

Guarding the Guard in South Africa: Report of the International Anti-Corruption Expert Round Table



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Abstract

Within the framework of the Global Programme against Corruption, Centre for International Crime Prevention / Office for Drug Control and Crime Prevention Southern Africa developed a project which aims at assisting the Government of South Africa in its fight against corruption.

In this context CICP/ODCCP and the Office of the National Director of Public Prosecutions organized an International Expert Round Table. The Round Table was held in Pretoria from 31 May to 2 June 2000 and was attended by representatives of existing national anti-corruption institutions and major NGOs as well as international experts.

The main objective of the Anti-Corruption Expert Round Table was to provide advice regarding the set-up, mandate and structure of a national anti-corruption agency (Investigating Directorate Corruption) taking into account the experiences gained in the respective countries with the establishment and operation of anti-corruption agencies.

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I. EXECUTIVE SUMMARY

The United Nations has been concerned with the problem of corruption for more than two decades. Most recently, in early 1999, the Centre for International Crime Prevention / Office for Drug Control and Crime Prevention (CICP/ODCCP) together with the United Nations Interregional Crime and Justice Research Institute (UNICRI) introduced the Global Programme against Corruption. The purpose of the Programme is to assist Member States in their efforts to build integrity to curb corruption. The Global Programme is composed of two main parts, the action learning component and the technical cooperation component.

Within the framework of the Global Programme against Corruption, CICP/ODCCP Southern Africa developed a project which seeks to assist the Government of South Africa in its efforts to prevent, detect and fight corruption and promote integrity, transparency, accountability and the rule of law within the country.

Within the framework of this project, the CICP/ODCCP Southern Africa has been requested by the Office of the National Director of Public Prosecutions to provide advice regarding the set-up, mandate and structure of an anti-corruption agency within the newly established Directorate for Special Operations (DSO), an elite law enforcement unit, comprising investigators, prosecutors and intelligence agents.

As part of CICP/ODCCP Southern Africa's assistance programme in the area of anti-corruption, as well the overall assistance to the Office of the National Director of Public Prosecutions, CICP/ODCCP organized an International Expert Round Table to discuss the mandate and strategy for the recently established Investigating Directorate on Corruption.

The International Expert Round Table had the following objectives:

- To present to the Directorate for Special Operations with experience gained in the respective countries with the set-up and operation of the anti-corruption agency, particularly as regards strengths and weaknesses of the relevant organization;
- To discuss best practices for the set-up of anti-corruption agencies and critically review their possible application in the South African context, taking into account the specific structure of the Directorate for Special Operations, as well as other existing South African institutions mandated to fight corruption;
- To review together with the staff of the Directorate for Special Operations the structure, mandate and jurisdiction of its Anti-Corruption Unit and advice on workable solutions to operate such a unit;
- To advice on a system of cooperation with other anti-corruption agencies in South Africa, in order to fight corruption effectively and efficiently and avoid duplication of efforts;

- To enhance international cooperation in fighting the increasingly trans-national crime of corruption; and
- To provide advice on any issue related to the set-up and operation of anti-corruption agencies as raised in the meeting.

The Round Table was comprised of two sessions. The open session provided for presentations by South African government and non-governmental organizations, international experts and CICP/ODCCP. The closed session focused on issues of relevance to the establishment and operation of the Investigating Directorate Corruption.

II. RECOMMENDATIONS FOR THE INVESTIGATING DIRECTORATE CORRUPTION*

Objectives and Mandate

The primary objective of the Investigating Directorate Corruption is investigation and prosecution of corruption and offences related to corruption. The secondary objective is participation in preventive and public education initiatives.

The IDC is to focus on corruption and related cases both in public and private sectors following the legislative and strategic/operational priority criteria to be adopted and established for the Directorate for Special Operations (DSO). The National Director of Public Prosecutions may, if deemed necessary, give priority to corruption cases in particular public and/or private sub-sector, for a limited period of time. The Head of the Investigating Directorate Corruption, may, following consultations with the Deputy National Director of Public Prosecutions responsible for the Directorate for Special Operations, further prioritize within the framework and guidelines as established by legislative act, strategic plan and/or specific instructions provided by the National Director of Public Prosecutions (see above).

Relationship with Other Units and Directorates of the Directorate for Special Operations and Other Anti-Corruption Agencies

Other Directorates within the Directorate for Special Operations

Within the DSO it is necessary to establish a permanent institutional mechanism consisting of the Heads of the Investigating Directorate on Organized Crime, the Investigating Directorate on Serious Economic Offences and the Investigating Directorate Corruption to make decisions as to the allocation of cases within each Directorate and the regional offices. In case of a dispute, the decision will be made by the Deputy National Director of Public Prosecutions responsible for the Directorate for Special Operations.

* These recommendations are meant to summarize the main outputs of the Round Table and are in no way prejudicial to any course of action to be taken by the South African Authorities.

All Directorates forming part of the DSO will accept corruption-related complaints and process them to the IDC. The Investigating Directorates of the DSO will closely cooperate and coordinate their work with the Asset Forfeiture Unit; in case the Asset Forfeiture Unit becomes also part of the DSO, the relationship will be the same as regards that among the three existing directorates.

The South African Police Service (SAPS)

The DSO, and in particular the IDC, when it comes to corruption cases, will establish a close cooperative working relationship with the SAPS and its Anti-Corruption Task Force in order to increase efficiency in investigating and prosecuting corruption cases. Once the DSO legislation is in place, the National Director of Public Prosecutions may wish to enter into a strategic cooperative agreement with the SAPS to better define the mutual relationship. It is further suggested that the Head of the IDC holds regular consultative meetings with designated officials of SAPS and to promote such arrangements at the level of the regional offices.

Other Anti-Corruption Agencies and Civil Society

The IDC is to participate in the initiatives promoted by the National Anti-Corruption Forum, as well as specific anti-corruption agencies. It may be requested to accept such corruption cases reported to or detected by other anti-corruption agencies should such cases require special skills, the troika approach (investigation, intelligence, prosecution) and fall under the priority criteria of the DSO as established by legislation and the enabling strategic/operational plan.

The IDC is to involve, as much as possible, and without prejudice to its mandate and investigating prosecutorial *modus operandi*, the representatives of civil society, in initiatives related to prevention, transparency of its activities, and accountability.

Legislative Work and Reform

It is recommended that the new legislation regulating the status, mandate and organizational structure of the DSO be promulgated as a matter of urgency.

Legislative reform is needed as regards the Corruption Act, as well as related legislation to facilitate the work of the DSO, and in particular, that of the IDC, also in view of increasing the understanding and effectiveness among investigating, prosecutorial and adjudicative agencies and institutions.

In the drafting of the new legislation on corruption, due consideration should be given to international best practice, in particular Hong Kong's legislation which makes it a crime for a public servant to be in possession of wealth which cannot be explained.

Structure and Resources

The Head of the Investigating Directorate Corruption is urged to prepare a strategic plan within three months.

The plan should include, *inter alia*, provisions for staffing, relationships with regional offices, training, equipment and financial needs. It should also establish performance indicators, accountability and reporting channels, forms and periodicity to the authorities, the Parliament and the public at large.

In view of the fact that high expectations already exist about the IDC, it is imperative that it becomes operational immediately. It is suggested that the National Director of Public Prosecutions within his powers and available resources, urgently provides core staff (professional - at least three – and administrative) and minimum equipment to the IDC.

Recruitment, Training and Manuals

The staff of the IDC will be recruited following the same recruitment criteria and methods as applied for other Investigating Directorates of the DSO. Special attention will be given to providing a right mix of professional profiles to deal effectively with the various types and levels of corruption cases and their linkages to organized crime and other forms of serious economic offences and violent crime.

Professional skills are of utmost importance. Training of the new recruits and refreshment courses to incumbents should be provided periodically, using local and international expertise, as appropriate.

It is suggested that in addition to classical technical group-based training courses, particular efforts be made to ensure on-the-job training. This may take two forms:

- Study training in foreign anti-corruption agencies; and
- Receiving foreign experts for work on particular cases without involvement in the decision-making process

Due to the complexity of corruption cases, evidence gathering, protection and preparation for trial it is recommended that special investigating/prosecutorial guidelines and manuals be prepared. It is hoped that manuals utilized by a number of foreign anti-corruption agencies would be of great assistance in this regard. Particular attention should be paid to record, retrieval and protection of computer-stored and processed evidence.

Integrity

Integrity of staff and institution is a crucial matter.

In the process of recruitment, the integrity issue is as important as professional competence. No less important is the issue of institutional integrity and righteousness. Therefore the following is suggested:

- A separate internal integrity unit for the DSO should be established by the National Director of Public Prosecutions staffed with at least five investigators, operationally independent, with precise guidelines as to the permitted methods of integrity investigation and integrity testing. It will report to the National Director of Public Prosecutions. For the unit to be effective it is of utmost importance that provisions contained in whistle-blowing legislation are strictly adhered to, and perhaps even increased when it comes to internal whistle-blowers, in order to guarantee their integrity, confidentiality and normal career development and progression.
- An integrity policy and appeals advisory board should be set-up. The main functions of such a board are as follows:
 - To review integrity policy;
 - To make suggestions to the Heads of the Investigating Directorates and the integrity unit as to emerging issues and critical areas;
 - To revise integrity procedures and modus operandi, and provide suggestions as to their improvements;
 - To establish limits to integrity testing and ensure proper monitoring in view of preventing possible abuses and promoting righteousness and fairness; and
 - hear cases on appeal for disciplinary actions and/or dismissals.

The Board is obliged to inform the National Director of Public Prosecutions, who, in turn, is obliged to consult the board before making any final decisions regarding measures, including the dismissal, to be undertaken against DSO staff. The Board will report to the President in sitting with the Inter-Ministerial Security Committee (alternatively the Minister of Justice).

It is proposed that the Board be comprised of:

- A representative designated by the Chief Justice;
- A representative designated by the National Director of Public Prosecutions;
- A representative designated by the National Anti-Corruption Forum

The Board will adopt its own terms of procedure to be approved by the President in sitting with the Inter-Ministerial Security Committee (alternatively the Minister of Justice). A staff member (defendant or applicant) will have a right to participate in the inquire phase of the Board's deliberations with or without a representative of his/her choice. There is no mechanism for appeal against recommendations of the Board, while the decision of the National Director of Public Prosecutions can be appealed against in the ordinary jurisdictional procedure.

Transparency, Accountability and Credibility

Without any prejudice to the level of secrecy involved in the investigation of corruption cases, all other phases of the IDC must be transparent. Transparency and professionalism will ensure credibility.

In turn credibility will be increased by accountability to the public at large through participation in preventive and educational campaigns, contacts with the mass-media and regular (annual) public reports. The reports should contain all relevant performance indicators beyond purely operational ones, thus including levels of public confidence and appreciation of the IDC's work.

International Cooperation and Judicial Assistance

The IDC is encouraged to participate in major regional/international projects and meetings, as well as to facilitate the exchange of information and experience.

The IDC, in partnership with other anti-corruption agencies in the region and abroad should take an active role in the establishment of an effective framework and mechanisms for judicial assistance and cooperation be it bilaterally or multilaterally.

International assistance is very important for the work of the IDC and in this regard the assistance from CICP/ODCCP and its regional office for Southern Africa is highly appreciated.

III. BACKGROUND

In 1998, President Mbeki highlighted the threatening state of moral degradation in South Africa's society which was reflected in the high levels of crime, disrespect for authority and the rule of law, and the erosion of key institutions such as the family. Corruption has for long been a characteristic of the South African public service. Since 1994, achieving good governance and fighting corruption have become two of the most important challenges for the country. The fight against corruption is now a top priority for the South African Government. Numerous anti-corruption programmes and projects have been put in place by the new government, including recent initiatives on promoting accountability, transparency and the rule of law, the practice of good governance, and the establishment of government watchdog agencies to identify corrupt practices and bring them to the public attention.

Concerns around corruption have intensified in recent years all over the world. Whilst corruption is a universal problem, it is particularly harmful in developing countries where there may be more opportunities and less resources for controlling it. Furthermore, it tends to have a much more debilitating effect in emerging democracies in the developing world. Corruption adversely affects all sectors in society and corrodes the national culture and ethos of democracy and good governance. It endangers the stability and security of societies and threatens social, economic and political development. It drains the government of resources and hinders international investments.

The United Nations has been concerned with the problem of corruption for more than two decades. Most recently, in early 1999, the Centre for International Crime Prevention

(CICP/ODCCP) together with the United Nations Interregional Crime and Justice Research Institute (UNICRI) introduced the Global Programme against Corruption. The purpose of the Programme is to assist Member States in their efforts to build integrity to curb corruption. The Global Programme is composed of two main parts, the action learning component and the technical cooperation component.

Since corruption has economic, political, social, legal, administrative and cultural dimensions, the most appropriate and effective approach for technical cooperation activities is necessarily a multi-disciplinary one. An effective approach must also be multi-dimensional, because corruption needs to be tackled at the national, regional and international levels. Through its research component, the Programme will provide information on trends and policy strategies in corruption.

Within the framework of the Global Programme against Corruption, CICP/ODCCP Southern Africa developed a project which seeks to assist the Government of South Africa in its efforts to prevent, detect and fight corruption and promote integrity, transparency, accountability and the rule of law within the country.

The following activities will be undertaken under the project: a) carry out a country assessment of the corruption situation and anti-corruption measures in South Africa based on the Corruption Monitoring Protocol; b) facilitate a national anti-corruption conference with a participation of a broad based group of stakeholders to, having discussed the country assessment, prioritise issues and refine national anti-corruption strategy as well as an anti-corruption action plan, to be followed by a donor meeting to present the strategy and action plan and seek coordinated international assistance; (c) create a framework for transparent and accountable public sector contracts and international commercial transactions; (d) provide advice on best practice in curbing corruption through civil, administrative and criminal law actions; (e) advise on establishing, strengthening and coordinating of anti-corruption bodies and on introduction or strengthening of credible and efficient complaints mechanisms in executive, legislative and the judiciary; (f) advise and facilitate prevention and awareness activities among the public and mass-media; and (g) provide capacity and integrity training for criminal justice officials.

Within the framework of this project, the CICP/ODCCP Southern Africa has been requested by the Office of the National Director of Public Prosecutions to provide advice regarding the set-up, mandate and structure of an anti-corruption agency within the newly established Directorate for Special Operations (DSO), an elite law enforcement unit, comprising investigators, prosecutors and intelligence agents.

In 1999, President Mbeki announced during the opening of Parliament the establishment of the DSO to be created under the National Prosecuting Authority Act and to investigate organized crime, corruption and other high priority cases. The Act provides for the establishment of three Special Investigating Directorates to include officers of any other department of state, to conduct investigations into specific crime areas or category of offences. The following three Investigating Directorates have been established as part of the DSO: The Investigating Directorate on Serious Economic Offences, the Investigating Directorate on Organized Crime and Public Safety and the Investigating Directorate on Corruption.

IV. OBJECTIVES

As part of CICIP/ODCCP Southern Africa's assistance programme in the area of anti-corruption, as well as the overall assistance to the Office of the National Director of Public Prosecutions, CICIP/ODCCP organized an International Expert Round Table to discuss the mandate and strategy for the recently established Investigating Directorate on Corruption. (Annex I: Programme)

The Round Table was held in Pretoria, from 31 May to 2 June 2000 and was attended by some 50 participants, including heads/representatives of all national anti-corruption agencies and major NGO's, as well as international experts from: Office of Professional Responsibility, Federal Bureau of Investigations, USA; Clean Hands, Italy; Independent Commission Against Corruption, Hong Kong, China; and Directorate on Corruption and Economic Crime, Botswana. (Annex II: List of Participants)

The International Expert Round Table had the following objectives:

- To present to the Directorate for Special Operations with experience gained in the respective countries with the set-up and operation of the anti-corruption agency, particularly as regards strengths and weaknesses of the relevant organization;
- To discuss best practices for the set-up of anti-corruption agencies and critically review their possible application in the South African context, taking into account the specific structure of the Directorate for Special Operations, as well as other existing South African institutions mandated to fight corruption;
- To review together with the staff of the Directorate for Special Operations the structure, mandate and jurisdiction of its Anti-Corruption Unit and advice on workable solutions to operate such a unit;
- To advice on a system of cooperation with other anti-corruption agencies in South Africa, in order to fight corruption effectively and efficiently and avoid duplication of efforts;
- To enhance international cooperation in fighting the increasingly trans-national crime of corruption; and
- To provide advice on any issue related to the set-up and operation of anti-corruption agencies as raised in the meeting.

V. WELCOME BY MR. FRANK ALBERT, REGIONAL REPRESENTATIVE, ODCCP SOUTHERN AFRICA

Mr. Albert opened the Round Table by welcoming all participants and thanking the organizers. He particularly expressed his gratitude to the international experts for their efforts in attending this Round Table and their commitment to anti-corruption work and support to the United Nations and South Africa.

He referred to the United Nations' Global Programmes on Trafficking in Human Beings, Organized Crime and Corruption and briefly described the work of CICP/ODCCP in these areas. As regards the work of the CICP/ODCCP Southern Africa, Mr. Albert highlighted the excellent working relationship between the regional office and the Office of the National Director of Public Prosecutions. He further emphasized the importance of international cooperation and wished all the participants a successful workshop.

VI. PRESENTATIONS

Opening Statement by Mr. Bulelani Ngcuka, National Director of Public Prosecutions

Mr. Ngcuka expressed his concern about the fact that the criminal justice system alone does not function as a deterrent factor against crime or corruption. This problem is not unique to South Africa but is rather a universal problem. In South Africa, however, far too few cases lead to prosecution and conviction. The remote chance of being caught for crime makes acts such as bribery of low risk and easier to justify. Since 1994 the Government has created many agencies for fighting corruption but the overall impact has not been as effective as was hoped for and there is still a lot to be done. South Africa needs to learn from the experience of others, from their mistakes rather than their successes. It is also important to elaborate a structure for effective cooperation between the agencies to ensure an increase in the number of convictions for corruption.

Presentation by Dr. Ugi Zvekic, Senior Crime Prevention and Criminal Justice Expert, CICP/ODCCP

It is trivial to say that corruption is high on the political agenda of today but much more difficult to discern whether there was really an increase in corruption since there is a lack of reliable evidence and the evidence that exists is very partial. This makes it difficult to talk about trends over time.

Corruption sits well with conditions of the abuse of monopolistic powers. This includes not just political powers but also financial and economic powers in the private sector. Corruption is a problem in all monopolistic positions where there is a lack of regulation, control, prevention and certainty of the rule of law. Institutional and legal frameworks to reduce monopolistic positions and unfettered discretion are needed both in the private and in the public sector.

There are different levels of corruption:

- Street level or routine corruption (among the low- and mid-level public administration, normally in the form of bribes). According to all comparative international research, this form of corruption is most common in developing countries and in countries in transition. Remedies are to be sought in the prevention area, including the public service culture.
- The nexus between business and the public sector is very marked in all emerging market economies. When the market opens up without regulatory and institutional frameworks in

place and when the rule of law is less developed, corruption follows. This level should be a prime target of the regulatory, criminal and civil law fight against corruption, since it has a great impact on human and economic development.

- Top-level corruption should be vigorously prosecuted through criminal justice. At this level there is no clear division between developing and developed countries. Evidence shows equally systematic cases of top-level corruption both in the developed as well as the developing world.

UN activities: The draft Convention against Transnational Organized Crime makes reference to corruption although the work on a separate convention against corruption will start soon. It is hoped that the SADC region and especially South Africa will take the lead in the preparatory work for this convention. The Global Programme against Corruption provides a framework for:

- Regional activities: The CICP/ODCCP, together with NGOs, SADC and governments in Southern Africa, is developing a standard protocol for monitoring the extent of corruption and extent of activities to fight corruption by governments and civil society. This programme is the first regional component of the Global Programme against Corruption.
- South Africa: The CICP/ODCCP is elaborating an anti-corruption strategy programme, which will involve all main anti-corruption actors and structures in the country. There is a burning problem of coordination and cooperation which needs to be addressed during the Round Table.

The fight against corruption must be approached at all levels: through prevention, regulation, investigation, prosecution and adjudication. The experiences in South Africa with criminal as well as civil litigation deserve full attention and need to be promoted together with the development of other approaches such as education and awareness (through civil society), early warning mechanisms, disciplinary and administrative approaches. It is important that the civil society is part of the fight against corruption. Corruption by nature involves two parties and citizens are both victims and “reluctant” suppliers of corruption. Therefore, both assistance to victims and deterrence of offenders is needed.

The Investigating Directorate Corruption, which falls under the NDPP and the DSO, is the newest anti-corruption unit in South Africa and it has great chances to be successful. It is important to ensure it will be transparent, credible – in the eyes of the citizens as well as other agencies - competent (with well-trained staff), efficient, authoritative and well coordinated with other units. It must also promote international cooperation, and this Round Table should be seen as an introduction to international cooperation.

Presentation by Advocate Dawood Adam, Head of the Investigating Directorate Organized Crime and Public Safety for Western Cape

The Investigating Directorate on Organized Crime (IDOC) in Cape Town deals with a broad range of issues such as major drug cases, gang wars, urban terror, and taxi violence. The approach is multi-disciplinary; lawyers/prosecutors drive the projects but work closely with the investigators who are seconded from the South African Police Service (SAPS). An important part of the work is to interact with intelligence agencies and to convert intelligence into evidence that can be used in court. The novelty of this structure is that the investigators and the lawyers form a partnership and work together in accordance with principles of a corporate environment, which provide effective outcomes. In the past, the police did the investigation and handed it over to the prosecutor who needed a long time to digest the material and then take the case to court.

It is important that the Investigating Directorates interact directly with the citizens at the grass-root level as well as with the top-level positions in the bureaucracy in order to prevent corruption throughout the system. Anti-corruption activities through awareness programmes and clear policies must target all levels in the public administration. A conference on cooperation between all the different law enforcement agencies was held last year and this was seen as a very important step.

The necessary tool for fighting corruption is legislation. A number of aspects of the key legislation need to be revised. A forum like this Round Table should also invite legislative reform.

Apart from the unit in the Western Cape, there is also an IDOC unit in Kwazulu Natal, which was prompted by the political murders in Richmond, and one unit in Gauteng, which deals mainly with vehicle hijackings. IDOC is an infant organization (it has only existed for 18 months) and it is in the process of being incorporated under the Directorate for Special Operations (DSO).

Discussion

With regard to the relationship between IDOC and the police in the Western Cape, it should be noted that the police are demoralized and citizens have given up and turned to vigilantism.

There is a widespread perception that the police are corrupt. IDOC and the police must be accessible to the citizens and have direct contacts with the people. The police stations should be looked after by the community. IDOC's staff in Cape Town have made themselves available after hours in order to reach out to the community. Anybody who wants to report a serious crime is welcome to do so and reports can be made anonymously. The reports are then passed on to a specialist within SAPS. IDOC is still under-resourced and does not have the capacity to be

effectively available 24 hours a day. IDOC is also offering their services to the police although there is some misunderstanding between the structures. However, IDOC or the NDPP is not capable of doing everything and needs to work closely with SAPS. Furthermore, the mandate of IDOC is limited to serious organized crime.

In terms of preventive work, IDOC is involved with the community. Staff visits schools and interacts with the children in a personal manner. A number of magistrates are also doing this. Also, the gathering of intelligence in the daily work feeds into the system and results in policy thinking at a national level.

It was noted that Judge Heath, Head: Heath Special Investigating Unit (civil litigation) expressed interest in meeting with IDOC in Cape Town and Pretoria to discuss ways for cooperation.

Presentation by Mr. Pete Richer, Head of Operational Support, Directorate for Special Operations (DSO) – Scorpions

President Mbeki announced the establishment of the Directorate for Special Operations (DSO) in his State of the Nation Speech after the elections in 1999. The reasons for establishing a new crime-fighting unit outside SAPS was the deep concern in the communities of the perceived level of organized crime and the fact that the communities often knew who the criminals were.

The announcement established a special investigating unit, which should:

- Investigate all national priority crimes, including police corruption;
- Be adequately staffed and resourced; and
- Be activated through an inter ministerial process.

The first issue posed particular problems since there were various lists of priority crimes. However, the sentiment was clear: “go after the worst”. This was proposed to mean serious cases of crime related to organized crime, terrorism and crimes against the state, serious economic offences, corruption in the police, the criminal justice system and the security forces as well as individual high profile crimes.

It is estimated that 90 per cent of all crimes will be dealt with by the SAPS, and ten per cent by the DSO. These ten per cent will be determined by the following criteria:

- High level of seriousness/impact of a national nature;
- High level of violence;
- High level of organization (enterprise related crime);

- Require an integrated multi-disciplinary approach; and
- Very high profile.

It will thus be a selection process in order to get the greatest impact on the fight against crime as well as address the perception of crime which is a deep concern for South Africa's reputation internationally.

The new unit should be based on the troika principle: Intelligence, Investigation and Prosecution, which must all work as a uniform team from the very beginning of the investigation. The theme is "prosecution led intelligence driven investigations".

The main challenges were to avoid duplication and fragmentation but rather increase co-ordination, to focus the existing resources, establish clear lines of accountability and to ensure effective witness protection capacity.

The DSO was formally launched on 1 September 1999 as a virtual organization. It should be a world class law enforcement agency. Officers were handpicked from other agencies and put together on a task force basis.

The mission of the DSO is to:

- Build respect for the law, fighting crime as well as the perception of crime (which is greater than the crime itself);
- Get publicity and be on the scene;
- Work in partnership with communities and related agencies;
- Focus on crime of national impact;
- Integrate intelligence, investigation and prosecution; and
- Use modern technology.

The core values of the DSO are to be rights based as determined by the Constitution, have uncompromising personal and institutional integrity and to be goal orientated, dynamic and professional.

Within the DSO there are project teams consisting of investigators, analysts, operational support staff and prosecutors. The specialized prosecutors are divided into organized crime, serious economic offences, corruption and general crime.

The Office of Internal Integrity is envisaged as a separate anti-corruption unit with over all responsibility. It reports directly to the NDPP.

Discussion

With regard to the legal framework in vigor, the DSO is currently operating under the National Prosecuting Act (the NPA Act). New legislation is to be passed. It will be one set of legislation encompassing all the different units and directorates of the DSO.

Regarding the mandate on corruption cases, according to the initial proposal, the mandate should be limited to corruption in the police, criminal justice system and the security forces. However, it is a widely held belief that this is too restrictive and that the unit should be able to deal with very serious cases of corruption at a national level. Furthermore, a bulk of the police corruption will most likely not meet the criteria of the DSO. It is important that the new corruption unit will be given sufficient resources. It was agreed that there is a need to look at international experiences on the question of how to limit the mandate. One view was that it was logical to first deal with corruption in the agencies tasked with fighting corruption and that corruption in the law enforcement agencies should be given priority.

In view of cooperation with the anti-corruption unit within SAPS, at present there was very good cooperation with the SAPS unit but it is important that the two units have a degree of independence and that this is clarified.

The issue of wide spread corruption with regards to the procurement in the provinces was noted as a concern.

Regarding the staffing of the Office of Internal Integrity, advertisements have been placed but no applicants were found to be suitable. Other means of recruitment need to be explored. An idea is to have foreign law enforcement agencies to place personnel on a temporary basis, which would rotate. An external person may authenticate the work and add an element of independence.

With regard to the appropriate location of the Asset Forfeiture Unit (AFU), it is currently being discussed if the AFU will fit into DSO totally or under the NDPP. It is a service unit to DSO as well as to the normal structure of the NDPP.

Advocate Lynette Davids, Deputy Director, Directorate on Serious Economic Offences (IDSEO)

The mandate of this unit is to investigate specific offences as contained in the President's Proclamation. Corruption makes only 15 per cent of the total number of investigations by IDSEO. Fraud is the most prevalent. Corruption cases are limited to cases where payments are received from companies with the expectation to be favoured. There are very few complaints from the public on corruption, corruption is usually part of a bigger fraud investigation and not the primary focus.

IDSEO was established in 1991 by the Investigation of Serious Offences Act, which was later repealed by the National Prosecutions Act. It is part of the office of the NDPP. It became an independent unit in 1998. The staff consisting of prosecutors, police and accountants, works in teams and can also employ other experts as required. The accountant is not used as an investigator but should rather be an impartial independent expert who can assist from time to time. He submits reports, which form the cornerstone of the investigation, helps to plan the investigation and may also testify in court.

IDSEO has the power to summon any person and compel him/her to give evidence. It can conduct its own prosecutions although only after consultations with the Director of Public Prosecutions in the jurisdiction.

There is a specialized commercial branch of SAPS supported by Business against Crime (BAC), which deals with syndicate frauds. A specialized commercial crime court has been established in Pretoria as a pilot project also supported by BAC. This court tries medium size cases and has the jurisdiction of a regional court. Its set-up might be ideal for corruption cases.

Discussion

IDSEO has proved to be effective and has extended to Durban and Cape Town. The unit needs to be more proactive and to run more suspect focused investigations. It also needs a proper database and has received some assistance from the FBI on this. It was noted that the different Investigating Directorates should receive computer service and support from the DSO in the future.

So far very few cases led to prosecution and conviction. The majority of cases are still being investigated.

It was noted that the mandate of the new Commercial Crime Court covers cases with an impact on the business community, which finances and administrates the court. It is thus not likely to deal with corruption cases at present.

Presentation by Mr. Willie Hofmeyer, Head of the Asset Forfeiture Unit

The Asset Forfeiture Unit (AFU) is a special directorate within the NDPP. The procedure is regulated by the Prevention of Organized Crime Act, 1998. There are two different models of asset forfeiture: criminal and civil.

The criminal model is still de facto a civil procedure but it can only take place following a criminal conviction. This system is based on UK legislation. It applies to all crimes. The prosecutor must show that a person has gained a financial benefit to a certain amount from crime. Then a normal civil judgement will be passed which can be executed against any property. The advantage of this system is that once somebody is convicted of an offence, there is a presumption that anything he/she owns is derived from the offence and the onus is on the accused to show that the assets were acquired legitimately. Anything that has been in his/her possession during the last seven years can be forfeited, even if the offender does not own it anymore, as well as all the money spent during the last seven years. The proof required is the civil test of a balance of probabilities, not beyond reasonable doubt. The criminal asset forfeiture has a fairly long history in South African law but has very seldom been used until last year.

The civil model is based on US legislation and allows for the seizure of assets without the need for a criminal conviction. It must be shown that the assets are dirty or tainted; that it is proceeds of crime, stolen money or something that has been bought by stolen money. The judgement cannot be executed against any asset. It is often possible to prove that all assets are proceeds of crime.

Instrumentalities are assets used to commit a crime. This category is expanded in the Act and includes for example a car that has been used for transporting stolen goods and a house used for selling drugs. In the US it is extended even further and in one case cattle on a ranch that was used as a drug factory was found to be covered. Also, a mansion where a drug deal was planned was part of the commission of the crime.

Since this can have very drastic consequences (a kid growing dagga in the garden could lead to forfeiture of the parents house) there has to be a balancing rule, a test of proportionality. The UK customs seized a Canadian jet with dagga on board. The European Court of Human Rights supported the notion of proportionality.

There are some safeguards in the South African law, which do not exist in the US. A husband used the car, which he owned together with his wife to pick up a prostitute. The state wanted to take the car and the US Supreme Court said it was constitutional although the wife was completely innocent. The objective of the law is to discourage property owners to let the property be used for crimes. In South African law a person is protected if he/she can prove innocence.

Asset forfeiture can effectively be used in corruption cases. The criminal model is easier and more common. What has been stolen is often worth more than the assets but it takes a long time since a conviction must first be obtained. The state can act early and freeze assets in order to secure them for the future. After freezing the assets an application for forfeiture must be made within 90 days.

The civil model can be used in some corruption cases when the evidence is not strong enough for a conviction. It requires a lot more financial investigating work in order to trace the money but is faster.

The Asset Forfeiture Unit has only exceptionally been involved in corruption cases affecting public officials. The Heath Special Investigating Unit uses much the same powers. It is important not to overlap and duplicate the work.

There is a powerful legal instrument against public service corruption in Hong Kong, which is of great interest for South Africa. The law makes it a crime for a public servant to be in possession of wealth, which he cannot explain. This legislation has been very successful. It may seem drastic but it is within Hong Kong's Constitution and Bill of Rights. The problem of corruption in South Africa is so serious that drastic measures are justified. Unexplained wealth should be forfeited even if the possession is not made a crime.

Organized crime and corruption of public officials are closely linked. This is an argument for the courts to take corruption offences more seriously than they are at the moment. If a head of a syndicate is sentenced and thus removed while the criminal structure remains untouched, the second in line will just step in. To take away the criminal's assets has a very good deterrent effect: It hits where it hurts most. Often it is not possible to get the syndicate leaders into prison as they are too sophisticated. Asset forfeiture allows to at least get their money. An example is a formerly convicted drug dealer who was stopped with a large amount of cash found in his car. The police could not prove it was his money but would build up a circumstantial case to prove that the money is proceeds of some drug deal. The police will invite the owner of the money to step forward and claim the money but as he would have to explain how the money got in the car, it is most unlikely that it will be claimed.

Further litigation is expected in the future. A few test cases have been brought to court and some clarity of the law and its interpretation has been reached. However, a lot has still to be interpreted. In the US it took ten years to use asset forfeiture successfully and a number of cases went to the Supreme Court.

There is a need to build up an expertise and to find test cases in order to lay a basis for asset forfeiture to be widely used in South Africa and make a real impact on crime. Local prosecution cases have started to employ forfeiture experts to work side by side with the prosecutor and the police. It is important that prosecutors as well as the police get training in the proper use of the legal instruments.

The Asset Forfeiture Unit will largely play a support role and add capacity and expertise to ordinary criminal cases. It is not intended that it should replace the ordinary police and prosecutors. Cooperation is the key. Corruption is one focus area where asset forfeiture should be able to make a significant impact.

Discussion

The Asset Forfeiture Unit has operated for less than one year and has dealt with 26 cases so far. It had a tough time in the courts and three out of six cases have been lost due to the non-

retrospectivity of the law. Since the law has been amended the problem should be solved. New legal issues arise all the time and this area of law is very complex. 80 – 90 per cent of the cases have been won which is a very satisfying result. So far only two cases led to confiscation of money: R 145 000 of cash in a car and R 45 000 in a drug deal. It will take two to three years to really start bringing in significant amounts of money. It is not the purpose to raise money for the state although it is used for fighting crime. The objective is to deprive criminals of illegal gains.

A restraint order or a preservation order can be granted at an early stage in order to secure the money. A curator will look after the money.

So far the cases have been in the private sector rather than the public although more and more corruption has been exposed. The penalties are completely inadequate and do not act as a deterrent at all. Other problems are that convictions often cannot be obtained due to a lack of valid evidence; it is cumbersome to get rid of a corrupt employee and the courts have a lenient attitude to white collar crime. Some recent cases have, however, resulted in tougher sentences. The link to serious violent organized crime needs to be stressed. Many judges do not understand the complicated law and often it is necessary to demand urgent measures, which put pressure on the judges. This will improve in time.

There is a real problem to seize assets, which have been transferred abroad. International co-operation needs to be improved. There is no enabling legislation in the SADC region to make judicial assistance effective.

Presentation by Professor Stan Sangweni, Chairperson of the Public Service Commission

Professor Sangweni briefed the participants on the role of the Public Service Commission as the flagcarrier of the Government's anti-corruption programme with a view to developing a National Anti-Corruption Strategy.

In October 1997, a Ministerial Committee was mandated by Cabinet to consider proposals on the implementation at national and provincial levels of a National Campaign against Corruption. The first step of this process involved the holding of the Public Sector Anti-Corruption Conference in Parliament from 10 – 11 November 1998. This conference was followed by the National Anti-Corruption Summit from 14 –15 April 1999 which was intended to underscore a sense of urgency and the need for an action-driven approach to corruption. The Summit included all relevant sectors of society which shared an interest in developing a national integrity strategy.

One of the resolutions of the Summit was the call on all sectors to develop codes of conduct. Since then most of the role-players have developed their respective sector specific codes of conduct and ethics.

The Summit also called on the Public Service Commission to develop a national integrity strategy. The Commission has since set-up a nationally managed hotline for receiving telephonically information about corrupt practices.

A Cross-Sectoral Task Team has been meeting regularly since August 1999 and has among other issues debated a Constitution. The document should be finalized within the next 30 days and presented to Cabinet for approval. The approval will lead to the adoption of a new formal National Coordinating Structure “with the authority to effectively lead, coordinate, monitor and manage the National Anti-Corruption Programme”.

South Africa shares with the international community the responsibility to fight corruption as a “phenomenon that is one of the most debilitating legacies of the twentieth century”. The emphasis in South Africa has been on the need for integrity development, including the furthering of ethical values.

Presentation by Mr. Alan Lai Nin, Commissioner of the Independent Commission against Corruption, Hong Kong

The ICAC was established in 1974 following the “dark ages” of a high level of corruption in Hong Kong between the 1950s and 1970s. Bribery and extortion of government officials was the rule and corruption was widespread within the police. Public frustration grew and led to a crisis in 1973 with a public outcry. The government appointed a commission of inquiry and found a need to establish an independent body, the ICAC, tasked to combat corruption in the private and public sector.

There were some worries about the future of the ICAC after the transition in 1997 but a law was passed that would ensure that the unit was preserved and the Chinese government has not tried to interfere with the work of the ICAC. There are frequent contacts with the counterparts in China, which was also the case before 1997. There is a mutual assistance scheme resting on reciprocity. In Mainland China economic crime and corruption are big problems and the Government has its own system to tackle it. There is no independent organization. Party members and non-party members are treated separately. Capital punishment is being used for serious economic offences. There are thus two separate systems. Hong Kong hopes to influence the mainland especially in the area of prevention of corruption and to share their experiences of education, e.g. ICAC has produced a drama series, which had very good audience ratings in Mainland China.

The ICAC has been very successful and it enjoys large support from the citizens. Complaints about corruption in the police have dropped remarkably and the non-anonymous reports have doubled. A greater willingness among the business community to report cases is also noted. In a survey among multinational companies establishing regional headquarters in Hong Kong, the most important factor for choosing Hong Kong was the cleanness of government. Government officials are not allowed to accept any advantages in the performance of their duties.

There will be a symposium in Hong Kong later this year on corruption and law enforcement in the Information Technology World. Technology has led to less paper documentation and more electronic filing. There is a need to learn how to use electronic data and protect evidence. A unit within ICAC specializing on computer crimes is dealing with this issue.

The main factors of ICAC's success are the following:

- Independence from the rest of the administrative sectors. The ICAC is the only anti-corruption agency in Hong Kong. In the beginning the police was the prime target and amounted for half of all complaints;
- Adequate resources. There is 1 300 staff; 950 investigators, 60 working with prevention, 200 on community relations and support staff;
- A functioning legal framework;
- A system of checks and balances; and
- A strong commitment and political will.

Discussion

The resources in South Africa are very scarce and cannot be compared to Hong Kong. However, it is also a matter of political will, as to how much importance is given to anti-corruption work compared to the cost of the consequences of widespread corruption. In this regard, the costs of a lack of foreign investments must be taken into consideration. It has been shown that the level of corruption is of utmost importance when a company is deciding on where to invest.

Presentation by Mr. Roger Batty, Deputy Director of the Directorate on Corruption and Economic Crime, Botswana

The DCEC was established in 1994 to fight economic crimes against the government. The unit has 150 staff and a budget of R 12 million. It is based on the same three-pronged approach as the ICAC in Hong Kong: investigation/prosecution, prevention and public education. The system is based on the idea that although investigation and prosecution act as a deterrent, it is not enough. The total problem must be addressed and this can only be done by changing people's mindsets and remove opportunities. It is the single anti-corruption body in Botswana, which is justified on the basis that it will enable the concentration of the problem, avoid problems of coordination and enable the focusing of resources. It will also ensure operational independence.

Political will is crucial for an effective anti-corruption unit. This means that the government has to establish an effective organization, it must ensure that it has operational independence, it must continue to provide adequate recourses, it must ensure longevity, it must enact empowering legislation and it must accept any possible consequence to itself. Furthermore, it must accept the consequences to individuals and must be apolitical.

Effective legislation should be in place, establishing the organization. It should also provide for the appointment and removal of the chief executive and the deputy. It should provide for accountability of the organization, for the appointment and removal of officials, provide for new offences if the existing legislation is inadequate, create power of investigation, impose a duty to educate the population and to seek their support and finally, to impose a duty to take preventive action.

As regards the necessary legislation, Botswana has followed Hong Kong and made it an offence to have unexplained wealth. This is, however, not restricted to public officials but is applicable to the whole population. The court decides if the person has given a satisfactory explanation. In tendering procedures it is an offence to act in conflict of interest.

Education and prevention are considered to be as important as the investigation. Physical as well as human resources must be adequate. The DCEC has a separate Head Quarter, a confidential communications network and technological equipment. The staff consists of white-collar crime investigators, intelligence analysts, accountants, surveillance operators and lawyers who guide and direct the investigations. The decision to prosecute is taken outside and independently of the

DCEC. There are also systems analysts who work with prevention and teachers and media experts who work with public awareness.

DCEC has become known to the public through posters, radio programmes and information in schools. According to a survey, ten per cent of the population knew about the DCEC in 1996 and 50 per cent in 1999.

A successful anti-corruption body must be operationally independent in the sense that no one should be able to decide whom to investigate. The leader of the organization should enjoy public trust, have an unblemished record and be perceived as apolitical.

As regards the mandate of the unit, there is a clear problem of defining grand and petty corruption. Minor bribes can be made for very serious offences. The problem must be addressed as a whole.

Confidentiality and transparency must work hand in hand. Confidentiality should be restricted to operational investigations only. The organization should preach transparency, ethics, accountability and also practice this.

Operational procedures: The DCEC has a report centre and hotlines with 24 hours accessibility. They receive 1 500 complaints a year, 35 per cent are relevant to their work. There is a reference service. 85 per cent of the complainants give their names and it is a policy to always provide feed back within 48 hours and again when an investigation is concluded. Confidentiality is guaranteed, if required. This is costly but necessary. A decision to open an investigation is taken by a committee of seven, which meets twice a week. Also, a decision to close an investigation is never taken by an individual alone. Interviews with suspects are always recorded on video or tape recorder.

There is a system of internal monitoring and testing of the staff's integrity. Techniques used are random telephone sampling, monitoring of calls, declaration of assets and surveillance of officers. In the internal review process a senior investigator reviews every case once a month.

Prevention is a high priority and public education is based on the reality. It is important that the message is given at the right level. The whole population must be targeted with a special focus on youth (7 to 14 years of age). A working relationship with the media needs to be cultivated. An anti-corruption programme is build into the national curriculum. Education officers often go on field trips to deliver information and presentations in schools including the provision of training to the teachers.

Botswana's experience shows a lot of shortcomings:

- There is no external review body, which is necessary for transparency;

- There is no power to fire an employee without a reason like in Hong Kong. The reduced security should be compensated by better salaries than the rest of the public service;
- The courts are slow and the prosecutors have a heavy workload;
- There is a problem of international cooperation. There is a campaign to form an association of anti-corruption agencies and to have own communication channels. At the moment, the line of communication must go through Interpol, while the police might be the very target of the investigation.

Discussion

The costs of witness protection are included in the budget. However, the funds have never been used. This scheme is separate from the police. In-house lawyers are guiding the investigations. The decision to prosecute is always taken by an Attorney General although the actual prosecution can be carried out by both.

There is provision for confiscation of money and similar legislation for recovering proceeds of crime. The system for recovering assets has not been so successful. A suspect can be compelled to disclose all assets and explain any excessive wealth. The conviction rate is 70 – 75 per cent.

The unit is collaborating with CICP/ODCCP to elaborate an effective measurement of anti-corruption activities.

Presentation by Mr. Gherardo Colombo, Deputy Public Prosecutor in Milan, Italy, and Head of the “Clean Hands” Operation

Corruption is a very widespread problem in Italy. The “Clean Hands” Operation started in 1992 and since then more than 5000 people have been investigated including prime ministers, ministers, members of Parliament, police, judges and entrepreneurs.

The issue of independent magistrates has been addressed in Italy. It is important that they are not dependent of the legislative or executive powers and that they are protected to some extent from influence by public opinions and the media. The careers of judges and prosecutors are not separated, which enhances a mutual understanding among them. The police report directly to the prosecutors and are protected by their independence. The “Clean Hands” Operation has received a lot of support from the public and the media.

The investigation is limited by law to a period of two years. An investigation normally takes about six months but then it might take five years before a final judgement is passed. The slow process in court is a serious problem. Bank secrecy is completely removed during investigation.

There is a big problem with regards to international judicial assistance. Corruption is becoming increasingly internationalized and the requests for international assistance are likely to increase in the future since it will be more movement of illegal capitals. The new Convention against Transnational Organized Crime will deal with this problem and make it mandatory to provide judicial assistance. A problem with the convention is that it does not provide for deadlines for answering to a request for assistance. Bilateral contacts may often be more effective. When there is no formal agreement the co-operation is based on courtesy and reciprocity.

Italy has requested assistance from 29 countries so far but has received very few answers. The most frequent requests have been made to Switzerland, Liechtenstein, Luxembourg, the UK and the Bahamas. No such request was made to South Africa.

Presentation by Mr. Michael de Feo, Assistant Director, Office of Professional Responsibility, FBI, USA

The Office of Professional Responsibility is the internal integrity unit in the FBI. It is based on the inquisitorial system and carries out investigations, prosecutions and also imposes punishments. There is no judicial review of the decisions.

Corruption and misconduct are seen as committed by two different groups of people: “the meat eaters”, who are aggressive and seek immediate gratification, and the “grass eaters”, who are of weak character and situational offenders. The FBI office is designed to control both of these groups. The “meat eaters” are identified and punished. 20 – 30 employees are dismissed every year and twice as many resign voluntarily. (There are 28 000 people working for the FBI). The “grass eaters” are inspired and conditioned to resist influence by the “meat eaters”.

All officers in the FBI are subjected to comprehensive inspections on a regular basis. The system is working reasonably well. Every year a report is published. Two per cent of the employees are investigated per year and 1 per cent are subjected to some kind of disciplinary measure. The office receives thousands of complaints every year. If the complaint is specific enough it will be investigated. 500 – 600 cases are investigated each year. The numbers are published in the yearly report with a list of offences and the penalties given. No names are revealed. The report is intended to fight misconceptions and rumours concerning the work of the office.

There are also daily reports on investigations on a managerial level and a monthly summary report of all cases that have been opened or closed. The office reports to the Prosecution Office of the Department of Justice and to the Office of the Inspector General of the Department of Justice who reports to the Attorney General and the Congress. Both of these bodies can approach the Attorney General requesting that she takes over the case.

The office cannot solely rely on complaints and voluntary witnesses since corruption is a consensual crime, it has also to use intrusive investigation methods such as undercover operations and internal observers.

The view of the office is that prevention is better than reaction although in reality a combination of the two is necessary. Accountability is an important aspect of prevention and citizens should demand accountability of the public officials. In the US, early warning indicators are being developed which reveal tendencies. For example, it has been shown that there is a correlation between police brutality, corruption and traffic accidents.

There is a rigid personnel recruitment system within the FBI. Staff is recruited by a selection board and an executive board must approve the choice.

More due process aspects have been introduced in the disciplinary proceedings and an agent can be represented by an attorney, he/she must also be given notice when an investigation is opened. An agent can appeal against a decision to an executive board consisting of three members, of which one is chosen by the employer.

In London the Metropolitan Police has introduced a new innovative method for fighting police corruption. They carry out random and targeted checks as well as decoy operations. The programme is designed to test the entire police force and enable them to statistically measure the amount of corruption. This will facilitate targeted actions and show the public that something is being done.

Presentation by Ms Lala Camerer, Head; Anti-Corruption Strategies, Institute for Security Studies, South Africa

The Public Service Commission has recognized the importance of civil society in the fight against corruption. Civil society can carry out monitoring, analysis, act as a watchdog and raise awareness. The national anti-corruption initiative in South Africa will establish a National Anti-Corruption Forum, which can be a way to increase co-operation and information sharing. This Forum will be established by the Public Service Commission by 1 August 2000 and consist of 30 persons from the public sector, the private sector and civil society.

Civil society is also subject to scrutiny and must keep their house in order. There have been cases of abuse of donor funds. Civil society can access information and do independent surveys, which form an important part of their work. There is a great need for more information on the extent of corruption. Corruption is a discreet, victimless and consensual crime, which makes it difficult to obtain information. Furthermore, the information that does exist must be interpreted properly. There is a study carried out in 11 African countries that establishes a public database with basic information.

One of the existing methods of measuring corruption is the Transparency International Corruption Perception Index. Also, under CICP/ODCCP's Global Programme on Corruption, a protocol will be established for measuring corruption.

In South Africa, a national victimization study on the individual perception of crime was carried out in 1997. This kind of survey is only useful to see trends over time. The ISS carried out further studies on victims and found that police corruption is preventing people from reporting crime.

According to IDASA, corruption is one of the most important problems facing the South African government after job creation, crime and security. The perception of corruption must also be measured. In 1995, 45 per cent of the people believed public officials were corrupt. In 1998, the number was 53 per cent. 60 per cent think that the government is not doing very well in fighting corruption.

The legislative framework is developing and a rather comprehensive set of laws is available. The problem is to implement them. There is a serious question of the enforceability of the Corruption Act. The Department of Justice is involved in legislative reform of this act.

It is hoped that the new Investigating Directorate Corruption will receive training for their officials in implementing the law and that there will be more cooperation between investigators and prosecutors. It is important that information on results in the form of charges and convictions will be made available in order to see that the system is working properly. There are many different units working with corruption and the mandates need to be very clear so that the public will know who does what. Also, resources need to be optimized.

The question of independence of the unit needs to be stressed. The Heath Special Investigating Unit has continuously pointed out the Unit's problem with requiring the consent of the President prior to pursuing an investigation.

There also needs to be a system of checks and balances to prevent abuse of powers. The NDPP has proposed to introduce a court management system to trace cases and prevent corruption.

Media plays an important role in public scrutiny and holding public figures accountable. They are also promoting public service ethics and have highlighted many corruption scandals.

The cross-sectoral approach to anti-corruption work that exists in South Africa is good. The public and private sector should work together with civil society. Public education and awareness are crucial for promoting a new culture of ethics and values. It is important to show people the negative impact corruption has on their lives.

Discussion

A survey by IDASA has identified the following challenges:

- A comprehensive national survey to capture baseline data as proposed in the CICP/ODCCP Global Programme on Corruption (so far there has been no survey focusing on corruption only);
- Ongoing review of the corruption legislation and the new legislation that will come into place;
- Training of prosecutors and investigators;
- Education packages and public awareness;
- Intelligence driven approaches

The Public Service Accountability Monitor at Rhodes University is running a monitoring programme in Eastern Cape with a database of cases based on media reports. It may be possible to cooperate with the new Investigating Directorate. There is not always a need to prosecute cases or it may be difficult to do so because of lack of evidence. These cases should be referred for disciplinary proceedings.

The backlog of cases and the lack of cooperation between different agencies is a big problem that often leads to officials being suspended for long periods of time on full pay. There is also no proper communication channel at the grass roots level. A lot of dialogue is going on but it needs to be disseminated.

An aspect of anti-corruption work is that the more that is being done the greater will the perception of corruption be. Therefore, any government activity against corruption stimulates the perception of corruption. It is important to be aware of this matter.

An anti-corruption agency must be credible. This is measured by straightforward questions and by how many non-anonymous reports they receive. If there is more than one organization they cannot all have the same level of credibility. It is difficult to compare different countries as regards the level of credibility and this must be born in mind when monitoring is being done. Success should not just be measured by figures. The most important issue is that people have confidence in the agency and that they turn to it.

VII. DELIBERATIONS IN THE CLOSED WORKING SESSIONS ON THE ESTABLISHMENT AND OPERATIONS OF THE INVESTIGATING DIRECTORATE ON CORRUPTION

Introduction

The new unit was proclaimed by the President on 23 February this year and is formulated in the Government Gazette 20997 published on 24 March. The Proclamation establishes an Investigating Directorate to deal with offences related to corruption. It will be structured within the NDPP and incorporated under DSO.

The following are general problems which have to be addressed by all the Investigating Directorates:

- *Lack of personnel*: Trained staff is leaving to the private sector. At the moment only 22 police officers work as investigators nationally. When a person resigns in the middle of an investigation it impacts on the pending case. In order to at least prevent information to be used outside of Government, IDOC in Cape Town makes prosecutors sign a comprehensive secrecy agreement prior to joining the organization.
- *Lack of resources*: New solutions must be found. The complainant may have to pay a part of the costs for the investigation or even assist in the investigation. This is already practiced by banks encountering problems with fraud.
- A state of transition. There is a lack of solid legislative foundation. New legislation is to be passed and the mandates of the different units are likely to change. It is therefore a time of great uncertainty.

Mandate and Objective

Background

No definition has been given of what areas the unit should concentrate on and it was discussed in detail how wide or limited the mandate should be. The Investigating Directorate on Organized Crime had the same problem in defining its mandate and objectives when it started. A study was done which showed the most serious problems in the country, leading to the respective focus in the different provinces with regard to priority crimes.

Investigation with a view to prosecute

There are many anti-corruption agencies in South Africa. What will make this new unit unique is that it will tackle corruption through intelligence, investigation and prosecution. The unit will carry out investigations with a view to prosecute the cases in court. It will not deal with disciplinary cases.

Extent of the mandate

One view was that the unit should only deal with corruption related to the criminal justice system. Another view was that the mandate should be very wide and that if the intention was to have a limited mandate this should have been spelt out in the proclamation. It was noted that it is very difficult to distinguish between petty and serious corruption since a small bribe can still lead to a serious crime.

The fact that the unit will be part of DSO is decisive for the mandate. It can be argued that it should only deal with more serious corruption cases, which are of high profile and a national priority, and that cannot be adequately dealt with by the existing police structure. The unit should focus on the top ten per cent of criminal corruption cases.

Since the new unit derives its functions from the NDPP and the DSO it can not be given a broader mandate than those units. Today the only legislative base for the DSO is the National Prosecution Act, which does not provide for prevention and education activities. The principal objective is to combat corruption. This will be done through investigation and prosecution of offences related to corruption. In order to carry out these functions effectively, it will when appropriate, be involved with prevention and education in cooperation with other agencies. It will work on a basis of complaints but also be accessible and transparent.

Relationship to other units

The unit should work with the police and together identify areas where the police are not able to cope and where the unit will have to step in. The extent of overlap between the three Investigating Directorates and their mandates must be identified clearly. It will be important that an institutionalized internal mechanism is established that will determine the relationship between the directorates and the allocation of cases. However, they can also do joint projects and a case may start in one unit and later be taken over by another. The three directors could meet periodically to review and make decisions on cases. There must also be an internal procedure for referring cases to the right directorate. It was noted that the management of DSO is presently meeting to discuss these matters. It is important to have a database linking the agencies and units together.

Only the police have the power to investigate and only the prosecutors have the power to prosecute. This means that the new unit will not compete with any other anti-corruption agencies than those two. The prosecutor is responsible as soon as an arrest has been made. When dealing with the question of the relationship with the police, the unit should look at how the other Investigating Directorates have dealt with this issue. It will be a problem until the new legislation is in place. Clear guidelines are needed. So far IDOC has negotiated separate cases with the police and this has worked rather well. Furthermore, a Memorandum of Understanding has been signed by the provincial commissioner and IDOC. The problem of rivalry between the different agencies must be overcome.

International experience

In Hong Kong the legislation is specifically spelling out the offences that are covered by the ICAC work. It is the only unit that deals with corruption. A lot of emphasis is given to prevention and awareness raising. The problem of corruption needs to be dealt with as a whole.

In Botswana the DCEC is the sole body with a mandate for corruption. Their view is that no distinction can be made between grand and petty corruption and that the entire problem must be tackled. It is very important to go beyond a purely reactive approach and add preventive aspects as well. The unit should interact with the Ministry of Education.

Prevention and education aspects

It was noted that the unit ought to be proactive as well reactive but that this will have to be worked on over time. The new legislation that is under consideration will include provisions for preventive work. The unit is based on the National Prosecution Act, which clearly states when an investigation can be initiated, mainly there must first be a complaint and prima facie evidence that a crime has been committed. The importance of prevention and the need to educate a culture of integrity was stressed. While there are not enough resources to tackle prevention and education the unit should participate in the work of other agencies. There are high expectations on the IDC and it is important to show results in the form of successful investigations and prosecutions.

Legislation

The Corruption Act is the starting point for the work of the Directorate although the proclamation widens the mandate by stating “offences related to corruption”. The Corruption Act gives a very wide definition of corruption since it is not restricted to the public sector. But in practice the law has been ineffective and has led to very few convictions. There is no reason to restrict the mandate given. Rather, the IDC can choose to put emphasis on certain areas if it wishes to do so. It will be for the discretion of the IDC to decide which cases to take on. The Directorate should also make suggestions for revised legislation and additional funding.

Structure and Resources

The IDC in the operational sense does not yet exist. There is a lack of manpower and the Directorate will be using the IDOC offices in the provinces to start work and probably also request them to assist in the form of investigators and prosecutors. It is important to get started as soon as possible.

In the long term it is crucial that the new unit gets a separate office and a proper structure with its own staff. All the Directorates suffer from a lack of manpower and it will be difficult to spare staff. The new unit will need approximately ten professional staff plus administrative support and at least three professionals to begin with. This must be expressed strongly to the NDPP. It is

important that the new anti-corruption unit will get the right people from the very beginning. Although a number of officers are receiving training abroad they still lack experience. The NDPP must arrange for the secondment of staff from other units.

The IDC should elaborate a strategic plan for the unit within three months. There is a problem of high expectations and pressure for quick results, but it is important to plan the unit properly from the beginning. Intelligence gathering is necessary to be able to decide what cases should be prioritized, where they are located, how serious they are, etc. The IDC should interact with a wide category of agencies such as the police, the other Investigating Directorates, the ministries and others to make an assessment of the situation.

Integrity

This involves issues such as recruitment of personnel, evaluation of their work including dismissal for wrongdoings and mechanisms to ensure that the standard of integrity remains high. It goes beyond the anti-corruption unit itself, as all the Investigating Directorates are vulnerable to this issue. It should thus be dealt with by a separate unit for the entire DSO.

There is a body for internal oversight envisaged within the DSO structure. It is unclear what the composition and functions of this body will be and what methods it will use. It is important that the NDPP or the head of DSO has the power to recruit and remove staff. Integrity tests should be applied to all DSO staff.

Labour laws

Strong labour laws and unions make it difficult to terminate people's contracts. This issue needs to be addressed. The new legislation will contain provisions making the DSO exempt from the labour laws.

Checks and balances

If the unit abuses its power it will also lose in credibility. There must be a system of checks and balances in order to create an accountable and credible unit. One possibility to address this is the establishment of an integrity policy and appeals advisory board. The functions of such a board should be:

- To review integrity policies;
- To give suggestions to directors and the head of the internal integrity office;
- To revise procedures periodically; and
- To set limits to integrity testing and monitoring in view of preventing possible abuses and promoting righteousness and fairness.

It should also have the power of appeal as regards cases of disciplinary actions or dismissals. The NDPP should be obliged to consult with this board before making any such decision. The final decision should be made in consultation.

The board should be composed of a person from the organization and others so that it reflects a broader society. It was suggested that one person should be designated by the Chief Justice. Concern was raised that this may lead to a conflict of interest. However, the representative from the judiciary does not exercise a judicial function when he/she sits on the board. There should also be representatives from the National Anti-Corruption Forum.

The board should report to the President in sitting with the Inter-Ministerial Security Committee or the Minister of Justice and should have open and direct communications with the NDPP. The board should be apolitical.

International experience

Hong Kong has set up a well functioning system of internal monitoring, which to some extent has been copied by Botswana. The ICAC keeps staff motivated to remain loyal through limited contracts. There is a system for positive vetting of applicants and they are examined in great detail. There is also routine monitoring of work as well as personal lifestyles. Files are examined and staff is subject to surveillance. Staff must also make annual declaration of their assets. The Commissioner has the power to terminate a contract of employment if this is necessary for the organization. The limited security and the invasion of privacy are compensated for by a higher salary than the rest of the public service.

In the US, polygraphs are widely used both for pre-employment screening and for specific incidents. The value of this policy is more the psychological pressure and the interviews that are conducted before and after the test. All employees are reinvestigated every five years with regard to their lifestyle and their assets. Disciplinary measures are essential and discretionary removal is necessary. If it is minor incidents the person can be transferred to another agency in the government. The FBI is not bound to general labour law.

Protocols – Manuals

The special investigators and prosecutors in the new anti-corruption unit will need specific skills. There is a lack of experience and a need to develop technical guidelines to assist in the investigations and preparation of cases. This is particularly the case with regard to the presentation of evidence in court.

Prosecutorial guidelines and policy manuals exist today although they are more general.

There should be one manual for the entire DSO. These instructions/guidelines should be part of the strategic plan of the new unit.

International experience

In Botswana there are manuals and guidelines for internal operating procedures. In Hong Kong there is a very detailed Commission Standing Order for the day to day work. It is very specific for the Hong Kong context. The prosecution has their own manuals. There are no such manuals in Italy.

Botswana and Hong Kong were asked to provide a copy of their manuals to the DSO to the extent that these are not confidential.

Secrecy vs. Transparency

International experience

In Botswana the investigation is transparent except in stages of covert operations.

In Italy this issue has been controversial with regard to the timing of transparency. The investigators are allowed to investigate secretly for three to six months, then they will have to disclose the details of the investigations and give the suspect an opportunity to examine the case. The suspect can appeal or ask the judge for a restitution of seized assets. This system works well.

In Hong Kong the investigation is secret until it becomes overt. Secrecy is necessary because of the nature of the work.

In the US there has been a strong resistance among police unions and members of the FBI to disclose the outcome of internal disciplinary proceedings. A name is only disclosed if public interest requires this.

There is a need to balance the interest of secrecy and transparency, between privacy and the integrity of the organization. It will be important to have public reports annually by the body for internal integrity of the DSO. No names need to be disclosed unless it is viewed that revealing the name of a bad case will increase the integrity of the unit. There are some problems with this test of public interest.

Whistle Blowing

There is a new law being passed on the protection of whistle blowers. The system has been elaborated by the Public Service Commission.

There is internal and external whistle blowing.

In the DSO structure reports should be made to the internal integrity unit or to the advisory board. The internal unit will be able to initiate cases on their own initiative.

The Investigating Directorate on Corruption should encourage both anonymous and non-anonymous complaints. So far a lot of the complaints received has nothing to do with corruption but is rather an expression of victimization. At the moment, the unit does only accept written complaints. It will be important to establish a database for complaints and keep records of categories of cases and action taken in order to measure and show results.

IDOC in Cape Town has established a new system for receiving complaints 24 hours a day. It is an operational service that processes the reports and refers them to the right unit. 50 per cent of all information is anonymous. A database for cases is in process of being established.

The President has given a special mandate to investigate complaints against the Department of Correctional Service and there have been a lot of complaints in just one month.

International experience

In Botswana there is provisions in the legislation that enables the organization to keep the identity of informants secret. This can only be overruled by a magistrate and if the informant has acted maliciously, improperly or illegally. The threat to witnesses is not a big problem in Botswana.

In Hong Kong there is no provision for whistle blowing as they want to encourage open complaints. There is, however, provision for witness protection. The ICAC accepts complaints made in person, through the hotline or anonymously. Anonymous complaints can still be very detailed and lead to convictions.

In the US there is a civil administrative type of whistle blowing. An employee of a government agency that fears reprisals from colleagues or a superior is protected by comprehensive legislation. If a person reports an allegation of misconduct and a reverse performance action follows, it is presumed to be in retaliation for the allegation.

Since legal actions are so popular in the US the law must be implemented carefully. People have abused the system when competing for jobs and filed complaints. A preliminary investigation is being done to establish if the complaint has any substance prior to opening a full case.

Evidence

Evidence is a critical issue and the key to a successful case. It is important to gain knowledge on how to keep evidence from being tainted. There is a need for guidelines for evidence gathering, securing and preserving, as well as training in search, retrieval and protection of computer-stored and processed evidence.

All corruption transactions involve two parties: a giver and a receiver. If one party is a public official he/she is the one most likely to be prosecuted. In some countries (e.g. Hungary) higher penalties are envisaged for holders of public office involved in corruption.

International experience

In the US the issue of entrapment has been debated. The general view in the US legal system is that if something is not forbidden by law it is permitted which allows for a generous interpretation. Emotional evidence is accepted and derogatory comments are evidence that can overcome an entrapment defence.

In Hong Kong cases that have first been admitted are later claimed as being made in an undue process. This resulted in all interviews when someone is questioned under caution being videotaped, thus helping to prove to the courts that a confession has been made voluntarily.

In Botswana the main problem is that the prisons are full, which have prevented courts to impose strict sentences. The prosecutor is not allowed to address the court on the issue of sentencing. Immunity witnesses can be used if necessary.

In the US, Congress has reacted on judges' positive attitude to alternative sentencing and abolished rehabilitation measures. The principles of deterrence and incarceration have been legally adopted. Sentencing guidelines have been established and a sentencing commission has been created. The judges have very little discretion left.

Performance indicators and credibility

There is a need to go beyond traditional performance indicators focusing purely on operational factors such as the number of complaints or convictions. The indicators should also include issues of integrity and efforts made to increase the integrity of the unit. The credibility of the unit is very important and closely linked to public confidence. This can be measured through surveys. Performance indicators should be part of the strategic plan.

Within the framework of the CICP/ODCCP Global Project against Corruption, methods of measuring the extent of corruption and how effective the anti-corruption measures are in the SADC region are being developed. The same methodology will be used within the CICP/ODCCP project on developing an anti-corruption strategy in South Africa.

International experience

The ICAC contracts a consultant to carry an opinion survey each year. There are also in-house mini surveys every two months to see trends in people's confidence. The outcome depends to a large extent on high profile cases in the press. One successful case may result in a peak of awareness and lead to an increase in reports. It is thus important to look at trends rather than independent cases.

Training

Currently one hundred DSO investigators are receiving technical training with the FBI and Scotland Yard, some of these will also be trained on corruption investigations.

The manuals and guidelines to be provided by Hong Kong and Botswana can be used for specific technical training.

Conventional organized training courses are good but have limitations. On the job training is very successful. It can be done in two ways:

- The unit receives an international expert who works side by side with the normal staff although he should not be involved in decision-making; and
- An international agency hosts staff from the new unit for some time. This is normally very practical and even more effective. The trained official will pass on the knowledge to new recruits.

VIII. CLOSURE

In the closing remarks, Messrs. Albert and Ngcuka thanked the national and international experts for their high quality contribution and assistance to the Investigating Directorate Corruption. Mr. Ngcuka in particular expressed appreciation to CICP/ODCCP Southern Africa for the excellent organization and capacity to mobilize high-level international expertise. He stressed the need for a rapid implementation of the Global Programme against Corruption in South Africa and the region in the framework of a focused and targeted international fight against corruption.