

CORRUPTION IN AFRICA

A South African Perspective

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INTRODUCTION:

In South Africa corruption is treated on a much wider basis than just bribery of an Official. Corruption includes any act or omission which corrupts the activities of Government Departments. In other words corruption also includes maladministration and mismanagement which has the potential to cost the government millions of rand every year.

Corruption is rife in South Africa. However if you look at the history in **Africa** you will **find** that there are many other African countries who face larger problems relating to corruption and the extent of corruption both in the public and private sectors.

Corruption takes place in the public sector in South Africa with and without the assistance of the private sector, however the private sector plays a major roll in corrupting the activities of the Government. Corruption is found, in one form or another, in all Government Departments whether National or Provincial and also in semi-State organisations.

CORRUPTION IN AFRICA:

Probably the most typical example of corruption in Africa is the involvement in bribery of state officials. This has been a factor that has led to economic hardship for many African countries and the lack of substantial investment and development. On the other hand the failure to implement control measures to run a clean Government has also had a negative impact and caused turmoil in many so-called “democratic” African countries. The very people who are supposed to design and implement control measures are so often the people who have already been corrupted on the inside or from the outside.

Africa is a large continent plagued by poverty, hunger, underdevelopment and war. In addition to this the scourge of corruption is an added weight to the shoulders of already burdened African governments.

CORRUPTION IN SOUTH AFRICA:

I have already indicated the much wider approach adopted in South Africa. The effect of this is that there is an overlapping between corruption as such and theft or fraud, the negligent loss of State assets, -misappropriation of State assets, etc. In the majority of cases this is motivated by greediness and not by poverty. The cases involving large amounts in South Africa involves people who are not poor and who have obviously not committed corruption out of poverty and to feed themselves and their families. Serious corruption is therefore rife under Senior Officials, sometimes Politicians and then individuals and companies on the outside of the Government structure. The concept of accountability is either not applied in many instances or is even a strange feature of good Governance in certain circles.

There are serious problems with the Criminal Justice System and a lot of people have lost confidence in the system with the result that they take the law into their own hands or they simply fail or refuse to notify the Police or other authorities of corruption that they are aware of. One of the serious problems with the Criminal Justice System is the lack of productivity in many areas in the country. In many cases there is also a problem with the quality of the people involved and the lack of experience which make it easy for the corrupt criminals to get away with the fruits of their corruption.

ACTIONS BY THE SOUTH AFRICAN GOVERNMENT TO COMBAT CORRUPTION:

The Government is faced with a serious problem amongst the-Police as a large number of Police Officers are corrupt and they either actively or passively promote corruption. This has led to the establishment of the Special Anti-Corruption Unit in the Police to investigate corruption in the Police itself. This Unit, although just recently appointed, has already had substantial successes in prosecuting Police Officers.

In terms of the Constitution the Public Protector and Staff were appointed to investigate complaints of corruption (and also other matters) in the public sector and to report to Parliament. They have more cases than they can handle but they are serious about their commitment to get rid of corruption. At the end of an investigation by the Public Protector's Office, a matter is referred to Parliament if it had not been satisfactorily resolved between the parties.

The whole prosecuting authority has been changed and operates now under the leadership of a National Prosecuting Authority with emphasis also on the question of corruption. This is a novel concept and has not had the opportunity to prove itself.

In addition to criminal prosecution of corruption, the South African Government has taken the unique step to establish two bodies which are involved in the recovery and protection of State assets and one of the Terms of Reference of these two bodies deal with the question of corruption. These bodies consist of a Special Tribunal (Special Court) and a Special Investigating Unit investigating in particular corruption, fraud and maladministration in South Africa. However it is completely different from the criminal investigating bodies as it does not become involved in prosecutions but through civil legal processes the Investigating Unit, after investigation, becomes involved in civil litigation before the Special Tribunal to either stop the loss of State assets or to recover it. It therefore litigates directly without making use of the typical and standard bodies. Litigating in South Africa and is therefore much more expedient in its processes to recover or stop the loss of State assets.

The Special Investigating Unit has special statutory powers to serve Notices on anybody, both in the public and private sector to make documents available to them, they can serve a Notice on anybody to appear before the Unit (and not the Special Court) to answer all questions as part of the investigative process and furthermore has the power of search and seizure. Once an investigation has been completed the matter is taken to the Special Tribunal. After a brief process the matter is ready for hearing by the Special Tribunal presided over by Judges of the High Court. The Unit has built up a very strong

reputation with the result that numerous Defendants investigated, offer to repay or return the assets that they have obtained through corruption. During 1998 the Unit has recovered or protected assets to the value of more than R840 million and it has got cases to the value of more than **R9 billion** which are being investigated by the Unit. This figure will probably double as a result of cases now being in the process of being referred to the Unit in one of the biggest Provinces.

The Unit consists of experts in various fields including Forensic Auditors, Forensic Accountants, Forensic Investigators, a sophisticated computer system and various other experts. In addition to this the Head of the Unit is entitled to appoint any expert in any particular field to assist the Unit in its investigations.

Should the Unit come across criminal activities in any matter investigated by them, the matter is referred by the Unit to the Prosecuting Authorities.

CO-OPERATION AMONGST THE VARIOUS ANTI-CORRUPTION BODIES IN SOUTH AFRICA:

Recently after meetings held by the different bodies, a specific agreement has been reached for closer co-operation between the various bodies in order to share information (insofar as it is not protected by law) and to share expertise in the investigation of matters.

CO-OPERATION BY POLITICIANS:

Various bodies, and from our point of view, the Special Investigating Unit, are receiving substantial support in Government circles and the top structure of the Politicians who promote the anti-corruption fight in South Africa. The Government is involved (and supported by opposition parties) in various spheres of the South African economy to take action to combat corruption and to promote the financial reputation of South Africa.

CONCLUSION:

In conclusion, Africa, and in particular South Africa, is faced with a huge problem that will only be overcome with the introduction of a culture of honesty and integrity.

Although we still have a **long way** to go, we believe that the South African Government has taken the right steps in addressing the problem. The loss of state assets and monies due to corruption, the blatant theft and the misuse of government funds have impacted negatively on the man in the street, the South African economy and the investor confidence in our country.

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In order to address this problem a global approach is necessary which should include the sharing of information, the sharing of expertise and a combined approach to deal with corrupt persons swiftly and effectively.

Judge W H Heath

HEAD OF THE UNIT