

THE SOUTH AFRICAN ECONOMY

Questions have been raised about the state of the South African economy, but if there is one sphere where there has been a real bodm, it is maladministration, corruption and misappropriation with relation to public funds and public assets. This is a matter of grave concern to the business sector. The unfortunate truth is that a shockingly large proportion of the South African community appears to regard public funds and assets as “fair game” for corrupt schemes. This attitude extends into other fields and when it comes to contracting with the State, invoicing the State for services, dealing with State property, dealing with blank State cheques, etc., members of the public and private concerns, often in collusion with State officials, plough into the State’s resources, destroying substantial portions of the crop destined for the community at large.

We are faced with a crisis, a national crisis, a problem far more serious than what the ordinary man in the street perceives it to be. We have to accept the fact that South Africa has lost substantial assets over the years through corruption and maladministration and that it is a continuing process.

Somehow internal controls, supervisors audits, the police and the ordinary courts have not been able to hinder the growth of this problem and the age-old saying that “*crime doesn’t pay*” is starting to sound more hollow by the day. The glaring necessity hence arose for special measures to be taken to strip away the cloak of corruption and maladministration, which besets our country. It is with this in mind that Parliament passed the Special Investigating Units and Special Tribunals Act 74 of 1996.

The Heath Special Investigating Unit was appointed in terms of this Act and whereas the Unit does not purport to present a water tight solution to all the problems which beset the administration of public &sets, it does provide a machinery that can tackle these problems and show the public that the Unit is not prepared to take blows to the face, but can counter-attack and hit back where it hurts.

SCOPE OF THE PROVISIONS OF SECTION 2 OF ACT 74 OF

1996

THE SPECIAL INVESTIGATING UNIT

On establishment, the Special Investigating Unit was entrusted, by the provisions of Section 2(2), to deal with the whole spectrum of clean administration and the protection of the interests of the public with regard to public money and public property. Section 2(2)(g) is the exception as it is not State related, and deals with private interests of categories of the public. The provisions of this Section cover a wide field of unlawful action, corruption and maladministration. This is based on the provisions of Section 33 (3) of the Constitution which makes provision for an efficient and clean administration. At the same time it helps to protect the fundamental rights of individuals in the Constitution, eg the right to housing, pensions, ect.

THE SPECIAL TRIBUNAL

The Special Tribunal was established in terms of Section 2 of the Act. The Judges of the Tribunal are called upon to adjudicate on matters on the very topical issue of efficient administration against the background of allegations of maladministration, corruption, etc. linked with the loss of State money and assets which impacts directly and indirectly on the citizens of South Africa. During the financial year, Acting Judges Cassim and Claassen presided in the Tribunal. President Mandela appointed the Acting President of the Tribunal, Judge Kotze, in consultation with the Honourable Chief Justice I Mohammed. Pending the appointment of permanent judges, Judge Louis Skweyiya and Judge Silas Nkanunu will be acting until 31 May 1999. Judge Kotze will continue to act as Judge President until 31 May 1999.

INVESTIGATION AND LITIGATION SERVICES

All investigations undertaken by the Unit are performed in accordance with the terms of reference set out by the State President in Proclamations detailing the nature and extent of the allegations to be investigated.

Once the State President has referred a matter to the Unit, the Unit has to investigate all the allegations and collect evidence regarding acts or omissions, which are relevant to its investigations.

When an investigation has been completed a decision will be made whether there is sufficient evidence on the merits to sustain a civil action. If there are sufficient grounds the Unit will institute proceedings in the Special Tribunal either in the form of an Application or by way of action similar to a Civil Summons in the High Court or the Magistrate's Court.

After instituting of proceedings the Unit is required to present evidence it has obtained as a result of its investigations, in the hearing before the Special Tribunal.

When a matter is referred to the Unit, the investigation is conducted by one of the teams of investigators employed by the Unit. A Manager heads each team and all investigations are conducted in consultation with the Head of the Unit and the Legal Representatives employed by the Unit. Where necessary, specialised professional expertise is obtained and used in the investigation.

In conducting its investigations the Unit not only has the advantage of the expertise of a specialised body concentrating on issues as mentioned above, but also has special powers conferred by Act 74 of 1996 :-

- ñ The Unit is empowered by Section 5(2) (b) and (c) of the said Act to notify any person to appear before it and to produce specified books, documents or objects. Such person who has been notified to appear before the Unit, is questioned under oath and is compelled to answer all questions, provided that this does not infringe on the law regarding privilege;
- ñ Section 5(8) of the Act empowers the Head of the unit to issue suspension orders or interdicts in urgent matters. The Special Tribunal must confirm such suspension orders or interdicts

within 48 hours. This leads to timeous action to prevent the loss or disappearance of State assets or funds;

ñ Section 8(2) of the said Act provides for suspension orders, interlocutory orders or interdicts to be issued by the Special Tribunal upon application brought before it by the Unit. Such applications are brought in a manner very similar to the application proceedings found in the High Court.

In terms of Section 6 of the Act, members of the Unit are empowered to enter and search premises. These powers are exercised within the framework of the Constitution. The Act also requires a warrant to be issued by a Judge of the High Court of Magistrate, save in exceptional circumstances, when a search and attachment can take place without such a warrant.

The civil proceedings brought in the Special Tribunal are similar to civil proceedings before the High Court, but are more streamlined than those brought in the High Court. Thereafter cases can be completed before the Special Tribunal within three months after the investigation has been completed.

The findings of the Tribunal have the same effect as a Judgment by a single Judge of the High Court, with an appeal to the full bench of the High Court.

In short, the Special Investigating Units and Special Tribunal Act provides a complete process whereby an allegation is investigated and where applicable presented to a judicial forum leading to a judicial finding and the machinery to enforce such a finding.

SUPPORT SERVICES

The Unit has employed a competent core of experienced, professional staff members to fulfill its function. Members include forensic accountants and auditors, computer experts, highly trained and skilled investigators, senior advocates, a strong component of experienced lawyers and litigators and competent support personnel.

The Unit has introduced a fully integrated financial system. This system allows the Unit to keep control of its own expenses and to manage and report on funds recovered on behalf of institutions and departments in the performance of its function.

The information technology function of the Unit, monitors the planning and implementation on all software **systems**, ensuring that the system runs as a “live” on-line system, and ensures that the Unit is kept up to date with the changing technologies regarding hardware and software.

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One of the key objectives of the Information Technology Department is to automate the office environment so as to promote a paperless society and to ensure that an effective and efficient service is provided at all times.

The abovementioned is achieved by:

ñ Electronic Mail

ñ Internet & Intranet Services

ñ Training of staff on Electronic Services

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The concepts of 'Ease of use' and 'user friendly' play a major role in designing our systems. One of the biggest problems in the computer arena is that the systems are designed for specialists. It is the Unit's objective to structure the user interface as uncomplicated as possible.

The Unit also has its own Web site on the Internet. This informs the public at large on an international platform of our objectives, goals and accomplishments. This site plays a major role in the electronic publishing media of the future. Government as well as Corporate Institutions who have shown keen interest in our progress, will be kept informed through this medium on a regular basis.

The Health Special Investigating Unit has a fully functional library, managed by a qualified Librarian. The Library is equipped with all the necessary media including books, journals and law reports to ensure a prompt and up to date service at all times. Research information required by members of the Unit is upon request available via the latest electronic sources and through use of the computerised Library database.

INTERNATIONAL CONTACT / RECOGNITION

During the short time that the Unit **has been in** existence, contact has been made with numerous International organisations and associations, all of whom have endorsed and applauded both the appointment of the Unit and the powers and functions accorded to the Unit.

GERMAN LINK

Representatives of the Provincial Government of Lower Saxony in Germany and the Federal Government have had various meetings with Judge Heath requesting a detailed briefing on the activities of the Unit and its successes. The Unit maintains regular contact with German Justice Department officials and has fostered a relationship of co-operation and assistance.

Judge Heath was invited by GTZ in the Eastern Cape, representing the Province of Lower Saxony in Germany, to visit Germany for a month, to study the topic of a Court of Administration, Court of Finance and Court of Audit in Germany and in general the principle of **Judicial Control of Administration**. This opportunity also enabled the Head of the Unit to formulate proposals with regard to amendments to Act 74 of 1996 which amendments have already been referred to above.

THE INTERNATIONAL CHAMBER OF COMMERCE (LONDON)

During a visit to London, Judge Heath visited and had discussions with representatives of the International Chamber of Commerce (ICC), as well as with members of their Commercial Crime Bureau (CCB). Both the ICC and CCB have undertaken to assist the Unit by making their services available, where necessary, with regard to any offshore investigation required by the Unit, particularly in Europe and the United Kingdom. The result is that the Unit now has access to international banks and institutions in Europe and the UK, and is able to access information through the above institutions.

THE INSTITUTE FOR INTERNATIONAL RESEARCH

During January 1998, Judge Heath delivered the keynote address at a conference in Johannesburg on "PUBLIC SECTOR FUND ADMINISTRATION", arranged and hosted by the Institute for International Research. Various topics of importance were covered including, "Uncovering Corruption, Maladministration and Theft from and within State Institutions".

BRITISH CHAMBER OF BUSINESS IN SOUTH AFRICA

During February 1998, Judge Heath delivered a speech at a luncheon hosted by the British Chamber of Business in South Africa (BCBSA). The topic discussed was “Investigating Government Maladministration and Corruption”. BCBSA supports and promotes UK / SA trade links and investment, and promotes business profitability through a UK / SA trade and investment network. The chamber is extremely supportive of, and endorses the appointment of the Unit as well as its powers and functions.

TRANSPARENCY INTERNATIONAL (GERMANY)

The Unit was invited to affiliate to Transparency International, an international anti-corruption Non Governmental Organisations, and to establish a coalition to assist government to develop and implement anti-corruption programs and to broaden public awareness of corruption as well as the need to counter and reduce it.

During his visit in Germany, Judge Heath met with Transparency International whose Head Office is in Berlin, to inform them about the activities of the Unit in South Africa. Members of the Press were also invited to attend this meeting.

UNITED STATES INTERNATIONAL VISITORS PROGRAMME

Upon invitation from the United States Information Service, Judge Heath took part in their International Visitors Programme and spent three weeks touring the United States during July 1998. During his three-week study tour he met with various top officials and persons involved in anti-corruption bodies. Much of the information brought back to South Africa has been incorporated in the day-to-day workings and operations of the Unit. In addition to this the Judge was asked to address members of the World Bank after which he was asked whether he would be willing to assist with advice in various countries where the World Bank experiences corruption and fraud related problems.

1998 TRANSPARENCY INTERNATIONAL CONFERENCE - KUALA LUMPUR

During September 1998 Judge Heath was invited to address the delegates of the worldwide Transparency International Conference held in Kuala Lumpur, Malaysia. His address “Fighting corruption, mechanisms and legal systems - a South African Perspective”, drew major interest from delegates around the globe with requests for assistance in establishing similar units in various

parts of the world. This highlighted the need for international contact and **links** to be established with international corruption-fighting bodies.

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16th INTERNATIONAL SYMPOSIUM ON ECONOMIC CRIME -
CAMBRIDGE (UK)

Also during September 1998 the Judge delivered two papers at the 16th International Symposium on Economic Crime held in Cambridge, UK. His papers entitled “The plight of the State as a victim of Economic Crime” delivered at the South African Chapter of this symposium and “Corruption in the Public Sector” delivered during the main body of the conference were well received and gave the delegates an insight into the operations and successes of the Unit in South Africa. The response was extremely positive.

SUCCESSSES OF THE UNIT

NO OF CASES.	DESCRIPTION OF CASES: RECOVERIES, SAVINGS AND PREVENTIONS AS ON 30 NOVEMBER 1998	VALUE
100	RECOVERING OF F FARMS IN FORMER TRANSKEI	20 645 000.00
372	RECOVERING OF STATE OWNED VEHICLES : DEPT OF TRANSPORT : KWAZULU-NATAL	33 000 000.00
1	DAILY BREAD FEEDING SCHEME : ATTACHMENT OF ASSETS	4 500 000.00
1	STOLEN CHEQUE - KOKSTAD : STOP PAYMENT	540 000.00
1	FRAUD : LEASE AGREEMENTS - CITY COUNCIL OF DURBAN	625000.00
11	BUTTERWORTH - COUNCILLORS : READY FOR TRIAL	1300 000.00
9	BUTTERWORTH - ARREAR SERVICE LEVIES : PROCESS OF RECOVERING	31 000 000.00
1	RENTAL AGREEMENT - KIM DIAMONDS : READY FOR TRIAL	2300000.00
1	LEASE AGREEMENTS (PHOTOSTAT MACHINES) - NORTHERN CAPE PROVINCIAL GOVERNMENT : SETTLEMENTS - TOTAL AMOUNT IN ISSUE WITH SOME DEFENDANTS	17 000 000.00
1	STOLEN BLANK WARRANT VOUCHERS - DEPT OF JUSTICE MPUMALANGA : RECOVERY OF MONIES	4 300 000.00
1	SARAFINA II : VEHICLES AND EQUIPMENT RECOVERED	4 000 000.00
1	MAGWA TEA CORPORATION : READY FOR TRIAL	10 000 000.00
30	FRAUD - MOTOR FINANCE SCHEMES	435 000.00
120	ALLIENATION OF HOTELS, A HOLIDAY RESORT AND OTHER IMMOVABLE PROPERTY--TRANSKEI COAST : INTERDICTS TO STOP TRANSACTIONS	6000000.00
1	OCCUPYING STATE LAND FOR HOLIDAY PURPOSES - WEST COAST (CARIES) : JUDGEMENT GRANTED	4 000 000.00
1	OVERCHARGED FEES - ATTORNEY: UMTATA: FULL RECOVERY OF R13 MILLION. R5 MILLION FURTHER TAXED OFF ACCOUNT DURING INVESTIGATIONS AND BALANCE TO BE CLAIMED	18000000.00
1	STOLEN BLANK CHEQUES - EC DEPT OF EDUCATION - INVESTIGATION ALMOST COMPLETED	1 232 000.00
10	BURSARIES - DEPT OF PUBLIC WORKS: EC : RECOVERED WITHOUT TRIBUNAL ORDER	196000.00
1	OVERPAYMENT TO PRIVATE COMPANY : (EX CISKEI DEFENCE FORCE)	58 000.00
3	FRAUDELENT QUOTATIONS - DEPT OF PUBLIC WORKS (EC) : NON DELIVERY: PAYMENTS STOPPED	130 000.00
1	MPUMALANGA PARKS BOARD-PROMISSORY NOTES/GUARANTEES: INTERDICT TO STOP PAYMENT / DOCUMENTS RECOVERED IN NEW YORK	340 000 000.00
	INVALID TENDER BOARD PROCEDURES - RENTAL CONTRACTS: N-CAPE PROVINCIAL GOVERNMENT AND MERCANTILE BANK LTD : SAVING	2 000 000.00
	INVALID TENDER BOARD PROCEDURES - QUEENSTOWN GOVERNMENT OFFICE COMPLEX	125 000 000.00
	FRAUDELENT TRANSACTION - INVESTMENT IN JOINT VENTURE WITH A MALAYSIAN COMPANY: ACCOUNT FROZEN	22 600 000.00
	INVALID TENDER BOARD PROCEDURE - PENSION PAY-OUT EASTERN CAPE : SAVING	200 000 000.00
TOTAL VALUE		848 861000.00

CASH RECOVERIES AS ON 30 NOVEMBER 1998

<u>EASTERN CAPE</u>	<u>KWAZULU-NATAL</u>	<u>MPUMALANGA</u>	<u>TOTAL</u>
38 581 576.08	3 448 273.45	4 400 000.00	46 429 849.53

CONTACT WITH SOUTH AFRICAN ANTI-CORRUPTION

BODIES

The Heath Special Investigating Unit forms part of an intricate web of organisations in South Africa to fight corruption, fraud and maladministration. The co-ordination and co-operation between these bodies is vital and allows for both the civil and criminal prosecution of persons involved in corruption. Very close links have been established with the Office of the Public Protector, the Auditor General, the South African Police Service, the Investigating Directorate: Serious Economic **Offences** and the National Prosecuting Authority to ensure swift and efficient action. In addition to this the Unit works very closely with these bodies in sharing information and assisting with investigations. Where bodies have completed investigations and there is a need for civil recovery, these bodies then refer the matters to the Special Investigating Unit.

PROFILE ON THE HEAD OF THE UNIT

JUDGE WILLEM HENDRIK HEATH

Judge Willem Hendrik Heath graduated from the University of Pretoria with a B A Law Degree in 1966 and an L L B Degree during 1968 after which he entered his professional career and obtained the following experience:

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| 1. February - 31 August 1969 | Prosecutor, Department of Justice |
| 2. September 1969 - September 1971 | State Advocate, Office of Attorney General, Pretoria |
| 3. 1969 - 1971 | Part-time lecturer - Pretoria Technical College :
Commercial and Criminal Law |
| 4. October 1971 - February 1988 | Private practice as Advocate |
| 5. 1978 - 1988 | Part-time President of Court Martials, South African
Defence Force |
| 6. 1 st March 1988 | Appointed as a Judge of the Supreme Court of South
Africa and seconded to Ciskei Supreme Court |
| 7. 1991 - 1994 | Chairman, Review Board, Ciskei Defence Force |
| 8. June 1995 - 1996 | Appointed as Chairperson of the Heath Commission,
an Eastern Cape body set up by former provincial
premier Raymond Mhlaba to look at government
corruption, maladministration, fraud, theft and
misappropriation of State assets. |
| 9. March 1997 | Appointed by President Nelson R Mandela, State
President of South Africa as Head of the Heath
Special Investigating Unit mandated to investigate
maladministration, corruption, fraud, theft and
misappropriation of State assets and monies on a
National Level |

His professional involvement includes the following:

ñ Member of the Council of the Faculty of Law at the University of Fort Hare

ñ Presided in a series of cases (civil and criminal) involving the application of Fundamental rights

After being appointed as a Judge he earned a reputation as a civil rights leader and handed down numerous reported human rights judgements. In particular he handed down a landmark judgement that a man **can** be charged with raping his wife (S v Ncanywa 1992(2) SA 182 (Ck)). He has also handed down a number of other landmark judgements during his career as a Supreme Court Judge. Many of these judgements have been recorded in law related journals.

In July 1998 Judge Heath was selected to participate in a three-week visit to the United States by the United States International Visitors Programme. He was also bestowed with Honorary Citizenship of the City of New Orleans, Louisiana, United States. During September 1998 he addressed the Transparency International Conference in Kuala Lumpur as well as delivering two papers at the 16th International Symposium on Economic Crime in Cambridge, UK.

CONCLUSION

Although the success of the Unit is evident to the South African Government, the Public, the media and the international community our major shortfall remains finances and resources. With over 90 000 cases on our books worth an estimated 8 - 9 billion rand the Unit is in dire need of more personnel and would like to expand its investigations component by three times. However, in spite of this the Unit faces an 8% budget cut for the 1999/2000 financial year which could have dire consequences for the operations and the success of the Unit. Despite this the Unit is looking at alternative funding.

However, we are confident that the future will be characterised by even more intensified and extensive investigations resulting in a positive contribution to the-improvement of the financial well-being of the whole spectrum of State institutions, and through them, the public. The improved awareness of the provinces and national departments as well as the other State institutions, of the activities of the Unit, is already an enormous step in the right direction.

CONTACT:
THE HEATH SPECIAL INVESTIGATING UNIT

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