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Diagnostic Research Report on Corruption, Non-Compliance and Weak Organisations

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The Technical Assistance Unit (TAU) is a chief directorate in the Public Finance Division of the National Treasury. The Public Finance Division is one of three divisions of the 'Economic Planning and Budget Management Programme'. As one of the Units within Public Finance Division, the mission of TAU is to provide Programme and Project Management technical assistance to government departments to improve the quality of spend in the public sector. In order to carry out its mission, TAU has the following strategic objectives:

- To provide management and technical assistance to National Treasury and government institutions.
- To leverage and disseminate public sector knowledge and innovation.
- To build and maintain the TAU as an effective and efficient learning organisation.

The Public Affairs Research Institute (PARI) is a research institute associated with the Faculty of Humanities at the University of the Witwatersrand. PARI aims to bring theoretically-informed social science research into the service of dealing with the major issues facing the public sector today. The Institute initiates relevant applied and strategic research on the public sector and state-society relationships, and generates dialogue between change agents in the public sector, business, civil society and scholars of the State.

ACRONYMS

ACAS	Anti-corruption and security unit in SARS
ACTT	Anti-Corruption Task Team
AFU	Asset Forfeiture Unit
AGSA	Auditor General of South Africa
ANC	African National Congress
BBBEE	Broad-based Black Economic Empowerment
CIDA	Canadian International Development Agency
COGTA	National Department of Cooperative Governance and Traditional Authorities
DPCI	Directorate of Priority Crime Investigation
DPSA	National Department of Public Service and Administration
FATF	Financial Action Task Force
FIC	Financial Intelligence Centre
IUFWE	Irregular, unauthorized and fruitless or wasteful expenditure
MFMA	Municipal Finance Management Act
NAHC	National Anti-Corruption Hotline
NDR	National Democratic Revolution
NLM	National Liberation Movement
NPA	National Prosecuting Authority
NPM	New Public Management
OECD	Organisation for Economic Cooperation and Development
PARI	Public Affairs Research Institute
PSC	Public Service Commission
PFMA	Public Finance Management Act
SAPS	South African Police Services
SARS	South African Revenue Services
SCM	Supply chain management
SCOPA	Parliament's Standing Committee on Public Accounts
SIU	Special Investigating Unit
SOP	Standard Operating Procedure
TAU	Technical Assistance Unit

FOREWORD

The Technical Assistance Unit (TAU) commissioned the Public Affairs Research Institute (PARI) to perform diagnostic research on the phenomenon of state corruption and the nature of anti-corruption efforts in South Africa. The primary purpose of this work is to assist TAU to better understand the operating environment of our clients in the different spheres of government. TAU's mandate does not include dealing directly with corruption but our support to client departments and our role as a "change agent" is enhanced when we better understand the specific and systemic challenges facing our clients in this area.

The scope of the research was restricted due to the limited timeframe available for the data collection, analysis and synthesis. The main aim was to document various perspectives on corruption and the fight against corruption and it excluded the development of recommendations. As Albert Einstein said: "If I had an hour to save the world I would spend 59 minutes defining the problem and one minute finding solutions". This analysis is undertaken in the same spirit of careful diagnosis to inform action.

The study was funded through the utilisation of interest accrued from the Capacity Building Technical Assistance Facility funded by the Canadian International Donor Agency (CIDA) in support of TAU. A word of thanks is due to our development partner, CIDA, and all of the individuals who participated in interviews and provided documentation for this Case Study.

We are grateful to PARI for producing this rich, contextualised, multi-dimensional analysis of the complex problem of public service corruption. The TAU intends to use this new knowledge to improve the support we provide to government. It is also our intention to share this work with other interested parties and stakeholders in the belief that they too could benefit from the analysis.

Finally, we recognise that this research raises more questions for exploration, and that follow-on work may be required to add further clarity to this area of knowledge.
Views expressed in this report are those of the authors and do not reflect the official policy or position of National Treasury.

Eileen Meyer
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Executive Summary

Since the late 1990s, and especially since allegations of corruption in the strategic defence acquisition (the “arms deal”), corruption has become a major topic of public discourse and increasingly of government concern and policy making. Surveys of public perception indicate that South Africans regard public servants as increasingly corrupt and corruptible. Politicians and senior government officials worry that failures in the health, education and municipal systems are often driven by the misdirection of state resources for illicit and criminal purposes. Some public commentators even talk about South Africa as a “failed state”.

This situation is frequently depicted in terms of the moral decline of South Africa’s political leaders and public servants. The argument is improbable, given that the point of comparison is with leaders of the National Party and the Apartheid government. The focus on morality of public servants misses a more important point; that talk of “corruption” in South Africa today is often a way of speaking about the malaise of the public sector.

Definitions of Corruption

Typically, definitions of corruption identify an act of private abuse or private misuse or private appropriation as lying at the heart of the phenomenon of corruption. Drawing on J. S. Nye’s formative work, the World Bank, for example, defines corruption as the “abuse of public office for private gain”. This phraseology carries with it a sense of misuse of office with violent or injurious intent (think of spousal abuse, abuse of alcohol). Nye’s own phraseology was more subtle, allowing a broader range of activities to be included in the notion of corruption. He referred not to “abuse” but to “deviation from the formal duties of public role for private gain” (Nye, 1967, p419). The subtlety is important because it brings into play practices of non-compliance with internal rules and procedures where malicious intent may be absent. I will return to this later. Brooks discussed it in similar terms, the “misperformance or neglect of a recognised duty, or the unwarranted exercise of power, with the motive of gaining some advantage, more or less personal” (Brooks, 1910, p46).

Central to these definitions above is a distinction between private interests and public duties. Consider the South African case. According to the Prevention and Combating of Corrupt Activities Act of 2004, corruption occurs when “any person directly or indirectly:

- Accepts or offers any form of gratification that will either benefit themselves or another person. They receive this gratification so that they will either act personally or influence another person to act in a manner that is illegal, dishonest, unauthorised, incomplete or biased.

- Takes part in the misuse or selling of information or material that is acquired in the course of their employment.
- Uses their legal obligations in order to carry out their powers, duties or functions that results in the abuse of their position of authority, a breach of trust or the violation of either a legal duty or a set of rules.
- Uses their legal obligations to carry out their powers, duties or functions in order to either achieve an unjustified result or to accept any other unauthorised or improper incentive to either do or not to do anything". (Republic of South Africa, 2004)

We have to step back for a moment from these legal conceptions. They suggest much greater consensus about corruption than there really is. In particular, a legal perspective obscures the high political stakes involved in these definitions.

For all its apparent ubiquity in the twentieth century, corruption became a public policy concern only in its closing years. In 1996, the World Bank, then under the leadership of James Wolfensohn, put the issue firmly on the agenda as part of a broader focus on "good governance" (see Doig and Theobold, 2000, p1). In the same year the United Nations adopted a declaration against international corruption and bribery, following this up with the United Nations Convention Against Corruption, adopted in Mexico in 2003 (Camerer, 2004, p4).

The renewed interest in corruption, coming as it does at the end of the Soviet period, reflects the ascendancy of liberalism as an economic ideology as much as it does liberalism as a constitutional framework. Indeed, this last aspect, though often overlooked, is more important. Modern definitions of corruption are not necessarily tied to liberal or neoliberal economic policy prescriptions; but they are closely tied to a liberal conception of the polity.
Central to the liberal conception of the state is the idea that the bureaucracy can be organised in such a way that it 1) operates neutrally vis-à-vis any social class or group of individuals and 2) that it can become a reliable instrument for whoever controls parliament (the legislature) and government (the executive). On these terms corruption refers to:

- Any kind of bias or partisanship that bureaucrats practice either towards themselves (Weber's major concern) or to a social class or group (Burke's objection),
- Any deviation in the work of bureaucrats from the policies and programmes of the government of the day.

Yet for most of the twentieth century and for a good part of the nineteenth century too, the idea that the bureaucracy could or should be neutral relative to social interests was rejected out of hand. In the South African context, for example, the purpose of State transformation

has not been to remove the social bias of the State, but to change its direction – from the white minority to the black majority, most notably to Africans. In other words, the purpose of State transformation in South Africa has not been to create a neutral state, but rather one that would work in favour of blacks in general and Africans in particular. To accuse the ANC government of failing in this respect is to miss the point.

The Apartheid-era bureaucracy was regarded as unfit to carry out the orders of the new, democratic government. In the first place it was staffed at senior levels by largely white, Afrikaans-speaking men – the very people responsible for implementing the racist programmes of the former government. Transformation of the State thus required "extending the power of the National Liberation Movement (NLM) over all levers of power: the army, the police, the bureaucracy, intelligence structures, the judiciary, parastatals, and agencies such as regulatory bodies, the public broadcaster, the central bank and so on" (ANC, 1998). In the second place the very organisation of the Apartheid public service (authoritarian, hierarchical, inwardly-focused, rule-driven[1]*)* impeded mass participation in the workings of government and made it unlikely that it could be used to implement the policies of the new government.

While both liberal and National Democratic Revolution (NDR) notions of corruption invoke a measure of "misuse" of public funds any resemblance between them is only superficial. In the liberal definition, "misuse" refers to a legal or public service standard. In the other, "misuse" implies a standard determined in and by the National Liberation Movement (NLM). Frequently the standards of the NLM and the standards of the public service are in conflict, if not in antagonism.

However, growing concern about corruption in South Africa from all quarters suggests that, on all definitions of corruption, there is evidence of widespread "misuse" of public resources. It is not middle class taxpayers alone that are concerned. Today the cabinet and the ANC are too (Nqgulunga, 2012). There is a growing concern in the ANC that the main beneficiaries of public sector procurement are not those intended by either the movement or the government. The ANC's organisational renewal document notes, for example, that within the ANC there has been "a silent retreat from the mass line to palace politics of factionalism and perpetual in-fighting" (ANC, 2012a, p9).

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[1] *See McLennan, Anne and FitzGerald, Patrick, 'Administration Initiative and the Mount Grace Consultation' in (McLennan, A. FitzGerald, P eds.) The Mount Grace papers: The new public administration initiative and the Mount Grace Consultation, Johannesburg: Public and Development Management Programme (P & DM), University of the Witwatersrand Press, 1991.*

What is the size of the problem?

How much corruption is there in the South African public sector? Is the problem getting worse, or is it just more visible? What type(s) of corruption are on the increase? Where are the problems the greatest? There is little consolidated empirical data to provide definitive answers to these questions, and different understandings of what exactly constitutes “corruption” also make it difficult to answer this question accurately. For the purposes of this analysis we have taken a broad view, and included instances of non-compliance in our definition.

An important point to be made at this point (and emphasised by the Country Corruption Assessment Report – DPSA, 2003) is the futility of trying to gauge the scale of corruption by an examination of official records of identified corruption and/or the prosecution of corrupt officials. The report found that even where government departments said that they had a dedicated anti-corruption team or officials in place, documentation relating to specific incidents of corruption was largely absent.

The 2011 audit report of national departments (AGSA, 2011a) noted a “continuous decreasing trend of departments and public entities receiving clean audits” (ibid, p1). The same report indicated that unauthorised and irregular expenditure at national departments and national public entities had risen to a total of R5.4 billion (ibid), compared to R341 million in 2007 (AGSA, 2007), as detailed in Table 1, below. Although a portion of this may be accounted for by the broadening of the Auditor General of South Africa's (AGSA’s) mandate and improvements in their forensic auditing capabilities, they are nonetheless disturbing.

Table 1: Unauthorised, Irregular and fruitless/wasteful expenditure at national departments and national public entities: Years ended 2007 and 2011 (R'000).

ENTITY	Unauthorised		Irregular		Fruitless/wasteful	
	2007	***2011***	**2007**	***2011***	**2007**	***2011***
Nat Departments	R1,122	*R802,399*	R188	*R2,286,728*	R0	*R428,814*
Nat Public Entities	R0	*R9,193*	R340,285	*R2,262,333*	R73,078	*R164,153*
TOTAL	R1,122	*R811,591*	R340,473	*R4,549,062*	R73,078	*R592,967*

Source data: AGSA 2011a, AGSA 2007.

Much of the blame for this outcome has been attributed by the AGSA to poor supply chain management (SCM), and in particular a failure to adhere to prescribed regulations.

Perceptions of corruption can provide insight as to the extent of corruption. The 2003 Country Corruption Assessment Report (DPSA, 2003) showed that local perceptions of corruption were high, with 41% of South Africans believing that it is one of the most important problems that should be addressed by government. The two provincial surveys showed that the clients of public services estimate that between 15% and 30% of public officials are corrupt. A high 62% of respondents in the business sector indicated a belief that corruption has become a serious business issue. Public sector managers interviewed expressed a particularly negative view of levels of corruption within their organisations. Some expressed the view that as many as 75% of staff could be described as "untrustworthy" and involved in some kind of corrupt activities (DPSA, 2003, p3).

The trend is clear: In the minds of the average citizen, corruption has gotten worse, and this view applies to large parts of government. Afrobarometer surveys (Afrobarometer 2004, 2008 and 2011) indicate that local government councillors, government officials and the police are rated as the most corrupt, and it is telling that people rate these three groups almost equally corrupt (although most media attention has focused on perceptions of the police) – Table 2 below. There has been a significant deterioration in the perceptions of local councillors and government officials, and our analysis of local government and misconduct in the public service set out below certainly suggests that these perceptions are based to some degree on actual events. If talking about corruption is also a way of speaking about "unfairness", then to what extent do perceptions that corruption is increasing testify to declining public trust in government bodies?

Table 2: How many of the following people do you think are involved in corruption, or haven't you heard enough about them to say? 2004, 2008 and 2011 (Percentage of respondents)

ENTITY	2004		2008		2011	
	Most	All	Most	All	Most	All
The President and officials in his office	14	4	10	7	26	9
Representatives to Parliament	20	4	18	7	32	8
Local Government Councillors	18	6	25	10	37	14
Government officials [1]	17	4	31	10	40	10
The police	28	8	35	11	40	12
Tax officials	14	4	21	8	18	5
Judges and magistrates	11	3	19	7	21	6

[1] The 2004 survey differentiated between local and national government officials, while later surveys did not. The 2004 figure is a simple average of the responses to the national and local officials' questions. Source: Afrobarometer, 2011, 2008, 2004.

How do perceptions of corruption accord with actual cases of corruption?

The Public Service Commission (PSC) drafts an annual report covering financial misconduct in the public sector. The most recent – covering the 2009/10 financial year - reports that the general trend in financial misconduct within the public sector is increasing, notwithstanding a small decline in actual cases finalised in the 2009/10 financial year. The value of financial misconduct has risen sharply, and the decline in the number of finalised misconduct cases (which is the PSC's unit of measure for this reporting) should be considered against the increasing trend noted by the PSC among employees charged with financial misconduct to resign before their disciplinary procedures are finalised (PSC, 2011b)

The Table below shows the number of finalised cases (reported to the PSC) and the estimated cost of this financial misconduct for the three years to 2009/10.

Table 3: Finalised cases and cost of financial misconduct in the public service (2008 – 2010)

Entity	Number of finalised cases			Cost of financial misconduct (R'000)		
	2007/08	2008/09	2009/10	2007/08	2008/09	2009/10
National Departments	316	260	286	R9,841	R69,552	R265,355
Provinces	552	944	849	R11,936	R30,558	R81,173
TOTAL	**868**	**1,204**	**1,135**	**R21,777**	**R100,111**	**R346,528**

Source data: PSC 2011b, PSC 2010, PSC 2009

It should be noted that this data may represent a significant under-counting of the actual problem (see the main report for details).

From an audit perspective, there are certain key indicators which indicate potential or actual problems with corruption within an organisation, even though it may not be strictly classified as "corruption". These include:

- Rising levels of irregular, unauthorised and fruitless/wasteful expenditure (IUFWE);
- Irregularities with Supply Chain Management; and
- Awarding of tenders/government business to entities in which an interest if held by government employees and/or their family members.

If we examine these trends across all three spheres of government we see a clear rising trend of increasing IUFWE, accompanied by widespread SCM irregularities and the participation of government employees in government tenders (see AGSA reports 2011a, 2011b, 2011c – details analysed in the main report).

Drivers of corruption: a focus on non-compliance

On the basis of research findings and from evidence from government reports this report draws attention to a driver of corruption that is often neglected in public discourse and in policy circles: **non-compliance** with regulations, laws and standard operating procedures.

The most serious area of non-compliance is probably in the area of supply chain management (SCM): Despite the detailed regulation of SCM practices in government and the efforts of various government agencies (Including the AGSA's operation Clean Audit launched in 2009), there are serious problems across all spheres of government. For example, in 2011, almost 70% of all irregular expenditure in provinces (just under R12 billion) was a result of the circumvention of SCM regulations. This included R3.6bn of payments that were made in excess of the approved contract price (and R3.3bn of that was in the Eastern Cape) and R2.5bn worth of contracts that were irregularly renewed/extended

in order to get around the requirement of a competitive bidding process. At a national level, 62 public entities (54%) and 7 constitutional institutions (88%) had findings on instances of non-compliance with both Public Finance Management Act (PFMA) and Treasury Regulations (AGSA 2011a). At a local government level the situation is particularly dire: In terms of SCM-related irregular expenditure, both the number of auditees at which this was recorded and the amount increased in 2010/11 from the previous year, despite the AGSA's specific focus on this area and the public commitments that had been made by senior officials after the release of the previous year's audit. In the 2010/11 financial year there was no improvement in audit outcomes at local government from the previous year, with approximately 50% of auditees failing either to submit their financial statements on time or to obtain financially unqualified audit opinions.

What is driving non-compliance?

Lack of consequences

Our research has found considerable evidence of a lack of consequences for a range of transgressions – from non-compliance through to criminal activity. The result is that the majority of transgressors face no or relatively little consequences for their actions. Often the failure to sanction offenders is in direct contravention of applicable legislation, which is in itself another example of non-compliance. A situation where offenders regularly go unpunished may have the long-term effect of entrenching corruption, as the potential results of getting caught decline in both severity and likelihood.

Shortage of relevant skills and capacity

There is little doubt that there is a shortage of skills and capacity in many areas that are key to identifying and dealing with corruption, particularly at the local government level. The AGSA found that more than 70% of official in key positions in municipalities did not have the minimum competencies and skills required. In addition, there is a high level of vacant positions and acting managers in senior posts. This skills gap is particularly acute in the area of financial management. This in turn is reflected in the serious gaping hole in the area of internal audit.

Another institutional weakness is in the area of investigating allegations of corruption. The PSC (PSC 2011a, p 34-35) made the following findings:

- Since 2003, all public service departments and entities have been required to have "Minimum Anti-Corruption Capacity Requirements". DPSA research conducted in 2006 found that 60% of departments had either no measures in this regard or only very basic policies.

- Only 15% of public service departments had advanced capacity to investigate corruption.
- 25% had basic investigative capacity.
- 60% had no basic investigative capacity.
- 45% have either poorly formulated or no strategic objectives for addressing corruption.

Poor planning and reporting

The way in which planning is done across government (but most particularly at local government level) creates an environment which undermines oversight and compliance. Planning regulations require the production of a large number of plans, across a wide range of functional areas. However, the main compliance indicator is that the plan is actually produced, rather than in the content. At local government level the planning output required is onerous, and very difficult for many smaller municipalities to comply with (van der Heijden, 2009). However, there is little or no quality control over the content of these plans. The main result is vague and fuzzy planning targets, with poor associated budgeting.

In this environment it is often difficult for managers, internal auditors and others charged with oversight to determine whether or not what is supposed to be happening is actually happening. It is also difficult to build a performance management and accountability framework onto a planning framework that allows for vague and unclear objectives. It is not hard to see how this facilitates an environment where there is opportunity for corruption.

Specific vulnerabilities in the SCM system

The new democratic government inherited from the Apartheid period a procurement system routed through a centralised state tender board - all procurement was managed centrally and from Pretoria. The result was massive inefficiency. Treasury's innovation was the Supply Chain Management (SCM) system which devolved the responsibility to the accounting officers in departments. The idea was to see more appropriate procurement specific to the procurement needs at the local level. Yet the model is vulnerable to failure in significant areas. There is heavy reliance on the accounting officers: the system is vulnerable if the accounting officer is not-compliant. Given the extent of decentralisation of the procurement system, this leaves procurement vulnerable in multiple points across the country.

Further, there are no independent bodies setting and/or evaluating prices and developing costing models for a range of government services. Many of the officials interviewed worried about the lack of minimum norms and standards for procurement.

The political-administrative interface and the impact on organisations

There are numerous reasons why public servants are not compliant with rules and procedures. Theft, fraud and skills are only some of them. The others are more mundane. The National Planning Commission has drawn attention to the lack of clarity in what it calls the administrative-political interface in government. As long as senior staff appointments remain the prerogative of the Minister and not the Director-General it is difficult for staff to know to whom they are accountable and with whose directives they should comply, those of the Minister or those of the Director-General. More seriously and this is the problem of politicising the public service generally, it is not clear whether appointees are responsible to the imperatives of the department or of the political party.

Organisational weakness and instability

The introduction of New Public Management reforms in South Africa in the 1990's was motivated by a fierce critique of bureaucracy – internally focused, rule-driven, hierarchically structured organisation. Instead, a post-apartheid public service was to be led by independent and values-driven managers that focused on outcomes and that were unrestrained by bureaucratic rules and regulations. Whatever the merit of these innovations, they have been associated with a general neglect of administrative processes in government departments. The recent focus on "management" has often been interpreted to mean that senior officials should be focused on questions of leadership, policy, strategy and vision. Seldom do they involve themselves with operational and/or administrative questions and issues. The result is that careful process design and engineering has been severely neglected in government.

This situation is compounded by high vacancies and high turnover rates amongst senior staff, associated with a constantly changing world of work. Since the introduction of the senior management service in the late 1990s, government departments have struggled to fill positions. This has made it easy and attractive for public servants to move between departments, often negotiating a more senior position at each change. The result is very high staff-turnover rates at the senior management level. Not only has this resulted in the "juniorisation" of the senior management function, it has also created high levels of instability. As long as senior managers are only in their positions for short periods (ranging from several months to, at most, a year or two) processes and systems do not have time to stabilise before a new manager introduces his or her own management model (Chipkin, 2011, pp49-58). Further, it is difficult to comply with standing operating procedures when they are constantly changing or when institutional memory is weak. Instability is sometimes compounded by "management interventions" to "turn-around" distressed organisations - resulting in what the Technical Assistance Unit (TAU) in the National Treasury call the "turn-around-about".

Conclusions

The report discusses the wide range of agencies and units responsible for anti-corruption efforts in the public sector and within South Africa generally. We also briefly discuss the international environment. What is evident, however, is that there is no specific configuration of investigatory and prosecuting functions that stands out as working best. However, apart from the technical (policing and legal) skills required, anti-corruption agencies tend to stand and fall on the basis of their **perceived fairness**. This resonates very well with the South African experience: The Scorpions was ultimately dissolved because it was seen as acting impartially vis-à-vis groups within the African National Congress. Anti-corruption units are always obliged to make choices about what to investigate and what not to. Therein lies their vulnerability. They can be perceived as partisan. It is thus vital that anti-corruption units select cases on the basis of transparent, impartial and credible criteria.

Centrally, PARI's research has shown the limited usefulness of understanding corruption as driven solely by individual "moral failure". An effective strategy to combat corruption depends to a great extent on how well the drivers of corruption are understood.

What our own analysis and the international experience clearly shows is that what seems to make a reliable difference is close attention to the design and implementation of administrative systems and effective work processes. This helps us better understand the results inter alia of the Auditor General's reports: where administrative systems are weak and where processes are badly designed or ineffective, the likelihood of corruption increases. In other words, **anti-corruption efforts seem to work better when they are focused not so much on corruption per se, than on organisational development and institution building**. Or again: anti-corruption strategies that work well are those that:

- appear to work fairly (impartially/neutrally), and
- are accompanied by a focus on organisational development.

There is evidence of an indirect correlation between organisational efficiency, on the one hand and, corruption, on the other. In other words the more efficient an organisation is the less corrupt it is likely to be. Inversely, as the organisation's efficiency decreases so opportunities for corruption grow. This suggests that the major effort against corruption lies in assisting public sector organisations to overcome structural, resource and staffing weaknesses.

Suggested focus areas outlined in the main report include 1) supply chain management 2) planning and reporting 3) the possible introduction of a compliance function in departments that is based on the separation of duties and powers, and ensures an independent compliance function within organisations; and significantly 4) stabilising the senior management service.

In conclusion it should be noted that almost all of the research and empirical data collection on corruption in South Africa (including our own research) focuses on the public service and local government. There is strong evidence to suggest that such a focus obscures other sites of corruption that may be significant, including business-government relations and state owned enterprises. This is an important area of further investigation.

Chapter 1: Introduction

1. Background

The Technical Assistance Unit (TAU) is a Chief Directorate within the Public Finance Division of National Treasury. Currently it is funded as part of Programme 8 of the National Treasury – "Technical Support and Development Finance". The purpose of this Programme is to provide specialised infrastructure development planning and implementation support, and technical assistance that will contribute to capacity building in the public sector.

The Justice, Crime Prevention and Security Portfolio supports work that is deemed strategically important in furthering effective service delivery. This includes activities related to anti-corruption efforts, financial intelligence, procurement practices and strategic planning (TAU, 2012).

Appropriate and accurate diagnostics play a central role in TAU's work. This is important in ensuring that TAU is able to make a meaningful and sustainable contribution to improving the organisational performance of its clients.

2. Scope of work

TAU has commissioned research on the subject of corruption in order to assist the unit in the support it provides to its clients in strengthening anti-corruption measures, in addition to serving as a knowledge base. PARI's understanding of, and proposals for, the scope of work under this project are as follows:

2.1. Review

- Identification of different forms of corruption, their scale and their causes, and well as possible consequences faced by South Africa, including:
    - corrupt activities occurring in the area of supply chain management; and
    - identification of new and emerging threats that anti-corruption role players should be aware of, including organisational factors like workplace culture and institutional incentives.
- Identification of relevant anti-corruption strategies and programmes that have been shown to be successful internationally.
- A review of government's current anti-corruption policies, strategies and programmes.

- Review of inefficiencies or inefficacies in current legislation, including those intended to regulate the private sector, and in particular regulations pertaining to the “declaration of interest”.
- Identification of administrative systems in government institutions that are either too weak or too rigid to effectively and sustainably counteract corrupt activities and ensure value for money including supply chain management policies, processes and procedures.
- Identification of other organisational dynamics that contribute to corrupt practice (see “Conceptual Approach” for further details).

2.2. Diagnostic

- Identification of underlying trends in public sector corruption.
- Identification and thematisation of the causes and enablers of public sector corruption.
- Taxonomy of government’s current anti-corruption interventions and identification of gaps in current approach given the review and diagnostic above.

2.3. Recommendations for strategy development

- Development of conceptual and methodological approach to a government wide anti-corruption strategy.
- Identification of different options, innovative approaches and scenarios to optimise current efforts to reduce corruption in South Africa.
- Recommendations for the attainment of synergy in the available legal instruments and the identification of gaps between instruments.
- Recommendations for improvement in administrative systems and professional culture in government institutions (administration as well as law enforcement, auditing and legal fields) to support compliant and non-corrupt behaviour.
- Development of a policy cycle for developing an anti-corruption strategy and implementation plan.

3. Project limitations

The time that has been made available for the project is relatively short, given its scope. This implies that only a sample of stakeholders can be interviewed, and delays in obtaining access to key persons may adversely impact on the project.

4. Methodology

Research will involve a combination of a desktop review and primary research comprising in-depth interviews with relevant respondents.

The desktop research will:

- analyse relevant policies, legislation and programme documentation;
- critically draw on secondary data sources and analysis, including academic and other published literature, official reports, reports by local and international NGOs and other bodies, selected media analysis; and
- include generalizable findings and strategic insight from PARI's primary research in the field of public sector corruption, as well as analysis emerging from the PARI symposium on corruption with Princeton University (which includes the presentation of case studies of international anti-corruption initiatives by Princeton researchers).

The desktop research will be supplemented by in-depth interviews with relevant respondents. These will include:

- Relevant government role players in the area of enforcement and detection, including member institutions represented in the Anti-Corruption Task Team (principal and secondary member institutions);
- Other government role players tasked with combatting corruption and developing anti-corruption measures, including central government departments such as the Department of Public Service and Administration, Treasury, the Department of Performance, Monitoring and Evaluation and the Public Service Commission;
- Relevant senior officials in a selected number of line departments (national, provincial or local) to trace the forms of corruption across different government areas, as well as the factors enabling these (these will be limited given the timeframes for the research);
- International bodies with experience in anti-corruption measures or insight into corruption in South Africa, such as the Organisation for Economic Cooperation and Development (OECD), World Bank and FATF (Financial Action Task Force); and
- Non-governmental role players and stakeholders, including for example, Corruption Watch.

Given the short time frame for research, a small and carefully selected sample of respondents will be drawn from the list outlined above.

The interviews will be used to obtain role players' analysis of the forms and enablers of corruption, the challenges faced in enforcement and detection, and the challenges faced in

prevention (including challenges or success with current tools, and the development of appropriate processes and systems as well as professional and compliant public service culture). The interviews will also be analysed to identify significant alignment challenges, points of difference, or gaps in strategic thinking regarding current anti-corruption measures, as well as to identify potential innovative solutions based on lessons learnt in the field.

Chapter 2: Corruption in South Africa

This section of the report (particularly part 2.2.) discusses the nature, scale and location of corruption in South Africa. The aim of this is the following:

- To provide the most holistic picture possible of the nature of corruption in South Africa, where it is located and the scale of the problem.
- To identify shortcomings in the way in which information on corruption is collected.
- To provide the detailed background/context for our analysis of the key drivers and enablers of corruption (part 2.4. below).

1. A definition of corruption

We tend to think of corruption as a historical constant or universal. In fact the term has a more varied conceptual history (Buchan and Hill, undated, p2). Contemporary definitions of corruption are a late eighteenth century innovation. If we use Montesquieu to stand in for the "classical" period then corruption, on his terms, is a feature of any polity (democratic, aristocratic, monarchic or despotic) when its leaders fail to act on the basis of its core or foundational principles. Jumping to the present and on these terms we might say that a person or a party or a government is corrupt in South Africa to the extent that he, she or it behaved in a way that undermined the principles of the constitution. This sense finds its way into contemporary private and public conversations, though it remains at a distance to "modern" definitions of the term.

Typically, definitions of corruption identify an act of private abuse or private misuse or private appropriation as lying at the heart of the phenomenon of corruption. Drawing on J. S. Nye's formative work, the World Bank, for example, defines corruption as the "abuse of public office for private gain". This phraseology carries with it a sense of misuse of office with violent or injurious intent (think of spousal abuse, abuse of alcohol). Nye's own phraseology was more subtle, allowing a broader range of activities to be included in the notion of corruption. He referred not to "abuse" but to "deviation from the formal duties of public role for private gain" (Nye, 1967, p419). The subtlety is important because it brings into play practices of non-compliance with internal rules and procedures where malicious intent may be absent. We will return to this later. Brooks discussed it in similar terms, the "misperformance or neglect of a recognised duty, or the unwarranted exercise of power, with the motive of gaining some advantage, more or less personal" (Brooks, 1910, p46).

Central to these definitions above is a distinction between private interests and public duties. Consider the South African case. According to the Prevention and Combating of Corrupt Activities Act of 2004, corruption occurs when “any person directly or indirectly:

- Accepts or offers any form of gratification that will either benefit themselves or another person. They receive this gratification so that they will either act personally or influence another person to act in a manner that is illegal, dishonest, unauthorised, incomplete or biased.
- Takes part in the misuse or selling of information or material that is acquired in the course of their employment.
- Uses their legal obligations in order to carry out their powers, duties or functions that results in the abuse of their position of authority, a breach of trust or the violation of either a legal duty or a set of rules.
- Uses their legal obligations to carry out their powers, duties or functions in order to either achieve an unjustified result or to accept any other unauthorised or improper incentive to either do or not to do anything” (Republic of South Africa, 2004).

Curiously, apart from the reference to “dishonesty” or “trust”, the Act defines corruption strictly in terms of legal and administrative compliance. That is, “illegality” is acting in a way that is “unauthorised”, “incomplete”, in violation of a “legal duty” or a “set of rules”. Yet there is a clear moral framework underpinning these terms. Corruption happens when officials who are supposed to be working in the public interest, work in their own interest instead.

We have to step back for a moment from these legal conceptions for a moment. They suggest much greater consensus about corruption than there really is. In particular, a legal perspective obscures the high political stakes involved in these definitions.

For all its apparent ubiquity in the twentieth century, corruption became a public policy concern only its closing years. In 1996, the World Bank, then under the leadership of James Wolfensohn, put the issue firmly on the agenda as part of a broader focus on “good governance” (see Doig and Theobold, 2000, p1). In the same year the United Nations adopted a declaration against international corruption and bribery, following this up with the United Nations Convention Against Corruption, adopted in Mexico in 2003 (Camerer, 2004, p4). Since then numerous non-governmental and inter-governmental organisations have taken up the issue, including the International Monetary Fund, World Economic Forum, World Trade Organisation, International Chamber of Commerce, the Organisation of Latin American States, Organisation of Economic Co-operation and Development, the G-7,

European Union, African Union, Southern African Development Community, Transparency International and Global Integrity (ibid, p4).

Hodgson and Jiang attribute the conflation of corruption with the public sector to the hold of libertarian and individualistic political ideologies that see that state as a restraint on individual freedom. In other words, they see the focus on corruption from the 1990s as the handmaiden of a liberal politics of rolling back the State. “From this individualistic and libertarian perspective […] the solution to the problem of corruption [is] the reduction of the State” (Hodgson and Jiang, 2007, p1047). Was this not the intention of structural adjustment exercises undertaken by the World Bank and the International Monetary Fund in many African countries in the 1980s?

The renewed interest in corruption, coming as it does at the end of the Soviet period, reflects the ascendancy of liberalism as an economic ideology as much as it does liberalism as a constitutional framework. Indeed, this last aspect, though often overlooked, is more important. Modern definitions of corruption are not necessarily tied to liberal or neoliberal economic policy prescriptions; but they are closely tied to a liberal conception of the polity.

Central to the liberal conception of the state is the idea that the bureaucracy can be organised in such a way that it 1) operates neutrally vis-à-vis any social class or group of individuals and 2) that it can become a reliable instrument for whoever controls parliament (the legislature) and government (the executive). On these terms corruption refers to:

- any kind of bias or partisanship that bureaucrats practice either towards themselves (Weber’s major concern) or to a social class or group (Burke’s objection), or
- any deviation in the work of bureaucrats from the policies and programmes of the government of the day.

Yet for most of the twentieth century and for a good part of the nineteenth century too, the idea that the bureaucracy could or should be neutral relative to social interests was rejected out of hand. In the South African context, for example, the purpose of State transformation has not been to undo the social bias of the State, but to change its direction – from the white minority to the black majority, most notably to Africans. In other words, the purpose of State transformation in South Africa has not been to create a neutral state. To accuse the ANC government of failing in this respect is to miss the point.

Consider the following extract from the ANC’s *State, Transformation and Property Relations* document of 1998. In language reminiscent of Lenin’s, the document declares:

"We [the National Liberation Movement (NLM)] have inherited a state which was illegitimate and structured to serve the interests of a white minority. […] To attain all these and other objectives, it became the seedbed of corruption and criminal activity both within the country and abroad. […] The NLM cannot therefore lay hands on the apartheid state machinery and hope to use it to realise its aims. The apartheid state has to be destroyed in a process of fundamental transformation. The new state should be, by definition, the antithesis of the apartheid state" (ANC, 1998).

The Apartheid-era bureaucracy was regarded as unfit to carry out the orders of the new, democratic government. In the first place it was staffed at senior levels by largely white, Afrikaans-speaking men – the very people responsible for implementing the racist programmes of the former government. Transformation of the State thus required "extending the power of the NLM over all levers of power: the army, the police, the bureaucracy, intelligence structures, the judiciary, parastatals, and agencies such as regulatory bodies, the public broadcaster, the central bank and so on" (ANC, 1998). In the second place the very organisation of the Apartheid public service (authoritarian, hierarchical, inwardly-focused, rule-driven[2]) impeded mass participation in the workings of government and made it made it unlikely that it could be used to implement the policies of the new government. There is an irony in this. The new "instruments" and designs introduced to the public sector to de-bureaucratise it, that is, make it more amenable to democratic control, were derived from the practices of avowedly liberal governments seeking to expand the role of the market and to introduce business principles into the workings of government. This irony was not always lost on those who introduced these measures[3].

Public sector reform in South Africa has often been beset by contradictory interventions. Even if some actions on the public service after 1994 have been informed by liberal conceptions of State neutrality[4] or impartiality, they have come up against others that have

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[2] *See McLennan, Anne and FitzGerald, Patrick, 'Administration Initiative and the Mount Grace Consultation' in (McLennan, A. FitzGerald, P eds.) The Mount Grace papers: The new public administration initiative and the Mount Grace Consultation, Johannesburg: Public and Development Management Programme (P & DM), University of the Witwatersrand Press, 1991.*

[3] *Geraldine Fraser-Moleketi was the Minister of Public Service and Administration at the time. She writes in her Masters dissertation, written when she was in office: "the minimalist, neo-liberal ideology of NPM [New Public Management] clashed with the democratic and radical approaches of the ANC especially with regard to the 'macro' sides of reform". "But such an appreciation," she continued, "could not detract from the potential these tools offered to result in greater efficiencies in state administration" (Moleketi, date 14).*

[4] *The introduction of New Public Management principles in the organisation of the public service in the late 1990's was driven by concerns with 'efficiency' and 'innovation'.*

not. The ANC's policy of cadre deployment is a case in point. It is not enough that an ANC government has embarked on programmes to undo the legacy of Apartheid (legislative reforms, massive housing programmes, the implementation of Affirmative Action, the introduction of Black Economic Empowerment measures), members of the African National Congress are given strategic positions in the public service and in the State *qua* members of the African National Congress. In a similar vein, Ministers, rather than senior public servants (Directors-General, for example) control the appointment of departmental officers. In both cases the intention is to strengthen political control over the public service. In these situations the measure of public service is not the degree to which public servants deal impartially with the public, but the opposite. It is the degree to which the organisation and structures of the administration are tilted towards the service of blacks and Africans in particular.

Let us note the consequences of this politics for the notion of corruption. From the perspective of the theory of National Democratic Revolution (NDR), corruption was evident in the structure of the country's political economy – gross racial and class inequality derived from South Africa's "colonialism-of–a-special-kind" - and not in the partisan behaviour of government officials. Hence corruption on liberal terms was necessary to overcome corruption in Leninist terms (or those of the theory of National Democratic Revolution). Consider the case of Broad-based Black Economic Empowerment.

1.1. Broad- Based Black Economic Empowerment

Let us follow the logic of the Mbeki presidency. We are drawing on the document State, Transformation and Property Relations, an important theoretical intervention from this period and likely written by Thabo Mbeki himself. One of the tasks of the National Democratic Revolution, it argues, is to change property relations in South Africa, including patterns of ownership, investment and procurement. How can this be done when capital is held in "overwhelmingly white hands", limiting the influence of the ANC government in how and where it is invested? The solution is deemed to lie in the creation of a black capitalist class, one created essentially through government procurement practices and regulatory interventions requiring minimum quota for black equity in private (white) firms. By virtue of their dependence on the ANC, black capitalists would be amenable to influence from the NLM. Patterns of investment could then be directed into sectors and initiatives that benefitted the black majority.

"An important element of the tasks of the state is ensuring that the glass ceiling of apartheid is removed from above the aspirations and ambitions of the black middle strata and capitalist

class. In a systematic way, the NDR [National Democratic Revolution] has to ensure that ownership of private capital at all […] levels […] is not defined in racial terms. Thus the new state - in its procurement policy, its programme of restructuring state assets, utilisation of instruments of empowerment, pressure and other measures - promotes the emergence of a black capitalist class" (ANC, 1998).

It is interesting to note that an argument about corruption emerges in the document immediately following the discussion of the black capitalist class as a strategic goal of the NDR. Here is the sentence: "While these forces [the middle strata and black capitalists] are direct beneficiaries of the NDR and share an interest in its advancement in the current phase, they can easily be co-opted into the agendas of their white counter-parts; and they can easily also become a source of corruption within the state" (Ibid: no page number). What does corruption refer to here?

It is no longer corruption as racial domination and racial inequality in the structure of South Africa's society and economy. Here corruption comes to resemble a liberal definition. In other words, it refers to those who in the name of serving the public good, serve themselves or serve other private interests. The ANC does not, however, object in principle to the use of public goods for private gain. Corruption happens if the wrong individuals benefit or the private benefit does not further the public good. In the case of the Mbeki government, that is, there was a subtext. Not all black beneficiaries were the "right" kind of beneficiaries, only those deemed so by the National Liberation Movement.

While both liberal and NDR notions of corruption invoke a measure of "misuse" of public funds any resemblance between them is only superficial. In the liberal definition, "misuse" refers to a legal or public service standard. In the other, "misuse" implies a standard determined in and by the National Liberation Movement.

1.2. Different standards

Frequently the standards of the NLM and the standards of the public service are in conflict, if not in antagonism.

In 2008, for example, the Auditor General found that more than two thousand government employees or their spouses had been involved in government contracts to the value of approximately R600 million (PSC, 2010, p9). The practice is becoming more and more common. In 2012 the Auditor General reported that at local government level alone R814 million had been received by councillors, municipal officials and their family members through municipal tenders (*The Sunday Independent*, 5 August 2012). The media has

jumped to the conclusion that this constitutes evidence of mass corruption. This may be the case, though not necessarily so. It is not illegal in South Africa for businesses in which public servants and/or their families have an interest to contract with government departments, even with the same department where the public servant concerned works.

From the late 1990's in South Africa it became normal to define the role of the State in terms of "facilitating" development rather than "driving" it. Under the influence of New Public Management thinking many service delivery functions were "outsourced" to private companies or state-owned agencies functioning as private businesses. The trouble, claims the Public Service Commission, is that "while some of these contracts might have been awarded fairly, the scale of the revelations, as well as the fact that most of these employees did not declare their interests, suggests that there was much impropriety, and subsequently damage to the public trust" (PSC, 2010, p9). "This begs the question," the commission continues, "should public servants or their spouses be allowed to do business with government?" (ibid). Their answer: yes. What matters for the Commission is that such contracts are awarded according to procedure. In other words, such "private benefit" is permissible when the officials in question declare their interests to an Ethics Committee and there is no conflict of interest between the parties (ibid).

We saw earlier, however, that within the ANC the emergence of a class of black businessmen and women was regarded as a sign of economic and political progress. The fact, moreover, that the market economy is dominated by whites means that entrepreneurialism via State tenders is a legitimate and necessary route for Broad-Based Black Economic Empowerment. We can go one step further. Established, white businesses are well positioned to respond to such tenders in terms of price and in terms of the quality of their products. Many have succeeded in appointing black people into strategic positions in the leadership while maintaining control over decision-making and securing the financial benefits ("fronting"). Even when businesses comply with legislation governing equity and Broad-Based Black Economic Empowerment the "wrong" people may still benefit. Is this not what has happened viz. affirmative action? The main beneficiaries have been white women and Indian men, not Africans (Burger and Jafta, 2010, p11). In these circumstances, public service prescriptions may not deliver the desired outcome, viz. black economic empowerment. Has this generated a "situational logic" where, on these terms, less formal processes are brought into play, including drawing on and from personal and political networks? In other words, "misuse" or "deviation" from public sector processes might well be a condition of realising political and economic objectives in terms of the NLM. That is, corruption by the one standard may be necessary to obviate corruption by the other. Or again, corruption by the standards of the public service is justified to advance black middle

and capitalist class formation. This situation likely explains the ANC's reticence, especially during the Thabo Mbeki presidency, to admit that "corruption" was a problem.

Growing concern from all quarters about corruption in South Africa today suggests something has changed since the early 2000s. On all definitions of corruption there is evidence of widespread "misuse" of public resources. It is not middle class taxpayers alone that are concerned about the phenomenon today. Today the cabinet and the ANC are too (Nqgulunga, 2012).

The Auditor General reported, for example, that for the financial year 2010/2011 municipalities alone had spent R10 billion "irregularly", a further R4,3 billion Rand in expenditure was "unauthorised" and R263 million had been spent in a "fruitless and wasteful" manner (AGSA, 2011c, p50-57). This amounted to a nearly 30% increase in wasteful and irregular expenditure from the year before. The Auditor-General explained the deterioration as the result of incompetent municipal officials (The Times, 7 May 2012) deployed by political parties (City Press, 29 July 2012) and corruption (see pages 49 and 63 of the AG report). The report was met with widespread consternation in the media and by opposition parties. It was received with dismay by the African National Congress as well. The ANC "note[d] with disappointment that out of 283 municipalities only 13 manage to get clean audits", though it never described the situation as evidence of corruption (ANC, 2012b).

This was a far cry from the way that former President Thabo Mbeki reacted to claims of corruption in the arms deal in 2006. "Some in our country," he warned in a column published on the ANC website "have appointed themselves as "fishers of corrupt men" (Mbeki, 2006). Those who made such claims, he argued, sought to entrench the stereotype that "Africans as a people […] are corrupt, given to telling lies, prone to theft and self-enrichment by immoral means, a people that are otherwise contemptible in the eyes of the "civilised" (Ibid: 2006).

There is a growing concern in the ANC that the beneficiaries of government procurement and expenditure are not those intended by either the movement or the government. The organisational renewal document notes, for example that within the ANC there has been "a silent retreat from the mass line to palace politics of factionalism and perpetual in-fighting" (ANC, 2012a, p9).

"The internal strife revolves around contestation for power and state resources, rather than differences on how to implement the policies of the movement. This situation has shifted the

focus of the cadres and members of the movement away from societal concerns and people's aspirations. These circumstances have produced a new type of ANC leader and member who sees ill-discipline, divisions, factionalism and in-fighting as normal practices and necessary forms of political survival" (Ibid, 9).

On the ANC's terms when this "new type of cadre", self-interested and prone to pursue their self-interest through divisive alliances, benefits from government and party interventions, there has been a "misuse" of public resources. That is, there has been corruption. Note the deviation here is relative to the ANC's own culture, that is, its norms and traditions. That is why for the ANC the solution to corruption lies in internal organisational renewal: to reinforce the organisation's own culture and to attract members invested in the broader vision of the organisation. The ANC thus proposed the following internal reforms:

- building a new corps of cadres with political, ethical as well as academic and technical acumen
- strengthening Luthuli House to be able to manage not only the exercise of political power and constitutional statecraft as well as the multitudes of members and supporters; but also how to relate to civil society - including intellectuals, artists and media - not as victim and protestor; but as leader
- operationalis[ing] the decision on the Integrity Commission: a commission that will have the legitimacy and authority to call members who stray to order
- a radical shift in the management of leadership contestation so we can dispense with the current pretence that everyone is waiting for October when nominations will start, while people are actually organising factional meetings about slates in the middle of the night (Netshitenzhe, 2012).

Joel Netshitenzhe goes even further suggesting that ANC members wanting to stand for positions should be "vetted" by branches and regions (Ibid). He describes the current problems with ANC membership as a "sin of incumbency", resulting from the transition. South Africa's peculiar character as a colonial society of a special type meant that coloniser and colonised inhabited the same territory. As a result, argues Netshitenzhe, black South Africans, especially those returning from exile and/or those from the "middle strata" had to "contend with lifestyles of the erstwhile metropolis (essentially the white community) that are profoundly pervasive". "Such lifestyles," moreover, "are based on a standard of living that is artificially high compared to today's global "middle class", in terms for instance of assets, number of cars per household, domestic assistants, swimming pools, emulation of the European "gentry" and so on" (Ibid).

"These mainly First Generation middle and upper strata quite legitimately aspire and pursue the artificially high standard of living of the metropolis. […] Yet, unlike their white counterparts, these emergent middle strata do not have historical assets, and they have large nuclear and extended families to support. As a consequence, they have to rely on massive debt and/or patronage" (emphasis added) (Ibid).

Under these conditions many ANC cadres and black "middle elements" became indebted and ultimately vulnerable to corruptible practices and people. Chinua Achebe's novels *Things Fall Apart* and especially *No Longer at Ease* (1960) make the argument in narrative form. Even honest and idealistic individuals entering politics or the public service are drawn into corrupt practices arising from their unenviable position at the interface of two, contradictory worlds. The first, a governmental system that calls on individuals to pursue their work according to anonymous rules and regulations. The second, a system of patronage that binds its members to obligations and duties on the basis of family, kin or friendship. Corruption, on these terms, arises when the pulls of kin and ethnicity overrides the obligations and culture of public office. In a version of this argument Jean-Francois Bayart claims that corruption is especially severe in Africa because the state is the major force within the economy and political office is the principle route to personal wealth (Bayart, 1993). Netshitenzhe's innovation is to locate this argument in South Africa in the context of the country's special history of colonialism. Yet this also shows up its limits. Why ANC cadres and others felt compelled to live by "white" standards requires an explanation in its own right.

1.3. Corruption and non-compliance

Talk of "corruption" in South Africa has become a way of speaking about generalised non-compliance. Within the ANC it increasingly refers to members of the ANC acting in ways contrary to what is expected of them, either by the standards of the ANC as the ruling party or by the standards of the public service. Corruption is not simply a problem for the discipline of the ANC and for the goals of National Democratic Revolution. Nor it is a problem simply because it increases transaction costs in the economy and furthers inequality. Corruption in the South African context weakens the institutional character of the State. Let us return to this and ask a related question. What is driving non-compliance in the public sector now?

Netshitenzhe may be correct that the social economy of the political and bureaucratic elite goes a long way to explain current patterns of corruption. Though there is a subtle moral register in this argument – why do some cadres succumb to these pressures more than others? It does bring to the discussion about corruption something more than moral

indignation. This is valuable because a) corruption is more serious a problem than moral decay and b) claims about moral rectitude cut both ways. They serve to condemn as well as justify corruption.

Consider the story of BS, a public servant that PARI researchers came across in the course of their work in a government agency. After 25 years as a diligent and unremarkable official in a provincial office, BS was arrested for diverting public moneys into a private account. She was subsequently found guilty of fraud. The amount was not substantial and the prosecuting agency offered her the following deal: “admit guilt for fraud and receive a sentence that does not involve jail time”. BS refused and was consequently imprisoned, though ultimately she ended up in a mental hospital. Why did she not accept the offer? Here is the paradox: BS accepted that what she had done was illegal, but she would not accept that what she had done was fraudulent. In her mind fraud was not simply illegal. It was immoral. Yet she had stolen the money for precisely moral reasons: the family had fallen on hard times and she needed the extra cash to provide for her children, especially for their education. In other words, BS, on her own terms, was acting as any dedicated mother should, to protect her children – a decidedly moral cause. BS’s story was not an isolated one. Corruption investigators report that such stories are widespread. People seldom steal or divert resources simply for themselves, but in the name of a social good: for the family, for others, for friends, for the political movement.

Public servants often accept that what they are doing is un-procedural; yet they can usually justify it on moral grounds. Typically, issues of unfairness are at the heart of their complaints. There can be and frequently is a gap between official definitions of corruption and private or individual understandings. In other words, what the law, and also official organisational discourses, say, is corruption does not necessarily coincide with private and/or social conceptions of wrongdoing. Alternatively, the legal definition of corruption comes up against private and/or social conceptions of virtuous or honourable behaviour. PARI has conducted interviews with government officials in agencies and departments where corruption is suspected to be rife. What emerges from these discussions is that corruption is often understood in terms of conceptions of fairness, especially in relation to how the organisation for which they work treats them and is seen to treat its staff generally. Corruption is understood as “lack of fairness”.

The payment of bonuses provides fertile grounds for a sense of grievance. PARI researchers have frequently heard the following story. “According to my performance management agreement I am eligible for a bonus if I achieve certain targets. Last year I met all my targets, yet I did not receive a bonus. The system is corrupt. Only the manager’s

friends get a bonus". There are multiple versions of this narrative. We have met white staff who have been demoted or who have seen their prospects of career advancement dissolve in the face of Affirmative Action. "If I had been allowed to progress as I deserved," they told us, "I would be earning X and my pension would be Y. Yet as it stands my pension will only be a fraction of Y. Hence I am owed the difference". In still other versions, young black recruits complain of the difficulty of career advancement in public sector organisations. "You can't get a promotion unless you are politically connected. And if you are a woman, you have to sleep with your manager".

Corruption as "lack of fairness", however, is very different to the criminal definition. Public servants, when they felt unfairly treated by the organisation they worked for, sometimes took enormous risks to get "what was owed to them" - even if it meant breaking the law. In other words, they committed legal corruption in order to restore the effects of what they termed "institutional corruption", or legitimised their own corrupt practices (such as bribery) as a response to this "institutional corruption".

Notions of "fairness" may also impact on citizen perceptions of corruption. Corruption Watch, for example, reports that many of the complaints that it receives do not relate to corruption per se. Often they are complaints of unfairness at the hands of government officials, service providers of all sorts, shop assistants, insurance companies and so on. In other words, in the public mind talking about corruption is also a way of talking about "unfairness", whether it takes place in the public sector or not.

Definitions of corruption circulating in policy circles thus tend to obscure as much as they bring to light. They do not adequately capture the sometimes moral undecidability (Laclau and Mouffe, 1985) of a corrupt practice. Consider, for example, the World Bank definition: "the abuse of public office for private gain". The United Nations Development Programme definition is more comprehensive in that it describes corruption as "the misuse of public power, office or authority for private benefit – through bribery, extortion, influence peddling, nepotism, speed money or embezzlement" (UNDP, 2005). Both take notions like "abuse", "misuse", "private gain" or "private benefit" as if they are somehow unambiguous terms or as if their meanings are universal. Yet a corrupt public servant may well not recognise themselves in such a description, especially when they were motivated by an "honourable" cause. Turning a blind eye, taking a bribe or committing fraud, that is, may not feel like "abuse", nor for "private gain" when it done to support one's family or to in the spirit of loyalty to a colleague.

Recognising the link between corruption and perceptions of "unfairness" requires that we think of corruption in more than legal and/or moral terms. Frequently talking about corruption is a way of speaking about organisational weaknesses (and their unfair consequences) in the public (and private) sector. In other words, the idea that corrupt public servants are somehow morally deficient obscures that morality is frequently invoked to legitimise corruption itself.

There is another reason that reducing corruption to a moral phenomenon is counter-productive. It obscures the relationship of corruption to compliance with laws, regulations, competencies and procedures.

Understanding the link between corruption and non-compliance with procedures, regulations and laws has important consequences for how we measure the scale of the problem and how we think about combating it. We now turn to attempts to quantify corruption in South Africa.

2. The nature and scale of corruption in South Africa

How much corruption is there in the South African public sector? Is the problem getting worse, or is it just more visible? What type(s) of corruption are on the increase? Where are the problems the greatest? There is little consolidated empirical data to provide definitive answers to these questions. In this section we have attempted to provide insights based on:

- An analysis of official government reports, such as the reports of the Auditor General and annual financial misconduct reports issued by the PSC;
- A review of corruption perception surveys, such as Afrobarometer and the HSRC's South African Social Attitudes Survey (SASAS);
- A review of published research, such as that issued by the Institute of Security Studies (ISS) and Idasa;
- The results of interviews undertaken as part of this study; and
- PARI's own research and related insights in this area.

Different understandings of what exactly constitutes "corruption" make it difficult to answer this question accurately. For the purposes of this analysis we have taken a broad view, and included instances of non-compliance in our definition.

In 2001 a report by the South African Public Services Commission noted that bribery, fraud and nepotism are common forms of corruption in contemporary South Africa and have

become systemic in certain contexts[5]. The extent of corruption in the country is difficult to quantify but public perception is that the phenomenon is on the increase. Transparency International's Corruption Perceptions Index, for example, shows that since 1998 people believe that the problem is growing.

The 2003 Country Corruption Assessment Report (DPSA, 2003) attempted to provide an answer to the question "how much corruption is there in South Africa?" The report was based on information collected in three separate surveys (households, business and the third focused on the public service (three national departments) and its clients in two provinces). This data was supplemented by other government information and surveys.

An important point to be made at this point (and emphasised by the Country Corruption Assessment Report) is the futility of trying to gauge the scale of corruption by an examination of official records of identified corruption and/or the prosecution of corrupt officials. The report found that even where government departments said that they had a dedicated anti-corruption team or officials in place, documentation relating to specific incidents of corruption was largely absent.

This theme has been echoed by the reports of the Auditor General (AGSA): the 2011 audit report of national departments (AGSA, 2011a) noted a "continuous decreasing trend of departments and public entities receiving clean audits" (p1). The same report indicated that unauthorised and irregular expenditure at national departments and national public entities had risen to a total of R5.4 billion, compared to R341 million in 2007 (AG, 2007), as indicated in Table 1, below. Although a portion of this may be accounted for by the broadening of the AGSA's mandate and improvements in their forensic auditing capabilities, they are nonetheless disturbing.

Table 1: Unauthorised, Irregular and fruitless/wasteful expenditure at national departments and national public entities: Years ended 2007 and 2011 (R'000).

ENTITY	**Unauthorised**		**Irregular**		**Fruitless/wasteful**	
	2007	***2011***	**2007**	***2011***	**2007**	***2011***
Nat Departments	R1,122	*R802,399*	R188	*R2,286,728*	R0	*R428,814*
Nat Public Entities	R0	*R9,193*	R340,285	*R2,262,333*	R73,078	*R164,153*

[5] *PSC report, 2001 cited in Pillay, S. 2004. Corruption - The Challenge to Good Governance: A South African Perspective.* The International Journal of Public Sector Management*, 17(7): 586-605.*

TOTAL	R1,122	*R811,591*	R340,473	*R4,549,062*	R73,078	*R592,967*

Source data: AG 2011a, AG 2007.

Much of the blame for this outcome has been attributed by the AGSA to poor Supply Chain Management (SCM), and in particular a failure to adhere to prescribed regulations. In addition to this audited and identified unauthorised and irregular expenditure, the AGSA also identified in the 2011 financial year 292 tender awards where it was not possible to categorise the expenditure because the necessary documentation was missing (AGSA, 2011a, p40). The AGSA also indicated that 191 procurement awards had been made to government officials, by national departments and entities. Despite the compelling evidence of SCM irregularities across departments and public entities, the same AGSA's report indicated that only a total of 107 SCM investigations were in progress or completed by March 2011, across all departments and public entities (Ibid, pp43 – 44).

The 2011 Report of the Public Service Commission (PSC, 2011b) into financial misconduct also highlighted the extremely low number of criminal charges laid against guilty public sector officials, notwithstanding the legal requirement to do so where the amount in question exceeds R100,000. All this points to the difficulty of obtaining an accurate assessment of corruption based on government's own actions and disclosures, notwithstanding legislation and/or entities established in this regard.

The Country Corruption Assessment Report (DPSA, 2003) showed that local perceptions of corruption were high, with 41% of South Africans believing that it is one of the most important problems that should be addressed by government. The two provincial surveys showed that the clients of public services estimate that between 15% and 30% of public officials are corrupt. A high 62% of respondents in the business sector indicated a belief that corruption has become a serious business issue. The business survey also showed that 15% of businesses had been asked for a bribe, and some 11% had made a payment of some sort. However, only 12% of business had decided against making a major investment because of corruption.

One interesting finding of the survey, which reflects on different conceptions of "corruption" related to notions of "fairness" (as discussed above), was that public sector managers interviewed expressed a particularly negative view of levels of corruption within their organisations. Some expressed the view that as many as 75% of staff could be described as "untrustworthy" and involved in some kind of corrupt activities (DPSA, 2003, p3).

However, the same report showed that perceptions of corruption were not matched by actual citizen experiences of corruption. A 1998 National Victim Survey indicated only 2% of people had directly experienced corruption. A 2001 survey found that 11% of households had done so (DPSA, 2003). There are two possible reasons for this discrepancy between perceptions and experience: The first is that where someone has benefited from a set of circumstances that could strictly be considered "corruption" (such as having a family friend sit on a tender adjudication committee) they are unlikely to consider themselves a "victim" of corruption. The second is to be found in what the study uncovered about how South Africans define corruption: The most common areas of "corruption" were considered to be in the area of job seeking, and the provision of government services – housing, electricity and water. While there is probably some genuine corruption (e.g. bribery) in the supply of services (particularly housing) and some nepotism involved in employment in the public sector, it is also possible that survey respondents were expressing their notions of fairness and unfairness in accessing better life chances and circumstances.

Ideas about "unfairness" were also clearly illustrated by what the report revealed about perceptions of corruption held by public service managers. These identified nepotism in the granting of jobs and promotions, and the provision of entitlements to employees as the most common examples of "corruption" in their departments. (Despite this evidence of the multiple ways in which corruption is understood, the Country Corruption Assessment Report failed to develop this thinking further, and the main content is focused on a criminal definition of corruption, and associated enforcement measures.)

A 2012 report issued by the Human Sciences Research Council (HSRC, 2012) which used data from the 2011 South African Social Attitudes Survey, indicated that the vast majority of those surveyed (91%) believe that corruption is a serious problem in South Africa. This represented a significant increase from previous years: In 2003, 9% of respondents put corruption in the top three most serious national challenges, which increased to 26% in 2011. Most tellingly, almost three quarters of those surveyed said that they believed corruption had increased over the three years to 2011.

Examining the Afrobarometer surveys from 2004 to 2011 (Afrobarometer 2004, 2008, 2011) supports the view that citizens believe that corruption has increased over that period. In addition, the surveys also indicated that perceptions of corruption apply to almost all parts of governments. Table 2 below indicates responses to the question "How many of the following people do you think are involved in corruption, or haven't you heard enough about them to say?" contrasting the replies "most" and "all" in 2004, 2008 and 2011.

Table 2: How many of the following people do you think are involved in corruption, or haven't you heard enough about them to say? 2004, 2008 and 2011 (Percentage of respondents)

ENTITY	2004		2008		2011	
	Most	All	Most	All	Most	All
The President and officials in his office	14	4	10	7	26	9
Representatives to Parliament	20	4	18	7	32	8
Local Government Councillors	18	6	25	10	37	14
Government officials[1]	17	4	31	10	40	10
The police	28	8	35	11	40	12
Tax officials	14	4	21	8	18	5
Judges and magistrates	11	3	19	7	21	6

[1] The 2004 survey differentiated between local and national government officials, while later surveys did not. The 2004 figure is a simple average of the responses to the national and local officials' questions.

Source: Afrobarometer, 2011, 2008, 2004.

The trend is clear: In the minds of the average citizen, corruption has gotten worse, and this view applies across large parts of government. Local government councillors, government officials and the police are rated as the most corrupt, and it is telling that people rate these three groups almost equally (although most media attention has focused on perceptions of the police). There has been a significant deterioration in the perceptions of local councillors and government officials, and our analysis of local government and misconduct in the public service set out below certainly suggests that these perceptions are based to some degree on actual events. If talking about corruption is also a way of speaking about "unfairness", then to what extent do perceptions that corruption is increasing testify to declining trust in government bodies?

It should be noted, however, that when surveys ask citizens to rate the importance of corruption against other problems (such as unemployment, poverty, housing, etc.), it scores very low: The 2011 Afrobarometer survey showed only 5% of survey respondents rates corruption as the most serious problem facing the country, way behind issues such as unemployment and poverty. Only 7% of respondents rated it as the second most important problem in South Africa. (Afrobarometer, 2011). These results should be seen in the context of Table 2, above, which clearly indicates that the same citizens believe that government

officials are generally corrupt. The point is not that they do not believe that corruption is widespread, it is that they do not believe it is a serious problem.

Even though perceptions that government officials are corrupt have increased considerably, this has not been matched by a corresponding increase in perceptions of how serious the problem is, relative to other citizen concerns. Unemployment and poverty were considered the most serious problems in the country with around 50% of votes over all three years, with corruption only rising to 5% in 2011 from 3% in 2004.

Although there is evidence that unfairness and corruption are often conflated in the minds of citizens, and this may make it difficult to determine how much corruption there actually is, based on the results of citizen surveys. However, documented differences between perceptions of corruption and "actual" (i.e. experienced) corruption should not be interpreted as indicating that there is no problem: Firstly, one of the most important negative consequences of corruption is the breakdown of the relationship between citizen and state, and in this breakdown perceptions are critical. Secondly, and potentially very importantly, PARI's research has shown that perceptions of "unfairness" (whether or not they are presented as corruption) can create an environment where people believe that they have some kind of justification for engaging in dishonest or fraudulent behaviour. That is, even if perceptions that corruption in the South African public sector is endemic and growing are not entirely accurate at this point in time, these perceptions may very well contribute to the growth of corruption, until reality indeed matches perception. Thirdly, this report shows evidence of significant corruption in areas of the public sector that have very little direct citizen contact (such as the Department of Public Works). Perceptions that the department is corrupt may be accurate without having to be supported by an actual experience with that department.

The PSC drafts an annual report covering financial misconduct in the public sector. The most recent – covering the 2009/10 financial year - reports that the general trend in financial misconduct within the public sector is increasing, notwithstanding a small decline in actual cases finalised in the 2009/10 financial year. The value of financial misconduct has risen sharply, and the decline in the number of finalised misconduct cases (which is the PSC's unit of measure for this reporting) should be considered against the increasing trend noted by the PSC among employees charged with financial misconduct to resign before their disciplinary procedures are finalized (PSC, 2011b)

Table 3 below shows the number of finalized cases (reported to the PSC) and the estimated cost of this financial misconduct for the three years to 2009/10.

Table 3: Finalised cases and cost of financial misconduct in the public service (2008 – 2010)

Entity	**Number of finalised cases**			**Cost of financial misconduct (R'000)**		
	2007/08	**2008/09**	**2009/10**	**2007/08**	**2008/09**	**2009/10**
National Departments	316	260	286	R9,841	R69,552	R265,355
Provinces	552	944	849	R11,936	R30,558	R81,173
TOTAL	**868**	**1,204**	**1,135**	**R21,777**	**R100,111**	**R346,528**

Source data: PSC 2011b, PSC 2010, PSC 2009

It should be noted that this data may represent a significant under-counting of the actual problem: Firstly, for the 2009/10 financial year, 13 of the 39 national departments submitted a nil return, as did 38 of the 109 provincial departments (PSC, 2011b). A nil return indicates that the department reported that it had not finalised any cases of financial misconduct in that financial year (as opposed to not submitting any report at all). When one considers the trends recorded in the AG's annual reports and the data collected by the PSC itself, it seems unlikely that this reflects a position where so many national and provincial departments did not have any instances of financial misconduct. Secondly, the AG's findings around missing SCM documentation (discussed above) suggests that there may be a number of misconduct cases around SCM that cannot be supported due to a lack of evidence. This further reinforces the view that corruption is under-reported by the public-sector mechanisms set up to do so.

In any event, the trends that are indicated in Table 3 above are fairly clear. Firstly, the value of financial misconduct has risen sharply. Secondly, there appear to be very different experiences at national and provincial departments: The incidence of financial misconduct in provinces is increasing, but the "value per case" at the national level has risen dramatically. It is difficult to judge the reasons for this, but an argument could be made that this reflects the general absence of meaningful (particularly criminal) sanctions, discussed in more detail below.

In terms of most prevalent type of financial misconduct, fraud was most commonly reported, with 600 cases (compared to "corruption" (defined in the report as bribery) with only 25), implying that fraud made up more than half of all financial misconduct cases. The most common types of fraud were listed as the following (PSC, 2011b, p23):

- Travel and subsistence claim fraud;

- Social grants;
- Capturing fraudulent transactions; and
- Petty cash fraud.

Fraud is also heavily concentrated in provinces, rather than national departments – the latter only recorded 97 out of the 600 cases. KwaZulu-Natal accounted for 243 of the total. Since the types of fraud described above are most likely to be associated with relatively small amounts of money, this could account for the much lower value per case recorded in the provinces.

Another PSC report issued in 2011 (2011a) analysed the cases reported to the National Anti-Corruption Hotline (NACH) from the time of its launch on 1 September 2004, to 31 June 2010. The report provides some interesting information on different categories of public service corruption and which public service entities received the most complaints.

As at 30 June 2010, the total number of cases reported for the most prevalent forms of corruption were as indicated in Table 4 below:

Table 4: Most common cases of corruption reported to the NACH: Total as at 30 June 2010

Type of corruption	**Number of cases**
Fraud and bribery	1,511
Abuse of government resources[1]	985
Mismanagement of government funds	870
Identity document fraud	781
Procurement irregularities	720

[1] All of these related to motor vehicles

Source: PSC 2011a

In turn, the report listed the most common cases of fraud and bribery as the following:

- Officials claiming overtime without actually working
- Officials receiving money from members of the public in return for obtaining tenders
- Prison warders accepting bribes in order to assist inmates to escape from prison.

It is interesting to note that this report (PSC 2011a) suggested a much higher incidence of bribery than the self-reporting of financial misconduct by departments and provinces (PSC 2011b). This suggests that these organisations are poorly equipped to detect bribery through

their internal control systems, and that the PSC financial misconduct reports may be under-reporting bribery by a considerable margin.

The PSC 2011 report covering cases reported to the NAHC (PSC 2011a) provided some information as to where in national and provincial government problems may be greatest. Once again, however, it must be noted that the NAHC data should be considered against the likelihood that corruption would only be reported where someone is unhappy with an outcome: where there is no aggrieved party, a complaint is unlikely. It is impossible to determine the extent of this undercounting.

As at 30 June 2010, a total of 3,554 cases had been referred to national departments by the NAHC, with the complaint winners set out in Table 5 below:

Table 5: Largest number of cases referred by the NACH to national departments (total as at 30 June 2010)

National Department	Number of cases
Home Affairs	781
Correctional Services	708
SAPS	357
Social Development [1]	268
COGTA	245

[1] Despite the fact that there was, during the same period, a dedicated social grant fraud hotline

Source: PSC 2011a

The complaints received by the NAHC for the period to 30 June 2010 were more or less evenly split between national and provincial government, with a total of 3,929 referred to the latter. Thirty percent (1,188) of these were referred to Gauteng. Second highest was KwaZulu-Natal, with 409 cases.

The 2011 PSC report on financial misconduct in the public services (PSC, 2011b) showed that misconduct was recorded across all salary levels on the Public Service (the salary level was reported in 80% of cases). However, the ratio between number of misconduct cases and number of persons employed at particular levels across the public service indicates that senior managers are 5 times more likely to be engaged in financial misconduct than those at lower salary levels (grade 8 and below). The PSC also reports “a consistent increase in the percentage of SMS members charged with financial misconduct” (PSC 2011b, p ix).

Although this is a likely result, given that the available opportunities for misconduct are likely to be more numerous at higher seniority levels, this is an important issue to be taken into account when we consider the efficacy of anti-corruption measures: It is exactly this group of people, where incidences of misconduct appear to be highest, who are mostly responsible for ensuring compliance and exercising oversight. It is also this group of people who have been identified during our interview process both as most important in "getting things done" in organisations (since they tend to outlast changes at ministerial and DG level), but also as most likely to resist change. There are very real dangers in the possibility of an entrenched layer of senior managers with a vested interest in opposing anti-corruption efforts.

In terms of where the misconduct cases were concentrated, it is difficult to use the recorded data as an accurate assessment of the location of problem areas, since (as the report points out) having a high number of finalised cases may be indicative of an effective and efficient control system, rather than a serious problem. The Department of Justice and Constitutional Development reported the highest number of finalised misconduct cases in the 2009/10 year (93) for the fifth consecutive year. In contrast, only 2 cases were finalised at the Department of Public Works, and this Department is consistently identified by the AGSA as having a particularly poor control and compliance environment (AGSA, 2011).

The results of the PSC's reports suggest that the current methods of data collection around misconduct by government employees needs to be improved. The most important issues that should be addressed are:

- The high number of nil returns, and the low number of cases reported in departments whose audit outcomes suggest significant levels of corruption, is consistent with input from interviewees that many government departments have a vested interest in keeping corruption hidden, since this reflects badly on senior management. In many cases it appears that guilty officials are simply "disappeared" on some or other pretext, such as redeployment or resignation for personal reasons.
- Given the prima facie evidence of a significant problem within local government, it is a serious omission that this survey is not extended to municipalities. The unwillingness of many government departments to acknowledge and/or investigate corruption was evident in the AGSA's 2011 report on local government, which showed a marked increase in the incidence of tender awards to councillors and/or council officials as well as unfair procurement practices, compared to 2010 (AGSA, 2011c). Despite this increase, the AGSA commented on the fact that "… more than half of our auditees can attribute their poor audit outcomes to mayors and councillors that are not responsive to the issues identified by the audits and do not take our recommendations seriously" (AGSA 2011c, p.13).

From an audit perspective, there are certain key indicators which indicate potential or actual problems with corruption within an organisation, even though it may not be strictly classified as “corruption”. These include:

- Rising levels of irregular, unauthorised and fruitless/wasteful expenditure (IUFWE);
- Irregularities with Supply Chain Management; and
- Awarding of tenders/government business to entities in which an interest if held by government employees and/or their family members.

If we examine these trends across all three spheres of government we see a clear rising trend of increasing IUFWE, accompanied by widespread SCM irregularities and the participation of government employees in government tenders. As a summary:

- In the 2011 financial year, 46% of national departments, 36% of provinces and 46% of local government entities had awarded tenders to government employees and/or their close relatives. In the case of local government, this was up from only 25% in the previous year.
- IUFWE has increased sharply: in 2011, the total across all three spheres of government was just over R20bn, compared to a total of R1.8bn in 2007 for national and provincial government and entities (local government data is not available for that year).
- SCM irregularities (described as uncompetitive or unfair procurement practices) were found at 74% of national departments, 69% of provinces and 65% of local government in the 2011 financial year.

The AGSA (AGSA 2011a, 2011b, 2011c) has voiced his concern about the negative trend at all spheres of government, despite an apparent commitment by senior officials to address problems, and the efforts of the AG”s office to improve audit outcomes. He particularly noted “the continuous decreasing trend of [national] departments and public entities receiving clean audits” (AGSA, 2011a, p1). The 2011 audit results reflected 34 improvements in audit outcomes, but 61 regressions at the national level (ibid, p1). In the 2011 financial year, 26% of national departments received qualified audits, but these departments accounted for 53% of total voted funds (ibid, p1).

The picture is not much better at a provincial level (AGSA, 2011b). Here the previous trend of improvements in audit outcomes seems to have stagnated, with the number of improved audit outcomes largely cancelled out by those which had regressed. Free State, Limpopo, Northern Cape and North West are the worst performing provinces, with a third or more of auditees receiving qualified reports. Most importantly, the AG noted an overall decline in

audit outcomes in the most important service delivery departments – education, health, human settlements and social development.

At local government level there was a marked deterioration in the 2011 financial year from the previous period accompanied by an increase in general non-compliance (AGSA, 2011c).

All of this evidence points to a situation of deteriorating compliance and control, despite the public commitment of senior government officials to change and the efforts of the AGSA through technical programmes designed to increase capacity, particularly at local government level. Although we do not mean to imply that all of the transactions included under IUFWE are “corrupt”, it is our contention that an environment of non-compliance is positively correlated with corruption.

A final point to be made is that there is a very high (and rising) occurrence of “uncompetitive or unfair procurement practices”. PARI’s own work around perceptions of fairness in organisations suggests that the more that the government procurement process is seen to be unfair, the greater the incentive (“justification”) for engaging in corrupt activities such as bribery in order to access these resources.

It is particularly important to highlight the rising levels of both non-compliance and outright illegal behaviour at the municipal level, discussed above. It is our opinion that there is a very serious problem at local government level, which is not receiving sufficient attention and analysis. For example, there is no corresponding survey of financial misconduct cases at local government level comparable to that done by the PSC across national and provincial government. This means that we actually know very little about the nature of corruption in these institutions, or how it is being dealt with (which is just as important). Given the critical role of local government in implementing development policy, far greater attention needs to be paid to the structure and nature of corruption in this sphere of government.

3. The consequences of corruption

There is a large body of literature dealing with the negative impact of corruption on democracy, economic development and social justice. There is no empirical evidence from South Africa which quantifies the impact of corruption, but some general conclusions can be drawn, based on the literature. The likely negative impacts can be summarised as the following:

- Lower levels of economic development, largely through increasing the cost of doing business and lowering investor perceptions. These change the risk – reward matrix for both local and foreign investors, resulting in generally lower levels of new investment. Higher levels of corruption in key infrastructure and human capital development – such as tenders for infrastructure and corruption in the education sector – will undermine the basis for future growth and development.
- Lower levels of social development: although South Africa's poor record in service delivery cannot be attributed only to corruption, there can be little doubt that there is a serious problem at local government level, and that this is impacting negatively on the provision of basics services and local economic development. Table 2 above indicated that citizens rate local government councillors and government officials as a group almost as equally corrupt as the police (although the latter tend to get most of the attention in discussions of corruption). Although we can acknowledge that this may be a partial reflection of notions of "fairness" in the allocation of services, our analysis of the state of local government suggests that citizen perceptions in this regard may be fairly accurate. A general environment of non-compliance and poor performance management almost inevitably reduces organisational performance, and contributes to the misallocation of resources.
- The effects of corruption tend to disproportionately impact more on the poor than the rich (Camerer, 2009): South Africa is already one of the most unequal countries in the world, and this can be exacerbated by corruption, largely via the following mechanisms:
    - If the provision of services becomes increasingly dependent on the payment of bribes, only the wealthy can afford to do so.
    - A deterioration in the quality of public infrastructure (such as transport) and public services (such as education and health) impacts greatest on those who cannot afford private options.
    - Declining economic activity and investment will result in fewer employment opportunities.
- A reduced level of trust between the state and citizen. As discussed above, perceptions of corruption within the police are particularly high. Such perceptions have been found to be the most important negative factor undermining the public's trust in the police (Faull, 2007).
- Corruption breeds more corruption. As more people perceive or directly experience higher levels of corruption, the notion that "this is the way things work" may support higher levels of corruption, as more people engage in corrupt activities because they see no alternative to gaining access to resources or government services. In this what happens at local government could be particularly important since this is where a considerable amount of government – citizen contact takes place.

4. The drivers of and the enabling environment for corruption

The work of the Auditor General as well as other studies, including those of the Public Affairs Research Institute, suggest that there is a relationship between corruption and non-compliance. Indeed, what makes corruption (as legally defined) so difficult to quantify is that there is seldom a smoking gun. In other words it is difficult to find that there has been abuse of office for private gain. As we saw in the AG reports, however, and those of the Public Service Commission there is often evidence of widespread deviation from formal and mandated processes. Often corruption is suspected to be the motive. This explains, perhaps, the following paradox. While few people in South Africa have been convicted for corruption, there are numerous officials in many departments and agencies on suspension. Often this situation testifies to the fact that there is clear evidence that they have violated or disobeyed a regulation. Yet there is often little or no evidence, or not enough evidence, that they did so with criminal intent. Hence there are grounds to suspend them but not arrest and prosecute them.

We have briefly discussed above the poor audit outcomes across government, particularly at local government level. Although some of this may be attributed to a shortage of capacity and skills (which is discussed below), there is a very clear indication that levels of compliance with key legislation are not just low, but in certain instances are actually declining (particularly at local government level). While there is good reason to believe that some of this is related to skills and capacity shortages, it is also clear that a significant portion of this can be attributed to failure to implement or obey legislation, regulations and/or standard operating procedures.

For example, SCM regulation 44 prohibits government contract awards to persons, or entities owned or managed by them, if these persons are councillors or council employees or if they are employed in some other part of the state. Despite this, 46% of local government auditees were guilty of this contravention was found. It should also be noted that in only about 20% of these cases had the official in question NOT disclosed his/her interest, and thus attempted to conceal it (AGSA 2011c). This implies that illegal contracts are in the majority of cases with full knowledge of the conflict of interest.

Failure to collect tax clearance certificates and declarations of interest from suppliers is a relatively common occurrence (AGSA 2011b, 2011c). Officials adjudicating in tender awards for which they had submitted a bid happened at 13% of national departments (AGSA 2011a).

Another serious problem area in terms of compliance and control is the fact that submitted tender documents go missing with alarming regularity, which prevents the AGSA from assessing whether or not the expenditure in question was compliant. In 2011, this was the case at all provincial auditees except Gauteng (AGSA, 2011b). The AGSA reports that the reasons for this were a combination of poor record-keeping systems, but in some instances officials claimed to be unaware that these documents should be stored for audit purposes.

Whether or not non-compliance is actually corruption in a strict definition is not the key issue: Rather, it is that a general organisational culture of non-compliance provides the environment within which opportunities for corrupt activities are both created and less likely to be detected.

The most serious area of non-compliance is probably in the area of SCM: Despite the detailed regulation of SCM practices in government and the efforts of various government agencies (including the AGSA's operation Clean Audit launched in 2009), there are serious problems at all spheres of government. For example, in 2011 almost 70% of all irregular expenditure in provinces (just under R12 billion) was as a result of the circumvention of SCM regulations. This included R3.6bn of payments that were made in excess of the approved contract price (and R3.3bn of that was in the Eastern Cape) and R2.5bn worth of contracts that were irregularly renewed/extended in order to get around the requirement of a competitive bidding process (ibid). (The Eastern Cape was also responsible for 84% of all contracts awarded to officials, all of which confirms that view that there is a particularly serious problem in that province).

At a national level, 62 public entities (54%) and seven constitutional institutions (88%) had findings on instances of non-compliance with both PFMA and National Treasury Regulations (AGSA 2011a).

At a local government level the situation is particularly dire: In terms of SCM-related irregular expenditure, both the number of auditees at which this was recorded and the amount increased in 2010/11 from the previous year, despite the AGSA's specific focus on this area and the public commitments that had been made by senior officials after the release of the previous year's audit. In the 2010/11 financial year there was no improvement in audit outcomes at local government from the previous year, with approximately 50% of auditees failing either to submit their financial statements on time or to obtain financially unqualified audit opinions. The frustration of the AGSA (and his assertion that non-compliance is a serious issue) is quite clear in his report:

The cornerstone of local government reform initiatives since 1994 has been the legislation introduced to define, enable, enforce and monitor sound and sustainable financial and performance management. Legislation such as the MFMA (2004) and MSA (2000) introduced transparency, accountability, stewardship and good governance which, in turn, safeguard citizens against abuse of public money and lack of service delivery. The legislation and the principles embedded therein are also geared towards achieving the defined national outcome of a responsive, accountable, effective and efficient local government system. It is within this context that the continued high levels of non-compliance with legislation and the lack of improvement on the prior year are of grave concern.

AGSA 2011c, p 58

The extent of this expenditure and non-compliance by the accounting officers is indicative of an environment where incurring unauthorised and irregular expenditure has become the norm and not the exception.

ibid, p 51

Irregular expenditure does not necessarily mean that money had been wasted or that fraud had been perpetrated – the impact is only determined after investigations by the council. It is, however, a measure of an auditees' ability to comply with laws and regulations relating to expenditure and SCM. Its prevalence, high values and continued increases demonstrate the inability of local government to comply with the laws and regulations that protect public money against fraud, waste and uneconomical procurement.

Ibid P55

In spite of the commitments made at all levels of government and action plans compiled by the auditees, there was little impact on the outcomes. It is also disappointing that auditees often express the view that the legislation is difficult to understand and onerous to implement. The lack of improvement in areas such as SCM, which received much attention from the AGSA, both in the provinces and at national level, however, points to a disregard for laws and regulations.

Ibid, p 58

The AGSA has expressed his opinion that this growing entrenchment of non-compliance may very well undermine the implementation of regulations on minimum competency levels and disciplinary processes, specifically designed to try and improve service delivery and accountability at local government level. The minimum competency level regulations to the

MFMA were promulgated in June 2007, and are due for implementation in December of this year.

One point to elaborate in respect of non-compliance is the role of senior management in both facilitating a culture of non-compliance, and conversely, putting up resistance to changes to make organisations more compliant. We have discussed above the fact that senior managers are far more likely to be involved in financial misconduct than other levels of employees. That this group is also the same one that is responsible for addressing non-compliance suggests problems. This is a potential leverage point for interventions.

What is driving non-compliance? Let us first address the more obvious factors.

4.1. Lack of consequences

At least 73% of the (local government) auditees showed signs of a general lack of consequences for poor performance. This is evidenced by the fact that modified audit opinions remained the norm. When officials and political leaders are not held accountable for their actions, the perception could be created that such behaviour and its results are acceptable and tolerated. This could make even those people that are giving their best under trying circumstances despondent.

AGSA 2011c, p13

Our research has found considerable evidence of a lack of consequences for a range of transgressions – from non-compliance through to criminal activity. The result is that the majority of transgressors face no or relatively few consequences for their actions. Often the failure to sanction offenders is in direct contravention of applicable legislation, which is in itself another example of non-compliance. A situation where offenders regularly go unpunished may have the long-term effect of entrenching corruption, as the potential consequences of getting caught decline in both severity and likelihood.

Despite the compelling evidence of SCM irregularities across national departments and public entities, the 2011 AGSA's report indicated that a total of only 107 SCM investigations were in progress or completed by March 2011, across all departments and public entities (AGSA 2011a, pp43 – 44).

The "gaps" in the list of investigations paint a picture of a significant mismatch between SCM (and audit) irregularities, and the organisation's ability (or willingness) to identify these and take remedial action in the form of investigations. Some examples are set out below:

- No SCM-related investigations were underway at the Passenger Rail Agency of South Africa (PRASA), despite the AG identifying 101 tender awards where documentation was missing.
- No investigations at all were under way at SANParks, where 13 instances of officials receiving tender awards were identified.

The AGSA's local government report commented specifically on the fact that very little action had been taken in the 2011 year against local government officials who had been awarded contracts in the previous (2010) financial year (AGSA, 2011c, p 65). This may very well be a key factor behind the increase in such contract awards in 2011. The result is that good and comprehensive regulation – in this case the Municipal Finance Management Act (MFMA) and associated supply chain regulations - are rendered largely ineffective in a culture of non-compliance and limited consequences for transgressors.

One of our interviewees discussed the fact that many senior managers and political office bearers are not disciplined or dismissed for corrupt activities in order to prevent negative perceptions of that person's department or area of authority. In these instances offenders either resign for a variety of reasons (personal reasons, clash of personalities, etc.) or are transferred to other areas.

This reluctance to investigate acts of corruption (together with limitations on internal capacity) may be reflected in the data from the PSC (PSC 2011b) which showed that some national departments (such as Public Works, which regularly receives a poor audit outcome and has been singled out by the AGSA for its problematic SCM) are investigating a surprisingly low number of misconduct cases. It is also the case that departments stop investigations of cases of alleged corruption without providing valid reasons for why they have done so (PSC 2011b).

Even where financial misconduct is formally investigated and the investigation results in a guilty charge, there is evidence to suggest that the required (legislated) sanctions are often simply not being applied. In 2009/10, 88% of officials investigated for financial misconduct in the public service were found guilty. However, in many instances the required sanction was not applied. Most particularly, subsection 34(1) of the Prevention and Combating of Corrupt Activities Act (No 24 of 2004) requires departments to report offences involving R100,000 or more to SAPS. However, of the 152 cases involving R 100,000 or more, in which officials were found guilty, criminal action was instituted in only 29. Thus in 113 cases departments simply ignored very clear legislation. The PSC requires that departments provide reasons for why criminal action has not been instituted when this is mandatory, but this reason was

provided in only two of the 113 cases (PSC 2011b), with departments simply ignoring the PSC's request in the remaining 111 cases.

Another way in which corrupt officials "get away with" financial misconduct is illustrated in the low level of recovery of misappropriated funds. There is a discrepancy here between provincial and national recovery rates (provincial rates are much higher), which cannot be explained at this point. Across both spheres of government only 13% of funds were recovered from employees found guilty of financial misconduct, while just over R302 million could not be recovered.

Finally, the PSC noted that the majority of disciplinary processes are not concluded within the required 90 days, and many take considerably longer than that (PSC 2011). During the disciplinary period the employee in question is usually paid a full salary. Thus, an extended disciplinary process effectively results in the employee receiving a benefit.

4.2. Shortage of relevant skills and capacity in key areas

There is little doubt that there is a shortage of skills and capacity in many areas that are key to identifying and dealing with corruption, particularly at the local government level.

At local government level there is a general shortage and/or mismatch of skills in many key areas. The AGSA found that more than 70% of official in key positions in municipalities did not have the minimum competencies and skills required. In addition, there is a high incidence of vacant positions and acting managers in senior posts. This skills gap is particularly acute in the area of financial management. This in turn is reflected in the serious gaping hole in the area of internal audit. This shortcoming was highlighted by the AGSA in 2011 and its effects were clear in the fact that across municipalities, only around half of irregular, unauthorised and fruitless/wasteful expenditure was identified by the auditee – the other half was identified by the AGSA auditors (AGSA 2011c).

Poor internal audit capacities reduce the ability of organisations to detect, prevent and deal with non-compliance and corruption. In addition to having the necessary skills available, an effective internal audit capability is also determined by the quality of planning (and particularly the budgeting component). Internal audit functions by assessing planned outcomes against actual outcomes. It follows that if the planning part does not meet certain standards of accuracy and disclosure, the internal audit function will be compromised. (Planning and reporting is discussed below.)

Another institutional weakness is in the area of investigating allegations of corruption. The PSC (PSC 2011a, p 34-35) made the following findings:

- Since 2003, all public service departments and entities have been required to have "Minimum Anti-Corruption Capacity Requirements". DPSA research conducted in 2006 found that 60% of departments had either no measures in this regard or only very basic policies
- Only 15% of public service departments had advanced capacity to investigate corruption.
- 25% had basic investigative capacity.
- 60% had no basic investigative capacity.
- 45% have either poorly formulated or no strategic objectives for addressing corruption.

In addition, all anticorruption units established at the provincial level may be considered "dysfunctional" (ibid, p40). This is a key area of concern, since the majority of the public service is located in the provinces.

Interviews with sampled departments (ibid) indicated that 80% of respondents believed that their own anti-corruption units were hampered by unclear / vague responsibilities and powers to effectively investigate corruption. The result is that officials are not always certain about what they can and should do when presented with an allegation of corruption.

Finally the PSC noted that the risk management function within many departments is not operating effectively. Most particularly, risk management activities are not focused sufficiently on the pro-active detection of corruption, and there is little interaction and co-ordination between risk management units and anti-corruption units, which would more correctly be seen as complementary functions.

Although there appears to be a widespread capacity gap in areas of both management and anti-corruption efforts, it must be emphasised that improving skills and capacity can have only a limited impact when it is applied in an environment of a general culture of non-compliance, a lack of leadership, and a culture of tolerance for corruption (evidenced by the lack of serious consequences for guilty parties).

4.3. Poor planning and reporting

The way in which planning is done across government (but most particularly at local government level) creates an environment which undermines oversight and compliance. In order for oversight to function effectively, it must be based on consistent standardised reporting against clear, measurable and detailed planned outputs (PDO – "predetermined

objectives" in the language of the AGSA). It is in the latter area where problems arise: planning regulations require the production of a large number of plans, across a wide range of functional areas. However, the main compliance indicator is that the plan is actually produced, rather than in the content of the plan. At local government level the planning output required is onerous, and very difficult for many smaller municipalities to comply with (van der Heijden, 2009). However, there is little or no quality control over the content of these plans. The result is vague and fuzzy planning targets, with consequent poor budgeting.

One interviewee, speaking about local government, confirmed this issue: in many instances plans and associated budgets are simply "guesstimates" of what a department is planning in a particular area, rather than the outcome of a detailed and methodical approach towards determining required activity and output, and then costing these. It is then problematic for a financial auditor to determine whether or not incurred expenditure should be considered "authorised".

In this environment it is often difficult for managers, internal auditors and others charged with oversight to determine whether or not what is supposed to be happening is actually happening. It is also difficult to build a performance management and accountability framework onto a planning framework that allows for vague and unclear objectives. It is not hard to see how this facilitates an environment where there is opportunity for corruption.

In the 2011 financial year, 43% of all local government auditees were judged to be materially non-compliant in the area of strategic planning and performance management (AGSA 2011c, p47) which means that they were not complying even with the legislated requirements. "Councillors, mayors and municipal managers have not demonstrated a proper understanding of their responsibility relating to service delivery planning, measuring and reporting, while reporting on performance is still viewed only as a year-end reporting requirement that must be satisfied." (ibid, p44).

There is thus good reason to believe that a significant number of municipalities are not doing the kind of planning which provides a good foundation for oversight.

Across all spheres of government concerns were raised about the quality (i.e. validity) of performance reporting (AGSA 2011a, 2011b, 2011c).

Some specific issues are raised here, based in large part of input from interviews:

- There is considerable pressure on managers in the public sector to spend their budgets. Under-spending has been proposed as a reason for poor service delivery, and managers face censure from senior officials if they fail to spend allocated budgets within pre-determined periods. Although it is obviously desirable for allocated budgets to be spent, this pressure (particularly when it takes place in a likely environment of initial poor budgeting) creates an environment that encourages the circumventing of SCM regulations and the inflation of supplier payments. In his 2012/13 budget address to Parliament Finance Minister Pravin Gordhan issued a warning to all spheres of government that under spending of allocated funding would result in the loss of allocations of funds, and that responsible officials would face consequences. In this way, under spending is presented as a failure by managers, rather than a consequence of poor planning and budgeting.
- The PSC (PSC 2011) raised the issue of policy/legislation that allows officials discretion and personal judgement in decision-making. This was identified as a factor that often results in the abuse of power, and an issue of most concern in many departments. A similar effect is generated by policy or legislation which provides for special dispensations or exceptions to rules (for example, to “fast track investment” or something similar). This provides the opportunity for corrupt officials to provide the exception to a situation that does not qualify.
- Pressure to “do something” in the fight against corruption. This results in a focus on short-term quick fixes focused on addressing corruption events rather than detailed analytical and investigative work focused on determining the relevant “process” of corruption (Interview with General Arendse 30/08/2012).
- The prohibition on unsolicited bids in government makes good sense from a compliance point of view, since there are obviously opportunities for corruption via circumventing SCM controls. However, the total ban on even discussing unsolicited bids in government means that there are no entry points into government for private sectors companies which have genuine innovations that would be beneficial. These companies may resort to corruption as the only way to get an audience for their goods or services.
- The AGSA has noted that there is no central database of government employees which government departments could use as a “back-up” check against the submission of declaration of interest documentation. This is an important issue, since the AGSA identified poor controls regarding declarations of interest as the most important control weakness in SCM irregularities (AGSA 2011c).

4.4. Political administrative interface

There are numerous reasons why public servants are not compliant with rules and procedures. Theft, fraud and lack of skills are only some of them. The others are more mundane. The National Planning Commission has drawn attention to the lack of clarity in what it calls the administrative-political interface in government. As long as staff appointments remain the prerogative of the Minister and not the Director-General it is difficult for staff to know to whom they are accountable and with whose directives they should comply, those of the Minister or those of the Director-General. More seriously, and this is the problem of politicising the public service generally, it is not clear whether appointees are responsible to the imperatives of the department or of the political party.

4.5. Organisational weakness and instability

The introduction of New Public Management reforms in South Africa in the 1990's, moreover, was motivated by a fierce critique of bureaucracy; that is, with an internally focused, rule-driven, hierarchically structured organisation. Instead, a post-apartheid public service was to be led by independent and values-driven managers that focused on outcomes and that were unrestrained by bureaucratic rules and regulations. Whatever the merit of these innovations, they have been associated with a general neglect of administrative processes in government departments. The recent diagnostic of the Limpopo Provincial administration, conducted by the National Treasury, is informative in this regard. Administrators did not simply find evidence of mass looting. They found departments operating in the absence of basic administrative processes. Departmental records were chaotic; administrators frequently could not find contract documents, there was no asset registry in the Province, Provincial data, including the number of school children in the Province, was unreliable or simply non-existent. In other words, even when public servants wanted to be compliant, there were seldom functioning processes and systems for them to be so. This situation is compounded by high turnover rates amongst senior staff, associated with a constantly changing world of work.

In other departments, the pace of technological change, especially the introduction of new IT systems, was not supported by sufficient training. Public servants could not operate the systems effectively and, hence, relied on earlier and now unauthorised processes to do their jobs. In the case of Companies and Intellectual Property Registration Office (CIPRO), now the Companies and Intellectual Property Commission (CIPC), the introduction of a new IT system exposed the organisation to fraud by skilled technicians able to hack into the agency's programmes. What is more, the Department of Public Service and Administration has pointed in the past to the vagueness in the way that job descriptions are defined. Ivor

Chipkin has discussed this elsewhere but for the moment let us note that such imprecision leaves recruits unclear about what the mandate of their job is and how it relates to other positions (Chipkin, 2011).

Since the introduction of the senior management service in the late 1990s, government departments have struggled to fill positions. This has made it easy and attractive for public servants to move between departments, often negotiating a more senior position at each change. The result is very high staff-turnover rates at the senior management level. Not only has this resulted in the "juniorisation" of the senior management function, it has also created high levels of instability. As long as senior managers are only in their positions for short periods (ranging from several months to, at most, a year or two) processes and systems do not have time to stabilise before a new manager introduces his or her own management model (Chipkin, 2011, pp49-58). Instability is sometimes compounded by "management interventions" to "turn-around" distressed organisations - resulting in what the Technical Assistance Unit (TAU) in the National Treasury call the "turn-around-about".

If corruption as a phenomenon is intimately related to non-compliance with departmental rules, then we have to admit that it is not always driven by "misuse" or "abuse" of office. In many situations it is difficult to comply because processes have not been adequately institutionalised, they are contradictory or they get in the way of performance.

On these terms, corruption is not always evidence of deterioration, of decomposition, arising from immoral infection or decay (Euben, 109). In some cases it speaks to weak institutions. In other words, non-compliance is not necessarily a result of abuse or misuse. It happens because there are no formal processes in place with which to comply, processes are contradictory and/or processes are an obstacle to performing one's job.

Chapter 3: A Review of Anti-Corruption Efforts in South Africa

1. A brief history of anti-corruption efforts since 1994

Date	Event
1994	Public Service Act (Proclamation No. 103/1994)
!996	Parliament adopts the new constitution which, under Chapter 9, establishes a number of independent bodies charged with protecting constitutional rights.
	The Special Investigating Units and Special Tribunals Act (74 of 1996) in passed into law.
1997	The Special Investigating Unit (SIU) is established.
	South Africa's National Anti-Corruption Programme is launched.
	Code of Conduct for the Public Service
	Inter-Ministerial Committee on Corruption makes, *inter alia*, the following proposals: • Extension of areas for investigation • Appointment of a task team to review cases and expedite the prosecution of some deemed "high impact" • Establishment of a project team to conduct a feasibility study for an ant-corruption agency. • Establishment of working group to review existing and draft new legislation • Appointment of an Inter-Departmental Committee on Corruption. • The development of an early warning risk assessment system The Committee also announces that the President and all political parties will not tolerate corruption.
1998	Cabinet endorses a National Campaign against Corruption.
	The Public Sector Anti-Corruption Conference is hosted by Parliament.
	National Prosecuting Authority established.
1999	Public Finance Management Act (1 of 1999)
	Establishment of a special criminal investigation unit, later known as the Scorpions
	National Anti-Corruption Summit

	Specialised commercial crime court established in Pretoria
	South African government hosts the 9th International Anti-Corruption Conference.
	PSC convenes the first meeting of the Cross-Sectoral Task Team on Corruption.
	Asset Forfeiture Unit established.
2000	Promotion of Access to Information Act (2 of 2000). This sets disclosure requirements for both private and government entities.
	Promotion of Administrative Justice Act (3 of 2000)
	Protected Disclosures Act (26 of 2000) which provides protection to both private- and public-sector whistleblowers.
	Cabinet instructs DPSA to develop and implement a comprehensive anti-corruption strategy.
	Establishment of the Investigating Directorate: Corruption (IDCOR) within the Directorate of Special Operations of the National Director of Public Prosecutions.
	Regional Office for Southern Africa of the UN Office on Drugs and Crime holds the International Anti-Corruption Expert Round Table in South Africa
2001	South African government joins the UN Global Programme against Corruption.
	Public Service Regulations promulgated
	Public Service Anti-corruption Strategy
	National Anti-Corruption Forum launched.

2002	Cabinet adopts the Public Service Anti-Corruption Strategy, which contains 9 considerations: • Review and consolidation of the legislative framework • Increased institutional capacity • Improved access to report wrongdoing and protection of whistleblowers and witnesses. • Prohibition of corrupt individuals and businesses • Improved management policies and practices. • Managing professional ethics • Partnership with stakeholders • Social analysis, research and policy advocacy • Awareness training and education
2003	Interim Management Team (IMT) is deployed to the Eastern Cape to address inefficiency and corruption.
	Establishment of the Civil Society Network against Corruption
	Municipal Financial Management Act (56 of 2003)
	PFMA Regulations in respect of the Framework for Supply Chain Management
2004	Prevention and Combatting of Corrupt Activities Act (12 of 2004). The Act, inter alia: • Makes a wide range of corrupt activities (in both the public and private sector) a criminal offence • Obliges public officials to report corruption.
	Public Audit Act (25 of 2004)
	South Africa ratifies the UN Convention against Corruption
2005	South Africa ratifies the AU Convention on Preventing and Combatting Corruption
	MFMA SCM Regulations
2006	DPSA stipulates that all parts of the public service should have a Minimum Anti-Corruption Capacity in place.
	DPLG launches the Local Government Anti-Corruption Strategy. This focuses on creating a “culture of integrity” across local government
2007	DPSA initiates the Business Survey Against Corruption

	South Africa ratifies the OECD Anti-Bribery Convention.
	Minimum Competency Regulations to the MFMA are gazetted
2008	Government announces that the Scorpions will be dissolved and its functions and staff merged with SAPS.
2009	The Scorpions is officially shut down and replaced by the Directorate for Priority Crime Investigation ("Hawks").
2011	Local Government Municipal Systems Amendment Act (7 of 2011)
2012	Draft Municipal Financial Misconduct Regulations (MFMA)

The South African government includes the "fight against crime and corruption" as one of the five "priorities areas" of work (Zuma, 2011) and has initiated a range of anti-corruption measures. In 2001 the National Anti-Corruption Forum (NACF) was launched in Cape Town by the deputy-president of South Africa and comprised representatives from business, civil society and government (NACF, accessed 2011). A year later government adopted the Public Sector Anti-Corruption Strategy, and numerous pieces of legislation have been gazetted which attempt to reduce a range of forms of public sector corruption, from the Public Finance Management Act of 1999 to the Prevention and Combating of Corrupt Activities Act of 2004.

2. Review of relevant legislation and policies

2.1. Legislation/policy dealing with corruption

The Global Integrity 2010 report on South Africa (the most recent available) describes South Africa's anti-corruption legislative framework as "very strong" giving the country a score of 88/100 for "Legal Framework". "Implementation" scores much lower, at 70/100 (Global Integrity, 2010).

In an environment where a culture of non-compliance has taken root, where sanctions for non-compliance are seldom applied, and where leadership appears to have no interest in rectifying the problem, it may become extremely difficult to regulate a way out of the problem. South Africa provides an excellent example of how good legislation is rendered virtually useless by poor leadership and commitment to implementation and enforcement. What follows are summary accounts of legislation and policy focused on corruption.

Constitution of the Republic of South Africa, 1996

The Constitution plays a central role in the interpretation of law. It is indeed the foundational law of the state, and in these two roles its influence on anti-corruption efforts will naturally be pervasive. Indeed, almost every piece of legislation that follows refers to the Constitution in some central way.

More directly, the Constitution establishes a number of institutions with an important place amongst South Africa's anti-corruption machinery. It provides for the existence and oversight role of Parliament and its committees, the most important amongst the latter in matters of corruption being the Select Committee on Public Accounts (SCOPA). It provides the basic framework for the courts, police service and public service. Furthermore, it establishes, or requires future establishment of, a number of further entities with a role in anti-corruption activities such as the Public Service Commission, the Public Protector, the National Prosecuting Authority and the Auditor-General. The Bill of Rights contains a number of provisions with a bearing upon corruption. And the Constitution also contains provisions which render international law, including customary international law, legally binding in the Republic. This would include international law dealing with corruption.

National Crime Prevention Strategy, 1996

The National Crime Prevention Strategy of 1996 cited corruption in the criminal justice system as a key area of intervention. It referred to plans to establish police anti-corruption units, including the Independent Complaints Directorate (now the Independent Police Investigative Directorate) . It also pointed to controls being set up to prevent the loss of police dockets, as well as intelligence projects aimed at uncovering corruption in government more widely.

Public Service Anti-Corruption Strategy, 2002

The Public Service Anti-Corruption Strategy of 2002 proposed a holistic and integrated approach to fighting corruption. It advocated a strategic mix of preventative and combative measures. Along these lines, it proposed a review of the legislative framework surrounding corruption, and the consolidation of this framework into a new corruption act. It suggested that departments foster a minimum capacity to fight corruption, and pointed to the need for mechanisms for the coordination of the numerous government entities involved in anti-corruption initiatives. The strategy called for the improvement of management policies and practices related to areas such as the management of employment, discipline, procurement, risk, information and finances. It called for the establishment of a comprehensive system of professional ethics, as well as greater stakeholder participation. And it suggested that all

these initiatives be underpinned through ongoing awareness, training and education programmes.

Prevention and Combatting of Corrupt Activities Act (12 of 2004)

The Prevention and Combatting of Corrupt Activities Act is the centrepiece of anti-corruption legislation in South Africa. In the first instance, it provides for the crime of corruption. The crime of corruption in terms of the Act has a number of components. First, it consists in a circumstance where party A offers gratification to party B, or where party B asks for gratification, or accepts gratification. Second, and additionally, it consists in a circumstance where the aim of that gratification is to cause party B, or any other party to, in his or her official capacity, act in a manner that is illegal, dishonest, unauthorised, incomplete, or biased. Thirdly, the action that is deviant in such a way must be intended to provide a benefit to party A, party B or any other party. Gratification need not involve money; it can consist in any other benefit, such as entertainment. Furthermore, gratification offered simply to expedite the performance of a routine government function – sometimes called a facilitation payment – also falls within the legal definition of corruption.

The Act includes further provisions with the aim of strengthening the anti-corruption framework. For instance, the Act provides for a duty to report corrupt, and related activities such as fraud and extortion, where a person in a position of authority knows or suspects, or ought reasonably to know or suspect, that these activities have occurred.

The Act provides for the investigation of persons whose assets or lifestyle exceed past and present known income, if reasonable grounds exist for believing that these assets or lifestyle are maintained by corrupt or other illegal means. The Act also provides for the inclusion in a "register for tender defaulters" of individuals or businesses found guilty of corruption related to government tenders and contracts. In such circumstances the individual or business will be prevented from doing business with government for between five and ten years.

Promotion of Access to Information Act (2 of 2000)

The Act gives effect to provisions in the Constitution providing for access to information, including Section 32 of the Bill of Rights which declares that "everyone has a right of access to any information held by the state". In this light, the Promotion of Access to Information Act contains extensive provisions delineating the nature and extent of this right, including provisions regarding the publication of information held by government, and the procedures and rules surrounding requests for unpublished information. The provisions extend in substantial part to the private sector. The Act therefore establishes an important framework for facilitating transparency and public scrutiny of government and private sector behaviour.

Promotion of Administrative Justice Act (3 of 2000)

The Act, required by the Constitution, gives effect to the Section 33 right to administrative action that is lawful, reasonable and procedurally fair, as well as the right to be provided with written reasons in circumstances where one's rights are adversely affected by administrative action. Significantly, where corruption is suspected, in tendering for instance, this is an important mechanism for adversely affected parties to acquire more information.

Protected Disclosures Act (26 of 2000)

The Act protects whistle-blowers, who uncover illegal or dangerous activities, from suffering occupational detriment. It specifies what avenues to follow when disclosing such information, and in protecting whistle-blowers from any retaliation from an employer.

Prevention of Organised Crime Act (121 of 1998)

The Act includes a range of measures designed to combat organised crime, money laundering and criminal gang activities. It provides for the forfeiture of assets gained in the course of, or used in, criminal activity. The Asset Forfeiture Unit within the National Prosecuting Authority was established to give effect to the latter provisions.

International Co-operation in Criminal Matters Act (75 of 1996)

The Act provides the legal machinery for cooperation between South Africa and foreign countries in criminal matters. For example, it provides a framework for the sharing of relevant information and assistance in securing evidence, including witnesses. It also provides for assistance in recovering fines and compensation, and for assistance in securing asset forfeiture.

Executive Members' Ethics Act (82 of 1998)

The Act requires the publication of a code of ethics applicable to cabinet members, deputy-ministers and MECs. The code of ethics is required to include provisions related to meeting obligations in terms of the law, acting in good faith in the pursuance of good governance, avoiding conflicts of interest, and not using high office as a source of illicit enrichment. The Act further requires that the code of ethics include provisions related to the disclosure of financial interests, including such things as gifts acquired while in office. The Public Protector is entrusted with investigating breaches of the code. The Executive Ethics Code was proclaimed in 2000.

There are similar codes of ethics for Parliament, provincial legislatures and the public service.

Preferential Procurement Policy Framework Act (5 of 2000)

The Act sets out the framework for the establishment, by procuring entities, of objective and measurable specifications and conditions in accordance with which tenders can be evaluated and accepted. Through requiring the use of objective criteria the Act aims to limit discretion, and thereby close-up spaces conducive to corruption.

Public Service Act (1994)

The Public Service Act provides for the organisational and administrative architecture of the South African public service. In that role, it contains a number of provisions related to anti-corruption efforts such as employment, conditions of employment, terms of office, disciplinary mechanisms and termination of employment.

Public Audit Act (25 of 2004)

The Act gives effect to the provisions of the Constitution establishing an Auditor-General. In this role, it elaborates the legal framework constituting the Auditor-General of South Africa, an organisation that plays a central role in monitoring administrative processes, compliance, performance and accounts – all key checks on corruption.

Public Service Commission Act (46 of 1997)

The Act provides for the regulation of the Public Service Commission, itself established in terms of the Constitution. The Act provides the Commission with powers of inspection and inquiry with a bearing on anti-corruption.

Public Protector Act (23 of 1994)

The Act, amended in light of the Constitution, provides for matters incidental to the establishment of the Constitution's establishment of the Public Protector. It provides the Public Protector, for instance, with extensive powers of investigation.

South African Revenue Service Act (34 of 1997)

The Act provides for the establishment and legal framework surrounding the South African Revenue Service, which plays a role in investigating corruption in relation to tax and customs.

Financial Intelligence Centre Act (38 of 2001)

The Act establishes the Financial Intelligence Centre, which assists in the identification of the proceeds of unlawful activity and, amongst other things, is tasked with ensuring compliance with the provisions of the Act related to activities such as money laundering. The

Act also establishes the Counter-Money Laundering Advisory Council which is composed of at least eight officials, including amongst others, the Director-General of National Treasury, the Commissioner of the South African Police Service, the Director-General of the South African Secret Service and the Governor of the South African Reserve Bank, or their representatives.

National Prosecuting Authority Act (32 of 1998)

The Act provides for matters incidental to the Constitution's establishment of a single National Prosecuting Authority. It sets out, primarily, the legal framework surrounding the organisation of the National Prosecuting Authority.

South African Police Service Act (68 of 1995)

The Act provides for the establishment, organisation, regulation and control of the South African Police Service. Importantly, as amended by the South African Police Service Amendment Act (57 of 2008), it provides for the establishment of the Directorate for Priority Crime Investigation, the Hawks.

Independent Police Investigative Directorate Act (1 of 2011)

The Act provides for the establishment of an independent directorate designed to ensure oversight over the South African Police Service and municipal police services. It is empowered to investigate matters of corruption within the police, including systemic corruption, although the latter is nowhere defined.

Special Investigating Units and Special Tribunals Act (74 of 1996)

The Act made allowance for the establishment and basic architecture of the Special Investigating Unit, which plays a central role in investigating fraud, corruption and maladministration, instituting litigation in connection therewith, and making systematic recommendations of a preventative nature. The Act also provided the legal basis for the establishment of special tribunals.

2.2. International instruments dealing with corruption

United Nations Convention against Corruption, 2003

The first legally-binding international anti-corruption instrument, the Convention has been ratified by 161 parties including South Africa. It obliges states to implement a wide range of anti-corruption measures related to prevention, criminalisation and law enforcement. It contains provisions regarding international cooperation, particularly around legal issues and,

importantly, asset recovery. The Conference of the State Parties was established to improve cooperation, and promote and review implementation of the Convention.

African Union Convention on Preventing and Combating Corruption, 2003

The Convention, adopted by the Assembly of the African Union, aims to strengthen anti-corruption measures in each state party, and promote cooperation and harmonisation of anti-corruption measures across states.

SADC Protocol Against Corruption

Signed by all the countries of SADC, the protocol provides for a range of anti-corruption measures, including cooperation around legal assistance and asset recovery.

OECD Convention on Combating Bribery of Foreign Government Officials in International Business Transactions, 1997

The Convention, signed by 38 countries including South Africa, commits states to criminalise, and implement measures against, the act of bribing foreign officials in the process of conducting international business transactions. The OECD Working Group on Bribery is tasked with monitoring and promoting implementation.

Other instruments of international law

The four preceding international instruments do not exhaust the list of those with a potential relevance to corruption. For instance, both the United Nations Convention against Traffic in Narcotic Drugs and Psychotropic Substances and the Convention against Transnational Organised Crime carry provisions that deal with money laundering.

2.3. Legislation/policy focused on organisational issues and compliance

In this section we have completed a high-level review of the most important relevant legislation associated with setting out the “rules” for financial management, planning, reporting, oversight and accountability, and associated requirements for compliance. The aim of this review is to identify areas where gaps/problems in the legislation may be contributing towards the high levels of non-compliance discussed above. Here we focus on gaps in the planning process.

Planning + reporting = performance management

(Strategic) planning and budgeting (or more accurately, non-financial and financial planning) is where PARI believes many of the problems around both non-compliance and the creation

of opportunities for corruption originate. Effective operational compliance has three minimum components:

- An accurately costed and detailed plan for achieving a particular output (or set thereof) by a particular target date;
- Detailed and regular reporting against the financial and non-financial components of that plan; and
- An oversight function which regularly compares (b) with (a)

That is, “compliance” and “oversight” are not things that can happen effectively in the absence of proper planning and detailed reporting against what has been promised in the plans. Unfortunately, in the public sector (and most particularly in local government) the aim of the planning exercise is more often the production of a plan, rather than the generation of an effective operational tool. There are many reasons why planning undermines efforts around performance management, oversight and thus compliance.

The most serious problem areas are in the area of non-financial planning – strategic planning/operational planning. This is the starting point for all other organisational activities, including budgeting, since budgets must (should) be based on what the organisation is planning to do in a particular period. If the strategic plan of an organisation is inappropriate, vague and/or irrelevant to what the organisation actually wants to/should achieve, then budgeting is likely to be poor.

In light of what has just been stated it would make sense, therefore, for government to place considerable emphasis on how strategic planning is done and to ensure that planning outputs are specifically designed to support organisational performance, and also that financial and non-financial planning are managed as two parts of one process. Unfortunately this is not the case, and this represents an important regulatory gap, particularly at local government level.

Budgeting and financial reporting across government is managed in terms of legislation implemented and managed by national Treasury: The Public Finance Management Act (1 of 1999, updated to Government Gazette 33059 dated 01 April 2010) (“PFMA”) covers national and provincial departments and entities. The Local Government: Municipal Finance Management Act, 56 of 2003 (”MFMA”) covers local government.

Planning in national and provincial departments and entities is regulated in terms of the PFMA (Chapter 5 of the National Treasury Regulations), and thus fall under the authority of National Treasury. These regulations include the requirement of “measurable objectives,

expected outcomes, programme outputs, indicators (measures) and targets of the institution's programmes" (5.2.3. (d)), and also that "(t)he strategic plan must form the basis for the annual reports of accounting officers as required by sections 40 (1)(d) and (e) of the Act". There is thus a close correlation between planning and budgeting, since both are governed by National Treasury.

However, the detailed format of strategic plans is not prescribed in the same level of detail that budgets are. That is, there is no strict and inviolate template that is prescribed, in the same manner that balance sheets and income statement formats are prescribed. Rather – a content outline is given. This means that departments and entities will use their own discretion in drafting their strategic plans. This may seem harmless enough, but the potential results of this kind of planning regime include the following:

- In the absence of detailed strategic planning templates it is much easier for departments to have vague and fuzzy objectives around "improving", "achieving", "reducing" and similar. In contrast to the very clear planning standards and regularities applied to financial planning, this makes oversight of non-financial planning much more difficult and time consuming because so much effort is required to work out exactly what an entity is actually planning to do. (Imagine, as an example, the difficulties that SCOPA would have if every department and entity could stipulate their own financial statement layout, definitions and methods of addition and subtraction).
- If there is no standardised way of planning, then it is almost impossible to implement a standardised method of reporting. That makes it much more difficult and time consuming to exercise oversight over performance management (performance against what?).

The PFMA and associated regulations is the central piece of legislation dealing with financial management, and the responsibilities of persons responsible therefore, in national and provincial departments, public entities and constitutional institution. The Act is enforced and monitored by National Treasury.

The PFMA (Section 8 (1)) provides that National Treasury prepares the annual consolidated financial statements for national departments and national public entities under the ownership control of the national executive (and a number of other organisations).

Section 17 covers the establishment of provincial treasuries, headed by the MEC for finance in each province, and effectively made up of the provincial department which is responsible for financial matters in the province. The provincial treasury prepares the provincial budget, controls the implementation thereof and is generally responsible to "promote and enforce

transparency and effective management in respect of revenue, expenditure, assets and liabilities of provincial departments and provincial public entities" (18 (1) (c)).

Chapter 4 of the PFMA sets out requirements for National and Provincial budgets, which must be prepared annually (in addition to multi-year budgets projects required in terms of the MTEF). Treasury may prescribe the format of that budget and sets the minimum content requirements.

Section 19 (1) requires that provincial treasuries prepare consolidated annual financial statements for provincial departments and public entities, and the provincial legislature.

Section 32 (1) requires that within 30 days after month-end National Treasury must publish in the Government Gazette a statement of actual revenue and expenditure in respect of the National Revenue Fund. Section 32 (2) require that provinces also do so, but after a prescribed period, which may not be longer than three months.

The planning-budgeting-reporting regime applicable to local government, however, is more complex, and PARI believes that this is contributing significantly to operational problems that create the environment within which corruption is able to flourish.

Chapter 4 of the MFMA deals with the drafting and format of municipal budgets, but not strategic plans. The regulation of planning at local government level falls under the functional responsibility of COGTA, and not Treasury, and is governed largely by the Municipal Systems Act (32 of 2000) and associated regulations and guidelines. The planning requirements on local government are particularly onerous: The requirement of an integrated development plan (IDP) largely means that a municipality must plan across a wide range of functional areas and outputs. Very little meaningful and useful guidance has been provided to municipalities in this regard. Apart from high-level guidelines about the most important components of an IDP, the form and detailed content is left largely to the discretion of the municipality in question. Although this is designed to ensure that local priorities and local issues are incorporated in IDPs the actual result on the ground is very often an extremely hefty document composed almost entirely of vague objectives and unfocused activities (van der Heijden, 2009). COGTA has attempted to institute an IDP "credibility" framework to improve the quality and relevance of IDPs, but it does not appear to have added much value.

The outcome is much the same as described above: Firstly, a vague and broadly sweeping plan provides a very poor foundation for accurate budgeting. Secondly, it is very difficult to

implement an effective performance management system onto this type of plan: If there are no clear targets with measurable outputs and clear timeframes, how exactly do we judge performance?

In terms of reporting, municipalities have obligations to both Treasury and COGTA, in terms of annual reports, annual financial statements and the Service Delivery Budget Implementation Plan (Treasury's attempt to bypass the problematic COGTA-based planning process to focus specifically on municipal planning and expenditure in key service delivery areas). The end result is that the smallest municipality (likely to have the least skills and capacity in this area) operates under a planning and reporting framework which is more onerous than that applicable to the largest national department, and which provides them with less guidance in fulfilling these obligations. Under these circumstances it is easy to understand how reporting, compliance and oversight become completely dysfunctional.

Legislative compliance

Section 6 (2) (e) of the PFMA provides that Treasury "may investigate any system of financial management and internal control in any department, public entity or constitutional institution".

Section 6 (2) (f) further requires that Treasury "must intervene by taking appropriate steps to address a serious or persistent material breach of this Act" (emphasis added), although what may constitute "a serious or persistent material breach" is not specifically defined in the PFMA.

In terms of who is actually responsible for financial management (and therefore financial mismanagement), the following sections apply:

Chapter 5 (parts 1 and 2) deals with accounting officers (the head of a department or the CEO of a constitutional entity) and their responsibilities. The latter is a long list, and basically makes the accounting officer responsible for financial systems, procurement systems, internal audits and all associated control systems, including the detection of and dealing with irregular, unauthorised and fruitless/wasteful expenditure. Although Section 44 allows for the delegation of any of these powers to another official, this action "does not divest the accounting officer of the responsibility concerning the exercise of the delegated power of the performance of the assigned duty" (S44 (2) (d)).

Section 45 deals with the responsibilities of other officials (who are not specified, but the section can be read to mean finance and related officials). These officials, inter alia,

- must ensure that the system of financial management and internal control established for that department, trading entity or constitutional institution is carried out within the area of responsibility of that official;
- is responsible for the effective, efficient, economical and transparent use of financial and other resources within that official's area of responsibility;
- must take effective and appropriate steps to prevent, within that official's area of responsibility, any unauthorised expenditure, irregular expenditure and fruitless and wasteful expenditure and any under-collection of revenue due.

In this regard, the legislated responsibilities of accounting officers and "other officials" are basically the same.

Some comments can be made in this regard:

Firstly, while it is obviously desirable that there is clear accountability for the financial management of the organisation, we are not convinced that locating all of this responsibility in one person (usually the head of department) achieves the desired results in terms of actual accountability, in an environment characterised by a large number of problems. Since the head of department cannot be dismissed every time there is a material problem in a department that has never achieved a clean audit (i.e. almost every government entity) the issue of how to actually enforce his/her accountability is problematic. In an environment where one person is responsible for everything, the unintended result may be that no one is really responsible for anything. For example, at what level or quantum of non-accountability is the accounting officer held personally responsible and disciplined? Clearly he cannot be effectively disciplined for every single breach of compliance, and so it becomes an objective (and practical) decision, open to interpretation and circumstances. In this environment poor accountability can flourish.

Secondly, the actual responsibility of the accounting officer is muddied by the fact that key responsibilities of "other officials" set out in Section 45 so closely mirror those of the accounting officer is problematic. This further blurs the lines of who will actually be held accountable for what.

A final point to note with regard to planning and reporting is that many of the recent initiatives to address compliance problems in local government are focused on improving skills and avoiding conflicts of interest (most particularly the Municipal Systems Amendment Act, 7 of 2011, and the Minimum Competency Level Regulations, Gazette 29967 of 15 June

2007), while they are necessary, may not be sufficient if the organisational planning – reporting system into which they are implemented is not addressed.

S38 (1) (h) of the PFMA requires the accounting officer to "take effective and appropriate disciplinary steps against any official in the service of the department, trading entity or constitutional institution who

- contravenes or fails to comply with a provision of this Act;
- commits an act which undermines the financial management and internal control system of the department, trading entity or constitutional institution; or
- makes or permits an unauthorised expenditure, irregular expenditure or fruitless and wasteful expenditure.

It is not clear what the sanction is for the accounting officer who fails to do so, but given the very real problem with enforcement in the public sector this probably should be investigated.

Chapter 10 of the MFMA deals with financial misconduct in local government. In response to a growing understanding that these provisions did not provide enough in the way of enforcement to reduce financial misconduct, Treasury has recently (July 2012) released the Draft Municipal Financial Misconduct Regulations (Government Gazette 35500) which were open for comment until 31 August 2012. The regulations have been drafted in response to the AGSA's concerns around unauthorised, irregular and fruitless/wasteful expenditure. The draft regulations give effect to Section 175 of the MFMA, which allows Treasury to establish a Disciplinary Board which will be an independent advisory body to assist councils with the investigation of allegations of financial misconduct.

The regulations also make provision for the Minister of Finance and the relevant MEC for Finance to receive investigation reports, and allow the MEC for Finance, National or Provincial Treasury to intervene by directing that an allegation must be investigated if the council has not done so.

These Regulations are obviously required in an environment where non-compliance and illegal activity is becoming entrenched. However, the same caveat around the over-arching planning/reporting system expressed above should be inserted here: local government urgently needs a framework that facilitates effective organisational performance, rather than one which makes that a more difficult goal to achieve.

The MFMA stipulates a range of responsibilities for council officials, accounting officers, councillors and mayors, all of which have been designed to ensure that the Act is

implemented as required. Section 27 deals with non-compliance, making the Mayor responsible for informing the relevant MEC and National Treasury of any impending or actual non-compliance and for determining and implementing corrective measures for addressing non-compliancy. However, there are no sanctions for failing to do so.

We have commented on the unintended consequences of Section 113 of the MFMA which deals with unsolicited bids, above.

3. Review of bodies tasked with fighting corruption

3.1. Constitutional and oversight bodies

The Department of Public Service and Administration (DPSA)

One of the functions of the DPSA is to set norms and standards relation to Anti-corruption in the public service. In November 2010 the department launched the Special Anti-corruption unit. Its aim is to coordinate anti-corruption initiatives within the public sector with key stakeholders such as the Special Investigating Unit, Auditor General of South Africa, National Treasury and the Public Service Commission, (DPSA 2010).

The Public Service Commission (PSC)

Promotes a high standard of professional ethics and investigates monitors and evaluates organisations, administration and practice. They also run the National anti-corruption hotline which the public can use to report cases of corruption in the public service, (PSC 2012)

The Public Protector (PP)

The mandate of the Public Protector is to strengthen constitutional democracy by investigating and redressing improper and prejudicial conduct, maladministration and abuse of power in state affairs. Corruption is one of the major issues that the Public Protector deals with (PP, 2012).

The Independent Police Investigative Directorate (IPID)

The aim of the Independent Police Investigative Directorate (IPID) is to ensure independent oversight over the South African Police Service (SAPS) and the Municipal Police Services (MPS), and to conduct independent and impartial investigations of identified criminal offences allegedly committed by members of the SAPS and the MPS, and make appropriate recommendations, (IPID 2012).

3.2. Criminal justice agencies

Special Investigating Unit (SIU)

Established according to the Special Investigating Units and Special Tribunals (SIUST) (Act no. 74 of 1996), the SIU is mandated to investigate serious malpractices or maladministration in connection with the administration of State institutions, State assets and public money as well as any conduct which may seriously harm the interests of the public (SIUST act 74 OF 1996).

Directorate for Priority Crime Investigation (DPCI – the "HAWKS")

The South African Police Service runs the Directorate for Priority Crime Investigation otherwise known as the Hawks. The main functions of the Directorate for Priority Crime Investigation are to prevent, combat and investigate national priority offences and any other offence or category of offences referred to by the National Commissioner. The division focuses on serious organised crime, serious corruption and serious commercial crime.

National Prosecuting Authority (NPA)

The National Prosecuting Authority has the power to Institute and conduct criminal proceedings on behalf of the State, carry out any necessary functions incidental to instituting and conducting such criminal proceedings. This includes investigation (NPA, 2012).

The Assets Forfeit Unit (AFU)

The AFU is a unit in the NPA that was created in order to ensure that the powers in the Act to seize criminal assets would be used to their maximum effect in the fight against crime, and particularly, organised crime.

3.3. Important information bodies

The South African Revenue Services

SARS collects state revenue and has an anti-corruption unit that coordinates investigation on tax and customs corruption (Levin 2012).

Financial Intelligence Centre (FIC)

The purpose of the organisation is to "to establish and maintain an effective policy and compliance framework and operational capacity to oversee compliance and to provide high quality, timeous financial intelligence for use in the fight against crime, money laundering

and terror financing in order for South Africa to protect the integrity and stability of its financial system, develop economically and be a responsible global citizen."

The Auditor general (AG)

Audits and reports on accounts, financial statements and financial management of all government entities. Corruption related cases are done by the Forensic Auditing which aims to facilitate the investigation of economic crime in general by providing support to the relevant investigating and prosecuting institutions by handing over cases and providing accounting and auditing skills, (PSC 2001)

3.4. Other important bodies

The Anti-Corruption Task Team (ACTT)

The team consists of three principle members, the DPCI (of the SAPS), the NPA, the AFU and the SIU. Other secondary members are the South African Revenue Services, the Office of the Accountant General and the Financial Intelligence Centre. The purpose of the ACTT is to provide better coordination within government in the efforts to reduce corruption and to expedite the effective investigation of priority corruption cases, (National Treasury, 2012).

National Anti-Corruption Forum (NACF)

The NACF was established on 2001, with the aim of driving the national anti-corruption campaign. Its mandate is to contribute towards the establishment of a national consensus through the co-ordination of sectoral strategies against corruption, to advise Government on national initiatives on the implementation of strategies to combat corruption, to share information and best practice on sectoral anti-corruption work and to advise sectors on the improvement of sectoral anti-corruption strategies, (NACF 2012).

Corruption Watch South Africa (CWSA)

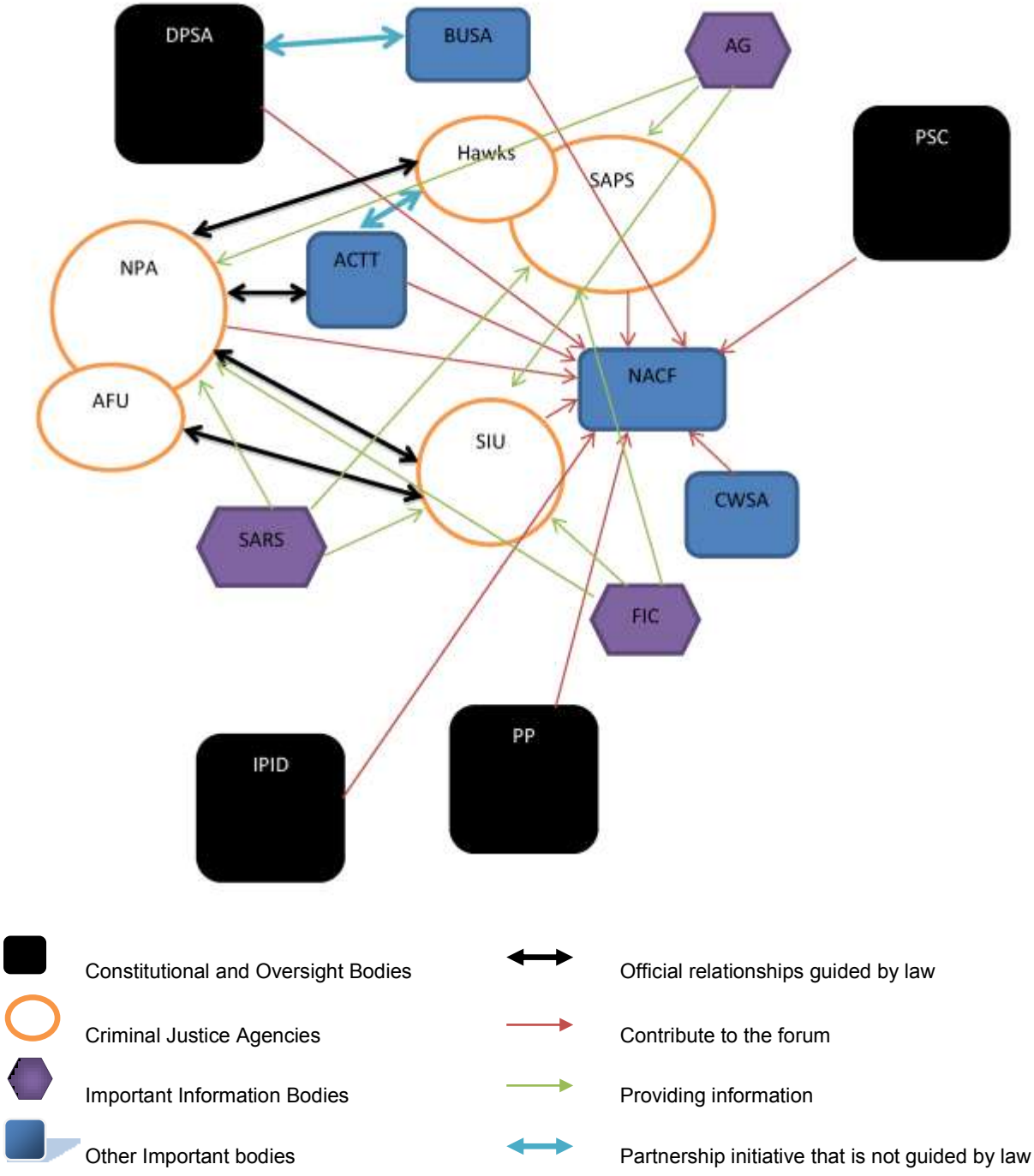
Corruption Watch is a non-profit organisation launched in January 2012. It relies on the public to report corruption to them. These reports are an important source of information to fight corruption and hold leaders accountable for their actions (CWSA, 2012).

Business Unity South Africa (BUSA)

BUSA runs a Business Anti-Corruption Working Group which aims at developing strategies in rising up against corruption in both the Private and Public Sector. The organisation works closely with the DPSA (BUSA 2012).

4. Overview of current anti-corruption efforts

Diagrammatic presentation of the interrelationships among anti-corruption organisations



The Anti-Corruption Organisations have been divided into four categories:

- *Constitutional and oversight* bodies have policy initiatives that fight against corruption, especially by developing ethics and standard procedures in day to day work. This category includes the IPD, PPA, PSC and DPSA.
- *Criminal justice agencies* are directly involved in corruption cases from investigation to prosecution. This category includes the DPCI, NPA, AFU and the SIU. Criminal Justice

Agencies rely heavily on information from the Important Information Bodies below in their investigation and acquisition of cases.

- *Important Information Bodies* category. These bodies are the AG, FIC and SARS.
- *Other Important Bodies* are involved in concerted to fight corruption in many ways but especially seek partnerships with government institutions to ensure that the fight for corruption is a national agenda that is taken seriously.

Chapter 4: Review of International Experience

This chapter provides a brief review of the international literature as it pertains to anti-corruption initiatives. Given the scale and breadth of this literature the review is necessarily selective. It provides the following:

- The international context in which much of the anti-corruption policies have been developed.
- An outline of the literature on measures to reduce corruption.
- An overview of anti-corruption approaches worldwide.
- A review of reasons for successes and failures of some of these approaches, focusing on a limited number of interventions at the local level that have been subjected to rigorous empirical testing, and on specialised anti-corruption agencies. The latter focus is due to the popularity of these agencies internationally and their potential role in anti-corruption coordination.
- It concludes with a summary of the key findings relevant for the South African case.

1. Introduction

In academic literature and policy studies at universities attention has been paid to defining corruption, exploring its origins, enables and impacts since the 1960s (Doig and Riley 1998 cited in Camerer, 2009). It is only since the 1990s that corruption and how to combat it has there has been a major focus of public policy. In 1996, the World Bank, then under the leadership of James Wolfensohn, put the issue firmly on the agenda as part of a broader focus on “good governance” (see Doig and Theobold, 2000). In the same year the United Nations adopted a declaration against international corruption and bribery, and an International Code of Conduct for Public Officials (Hanna et al, 2011) following this up with the United Nations Convention Against Corruption, adopted in Mexico in 2003 (Camerer, 2009).

Since then numerous non-governmental and inter-governmental organisations have taken up the issue, including the International Monetary Fund, World Economic Forum, World Trade Organization, International Chamber of Commerce, The Organisations of Latin American States, Organisation of Economic Co-operation and Development (OECD), the G-7, European Union (EU), African Union (AU), Southern African Development Community (SADC), and the United Nations Development Programme (UNDP). International agencies have been established with the sole mandate of combatting corruption, such as Transparency International, Global Integrity (Camerer, 2009) and U4 Anti-Corruption Resource Centre.

In 1999 the OECD held a convention on corruption between private sector companies that conduct business internationally and public sector officials (OECD, 2005 cited in Hanna et al, 2011). The convention led to the development of anti-bribery legislation which all OECD member countries were required to ratify, as well as complying with peer reviews that are made publicly available (Hanna et al, 2011).

Increasingly, the World Bank shifted from solely overseeing corruption within its institution and providing policy advice on tackling corruption, to using corruption eradication "as a carrot for countries that desired additional funding" (Hanna et al, 2011). In 2006, then President of the Word Bank, Paul Wolfowitz, outlined three policies for eliminating corruption: expanding anti-corruption work at the country level, minimising risks of corruption in Bank-funded projects and increasing cooperation with other anti-corruption organisations (Wolfowitz, 2006 cited in Hanna et al, 2011).

Regionally, the African Development Bank, the Asian Development Bank, the European Bank for Reconstruction and Development, and the Inter-American Development Bank have all employed similar anti-corruption procedures and standards as the World Bank (Hanna et al, 2011)[6].

Partly as a result of the growing attention on corruption by international bodies, there has been a proliferation of literature on the nature, causes, and impacts of corruption and a somewhat smaller body of literature on anti-corruption measures, most of it produced by international agencies such as the World Bank.

The literature on combating corruption and anti-corruption initiatives includes:

- Literature offering broad overviews of proposed anti-corruption initiatives that a country can consider (policy options, enforcement mechanisms and so on). In many cases, if not most, this literature is not based on empirical case studies of what has and has not worked, but rather is derived from a set of assumptions about the nature of corruption, its underlying causes and the nature of the states in which corruption is common or endemic. (We explore some of these assumptions below and their applicability to South Africa). The bulk of this literature is published by the World Bank and other international organisations. (See for example Bhargava and Bolongaita, 2004; Galtung, 1998; Heeks,

[6] *South Africa is a signatory to the OECD Anti-Bribery Convention, UNCAC, (AU) Convention on Preventing and Combating Corruption, and the SADC Protocol against Corruption.*

2011; Hussman et al, 2009; Huther and Shah, 2000; Shah and Schactner, 2004; UNDP, 2005).

- Econometrics literature which tests the relationship between a variable hypothesised to reduce corruption and the incidence of corruption after the introduction of associated reforms (such as an increase in public sector wages in a country). While this literature is useful for exploring the variables correlating with corruption, it generally is not able to provide insight into causal relationships (see for example Lindstedt and Naurin, 2010 and Park and Blenkinsopp, 2011 on the relationship between the public release of information by public sector bodies and a reduction in corruption; Van Rijckeghem, and Weder, 2001 on the relationship between an increase in public sector wages and corruption; Williamson, 2005 on the relationship between increasing democratic reforms and corruption; Huther and Shah, 2000 and Jain, 2001 for summaries of this literature).
- Literature which evaluates specific preventative interventions: this literature includes cross-country comparative studies and detailed case studies of particular countries or areas of the public sector, for example in Customs. (See for example Cantens et al, 2010 on the impact of the introduction of performance management contracts with senior officials in Cameroon; Baltaci and Serdar, 2006 on internal audit and control systems – cross country analysis; on controlling corruption in Customs see Ferreira et al, 2007; Hors, 2001; McLinden, 2005). This literature also includes a limited number of empirically robust studies which employ randomized control trials and experimental design to measure the impact of particular micro-level interventions on corruption reduction (see Hanna et al, 2011 for an analysis and summary of this literature and key findings, which we report on below).
- Literature on anti-corruption agencies; these include cross-country comparative studies and detailed case studies of particular agencies (see for example Bhargava and Bolongaita, 2004; de Sousa, 2009; Doig, 1995; Doig et al, 2005; Doig et al, 2007; Kuris, 2012; Heilbrunn, 2004; Klemencic et al, 2006; Meagher, 2004a; Meagher, 2004b; Transparency International, 2000; UNDP, 2005; Williams and Doig, 2007. Much of this literature is based on desk reviews of a limited number of empirical studies.

Despite the growing body of literature on corruption there is “limited knowledge on which policies and programmes have been most successful, and therefore which are the best strategies for countries to adopt” (Hanna et al, 2011). For one thing, this is related to the fact that corruption is hard to identify as it is a covert activity, and second because there is no single indicator used across studies to measure corruption reduction (Hanna et al, 2011).

More fundamentally, it is linked to the fact that "despite extensive resources being channelled into the fight against corruption, there are very few success stories to tell when it comes to the actual implementation of anti-corruption reforms" (Lawson 2009; Ittner 2009; Brinkerhoff 2000; Fjeldstad & Isaksen 2008; Svensson 2005; Meagher 2005 cited in Persson et al, 2010). There is now increasing evidence that anti-corruption legislation and interventions initiated in most countries over the last few decades have generally met with little success (see for example Disch et al, 2009; Hussmann and Hechler 2008 and Mutebi, 2008 cited in Heeks, 2011; and de Sousa, 2009).

In 2009 a study was commissioned by five major European funding agencies (DFID, NORAD, SIDA, DANIDA, SADEV) and the Asian Bank to determine the success of anti-corruption programmes supported by international donors. The reviewers worked through a vast literature. The findings are sobering: "The literature can identify few success stories when it comes to the impact of […] anti-corruption efforts." (Disch et al, 2009).

Whilst there are therefore no clear models to replicate or draw from (at the broad level of national anti-corruption strategies or the micro-level of localised anti-corruption projects) there is a growing body of literature that provides accounts for the reasons for these failures. Whilst at first glance this paints a rather pessimistic picture, it offers insight into broad guidelines for developing realistic anti-corruption strategies that might avoid the pitfalls of much of the initiatives in developing counties over the last twenty years.

2. Anti-corruption approaches: overview

Given the wide ranging drivers of corruption and forms of crime and non-compliance associated with corruption, the proposed approaches to combating crime are numerous. Broadly, anti-corruption measures include, "instituting checks and balances in the political system (for example, strengthening the judiciary and promoting government decentralization), expanding civil society (for example, fostering a freer press and freedom of information and association), increasing accountability among political officials (for example, establishing asset disclosure regimes and campaign finance rules), injecting greater competition into the economy (for example, breaking up monopolies and enhancing regulatory institutions), and improving public administration and public finance (for example, developing a meritocratic civil service and fiscal discipline)" (Kaufmann 2000 cited in Bhargava and Bolongaita, 2004).

Promoting public participation in government is also proposed as a measure to include public sector accountability. Direct anti-corruption measures include raising public

awareness of the causes and impact of corruption; establishing dedicated corruption watchdog agencies – often driven by civil society; and the establishment of improved detection and enforcement capacity to combat fraud, bribery and other forms of corruption, often in the form of dedicated agencies.

This list above has been shaped in large part by the World Bank's research and proposed approaches to combating corruption[7]. The approach proposed by the Bank and other international agencies has been informed by a particular conception of corruption (as misuse of public office for private gain) and a particular model which attempts to explain corruption, i.e. principal-agent theory – predominant in political science and economics (Persson et al, 2010). A large number of researchers have demonstrated that anticorruption efforts in most developing countries have commonly followed the logic of principal-agent theory (Andvig and Fjeldstad 2001; Riley, 1998; Lawson, 2009; Johnston, 2005; Ivanov, 2007 – cited in Persson et al, 2010).

The "principal" in the model is the person or body assumed to embody the public interest (Persson et al, 2010) such as a policy maker or citizens (Hanna et al, 2011) and the agent is the person/s or bodies that have preferences in favour of corrupt transactions "insofar as the benefits of such transactions outweigh the costs" (Persson et al, 2010). There is assumed to be asymmetry of information, to use the economic jargon, between the principal and the agent in that it is often difficult for the principal to know if the agent is achieving the principal's goal or following the agent own agenda (Hanna et al, 2011). Klitgaard, at the forefront of developing and popularising this model, defines three conditions under which corruption is therefore more likely to occur: a monopoly of power by agents (e.g. customs officers) over clients (e.g. traders/taxpayers), discretionary decision power over provision of services from the side of the agents and low level of accountability of agents in front of principals (Klitgaard, 1998 cited in Polner and Ireland, 2010).

Reforms proposed by international agencies such as the World Bank therefore include those which reduce the discretion and "power" of public officials through privatisation and deregulation and those that "reduce monopoly by promoting political and economic competition". Regarding accountability: reforms to improve democratisation are proposed for political accountability and administrative accountability is sought through "administrative

[7] *The Bank uses an anticorruption strategy framework that comprises the following components: 1) increasing political accountability 2) strengthening civil society participation, 3) creating a competitive private sector 4) establishing institutional restraints on power, and 5) improving public sector management (Bhargava and Bolongaita, 2004).*

and civil service reform, including meritocratic recruitment and decentralisation" (Persson et al, 2010).

Increased accountability of public servants is also proposed through introducing or strengthening performance management systems; passing laws designed to increase transparency in government services, including improved public access to government records (Hanna et al, 2010); and increasing the strength of oversight bodies, including the Auditor General; public service commissions, public protector or ombudsman; and parliament (UNDP, 2005). [8]

In line with this model, improving the salaries of public sector officials are assumed to increase the opportunity cost of corruption if detected; and improving the rule of law so that corrupt bureaucrats and politicians can be prosecuted and punished increases the "costs" to the agent. Economic liberalisation, tax simplification de-monopolisation and macro-economic stability – are assumed to reduce "rents" (Persson et al, 2010).

Decentralisation refers to "the shift of power from either the federal or state government to the local level" which is thought to "bring the decision-makers closer to those affected by the decisions that are being made, thereby making bureaucrats more accountable to the populations they serve, and potentially aligning their incentives more closely with those of society. Additionally, decentralisation is thought to reduce opportunities for fund leakages in centralised bureaucratic processes" (Hanna et al, 2011).

Since the mid to late 1990s the Bank has focused on promoting "good governance" in order to reduce corruption (World Bank, 2004 cited in Camerer, 2009) [9] given that corruption is assumed to be driven or enabled by "governance failure".

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[8] *UNCAC states (Article 6) that "Each State Party shall ensure the existence of a body or bodies, as appropriate, which prevent corruption. Each State Party shall grant these bodies the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material resources and specialized staff, as well as the training that such staff may require to carry out their functions, should be provided." (UNDP, 2005). UNCAC treats audit requirements as elements of prevention of corruption, in both the public sector (Article 9) and the private sector (Article 12) (UNDP, 2005).*

[9] *Good governance (defined by the World Bank Institute as 'the traditions and institutions by which authority in a country is exercised for the common good') includes 1) the process by which those in authority are selected, monitored and replaced 2) the capacity of the government to effectively manage its resources and implement sound policies and 3) the respect of citizens and the state for the institutions that govern economic and social interactions among them (World Bank, 2004 cited in Camerer, 2009).*

Over the last couple of decades countries have increasingly "centralised anti-corruption strategy through the establishment of specialised anti-corruption agencies." (Kuris, 2012). Kuris notes that this consensus "is reflected both in the priorities of academic experts and international donors and in the mandates of international law" (Kuris, 2012).

In this regard, the United Nations Convention against Corruption, signed by over 150 countries, mandates states parties to ensure the existence of domestic bodies specialised in implementing anti-corruption policies, combating existing corruption, and researching and sharing knowledge on corruption (Kuris, 2012)[10].

Kuris notes, "The current wave of anti-corruption agencies originated with two models: the single-function Corrupt Practices Investigations Bureau of Singapore (CPIB) and the multi-function Independent Commission against Corruption of Hong Kong (ICAC). In the 90s, as international experts groped for successful reforms against corruption, these two agencies stood out as concrete, replicable reforms" which had a clear impact on corruption in these two countries respectively (Kuris, 2012).

Many countries have turned to single, multipurpose anti-corruption agencies as a response to domestic and international pressures and treaty obligations, given that the "establishment of a multi-functional agency [is] often the most cost-effective way to comply for a country newly developing its anti-corruption system"[11]. They also offer the potential for enabling policy coordination in the fight against corruption.

These agencies tend to have one or more of the following functions: investigation[12]; prosecution; education and awareness-raising[13]; prevention[14]; and coordination (UNDP,

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[10] *Article 36 of the Convention stipulates that, "Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks. (UNDP, 2005)*

[11] *Apart from the UNCAC, these treaties include the Council of Europe's Criminal Law Convention on Corruption (1999), the Economic Community of West African States Protocol on the Fight against Corruption (2001), and the Southern African Development Community Protocol against Corruption (2005) (Kuris, 2012).*

[12] *Receiving and responding to complaints; intelligence, monitoring, evidence-gathering; surveillance, undercover operations; arrests (Kuris, 2012).*

[13] *Public information and awareness-raising; training public servants; student curricula (Kuris, 2012).*

[14] *Research and analysis; ethical policy guidance and review; scrutiny of asset declarations; legislative review (Kuris, 2012).*

2005). The functions granted to a specific agency often have more to do with historical development than any deliberate choice of model (UNDP, 2005).

Countries in Asia opting for a centralised anti-corruption agency include Hong Kong and Singapore (as the earliest examples); Malaysia, Nepal, Indonesia, Thailand, the Republic of Korea and Pakistan (UNDP, 2005). Latvia, Lithuania, Croatia and Romania have centralised agencies. In Africa, this model has been adopted by Botswana, in Malawi, Zambia and Tanzania (Doig et al, 2007). In most western countries the responsibilities or functions outlined above (investigation, prevention and so on) are diffused across various agencies, offices or persons (Kuris, 2012), though there are departments tasked with focusing on corruption, for example the French Service Central de Prevention de la Corruption established in the police in 1993.

3. Reasons for successes and failures

3.1. Anti-corruption agencies

Anti-corruption agencies established in middle income and developing countries have been ineffective in all but a few circumstances (Heilbrunn, 2004; see also de Sousa, 2009 and Kuris, 2012; Williams and Doig, 2007 cited in Heeks, 2011). The most cited success stories are those of the Hong Kong's ICAC, Singapore's CPIB, and the New South Wales' (Australia) Independent Commission against Corruption (ICAC) (UNDP, 2005).

Why have anti-corruption agencies generally not succeeded?

There are clearly strong entrenched interests which militate against the success of these agencies (Heilbrunn, 2004). A number appear to have been established to signal commitment to international investors and donors while avoiding harder reforms in the area of governance (Heilbrunn, 2004; see also Easterly, 2006 cited in Hanna et al, 2011). This appears to have been particularly the case in a number of African countries (see for example Doig et al, 2005; Doig et al, 2007).

A number of scholars have argued that in some cases anti-corruption agencies have done more harm than good in either reducing public trust where anti-corruption agencies are assumed to be a token gesture on the part of politicians, or in worse cases, have been used as "tools to repress political rivals and members of the opposition" (Heilbrunn, 2004).

Models of successful agencies have not been easily replicable because of the specific contexts in which these agencies operate and the particular history of their creation and evolution (UNDP, 2005). Failures have been attributed to countries replicating the models of Hong Kong and Singapore with insufficient attention to the local institutional conditions (de Sousa, 2009) as well as local politics.

Lack of organisational capacity has placed major constraints on these agencies in many countries in Africa (Zambia, Tanzania, Uganda for example) – high staff turnover, inexperienced staff, lack of cooperation between departments, insufficient budget and insufficient technical expertise – from investigative and financial expertise to record keeping and budgeting (Doig et al, 2007). The important point here is that these agencies share "many of the organisational development and management weaknesses of the public sector institutions they are intended to investigate" (Doig et al) and that create a context in which corruption is more likely in the first place.

Pressure for "quick-wins" (such as investigating and brining to trail high profile cases of corruption) see many agencies neglect the building blocks of effective organisations such as establishing conditions of service, standing orders, operating procedures, financial control systems and enabling regulations which are the prerequisites for effective, durable organisations (Doig et al, 2007). The capacities of Hong Kong's ICAC took twenty six years to develop (UNDP, 2005).

Heilbrunn (2004) notes that "the more functions a commission seeks to fulfil, the greater its demand for revenues." The "universal model" – a single anti-corruption unit with strong powers to investigate cases of crime and non-compliance with regulations, as well as other functions such as education – demand very large budgets. Countries that have attempted to replicate this model without substantial funding have been unsuccessful.

There are however a handful of anti-corruption agencies have proved relatively effective. The cases of Hong Kong, Singapore and New South Wales have already been mentioned. The literature also identifies anti-corruption agencies in Latvia (Kuris, 2012), Lithuania (Kuris, 2012), Indonesia (Kuris, 2012), Botswana (UNDP, 2005) as relatively effective.

Botswana's Directorate for Economic Crime and Corruption (DCEC), "evolved out of a series of scandals in which senior officials in the ruling Botswana Democratic Party were implicated in accepting bribes. In September 1994, the Botswana National Assembly enacted the Corruption and Economic Crime Act to establish the Directorate on Corruption and Economic Crimes (DCEC)." (Helibrunn, 2004) Heilbrunn notes that the DCEC's successes

are unique in that the country has a highly developed bureaucratic state that governs, but "without the controls imposed by a dynamic associational milieu or media". The DCED is not particularly independent in that it is subservient to the president's prerogatives. This appears to have impacted to an extent on the number of cases forwarded for prosecution.

The successes of Indonesia's KPK have been more substantial. Kuris notes that, the performance of the PKP is viewed highly amongst the public and that the agency has contributed to an increase in public perceptions of the government's ability to combat corruption (Kuris, 2012).

The KPK has "convicted over a hundred defendants, including 46 MPs [and] eight Ministers" and asset recovery levels are high: US$297 for 2010 for example". Perhaps most encouraging, "Wealth reporting compliance across the Indonesian government had climbed to 85% by 2011." (Kuris, 2012).

In Latvia the anti-corruption agency has played a role in breaking the power of corrupt oligarchs in the country through galvanising support form reforms to legislation.

The literature suggests that the structure and institutional arrangements of these more successful agencies have varied quite widely – in terms of agencies' reporting lines, checks on powers, internal organisational structure, the relationship of the agency to other institutions such as the judiciary and the police, the manner in which senior agency staff are appointed and more. Heilbrunn's analysis (2004) of successes in Hong Kong, Singapore, New South Wales and the United States point to the difficulty of transferring institutional arrangements that operates efficiently in one country to another. Successful organisations emerge as a result of a host of contingent factors.

However, a few broad lessons can be drawn from the more successful agencies identified above. These agencies need to ensure a number of successes: first, in being able to effectively conduct investigations which see high profile cases of corruption successfully prosecuted. As a result of this success, these agencies need to be positioned to survive the political backlash from those involved in, or supported by, corrupt networks. Third, if they are to make a meaningful impact on corruption at scale they need to be able to leverage these successes to push for reforms (in legislation for example) which see a more systemic decrease in corruption.

Independence and accountability

Successful agencies established a fair degree of insulation from politics, provided in part by establishing independent oversight of the agencies' work. The institutional arrangement intended to ensure accountability need to be developed differently in each country case, taking into consideration the relative independence of the bodies tasked with oversight. In New South Wales, Australia, parliament has provided generally effective oversight of the Independent Commission against Corruption. In Thailand, however, the independence of parliament from the executive is far weaker, which has impacted on the performance of the local National Counter Corruption Commission (NCCC) (Heilbrunn, 2004).

Hong Kong's ICAC has its activities scrutinised by four independent committees, including representatives from civil society, as well as the independent ICAC Complaints Committee, which receives, monitors and reviews all complaints against the Commission. (UNDP, 2005)

Accountability in successes agencies was not established solely through the formal structure and oversight of these agencies but through carefully drafted rules, especially for the selection and removal of agency leadership. In the case of Indonesia for example, the flat, simple hierarchy of Indonesia's anti-corruption agency, KPK [15], is headed by five commissions who reported annually to the president, the parliament, and the state auditor (Kuris, 2012). KPK commissioners are confirmed by parliament, voting from a list "generated by the President with the help of a selection committee appointed by the justice ministry and composed of government and private individuals." (Kuris, 2012).

Co-operation and institutional coordination

Whilst the institutional and structural arrangements of successful agencies have varied widely, getting this right has been key to their impact. In the case of Indonesia, for example, incentives to enable cooperation and institutional coordination appear to have been very carefully through, from the relationship of the agency's work to the judiciary, to facilitating cooperation between the range of departments tasked with fighting corruption. For example, to limit inter-agency rivalries with other organisations such as the police and the accountant generals office, all KPK investigators and prosecutors be seconded from the police and AGO on four-year contracts (Kuris, 2012).

Organisational capacity

The examples of Hong Kong, Indonesia and Lithuania show that successful agencies build capacity through "ample resources, professional and well-compensated personnel, and strong, watertight procedures of operation" (Kuris, 2012).

[15] *Komisi Pemberantasan Korupsi – the Corruption Eradication Commission of Indonesia.*

They also take time, as cited above in the case of Hong Kong. In Indonesia, “Rather than make early arrests to satisfy the public demand for quick action, the commissioners made a controversial early decision to focus on institution building” (Kuris, 2012). This included developing and enforcing clear standard operating procedures and developing human resource capacity. Established in 2002, the KPK only made its first arrest in December 2004. Latvia’s KNAB, also considered a relatively successful agency, went for quick wins, making its first arrest four months after establishment. When faced with “pushback” from corrupt officials and oligarchs, the lack of sound internal procedures nearly saw the reputation of KNAB destroyed. (Kuris, 2012).

Coalitions of support

Once agencies began to build a successful track record they are inevitably met with a strong pushback from those implicated in, or supported by, corrupt groups. At these points, public support is essential (Heilbrunn, 2004; Kuris, 2012; de Sousa, 2009). In the cases of Indonesia and Latvia public support was the only factor that allowed an anti-corruption agency to prevail over high-level opposition (Kuris, 2012). This involved courting the public and organised civil society directly. However, Heibrunn (2004) notes that governments that have established successful anti-corruption commissions have done so in response to demands for reform from a broad base of domestic constituents rather than generating this support once successful. Heilbrunn (2004) further notes that demands for meaningful reform from the public “generally occur after a precipitating crisis has caused deep economic hardship and a national consensus exists that reforms must be implemented… Without the precipitating crisis, building such domestic coalitions is a challenge for even the most popular leaders”.

Push for fundamental reforms

The cases of Hong Kong and Latvia suggest that the agencies’ major achievements were not so much in the number of successful arrests and prosecutions, but in the manner in which these successes were used at strategic points to push for more fundamental reforms to reduce corruption. These included changes to legislation and changes to the structure of key institutions of accountability.

In the case of Latvia for example, Kuris notes that, “Over several years, KNAB slowly built cases against the powerful oligarchs and the parties they financed…the public outcry against corruption, galvanised by KNAB’s casework and [an earlier dissolution of parliament in the wake of a corruption scandal] built legislative momentum for reform. The reforms… included criminalisation of campaign finance violations, an end to secret confirmation votes

in most cases, judicial reforms to expedite trials, whistleblower protections, and the lifting of parliamentary immunity for administrative offenses." (Kuris, 2012).

3.2. Other interventions

As mentioned in the introduction to Chapter 5, there are a limited number of empirical studies about which policies and programmes aimed at reducing corruption have been most successful (Hanna et al, 2011). Where this data does exist, it is usually at the level of micro-level interventions, in particular projects (the construction of new roads in Indonesia for example) (Hanna et al, 2011) or in particular cities or districts.

In this regard, Hanna et al (2011) scanned thousands of articles on anti-corruption measures to select "empirical micro-level studies that offer rigorous support for their theory of change and selected outcome variable(s)" related to corruption (Hanna et al, 2011). Interventions aimed at reducing corruption were grouped into one of two categories – monitoring and incentives programmes and programmes that "change the rules of the system".

Monitoring and incentives programmes attempt to reduce corruption by increasing the risks or costs associated with an agent's decision to participate in corrupt behaviour – through increasing the probability of getting caught by monitoring behaviour and increasing the punishment applied to an agent caught engaging in corrupt activities. Programmes which aim to "change the rules" assume that monitoring and incentives are likely to be futile, because the "monitors themselves will be corrupted or because the bureaucrats will create new methods for obviating the rules (see, for example, Banerjee et al. 2007)(cited in Hanna et al, 2011). This requires more fundamental policy interventions aimed "to change either an aspect of the government system itself or the way the government delivers services so that the agent's own incentives are naturally better aligned with those of society and there are fewer opportunities or reasons to engage in corruption." (Hanna et al, 2011). This might include for example, decentralising decision making to lower levels of government assumed to be more accountable to the citizenry.

Studies included for detailed review ranged from those testing anti-corruption programmes in road construction in Indonesia, in which bureaucrats were warned in advance that an independent audit of approved road projects would be conducted in order to monitor theft in road construction, to the use of municipal audits aimed at reducing the probability of "corrupt" officials being re-elected (Hanna et al, 2011).

Regarding decentralisation interventions, Hanna et al (2010) found that:

- The department newly in charge of implementation (as a result of decentralisation) has to be provided with the capacity to run the programme in question: "decentralisation strategies had the greatest success when combined with high levels of community participation and when pre-implementation included building capacity of local officials and infrastructure". (Bjorkman and Svensson, 2009, Chavis, 2010 cited in Hanna et al, 2011). For this reason (and point 2 below), decentralisation programmes are resource intensive.
- Decentralisation is "only successful when decision-makers and service providers are held accountable by programme recipients. When accountability is upheld through elections, then voters must be aware of corruption levels. Some successful decentralisation programmes combine decentralisation with community monitoring programmes, to ensure that the voters and service recipients know true corruption levels (Bjorkman and Svensson, 2009, Chavis, 2010 cited in Hanna et al, 2011).
- These programmes work in cases where officials are elected "exclusively by the population they serve and who risk losing their elected position if a programme is highly corrupt".

In the case of monitoring and incentive programmes, Hanna et al (2011) concluded the following:

- In order to be effective they must be "implemented and monitored by a party desiring to lower corruption".
- That monitoring on its own is ineffective. Monitoring needs to be combined with "some incentive programme" such as punishment for non-compliance. These strategies ranged from wage-reduction or dismissal to media campaigns that published the details of non-compliance or criminal activity by officials*16*.

Wider (2012), based on a series of case studies of public sector reformers at the city and district level that successfully reduced corruption, suggests that, "Anti-corruption strategies that reduce temptation and re-shape norms usually take less of a toll on goodwill than punitive measures do". The paper explores the techniques used by successful reformers to

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[16] *Persson et al (2008) have criticized the principal-agent model because it assumes that "the problem of corruption lies exclusively with the agent" and that "the principal will take on the role of controlling corruption". If, however, the principal is also corrupt, there will be "no actors willing to monitor and punish corrupt behaviour" (Andvig & Fjeldstad 2001 cited in Persson et al, 2010). They propose collective action theory as a more useful analytical tool to understand corruption in societies or contexts where legally corrupt or non-complaint behaviour is the norm – here "there will simply be no [or few] actors willing to take on the role of controlling corruption" (Persson et al, 2010). They suggest that in this context "monitoring devices and punishment regimes should be expected to be largely ineffective".*

ensure that individuals and groups who assume they will “lose out” as a result of reforms are prevented from blocking change.

These initiatives included reducing the opportunity for officials to engage in corrupt activity through changes to basic systems and processes and daily tasks in order to “alter three elements of the corruption calculus: the willingness of citizens to “pay extra,” the ease of monitoring those who might demand a bribe, and the numbers of people in a position to collect.” These interventions worked best for “services that involve limited employee discretion and low price-tags. Issuing identity papers, permits, and licenses, collecting simple taxes or fees, inoculations and procurement of standardised products”.

Other initiatives included the following strategy: providing good notice of the introduction of new monitoring systems or the enforcement of existing codes or regulations, following this up with an amnesty for previous wrong doing and then instituting a clear but staggered policy for dealing with non-compliance. Widner provides an example from a case in Brazil in which the first signs of non-compliance by an official received a written warning, the next case of non-compliance by the official involved the official having to reimburse the public coffers in some way such as a “donation to charity. If subsequent behaviour triggered more alarms, dismissal was likely.” (Wider, 2012).

The interventions outlined above (local level monitoring and incentive programmes for example) as well as anti-corruption agencies comprise only part of the necessary measures aimed to address corruption. Hong Kong and Singapore’s anti-corruption agencies made very meaningful impacts on corruption levels in their respective countries, but this has been attributed in a large degree by the fact that these are small island-states (Heilbrunn, 2004).

On the whole national anti-corruption strategies developed over the last few decades have been corruption measures have not been successful.

Many commentators have noted that given the model used for understanding of the conditions under which corruption occurs and the solutions that have flowed from this, it is not surprising that so many initiatives have failed. These commentators point to a “mischaracterisation” of the problem of corruption (see for example Persson et al, 2008; Khan, 2006; and work of anthropologists such as Anders, 2002 and de Sardan, 1999).

Khan (2006) suggests that the convention model underlying anti-corruption measures proposed by international agencies can be characterised as “greed plus discretion”: in this model, “corruption is largely caused by the greed of public officials who have the discretion

to offer citizens benefits or cause damage to their activities but who are inadequately monitored or face inadequate punishments for violating laws. If bureaucrats or politicians have the power to offer selective benefits or cause selective damage, and if their risk of detection or risk of punishment is low, they are likely to engage in corruption to enrich themselves."[17] Flowing from this model of corruption, as well as developments in the growing field of New Institutional Economics, measures to curb corruption at scale (as we saw in the section above) have included reducing the discretion of public officials through privatisation and liberalisation of the economy, "encouraging greater transparency of government decision-making through deepening democratisation, decentralisation and the creation and encouragement of civil society watchdogs", and so on.

Khan provides evidence for the fact that reducing the opportunity for state discretion through increased privatisation, liberalisation of the economy and democratic reforms have not seen a reduction in corruption in most cases (Khan, 2006). Khan suggests that the drivers of corruption and their outcomes in developing countries are structural, embedded in the nature of the political-economies of these countries.[18] For example, these policies have failed to deal with massive income inequality in many of these countries, the social character of corruption, and the complex nature of the post-colonial state and its bureaucracy.

Failures in anti-corruption strategies have also been attributed to the lack of attention paid the specific nature of corruption in the country in question, the impact of corruption and the institutional environment in which it occurs.

A 2005 UNDP report attributes the failures in many national anti-corruption strategies to the prioritisation of short term and highly visible targets that attack the "symptoms rather than the root cause of corruption, over deeper, more difficult, as well as time and resource intensive systemic reforms" (UNDP, 2004 cited in UNDP, 2005).

What broad lessons for success then? The first involves developing an anti-corruption strategy that is based on a very in-depth analysis of the nature of corruption, its enables (this includes an analysis of state-society relations as sketched in the case of South African in

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[17] *Khan notes that there is a "large academic and policy literature that develops aspects of this analysis of the causes of corruption (Rose-Ackerman, 1978; Klitgaard, 1988; Andvig and Moene, 1990; Shleifer and Vishny, 1993; Mauro, 1995; Bardhan, 1997; Leite and Weidmann, 1999) cited in Khan, 2006.*

[18] *He does not propose that there is no corruption in developed countries, but suggests that on average corruption in these countries produces less harmful outcomes for the delivery of public goods.*

Chapter 2 above); how corruption plays out differently across different areas of the state and society (business for example); and the local institutional environment.

The international literature suggests that only in a very small number of cases, measures that have attempted to narrowly focus on corruption, such as specialised anti-corruption agencies, have had major knock impacts on reducing corruption even in more successful cases of these agencies (Hong Kong is an example where this has happened, as mentioned.

A more long term view from the literature suggests that corruption and its particularly negative impacts[19] have been reduced by a change in the character of the state in relation to the citizenry, but more specifically, in the character of the bureaucracy. Dagut et al (2012) suggests that a more fruitful line of enquiry into possible lessons for reducing corruption and its consequences is to focus of the converse of corruption: what can be defined as public sector efficiency. Public sector efficiency is defined as "the use of public office to produce the public goods required by the policy maker" (Dagut, 2012). The international literature suggests that this efficiency has been driven in large part (though not only) in modern states by the development of a class of civil servants which sufficient technical expertise who act neutrally and in a disinterested manner in relation their own outlook (or outlook of a social group) and their own interests (Page and White, 1999).

In the case of Western European countries and China, these characteristic developed over centuries as a result of a host of factors, suggesting that efficient bureaucracies cannot be "manufactured" quickly (see the work of Raadschelders and Rutgers, 1996 on European countries cited in Dagut, 2012). However, there is a body of literature on "pockets of efficiency" that have developed relatively rapidly (see for example the work of Matt Andrews at Harvard) in bureaucracies without the long bureaucratic traditions of countries such as China. Examples of these pockets include areas of the Indian Administrative Service, the

[19] *Key to reducing the impact of corruption is not only in reducing its incidence but understanding the structural factors which see it having a particularly devastating impact. Khan (2006) contends that "whenever states have essential functions that are both socially beneficial and also benefit particular constituencies, there will necessarily be some rent seeking that needs to be managed". He continues that "a critical distinction here has to be made between the intended outcome of a [state intervention which creates opportunity for rent seeking] and the cost of the rent seeking it induces." Despite a level of rent seeking in developed countries, these countries have states that are nonetheless able to provide public goods relatively effectively. Khan notes that this suggests the need for focus on increasing the states capacity to "assist growth in critical areas such as technology acquisition or the provision of critical infrastructure for productive sectors". Clearly the policies in this regard would need to be developed to suit the needs of the country in question. It might, in the South African case for example, include getting right the hard task of skills development and the focusing on the conditions to generate small business and entrepreneurs*

Brazilian Development Bank and local examples such as the South African Revenue Services.

In most cases however, the challenge is on building the institutions of state and on improving the "efficiency" of the public sector. The approach increasing outlined by the World Bank (and that of other international agencies such as the UNDP and the OECD) for the development of national anti-corruption strategies in specific countries is that the weaker the indicators of good governance in the country the less the anti-corruption strategy should focus on measures that narrowly target corruption (such as anti-corruption detection and enforcement agencies) and the more they should focus on the governance environment (improving the rule of law and strengthening the efficiency of the public sector, for example) (see for example, Bhargava and Bolongaita, 2004; Shah and Schactner, 2004).

4. Application to South Africa

Successful national anti-corruption strategies are based on a very in-depth and rigorous analysis of the nature of corruption in the country in question, its enables, how corruption plays out differently across different areas of the state and society, and the local institutional environment. The research is an important component of this analysis, and more analytical work and mining of existing data is needed to build this comprehensive picture.

Whilst the precise organisational structures and institutional arrangements of successful anti-corruption agencies (whether in the form of universal model or multi-agencies) have varied widely – all have had high level of support from organised civil society and the public in order to deal with inevitable political backlash and to push for more meaningful reforms to reduce corruption at scale. In some cases this has been generated by successes of the agencies themselves, more often successful anti-corruption bodies have done so in response to demands for reform from a broad base of domestic constituents. This may require a fair degree of consensus that the root causes of failures in policy and implementation lie in corruption at a senior level and a degree of consensus about the kinds of reforms this might require. This consensus may still need to be developed in South Africa.

System change requires a focus on institution building and "good governance", and on improving public sector efficiency more specifically.

Monitoring aimed at improving public officials' compliance with official regulations, procedures and policies is only effective when combined with incentive programmes / interventions. The data provided in Chapter Two of this report shows clearly that monitoring

and reporting requirements have made little impact on ensuring compliance (an environment in which illegal activity is far more likely to occur) partly as they have not been twined with interventions to incentivise compliance (in the form of punishment for non-compliance or positive incentives). Given the level of non-compliance in many of the departments and municipalities as outlined in the Auditor-General's report, very careful consideration will need to be given to the introduction of new measures to enforce compliance – a phased in approach as outlined by Widner above may be an area to explore in order to reduce resistance to change. There are multiple reasons for non-compliance, and other issues not covered in the international review above but which will be central to improving departments' own capacities to monitor and enforcement compliance in South Africa, include interventions to ensure stabilisation in the public Service (such as recommended by the Public Service Commission) as this has been a key component of effective bureaucracies worldwide.

Chapter 5: Assessment of the Current Approach

1. What is working well?

Given that corruption and associated practices of non-compliance with public sector standing operating procedures is increasing it would not be difficult to conclude that anti-corruption interventions are flailing. The evidence is more uneven, however, than general perceptions. The Anti-Corruption and Security Unit (ACAS) in the South African Revenue Services has uncovered and successfully interrupted several major syndicates operating within the tax collection environment. On the 9th of May 2010, for example, South Africans woke up to the headline: “Corruption at CIPRO funds ‘global terror’”. The report in question alleged that a team of Pakistani nationals had corrupted CIPRO systems to register bogus companies with near identical names to existing, large corporations. With a set of authentic-looking documents and with the assistance of conspirators in SARS, they changed the banking details of legitimate companies to those of the bogus enterprise. In this way, millions of Rands in tax rebates were paid into the hands of Pakistani nationals – some with links to international terrorist networks. Less well known is that it was ACAS investigators that discovered the deception and arrested the corrupt officials in both SARS and the then Companies and Intellectual Property Registration Office (CIPRO). There have been several other, no less dramatic cases of successful interventions.

What makes ACAS effective? Like the Scorpions, ACAS is staffed by a combination of investigators (drawn from the police and the intelligence community) and prosecutors. This structure means that the unit gathers evidence with a view to winning criminal trials. It is assisted by a leadership that respects the working autonomy of the agency. The difficulty arises for an outfit like ACAS in how it chooses what cases to pursue. In the absence of a transparent and “objective” (or, at least, random) selection process the unit is constantly in danger of being accused of favouring certain individuals/groups over others. Is this not what happened to the Scorpions? It was accused of choosing cases, not on the basis of legal criteria, for example, but on the basis of a political agenda. We will say more about this shortly, though for the moment let us note the following. the major challenge for any kind of anti-corruption strategy based on policing and prosecution, over and above its particular organisational form (centralised approach/decentralised model), is its ability to appear neutral with regard to any particular social class or group. The danger is that when they fail in this respect, anti-corruption strategies can become instigator of one of the major drivers of corruption itself, perceptions of “unfairness” in public life.

It is not so much the high-profile busts that are the measure of success of ACAS and other anti-corruption measures in SARS. The success lies elsewhere: the proportion of revenue

gathered by the agency through tax collection and the money available to Treasury for the national budget largely correspond. It is testament to the fact that corruption has a negligible impact on national finances at this level.

This is undoubtedly a major achievement and likely explains why on the World Bank's score of corruption, South Africa received a respectable 61, well above its colleagues in the BRIC countries, India (35) and China (32). The least corrupt countries, on the World Bank's measure, were Denmark and New Zealand. They each scored 100. The world average was 49. In other words, South Africa is deemed a lot less corrupt than many other "middle income" countries and developing nations.

The success of anti-corruption measures in SARS, however, is not only a consequence of its anti-corruption unit. Nor is it simply a question of honest leadership, though this clearly plays a vital role. More importantly, the SARS leadership historically and today has paid a lot of attention to operational matters, especially to processes and supporting systems. The agency invested heavily in process engineers with a view to design effective and simple operating procedures.

Modernisation broadly defined has privileged efforts to increase organisational efficiencies through improvements in processes and the introduction of new IT-based systems. The new strategy focused on improving taxpayers and traders' compliance with regard to three obligations:

- Registration compliance: taxpayers and traders must register with SARS so that they are on the system and available to pay their tax.
- Filing Compliance: taxpayers and traders must submit their declarations timeously, accurately and honestly.
- Payment Compliance: taxpayers and traders must pay what they owe[20].

Modernisation targeted three principal areas, the organisational structure, the core business process and human resources.

The first major initiative in this regard came with the introduction of Siyakha in KwaZulu-Natal in 2001. Drawing from advances in international practice, especially from the experience of the Internal Revenue Service (IRS) in the United States, Siyakha sought to transform existing structures and operations by concentrating key functions at major hubs. In

[20] *SARS, A Better Return for All. A Special Report to the Standing Committee on Finance on the return on investment of the SARS Modernisation Programme, August 2011, p.4.*

particular, files were concentrated in a single location, the various components of the audit function were housed together (audit, account maintenance) and a new distribution network was introduced.

In 2007 SARS reduced the annual tax return to a standardised two page document (down from 12 and longer). It also made it possible to submit tax returns electronically via the Internet, through e-filing. In the following year, SARS set-about modernising the PAYE system. Taken together these changes have resulted in major improvements in all areas of operations, including access, enforcement, compliance, revenue and cost-efficiency.

Automation has made it possible for SARS to increase the number of audits conducted both in absolute terms and as a proportion of all submissions; from 72 962 or 0.92% of submissions in 2008/9 to 159 832 or 6,31% of submissions in 2010/11. As a measure of growing registration compliance, the active personal income tax register has grown from 4,8 million in 2007 to 13 million in 2011. Moreover, efficiencies in the system, including the introduction of an automated risk engine, has seen a further R7,5 billion collected from taxpayers who had otherwise under-declared in their original submissions[21].

The success of these changes has encouraged the organisation to modernise more and more of the organisations operations, including the customs service, the penalty system, and the account maintenance area, with regard to the payment of VAT and Corporate Income Tax. These are all areas of on-going developments.

While it is still too early to say definitively, similar changes in the Department of Home Affairs have improved effectiveness in certain areas (especially in the processing of passports and IDs, though not in the handling of foreign nationals). Improvements in operational design, administration and process engineering is also having a positive impact on corruption and non-compliance in the department.

The SARS and the Home Affairs experiences generate paradoxical lessons for the fight against corruption. Anti-corruption units have an uneven history of success in South Africa, though tend not to be effective. We will see shortly that this accords with the international experience. What does seem to make a reliable difference is close attention to the design and implementation of administrative systems and effective work processes. This helps us better understand the results inter alia of the Auditor General's reports: where administrative systems are weak and where processes are badly designed or ineffective, the likelihood of

[21] Ibid.*, pp. 11-15.*

corruption increases. In other words, anti-corruption efforts seem to work better when they are focused not so much on corruption per se, than on organisational development and institution building. Or again: anti-corruption strategies that work well are those that:

- appear to work fairly (impartially/neutrally), and
- are accompanied by a focus on organisational development.

2. What is working less well?

If we acknowledge the relationship between corruption and non-compliance with standard operating procedures then we have to recognise a paradox. Many of the public sector reforms in the post-Apartheid period focused on managerial competencies to the neglect of operational and administrative matters (Interview with Colette Clark, 6/9/2012).Or rather, interventions intended to improve the efficiency of the public sector as a whole, have been compromised in their implementation. Often there has been insufficient attention paid to operational matters.

We have discussed above the legislative and regulatory environment, noting that the laws and rule governing financial management and procurement provide a potentially solid foundation for dealing with corruption. It is worth noting, for example, innovations in supply chain management since the 1990s.

The new democratic government inherited from the Apartheid period a procurement system routed through a centralised state tender board. All procurement, that is, was managed centrally and from Pretoria. The result, notes Kruger, was massive inefficiency.

”The disadvantages of such a system and you separate the procurement and provisioning processes from the accounting officers. Somebody else, the Tender Board essentially, takes the decisions and the accounting officer now has to implement. In many instances the complaint was that what you asked is not what you procured” (Interview with Coen Kruger, 30 August 2012). Consider the following example, the procurement of computers.

Remember, explains Coen Kruger, head of procurement at the National Treasury and the designer of the Supply Chain Management system, that when you buy computers you also have to maintain and service them. The State tender board would procure computers from say Johannesburg for the whole country. This meant that it had to be able to deliver hardware to remote locations, far from the city. In addition it needed to develop an infrastructure to be able to service these offices. This massively increased the costs. “The

logical thing would be to get the maintenance and support on a regional basis, closest to where the service is required" (Ibid).

Treasury's innovation was the Supply Chain Management (SCM) system. "So when we modernised the financial management in government," Kruger explains, "three things were critically important. Devolve the responsibility to the accounting officers [in departments] (and the accounting authorities in the case of public entities). The second important principle, is you need to report. And the third thing is you need to be held accountable for your decisions" (Ibid).

Yet the model is vulnerable to failure in two significant areas. The first is straightforward. Willie Hofmeyr worries that in certain cases chief accounting officers are susceptible to "capture" by criminally-minded public servants (Interview with Willie Hofmeyr, 31/07/2012). In other words, if the chief accounting officer is himself or herself corrupt then he or she can enter into contracts on behalf of government that are prejudicial in terms of price and in terms of service and that favour particular individuals or groups. As discussed earlier sometimes such behaviour is deemed appropriate for political and economic reasons. As a general point, the procurement system is vulnerable if the accounting officer is not compliant. We saw earlier that this, in fact, is precisely what the Auditor-General found with respect to accounting officers at all three tiers of government. This situation is compounded by the fact that with the dissolution of the State Tender board there are no independent-minded bodies setting and/or evaluating prices and developing costing models for a range of government services.

Many of the officials interviewed worried about the lack of minimum norms and standards for procurement (Clarke, Levin). One provided the following example: "In the Gauteng Department of Education, you have got eighteen districts, with district directors, each school has got thirty classrooms and each classroom […] has a broom, so it is thirty brooms per school and you have got two thousand schools. If you walk into Game and you buy a broom you can get it for fifteen rand but you make sure that that broom costs sixty rand" (Anonymous, 10/9/2012).

The vulnerability of the Supply Chain Management system is not only at the level of the chief accounting officer, however. Indeed, the vulnerability of this person either to "capture" or to "misuse" of office speaks to the weakness of the senior management system as a whole. This is not the place to rehearse the history of public sector reform in South Africa other than to note the following:

Under the influence of New Public Management thinking inefficiencies in the public sector were deemed a consequence of its bureaucratic structure (hierarchical, inwardly focused, rule driven). Simply put, the South African public sector was deemed to be "under-managed" (DPSA: 2001). In the late 1990s, amongst other efforts to "de-bureaucratise" the public service, the Department of Public Service and Administration muted a Senior Management Service. The plan was to transform the higher echelon of government into strategic and innovative managers, focused on outcomes, instead of rule-following officials turned in on themselves (see Chipkin, 2011).

"Senior managers and high-level professionals," argued the DPSA, "must concretise government's vision of a better life for all through effective implementation strategies and the efficient utilisation of resources. In this demanding environment there can be no place for mediocrity or lack of commitment. Only the finest candidates, imbued with a spirit of selfless service to the community should be appointed. Their talents should be carefully nurtured, and once well developed, be utilised to the best advantage of the state" (DPSA:2001).

What emerged was a surprise to everyone. It is not so much that incompetent people were appointed, though this occurred, especially at local government level (Moloi: 2012). In the public service proper, it was more common that no-one was appointed at all. In other words, the vacancy rate in government departments averaged 25% during the mid-2000s. This, in turn, fuelled high turnover rates as departments poached from one another in order to fill their positions.

Chipkin writes: "We know that such volatility has debilitating effects on state performance, especially when the problem is as severe as it is in South Africa. The DPSA reports that there is "the loss of efficiency during the notice period; the cost of recruiting and selecting a new staff member; and the induction stage (when new staff members are not that efficient)". "The replacement cost can be even higher when the person has been in the service for some time. It effects morale and productivity, increases training costs and results in a substantial loss of organisational memory (DPSA, 2006, p.16). It is likely that such volatility is the single greatest cause of the failures in State performance" (Chipkin, p. 55).

Even though the size of the Senior Management Service (SMS) has grown from approximately 2500 in the late 1990s to over 10 000 today, high staff turn-over rates remain a serious problem. Richard Levin estimates that in some departments senior officials leave their positions after only 4 months (Interview with Richard Levin, 10/9/2012). The national average of about a year is not much better (Interview with Colette Clark, 25/8/2012).

There are several reasons why this is damaging to governance. In the first place, departments are in a constant state of flux as new managers introduce their own processes and then leave, only to be followed by another manager with their own way of doing things. It is difficult to comply with standing operating procedures when they are constantly changing.

Secondly, the recent focus on "management" has often been interpreted to mean that senior officials should be focused on questions of leadership, policy, strategy and vision. Seldom do they involve themselves with operational and/or administrative questions and issues. The result is that careful process design and engineering has been severely neglected in government.

Taken together what this means is that chief accounting officers are often operating in highly unstable environments where there is little consistency in procedure and policy with regard to what departments need and in what quantities.

We are in a position to explain a further phenomenon widely discussed by the interviewees for this study. Colette Clark and others warn that corruption is often driven by junior and middle-ranking officials who are involved in the administration of the supply chain management system. Often they are experienced, yet disgruntled public servants without prospects of career advancement. In the absence of standardised costing frameworks, for example, or minimum norms and standards for services, they are able to collude with service providers to produce tender documents or write-up terms of reference prejudicial to government and the public yet lucrative to the company involved. This situation is possible because a) senior managers are usually not attentive to administrative detail[22] and b) because managers change so often.

3. Broad conceptual approach

"I am very clear in my mind, it is the lack of norms and standards in government, everything has been left to chance and we have got to go back to basics" (Colette Cark, 25/8/2012.)

What does getting back to basics mean in the context of corruption? This report, following the studies of the Auditor General, the Public Service Commission, the work of the Public Affairs Research Institute and the testimonies of various respondents, has drawn a link between corruption and generalised levels of non-compliance with SOPs, regulations and

[22] *Former Police Commissioner Bheki Cele reported in his defence against charges of corruption that he had not read any of the relevant lease documents.*

laws. This suggests that, broadly, an anti-corruption strategy must involve a focus on improving compliance in government departments, agencies and components as much as on policing and prosecution.

Non-compliance and corruption is especially severe in areas where the reach of the national regulatory environment is weak and/or where organisations can invoke exceptions and exemptions from Standard Operating Procedures (SOPs), that is, outside or on the edges of the public service – in local government and in agencies and parastatals.

It is important either to accelerate the inclusion of local government into the public service or to simplify and clarify the regulatory environment for local government. We have seen that as it currently stands, municipalities are subject to multiple reporting and compliance regimes (from Treasury, from CoGTA) that often exhausts their ability to comply with any. In the case of agencies and parastatals a State Tender Review Board (discussed above) would go some way to better control the SCM environment. When agencies and parastatals invoke special circumstances to deviate from standard procedures they must be called on to explain and justify their decisions. A State Tender Review Board could play a useful role in this respect.

We have discussed in this report the wide range of agencies and units responsible for anti-corruption efforts in the public sector and within South Africa generally. As we will see from international experiences there is no specific configuration of investigatory and prosecuting functions that stands out as working best. Apart from the technical (policing and legal) skills required, anti-corruption agencies tend to stand and fall on the basis of their perceived fairness. This resonates very well with the South African experience. The Scorpions was ultimately dissolved because it was seen as acting impartially vis-à-vis groups within the African National Congress.

Anti-corruption units are always obliged to make choices about what to investigate and what not to. Therein lies their vulnerability. They can be perceived as partisan.

This is why it is vital that anti-corruption units select cases on the basis of transparent, impartial and credible criteria. For example, contracts above a certain amount might be automatically subject to a preliminary audit/review. Perhaps contracts in certain sectors are especially prone to corruption (construction or the leasing of buildings, for example). SARS uses such a methodology for the selection of tax submissions to audit.

This might be one of the key roles that the Anti-Corruption Task Team (ACTT) – to build the credibility and legitimacy of anti-corruption units by:

- developing an impartial and transparent framework to guide anti-corruption agencies select cases for investigation,
- coordinating activities between these agencies, and
- publicising these criteria in the public domain to maximize their legitimacy.

Chapter 6: Conclusions

Conclusion 1: A focus on improving organisational efficiency

This report suggests that there is an indirect relationship between organisational efficiency, on the one hand and, corruption, on the other. In other words the more efficient an organisation is the less corrupt it is likely to be. Therefore, a comprehensive anti-corruption strategy should include a focus on improving efficiency, compliance and oversight in government departments, agencies and components as much as on policing and prosecution.

The supply change management system has been identified as especially vulnerable to non-compliance and corruption. The position of the Chief Accounting Officer is especially weak in the context of a highly politicised environment and/or an unstable work environment. This situation is compounded by the extremely decentralised structure of SCM across government. It is worthwhile considering amendments to the SCM to overcome or mitigate for these dangers.

The National Treasury has muted a Chief Procurement Officer to take responsibility for the overall SCM system. In this regard it might be valuable to situate such a position within a State Tender Review Board composed of public servants as well as members of civil society, including consumer groups, trades-union and so on to supplement the SCM system.

Such a Review Board would:

- Have powers to review and set-aside any tender related to government work, including in the public sector, local government and in the parastatals.
- Have power to discipline/ prosecute senior managers, including chief accounting officer for non-compliance with Treasury standing orders
- Set minimum norms and standards for government services an goods
- Develop costing models for a range of government services
- Review any state tender that deviated substantially from these costs and norms and standards.

Planning has been highlighted in our report as an area that may seriously undermine effective performance reporting and oversight. In particular, local government is subject to an onerous planning and reporting burden that appears to be doing little to improve organisational efficiency

Stabilising public sector organisations: We have seen in this study that organisational weakness and instability is conducive of non-compliance with SOPs etc. and corruption. Stabilising public sector organisations would go a long way to change this situation. One of the key challenges in this regard is the high staff turnover rate in the senior management service.

Conclusion 2: Compliance needs to be improved

Alternative approaches for improving **compliance** across government need investigation. Effective accountability requires that a designated person is responsible for a clear and manageable set of outcomes, and that an independent third party verifies what has actually been done, against what is required. In this regard it may be more useful to consider a demarcated accountability structure, which separates implementation and oversight.

SCM is the single most problematic area in government, and where the greatest incidence of no-compliance is recorded. There is certainly scope to both centralize and manage differently the oversight of SCM. This could include the following components, which is based on our review of the current legislation and our analysis of the problem:

- The creation of the office of Chief Government Procurement Oversight Officer. This office would not be responsible for procurement per se, but would be responsible for the oversight of procurement. It would be located in Treasury, which is where the relevant legislation resides.
- Each government entity would have a Chief Procurement Oversight (CPOO) Officer (which in smaller entities could be the same as the Compliance Officer – see below). These CPOOs would report directly to the Treasury Office, bypassing the local management structure (which is how compliance officers in the private sector operate). These CPOOs would be responsible for dealing with the most serious problem areas in SCM, viz:
    - Ensuring the tax clearance certificates are obtained for all bidders prior to the adjudication process.
    - Ensuring that declarations of interest are obtained.
    - Filing and document management
    - Oversight that the SCM process complies with prescribed legislation
- SCM regulations could be amended to ensure that awards cannot be made until the CPOO has signed off the process.

- This procurement oversight function would be greatly assisted by the establishment of a database containing the details of all government officials, so that declarations of interest can be verified.
- Given the problems experienced with tax clearance certificates, it may be useful for the office of Chief Government Procurement Oversight Office to have direct access to SARS to verify the tax status of bidders.
- Neither the PFMA nor the MFMA make provisions for the post of Compliance Officer, which is fairly common in the private sector. A compliance officer is responsible for adherence to prescribed laws and regulations, and usually has a reporting line directly to the most senior staff, which helps to prevent management interference. The deployment of compliance officers directly responsible to national Treasury throughout all spheres of government may be a way to improve oversight and increase Treasury's ability to enforce its own legislation (and provide employment for the thousands of unemployed law graduates in South Africa.)
- Compliance Officers would be responsible for ensuring compliance with all regulation outside of SCM. Given that there is a well-documented skills and capacity gap in key areas critical to oversight across government, it would makes sense to create "centres of excellence" focused on specialized areas, such as compliance.

Conclusion 3: Attention needs to be paid to government outside of the public sector

Non-compliance and corruption appears to be especially severe in areas where the reach of the national regulatory environment is weak and/or where organisations can invoke exceptions and exemptions from Standard Operating Procedures (SOPs), that is, outside or on the edges of the public service – in local government and in agencies and parastatals. Our research has shown that there is a real problem with non-compliance and organisational weakness across local government, which appears to be worsening.

Evidence gathered for this study suggests that accelerating the inclusion of local government into the public service could help to simplify and clarify the regulatory environment for local government.

Conclusion 4: The most important lesson from our international revue is the necessity of perceived impartiality

We have discussed in this report the wide range of agencies and units responsible for anti-corruption efforts in the public sector and within South Africa generally. We also discussed the international environment. What is evident is that there is no specific configuration of investigatory and prosecuting functions that stands out as working best. Apart from the

technical (policing and legal) skills required, anti-corruption agencies tend to stand and fall on the basis of their perceived fairness. This resonates very well with the South African experience. The Scorpions was ultimately dissolved because it was seen as acting impartially vis-à-vis groups within the African National Congress.

Anti-corruption units are always obliged to make choices about what to investigate and what not to. Therein lies their vulnerability. They can thus be perceived as partisan. This is why it is vital that anti-corruption units select cases on the basis of transparent, impartial and credible criteria. For example, contracts above a certain amount might be automatically subject to a preliminary audit/review. Perhaps contracts in certain sectors are especially prone to corruption (construction or the leasing of buildings, for example). SARS uses such a methodology for the selection of tax submissions to audit.

This might be one of the key roles that the Anti-Corruption Task Team (ACTT) could play – to build the credibility and legitimacy of anti-corruption units by:

- Developing an impartial and transparent framework to guide anti-corruption agencies select cases for investigation,
- Coordinating activities between these agencies, and
- Publicising these criteria in the public domain to maximize their legitimacy.

Conclusion 5: Further research and a conceptual approach for research

The analysis in this study indicates that much of the work done to date on corruption in South Africa is characterised by the following:

- It tends to focus more on the description and quantification of corruption than on detailed analysis of the drivers of corruption.
- It generally fails to take account of the complex institutional, social and individual factors that combine to create a situation where corruption is both possible and taking place.
- It tends to focus on corruption "events" rather than the complex process which has resulted in the event occurring.

PARI's research has shown the limited usefulness of understanding corruption as driven solely by individual "moral failure" and has also illustrated that similar or identical over-arching institutional environments (such as reporting regulations) can have very different results in different circumstances. An effective strategy to combat corruption depends to a great extent on how the drivers of corruption are understood. In particular, studies of corruption need to contribute to an understanding of why there is a "break" between what institutions are designed to get people to do, and what they actually do. Capturing this

complexity requires that we find a way to integrate analysis at the level of the "system" (defined here simply as an integrated group of institutions designed for the common purpose of preventing or combating corruption) and the level of the individual.

The "situational logic" (Prattis, 1976, 1978, 1987) for any particular individual is determined at the intersection of system and individual: The system (i.e. the collection of relevant institutions) provides information around key decision components. This includes the content of legislation and policies, which set out expected behaviour, penalties, etc. It also includes available information on enforcement, the likely consequences of failure, etc. The individual's input is made up of subjective preferences, personal experience, social expectations, etc. This is where notions of "fairness" (discussed above) will likely play a role, influencing how individuals view various options. External political or other pressure would also exert an influence on what choices are available. In the South African context a key element of this "situational logic" is the way that different conceptions of the role of the state play out in public sector organisations and beyond. That is, how do public servants understand their role as public servants and their relationship to the "public good", to government, to political parties and to various social classes? These may be fruitful avenues for further research.

In conclusion it should be noted that almost all of the research and empirical data collection on corruption in South Africa (including our own research) focuses on the public service and local government. There is strong evidence to suggest that such a focus obscures other sites of corruption that may be significant, including business-government relations and state owned enterprises. This is an important area of further investigation.

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