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QUARTERLY



THE HELEN SUZMAN FOUNDATION
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roundtable

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promoting liberal constitutional democracy

Vision

Promoting liberal constitutional democracy in South Africa.

Mission

To create a platform for public debate and dialogue – through publications, roundtable discussions, conferences, and by developing a research profile through an internship programme – with the aim of enhancing public service delivery in all its constituent parts. The work of the Helen Suzman Foundation will be driven by the principles that informed Helen Suzman's public life.

These principles are:

- Reasoned discourse;
- Fairness and equity;
- The protection of human rights.

The Foundation is not aligned to any political party and will actively work with a range of people and organisations to have a constructive influence on the country's emerging democracy.

"I stand for simple justice, equal opportunity and human rights; the indispensable elements in a democratic society – and well worth fighting for." — Helen Suzman

Hosted in association with the Open Society Foundation For South Africa



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Profiles



Thuli Madonsela

Advocate Thuli Madonsela

was appointed as Public Protector South Africa by the President on the recommendation of Parliament with effect from 15 October 2010. At the time of her appointment, Adv Madonsela was the only full-time Commissioner in the South African Law Reform Commission. Before then she held various leadership positions in civil society and the public sector.

She is the co-architect of the Promotion of Equality and Prevention of Unfair Discrimination Act, the Employment Equity Act and Local Government Transition Act. She has also contributed to laws such as the Promotion of Administrative Justice Act, Repeal of the Black Administration Act, Recognition of Customary Marriages Act and the reform of Customary Law and Related matters Act.



Mzilikazi wa Afrika

Mzilikazi wa Afrika is an award winning journalist working for the *Sunday Times* investigations unit. Wa Afrika is one of the doyens of South African investigative journalism with a career dating back to 1995 when he started as a freelance reporter for the Witbank News. Over the years, he has uncovered and exposed a number of dodgy deals and corrupt politicians including the government's controversial arms deal saga and the SAPS lease deal.

Wa Afrika was awarded two international scholarships to study in the UK and USA for the recognition of his outstanding achievements in the field of journalism and has received numerous accolades for his work as a journalist. He is currently working on his first novel titled *The Ugly Ones Are So Beautiful*, which is expected to be published next year.



Dovhani Mamphiswa

Dr Dovhani Mamphiswa holds the position of Deputy Director-General in the Public Service Commission responsible for Investigation and Anti-Corruption.

He holds a PhD in Social Development from Wits, and a certificate in Public Sector Management from France's prestigious Ecole Nationale d'Administration, amongst other qualifications.

His previous positions include being a lecture at the University of Fort Hare and Wits.

He has published articles and chapters in both local and international journals.

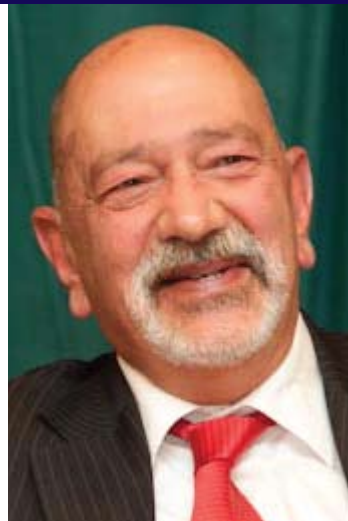


Steven Powell

Steven Powell is an executive at Edward Nathan Sonnenbergs (ENS) forensics and has more than 21 years experience as an advocate, specialist white-collar crime prosecutor and forensics lawyer.

He has presented on the topic of white-collar crime and corruption and is a regular speaker on fraud issues throughout Africa. He lectures on corruption at the University of the Western Cape's Forensics certificate course and is a regular speaker at the University of Cape Town and Stellenbosch.

Steven currently acts as non-executive director of Plattner Golf (Pty) Ltd – the Fancourt Golf Resort.



Francis Antonie

Francis Antonie is the Director of the Helen Suzman Foundation. He is a graduate of Wits, Leicester and Exeter Universities. He was awarded the Helen Suzman Chevening Fellowship by the UK Foreign Office in 1994. From 1996 to 2006 he was senior economist at Standard Bank; thereafter he was Director of the Graduate School of Public Development and Management at Wits University. He was the founding managing director of Strauss & Co.

Executive



“Corruption and misadministration are inconsistent with the rule of law and the fundamental values of our constitution. They undermine the constitutional commitment to human dignity, the achievement of equality and the advancement of human rights and freedoms. They are the antithesis of the open, accountable, democratic government required by the Constitution. If allowed to go unchecked and unpunished they will pose a serious threat to our democratic state.”

– Judge Arthur Chaskalson, President of the South African Constitutional Court, 2000.

At every level of our society we hear stories of kickbacks, nepotism, dodgy tenders, bribery and other corrupt acts. Corruption in South Africa is not an individual act but a phenomenon that is institutionalised and embedded in the wider matrix of power relations in our society.

In recent times the fight against corruption has made some progress, at the hands of the Public Protector, the Special Investigation Unit and the South African Police Services, as well as through the efforts of committed legal minds, individual whistleblowers and investigative journalists. But the scourge remains with us, and the threat it poses is as serious today as ever.

While there have been some successes in the fight against corruption, there are some structural conditions and expectations that make corrupt practices pervasive in our society.

The panellists were asked to consider the following:

- How do we define corruption?
- The history of corruption in South Africa and the ways in which modern corruption built on or supplanted Apartheid corruption.
- What is the true extent of corruption in our society?
- Is there sufficient will, both in government and in business, to fight corruption? Here we must remember that for corruption to take place there must be both a public servant willing to solicit or accept a bribe, as well as a private individual or company willing to pay that bribe.

The discussion was opened by Advocate Thuli Madonsela, the Public Protector, focusing on Corruption in South Africa: Past and Present Challenges. The Public Protector briefly touched on the following questions:

- What is corruption?
- Why should we be concerned about corruption?
- Who should be concerned about corruption?



Summary

- What challenges has our society faced over the years regarding corruption?
- What challenges does our nation face today regarding corruption?
- What is the role of the Public Protector and what challenges does this office face in playing its part regarding corruption?
- How do we join hands to present a united front against corruption?

Mzilikazi wa Afrika, journalist at the *Sunday Times*, gave a detailed account of individuals who had not only been victimised for whistle blowing, but lost their lives as a result. Wa Afrika recognised that South Africa has good anti-corruption policies, but these policies are failing the nation, and whistleblowers are especially vulnerable. He questioned government's will and intent to solve issues pertaining to corruption.

Dr Dovhani Mamphiswana, DDG (Integrity and Accountability) at the Public Service Commission (PSC) explained the mandate and role of the PSC. Dr Mamphiswana, also questioned government's will through the work of Accounting Officers and Executive Authorities -Ministers and MECs- stating that most of the time these government officials lack the appetite to investigate cases referred to them. This disregard raises serious concerns,

which suggest that these officials do not regard issues of corruption as strategic issues that are important to their core responsibilities.

The discussion was concluded by Steven Powell, Forensic Director at Edward Nathan Sonnenbergs, who began by stating that lack of resources to appropriately address corruption is one of the key issues that has an impact on the fight against corruption. He went on to say that, the South African Police Service and National Prosecution Authority do not have the required expertise or experience to deal with the high levels of corruption in South Africa. He commended South Africa's powerful legislation, but stressed that very few people are aware of critical anti-corruption requirements.

Although Powell acknowledged the Scorpions weaknesses, he declared that prosecutor driven, multi-disciplinary teams comprised of lawyers, accountants, investigators and digital forensic practitioners are the best way to deal with the high levels of corruption. He ended the discussion by reiterating the need for a dedicated and independent corruption-busting unit, saying, "The creation of a truly independent, dedicated anti-corruption body will be the acid test as to whether government truly has the political will to address corruption in South Africa."

Welcome



Good evening, ladies and gentlemen, and welcome to the Helen Suzman Foundation Roundtable. This is the 24th in our Quarterly Roundtable Series and it is brought to you in association with the Open Society Foundation for South Africa.

We are here tonight to discuss a topic that is seldom far from the national consciousness, namely Corruption.

Speaking in 2000, the then President of the Constitution Court, Arthur Chaskalson said:

“Corruption and misadministration are inconsistent with the rule of law and the fundamental values of our Constitution. If allowed to go unchecked and unpunished, they will pose a serious threat to our democratic state.”

More than a decade later in the judgment of the *Glenister* case, where the Helen Suzman Foundation was the *amicus* of the Court, Deputy Chief Justice Dikgang Moseneke and Justice Edwin Cameron wrote, and I quote:

“There can be no gainsaying that corruption threatens to fell at the knees virtually everything we hold dear and precious in our hard-won constitutional order. It blatantly undermines the democratic ethos, the institutions of democracy, the rule of law

and the foundational values of our nation's constitutional order.”

Corruption then has been with the South African state for many years. Nor is it new to the post-apartheid era – the final decades of apartheid were characterised by rampant corruption and looting of the state coffers.

In recent times, it seems that the fight against corruption has made some progress at the hands of the Public Protector, the Special Investigation Unit and the South African Police Service, as well as through the efforts of committed legal minds, individual whistleblowers and investigative journalists. But the scourge remains with us and the threat it poses is as serious today as ever.

At every level of our society we hear stories of kickbacks, nepotism, dodgy tenders, bribery and other corrupt acts. Corruption in South Africa is not the action of isolated individuals, but a phenomenon that is institutionalised and embedded in the fabric of our society.

This Roundtable will address this issue by asking a set of questions:

- How do we define corruption?
- What can we learn from the history of corruption in South Africa, both before and since the end of apartheid?
- What is the true extent of corruption in our society?



- What is it that makes corrupt practices so pervasive?
- What are the structural issues?
- Is there sufficient will, both in government and in business, to fight corruption? Here we must remember that for corruption to take place there must be both a public servant willing to solicit or accept a bribe as well as a private individual or company willing to pay that bribe.

We have an exceptionally distinguished group of panellists with us tonight to discuss these questions.

First, let me introduce a woman who needs no introduction, Advocate Thuli Madonsela, the Public Protector of South Africa. Advocate Madonsela's background is in human rights law and she was one of the 11 technical experts who advised the Constitutional Assembly on the drafting of the 1996 Constitution.

Before being appointed the Public Protector, she was also the only full-time Commissioner on the South African Law Reform Commission, where she was instrumental in the development of many important pieces of legislation, including the Promotion of Administrative Justice Act.

Our second speaker will be Mzilikazi wa Afrika of the *Sunday Times* Investigations Unit. Mzilikazi has worked as an investigative journalist for

more than 15 years. He has covered many corruption cases over the years, including Mr Tony Yengeni's involvement in the arms deal saga. In 2010, Mzilikazi became a newsmaker himself, when he was arrested after writing an exposé pointing to Bheki Cele's involvement in a dubious SAPS Lease Agreement.

We will then invite Dr. Dovhani Mamphiswana to contribute to our discussion. Dr Mamphiswana is the Deputy Director-General in the Public Service Commission responsible for Investigations and Anti-Corruption. He holds a PhD in Social Development from Wits and a certificate in Public Sector Management from France's prestigious École Nationale d'Administration.

Finally, we will ask Steven Powell to give his input to the panel discussion. Steven is the executive in charge of leading law firm Edward Nathan Sonnenbergs' Forensic Division. He specialises in leading forensic investigations into white-collar crime, and has acted for the Asset Forfeiture Unit, as well as previously being a specialist prosecutor for the Department of Justice.

I will ask our four panellists to address the questions I have raised before opening the discussion to the floor.

I would like to invite the Public Protector to open our discussion tonight.

Thuli Madonsela

Thank you, Programme Director and Director of the Helen Suzman Foundation, Mr Francis Antonie.

Fellow panellists, Deputy Director-General of Integrity and Corruption at the Public Service Commission, Dovhani Mamphiswa, Forensic Director at Edward Nathan Sonnenburgs, Steven Powell, Mzilikazi wa Africa of the *Sunday Times*, distinguished guests, ladies and gentlemen, members of the media, I'm sincerely honoured to participate in this important Roundtable discussion.

I thank the Helen Suzman Foundation for the opportunity. I also commend them for bringing us all together to discuss a matter that has become one of the Achilles' heels of our democracy.

My brief address focuses on, "Corruption in South Africa: Past and Present challenges".

When I received this invitation, I wondered

what I could possibly contribute to another corruption conference, having participated in more than half a dozen this year and witnessed a lot more via the media.

I was particularly concerned that I might not be able to share any more insights on the subject. But, having considered it, I thought I could briefly touch on the following questions:

- What is corruption?
- Why should we be concerned about corruption?
- Who should be concerned about corruption?
- What challenges has our society faced over the years regarding corruption?
- What challenges does our nation face today regarding corruption?
- What is the role of the Public Protector and what challenges does this office face in playing its part regarding corruption?
- How do we join hands to present a united front against corruption?

As the topic suggests, we all acknowledge that corruption is not something new to our country, nor is it a post-apartheid phenomenon. In fact corruption is a global phenomenon that democracies have been dealing with for centuries.

It was in England many centuries ago that Lord Acton coined the famous adage:

“All power tends to corrupt and absolute power corrupts absolutely.”

The very notion of separation of powers in a democracy, with emphasis on diffused state power, sought in part to minimise maladies such as corruption.

“Corruption is the abuse of entrusted power for private gain. It hurts everyone who depends on the integrity of people in a position of authority.”

Closer to home, the office has been recently asked to look into the Ciex report. This report focuses on allegations of looting and corruption during the dying days of apartheid.

What is corruption?

Transparency International (TI), a global NGO dedicated to fighting corruption, gives us the following definition of corruption:

“Corruption is the abuse of entrusted power for private gain. It hurts everyone who depends on the integrity of people in a position of authority.”

If we apply this formula, the test is simple. We will red-card you for corruption, if you are placed in a position of entrusted power and you use your power for private or personal gain.

But there are limitations to this definition. One of the key limitations is the fact that the TI definition tends to focus on those entrusted with power – politicians, civil servants, company boards, executives and employees. The definition does not seem to take into account the accountability of other parties to corruption. Bribery, the most common form of corruption, always involves two more parties. If we limit ourselves to those who exercise

entrusted power, there is no accountability for those that offer or pay bribes.

The emphasis on position of authority, although legitimate, tends to direct us to focus on corruption in higher echelons of organisations, and in many instances, at the politician’s levels of the public sector.

The reality is that corruption on a day-to-day basis happens in the frontline of service delivery. It also takes place regularly at technical units such as finance, human resources, procurement or supply chain management, and regulation including licensing and enforcement. If we look at the Public Protector’s office, the stories we have from the integrity front, for example, would include corruption at lower levels within social housing, particularly the delivery of RDP houses, social grants, identity documents and the provision of things such as permits, licenses, traffic regulation and law enforcement.

Our own specific legal instrument on corruption the Prevention and Combating of Corrupt Activities (PCCAA), Act 12 of 2004, offers a much more complex formula on corruption. According to the PCCAA, the general offence of corruption involves the following:

“Any person who, directly or indirectly-

- a) accepts or agrees or offers to accept any gratification from any person, whether for the benefit of himself or herself or the benefit of another person; or
- b) gives or agrees or offers to give to any other person any gratification, whether for the benefit of that other person or for the benefit of another person, in order to act, personally or by influencing another person so as to act, in a manner-
 - i) that amounts to the-
 - aa) illegal, dishonest, unauthorised, incomplete, or biases; or
 - bb) misuse or selling of information or material acquired in the course of the exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation;
 - ii) that amounts to-
 - aa) the abuse of the position of authority;

- bb) a breach of trust; or
- cc) the violation of a legal duty or set of rules;
- iii) designed to achieve an unjustified result; or
- iv) that amounts to any other unauthorised or improper inducement to do or not to do anything, is guilty of the offence of corruption.”

Then the PCCAA anticipates corruption in, and provides for, specific offences in respect of activities relating to: foreign public officials; agents; legislative authorities; judicial officers; prosecuting authorities; bribery or gratification in employment relationships; witnesses and evidential material during certain proceedings; contracts; procuring and withdrawal of tenders; actions; sporting events; gambling games and games of chance; private interest in contract – agreement or investment of public investment bodies; and various other areas of unacceptable conduct.

Application of this, in regard to day-to-day activities, means both the person who takes bribes – the traffic officer – and the person who pays bribes – the road user – are culpable.

So basically the PCCAA is very extensive in the way it defines corruption. If you look at it very closely, it is similar to the TI definition, in that there must be some form of gratification. The difference in this particular case is that the PCCAA ensures that there is accountability for both the one who acts and the one who causes another to act dishonestly or irregularly. Application of this, in regard to day-to-day activities, means both the person who takes bribes – the traffic officer – and the person who pays bribes – the road user – are culpable.

Why should we be concerned about corruption?

According to TI, corruption hurts everyone and it hurts particularly all persons in society “... who depend on the integrity of people in a position of authority”.

It does not matter whether you’re depending on the person in authority to make sure that when bread is supposed to be 1 kg, it is 1 kg, and

not 800 grams; or somebody who is supposed be in authority to make sure that you don’t get overcharged for licensing, or somebody who partakes in the common forms of corruption relating to tenders and employment in the public sector.

A young lady approached us in the Eastern Cape. She had been denied a child grant by the South African Social Security Agency (SASSA). The answer given by SASSA to her was that she already had two children in the system. Her insistence that she only had one child and that her child was not one of those in the system had fallen on deaf ears.

She then brought the matter to us. When we investigated, we found that there was indeed somebody going by her name, who was receiving a grant for two children. On further investigation we found that she was a victim of a syndicate, a criminal and corrupt syndicate that was cutting across three organs of state and a supermarket in civil society.

Home Affairs would give out IDs based on identity theft, which would result in something that Home Affairs calls a duplicate ID, where an ID is shared between one, two, or sometimes even four people. A similar pattern occurred in the Department of Health, where a clinic would give health cards for fictitious children. Then SASSA would process the application and adjudicate favourably despite the limitations, and then a local supermarket would be used as a pay point.

In this specific case case the young lady would be prevented from realising her rights protected under Section 27 of the Constitution. So if we’re looking at the cost of corruption, one of the areas undermined by corruption globally is human rights, particularly socio-economic rights and the justice system. Globally, the rights of poor people are undermined. And in our country, particularly, the rights under Section 27 of the Constitution, which are the rights to water, social security, food and related measures, are undermined.

While I’m discussing socio-economic rights, the RDP housing programme provides for another good example of corruption undermining expeditious realisation of socio-economic rights. Although we have not yet investigated

allegations made during our recent public hearings, information gathered already points to corruption being a huge factor slamming breaks on the progressive realisation of the right to adequate housing as envisaged in section 26 of the Constitution.

No one had informed her until a municipal office whistleblower informed her that her name was on the list of houses released a while ago. The whistleblower provided her with evidence.

One of the people that approached us was Ms N. She approached us sometime last year alleging that she was homeless due to corruption. She had been living in an informal settlement and alleged that she was told that her RDP application had been successful, and a house had been allocated to her. She was told that her house had been given to someone else, by a councillor. No one had informed her until a municipal office whistleblower informed her that her name was on the list of houses released a while ago. The whistleblower provided her with evidence.

When she pursued it, the municipality wouldn't help her until she turned to a councillor from an opposition party, who threatened to sue. Grudgingly, with constant threats and harassment, the house was restored to her. After these threats, her house and her daughter's car were burnt down. As we continue our systemic investigation into RDP housing, we have discovered that there are many people in the same position as Ms N.

Who should be concerned about corruption?

We should all be concerned about corruption. Not only does it rob people, primarily the poor, of services they deserve, but corruption is increasingly associated with serious health risks and even fatalities. It hits us all, both individually and as a society. If we take RDP housing, for example, it is said that the cost of redoing shoddy work of contractors under the RDP housing programme, is about 4.5 billion rand.

Of course we know that in some instances it is incompetence causing this shoddy work, but



our investigation has proved that a lot of it is also corruption, as these houses are approved. And in this 4.5 billion rand we are only calculating the cost of rebuilding the house.

We're not calculating the cost of fixing sewage systems that are structurally defective as we have seen in Braamfischerville, in Nala in the Free State and virtually all over the country. We have not calculated the cost to the poor such as the Braamfischerville man who only escaped with the clothes on his back, which were pyjamas, when his house sank. The question is, who is supposed to pay for all this?

In other countries they have associated the extent of devastation left by natural disasters such as tsunamis with structurally defective buildings approved because of corruption. The possibility that this may be the case in many disaster hit areas in our country is not remote.

What challenges has our society faced over the years regarding corruption?

Corruption has evolved over the years. Previously, corruption mostly took the form of bribery; today gratification is far more complex.

Thuli
Madonsela

The vehicles for executing gratification are also far more sophisticated. Here are examples of how complex and sophisticated it has become. Even where gratification is in the form of cash, cheques and EFT transactions are not used. Instead bags of cash are used, to get around FICA regulation. In cases of corruption in auctions, cash is not usually used. Instead, a barter system is preferred.

In the US, if you are charged after you have whistle-blown for something that happened before you whistle-blew, you are not allowed to be charged until the corruption case has been processed.

Another example of the sophistication is something we call, javelin arrangements. An example of a javelin arrangement is where a huge tender is given to a private company and a public authority joins that company soon thereafter. Another common form involves the privatisation of public entities with the effect of authorities involved ending up having shares in that private entity or having someone hold the shares for them – that is called warehousing.

What challenges does our nation face today regarding corruption?

Some of the challenges are outlined above. Another is the complexity of the law. I recently had a three hour discussion with two senior lawyers on the elements of corruption as envisaged in the PCCAA. It is very difficult to prove gratification. It is also not easy to prove the connections. At the most we can end up with conflict of interest as we did in my *It Can't be Right* report, or abuse of power and state resources among other PFMA violations, in the Against the Rules reports.

Another key weakness is the protection of whistleblowers. In South Africa it is not adequate; in countries like the United States it's a bit tighter. An example is 'pretext charges'. In the US, if you are charged after you have whistle-blown for something that happened before you whistle-blew, you are not allowed to be charged until the corruption case has been processed.

Whereas here, if the charges are valid, it doesn't matter that you're being charged over something that you did two years ago when you just whistle-blew last week.

What is the role of the Public Protector and what challenges does this office face in playing its part regarding corruption?

The Public Protector's constitutional mandate is to investigate conduct in state affairs that is alleged or suspected to be improper or prejudicial, report on that conduct and take appropriate remedial action, includes an anti-corruption mandate. So does the Public Protector's mandate under the Public Protector Act, which includes investigating and redressing maladministration, abuse of power and abuse of state resources.

The Public Protector's mandate under the Protected Disclosures Act also has key implications for combating corruption. The same applies to the information regulation mandate under the Promotion of Access to Information Act. The Public Protector's review mandate under the Housing Protection Measures Act also has implications for combating corruption.

The constitutional injunction that the Public Protector be accessible to all persons and communities allows a broader sector in society to use the Public Protector as their voice on issues of maladministration, including corruption. An important part of the Public Protector's mandate is the constitutional power, as entrenched in section 182(1)(c), to take appropriate remedial action. While this still leaves the Public Protector's powers at the level of non-judicial enforcement, the provision is unarguably stronger than the power to make recommendations as is the case with other constitutional institutions.

But there are challenges. The first challenge relates to inadequate resources. The second challenge is the lack of understanding of the Public Protector's mandate in some quarters. The last challenge, that I've seen personally, is a lack of synergy amongst integrity institutions that fight corruption. Within the State, there is at least a bit of coordination between the SIU, Public Service Commission, etc. But between Chapter 9 institutions, like the Public



Protector and the Auditor-General, there isn't a mechanism that oversees, for instance, after the Auditor-General has made his findings, – how the Public Protector's office takes over from there, as the Auditor-General is not mandated to deal with corruption directly.

There also isn't enough collaboration between the public sector and civil society actors such as Corruption Watch.

I must indicate that the question of strengthening of synergies is being addressed though, as part of a national good governance movement kick-started 3 years ago under the Public Protector. In October this year, we will be having the third Annual Good Governance Week and Conference focusing on service excellence through ethical governance.

Consensus on ethical governance is another challenge. We need to build national consensus on dos and don'ts with regard to integrity and the sanctions thereafter. For example, loss of face is a powerful deterrent in many societies, including countries such as Singapore. The media also plays a key role in this regard.

The media has a key role to play in the moral suasion necessary for swift compliance with the Public Protector's processes and findings.

How do we join hands to present a united front against corruption?

Building a united front against corruption is paramount. This includes strengthening synergies among bodies and actors involved in promoting good governance and combating corruption. A common understanding of corruption is important. It is also important that we promote shared values and unwavering commitment with regards to ensuring that wrongdoers are accountable regardless of whom they are.

Thank you.

CHAIRPERSON: Thank you, Public Protector, many thanks for opening our discussion. I am going to call on Mzilikazi to continue.



Mzilikazi Wa Afrika

Evening everyone, Public Protector and other guest panellists. All protocol observed.

The Public Protector explained in detail the definition of corruption, the limitations that we have, and the problem that we are facing as a nation. I will talk from a journalistic point of view and as a citizen of this country.

My problem with corruption is that corruption is not like a virus. Corruption can be cured and stopped. We don't need a doctor, sangomas, or prophets to stop it. What we need are honest citizens - businesspeople, politicians, men and women alike who are prepared to stand up and be counted to eradicate corruption.

Karl Cross once said:

"Corruption is worse than prostitution. The latter might endanger the morals of an individual. The former inevitably endangers the morals of the entire country."

As a journalist, when it comes to the issue of corruption, the government behaves like a farmer. It blames the bad weather, who happen to be journalists, for a bad harvest. It blames bad crops, who happen to be its employees, for not being suitable for its field.

The government tends to turn a blind eye on corruption and simply pay a little lip-service when required to. The government has good anti-corruption policies, yet those policies are failing the nation, and most of all they are failing whistleblowers who end up being victims for whistle-blowing or talking about corruption.

I will give you some examples of where the government has failed to help or protect whistleblowers:

Case No. 1: We will look at a gentleman by the name of Jimmy Mohlala. Jimmy blew the whistle on the 2 billion rand Mbombela Stadium in Mpumalanga.

Jimmy Mohlala was shot dead.

After his shooting, his wife, two daughters and son were taken to the bush and tortured by police and forced to make a false confession. The same policemen who were doing this knew exactly who had killed Jimmy Mohlala. But the government wanted to show the nation that they were doing something about his murder.

Before Jimmy was killed, he had been accused of rape, and when they had failed to smear and tarnish his name with the rape case, they decided to kill him. Up to today no one has been prosecuted or even arrested for the killing of Jimmy Mohlala.

The government did nothing to protect him. They knew why he was being fired; they knew why he was being victimised, yet they turned a blind eye.

Case No. 2: We look at the case of a gentleman by the name of John Muller. John was a junior traffic officer in Mpumalanga; he blew the whistle on, the speaker of Parliament Baleka Mbete-Kgositsile, about how she obtained a dodgy driver's licence. John Muller died of a heart attack after he was fired from his job, after blowing the whistle.

The government did nothing to protect him. They knew why he was being fired; they knew why he was being victimised, yet they turned a blind eye. On the other hand government will say, "We need to talk about corruption, join us in our fight against corruption, so we can stop this scourge."

Case No.3: We look at a case of a gentleman by the name of General Hamilton Hlela, the man who was behind the exposure of the 1.7 billion rand police tender. Hamilton was forced into early retirement because he did not approve this tender.

Again the government knew why he was being pushed out of the South African Police Service; yet again, they did not protect him. His experience was needed but no-one questioned why a General, which such experience, was let go.

Case No. 4: We look at a case of a gentleman by the name Bheki Jacobs, the man who blew the whistle on the controversial government arms deal. After it had been reported that Bheki Jacobs was the man behind the arms deal whistleblowing, he was arrested on trumped up charges. Bheki was flown out, from Cape Town, on a police private jet, his computers, laptops, and hard drives were taken from him.

He was subsequently released, as all they needed was in his computers and hard drives, to see how much information he had. Bheki died while fighting to get his stuff back. This is yet another example of a person blowing the whistle and not getting any protection from government.

Case no. 5: This is the case of a gentleman who was the former Chief Financial Officer of the Land Bank, Xolile Ncame. Xolile blew the whistle on the 100 million rand AgriBEE scandal, where money meant for emerging farmers, to help them with their businesses, was used by the executives of the Land Bank to buy luxury cars, farms and houses.

Xolile was victimised and forced out of his job after blowing the whistle on these executives. The government knew and didn't do anything to protect him. Yet the same government will come to, you and I and say "Help us fight corruption."

My problem with the government is that it sits at the table with us and says, "Guys, help us fight corruption." The same government behind our backs is trying to pass legislation that will force us to go to jail for up to 25 years for exposing corruption and corrupt politicians.

For me, that is the problem; government is behaving like a wolf and treating us like sheep. It comes to us with good intentions, but behind our backs, it has no will to do anything to solve the issue of corruption.

Thank you.

CHAIRPERSON: Many thanks. I'm going to ask Dovhani to continue the discussion.

Dovhani Mamphiswa

Thank you very much. I appreciate this opportunity. My fellow panellists, thank you for sharing the platform with me.

I will not venture into what the Public Protector and Mzilikazi wa Afrika have said, particularly with regards to the definition of corruption. Their definitions were clear and we share the same perspective and understanding.

Perhaps it's important for me to start by stating the following. The Public Service Commission (PSC) is a Chapter 10 institution, which drives its mandate from the Constitution of the Republic - particularly Section 196 of the Constitution, which states that the PSC is supposed to evaluate, monitor, and investigate maladministration in the public service.

It is out of this mandate that the PSC is also assigned the responsibility of managing the National Anti-Corruption Hotline. This was put in place by government to ensure that anyone who is aware of any corruption or corruption related activities reports these anonymously.

The hotline number is 0800 701 701. It is through this mechanism that the PSC receives a great deal of information relating to corruption taking place in the public service. Cases reported to the PSC vary from irregular appointments to irregular procurement processes. Irregular appointment cases range from, say, a position being filled without the required procedures being followed, to unqualified people being put in positions.

This way we rob people, who might be competent or qualified to do the job, of the chance to serve in the public service.

A number of you seated here today might have seen positions advertised in the papers, for posts in the public service. However, I think the majority of you are of the view that it is not worth the effort to apply; because surely those positions have been reserved for certain people.

I am sure the same is applicable for tenders. When you come across the tender bulletin, at the back of your mind, you already of the view that someone internally already knows who they awarding the tender to. This way we rob people, who might be competent or qualified to do the job, of the chance to serve in the public service.

The challenge that the PSC has received over the years with regards to irregular appointments and irregular procurement processes, is mainly due to insufficient capacity within the respective departments. As all departments are supposed to have what we call Anti-Corruption Units. These Units are to be well staffed, and properly resourced to ensure that all corruption cases, once referred to them for investigation, are indeed investigated thoroughly.

Over the past five years the PSC has received and sent out over 9 000 cases, to these Anti-Corruption Units and other departments. What we have seen, though, is that the relevant Departments or Units don't have the appetite to investigate these cases.

Lack of appetite is informed by the different heads of departments and accounting officers who don't regard corruption-related issues as being part of their overall strategy. In other words, they do not regard them as important or as the core business of their responsibilities as accounting officers or heads of departments. This results in cases referred to them getting stale as they aren't investigated.

I will share a simple example with you about recruitment in the public service. In the public service any position should be evaluated before it's advertised. Once it's advertised, an interview panel should be properly constituted by an accounting officer or by a delegated officer.

Once constituted, the interview panel must shortlist candidates for the position and they must have minutes of the short-listing meeting. When a candidate is recommended, the accounting officer or delegated official must issue a letter of appointment to that candidate.

But what we have seen over the years is that positions aren't properly evaluated – some aren't evaluated at all. If evaluation doesn't take place this simply means the position

is an irregular post. It might not even exist on the establishment of the organisation or department. Further, in many instances, the panels responsible for evaluating posts aren't properly constituted. That simply means anyone can challenge the appointments made by these panels.

There are a number of cases like this, and they do come to the PSC. When investigating such cases, we ask the head of the departments, who are accounting officer or the Executive Authority (EA), in this regard it will either be a Minister or a Member of the Executive Council, to consult a chief state law advisor as the position would have been irregular.

The same applies to the tendering process. All tenders have to be advertised, and there will be those that, depending on a particular threshold, have to call for three quotations.

What happens half of the time is that we don't get any response from the EAs. In other words, no action is taken. That tells you and me that a lot of people holding public office aren't properly appointed. And if they not properly appointed, they don't qualify for the position, either because they don't have the right competency or the right qualifications for the position, surely they not going to deliver the mandate of that particular position, or fulfil the responsibilities that are assigned to them. That on its own is maladministration.

The same applies to the tendering process. All tenders have to be advertised, and there will be those that, depending on a particular threshold, have to call for three quotations. In many instances that is not done and, when we request information from the department regarding the process, the department doesn't have all the information needed.

As I said earlier, cases like these in many instances discourages people from wanting to serve or offer their services to the public service.

The other example that I think is very important to demonstrate is the extent of corruption in

... all senior managers, ranging from directors upwards, are required to declare their financial interests on an annual basis. The sole purpose is to establish if any conflict of interest exists with their businesses, or if they conduct business with the State.

the Public Service, and perhaps we need to talk about this.

The PSC has also been assigned, by Cabinet, the responsibility to manage what we call the Financial Disclosure Framework. In this Framework, all senior managers, ranging from directors upwards, are required to declare their financial interests on an annual basis. The sole purpose is to establish if any conflict of interest exists with their businesses, or if they conduct business with the State.

How do we do this? These senior managers, by the 30th of April each year, are required to submit their financial disclosure forms to their EAs, who are in turn required to submit these forms to the PSC, by the 31st of May. The PSC will then scrutinise these forms by applying the following three steps.

First, we use the Deeds Registry, which will help us establish whether an official has declared all their properties. If they haven't, the Deeds Registry will let us know which other properties are owned by that particular official. This allows us to then go back to that official and let them know that the information they provided was incorrect.

Secondly, we use the Companies and Intellectual Property Commission (CIPC) to establish if an official declared their directorship. Earlier, the Public Protector talked about the javelin throwing and warehousing – where officials get other people to hold their shares for them. But through this process we are able to see when an official hasn't declared all their positions.

Lastly, we'll use the electronic National administration Traffic Information System (e-NaTIS) which helps us establish the cars an official has registered under his/ her names.

And what we've realised is that most senior managers don't declare all these things, even though they are supposed to be ethically grounded and integrity-driven. When senior managers don't declare all their interests, we raise this with their EAs, so they can take action, as this is a punishable misconduct. Over the years, the PSC has conducted an audit of the responses it has received from the EAs regarding actions taken against these officials. The results have been nil – no actions were taken.

Again, this tells us that perhaps there is no political will to eradicate corruption in the public service. That is very problematic.

I'll conclude with what we call financial misconduct. Anyone in the public service knows the restrictions they have in terms of how much money they can sign-off. What we've realised is that some public servants are exceeding this amount. That's where we start to talk about unauthorised expenditure, wasteful expenditure, and so on. In many instances if there's financial misconduct or financial loss to the state, the official found responsible for this has to pay the state back. But we also want the EAs to take action against these punishable misconducts.

The findings of the PSC study have shown that very little is being done in this regard. The worst sanction imposed by EAs is a final written warning. That's very wrong because a lot of these officials would have misused state resources for personal gains; that is corruption and they should be punished for it.

Thank you very much.

CHAIRPERSON: Dovhani, many thanks for broadening the discussion and for giving us a glimpse of what is happening in the public sector. I'm going to ask Steven Powell to conclude the panellists' contributions.



Steven Powell

Steven

Powell

Thank you, Francis. Good evening, ladies and gentlemen. Tonight I'll be looking at corruption insights from a private sector forensic expert perspective.

I strongly believe that South Africa is again at a turning point, where if we do not act quickly, corruption will become endemic. Petty bribes are already being accepted as routine and normal. Daily newspapers are rife with reports of widespread corruption in both public and private sectors. The arms deals scandal, coupled to prison sentences for the former Commissioner of Police, Jackie Selebi, and recent termination of his replacement, Bheki Cele, who was embroiled in a 1.8 billion rand overspend on police accommodation, has done little to bolster confidence in public sector integrity. These incidents, coupled to the tenderpreneurship phenomenon and many instances of grand corruption exposed by the office of the Public Protector, have created the perception that corruption is rife in South Africa.

The great work that Thuli is doing is exposing a lot of the rot. With our former Police Commissioner behind bars and all these corporate and public sector scandals in the forefront of the media, the perception around

corruption just becomes more and more negative. But I am really encouraged by our Public Protector's work. I think she's doing a lot more than the role actually requires.

The negative perception has contributed to South Africa's slide down the Transparency International Corruption Perception Index (CPI) by more than 20 positions. South Africa currently occupies the 64th position out of 189 countries; four years ago we were in position 42.

There is no question that indeed we have great anti-corruption infrastructure. We have some glorious legislation to tackle corruption and we have modelled units like the Assets Forfeiture Unit on what is in place in the United States and the United Kingdom. But very few people are aware of critical anti-corruption requirements in South Africa. Many of the initiatives and resources to address corruption in South Africa are not marketed effectively, and we also don't have people to enforce the great legislation we have.

I am going to give you a couple of examples of some startling information about some brilliant pieces of legislation which have been introduced recently. I can guarantee you it

will come as a surprise to most of you in the audience today.

The first example I want to allude to is from the Prevention and Combating of Corrupt Activities Act (PCCAA). Thuli referred to how we have extended the definition of corruption and she spoke about all the different categories of corrupt activity.

But there are a number of important ingredients to this legislation. The first is that the definition of corruption has been radically extended. We've also built a number of presumptions into the legislation to assist with prosecution and to facilitate convictions, but we are still not seeing enough convictions.

So if South African companies pay bribes in the rest of Africa, they can be prosecuted locally. The problem is that we do not even have the resources to deal with corrupt acts that are committed within our own borders ...

What are the reasons for that? Well, look at what is happening with the criminal justice process; in the public sector prosecutors aren't being paid anywhere near what they can earn in the private sector. So working for the government isn't rewarding for any law student.

As a result, what happens is that you have practitioners like me, who become specialist prosecutors and then head off to the private sector; the state loses talent it should be retaining. Therefore, we really need to look at how we reward and remunerate key role players in the criminal justice process, which includes the police.

The second example in terms of the PCCAA is that this legislation makes provision for extraterritorial jurisdiction for contravention, like the Foreign Corrupt Practices Act (FCPA) of the United States and the recently promulgated United Kingdom Bribery Act (UKBA).

So if South African companies pay bribes in the rest of Africa, they can be prosecuted locally. The problem is that we do not even have the resources to deal with corrupt acts that are committed within our own borders, so it will be

years before we look at what happens when rogue South African companies pay bribes in our neighbouring countries.

Lastly, on the PCCAA, and I'm sure this will be a surprise to many of you; there is an obligation to report acts of corruption in the Act. In terms of section 34 of the PCCAA, it is a criminal offence for any person in a position of authority, who knows, or ought to reasonably have known or suspects that an act of fraud, theft, corruption, extortion or forgery and uttering, involving an amount which exceeds R100 000 and does not report the incident to police officials. This legislation is designed to compel executives, managers and business leader to address corruption by reporting it to the authorities; however, very few people are aware of this requirement even though the failure to report carries a potential 10 year jail penalty.

This is brilliant and should spur every individual who comes across corrupt activities to report them. But if people don't know that they need to report, they're not going to do it. That's why we need to market such legislation, and it needs to be communicated effectively. I'll give you the most radical example of what has recently happened.

There is also limited public awareness regarding onerous anti-corruption compliance requirements that have been introduced into South African law. We have now created some strong anti-corruption infrastructure for the corporate world, to facilitate the relationship between the bribe receiver (government official), and the bribe payer (private sector official). This legislation takes out the bribe payer, which makes it a lot harder for bribery and corruption to take place.

I'd like a show of hands, how many of you in the room have ever looked at or read the Organisation for Economic Co-operation and Development (OECD) recommendations on reducing corruption? A show of hands! One, two, three...

I recently spoke at the Compliance Institute, and I asked the same question, about the OECD Recommendations. I was speaking to lawyers, compliance officers, CEOs. Out of 250 people in the room, I had the same result as this evening; only three people were aware of the requirement.

The South African Companies Act (Act 71 of 2008) was overhauled recently, and the new amendments came into effect last year. Requirement 43 of the new Companies Act requires South African companies to establish Social and Ethics Committees, which have a host of good governance and corporate citizenship obligations. Included amongst those obligations is a requirement to monitor the company's progress in respect of adhering to the OECD recommendations on reducing corruption. Very few people have any idea of what the OECD recommendations entail, as we've seen tonight.

The OECD recommendations also require South African companies to put anti-corruption policies and procedures in place and to develop internal controls to mitigate the risk of bribery in its business activities, as well as, to train its people, to discourage facilitation payments, to accurately record its transactions, to perform due diligence on agents, intermediaries, business partners etc.

Many companies are just as blissfully unaware that they are even obliged to comply with this legislation, as many business leaders labour under the misapprehension that this legislation only applies to listed companies. Whilst it does apply to listed South African companies, it also applies to all state-owned entities such as Eskom and Telkom. What very few people realise is that this legislation is also applicable to medium to large enterprises. Eligibility is determined either by being listed or being a state-owned company or further by achieving a score of 500 points or more. The criterion for scoring points is as follows – an entity is awarded one point per employee, based on the average number of employees over any two of the last five years. The entity further scores one point per million rand in turnover, one point per million rand in debtors, one point per million rand in creditors and one point for every holder of issued securities (shareholders).



There are accordingly a large number of unlisted companies that are also subject to these requirements. Clearly, if government wishes South African companies to adhere to these onerous requirements, it needs to take concrete actions to bolster awareness of such requirements.

The OECD recommendations also require South African companies to put anti-corruption policies and procedures in place and to develop internal controls to mitigate the risk of bribery in its business activities, as well as, to train its people, to discourage facilitation payments, to accurately record its transactions, to perform due diligence on agents, intermediaries, business partners etc., and in so doing, restrict opportunities for corruption to take place within its own business.

Now I'll elaborate briefly on some of the OECD recommendations. The OECD recommends that companies should not pay bribes; should discourage and prevent bribes solicitation and that they should avoid facilitation payments. South Africans don't even know what facilitation payments are, unless they travel through Africa, and that's another problem.

The other OECD recommendation is that companies are required to do a corruption risk assessment and to determine where key corruption exposures lie; what are the interactions with government, the regulators, where do they need permits, approvals, authorities and to put procedures in place to mitigate that corruption risk.

It also requires due diligence on agents and intermediaries, because a lot of corrupt parties do not pay the bribes themselves – they appoint third parties to facilitate and pay those bribes. Even in the legal profession, lawyers are often the instrumentalities of these corrupt payments. The OECD, in conjunction with the International Bar Association (IBA) and the Law Society of South Africa, has introduced an initiative to train the legal profession on its own anti-corruption requirements.

Some companies even do some homework to find out what the vices of the individuals who control the process are and they exploit those. If they can't pay money, they'll find a way to get to those decision-makers.

So when a company appoints someone to act on their behalf, they need to tell them: we do not pay bribes; that's the way we do business, so, if you're going to do work for us, you have to commit that you will not pay bribes. And a company has to implement warranties and covenants in the agreements with those people.

The inclusion of the OECD recommendations on reducing corruption in the regulations of the Companies Act is a bold step which should have a positive effect on reducing corruption in our country. This will go a long way in reducing bad corporate behaviour, because at the moment it's a free-for-all in South Africa.

You want to win a contract; you want to win a tender; you find out who the key role players are. Some companies even do some homework to find out what the vices of the individuals who control the process are and they exploit those. If they can't pay money, they'll find a way to get to those decision-makers.

By including these recommendations we have taken our first steps as a country down the anti-corruption compliance path, which has been led by the United States with its FCPA which targets bribes paid to foreign government officials. Even stronger global anti-corruption legislation was promulgated by the United Kingdom, in July 2011, when the British government introduced the UKBA which also targets bribes paid to foreign government officials and any other persons. The UKBA has also introduced a new corporate offence entitled "the Failure by a Commercial Organisation to Prevent Bribery". What this means is that if an incident of bribery takes place and the corporate entity in which it happened, does not have anti-bribery policies and procedures in place and has not educated its employees and agents about not participating in acts of bribery, the company can then potentially be prosecuted and fined by the Serious Fraud Office, which is the British Regulator failing to prevent bribery.

The penalties for failure to comply with global anti-corruption measures are significant. In the United States, the Department of Justice and the Security and Exchange Commission (SEC) are the regulators that enforce investigations into corruption breaches by corporate entities and they impose massive penalties.

If you read the paper today you would have seen that Pfizer, a global pharmaceutical manufacturer, entered into a settlement where they paid \$60 million as penalty for corruption breaches in some of their very remote subsidiaries.

If you look at what has happened over the last couple of years, in 2010, Siemens paid \$1.6 billion in penalties for corrupt activities. Why? Because they thought it was prudent to win business across Latin America, Asia, Africa by paying bribes to key decision-makers in government. Those types of behaviours were severely penalised by the regulators. We need to wake up in South Africa and start looking at how other regulators are dealing with corrupt activities.

We have now introduced these wonderful requirements to implement the OECD recommendations, but now we need to introduce a strong stick to ensure that we can enforce those regulations and that we take companies that ignore these regulations to task.



Steven Powell

If we as a country were to emulate what United States and the United Kingdom have recently done; first the South African fiscus would be dramatically bolstered, and secondly and more importantly companies would be encouraged to create a culture of doing business ethically.

South Africa should indeed look at how the rest of the world is tackling corrupt activities. If we as a country were to emulate what United States and the United Kingdom have recently done; first the South African fiscus would be dramatically bolstered, and secondly and more importantly companies would be encouraged to create a culture of doing business ethically – they would avoid corrupt activity in order to evade robust sanctions.

When we look at some of the structural issues that we are faced with in South Africa, when it comes to dealing with corruption, it is clear that the police and prosecutors do not have the resources or the expertise to deal with the problem effectively.

On the police side, we recently held meetings with the investigation officer on a 90 million

rand corruption case, committed by a manager of one of the mines, involving the refurbishment of a mine shaft. On this one we suspected that the manager was on the take, and was getting kickbacks from the company whose invoices he was approving.

They went 60 million rand over budget on the project; we investigated and got the police to issue a section 205 subpoena. We looked at the bank statements and they clearly show that our suspect, the mine manager, had been taking kickbacks to the value of 2.5 million rand.

We explained this to the police, but struggled to get the South African Police Service to obtain an arrest warrant, notwithstanding the fact that our suspect is a foreign national with two local identity numbers. It took us two weeks just to get the State to read what we had given them and then to effect the arrest. When we got to arrest mode and approached our investigator, we got to his office and he must have had 150 dockets on his table. Commercial police investigators have case loads of more than 150 to 200 and they simply cannot give proper attention to all of these matters, there are only so many days in a month. This is one issue that really needs to be looked at.

On the other hand, prosecutors often lack the experience or expertise to prosecute complex corruption cases which are notoriously difficult

to detect as corrupt payments are usually well-concealed or off-book.

Now if we look at the United States, the Department of Justice and the Security and Exchange Commission are staffed by competent, qualified professional lawyers and investigators. The same applies with the Serious Fraud Office, in the United Kingdom.

What is happening here? We had the Scorpions; they had their weaknesses but they were prosecutor-driven and they had multi-disciplinary teams comprised of lawyers, accountants, investigators and digital forensic practitioners. That remains the best way to address these difficult cases. Now we've got the Hawks and we've had the Glenister case which challenged their independence.

In my view the demise of the Scorpions was a regressive step in the war against corruption. The replacement unit, the Hawks, which forms part of the South African Police Service, is simply not independent or effective enough. They do good work on organised crime, but they are not the ideal solution to the corruption problem.

If there is political will to address the scourge of corruption, then the government needs to create a dedicated, fully independent, multi-disciplinary corruption busting unit with sufficient resources, in order to have a meaningful impact on corruption.

It is absolutely essential that this body is sufficiently independent, to enable it to function effectively and without fear or victimisation or recrimination and without political favour or influence.

I shouldn't be complaining because my forensic team is flourishing, as are other audit and law firms. We are actually thriving on the incapacity of the state because a lot of what we do should be done by the state. But when we actually work with the police, we get frustrated.

Another key thing that we need to watch out for, and Mzilikazi referred to this, is media freedom, which is critical to fighting corruption and witness protection.

It is no secret in South Africa that whistleblowers have had a particularly rough ride. We've

got to make sure that whistleblowers are not persecuted. Protecting whistleblowers is actually a global problem. Even in the United States they struggle with protecting them, but I just want to add another ingredient the US has introduced to corruption prosecutions.

Whistleblowers in the United States are incentivised to report companies that pay bribes. They get 25% of whatever is recovered in terms of penal sanctions imposed against those companies – so whistle-blowing can become quite a lucrative career there!

In South Africa, if whistleblowers are not victimised, dismissed, fired, disgraced, their lives are at risk. We don't hear about all the deaths, people that just disappear, and cases that can't move forward because there are no more witnesses. The Open Centre for Democracy has been grappling with mechanisms to ensure witness protection. Even in my own forensic unit we often deal with whistleblowers, as a large number of the successes that we achieve on investigations are as a result of whistleblower information.

The Protected Disclosures Act only offers paper protection to such whistleblowers. In my experience the best way to protect the whistleblower is to keep them absolutely anonymous; if the criminals do not know who blew the whistle on them, it is very difficult for them to do anything about these whistleblowers. It is critical that the envisaged anti-corruption body is able to receive whistleblower information regarding corrupt activities, and the whistleblower remains confidential.

I reiterate that we need a dedicated and independent corruption busting unit.

The creation of a truly independent, dedicated anti-corruption body, with specialist teams, which can coordinate and integrate its efforts with the South African Revenue Services, and other bodies like the Asset Forfeiture Unit, will be the acid test as to whether government truly has the political will to address corruption in South Africa.

Thank you very much.

CHAIRPERSON: Thank you, Steven. I'm now going to open the discussion to the floor.



Comments

COMMENT: *What concerns me is that there are some big initiatives on the table, but it's the small endless endemic corruption, that's not being given enough attention, driving licenses for example.*

I recently heard a story where one of the members of my team, at Wits, only got her driving licence after taking the test five times. As a highly religious woman, she would not give a bribe, but every time she went for her driving licence, she'd be asked to give one, not by the examiner but by the driving school people, who have arrangements with the driving inspectors.

90% of her friends have paid bribes to get their licences, in many instances they didn't deserve to pass the test but they paid. This continues to happen.

I ask the panel, what are we doing about this sort of broken windows policy? How do we fix the small bits of corruption so that we can look at these giant acts of corruption?

GREGORY: *My name is Gregory, I'm from COSATU. My two questions are directed to Adv Thuli Madonsela, and Mzilikazi wa Africa.*

I'll start with Thuli Madonsela; would you agree that corruption has been, around since apartheid? It's not something that came with the ANC!

There's corruption in both the public and private sector, it's not just a public sector problem.

The contributing factor is that there's no real opposition for the ANC and as a result they feel free to do whatever they want. As long as there is no political opposition in this country, corruption will be endemic.

And to Mzilikazi, would you agree that the Info Bill caused an outcry; would you also agree that it's a way to protect corrupt politicians?

ANNE PRATT: *My name is Anne Pratt and I'm the Director at Memela Pratt and Associates. I think it was Steven Powell who said corruption is almost endemic.*

The question is, is it not endemic already? And if that's so, and if we accept the view of Bob Garratt who wrote the book, The Fish Rots from the Head, how do we tackle corruption?



Questions

PHILLIP: *My name is Phillip. My only question to the panel is can you unpack what you mean by there's no political will? We've got all this legislation but people are saying there is no political will. What does that mean?*

ALEX VAN DEN HEEVER: *Alex van den Heever. I'm the Old Mutual Chair of Social Security at Wits. One of the problems that I see in the current system is that the institutional frameworks, the organs of state, that we have in position are largely captured, which means that you can't prosecute or investigate.*

Having information on corruption is only one part of ensuring accountability and the question really is how is one going to recapture the organs of state?

So if the National Prosecuting Authority is easy to influence, and the investigative structures are easy to block, then it means that there's no prosecuting corruption within the system.

If we look at how many people are actually prosecuted in the system, and how many investigations are completed, it's nothing like the extent of corruption that is being identified within the system and that means it is endemic now.

There isn't a single hospital manager in South Africa, in any province outside the Western Cape, that actually should be in that position, and that's most of the state institutions.

CHAIRPERSON: Some of the themes include small scale corruption which appears to be very widespread, if not endemic. There's also the question of political will and political competition. Lastly, the level of corruption, how endemic is it, and whether or not the organs of state have been captured.



THULI MADONSELA: The first question was, are we doing enough about retail corruption? The corruption at traffic control stations, I suppose that also includes traffic control and Home Affairs and similar departments.

At that level of government, I would say that some work is taking place. If you look at, for example, the police – the traffic control departments, would fall under the work of the Independent Police Investigation Directorate (IPID). So they're doing some work but maybe it's not out there; or it's not very intense, so to speak.



At the level of civil society, Corruption Watch is targeting a lot of retail corruption and encouraging people to report their own personal experiences. But, perhaps Corruption Watch should also consider an organisation like that in India where people, through a website “I paid a Bribe”, specifically say I did pay a bribe and these were the circumstances and it is dealt with.

But I do agree that we have to target retail corruption because that’s where the indifference starts.

Recently *The Star* newspaper published an article about corruption. Personally, I was sad that there wasn’t much dialogue around it, it wasn’t trending on Twitter. There wasn’t much discussion about it and I was worried that we are reaching a point where corruption becomes just another thing.

You will recall earlier this year, there was a young lady, a model, who reported proudly that she had paid a bribe to get out of a fine. As soon as Corruption Watch caught wind and tweeted about it, there was so much social pressure that she withdrew and said she was joking. I’m wondering whether she was really joking!

But that takes us to the point that was made by my colleague, Steven Powell, about the need for a corruption-focused entity, because that corruption-focused entity would also be able to target retail corruption.

I don’t think the Hawks are that entity, the Hawks are supposed to focus on specialised crime and obviously retail corruption isn’t that.

So if I compare this with what’s happening Singapore, the investigation bureau would have its people pose, as civilians looking for licences. This would let them know where corruption was taking place, and they would be able to deal with it.

The next question was is corruption new, and was it there under apartheid? I think as Francis stated when we started this conversation, corruption has always been there. In fact it goes beyond apartheid.

The Chief, who was allowed to take away someone’s land and arbitrarily remove them, was given some shiny gift of some sort and that was corruption. So corruption has always been there but I think what we have been saying is that it has evolved and it’s become more sinister, riper and more dangerous.

Comments



Just to add on what I'd already said about corruption, is that corruption can also have life threatening implications, for example, where bridges are signed-off by engineers as built according to certain specs and then they fall on people.

Our own investigations on RDP housing found that a lot of the people who are subject to disaster relief because their houses had collapsed, aren't homeless as a result of the strength of the disaster but because their houses had been shoddily built.

I come from Dlamini, in Soweto, my municipal house still has the window frames and doors that it had when I was born.

So some of the things that we are seeing are new and we must admit that it has gone a little bit wild. The Ciex report that I spoke about, shows how during the dying days of apartheid there was looting, shameless looting really.

So we are not saying it wasn't happening then.

One of the things that changed recently is controls. I was one of the first people to enter the public service; I entered around 1995, with most people having entered around 1994. One of the things we said in the transformation of

the public service is that we didn't like the fact that it was rules-focused instead of people-focused.

But it may have happened that in the process of worrying about doing things the right way, as opposed to doing the right things, we forgot the right way.

When I was in the public service, you were scared when told you'd be fired for fruitless expenditure – irregular and unauthorised expenditure. Some civil servants today don't even know the meaning of unauthorised and irregular expenditure.

I'm not going to comment on political will because I didn't say there was no political will. I just called for a united front against corruption with public service and civil society. The only thing I can say though is that there shouldn't be impunity.

If we're dealing with corruption it's going to be important that once we have decided what the values are and what the do's and don'ts are in terms of ethical governance; it shouldn't matter who is alleged to have done something wrong, the same standard should be applied all round. Then about institutions being captured, I'm not going to comment on that because that will also include my institution.



Comments



MZILIKAZI WA AFRICA:

Corruption does not start at government offices or at the Tender Board; it begins in our homes and those of our friends and families. It starts when we decide to bribe a traffic officer, when caught

speeding or drunk driving.

It starts when we buy stolen goods, knowing very well that they're stolen. Corruption starts with the small things and evolves.

My biggest problem with the State of Information Bill is that the government wants to send journalists and whistleblowers to jail for 25 years, instead of sending corrupt individuals to jail, for 25 years.

As for political will, I've never seen the ANC discipline any person or minister found guilty of anything, for bring the party into disrepute. Instead, that official will be given a diplomatic post. From where I'm standing that's a lack of political will.



STEVEN POWELL:

I'm going to kick-off with the small scale, endemic corruption. Again, government is busy with a very, very useful initiative. There's the Criminal Justice Cluster, in the National Prosecuting Authority.

The project is set to identify 100 corruption cases, worth more than 5 million. That's tackling the small stuff but again it's a big initiative that nobody knows about. So there is a lot more happening than we realise and I'm hoping we will see the fruits of those cases as they progress through court.

But there's also a lot happening at the traffic departments. I can't tell you how many I've personally been involved in; we've helped municipalities across the country sort out corrupt officials, within the department. The biggest problem is that as we replace them, new people come in and the practice continues.

The SIU has also sent people in and they've had agents going in under cover trying to see how easy it is to buy licences at some of these departments. The result of such corruption is that you see people on the roads in unroadworthy vehicles.



I'm going to close with the question around political will. For me, if there is genuine political will, then government has to take steps to create a truly independent and strongly tasked multi-disciplinary body that tackles corruption. If we don't get there, then I think the answer to the question will be NO!



DOVHANI MAMPHISWANA:

Thank you. Just to add to the issue of political will, which I might have indicated earlier, political will can be measured by the resources that are allocated to fighting corruption; like capacity to

fight corruption and financial resources that will ensure that there's adequate capacity to do that.

There should also be action taken against those who are found guilty of corruption. As it is, there are no consequences, except for the few exceptional cases from time to time. So I cannot say there is a strong or overwhelming political will, as it is stands, from where I am seated. We have, as the Public Service Commission, on a number of cases, made sure that all our findings are presented to the EAs, but no action was taken.

We are all aware of the fact that we've got the Protected Disclosure Act (PDA) which talks about whistle blowing and the protection of the whistleblowers. I think all of us seem to be in agreement that we've seen a lot of whistleblowers being subjected to other things, but not protection.

If the PDA is not good enough, those in power should through the reform of any amendment make the PDA adequate. That would demonstrate political willingness to fight corruption.

That lack of accountability by those placed with the responsibility, like EAs and accounting officers, also contributes to what we regard as lack of political willingness or leadership at that level in dealing with corruption.

CHAIRPERSON: I would like to take a last round of questions.

COMMENT: *It's common knowledge that corruption is a malignant tumour of a body politic and one of the reasons it has metastasized is because it's a top-down disease.*

We have venal and corrupt leaders who feel untouchable and invincible. We talk about corruption and the society, and we say we can address it!



What I'm seeing here is that with corruption, even with the best systems and frameworks, the small man will always be caught and the big man will always get away. How are we really going to address that?

TONY MATHIPA: *My name is Tony Mathipa, President of Youth for Human Rights in South Africa.*

Let's look at where the issue of corruption starts in the first place. When the concept of good governance was introduced, it was to ensure that corruption is minimised, however, the concept of good governance is informed by maximum participation.

If civil society is not participating in the fight to combat corruption, the concept of good governance fails to exist, and in that format you cannot defeat corruption at any level.

The point is engaging people; people should be informed of their role in society, not only government, because good governance is not informed by government only. It is also informed by civil society, the private sector and a whole lot of other parties.

DOUGLAS IRWIN: *My name is Douglas Irwin. I'm a political scientist and subsequently a business environment policy researcher, though*

retired from both. A few years ago I was on a research project in Nigeria and I encountered a remarkable business association there.

The members were business people, CEOs and other senior people in businesses of various sizes, from corporates through to SMEs, who all pledged on a single issue – to oppose corruption. Not to engage in corrupt activities and to expose corruption where they encountered it. I wonder what appetite there might be in South Africa for a business association of that kind and I put that question to Steven Powell.

BONITA: *My name is Bonita and the question I have for Mzilikazi is whether the media has the power and duty to investigate until they discover the truth, or do they just want to make front page news?*

GAVIN BARTLETT: *My name is Gavin Bartlett. One of the problems we're having within the auditing profession and the accounting profession, in that the number of people who are competent and qualified is declining rapidly.*

There's very few coming into the auditing profession. Those in the auditing and accounting profession are middle-aged to elderly and within ten years or so, most auditors and accountants will be retired.

Questions



Comments



MZILIKAZI WA AFRICA:

I would like to start with the issue of how to address corruption in South Africa. I agree with both Steven and the Public Protector that we need a strong body that will only deal with corruption.

We do have organs of the state working on corruption, but they're not strong enough as they're working parallel and have budgetary constraints. If we'd get a body whose job is to only investigate corruption, we'd then be able to minimise corruption.

On the question of whether journalists investigate to the bottom of issues, I think the Public Protector will back me up because, she came to the same conclusion that we reported on about before she started her investigation.

If you look at Tony Yengeni's Charge Sheet, it looks exactly like my story and what I found while doing my investigation.

Look at the Public Protector's report on Minister Shiceka. She found more stuff than we did because we didn't have that capacity. But, she came to almost the same conclusion. The police list, also, almost the same conclusion. So we are doing our job. We do go deep and try to get to the bottom of issues.



STEVEN POWELL:

I'm going to touch on Gavin's question, at the end, about the pledge. I think that's an initiative worth pursuing and let's see how we can take that forward, because I think that's something that can

add value and thank you for that.

The one item I meant to allude to earlier, which I want to canvas, is whistleblower protection. When we create, an independent body that tackles corruption in South Africa, they should have facilities that people feel comfortable reporting to without fear of victimisation or recrimination.

We deal, as forensic practitioners, with whistleblowers on almost a daily basis. I think more than 50% of the stuff, we get to the bottom of, comes as a result of whistleblowers because corruption is incredibly difficult to detect.

As the Public Protector indicated earlier, a lot of the payments are hidden. These envelopes are handed over in bars and restaurants after hours.

And how we protect them is something that the anti-corruption body should also do. We must keep the informant anonymous because, if nobody knows who blew the whistle, nobody gets victimised.



So I must tell you, there are a lot of whistleblowers who have done these noble deeds.

Nobody knows who they are. Sometimes they're the best friend, sometimes they're the spouse of the corrupt party. Usually that's after a divorce, I might add.

But at the moment if you report corruption, you are going to be victimised, and until we can eradicate that, people are not going to feel comfortable about blowing the whistle.



THULI MADONSELA: I just want to start with my own personal views; we are not losing the war against corruption. The very fact that we are going higher in the Corruption Perception Index is good, when you are higher

you are doing well, and if you are in the lower numbers you are doing badly.

So I don't think it's a reflection of the fact that we are doing badly. It's partly a reflection that we have a problem, but it is also partly a reflection of the fact that people are doing something about it. Increasingly, ordinary people are stepping out to say something about it, and whistleblowers, some of them at their own peril, are stepping out to say this can't be right.

Secondly, I would support Steven, about seriously considering the American approach. They call them bounty laws and when we met with our counterparts in New York, we seriously thought that this is something we may want to consider. It's not just for whistleblowers, but it's also for law firms. The system works in two ways.

If you whistle blow and the prosecutorial authority accepts your statement, there's a good case, then they take it. If they prosecute successfully, you get 25% if they get the money back.

But if government refuses to prosecute, they farm out the right to prosecute selected people that are properly accredited in terms of access to information and have the right vetting. If you do win the case, you get 40% of whatever is recovered. So it's something seriously worth considering.

I don't think we're at a crisis point yet, but we are at a serious phase in our society where if we don't take decisive action, we are honestly going to be one of those societies where nobody cares.

I heard that in some countries, particularly in West Africa, when you apply for a visa, they say your passport is missing a page and if you don't know what that page is, you're not going to get your passport. And they send you away.

Comments



Comments

So we haven't reached that point yet where people are saying things are missing a page, except of course for those who have gone to the licensing department.

I didn't want to comment on the question of political will, but there are places where I have seen political will displayed very seriously, let's take Home Affairs. The leadership of Home Affairs has made the decision to eliminate corruption, not only by targeting corrupt people, but by also targeting loopholes in the system.

We recently heard about the Department of Transport prosecuting people. We regularly hear from the Minister of Justice and Constitutional Development that they are trying to deal with corruption.

So there isn't really a situation where we are not doing something. I think all we are asking for is consistency, in dealing with corruption.

Dr. Dovhani, yes we have a moral problem in society; we do, but it's not just our society, it's a global thing. I think each generation tends to be less morally strong than the previous one.

I would say we're again at a turning point in society, where 18 years into democracy a lot of things have happened. Some of them are ills of transition into a new world and I think business South Africa must also take some responsibility.

Why did business South Africa decide that BEE was going to be given to politicians? If it wasn't to get those politicians to influence, as defined in the PCCA, policies and other measures, then why would business chose politicians who know nothing about their business practices?

I also think we all have to take responsibility, as a society. If we now want to build a society that we all want to live in, we all have to take responsibility. We can't blame politicians or civil servants because there's always the corrupted and the corruptor.

One of the modern forms of corruption that has become endemic, which is again an issue between civil society and government, is what my office refers to as false billing. It's something that we're looking into.



Comments

You see it in the RDP Housing Programme, where there were supposed to be 200 houses built and only 150 are built.

In the medical field there's also the case of what was quoted and what get supplied, but we get billed and we pay; the list is endless.

I like what the young person said about the need to deal with corruption in the context of promoting good governance. That actually is the approach that we are taking as the Public Protectors Office and other Chapter 9 Institutions.

We have a good governance movement; we meet once a year, in October, it's called good governance week, where we talk about good governance and ethical governance.

Our focus is on responsive service delivery through ethical governance because; we believe that if we highlight the vision of the society that we want, the rest should fall into place. The idea of the good governance movement is to bring people to the party, around the question of what to do to prevent corruption.

One of the things we spoke about was the need for transparency.

India is one of the countries doing well in CPI. And one of the campaigns we've seen in India is the Right to Know Movement, where people are being trained to understand how government works.

In our case, for example, we looking at training people about Integrated Development Plans (IDPs) and systems that IDPs should be spread in, so people know exactly how much money there is and who is supposed to do what.

So when people aren't doing what they are supposed to do, we know who to call to order. I think by bringing people to the party, for promoting good governance, that's one way of preventing and combating corruption.

CHAIRPERSON: Ladies and gentlemen, unfortunately I must bring the proceedings to a conclusion. I would like, on your behalf, to thank our speakers.

In my opening remarks I spoke about the Glenister case. I'd like to believe that the role which the Helen Suzman Foundation played, as the amicus, in this particular case was a decisive role.

Comments



Our speakers today have spoken about the need for a body to investigate corruption. However imperfect the Scorpions were, and they were, their departure has been a great loss.

As a result of the Glenister case, Parliament has concluded its enactment of the South African Police Service (SAPS) Amendment Bill. This still needs to be signed by the President and the deadline which the Constitutional Court gave government is the 18th of September 2012.

As the Helen Suzman Foundation, we are concerned about the legality of this SAPS Amendment Bill and are considering, as I gather from the lawyers, our options.

What we need is support from a public such as this one and I urge you all to consider becoming Friends of the Helen Suzman Foundation.

For R1 000 a year, we don't guarantee you all the freedoms, but we will promise that we will take these sorts of matters to Parliament, to the Courts, and wherever we can.

Again, I want to thank our speakers for their participation tonight.

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