



**Keynote Address by Public Protector Adv Thuli Madonsela during 5th  
Annual Association of Certified Fraud Examiners South Africa  
Wednesday, October 03, 2012**

***Programme Director;  
Members of the ACFE Board;  
Distinguished guests;  
Members of the Media  
Ladies and gentlemen;***

Congratulations to the ACFE for hosting its 5<sup>th</sup> Annual conference. This is an important milestone. I am sincerely honoured to participate in this important conference whose participants I understand to be drawn from the fraud examining profession across the African continent. I understand about 18 countries are participating in this conference. To those from outside our borders, I wish to extend a warm welcome to our country. I trust that you will enjoy our beautiful scenery, our tourist attractions and our unparalleled hospitality.

I must say I would have preferred to come as a participant and stay for the entire conference, unfortunately that was not possible. However, a more fortunate group of members of my team is attending the entire conference. Another even more fortunate group from my office is also currently busy with studies that will ensure they become Certified Fraud Examiners. We thank you for these opportunities.

I am particularly encouraged by the choice of topic, which is "Investigations- the last resort". The conference's emphasis on prevention is indeed what we need as a country and as organizations.

Indeed investigations are and should be the last resort when it comes to ensuring clean governance as the core of good governance. Clean governance means, among other things, corruption and fraud free governance. Being an investigation agency, the Public Protector's role itself is a matter of last resort.

As some of you may already know, in South Africa, the Public Protector is constitutionally mandated to investigate any alleged or suspected improper conduct in state affairs, to report on that conduct and to take appropriate remedial action. Our approach to the constitutional mandate is two pronged. While we seek to ensure justice in each specific case, we also use every investigation opportunity to act as a catalyst for change to entrench good governance, does contributing to the prevention of maladministration.

Corruption and fraud are crimes. Even though my office investigates these as forms of maladministration under the broad rubric of the Public Protector Act read with the Prevention and Combating of Corrupt Activities Act, they remain crimes. In fact under the Public Protector Act, I am expected to refer a matter directly for prosecution if the investigation elicits evidence indicating the commitment of a crime. The crimes we regularly refer include fraud and corruption.

Like all crimes and like crimes prevention is the main key. Investigation should and can only deal with occasional aberrations but cannot cope when deviant behaviour becomes normative. It is also important to note that in the public sector corruption and fraud often occur simultaneously or enable each other.

Sometimes I wonder though whether we have not reached a point where in some of our countries and indeed some of the organs of state corruption and frauds are no longer occasional aberrations. How many of you have heard the story about countries where it is said that to get a visa you must remember to include an extra page in your passport.

I thought I would share with you a few case studies we have dealt with as the Public Protector South Africa where corruption and fraud have coexisted or facilitated each other. As I share these case studies, I seek to highlight our two pronged approach to investigations. More importantly I wish to show that **good investigations contribute to the prevention of corruption and fraud whereas bad investigations contribute to an enabling environment for corruption and fraud to thrive.**

Let us start with the story of Ms J. Ms J applied for an internship and did not get it or so she thought. She remained unemployed for more than two years. When she received a reminder to submit her tax returns from the South African Revenue services (SARS) she explained that she had never worked. SARS informed her that according to its records Ms J had worked at the Department of Health for two years. She followed up with the Department of Health and asked for a letter setting the record straight with SARS to no avail. She came to my office for help.

My finding was that Ms J had been the victim of a ghost worker situation. The Department of Health's explanation was that it was all a mistake. Two Ms J's applied and both got the internship. The Department just forgot to inform the one Ms J about her successful application but somehow ended up with her salary being paid to the other Ms J. The Department explained that the Ms J who received a double salary was now an unemployed "person of straw" and there was accordingly no chance of recovering the money. My office was advised to accept this mistake and close the case on account of a mistake and a bad debt.

Do you believe this was a genuine mistake? Would you have closed the case at that point? When I stepped into the scene that was the case but when we debated the matter during our Think Tank (Collective Investigative Minds Roundtable), we unanimously agreed that there was fraud and possibly corruption included. We demanded accountability.

Had we not done so, we would have missed an opportunity to uncover what really happened and how to prevent it in the future. We would have also encouraged impunity which is one of the pull factors with regard to corruption and fraud. When people know there will be no consequences, incentives to engage in prohibited behaviour are increased.

Impunity does not cause corruption and fraud but it is one of the key factors that foster an

enabling environment.

Sometimes we enable corruption and fraud without realising we are doing so. Let us take the case of Ms S, a young disabled woman. Having struggled to get a disability grant from South African Social Security Agency (SASSA) she was later informed her grant had been approved. She was told that SASSA records showed that backdated payments had been made into her bank account. Trying to convince SASSA she had never been paid proved fruitless and that was the point at which she approached my office. She had evidence showing that money had never been paid into her account.

When approached by the Public Protector SASSA quickly made arrangements to pay the outstanding back pay. This was great for the complainant. But the question that arises is whether my office supposed to close the investigation as soon as Ms S got her pay? Is it ok to close an investigation without establishing what really happened to the money? What if there is a possibility that the state ended up paying twice. How about finding out what led to the fiasco that ended up at my office to start with? If we never establish what happened to the original pay we may not only have acquired the double pay to the state that may also have allowed corruption and fraud to fester unabated.

Another case study worth considering relates to the story of Ms M. She also applied for a social grant, a child grant for one child, which was declined. Reasons given were that she was already a grant recipient for two children. Her attempts to convince SASSA to remove the two children which she argued were not hers and register the only child she had were unsuccessful. She then approached my office. The investigation revealed that she was a victim of an organised crime involving identity theft and grant fraud. The syndicate which straddled three organs of state involved fake identity documents, fictitious children registered through fraudulently produced clinic cards and collusion within SASSA and a local supermarket for the processing of grant applications and payments. Again for us it was not enough that Ms M got her grant with back pay. We made sure that criminal proceedings ensued against members of the organised crime syndicate.

A common management lapse with enormous potential for encouraging and enabling corruption and fraud is the tendency to allow people accused of wrongdoing to jump ship before proceedings are concluded. Not only do we end without accountability and possibly no recovery of abused state resources, the conduct has the potential of depriving the wrongdoer of an opportunity to learn their lesson and start on clean state. More often than not, beneficiaries of this management lapse carry their bad governance habits to their future work places.

I've primarily focused on investigations yet you want me to focus on prevention. As pointed out earlier, the point I wanted to illustrate is that a bad investigation is not only bad for the case at hand but also has implications for undermining prevention. I wanted to highlight the fact that lessons learned from a good investigation may be used to make an organisation more corruption and fraud proof. Such lessons invariably include insights into the loop holes that allowed the corruption and fraud to thrive.

For us at the Public Protector Team it is accordingly important that we use each investigation as an opportunity and act as a catalyst for improved governance and better administration. I referred to this as our two pronged approach. We see each case before us as an opportunity to ensure justice to those immediately affected while seizing the opportunity to serve as a catalyst for transforming governance or addressing the administrative deficiencies that led to the maladministration.

Our approach includes ensuring that there is no impunity. In this regard we take seriously the constitutional mandate in section 182(1) (c), to take appropriate remedial action. Appropriate remedial action often involves ensuring that a contract entered into fraudulently or through corruption, is cancelled. For example, in the Against the Rules Reports, fraud was used as one of the grounds for ordering the review of a contract with a view to cancellation. You probably have heard the Lord Denning dictum that “fraud unravels everything”. This informs our reasoning in many of these cases.

Accountability for wrongdoing in cases involving corruption and fraud is very important. Equally important is ensuring that if we have an opportunity to reverse a contract entered into corruptly or fraudulently we do so. This is to claw back state resources, a responsibility we take very seriously. We believe there is a link between lack of responsive service delivery and the siphoning of state resources through corruption and fraud.

This takes me to some of the common trends where a combination of corruption and fraud depletes state resources while undermining service delivery. We believe these areas could be managed through preventative strategies focussing on compliance and using investigations as opportunities for risk detection.

**Overcharging, false billing and misrepresentation of qualifications** are some of the key corruption fraud related transactions we come across when investigating tenders.

Overcharging is a huge problem in government. Yet it is preventable as it is possible, through due diligence to study the market and estimate fair market value. Is it unfair then to believe that in many instances overcharging is not a simple matter of mark up fraud by service providers only but a conscious act of collusion by internal actors and accordingly a matter of corruption?

We were recently informed through an article in one of the news daily that overcharging is to ensure that all involved in the organised crime networks for rigged tenders get their cut. Needless to say the loser is the public. Let us think for a moment about Gogo Dlamini who dies at Chris Hani Baragwanath because of lack of basic facilities such as a bed to sleep on or a mattress, life support equipment, including an intravenous tube, and professional services. Is it possible that were it not for inflated tenders and other contracts, there would be more money available for basic amenities for health care?

False Billing is another area where government loses millions. The school books crisis may when the investigation is concluded, tell a story about false billing. Without prejudging the investigation, we are all wondering how many books were procured and how many were paid for why is it that three months before the end of the year, some of the books are still outstanding. Were these books paid for as delivered? If so who confirmed delivery and why?

The RDP housing sector is a haven for false billing. We have also been recently alerted to the possibility of false billing by travel agents. One Minister believes a systemic investigation needs to be conducted into possible false billing and accordingly massive fraud by travel agents. As indicated earlier, false billing is an excellent example of the interference between corruption and fraud. Often false billing is allowed because those that have to confirm delivery or performance according to specifications deliberately lie about delivery in exchange for kickbacks. Questions of this nature have been raised about engineers and housing inspectors that have certified that houses were built according to specifications when none were built or part of the specs were satisfied.

Misrepresentation of qualifications by job seekers has become common and lots of measures have been conceived globally to combat this malady. However, what organs of state are not waking up to is the fact that misrepresentation of company profiles is equally rampant.

Without due diligence, a contract may be given to a paper company with no track record, delivery infrastructure or financial security. You've heard about a confectionary tender going to a butchery or a legal consultancy going to a general dealer. Who should take responsibility for lack of due diligence. In South Africa, Treasury Regulations are clear on due diligence. When it is not done is it unfair when an inference is drawn that the contract may have been influenced by corruption?

What do we do when a contract was awarded on the basis of these or other forms of fraudulent misrepresentation? Do we wait until there is bad or non-delivery or do we cancel the contract on the basis of fraud? South African jurisprudence on fraud holds that fraud is a crime whether or not someone was prejudiced.

As long as a benefit was received on the basis of false representation that benefit is unlawful. Again here corruption and fraud often intertwine, otherwise why would you knowingly give a confectionary tender to butchery?

I hope I have succeeded in pointing out a symbiotic relationship between investigations and the prevention of fraud and corruption. I hope I have also succeeded in highlighting some of the low lying fruit that may be picked up by organisations in the pursuit of corruption and fraud prevention. The two key areas I have highlighted in this regard are the strengthening of compliance with own or universal rules and using lessons from investigations to close highlighted loopholes that enable or encourage corruption and fraud. As fraud examiners you have an opportunity to contribute enormously to prevention by both ensuring that investigations cover all bases while helping organisations note and close loopholes that present corruption and fraud risks.

Our jobs are complementary and together with others, we can ensure that our states become more accountable, have improved integrity levels and ultimately serve all people responsively.

Thank you.

**Adv. Thuli Madonsela**

**Public Protector of the Republic of South Africa**