



ELIMINATING CORRUPTION BY PROHIBITING PUBLIC SERVANTS WHO CONDUCT BUSINESS WITH THE STATE

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INTRODUCTION

- The definition of corruption consequently ranges from the broad terms of “misuse of public power” and “moral decay” to strict legal definitions of corruption as an act of bribery involving a public servant and a transfer of tangible resources.
 - Accordingly, the corruption has been “multi-disciplinary” and dispersed, ranging from universal theoretical modelling to detailed descriptions of single corruption scandals.
- It has been a problem of political, economic, cultural or moral underdevelopment, and mostly as something in between.

FORMS OF CORRUPTION

- A recent study has characterized some main forms or manifestations of corruption, according to a number of basic characteristics (Amundsen 1999).
- The main forms of corruption are:
 - i. Bribery
 - ii. Embezzlement
 - iii. Fraud and
 - iv. Extortion
- Even when these concepts are partly overlapping and at times interchangeable with other concepts, they may identify some basic varieties of corruption.

BRIBERY

- The act of taking or receiving something with the intention of influencing the recipient in some way favourable to the party proving the bribe. Bribery is typically considered illegal and can be punishable by jail time or stiff fines if authorities find out about the bribe

EMBEZZLEMENT

- It is a fraudulent appropriation to his/ her own use or benefit of property or money intrusted to him by another, a clerk, agent, trustee, public officer, or other person acting in a fiduciary character.

FRAUD

- It is the unlawful , intentional, misrepresentation of facts(distortion of the truth) calculated to prejudice another

EXTORTION

- The crime of extortion is committed when a person unlawfully and intentionally obtains some advantage, which may be either of a patrimonial or a non-patrimonial nature from another by subjecting the latter to pressure which induces her to hand over the advantage.

POLITICAL V/S BUREAUCRATIC CORRUPTION

- According to Moody-Stuart 1997; Doig and Theobald 2000: political corruption is furthermore when policy formulation and legislation are tailored to benefit politicians and legislators.
- Political corruption can thus be distinguished from bureaucratic corruption, which is corruption in the public administration, at the implementation end of politics.
- Political corruption might be incidental, controlled or concealed, as in most consolidated liberal democracies. Likewise, bureaucratic corruption may take place at the implementation end of public administration without necessarily being a part of the political system or having political repercussions. This happens in particular when a clean and strong government has been able to purify the corridors of power, but not every inch of the public service so that certain services or bureaux are (still) engaged in corrupt practices.
- And corruption in high places is contagious to lower level officials, as these will follow the predatory examples of, or even take instructions from, their principals. This is why a strict definition of corruption as a deviation from formal rules, and a particular focus on bureaucratic corruption alone, can be misleading.

PROBLEM STATEMENT

- The 2008 REPORT OF THE AUDITOR-GENERAL TO PARLIAMENT ON A PERFORMANCE AUDIT OF ENTITIES THAT ARE CONNECTED WITH GOVERNMENT EMPLOYEES AND DOING BUSINESS WITH NATIONAL DEPARTMENTS
<C:\Users\Mobakeng\Desktop\government employees and doing business with national departments.pdf>
- Public service & administration minister Lindiwe Sisulu has published a draft law that aims to make it illegal for civil servants to be involved in companies that benefit from state tenders,
- Public Administration & Management Bill (PAM) will apply in national, provincial and municipal government, which will make implementing it a vast and complex administrative task. Getting all civil servants to disclose their business interests is one thing; verifying these is quite another, especially considering that the law also requires officials to declare the business interests of their close family members. Wives, partners and children won't be prohibited from doing business with the state but the idea is to pick up any conflicting interests in tender bids.
<http://www.pmg.org.za/files/bills/130605publicadministrationmanagementbill.pdf>
- In 2009, the Institute of Security Studies revealed that 42% of the cabinet, including the president, were registered with the Companies & Intellectual Property Registration Office (Cipro) as having business interests in 184 companies and close corporations. Politicians in provincial and municipal government are also benefiting from state contracts. For example, the AG reports for the past financial year show how the Free State provincial government awarded 50% of its contracts to politicians and their families.

POLICY FRAMEWORKS TO ENSURE ELIMINATION OF CORRUPTION

- The constitution of the Republic of South Africa Act 106 of 1996- Chapter 3: Co-operative Government
- All chapter 9 institutions and legislations governing them
- The existence of PAC and MPACS in various jurisdictions
- PFMA and MFMA
- Prevention and Combating of Corrupt Activities Act 12 of 2004
- Prevention of Organised Crime Act 121 of 1998
- Business interest of Government Employees Bill

RECOMMENDATIONS

- Fraud Prevention Policy be strengthened. The purpose of the fraud prevention policy document is to inform all staff and other stakeholders on the entity's policy towards fraud and corruption. Its purpose is further to inform all recipients on what actions are prohibited and urges them to assist in the combined effort to limit fraud and corruption in the workplace. It introduces a forum and channel through which fraud can be brought to management's attention.
- The fraud prevention policy should be made available to all staff members and should be worded in such a way as to achieve ``buy-in" from all staff. It should create a certain level of fraud awareness among staff members, encouraging them to detect and report fraud in the workplace. This document will cover aspects such as the need to have a policy, defining the various offences, setting out the reporting structures, assigning responsibility to designated officials, making provision for training, selling the hotline concept, publication, non-fraud irregularities, confidentiality, anonymity, protection of whistle blowers rights, etc.

Recommendations conti...

- The draft of Public Administration and Management Bill be enacted
- When scrutinising procurement deals, public accounts committees should pay special attention to a number of areas e.g. conflicting interest of officials processing the procurement, over pricing collusion practices, price overruns, social security payments evasions, poor service delivery and bad labour practices.
- Due to the vulnerability of Public Procurement system it is imperative that procurement processes and awarding of state contract is monitored to ensure transparency, accountability and fairness.
- Monitoring of state procurement contracts should be clearly spelt out within the mandate of PACs as huge sum of public money is at stake.
- A stable and effective government procurement process is crucial to economic development success and PACs should advocate for the development of research tools which evaluate contemporary trends, strategies, tactics and techniques evolving within the Public procurement sphere
- Good leadership and Political willingness to fight corruption

CONCLUSION

- Implementation of APAC resolutions
- Implementation of reports of Chapter 9 institutions
- Public Education on Act No. 12, PREVENTION AND COMBATING OF CORRUPT ACTIVITIES ACT, 2004 be enhanced and in all other Policy frameworks.