

2D.III Case Story: Eastern Cape — Introduction of regional anti-corruption programmes

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“We run the risk of unethical activities becoming systemically embedded in our society.”

There is a saying, “May you live in interesting times”—that saying can be used either as a blessing or a curse. The ambivalence in this statement rings especially true in South Africa. While “interesting” is a desirable adjective when describing holidays and trips to museums, it is not a descriptor that you want to apply to persons tasked with performing important services on your behalf.

Turning the tide of corruption in South Africa: How the Eastern Cape Province is meeting the challenge

Many citizens would very much prefer the somewhat monotonous humdrum of competent but low-key officials governing private and public sector organizations. We do not want public officials or the captains of industry to be overly interesting. Rather, most of us would prefer them to be anonymous and boringly reliable in the way they manage their, and ultimately, our affairs.

Unfortunately, there are public and private sector officials that make the prime-time news more often than ill-behaving pop stars. Today in South Africa, we cannot open a single newspaper without being confronted by reports relating to a wide range of unethical activities, from the lowest levels of municipal service delivery to the highest echelons of Government and enterprise.

There are daily exposés of corrupt officials claiming that detection matters only when you are unconnected to someone with a broad broom and a plush carpet. If you compound this with many recent high-level corruption cases, for example, the widespread abuse of parliamentary travel vouchers, it indicates that we run the risk of unethical activities becoming systemically embedded in our society.

While Africa has suffered from various personality cults, South Africans have also been subjected to villains cultivating auras of victimhood, using their ill-begotten limelight to further their own selfish causes. It would not be difficult to paint an even bleaker picture if we add increased dilution of traditional values and dwindling social awareness, especially among the youth, with widespread materialism and a sense of unbridled entitlement.

Fortunately, it is not all doom and gloom. South Africans have not met this sorry state of affairs with apathy. There is a growing realisation that if we do not stem the tide of corruption, then the dream of a free and prosperous South Africa will fail, and along with her, the entire continent’s hope for a better future. Most fundamentally, our young democracy is at stake.

From within Government, business and non-governmental platforms like the Ethics Institute of South Africa (EthicSA), various responsible and committed leaders have emphasized that our country needs to undergo a moral regeneration to exorcise the spectre of corruption and decay that threatens to overwhelm us.

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A strategy should be developed in which society will honour and respect citizens, not for their material excess, but for their ethical virtues. Furthermore, we need to educate our citizens to realize that our rights are not blind entitlements but privileges guaranteed by our dutiful commitment to respect the rights of others.

In order to affect such a culture change, all sectors of society need to cooperate. Corruption is not limited to certain sectors of society. It occurs everywhere, but it is especially in the public sector that its effects can be most destructive. The reasons for this are:

- The public sector is a direct receptacle of societal trust, the abuse of which erodes local and foreign investment in the widest sense. This means that, unlike disgruntled stakeholders in corrupt private sector concerns who target specific organizations in their complaints, corruption in the public sector tends to create a negative reputation of a country as a whole.
- Whereas private sector institutions compete on the open market, the public sector primarily holds monopolies on basic and essential services like state housing, welfare grants and primary health care. Recipients of these services are thus highly vulnerable, often suffering from exploitation and human rights abuses. Think of an AIDS patient being required to pay a bribe to receive anti-retroviral treatment, without which the person will die.
- While private sector institutions are increasingly scrutinised internationally according to emerging world governance standards due to economic globalization, the public sector is still largely enveloped and shielded by national sovereignty. Coupled with the presence of poverty and the absence of proper over-

sight and management skill to prevent, detect and sanction abuses, citizens are largely defenceless against exploitation.

It is for these reasons that the United Nations Global Compact does not address corruption prevention in isolation but in conjunction with the protection of human rights, the upholding of responsible labour standards and environmental protection.

For the very same reasons, this article will explore how South Africa, in particular the Eastern Cape Province, is responding to the challenge of turning the tide of corruption.

Relevance to the private sector

Corruption is by its very nature a team sport. In many cases, it is characterised by interplay between inappropriate influences originating from the private sector with undue benefits accrued by those in the public sector. In practice, this means that corruptors are mostly private sector entities bribing corruptees holding strategic public servant positions. Invariably, this happens in a procurement environment, where bribes are paid to affect the awarding of tenders.

The South African Government is highly aware of this dynamic, and in an attempt to discourage public servants from engaging in corrupt activities, their salaries have been significantly hiked up in the last few years. While corruption in South Africa can be partly explained by deprivation resulting from poverty, many of the corrupt officials cite a sense of *relative deprivation* as a motivating factor. They have enough to live comfortably, but want more to live in luxury.

Furthermore, these officials often service communities deeply mired in poverty and ill-equipped to speak out against their exploitation. The raising of public servants' salaries alone has therefore not stemmed the tide of corruption emanating from Government. A more holistic approach is needed, in which the Government develops strategies to manage the ethical conduct of its employees while instituting fair and effective procedural and legal sanction against corruptors—often being private sector entities.

“Without national senior executive commitment, the organizational fight against corruption is doomed to fail.”

This can only be done within the context of a public-private pact to combat corruption. Government has to seize the opportunity of leading by example where required and learning from the private sector where necessary.

Addressing the challenge

The Eastern Cape Province is one of nine provinces in the Republic of South Africa. Although rich in material and cultural resources, it is regarded as one of the least developed regions in the Republic.

Furthermore, the region has suffered countless wars in the last two centuries and institutional neglect dating back to the Apartheid era. It needs to contend with low levels of education and widespread poverty, as well as with the HIV infection so prevalent among its population.

The public service is also the dominant employer in the region with a large number of Government initiatives undertaken to improve the physical and social infrastructure. It is especially with regard to the latter that the Government contracts a large number of private sector concerns to build and maintain roads, clinics, schools, et cetera. Considering this unique combination of social circumstances, and the access and opportunities it represents to criminal elements, it is not without reason that this province has a reputation for being among the most corrupt.

Conditions for effectively combating corruption

There are three vital components or conditions that make up an effective battle plan against corruption, without which such an endeavour will fail. These conditions are:

1. High level commitment from the most senior echelons of Government;
2. Investment in the building of corruption prevention infrastructure;
3. Implementation and management of such infrastructure with the aim of affecting ethical culture change.

In South Africa, the first condition is well met, with President Mbeki himself referring to corruption as a “cancer” that needs to be eradicated.

The second condition is partly met, being well presented on a legislative level but less so on an organizational management level.

Unfortunately, the third condition has not been met. It is here where the greatest challenge lies. Although these conditions need to be sustained in tandem, there is a chronological and logical sequence to them. Simply put, you need sincere commitment from the politicians before you can get the resources to build the infrastructure, and without the support of the politicians and the infrastructure, attempts to affect an ethical culture change is fatally compromised.

It is therefore valuable to briefly provide an overview of South Africa’s progress in meeting these conditions for combating corruption. A review of the response of the Eastern Cape Government follows.

Condition 1—Ensuring high level political support of anti-corruption initiatives within the public sector

Without national senior executive commitment, the organizational fight against corruption is doomed to fail. Commitment is defined as acknowledging the problem of corruption, recognizing that combating corruption is a basic expression of responsible leadership, and making available human and material resources to combat corruption.

Differing from many other African counterparts, whose official standpoint is one of blatant denial, the South African Government has formally and repeatedly acknowledged that corruption is widely prevalent and should be combated irrespective of where it occurs or who is involved. Therefore, South Africa is enjoying high-level executive commitment, benefiting from increased awareness of the urgent need to combat corruption from the most senior levels of national Government, the private sector and civil society.

This acknowledgement is especially valuable given that prominent public figures have started to emphasize the link between the combating of corruption and the struggle

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against Apartheid. It is a link that further enforces that corruption should not only be understood as a criminal issue, but as a human rights issue, often robbing the most vulnerable elements of society of their constitutional rights and human dignity.

Consequently, the State is showing increasing leadership and political will by providing national and provincial agencies with some of the resources required to combat corruption. The Eastern Cape Province has commendably shown resolve and commitment in making use of these resources. On a provincial level, this need for responsible leadership has also been clearly reflected by the highest-ranking public servant in the province, the Eastern Cape Premier, making a public pledge to personally uphold the highest ethical standards and to lead by example.

Condition 2—Building of corruption-combating infrastructure

Since 1994, South Africa has seen a gradual building of corruption-combating infrastructure. From an organizational standpoint, the adoption of a public service Code of Ethics (1997) was a major milestone, coinciding with the significant strengthening of the legislative arsenal available to prosecute fraud and corruption. These efforts provided the rationale for hosting the First National Anti-Corruption Summit in 1999 and the creation of the National Anti-Corruption Forum (NACF) in 2001, both with the aim of galvanising broader society in the battle against corruption.

However, most efforts in building corruption-combating infrastructure have focused on developing prosecution capacity through legislation. Recent examples were the promulgation of the Protected Disclosures Act (2003) designed to protect whistle-blowers, and the Prevention of Corrupt Activities Act (2004) designed to improve the capacity of the State to prosecute corrupt entities. In addition, concerted effort has been made to build investigative and prosecution capacity through the creation of special investigative units and dedicated economic crime courts.

However, reported levels of corruption have kept rising in spite of these efforts. Warnings were sound that corrup-

tion is becoming endemic. Commentators noted that corruption has a direct impact on the capacity of the lowest levels of Government to deliver services, with the associated risks of social instability. On the highest levels, corruption can erode confidence in the State's ability to manage a just society.

Gradually, from within the public service and the non-governmental community, the call came that the full value of preventive approaches to complementing prosecution capacity was not being realized. An example of this is the public service Code of Ethics receiving very little institutional support apart from it being distributed to the various departments and agencies.

From anecdotal evidence, it emerged that corrupt officials did not view prosecution as an effective deterrent, but rather cited detection as having a deterring effect. The corrupt expend most energy to avoid detection, with fear of prosecution only following as a consequence of detection. Therefore, the fear of prosecution, seen in isolation, in the absence of fear of detection, is not an effective deterrent.

What is worrisome is that society often does not fulfil this primary deterrent function. Instead it places a heavy burden on many public officials, expecting them to contribute liberally to their communities and to live a lifestyle far beyond their legitimate means. So, instead of known corrupt officials being vilified, they are often respected in their communities for their largesse and opulence.

Furthermore, the public service has not consistently integrated the principles of the Code of Ethics into reward and disciplinary processes. In many cases, the public sector does not have the will to discipline deviant officials or reward those that are ethical, although there is positive indication that this is changing for the better. Therefore, the fear of prosecution, seen in isolation, in the absence of fear of societal rejection or dismissal, is not an effective deterrent.

It is clear that through the support of its leaders and a well-developed legislative infrastructure, South Africa is in the fortunate position to successfully combat corruption, provided it pursues a strategy that would target raising ethical standards of both society and organizations simultaneously.

“The law is only as good as those that manage it.”

The ultimate aim is to secure an ethical culture change reaching into the homes of citizens. A key way to raise societal standards is to start where most employed people spend most of their time—their place of work.

Condition 3—Institutionalising an ethical culture

With some of the best legislative infrastructure in the world, it is the failure to implement the principles of these laws that leads, for instance, to whistle-blowers still being victimised in spite of legislative protection.

The law is only as good as those that manage it. Therefore, a structured programme to build management capacity is needed, while instilling universal values underpinning our laws, the Bill of Rights and the Constitution, in order to promote good consequences, right principles and fair actions throughout organizations. The implementation of such a programme is premised around a simple set of principles:

1. It is the responsibility of the organization to set a clear set of standards and to assist employees in meeting those standards by providing institutional support in the form of:
 - a) Functioning codes of ethics;
 - b) Aligned rewards and disciplinary procedures;
 - c) Good communication strategies;
 - d) Sustained training and awareness programmes;
 - e) Safe and effectively managed whistle-blowing facilities.
2. It is the responsibility of employees to meet those standards.

Within this context a Second National Anti-Corruption Summit was held in March 2005. It resolved to implement a series of resolutions focusing on:

1. Increasing ethics awareness and prevention capacity;
2. Promoting and supporting inter-sectoral and interdepartmental combating initiatives;
3. Strengthening oversight, transparency and accountability capacities within Government and civil society;
4. Strengthening national and provincial coordinating bodies such as anti-corruption councils/forums.

The intention was that provincial Governments make use of these resolutions to develop their own anti-corruption programmes.

The Eastern Cape Provincial Anti-Corruption Action Plan

The provincial anti-corruption strategic planning session

Armed with a national mandate, the Eastern Cape Provincial Anti-Corruption Council agreed on the need to conduct a strategic planning session to investigate methods of implementing the Second National Anti-Corruption Summit resolutions. This resulted in a two-day Provincial Anti-Corruption Strategic Planning Session, hosted in July 2005 by the Anti-Corruption Unit situated within the office of the provincial premier.

This session, facilitated by EthicSA, was attended by approximately 70 delegates representing various Government departments, law enforcement agencies, private sector organizations and civil society. The objective was to develop a Provincial Anti-Corruption Action Plan with the resolutions of the Second National Anti-Corruption Summit as a guide. It also provided an opportunity for government, business and civil society leaders to publicly pledge support for the initiative.

The Provincial Anti-Corruption Strategic Planning Session comprised presentations delivered in plenary and

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work commissions tasked to develop proposals to successfully turn the tide of corruption in the province.

Resolutions and Action Plans

Based on findings derived from plenary presentations, three work commissions were constituted, each to address a specific series of problem statements.

- Commission 1 developed resolutions encompassing broader societal aims; and
- Commissions 2 and 3 developed concrete management action plans for the province.

Eastern Cape provincial Resolutions

The Resolutions indicated a series of objectives that all sectors of society directed the provincial public service to pursue in order to combat corruption. The Resolutions are not meant as an exhaustive list but as a tool indicating immediate priorities. The Resolutions found that there should be:

1. Increased and sustained senior commitment in the fight against fraud and corruption;
2. High ethical standards set by those in positions of authority;
3. Diligent and consistent communication on these high ethical standards;
4. Education and encouragement for civil servants to meet these standards;
5. Firm action against those that do not meet these standards;
6. Honour and reward for those that do meet these standards;
7. Consistent and high efforts made to institutionalize and integrate these high ethical standards throughout the public service;
8. Proper implementation and utilisation of existing capacity and legislation;
9. Concerted efforts made to build new fraud and corruption-combating capacity;

10. Ongoing efforts to identify loopholes in the system;

11. Increased cooperation between various agencies and departments, especially in the fields of law enforcement and data sharing;

12. Strengthening of prevention programmes and methods throughout the province, especially in the fields of:

- a) Training;
- b) Whistle-blowing;
- c) Data sharing;
- d) Blacklisting.

Eastern Cape provincial Action Plans — blacklisting and greylisting

The Action Plans organized key objectives around the proposals of the Second Anti-Corruption Summit. Each key objective reacts to a number of pressing concerns and is guided by the Resolutions. It contains a number of strategic activities with measurable outputs. For the sake of brevity, only the provision for blacklisting is discussed at greater length, as it will directly impact private sector service providers' engagement with Government. The complete set of Eastern Cape Provincial Anti-Corruption Action Plans is included as ADDENDUM A.

Blacklisting

The Prevention of Corrupt Activities Act (2004) provides for the creation of a list of national tender defaulters, commonly known as a blacklist. Within seven days of successful prosecution, the prosecuting authorities need to request a judge to make a court order instructing the South African National Treasury to blacklist the convicted entity and its directors. A blacklisted entity will be forbidden from providing services to the State for up to 10 years. These are currently no listings on the database, but the first is expected to occur in 2006.

For Government, the challenge is in managing relationships with alleged corruptors in the period between

the commencement of an investigation and eventual judgement in a court of law. The legal process is often slow, with the high burden of proof demanded by criminal prosecution resulting in, on average, between one and three years of investigation and litigation. During this window period, Government is often contractually bound to continue trading with these suspected corrupt entities.

Greylisting

A need arose for a management response while the legal process continues. Such a response is required to balance the constitutional rights of individuals to be considered innocent until proven guilty, with the constitutional obligation of the State to protect its citizens and assets from abuse. A proposed solution to this dilemma is the creation of a greylist. With sufficient prima facie evidence and on condition that the South African prosecution authorities commence with legal action, the entity under investigation will be placed on a greylist. Importantly, greylisting is not dependent on investigation but the decision to prosecute. If the prosecuting authorities decide not to proceed with legal action for whatever reason, the entity will not be greylisted.

With the representatives of a greylisted entity fully informed of the nature of the charges and constitutionally guaranteed the right to defence in a court of law, Government reserves the right to suspend the greylisted entity from dealing with the State, pending judicial outcome. If the entity is found guilty, it will be blacklisted as provided for in the above-mentioned act. If the entity is found to be not guilty, it will be removed from the greylist and again fully entitled to provide services to the State. It is also foreseen that future service contracts with the State will clarify this position. The State in turn will intensify its efforts to root out corruptees in its midst by strengthening preventative and investigative capacities.

Conclusion

The Eastern Cape Province, armed with a national mandate in terms of the Second National Anti-Corruption Summit, developed provincial resolutions and action plans that conform to international best-practice standards. This is testimony to the

commitment and prudent application of resources by the Office of the Premier Anti-Corruption Unit and other key stakeholders. The private sector can also expect a greater amount of scrutiny. It is, however, expected that governments will increasingly value long-term mutually beneficial relationships with entities that adhere to the highest ethical standards.

It is hoped that this pioneering work will inspire private sector concerns, other provinces in South Africa, and the public services of fellow African countries to follow suit. It has been possible to get this far through sustained executive commitment, which is Condition for the successful combating of corruption. With regard to Condition 2, the resolutions and action plans fill vital gaps in the corruption-combating infrastructure of the Eastern Cape Province. It does so mainly by complementing legislation and prosecution capacities with the building of organizational ethics management infrastructure.

However, the ultimate worth of what has been achieved so far lies in the ability to go beyond mere compliance and affect real ethical culture change within the public sector. If consistent and sustained implementation of the resolutions and action plans is achieved, Condition 3, as yet elusive, has the very real potential of being met in the public service. Condition 3 has such a good chance of success because, based on the view that the institutionalization of an ethical culture cannot be affected by external consultants, prosecutors or special investigators alone, it places strong emphasis on building internal corruption-combating capacities. These role players are only valuable if they supplement the process of culture change managed from within by custodians of organizational ethics management programmes.

The dream of turning the tide of corruption can be achieved, not by dreaming alone, but, as we see in the Eastern Cape Province, by doing. It will take time, resources and resilience, but it can be done. It must be done! Corruption has brought South Africa to the precipice, the abode of both the visionary and the suicidal. We must choose whether we cross the divide, or fall.

Bibliography

Tyikwe Z, Punt W 2005. The Eastern Cape Anti-Corruption Action Plan, Version 1.

Addendum A

Eastern Cape Provincial Anti-corruption Action Plans

For ease of reading, the information is presented in table format.

1. Key objective: Increasing ethics awareness and prevention capacity.

There is:

- A dire need to raise societal ethical standards;
- Tolerance for corruption with the resultant lack of societal sanction;
- A danger of fraud and corruption embedding itself into what is perceived as a normal or even desirable way of earning a living;
- A need to build ethical role models by recognizing and rewarding people for their ethical virtues and their ability to accumulate symbols of wealth;
- A need to clearly state public service ethical standards;
- A need for public services to meet these standards.

Key objective	Strategic activity	Output
<i>Raising ethical awareness in the provincial public service</i>	Human Resources (HR) to include Code of Ethics awareness at induction.	Ethics training of employees in all departments.
	Departments to institutionalise and culturally instil the Batho Pele principles with ethics management and training.	Training of ethics and compliance managers.
	Office of the Premier (OTP) to drive the process of ethics training and awareness.	OTP Ethics and compliance managers ensuring compliance by departments.
	Reflect cases of corruption and misconduct and how departments dealt with it.	<ul style="list-style-type: none"> • Heads of Departments to ensure that annual reports accurately reflect cases of corruption and misconduct; and • Promotion and recognition of case of ethical leadership.
	Encourage safe and responsible whistle-blowing.	<ul style="list-style-type: none"> • Development of provincial whistle-blowing policy; and • Ongoing management of hotline reports.
	Disseminate provincial whistle-blowing policy to departments.	OTP Anti-Corruption Unit ensuring implementation and management of whistle-blowing policy.

2. Key objective: Promoting and supporting inter-sectoral and interdepartmental combating initiatives.

There is:

- Lack of capacity in many departments to effectively combat fraud and corruption.

Key objective	Strategic activity	Output
<i>Combating corruption</i>	All departments to establish minimum anti-corruption capacity.	<ul style="list-style-type: none"> • Provincial Anti-Corruption Council to develop a framework detailing minimum anti-corruption capacity for departmental Anti-Corruption Units; and • Heads of Departments to institutionalise minimum anti-corruption capacity according to framework.

3. Key objective: Strengthening oversight, transparency and accountability capacities

There are:

- Multiple fraud and corruption-combating initiatives on national and provincial levels, with obvious duplication and overlap in goals, objectives and even zones of operations;
- Multiple data bases that are not communicating to ensure effectiveness of use;
- Input and control standards that are not uniform or standardised, resulting in data integrity concerns;
- Windows of opportunity, between commencement of investigation and eventual legal judgement, for potential corrupt parties to further exploit State resources.

Key objective	Strategic activity	Output
<i>Strengthen oversight transparency and accountability.</i>	Archiving annual reports, Auditor General and Public Service Commission reports to national and provincial public libraries and departmental websites.	Heads of Departments to ensure distribution of relevant reports.
	Establish a proactive, supportive and collaborative relationship between the Provincial Legislature and the Provincial Executive Council.	Heads of Departments to engage standing committees in developing two-way communication channels.
	Centralise databases.	<ul style="list-style-type: none"> • OTP Provincial Anti-Corruption Unit to ensure that centralised database of all departmental suppliers are created; • OTP Provincial Anti-Corruption Unit to ensure maintenance of data integrity and vetting of suppliers; • In the interim, OTP Provincial Anti-Corruption Unit to develop best practice standards in consultation with various supply chain management units; and • OTP Provincial Anti-Corruption Unit to co-develop protocols for inter-departmental and inter-sectoral information sharing.
	Develop a data base of suspected corrupt service providers (greylist) preceding listing of convicted corrupt parties on the National Treasury List of Tender Defaulters (blacklist).	<p>Administrative process of preventing corrupt activities:</p> <ul style="list-style-type: none"> • Greylist model = risk management tool: <ul style="list-style-type: none"> ✦ Precedes possible blacklisting; ✦ National Prosecuting Authority (NPA) - test is prima facie evidence; ✦ Listing dependent on decision to prosecute by NPA; ✦ Transparency balances rights of defendant and public; ✦ Reduces window of opportunity for potential corruptees or corruptors; ✦ In the event of a guilty verdict, name of party to be blacklisted (see next strategic activity); and ✦ In the event of a not-guilty verdict, party to be removed from greylist.
	Enter convicted parties on blacklist as provided for under the Prevention of Corrupt Activities Act 2004.	<ul style="list-style-type: none"> • Provincial Anti-Corruption Units to liaise with NPA, to seek court order within 10 days instructing National Treasury to list convicted parties on National Tender Defaulters list (blacklist); and • High level cooperation between provincial Anti-Corruption Units, National Treasury and the NPA.

4. Key Objective: Strengthening of Anti-Corruption Councils/Forums

There is:

- A tendency for work to progress very slowly within such forums if no clear direction is provided and no common vision and urgency is shared;
- A need to pay special attention to maintaining communication between forum constituents and other parties because of such a forum being inter-sectoral and inter-departmental.

Key Objective	Strategic Activity	Output
<i>Strengthen the provincial Anti-Corruption Forum/Council</i>	Develop joint programmes around awareness and combating	<ul style="list-style-type: none"> • OTP Anti-Corruption coordination of all related initiatives; • Coordination of activities of relevant law enforcement agencies and Chapter 9 institutions; and • The Anti-Corruption Unit in the Office of the Premier should facilitate exchanges with the National Anti-corruption Forum.