



## INCLUSIVE SOCIETY INSTITUTE

### Op-ed

#### Different types of anti-corruption agencies By Drago Kos

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Establishing yet another anti-corruption agency in South Africa will not be a simple task, with possible difficulties in identifying its power relationships with the other agencies.

At the end of the previous millennium and the beginning of this one, there was a wave of setting up anti-corruption agencies all over the world. One reason for that was the adoption of the United Nations Commission Against Corruption. The second reason, especially in Eastern Europe, was the desire of countries to join the European Union (EU). In the beginning, there were no criteria that countries had to fulfil with regards to fighting corruption in order to join the EU, but it eventually started requiring the establishment of such agencies.

There are basically two different types, the first being preventative agencies, which do not have any law enforcement powers. Countries that have installed this type include Slovenia, Serbia, Montenegro, Rumania, Ukraine and, lately, France. The second type are law enforcement agencies, established by regions and countries such as Hong Kong, Indonesia, Lithuania, Latvia, Croatia, Romania, and Ukraine.

The big question is: Should an agency have law enforcement powers or not? If a country has effective control over its existing law enforcement agencies, it may not need to put in place new institutions, as that will not only produce solutions, but it will also create new problems. A new institution could garner the resentment of existing institutions, because commonly the newest institution collects personnel from those already in existence, leaving the existing ones objectively weaker.

Furthermore, it is easy for a new agency to boast that they will investigate and prosecute corruption, but to prosecute, the resources and technical equipment, etcetera, must be available to do so. This is a basic dilemma which all countries must deal with when establishing anti-corruption agencies.

After the first wave of enthusiasm, once many agencies had been set up, came the first wave of disappointment. Countries started speaking of anti-corruption fatigue. Now, a few years later, the situation has settled down and cool heads can be used to think the issues through.

There is now also a type of agency called a council, which is the kind proposed by South African President Ramaphosa. The Inclusive Society Institute's (ISI) recent high-level dialogue on the merits of establishing such an agency revealed the country's position in terms of this critical decision. Normally these are high-level agencies or anti-corruption institutions established by countries that want to show that they are giving the fight against corruption strong political emphasis. However, to be frank, there has never been such a body that has been effective.

First of all, such a body cannot do any concrete work, because they cannot carry out law enforcement. In the case of South Africa, this is excluded by definition. The President has said that the council will report to Parliament. But law enforcement agencies cannot report directly to Parliament if they are to have executive power.

Secondly, an agency established at such a high level will be under pressure to impress on others. The tasks of high-level institutions or councils are to deal mostly with the coordination and cooperation of existing institutions. This can be done but it has yet to be seen, mainly due to the fact that the existing agencies already have their assigned powers and responsibilities; they are already responsible to another entity. Therefore, if the body cannot impose its position and its strength to force existing agencies to function as directed, then what will the council actually be able to do?

It is not known what powers the council will have, but here is a basic analogy. There are anti-corruption agencies which simply fall into the strategy of the institutions as already set up in a country. And then there are agencies that act like sharks. Agency one cannot do much in the fight against corruption. However, an agency that is acting as a shark in a pool of big fish, being the existing agencies, can enforce them to do their jobs. Of course, this would immediately make the council very unpopular with the other agencies. But this should not be a sticking point, after all, the purpose of working in the public sector is not to make friends, it is to take care of communities. Therefore, if the agency has a coordinating task, it will need to be a shark, which will require it to have very strong powers.

It is not enough to have general political will and good personnel. An agency also needs clearly defined boundaries, and resources. South Africa will have to decide on whether to form an agency or a council that will try to increase the level of cooperation, coordination and functioning of its existing bodies by acting as a shark. Otherwise, there is no real reason why South Africa should establish yet another agency, which is surely a recognition of the fact that not all of the many existing ones are as effective as they could be, or even necessary.

There is another way of going about it, but not a method that is recommended for South Africa. Within the last year there has been a new kind of anti-corruption agency established in Afghanistan, Ukraine and Moldova – Armenia and Tunisia are also thinking about taking this approach on board – an agency that is not only composed of national public officials but in which there are also a combination of national and international anti-corruption experts.

The national public officials bring their experience with regard to the local circumstances and their law, while the international experts bring their anti-corruption experience and independent positions. This could very well be the future of anti-corruption agencies. This approach is not applicable to South Africa, but it is well suited to much more complicated countries that cannot fight corruption on their own.

South Africa will need to do a thorough analysis of what the proposed new agency or council's role should be. If this is not carefully thought through, then South Africa will simply be sitting with yet another agency.

It is encouraging that the government is willing to take the issue on headfirst – this is most important. However, it would be ill-advised to take shortcuts in fighting corruption, as this could cause more harm than good in the long term.

***This is Part 2 of a 5-part series of a high-level dialogue on the establishment of a National Anti-Corruption Agency for South Africa. This is an extract from the Inclusive Society Institute report on the dialogue.***