TACKLING THE MULTI-HEADED DRAGON
Evaluating prospects for a single anti-corruption agency in South Africa

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Occasional Paper No 38

INTRODUCTION

The Interdepartmental Committee on Corruption was appointed in October 1997 to consider proposals for the implementation of an anti-corruption campaign at national and provincial level. The Committee recommended in its report that Cabinet should consider establishing an independent and centralised anti-corruption agency such as that found in Hong Kong, Singapore, Botswana and New South Wales, Australia.

In particular, the report recommended that **"...** *a project team be established to carry out a feasibility study for an anti-corruption agency and the rationalisation of existing bodies"* and in a somewhat contradictory manner proposed *"the establishment of an anti-corruption agency with appropriate legislation* **...** *that is properly resourced. "* This might seem a bit like putting the cart before the horse, but given the current level of confusion about government strategies to fight corruption, this is not surprising. Cabinet apparently approved these proposals on 23 September 1998. However, in the light of the Public Sector Anti-Corruption Conference held in Parliament during mid-November 1998, it became clear that these issues were not conclusively resolved.

When opening the November conference, Deputy President Thabo Mbeki noted: *'It is a laudable feature of our new democracy that no less than ten structures exist to counteract corruption in line with their constitutional mandates. Some might share the view that these bodies are not effective enough, whilst others might feel that they need to be replaced by a single anti-corruption agency. This is one of the range of issues that should be addressed at this conference."*

It is clear that a key issue in the anti-corruption debate in South Africa concerns whether or not to improve the effectiveness of existing bodies tasked with an anti-corruption mandate, particularly in terms of investigation and prosecution, or whether to replace these institutions by a single anti-corruption agency.

This paper explores these options in a number of ways:

- firstly, by examining the politics of anti-corruption controls and establishing broad criteria for successful and effective anti-corruption agencies;

- secondly, by looking at international models, in particular Hong Kong's Independent Commission Against Corruption (ICAC);

- thirdly, by examining the context in which the South African debate is taking place. with a particular focus on the Heath Special Investigating Unit; and

• finally, by considering the key issues, advantages and objectives of co-ordination in order to assess the most viable way forward.

Criteria for successful and effective anti-corruption agencies

Some have noted cynica1ly that anti-corruption rhetoric has **"..** *been a routine feature of politics, invariably less as a means to longer term reform than as a means to diffuse opposition to the incoming regime, placate external agencies and secure tenure of office."* On the eve of South Africa's second democratic election and with regular media reports of official misconduct, it should come as no surprise that anti-corruption rhetoric forms part of the political agenda.

Particular examples where political rhetoric around corruption control has replaced the real issue include countries like Nigeria where **"...** *the preoccupation with panic measures and the creation of ad hoc panels and tribunals to replace non-functioning legal institutions for ensuring public accountability have not been particularly helpful."* This is clearly something that South Africa must avoid. Understandably, talk of establishing a single anti-corruption agency in South Africa, rather than tackling the difficult challenges of reforming the public sector, in particular the criminal justice system, to address corruption effectively, could be viewed as a statement of short-term political expediency.

Few public sector reforms have proven effective in developing countries without complementary preventive and investigative measures against corruption as part of the broad process. Such measures include public service training, staff rotation, particularly in the customs, revenue and contract-awarding agencies, suitable salary levels, codes of ethics and related disciplinary procedures and watchdog units within departments. The establishment of an anti-corruption agency or agencies with extensive investigative powers, a high public profile, honest staff and government support, is a key aspect of such reforms. However, even when such agencies are created, it is common that they are often starved of the resources needed to achieve their purpose. Analysts have warned that repetitive rhetoric that is not matched by sustainable reform will lead to indifference within and outside the political system with regard to the commitment by government to combat corruption.

The particular features of corruption as a crime call for specific and specialised investigation and prosecution techniques. Specialisation may take a number of forms: the specialisation of a number of police officers, judges, prosecutors, and administrators or units specifically entrusted with (several aspects of) the fight against corruption.

Other than sufficient monetary resources, a number of important requirements can be identified for an anti-corruption agency to function effectively. These include:

- sufficient staff and resources with specific knowledge and skills;
- special legislative powers;
- high level information sharing and co-ordination; and
- operational independence.

The Council of Europe's Multidisciplinary Group on Corruption has spelled our some of these features in more detail.

Experts

The fight against corruption needs to be approached on numerous levels, using specific knowledge and skills from a variety of fields (law, finance, economics, accounting, etc.). Each state should therefore have experts specialised in the fight against corruption. They should be of a sufficient number and should be given appropriate material resources.

Powers

The powers available to the specialised unit or individuals must be relatively broad and include right of access to all information and files which could be of value in the fight against corruption. Also, it is essential that the organisations/ institutions responsible for investigating corruption cases have appropriate legal instruments permitting them to be able to seize the proceeds of corruption and relevant evidence, including for the purposes of international co-operation.

Co-ordination

Successful agencies need to have rapid access to information held by a wide variety of national authorities (customs, tax departments, police, courts, etc.) and, as such, effective co-ordination mechanisms need to be in place. Compartmentalisation of departments (customs, tax, judiciary, etc.) is detrimental, and there is an absolute need for such mechanisms to be established at a central level to facilitate co-ordination.

Independence

All officers responsible for the fight against corruption must be shielded from political, economic or personal pressures. In particular, the operational independence of an agency — within its specific parameters — must be guaranteed.

In the following sections, the specific features of two anti-corruption agencies, namely Hong Kong's Independent Commission Against Corruption and South Africa's Heath Special Investigating Unit, will be examined against the backdrop of the broadly identified criteria for successful and effective anti-corruption agencies.

International models: The Hong Kong Independent Commission Against Corruption

The most often cited model of an effective anti-corruption agency is that of the Hong Kong Independent Commission Against Corruption (ICAC). This body, formed in 1974 largely as a result of public outrage against corruption, celebrates its 25th anniversary in March this year. The main reason for the ICAC's creation was political: "*... to persuade citizens that an agency independent of the police and the civil service was more likely to be effective than the existing system.*"

The ICAC has been the focus of much attention from countries as diverse as Australia and Botswana, for more reasons than its operational success. Its relative freedom from internal corruption, ability to attract widespread public support, apparent capacity to fit into a

heterogeneous society with several strong cultural imperatives, as well as its ability to work across both the public and private sectors, have also made it a popular model.

From the outset, the ICAC saw its role extending beyond the investigation of specific cases, to include identifying major structural factors that gave rise to corrupt behaviour. This was achieved by evaluating how work should be done (formal procedures), how it is actually done (informal practices) and how it is tasked and controlled (management). What makes the ICAC unique is that it does not confine its activities to enforcement, a fact which may be a major reason for its successes. Rather, it devotes enormous resources to the changing of attitudes and practices as reflected in its three complementary arms:

1. Operations - responsible for investigations in both the public and private sector;

2. Corruption prevention — works with government agencies and private industry to suggest methods to avoid corrupt practices; and

3. Community relations — promotes public information, awareness and involvement, including professionally produced television spots and written material, extensive educational packages for schools, and public activities of all kinds.

In. recognising the nature of corruption as a complex and pervasive crime, which is extremely difficult to investigate and prove in court, the ICAC is provided with specific powers to deal with corruption offences. These powers are contained in three specific laws:

- the Prevention of Bribery Ordinance (POB);

- the Independent Commission Against Corruption Ordinance; and

- the Corrupt and Illegal Practices Ordinance.

Inevitably there is a dearth of evidence to positively establish a bribery or corruption offence, a factor which stymies many investigators in western jurisdictions. These legislative powers assist in unravelling deliberately convoluted transactions and identifying hidden assets gained from corrupt practices They are essential if evidence against often devious, cunning conspirators is to be obtained.

The ICAC's powers include extensive investigative search and seizure powers, the power to restrict the disposal of property by anyone subject to an investigation, to obtain restraining orders to seize passports (with an order from a magistrate), to search bank accounts and to hold and examine business and private documents. One of the more controversial aspects of this legislation is that, for certain offences, the onus rests on the defendant to prove her/his innocence. For example, the Prevention of Bribery Ordinance reverses the traditional presumption of innocence until proven guilty. In terms of Section 10(1), the defendant is guilty of an offence unless s/he can give a satisfactory explanation of the source of additional funds or assets. There is thus no need for the ICAC to establish that bribery or corruption has occurred, or for a *prima facie* case to be established.

The ICAC Ordinance also empowers officers to arrest without warrant, if they reasonably suspect that a person is guilty of an offence in contravention of the Prevention of Bribery

Ordinance. The ICAC even has the authority to arrest for suspected offences without having the obligation to investigate them. Any power that the ICAC possesses, is enhanced considerably by the lack of a real definition of 'corruption'. The discussion of corruption, even in legislation, is so loose as to permit tremendous leeway to the 1CAC.

Although its powers are enormous, the ICAC has operated, by and large, within the set restraints. However, it has been argued that the ICAC's powers to search, seize and compel suspects and witnesses to divulge information are far in excess of that which is customary in liberal democracies. In the light of the transition from British to Chinese rule, some believe its existence is a potential danger and that its power could be abused. In a society whose political leaders are less restrained, no legal change would be required to operate the ICAC as the enforcement agency of an autocratic state and its vast authority therefore becomes a direct, not merely an implied, threat to fundamental human rights.

At present, the ICACs independence is guaranteed in the sense that it is a structure independent from the public service with the control of its own budget, powers and functions statutorily determined, which reports directly to the chief executive. Yet, what checks and balances exist to monitor its activities?

For one, there is an Internal Complaints Committee on Corruption, which looks into ICAC actions. In addition to an internal monitoring system, separate committees, appointed by the governor, with diverse representation exist to oversee the activities of each of the three divisions:

- Operations Review Committee;
- Corruption Prevention Advisory Committee; and
- Citizens Advisory Committee on Community Relations.

In June 1991, Hong Kong adopted a Bill of rights which was fully supported by the ICAC. Recognising the need to maintain a proper balance between the power to ensure effective investigations and the rights of individuals, the ICAC undertook to review the legislative authority and compatibility of its Ordinance with the Bill of Rights. As a result, a number of amendments on some provisions were proposed, which were subsequently passed by the Legislative Council. These included repealing the power to detain and search any person found on the premises of an investigation; requiring the court to issue a warrant to remand a person under investigation and about to leave Hong Kong to prison; and relaxing the controls over disclosure of a suspect's identity or details of an investigation by the press or any person once the suspect has been arrested. In addition, an independent review committee was appointed in 1994 to examine the ICAC's powers and accountability. On its recommendation, the Prevention of Bribery Ordinance was amended to transfer the Commissioner's powers of obtaining information, search and seizure, retention of travel documents and restraint on property disposal to the judiciary. These amendments took effect in June 1997.

There is thus an elaborate system of checks and balances to ensure that the ICAC does not step out of line. Importantly, the ICAC only investigates and collects evidence and has no prosecution powers for prevention of Bribery offences. It should be emphasised that the courts remain a major protection, for the authority to prosecute is reserved for the Attorney-General and only a court can determine guilt. All information is passed to the Secretary for Justice for consideration, since only the latter can initiate prosecution proceedings against those accused. This is an important safeguard against the abuse of powers.

Of particular interest to South African policy-makers are the regular questions raised about the transferability of the ICAC as an independent agency.

While some have pleaded the case for the transposing of such a model to South Africa as a matter of urgency, the ICAC is a particular product of a specific environment. For one, it is well-resourced with an intensive selection and training programme. It operates within a relatively well-regulated administrative culture alongside a large, and again, well-resourced police force within a political and legal framework which supports anti-corruption activities. Much of its success has been derived from its deliberate development of a highly successful public relations profile, exploiting both mass communication and a media-using population at a. time of economic growth.

A brief examination of the South African context, particularly in relation to existing anti-corruption bodies and functions follows, where after the difficulties which exist in transposing such a model will become more apparent. While South Africans are desperate for mechanisms to effectively control rampant corruption, several of the reasons for the ICAC's success confirm that the contextual differences are of such a nature that the adoption of this model is not a short-term option. In the next section, the statutory bodies which have a mandate to deal specifically with corruption and related issues in South Africa are briefly discussed.

The South African context: The Heath Special Investigating Unit

There is general consensus among the public and the media that all the institutions involved in fighting corruption are handicapped in various ways, such as inadequate financial and human resources. It has been argued that the current situation in South Africa is "… *not conducive to the effective combating and investigation of corruption."* Currently, there are at least ten bodies that deal with corruption. They act in isolation and do not share information, research, intelligence, prevention or other resources.

The table on the following page is largely based on an organigram distributed to delegates at the Public Sector Anti-Corruption Conference in Cape Town where the different anti-corruption bodies and their functions were identified.

This paper will only deal with the specific functions and powers of the Heath Special Investigating Unit (SIU). The focus is justified by the peculiar challenges which face the Unit in fulfilling its mandate effectively, and the role it has played in raising the stakes around the debate for a single anti-corruption agency in South Africa.

In 1995, the Eastern Cape-based Heath Commission's success in recovering state assets through civil proceedings caught the attention of President Nelson Mandela. In 1996, Parliament passed a bill that broadened the commission's responsibilities to cover corruption countrywide. In terms of Section 2 of the Special Investigating Unit and Tribunal Act No 74 of 1996, the Unit, which is headed by Judge Willem Heath, was entrusted to deal with the whole spectrum of clean administration and the protection of the interests of the public regarding public money and public property.

The Unit investigates matters from a civil perspective and institutes civil action in the Special Tribunal. It does not investigate crimes, arrest criminals or act through the criminal courts. On a cynical note, this may partly explain its phenomenal success. While the Unit does not institute criminal prosecutions, in terms of the relevant legislation, all matters of a criminal nature which

come to its attention are referred to the relevant prosecutorial authorities in order to proceed with criminal prosecutions,. In performing its functions, the Unit liases closely with other bodies such as the Auditor-General, the Public Protector, the Attorney-General and the South African Police Service (SAPS), in order to co-ordinate investigations into matters which fall within the jurisdiction of the Unit. Until recently, this occurred informally. Ongoing efforts to formalise this co-ordination arc discussed in. some detail later in this paper.

Civil actions are instituted before the Special Tribunal which is a separate legal entity presided over by judges who are not part of the Special Investigating Unit and are appointed on the same basis as judges of the High Court. If civil action is successful, judgement is obtained from the Special Tribunal and full effect is given to the judgement, including execution and attachment of assets. In this manner, transactions, measures or practices leading to losses by state institutions may be prevented, set aside or losses may be recovered.

Despite not having criminal jurisdiction, the Heath Unit has nurtured an impressive public profile as the face of effective anti-corruption efforts in the country. Heath believes the recovery of money and assets should be the primary objective of any fight against corruption: *" Criminal action should be secondary. The recovery of money proves that economic crime does not pay and this is essentially the message to convey. Recovery will not only act as a deterrent but will replace what has been removed from the coffers and thus strengthen the economic climate. "*

The Unit's investigative armoury includes legal representatives who specialise in anti-corruption, mal-administration and related investigations and civil litigation emanating from such investigations. Multidisciplinary teams of experienced investigators, internal auditors and accountants, supported by an information technology team to access relevant information, have delivered impressive results. Between 1 April and 30 September 1998, twenty cases involving a total value of R 501,261,000 were successfully concluded with orders granted. Currently, 71 people are employed by the Unit, but Judge Heath believes this number is far below what is required for it to be effectively optimised. He has expressed the need to appoint additional members to effectively deal with the expected increased workload of the Unit. Issues of budgetary constraints, however, currently limit these appointments. Suggestions made by the Unit to supplement its budget through the appropriation of a percentage of the recovered proceeds of corruption have effectively been dismissed.

Similar to the ICAC, the Heath Unit has broad powers enabling it to act quickly against official corruption. With the authority of a magistrate or judge, unit members can enter and search premises and remove documentation on the basis of a reasonable suspicion that it would assist an investigation. The unit can also summon anyone to appear before it and compel them to answer questions. It. has powers to make an order for the return of money or property and to issue an interdict to stop the potential loss of such money or property.

Some critics believe that the special powers invested in the head of the Special Investigating Unit are too wide. The question has been raised whether Heath's concept of an independently funded body, combined with its vast legal powers, could lead to the Unit becoming untouchable. This is a valid concern and raises important questions about the type of oversight mechanisms which the Special Investigating Unit is subject to. Heaths response is that "…*we are very careful in our approach and apply the principles of the constitution meticulously. Although we are independent from government departments we still have to comply with the terms of the Act. The Unit can never become more than what the Act provides for.* " The Unit is funded from the budget of the Department of Justice and reports to both the Minister of

Justice and the President.

However, Heath has expressed his frustration over the current terms of the Act which require that allegations must first be referred to the necessary authorities, whereafter a (usually) lengthy process is followed before the Department of Justice submits a draft Proclamation to the office of the President. This finally culminates in a Proclamation referring the matter to the Unit for investigation. This lapse of time serves to delay and hamper the effectiveness of investigations. Heath has proposed specific amendments to the Act, notably the scrapping of the requirement that the Unit has to wait for a proclamation before investigating cases. These amendments have been viewed as the already powerful unit asking for additional powers. The proposed amendments have effectively been ignored by the Justice ministry. The Unit is not aware of any steps taken to implement the amendments, with 65 categories of cases having been referred to the Department of Justice since 31 March 1998 which are awaiting proclamation.

While the proposed amendments were received with sympathy in some quarters, others believe that the Unit already has too much power. Objections have been raised over what is seen as an increasing tendency to bypass the courts. The point has been made that if fast track procedures are needed to deal with corruption, these should be implemented within the legal system. Heath strongly denies that, the special powers given to his Unit are unfair to the people against whom it acts and that the fast tack procedures of the Unit and the related tribunal could infringe on the civil rights of those it investigates, as has been suggested. He has indicated that the shortened procedure relates only to documents, and that defendants have the right to access everything pertaining to their cases: *"There is no tampering of rights. We are completely transparent and we play open cards. "*

On the eve of the November conference, Heath's request for more powers was met with a stinging attack from the President's office in a letter leaked to the press, complaints were made that the Unit was guilty of sloppy work which was causing the President's office legal headaches: *"Our office has had to assist in dealing with litigation or threatened litigation which arose there from, or from the failure of your unit to operate within its legal limits."* Some commentators believe this is clearly a campaign aimed at clipping Heath's wings.

In the same week, Justice Minister Dullah Omar, in a written reply to a parliamentary question on the fate of Heath's amendments, appeared to express concern that the Heath Unit's powers, once extended, might set precedents for other investigative bodies. He questioned whether it was appropriate to have a judge as head of the unit, and whether the Unit should indeed continue existing as an independent body, given the existence of the Public Protector and the Attorneys-General. His suggestion that the Unit could possibly be rationalised to form part of a single anti-corruption centre under a *'special cabinet committee"* was met with outrage by Judge Heath who said that such a step *"... would raise the question of whether or not such a body was apolitical."*

In response to Heath's public call not to compromise the independence of his Unit, both Omar and President Mandela s office subsequently denied that the proposed rationalisation amounted to political interference. Instead, in an apparent turnabout, Omar claimed that the media had misrepresented his position, and pledged additional funds to the Unit and to the Public Protector. He stated that government would protect the Unit from political pressure and "... *world like to see the two bodies become even more independent and strengthened "*

Such events suggest that some tensions exist around issues dealing with the way in which state strategies towards fighting corruption should be directed. The nature of the Unit's work

ensures that there are powerful forces that would like to restrict the operational independence of the Unit whose increasing vigour in pursuing public officials has ruffled many feathers. A recent case summoning the Minister of Health to appear before the Unit and possibly repay millions of rand lost to the government through her apparent negligence in the Sarafina 2 case, may set a precedent for extending responsibility for corruption in government departments to political heads. All this raises the political stakes of the debate, particularly as politicians under suspicion are currently vying for re-election on party lists.

In the final section of this paper, the key issues, advantages and objectives of co-ordination between existing anti-corruption bodies are examined in an effort to get clarity on the viability of establishing a single anti-corruption agency.

Rationalisation or Co-ordination?

In the heat of the debate Which followed the suggestion to rationalise existing structures and establish a single anti-corruption agency, presidential spokesperson, Parks Mankahiana, made the following statement: *"Inevitably all structures of government have to be reviewed not only for the purposes of maximum efficiency but also to ensure that the general cost of administration is kept at a minimum. The reality of the situation is now you have the Heath Special Investigating Unit, the police and the Public Protector. Sometimes we even appoint commissions of inquiry and you have parliament. The duplication that is taking place is unbelievable. Furthermore they all rely on resources from the same coffers. We are not saying that the Heath Commission or the Public Protector must die — all we want is to maximise efficiency and rationalise out structures."*

There is no doubt that resources are scarce, a fact which is confirmed by the pitiful state of the criminal justice system, and no one would disagree that duplication, in any form, cannot be tolerated. However, the recurrent theme of rationalising existing anti-corruption agencies to supposedly improve their effectiveness and speed up prosecutions, has to be challenged. Most of the identified anti-corruption agencies have a purely investigative mandate. It is at this stage that effective co-ordination of intelligence and information sharing needs to take place, as well as where informed, co-ordinated decisions on which agency is best placed to undertake a particular investigation, need to be made. Existing anti -corruption agencies are in the best position to make these decisions.

Unfortunately, a successful investigation, if not followed up with an effective prosecution process, does not secure a conviction, criminal or otherwise. The fact that corruption and commercial crime (which is part of it) need specialised responses is a point that has been made earlier. In addressing the features of an effective anti-corruption strategy, it is therefore crucial to focus the attention on the prosecution stage of the criminal justice process. A recommendation emerging from the November conference was that a specialised anti-corruption court, comprising retired magistrates and prosecutors, should be established to increase the speed with which criminal matters closely related to corruption, fraud and mal-administration, are handled. It is mooted that the Special Tribunal possibly become a specialised court. However, this has only been superficially discussed. There is an urgent need for further investigation into this issue, which falls beyond the scope of this paper.

Talk of rationalisation to form a single anti-corruption agency clearly threatens the independence of existing structures. It is understandable that remarks to this effect caused concern, as reporting to a special Cabinet committee, reeks of centralised political control. Rather than reporting to the executive, such an agency should preferably be subjected to

parliamentary oversight. To some extent, this would counteract the legitimate fear that such a creature would be rendered ineffectual or subject to political interference should cases under investigation prove to be threatening to those in power. However, the fact that anti-corruption structures need to be made more effective, both at the investigative and prosecution levels, is a reality none would deny.

One way to achieve this is through better, more formal co-ordination. Co-ordination does not suggest combination, centralisation, or even consolidation as some of the talk of rationalisation would suggest. Rather, it recognises the reality of independent and complementary institutions, of which each have an important and unique role to play in effectively fighting corruption. This point has been made vividly by the Heath Special Investigating Unit: *"We are dealing with a multi-headed dragon and various different kinds of swords are required to attack the different types of heads of this dragon. The Unit is therefore of the view that the various organisations all have a role to play in the fight against corruption and mal-administration "*

What can be done to make these anti-corruption bodies work together more effectively?

A number of key challenges regarding co-ordination were identified at the November conference in the commission on strategic co-ordination chaired by Judge Heath. These include:

- determining clear lines of responsibility for different agencies, particularly in relation to who should deal with particular cases of corruption;

- ensuring informed decision-taking at an early stage to determine whether criminal sanctions, civil sanctions or internal disciplinary measures will apply, since different procedures involve different rules, standards of evidence and rapidity of reactions;

- improving the relationship between internal agencies in the public sector which apply internal regulations in the context of the employer-employee relationship, as distinct from external agencies that apply the law;

- developing an easily understandable regulatory framework to avoid overlap; and
- improving more rapid and effective measures to fight corruption.

The commission decided on a number of immediate, short *and* medium term strategies to improve co-ordination:

- immediate strategic action would include establishing a medium of communication between the different bodies involved in anti-corruption activities with the idea to find common ground, common facilities and the exchange of experience.

- In the short term, it would be unwise to attempt to bring about changes in the existing fields of operation of relevant agencies. Rather, the most practical approach would be to enable the existing agencies to do their work as effectively as possible through skilled staff *and* additional resources, which depend to a large extent on government support.

- Medium term strategic co-ordination strategies include the tightening of legislation. Rather than develop new legislation, it was felt that existing legislation should be scrutinised in order to make it more expedient.

As a follow-up on these recommendations, a meeting was convened in mid-January 1999 by Judge Heath at his offices. It included the following role-players: the national directorate for public prosecutions; the auditor-general's office; the police's anti-corruption arm; the directorate for serious economic offences; the public protector; the justice ministry; and the Public Service Commission. It was decided at this meeting that the co-ordinating committee of representative anti-corruption bodies would meet monthly, but that individual agencies would meet to share information on specific cases whenever necessary. A four-point resolution was adopted in which agencies agreed to:

- establish direct lines of communication with each other; each organisation will have a dedicated person who can be contacted for information;

- enhance co-ordination *"... of facilities, mechanisms and abilities"* at the disposal of agencies *"... for assistance to other bodies in investigations of corruption, fraud and mal-administration";*

- share information **"...** *on a regular basis";* and

- send *"... information on the operations of each body, its* modus operandi, *function, powers and methods of recourse"* to all government departments. This is aimed at making *"them aware of the roles of each anti-corruption agency."*

Future plans of this forum include developing a **"...** *manual on guidelines to govern control measures within government departments",* and a media campaign **"..** *to highlight the different roles of the various agencies in the fight against corruption."* The co-ordinating committee will also discuss suggestions to be put forward at the national anti-corruption summit expected to be convened in April 1999.

The formation of this committee may have effectively pulled the rug out from under the feet of those who wish to rationalise existing anti-corruption agencies into a single body in the near future. Instead, the powerful checks and balances, which exist by having a number of independent bodies scrutinising public sector corruption, appear to be bearing fruit through formalised strategic co-ordination. Witness, for example, the Public Protector's recent recommendation to President Nelson Mandela that the Heath Unit should probe the alleged abuse of funds by former councillors of the Independent Broadcasting Authority. This was described by the agencies as the first public sign of the new-found co-operation. Baqwa recommended to Parliament that, if necessary, the Heath Unit should use its special 'powers to recover any "… *improper or unlawful expenditure. "*

Also the announcement that the Public Protector's office had joined forces with the Auditor-General, the Director of Public Prosecutions and the Heath Unit to probe allegations of fraud and corruption in Gauteng's Housing Department signifies a co-ordinated commitment. The four bodies said that they would meet regularly, share information and co-ordinate investigations. While Baqwa had begun to investigate irregularities in the allocation of housing subsidies, the reason for bringing in the Heath Unit was that it had wider powers to subpoena witnesses, seize documents and initiate moves to regain public money lost via fraud.

These co-ordinated activities support Heath's excitement about the formal agreement that it has *"... spread the anti-corruption net much wider,"* and that *"… culprits can be investigated simultaneously for both civil and criminal misdemeanours — if they get away on the one we can catch them on the other. "*

Conclusion

This paper attempts to contribute to the debate on how to combat corruption most effectively in South Africa. After examining criteria for successful anti-corruption agencies, discussing the Hong Kong Independent Commission Against Corruption, identifying the range of anti-corruption bodies which exist in South Africa, with a special focus on the Heath Special Investigating Unit, and examining arguments around rationalising versus co-ordinating existing structures, the argument is developed that South Africa will need to bolster existing resources, especially the criminal justice system, rather than create new agencies.

In the light of the four criteria which underlie effective anti-corruption agencies, a number of conclusions can be drawn in relation to the relative success of both the Hong Kong and South African case studies in fighting corruption. Each of these agencies proved effective because of their specialised expertise, powers, information-sharing capacities and operational independence. The powers of both bodies are subject to scrutiny, since these may pose a threat if not exercised in a responsible, democratic way.

The Hong Kong case's success (besides the fact that criminal investigations are central to its mandate), is related to the context, namely that the activities of the commission are supported by a well-resourced police force and criminal justice system and that it acts within a supportive' political environment. The South African case study indicates that a number of tensions exist when it comes to institutional capacity to deal with corruption. While the numerous and varied bodies have unique and complementary roles to play, if these are not supported by a sympathetic context to corruption reform or an effectively functioning criminal justice system, the weaknesses in the system becomes apparent. Once again, as demonstrated by the recommendation to establish an anti-corruption court, specialised responses rather than a commitment to public sector reforms as a whole, distract attention from the real issues.

One of South Africa's strengths is its institutional tapestry, most clearly demonstrated by the diversity of civil society actors. In the context of a currently dysfunctional criminal justice system, it is perhaps appropriate to focus more energy on preventive action, rather than to address the problem after the event. South Africa is far behind in developing the much needed public information material and mechanisms, such as those available in Hong Kong, to educate citizens on the evils of corruption and the impact it has on their security and wealth. Energy needs to be spent on developing these areas and, in this regard, civil society groups can play an important role.

Corruption is a multifaceted phenomenon. As such, it is not surprising that a multidisciplinary approach is viewed as the natural path to follow. Internationally, it has been argued that because of its diverse nature, **"**… *it would not seem advisable to make one single body exclusively responsible for the fight against corruption. "* It appears that, in the short to medium term, strategic co-ordination will prove the vehicle through which to consolidate existing initiatives within the current legislative framework. This may mean rationalising certain functions of existing agencies to make them more effective, rather than replacing them with a single agency. Government support of these efforts will be crucial. The jury is still out on how to tackle the multi-headed dragon of corruption. While co-ordination is central to this debate there is a great deal more thinking — including around the core functions of existing agencies — which needs to go into the best ways to tackle corruption in South Africa and whether a single agency approach is the way to go.

[*] The author can be contacted at the email address below for further information on sources and notes.