

# The EFFECT of CORRUPTION on POVERTY

## Introduction

The oft identified and so called “triple threats” (or threatening troika) facing South Africa in 2012 have been named as “poverty, inequality and unemployment”. Inequality is perpetuated and exacerbated as a by-product of poverty. Unemployment today is the result of the current economic order being unable to generate sufficient viable work opportunities for those seeking work, having regard to their standard of education and lack of work experience. Many remain under-employed or unemployed because the basic education system is in crisis and does not sufficiently prepare school goers for the demands of the workplace in the economy. Inequality has, according to the gini co-efficient for South Africa, been exacerbated since 1994 when the political liberation of the country took place. Widespread poverty is a legacy of the apartheid past that needs to be addressed constructively if a “better life”, as constitutionally contemplated, is to be achieved for all who live in South Africa, whether or not they are at present living in poverty. Left unaddressed the “triple threats” could easily morph into a revolution of highly destructive proportions.

Addressing these triple threats is a major pre-occupation of those responsible for a proper understanding of government’s constitutional responsibilities and for sound policy implementation in the practices in place in government. The enjoyment of human dignity, the promotion of the achievement of equality and the realisation of the various rights guaranteed to all in the Bill of Rights are foundational to the new constitutional order in which a non-racial, non-sexist society is meant to be built, united in its diversity and free of unfair discrimination. This is what was envisaged when the people of South Africa embraced multi-party democracy under the rule of law and turned their collective backs on the authoritarian apartheid order of old, in which parliamentary sovereignty held sway and policy making was not constrained by constitutional values and principles.

There has been a failure thus far to properly address the scourge of poverty. About half of the population lives in impoverished circumstances. Black economic empowerment laws, policies,

measures, charters and practices have not filtered down to the poor. They have tended to empower those least previously disadvantaged at the expense of the poor, whose lot in life has remained materially unchanged after the end of the apartheid era. The widespread dysfunction in the basic education system has served to perpetuate the legacy of the past rather than have a function education system expunge it on a wide and sustainable basis as only education of superior quality can do, short of some windfall discovery of vast new mineral wealth. Learners in township and rural schools, other than the former model C schools, are not being adequately prepared and equipped to improve their lot in life. Only about 1 in 28 Black African learners emerge from school functionally literate. The other 27 are doomed to a life of un-or-under employment, their lack of literacy and the skills needed to equip them for the workplaces of the new South Africa sees to this. A life of poverty, hopelessness, anger, frustration and sometimes crime is all that they can look forward to as a consequence of the crisis in basic education. Hence the “threat”.

Corruption in the public administration and in political decision making is a major enemy of those who wish to make a genuine effort to tackle these triple threats. Corruption has the capacity to render any society unstable and insecure. When corruption becomes endemic it is destructive of the achievement of the type of society that was envisaged by the founders of the new South Africa. Corruption is a cancer in any society. Left unchecked and unchallenged corruption leads to failed state status and with that the further exacerbation of poverty. The example of the implosion of the Zimbabwean economy after the seizure of that state by a predatory elite that could not come to terms with its unpopularity at the polls is both geographically close to home and salutary.

It is accordingly appropriate to give consideration to the effect of corruption on poverty and to examine what is to be done about addressing the deleterious consequences of this particular enemy of solutions to the triple challenges facing the country.

## Corruption Defined

According to the Prevention and Combating of Corrupt Activities Act (or PRECCA) the definition of corruption is somewhat convoluted:

“General offence of corruption

Any person who, directly or indirectly-

(a) accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person; or

(b) gives or agrees or offers to give to any other person any gratification, whether for the benefit of that other person or for the benefit of another person,

in order to act, personally or by influencing another person so to act, in a manner-

(i) that amounts to the-

(aa) illegal, dishonest, unauthorised, incomplete, or biased;

or

(bb) misuse or selling of information or material acquired in the course of the,

exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation;

(ii) that amounts to-

(aa) the abuse of a position of authority;

(bb) a breach of trust; or

(cc) the violation of a legal duty or a set of rules,

(iii) designed to achieve an unjustified result; or

(iv) that amounts to any other unauthorised or improper

inducement to do or not to do anything,

is guilty of the offence of corruption.”

The minimum penalty for serious corruption is imprisonment for 15 years.

In the present context, in which the effect of corruption on poverty is under examination, it is perhaps more appropriate to define corruption in the public sector more simplistically as “theft from the poor”. This is because corrupt activities have the effect of depriving the poor of the finances and resources that are diverted into

corrupt activities whether directly or indirectly as a consequence of the inordinate amount of official energy that has to be expended on covering up past corrupt activities and engaging in them in the present.

Whilst it is true that much of the corruption in the private sector does not impact directly on the poor and on poverty alleviation strategies and practices, the indirect effect of private sector corruption is a smaller fiscal catchment area, less tax recovery by government and accordingly fewer resources can be financed out of the fiscal pool.

## **Poverty defined**

According to the research of the World Bank into poverty:

‘First, many factors converge to make poverty a complex, multidimensional phenomenon. Second, as expected, poverty is routinely defined as the lack of what is necessary for material well-being — especially food but also housing, land, and other assets. Poverty is the lack of multiple resources leading to physical deprivation. Third, poor people’s definitions reveal important psychological aspects of poverty. Poor people are acutely aware of their lack of voice, power, and independence, which subject them to exploitation. Their poverty also leaves them vulnerable to rudeness, humiliation, and inhumane treatment by both private and public agents of the state from whom they seek help. Poor people also speak about the pain brought about by their unavoidable violation of social norms and their inability to maintain cultural identity through participating in traditions, festivals, and rituals. Their inability to fully participate in community life leads to a breakdown of social relations. Fourth, the absence of basic infrastructure — particularly roads, transport, water, and health facilities — emerged as critical. While literacy is viewed as important, schooling receives mixed reviews, occasionally highly valued but often notably irrelevant in the lives of poor people. Finally, poor people focus on assets rather than income and link their lack of physical, human, social, and environmental assets to their vulnerability and exposure to risk.’<sup>1</sup>

---

<sup>1</sup> <http://siteresources.worldbank.org>

Closer to home IDASA has, in 2010, produced a Democracy Index in which poverty is studied and commented upon by Haroon Borat and Carlene van der Westhuizen. Their chapter entitled “Poverty, Inequality and the Nature of Economic Growth in South Africa” uses figures of R322 and R174 a month in 2000 prices as the applicable “poverty lines”. They conclude at page 67 that:

“Firstly, it is clear that gains in poverty reduction have been recorded in the first decade of democracy at the national level and for African-headed and female headed households, and that this result is independent of the choice of poverty line. Secondly, however, the results show that race and gender remain overwhelming determinants of this poverty profile, with African-headed and female-headed households having a disproportionate share of poverty. Thirdly, the trends in income inequality suggest that one of the world’s most unequal societies may have become the most unequal. Our fourth key finding is that income inequality between racial groups – to all intents and purposes between Africans and whites – is driving this overall increase in inequality. Our analysis suggests that despite positive economic growth since 1995, people at the top end of the distribution have gained most from post-apartheid growth. It also suggests that the country’s current democratic growth model is crafted around supporting incomes at the bottom end of the distribution through an extensive social transfer programme, while offering few benefits to those in the middle of the distribution. The growth in expenditures of the poor has been driven by the expansion of social grants. As South Africa enters its first post-1994 recession, with declining tax revenues and rising fiscal deficits, it is unclear whether such a growth model is desirable or sustainable.”

## **The National Development Plan and poverty**

The approach of the National Development Plan is informed by the Constitution. The obligations of the state to respect and protect the rights to access to housing, health care, food, water and social security as set out in sections 26 and 27 of the Bill of Rights are evidently in mind: access to health care, including reproductive

health care is covered by the NHI scheme which is at present in its infancy. “Access to sufficient food and water; and to social security, including, if they are unable to support themselves and their dependents, appropriate social assistance”, are the tasks of the grant system to which Professor Borat makes critical reference. Its sustainability is questionable in a time of recession. Sight should not be lost of the qualifying words in the provision of section 27(2) which reads:

“The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.”

If “available resources” dwindle in a time of fiscal belt tightening, the reasonable measures must shrink accordingly. There is a tightrope to walk between compliance with section 27 and the sustainability of the achievement of progressive realisation of the rights guaranteed to all in the section.

The provisions of section 26, which in similar terms guarantee access to housing, are also subject to progressive realisation within the available resources of the state.

### **The National Development Plan and corruption.**

It is suggested in the National Development Plan that the best means for dealing with corruption is a multi-agency approach with greater cohesion and co-ordination than is at present in evidence. The drafters of this recommendation may have done their research and conducted their deliberations prior to the delivery, on 17 March 2011, of the seminal Constitutional Court judgment in *Glenister v The President of South Africa and others* 2011 (3) 347 CC. They certainly came to the conclusions they reached without regard to the Court’s ruling. This judgment finds that the anti-corruption entity (Ace) in place in South Africa, a new SAPS unit known as the Hawks (Directorate of Priority Crime Investigation) does not pass constitutional muster to the extent that an adequate degree of independence is not afforded the Hawks in the enabling legislation

as a consequence of which it is unable to function and perform as an effective Ace.

The judgment examines the criteria for successful corruption fighting and comes to a conclusion that is diametrically opposite to that favoured by the National Planning Commission. Relying on OECD research into best practice for corruption busting the court identifies five criteria according to which effectiveness is best assured. They are specialisation, adequate training, independence from political influence, interference and manipulation, resources that are guaranteed and security of tenure of office for those who work for the Ace. The Hawks do not comply properly with any of these criteria and the attempts of the executive and legislature to retain them as a SAPS unit in legislation, at present being processed in Parliament, are likely to be found to be unconstitutional if not for any other reason, then because of the role of the National Commissioner of Police in SAPS. This is a role which is and remains constitutionally determined and which gives a political appointee the “management and control” of the Hawks. This is incompatible with an adequate degree of independence. The attempts to keep the Hawks within SAPS without having them subject to the management and control of the chief of police are manifestly not in line with the constitutional requirements in place in section 207 of the Constitution. This is an invalid approach because section 2 of the Constitution provides that any law that is inconsistent with the Constitution is invalid.

The National Planning Commission has overlooked the importance of specialisation and independence for the Ace in its report. The Hawks are not specialised, they are legally obliged to deal with all “priority crimes” which may or may not include corruption. The fact that resources have to be spread to deal adequately with all of the priorities crimes with which the Hawks are seized means that corruption cases, especially difficult ones that involve those in high places are not accorded the necessary priority.

A good example of this was the Hawks’ decision in September 2010 to shelve all investigations into wrongdoing in the arms deals of 1999. Only one Hawk was working on the dockets and the amount of material seized for the investigations was regarded as too overwhelming to justify keep the investigations open. Only the intervention of veteran campaigner Terry Crawford-Browne led to the appointment of a commission of inquiry which is now tasked by

the President with the business of getting to the bottom of allegations of wrongdoing in the arms deals procurement plan.

### **Judicial consideration of corruption**

The most recent consideration of the evils of corruption in our courts is that of the Constitutional Court in the Glenister matter. The majority judgement at paragraph [166] spells out the court's attitude in pellucid words that the nation will ignore at its peril:

“There can be no gainsaying that corruption threatens to fell at the knees virtually everything we hold dear and precious in our hard-won constitutional order. It blatantly undermines the democratic ethos, the institutions of democracy, the rule of law and the foundational values of our nascent constitutional project. It fuels maladministration and public fraudulence and imperils the capacity of the State to fulfil its obligations to respect, protect, promote and fulfil all the rights enshrined in the Bill of Rights. When corruption and organised crime flourish, sustainable development and economic growth are stunted. And in turn, the stability and security of society is put at risk.”

### **Judicial consideration of poverty**

In *Government of the Republic of South Africa and others v Grootboom and others* 2001(1) SA 46 (CC) at para [24] et seq the following words fell from the lips of Yacoob J:

“The right of access to adequate housing cannot be seen in isolation. There is a close relationship between it and the other socio-economic rights. Socio-economic rights must all be read together in the setting of the Constitution as a whole. The State is obliged to take positive action to meet the needs of those living in extreme conditions of poverty, homelessness or intolerable housing. Their interconnectedness needs to be taken into account in interpreting the socio-economic rights, and, in particular, in determining whether the State has met its obligations in terms of them.

[25] Rights also need to be interpreted and understood in their social and historical context. The right to be free from unfair discrimination, for example, must be understood against our legacy of deep social inequality. The context in which the Bill of Rights is to be interpreted was described by Chaskalson P in Soobramoney:

'We live in a society in which there are great disparities in wealth. Millions of people are living in deplorable conditions and in great poverty. There is a high level of unemployment, inadequate social security, and many do not have access to clean water or to adequate health services. These conditions already existed when the Constitution was adopted and a commitment to address them, and to transform our society into one in which there will be human dignity, freedom and equality, lies at the heart of our new constitutional order. For as long as these conditions continue to exist that aspiration will have a hollow ring.'

### **Steps taken by government to fight corruption: structures, policies, implementation and their impact on poverty**

It is important to place the anti-corruption measures in place in their proper historical context. South Africa has never in its entire history experienced a period of clean, just and effective government. According to the research of Paul Holden and Martin Plaut for their book: "Who Rules South Africa?" (Jonathan Ball, 2012), dispossession, avarice and conflict are the bedrock upon which South Africa was built. (Page 267)

The announcement by the head of the Assets Forfeiture Unit, Adv Willie Hofmeyr on 30 March 2011 that about R30 billion per annum is lost to corruption on state tenders is cited by these authors as proof of the ongoing nature of corruption in our society. (Page 266) Hofmeyr is quoted as saying:

"I think we should all accept that corruption is a serious problem in our country, but I am hopeful that we will make good progress over the next few years."

At the same time as Hofmeyr was making this announcement the SAPS arrested the head of crime intelligence, Richard Mdluli. He has been charged with murder, kidnapping, fraud and corruption.

All charges were withdrawn and his reinstatement as head of crime intelligence followed. Then Freedom under Law, an NGO dedicated to upholding the rule of law, secured a High Court interdict preventing him from doing any police work whatsoever pending the outcome of a review of the decisions not to prosecute him on the various charges. The charges were formulated by senior prosecutor Glynnis Breytenbach, herself suspended by the National Prosecuting Authority and in dispute with her employer over the validity of her suspension.

The former National Commissioner of Police, Bheki Cele, has been dismissed by the President following irregularities in the conclusion of leases for Police Headquarters in Pretoria and Durban at more than three times the going rate for premises of the kind in question. The Molozi Board of Inquiry that considered the fitness for office of Cele has recommended that he be further investigated for corruption. His predecessor, Jackie Selebi, is serving a 15 year sentence for corruption after his relationship with a mafia boss called Glenn Agliotti came under scrutiny in the Gauteng High Court in a long running criminal trial.

Twelve member of the Hawks in Cape Town are awaiting trial for murder while in Durban the Cato Manor organised crime unit of the Hawks has been disbanded with several of its members facing multiple charges ranging from murder to robbery.

The Office of the Public Protector is investigating the CIEX report into corruption in the dying days of apartheid with a view to clawing back the money allegedly used to shore up failing banks in what was called a "lifeboat" operation in which taxpayers' money was misapplied by the apartheid regime to keep insolvent banks from failing publicly and disastrously for the apartheid era economy.

The SAPS is a creature of the new dispensation. The notion of a service replacing a police force was overtaken when Cele became police commissioner. His style of preventing and combating crime was a militaristic and aggressive one. He adopted the rank of general and instructed his staff to "shoot to kill" troublesome suspects. They did. Whether his successor, Riah Phiyega, persists with the militarisation of the SAPS remains to be seen. She has no experience of policing and finds herself in a conflict of interest situation as a consequence of contractual dealings between a company of which she was a director and the SAPS.

During the Mbeki era of the new South Africa it was decided to tackle corruption via a troika system in which crime intelligence, investigation and prosecution was united in the Scorpions (Directorate of Special Operations) unit of the National Prosecuting Authority. The Scorpions functioned effectively and efficiently. Their success with corruption in high places was their downfall. At the very Polokwane conference at which Jacob Zuma was installed as the new leader of the ANC, a resolution was passed calling for the urgent disbanding of the Scorpions and their replacement with a police unit to be called the Hawks. Despite opposition from civil society organisations and the opposition parties in Parliament, the legislation needed to enforce the resolution was rammed through Parliament; even the National Prosecuting Authority opposed it. Some prosecutors, who called themselves the Concerned Members Group, warned that the disbandment of the Scorpions would put the fight against corruption back by 20 years. None of this was heeded. Too many highly placed members of the ANC had received the attention of the Scorpions, if not in the Travelgate scandal (in which parliamentary travel allowances were fraudulently abused by members of parliament) then for involvement in the arms deals (Tony Yengeni and Schabir Shaik) and tender irregularities of various kinds. The official opposition in a submission entitled "The case for retaining the Scorpions" put it in the following words in February 2008:

"The government's decision to disband the Directorate of Special Operations, in line with the ANC's resolution at Polokwane is a transparent attempt to destroy the most effective corruption-busting force in the country. The only conclusion to draw is that the ANC want to get rid of the DSO to protect prominent members of the ruling party. Besides the seven convicted criminals on the ANC's National Executive Committee, six NEC members are currently the subjects of ongoing criminal investigations. At least two of these are under investigation by the DSO."

The laws doing away with the Scorpions and creating the Hawks were passing in 2009 and were immediately challenged by Johannesburg businessman, Hugh Glenister, who succeeded eventually in winning a judgment on appeal in the Constitutional Court in March 2011 which has sent government back to the drawing board in an effort to create an Ace that is constitutionally

compliant in the sense that it is sufficiently independent to be an effective bulwark against corruption.

The legislation formulated to implement the Glenister judgment is problematic and could, unless it is radically revised in the National Council of Provinces, lead to further litigation concerning its constitutionality.

South Africa has entered into a plethora of treaty and international agreements in terms of which the undertaking is given to maintain an effective and independent Ace. The Hawks do not measure up to the undertakings given in their present guise and are unlikely to do so in the form contemplated by the executive and the majority in the National Assembly. It remains to be seen whether the National Council of Provinces insist on the further amendment of the formula upon which the ANC is insisting. Only the Democratic Alliance and the Freedom Front + continue to oppose the idea of keeping the Hawks within SAPS. Glenister has complained to the Office of the Public Protector and the Human Rights Commission that the process has gone awry. His complaints are under consideration.

While it is so that the Constitution contemplates a single police service for the new South Africa, this does not prevent the government from creating a suitably independent specialist body, an Ace that is sufficiently resourced and staffed by people who have security of tenure. This would accord with the OECD criteria cited by the Constitutional Court in the Glenister judgment and with the international obligations assumed since 1994. The government created the Scorpions outside of the SAPS. A new Ace that is of a stand alone kind could be clothed with the necessary attributes to function independently and effectively as an Ace. The thinking in Luthuli House remains problematic for the creation of such a unit.

The figures collected by Plaut and Holden do not suggest that there is any merit in keeping the Ace in the SAPS. The SAPS is itself a corruption ridden and dysfunctional entity. This was conceded by the then Deputy Minister of Justice, Adv Johnny de Lange, during the parliamentary debate on the dissolution of the Scorpions. On the Hawks watch (since 2009) the number of new investigations has fallen by 85%, while the value of contraband seized plummeted by a staggering 99.1%.

A feature of an effective Ace is that the public should have confidence in its ability to do its job. This feature was highlighted by the Constitutional Court. Public perception plays an important role as whistle-blowing by the public is encouraged when there is confidence and is discouraged when confidence is at a low ebb. The South African public does not have any great confidence in the SAPS. In order to assess the scale of the problem, the SA Institute for Race Relations embarked on a scientific survey of the public perceptions of the police:

“The Institute consulted journalists, media reporters, and information from the Independent Complaints Directorate [now the Independent Police Investigative Directorate]. Within a week, a list of over 100 separate incidents alleging and/or confirming the police’s involvement in serious crimes was drawn up. The Institute’s researchers stopped looking for more incidents after compiling this list of the initial 100. The 100 incidents do not include reports of petty crimes, poor service delivery, or the soliciting of small bribes by officials. Without exception, the 100 incidents identified are related to very serious and often violent and pre-meditated criminal behaviour. These included ATM bombings, armed robberies, house robberies, rapes, murders and serious assaults.”

Writing for Politicsweb on 3 July 2012, Frans Cronje of the SA Institute for Race Relations adds to the research of his organisation with the following observations:

“Rather than actually addressing South Africa’s problems, the ANC has tried to place the blame for its failures elsewhere. Jacob Zuma told delegates at the policy conference [Gallagher Estate June 2012] that the problem was that the structure of the South African economy has not changed sufficiently since 1994 and was largely in white hands. He is of course correct that whites are far more likely than blacks to hold professional positions or start and run successful businesses.

However, that he even raises white ownership of the economy as a key problem suggests that at some level he believes that, despite failures in both growth and education, black South Africans could nonetheless have attained white standards of living and expertise in business. There is no content or logic in such arguments. That the ANC president makes them suggests that his party has run out of ideas.

The same is true when it comes to corruption. This is without doubt an issue that is important in any diagnosis of the ANC's flagging support. There is much evidence that what the media likes to call 'service delivery protests' is often the angry response of communities to corruption perpetrated by their ANC representatives. A senior police general, who happens to be black, has communicated to us that he is sick and tired of deploying his members to stamp out protests that result from ANC councillors, often repeatedly in the same municipality, stealing money that is meant for the community projects.

Despite Jacob Zuma's exhortations to the party to root out corruption in its ranks, the DA's research head, Gareth van Onselen, points out that the party has in fact, under Zuma, placed an number of candidates convicted of fraud and corruption on its election lists. Even the head of its political school [Tony Yengeni], who is responsible for guiding the ANC's emerging leaders, is a convicted criminal. This is not a party that takes corruption seriously or believes it to be a problem.

What the above shows is that the ANC is not serious about addressing the failed education, low growth, unemployment, and corruption that underpins its flagging support."

These comments dovetail with the view of Professor Njabulo S Ndebele who wrote in City Press on 17 June 2012, after the "spear" debacle:

"President Zuma comes across as being highly tolerant of criminality. In the context that criminal charges against him were unsatisfactorily withdrawn, his conduct in this respect should not be surprising.

ANC party members caught on the wrong side of the law are likely to receive active support or admonitory leniency. This presents an image of the president as not being committed to upholding, defending and respecting "the Constitution as the supreme law of the republic".

An Ace housed within the SAPS is hardly likely to engender the levels of public confidence that need to be inspired. In the words of an unnamed official who was interviewed by Paul Holden:

“otherwise we are heading towards becoming a banana republic.”  
(page 301)

Holden does record some initiatives ostensibly designed to combat corruption. The President himself has agreed key targets with the Minister of Justice. The idea is to successfully prosecute 100 people who have assets that can be seized as the proceeds of crime to the value of at least R5 million. The notion of successfully achieving this by 2014 with the limited resources of the anti-corruption task force assembled in July 2010 seems far-fetched and the insistence on keeping the Hawks within the SAPS is likely to bedevil the prospects of successfully reaching the targets set.

Another aspect on which the President has acted pro-actively is in relation to the allegations of corruption tainting the arms deals of 1999. The procurement of goods and services in the new South Africa has to be in accordance with a system that is fair, equitable, transparent, competitive and cost-effective. The arms deals were arguably not compliant with any of these criteria. After pressure from various quarters, and litigation by Terry Crawford-Browne, the President appointed the Seriti Commission of Inquiry into the arms deals and gave it extensive powers and wide ranging terms of reference. It is conceivable that the end product of the work of the Seriti Commission will be the cancellation of all four of the arms deals, a return of the armaments procured to the sellers and the recovery from them of about R 70 billion to the benefit of the taxpayers of South Africa. The Seriti Commission is taking its work seriously and is proceeding with due deliberateness toward the fulfilment of the mandate given it by the President.

In summary: the recent steps taken by government in relation to fighting corruption are somewhat patchy and lacking in compliance with the requirements of the Constitutional Court, the OECD research criteria and the international obligations to keep an effective Ace to deal with the scourge of corruption in South Africa. It may be argued that the institutional corruption of the ANC, what its Secretary General, Gwede Mantashe, calls the “sins of incumbency” have rendered it incapable of taking on the scourge of corruption properly and effectively.

## **Steps taken by government to fight poverty: structures, policies, implementation and their impact on corruption**

While it has often been remarked that education, education and more education is the solution to the problems of South Africa, including the problems of poverty, and while in the longer term this is indubitably the case; for now the issues of poverty are so pressing in the short to medium term that long term solutions do not have any immediate relevance to those who are hungry, thirsty, under-clothed and poorly housed in the informal settlements that have mushroomed around the metropolitan areas since the abandonment of influx control back in the 1980s.

In its review of the last 18 years the ANC, in its policy conference report of 2012, first published in ANC Today, rightly points, inter alia, to the following:

“

- the adoption and implementation of a Constitution that promotes consistent equality and encompasses first, second and third generation rights.
- Programmes aimed at meeting basic needs such as housing, roads, and access to electricity, sanitation and water
- Improving access to health care and dealing with the burden of disease
- The introduction of a social wage and social policy to alleviate poverty
- Measures to develop our human resources through education and skills
- A programme of economic transformation that saw growth and job creation after decades of stagnation”

The same document, in its discussion of the “Pillars of Social Transformation” simply records that most Commissions reaffirmed the five pillars outlined in 2007 –

“There was consensus, however, that these need to be reviewed, taking into account such major areas of struggle as mass mobilisation and mass work as well as social transformation and

gender. How these are to be integrated and rationalised, will require further reflection.”

It is apparent from this that the ANC is going to be busy with the issue of poverty in the run up to the Mangaung conference in December 2012.

The impact on corruption of whatever changes in relation to the war on poverty are wrought is at this stage a matter for speculation. Grants aimed at the alleviation of poverty now reach some 13,5 million people in South Africa, including non citizens who are permanent resident of the country. Whether the tax base of only 12 million is able to sustain this level of expenditure remains to be seen. Individual taxpayers are responsible for paying about one third of the income tax levied by government. It accordingly falls to business and industry to provide the lion's share of the taxes needed to sustain the social security net that has been put in place by the government since the liberation and unification of South Africa.

### **The effect of corruption on poverty**

There can be little doubt that in circumstances in which government is “clean, just and effective” (to use the adjectives preferred by Martin Plaut page 267) the capacity of the state to deal with poverty properly is considerably enhanced. The converse is also true. The loss of as much as R30 billion a year on corruption in the state tender process, one which is meant to be compliant with the values of section 217 of the Constitution, is a blow to the ability of the state to fund social expenditure aimed at sustainably alleviating poverty.

It can accordingly be argued that ongoing corrupt activity, especially in the public sector, is a major factor in the fight against poverty. With millions of fellow citizens living in relative poverty, the continuation of corruption is intolerable. The Public Protector has pointed to three strategies to steer the country away from a tipping point on corruption that she sees looming. First, public accountability needs to be promoted, secondly, the re-enforcement of transparency – largely via the media – is necessary, and thirdly the culture of impunity that is abroad needs to be tackled via better law enforcement in relation to criminality giving rise to corruption.

Combating corruption and fighting poverty are in many ways two sides of the same coin: the better the results on the former, the rosier the prospects for the latter. Even if only tender fraud and corruption are eliminated, this would free up R30 billion a year to be spent on more worthy causes than the feathering of the nests of the corrupt among us.

### **Measures available to improve poverty alleviation through tackling corruption**

Enhancing public accountability is achievable via a variety of measures. The primary accountability mechanisms are in the oversight of the Executive by Parliament, the promotion of constitutional values by the Chapter Nine Institutions, and the adjudicative role of the Courts in relation to crimes committed and in respect of conduct and laws being kept consistent with the Constitution itself. The Standing Committee on Public Accounts in the National Assembly is able, through its powers of investigation and interrogation of the public service, to keep watch over the spending of public money.

The public service itself, when it becomes compliant with the values and principles spelt out for it in section 195(1) of the Constitution is also capable of being a bulwark against corrupt activities. The public service is only obliged to implement the lawful policies of the government of the day. (section 197) and it ought to function accountably at all times. The public service ought not to be a site of cadre deployment. This is illegal, unconstitutional and a source of conflicts of interest. Civil society also has a role to play in the exacting of accountability.

It is so that under the proportional representation system of voting for parliamentarians at present in place, the relationship between voters and members of parliament is somewhat attenuated, while that between party bosses, who control whose names appear where on party lists for elections, and their parliamentarians is increasingly cosy. Many parliamentarians conduct themselves in a way that suggests that they only feel accountable to the party bosses and not to the people who elected them via their membership of the party for which votes are cast every five years.

The introduction of a constituency system for at least half of the parliamentarians could rectify this and also enhance the essentially participatory nature of the constitutional democracy in place. While the Van Zyl Slabbert Commission did make detailed recommendations on this, its report is gathering dust in a vault in Parliament and has not found favour with those who benefit most from the strict proportional representation system at present in place.

Insofar as re-enforcing transparency as a means of combating corruption is concerned, the health of the fourth estate is the primary consideration as it is in the newspapers, on the radio and via television that ordinary folk are able to keep up with the political developments and general news of the day. The freedom of the press and its ability to have access to information (both rights guaranteed to all in the Bill of Rights) need to be jealously guarded. This involves ensuring that the Protection of State Information Bill is not allowed to become a Protection of Crooked Politicians Bill by keeping it strictly within the confines of the Constitution. This is achieved by insisting that such secrecy as is legally allowed is confined to the type of secrecy that is permissible in an open and democratic society in which human dignity, equality and freedom have pride of place. The proposed Media Appeals Tribunal seems not to be on the political agenda, having been seen off by the good work done by the Press Commission chaired by former Chief Justice Pius Langa. It is nevertheless imperative that a vigilant watch be kept to protect the freedom of the press.

Countering the culture of impunity that is abroad in South Africa is perhaps the most difficult task for those seeking measures to combat corruption. The Institute for Accountability in Southern Africa has suggested the creation of a new Chapter Nine Institution to be called the Anti-Corruption Commission to prevent, combat, investigate corruption while also educating on the subject of corruption. The detailed proposals are available at [www.ifaisa.org](http://www.ifaisa.org) on the Glenister case page of that website. Nick-named the Eagles, this Ace will have all of the attributes that the OECD has identified as best practice. It will specialise in corruption, be well trained in much the same way as the Scorpions were, have guaranteed and adequate resources as well as security of tenure for its staff. Most importantly, it will be independent of the executive and the SAPS, reporting directly to parliament as do the other Chapter Nine Institutions. This is the way to curb the culture

of impunity. The Hawks lack the clout or sapiential authority to do so. Even in their revised incarnation, while they remain while the SAPS they will not have the necessary attributes to deal with corruption in high places adequately and effectively.

## **Recommendations and conclusions.**

- As a means of enhancing public accountability and bridging the chasm that has developed between politicians and people, it is recommended that the Van Zyl Slabbert Commission report be reconsidered, with a view to introducing some form of constituency representation in the provincial councils and in parliament.
- In order to allay fears for the freedom of the press and so as to improve transparency, all thought of a Media Appeals Tribunal should be put in abeyance or better still abandoned.
- So as to properly equip the state with the machinery to deal effectively and independently with the scourge of corruption with impunity, a new Chapter Nine Institution called “The Anti-Corruption Commission” or Eagles should be created by parliament as a best practice form of implementation of the judgment of the Constitutional Court in the Glenister case.
- All dysfunction must be eliminated from the basic education and the early childhood development systems so that education of decent quality is made available to the populace, both child and adult alike, in order to equip individuals with a standard of education that empowers them to escape the clutches of grinding poverty and realise their full potential. The best interests of children should be regarded as paramount; the delivery of proper basic education should be given priority.
- Job creation strategies must be more vigorously explored in the private sector; laws that prevent the creation of jobs should be revisited and the unemployed should be given representation at Nedlac.
- Land reform initiatives that encourage small farming on the most arable land by properly trained and financed emergent

farmers must be put in place as a means of uplifting and providing employment to those who live in poverty.

Corruption is theft from the poor. Promoting responsiveness to the needs of the poor accordingly involved relieving the poor among us of the burden of this form of theft. The recommendations and strategies suggested above are a means of alleviating poverty and exacting accountability. Making accountability matter is the key to achieving implementation of the recommendations.

Paul Hoffman SC  
Director  
Institute for Accountability in Southern Africa  
3 July 2012.