



INCLUSIVE SOCIETY INSTITUTE

Op-ed

The establishment of a National Anti-Corruption Agency for South Africa By Daryl Swanepoel

Nothing could be more urgent, or more needed, than a National Anti-Corruption Agency in South Africa. After twenty-seven years of democracy, and three-and-a-half years into the sixth administration, it is very clear that state capture continues to be a problem – even in the face of concerted efforts by the President. It has taken just five years to steal R1.5 trillion. And the thieves in government caught out for their corrupt activities have yet to be brought to book, and still hold their positions, thereby frustrating the actions of those who have chosen the right side of the law.

Despite progress made elsewhere in the world, there is still a great deal of work to be done in combatting the scourge of corruption on the African continent, where 25% of African GDP is lost to corruption. In the South African context, the impact of many years of corruption has been catastrophic. It has resulted in devastating economic losses whilst scaring away foreign investment. It has deepened public service dysfunction, eroded institutional integrity, and has had a corrosive impact on the rule of law and our democratic processes. It has also served to further entrench poverty and inequality, cruelly exacerbating the plight of our most vulnerable citizens.

President Ramaphosa has proposed the establishment of a high-level National Anti-Corruption Agency that would act in an advisory capacity and report directly to Parliament. Critics were, however, quick to point out that there are already fourteen law enforcement agencies operating in South Africa, all with a mandate to combat crime and corruption. The questions that then arose were why and how a fifteenth agency could be expected to make the kind of seismic difference all the other agencies have thus far failed to achieve? In the alternative, should government not allocate its resources to improving efficiencies in the existing agencies?

The Inclusive Society Institute, together with the Anti-Corruption Centre for Education and Research of Stellenbosch University (ACCERUS), has been working on research aimed at responding to the call and the criticism.

As the starting point in answering these questions, government needs to determine, via a clear and careful gap analysis and mapping, to what extent the existing anti-corruption agencies in South Africa are meeting the outcomes envisaged of such agencies under Article 6 and Article 36 of UNCAC. What must follow from this mapping exercise is a comprehensive and practical analysis – with reference to South Africa's international obligations and the domestic landscape, keeping in mind all the relevant constitutional, cultural, economic, political and social factors – on whether the nation would in fact be best served in proceeding with the establishment of the proposed fifteenth body.

In the event that a fifteenth agency is indicated, it is imperative to consider very carefully the proposed nature and structure of such an agency, including the duties, functions and powers that it will enjoy under South African law. There are four different types of agencies to weigh up. Firstly, those of a preventative nature, which have no law enforcement powers but typically include the promotion of

standards that assist in guiding public and private actors and the facilitation of education at all levels of society. Then there are those that have law enforcement powers and act as such. A word of caution here: if these already exist, creating new agencies should be avoided where the same result could be achieved by upgrading and retooling existing ones. Thirdly, there are agencies that are of a hybrid nature – these are composed of both national public officials, who contribute their local experience and knowledge, and international anti-corruption experts, who bring their broad expertise and independence to bear. A model largely employed in countries unable to fight corruption without external assistance.

And lastly, are agencies of an advisory or coordinating nature. These bodies are typically referred to as Councils and are ordinarily driven by political will and founded at a high level – and is the kind proposed by the President. Unfortunately, these bodies do not boast a successful track record, as the efficacy of their role is entirely dependent on the degree of their authority. They are theoretically tasked with ensuring a greater degree of coordination and cooperation between existing law enforcement agencies, thereby resulting in improved efficiencies. However, if such an agency lacks authority over the law enforcement bodies it is tasked with coordinating, its authority becomes little more than notional.

If a fifteenth agency is contra-indicated, government needs to determine what the proposed upgrades to the existing agencies should be to ensure greater prosecutorial capacity and efficacy, the promulgation and enforcement of standards by public and private actors, and the promotion of broad-based education designed to reverse societal resignation to corruption. Research into global best practices is necessary to determine specific models and practices for incorporation into new policy and/or regulatory frameworks. In addition, there needs to be consideration of the barriers – contamination of law enforcement, cronyism, inadequate support for whistle-blowers and violent crime rates – to the ongoing efforts to combat corruption, and proposals made.

To finish off the process, there are two more questions that need answering: Would South Africa be willing to offer Amnesty for past acts of corruption in order to ward off opposition to anti-corruption enforcement and to drive anti-corruption compliance? And would South Africa be willing to adopt a framework of Non-Trial Resolutions (NTRs) and if so, under what conditions might this take place?

South Africa, like the rest of the African continent, is not poor, but rather poorly managed, which is at the root of most of the country's problems. In fact, there is much promise in this country, which corruption has systematically been eating away at. In order to prosper as a nation, South Africa needs to leave no stone unturned in its efforts to reverse the damages that corruption has caused to the economy. And indeed, the very fibre of society.

In principle, the Inclusive Society Institute will support any effort that aims to cause the demise of corruption in this country. However, it must also be the most productive and effective path that is followed, to address the social ills in society. Whilst the creation of a new agency invariably creates new solutions, it also creates new challenges and difficulties. The Institute acknowledges the current regime's commitment to fighting the scourge, which fight is slowly but surely starting to turn the wheels of justice. That said, the powers that be, need to pick up the pace.

Daryl Swanepoel is the Chief Executive Officer of the Inclusive Society Institute. This article draws on the content of the high-level dialogues aimed at informing the research into the establishment of a National Anti-Corruption Agency for South Africa, which was hosted by the Institute. The findings of the research is due to be released soon.

7 April 2022