

# The palm that greases the hand

Should unions be tackling private sector corruption in SA? Hennie van Vuuren examines why unions, as part of civil society, should be taking up the fight against corruption.

The vice-president is probably a likeable man. He no doubt wears tailored suits, flies business class and is not immune to living a bit of the good life. He is after all the 'no 2' of a global entity that in the first half of 2004 recorded healthy revenue of close on R40bn. He is also the man, who according to the Scorpions, is alleged to have paid a sweetener to deputy president Jacob Zuma in order to influence the multi-billion SA arms deal.

Jean-Paul Perrier is, however, an unknown entity. Thales (previously Thomson CSF) the corporation that employs him as deputy Vice president and CEO employs a staff of over 60 000 – by no means comparable in size to the SA state. However, start comparing the balance sheet of Thales with that of Lesotho or Malawi and you start to see a corporation, which in terms of its size and influence can compete with smaller states. Thetard (and his co-accused Frenchman Perrier) exemplifies 'probably one of the biggest challenges facing those serious about combating corruption: The bribe payer lurking in the shadows and ready

to do business with corrupt officials and make a handsome profit at the expense of the poor. The alleged link between Thetard his company Thales and Zuma is important to resolve if we are serious about holding our elected representatives to account. However, the value of the alleged bribe offered is minuscule in comparison to the reported size of white-collar crime and private sector corruption in South Africa.

According to former justice minister Penuell Maduna white collar crime (including fraud and corruption) is costing the SA economy between R50 – R150bn a year, with 82% of businesses being probable victims. It is said to account for 30% of all business failures and consumes 2% to 5% of a healthy company's economic turnover. Compare this to the R15-20bn government has promised to spend on an extended public works programme over the next ten years in order to create 'work' for a million people – and you realise the enormity of the problem. An investment in developmental efforts is therefore dwarfed by the cost of corruption and white-collar crime.

A survey conducted in 2002 as part of the SA Government/United Nations Office on Drugs and Crime Country Corruption Assessment amongst 1 000 local business people found that 24% of employees had experienced fraud by an outsider and 7% had paid a bribe. The payment of bribes may in fact be higher as many respondents would have been cautious about admitting that they had been involved in a crime. According to the survey most bribes were paid for clearing of goods through customs (75%) followed by the procurement of goods from government (74%). The procurement of goods for private companies was cited by 51% as the source of a bribe. Corruption therefore is a phenomenon that takes place both between corporate bribe payers and corrupt officials as well as between

management in 'profit at any cost' corporations.

Such practice will however, prove unsustainable over the long term. Corruption in the private sector not only has a direct impact on the public sectors ability to delivers goods and services to the people – but it introduces instability into the economy likely to result in job losses that have a painful effect on a companies workforce. In turn, the involvement of business leaders and managers in this practice has a direct impact on the way they view the interests of employees in the long term. Individuals involved in corporate crimes need to keep one step ahead of the law, creating a fatal culture of 'short-termism', as quick profit taking becomes the main driver for business activity. As funds are moved offshore or spent to finance high-flying new lifestyles, it no doubt becomes difficult to break what has become a vicious cycle.

What underlies the difficulty in tackling this phenomenon is that it is nothing new. Under the apartheid regime, the corporate sector refined the art of sanctions busting abroad and building toilets in the veld for a regime that was happy to turn a blind eye, if required to do so.

## REGULATORY ENVIRONMENT

Although SA has only just started to recognise the effect of corporate fraud and corruption – government, civil society and even the private sector have woken up to the need to tackle the problem. As a country we are progressing well in addressing these issues. A number of regulatory initiatives have been taken over the past ten years that may start to tackle this problem. None are perfect. All rely on active implementation and most will only be effective if workers are active in ensuring that measures are in fact enforced. These include:



*Criminalising bribery:* The Prevention and Combating of Corrupt Activities Act (referred to as the Corruption Act) is a powerful new instrument and signed into law by the President on 27 April this year. It represents a clean break with the past as it not only tackles corruption in all its forms (public officials, sports, gambling and auctions) but also ensures that the payment of bribes – particularly by and within the private sector is legislated against. If enforced, an offender faces the minimum of life imprisonment for breaking this law.

*Naming & Shaming offenders:* The Corruption Act also requires the national treasury to draft a register of tender defaulters (a so-called blacklist). Should any company or individual be found guilty in court of paying a bribe, their names will be placed on a publicly accessible register (hopefully via the internet) and they will be excluded from all government contracts for between five and ten years. The South African states annual procurement expenditure is worth approximately R180bn a year, making it a good reason for companies not to wish to go down this route. This underlies the importance of employees blowing the whistle on corrupt practice as soon as it starts. In the long run if the company is implicated for a major offence, it will suffer a direct loss of profit and this in turn could result in job losses. An early intervention could stem what is likely to become a major problem. This approach also underscores the need for a collective effort in combating corruption.

*Blowing the whistle on boardroom pirates:* The Corruption Act places a duty on anyone in the position of Director-General, municipal manager, head of a tertiary institution or anyone with a senior position of authority in the private sector (including banks) to report an instance of corruption to the authorities. The only requirement is that the value of the offence must equal R100 000 or more. This ensures that junior officials are not forced to blow the whistle – shifting the onus to those in a position of relative power who are thereby forced to use

this in a positive manner. Failure to comply with this provision could result in a fine or the maximum sentence of ten years imprisonment.

*Hemming in corrupt multinationals:* Large procurement deals are vulnerable the world over to bribe payment by powerful multinational corporations. The Corruption Act threatens SA companies with stiff penalties if they attempt to corrupt other governments – this is important given the need for business to act responsibly when operating elsewhere on the continent.

Equally, if a multinational corporation from any of the 30 wealthiest trading nations (OECD countries) is known to be offering bribes in SA, it is up to local business, unions and civil society to report this to the embassy of that country. They are then duty bound through domestic law in place in those countries to investigate such allegations and prosecute the companies at home if necessary. This is important not only to promote the rule of law in northern capitals but ensures that foreign companies do not gain an unfair advantage over a local workforce.

*Developing an ethical framework:* King Report on Corporate Governance (King I and II) – hailed outside SA as the finest report on corporate governance anywhere in the world – sets standards for ethical conduct by all listed corporations on the JSE Securities Exchange. The down side of what is a homegrown initiative, is that it excludes companies that are not listed and provides no sanctions for non-compliance. The Ethics Institute of South Africa, released its latest Corporate Ethics Indicator in 2003 based on a survey amongst the top 53 JSE Securities Exchange listed corporations (representing a workforce of over 800 000 employees). According to their research one in every four senior managers responded that their companies did not have a code of ethics in place and one in three knew little about it or claimed that it did not exist in practice.

Labour should be at the forefront of ensuring that codes of ethics and conduct are enforced in the private and public sector,

particularly in organisations where such practice benefits corrupt managers to the detriment of workers.

*Promoting a culture of whistleblowing in the workplace:* Whistleblowers should be feted like Olympic gold medal winners. However, unfortunately these brave women and men are often isolated, mobbed out of jobs or unfairly dismissed by the very colleagues who are heard to sing the refrain of virtuous corporate and public governance. These are not the impimpis of old but rather one of the best weapons we have to expose instances of discrimination, corruption and ethical misbehaviour in the workplace. The Protected Disclosures Act accords whistleblowers certain rights in the event of unfair dismissal. However, as recent media reports have shown, this has still not provided adequate protection. However, the key is for companies and government departments to create an enabling environment that promotes whistleblowing. Organised labour in particular, can play a leading role in negotiating for a system which will allow whistleblowers to undertake action that arguably will result in a collective benefit.

## CONCLUSION

At its 8th Congress, Cosatu made welcome resolutions on the need to combat corruption. The implementation of these resolutions, together with law enforcement, civil society critique and media reporting needs to reflect that there are two sides to corruption in SA. We need to vigorously tackle both bribe-payer and taker in both public and private sector. The vice presidents of large corporations and the leaders of countries need to be treated with equal scorn, when and if, corruption is found to be evident. Only then will we have turned the corner. Ensuring that all SA's are economically better off is a goal worthy of these efforts.

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