

# **Rebuilding Democratic Life and Institutions**

## **Helen Suzman Memorial Lecture, 6 December 2022**

### **Delivered by Ivan Pillay**

I thank the Helen Suzman Foundation and its director, Nicole Fritz, for inviting me to deliver this lecture, to honour the life and work of Helen Suzman. Regrettably, many of the anti-democratic practices which she devoted her life to combatting persist, despite a new democratic order, and a constitution that is admired by all democrats.

Helen Suzman's most significant contributions in exposing apartheid abuses and in advancing a non-racial order happened in a climate of repressive rule, and the organisations from which I and many others came, were declared unlawful. This meant that the ANC and its allies, the PAC and others that were later banned, could not be participants in the public space, advancing an alternative to apartheid South Africa. This was the period when Helen Suzman was the lone representative of the Progressive Party in parliament.

It would be a mistake to think that this repression had no effect on people's consciousness, black and white. Many were fearful of falling victim to apartheid terror. Many aligned themselves with schemes that the apartheid regime advanced as alternatives, for example the bantustans and also at a local level.

It is true that most black people (by which I mean, following the influence of the Black Consciousness Movement: Africans, Coloureds and Indians), did boycott collaborationist institutions. But that did not mean that there was an unwavering belief in an alternative democratic order. The ANC may have been underground, but it was generally not visible or present in most people's lives -in some periods- because of the danger and fear that prevailed.

It is important to remember that in this period many people were demoralised. They came to believe that there was no alternative, and that apartheid would rule forever. There was suppression of news of any activities of illegal organisations, but there was also suppression of news of many of the acts of oppression and atrocities of apartheid.

The Progressive Party was not banned and did not dissolve itself like the Liberal Party later did when it became illegal to have both black and white members. The Progressive Party, together with a few liberal and independent organisations of that time, like the National Union of South African Students, or NUSAS, and the South African Institute of Race Relations - the SAIRR - became important sites of opposition to apartheid. In different ways these organisations, and some others, represented important centres of resistance and, critically, the documentation of apartheid wrongdoing.

The Progressive Party was formed as a breakaway from the United Party, in 1959, and initially had 11 members in Parliament. But all except Suzman lost their seats in the first election contested as the Progressive Party, in 1961. She remained the Party's only representative until 1974.

In the years that followed the formation of the Progressive Party, Suzman raised many atrocities that would otherwise have gone by, un-noted and unnoticed, had she not served as an MP.

MPs have 'parliamentary privilege' which allows them to do things and say things in parliament that would otherwise be illegal to do or say, and gives them access to go to places not permitted by the general public. By making use of this privilege Suzman was often one of the first on the scene of massacres and atrocities, and had she not been there and voiced her concerns in parliament, there would often not have been an alternative version to that of the apartheid regime. This became Suzman's preferred way to evade government censorship and misinformation, and to pass reliable reports to the media about some of the worst abuses of apartheid.

In line with this, in 1982, following Neil Aggett's death, she read to parliament a letter smuggled out of prison concerning Aggett's torture at the hands of the security police.

As a lone parliamentarian Suzman worked tirelessly. In her first session she made 66 speeches, moved 26 amendments and put 137 questions to Ministers.

As apartheid legislation was introduced, she would often call a division - a vote - of the house, a process whereby the members of the Parliament had to physically stand up and be counted. On many of these occasions, as when she opposed the infamous 90-day detention law, she found herself alone at one side of the Parliamentary chamber and all other MPs on the other side.

In her 13 years as the sole representative of her party in the South African Parliament, Suzman made 885 speeches and posed 2,262 questions. In a period during which there were numerous laws passed imposing censorship on the press, parliamentary privilege ensured that her exchanges in Parliament could be published.

## **Suzman and the ANC**

There is no denying that Helen Suzman's political views and that of the ANC and its allies differed. Yet despite differences on strategy and tactics, there was an overall convergence between all anti-apartheid organisations in opposing racism and the range of repressive actions, laws and institutions wielded against both black and also white opponents of apartheid.

Helen Suzman made it her business to visit political prisoners all over the country, and the prisoners, including Nelson Mandela and other political prisoners, have acknowledged that her interventions made a significant contribution to improving their conditions.

She also travelled long distances, to see people living under restrictions, like Chief Albert Luthuli, Nomzamo Winnie Madikizela-Mandela and Mamphela Ramphele.

She took risks and attended the militant – and often dangerous – funerals of activists when invited to do so. She believed that her presence could reduce the risk of police violence. She visited resettlement areas, townships and 'squatter' camps, in order to have first-hand knowledge of conditions. This provided the ammunition to confront the authorities.

## **Crisis and recovery of democratic life**

I speak to you today as a mood of despondency over the political situation envelops a great many people in our country. We know that many have disengaged from political involvement. Some, who have the means, have emigrated, including significant numbers of black professionals. Others do not know what to do about their sense of powerlessness, disappointment and anger.

There is a *political crisis, that broadly comprises.*

**A Legitimacy crisis.** There is distrust of the ANC, even among its followers, who, although they may vote for the organisation, do not believe or trust its promises.

No longer is the ANC seen as a reliable organisation for realising the aspirations of millions who suffered under apartheid. No longer is it closely identified with the poor and the marginalised.

Yet there is no other party that has won substantial trust. Surveys show that the strongest two alternatives - the DA and EFF- also evoke significant levels of distrust.

While other electoral alternatives have emerged, there is no evidence of a party that can win an election outright or obtain more votes than the ANC, or establish a stable coalition government. There is no party with a plan to address inequality, hunger, unemployment and the breakdown of basic services. There is no party that can be relied on to provide the bare minimum of conditions for a decent life for all.

This is a crisis of representation which primarily effects the ANC, in that it is no longer regarded as a credible, trusted and honourable force.

The distrust and cynicism extend to our institutions of representative democracy like parliament, provincial legislatures and municipalities. Their oversight functions have been significantly weakened. The Zondo Commission has demonstrated the lack of political accountability of members of parliament, failing to bring politicians involved in state capture to book. Politicians have been shown to place more weight on obligations to their political parties than to citizens. Communities are, consequently, often left to fend for themselves.

But the problems are wider than individual parties. This is in fact a crisis of representative government. There is currently no viable pathway for resolving problems through the institutions of government, hamstrung by a low quality of democracy.

The crisis worsens as voters stay away or do not even register to vote. And there are additional potentially troubling signs, especially the withdrawal of the youth from the political landscape, and the fact that unemployment is particularly high amongst the youth, even amongst those with matric or tertiary qualifications.

Conditions of schooling continue to reflect the existence of 'two nations' with schools accommodating primarily black scholars lacking basic facilities for satisfactory learning, including persistence of unsafe conditions, in defiance of court orders.

**Distrust of state institutions.** Against this background very few people have confidence in the performance of institutions of state to deliver on their mandate and perform the duties assigned to them under the constitution, and relevant legislation.

And this mistrust of the state was greatly aggravated by ‘State Capture’. Numerous institutions have been affected by state capture in that many of the services which departments of state were supposed to deliver were put out to tender and in the process of selecting service providers, billions of rand in fraud was committed and monies were wasted and lost without the goods that were needed being provided.

Although some institutions, like the judiciary, have performed well, the judiciary itself faces sustained attack from sections of the political stratum, together with assaults on the Constitution itself.

In this situation, it is unsurprising that citizens are despondent and apprehensive about the future of the country, and of its institutions, and are dubious about the value of their vote, as the main way of securing change, in remedying the present democratic crisis.

There are no easy answers to these questions. I do not have any easy answers. But I am certain that there are ways of effectively addressing the challenges faced by democratic or public institutions, and I say this based on my experiences at the South African Revenue Services -SARS. Our future is in our own hands.

## **What political role for people who cherish their freedoms?**

At the broad political level no one should forsake their hard won right to vote. But it is clear that the vote is currently insufficient to bring about the type of changes that people are entitled to enjoy in our democratic state.

The three major parts of society - government, the private sector and civil society are not aligned. They do not share agendas or have a common agenda. With regard to the state and business – each is asking the other to do something the other cannot do. Civil Society is the weakest of the three; the least organised and stands outside of economic discourse, but feeling the pain of low growth.

At a political level, it is desirable for us to put some of our muscle into other organisations, outside of parliamentary and other elections, to bring pressure to bear on the authorities to fulfil the mandates with which they are vested. We can do this within religious organisations to which we may belong. We should act

within professional organisations as lawyers, doctors, teachers, nurses, and various other professionals or people in trades. We can also pursue these goals as trade unionists or unemployed people, or as women, or in other sectors.

Some organisations working for their constitutional rights at the grassroots, as with the shack dwellers movement Abahlali baseMjondolo, are subject to heavy repression - over 30 have been murdered. I commend the Helen Suzman Foundation for adding its voice to the few who have come out in support of Abahlali's legitimate rights.

We can also involve ourselves in older and re-established or newly established organisations that act to regain our democracy, like the Ahmed Kathrada Foundation, Defend our Democracy and Equal Education

Then there are the civic and residents' organisations. The latter were and are constituency-based organisations which includes all political orientations. Given that local municipalities, except for those in the Western Cape and a sprinkling in other provinces, are corrupted and dysfunctional, objectively there is a need for local associations to once again become a forceful driver for change.

Trade unions are in a different situation. Once these were proud participants in the national struggle for liberation. Now many have narrowed their role and interests to either focus solely on their work conditions or, worse, support factionalists and even the corrupt. Trade unions too should be revitalised and play their part in renewing our democracy.

A vibrant civil society is essential for a thriving democracy. Civil society should harness its professionals and its students to use their knowledge to support and oppose government plans and activities when necessary.

## **Business and the recovery of democracy and constitutionalism**

It's easy to see that while the constitution remains the foundation of our democratic life, there is an absence of leadership from business, labour and government; leadership that is prepared to take the country to the next level of development. Unlike in the early 1990s when there was a visible common intent and purpose to work for and create a 'national interest', the present situation is marked by its absence. We need leadership that is prepared to move the country in a different direction. This means answering the question of what is presently required, by whom, and by when.

Businesses - big and small - need to be involved. Big Business is one of the most powerful if not the most powerful force in the country today. It showed its

muscle in the political terrain at the end of the Jacob Zuma era, also coming into the streets, in some cases. Unfortunately, Big Business did not sustain the momentum it created and retreated to the business of business. It is now time for businesses to act boldly to prevent democratic reversals.

I am conscious of the fact that business prefers to act informally and use its entry to the corridors of power to exercise its influence. But the country is in a situation that is close to emergency conditions. And it's important that business acts in coordination with other sectors and organisations to leverage its power to save our country and our democracy.

The conditions that business needs for its own activities, to be able to operate, relate to the failure of government in important spheres, like crime prevention, the prevalence of violence, the spread of corruption, and the collapse of services. All of these matters affect the whole population and they certainly affect business. But business has more power than the ordinary citizen or worker and it's important that this power is brought to bear.

## **Provision of welfare**

Fraud and broader dysfunctionality has left many people without homes, food and basic services, as required by the Constitution.

Already people have stepped in, on the one hand to do things that the state ought to be doing, in terms of provision of welfare, but also as pressure groups, to force the state to take action in line with with the Constitution.

These welfare duties have often been undertaken, most prominently by the Gift of the Givers - with large scale interventions - and also informally by smaller groups who provide soup kitchens and try to meet the needs of the poor and hungry, some of whom are already on the verge of starvation; their perilous situation aggravated by floods.

While we must still demand that the state fulfils its duties it is important that public spirited individuals and organised forces be encouraged to be involved in small or large projects to fill the many gaps left by state failure.

## **But how do the public enter political life?**

It is important that we find ways of increasing accountability, and what that entails. This needs more attention, not simply focusing on constituencies. The United Kingdom has the constituency system, and the recent change of three

Prime Ministers happened without any constituency involvement. There is, nevertheless, merit in a careful engagement and review of our electoral system.

I feel that public involvement ought not to be restricted to holding office-bearers of various types accountable. It is correct to demand accountability to the public, but *we should not restrict the involvement of the public in the political terrain to that of accountability alone.*

Are we to be spectators to every other issue that affects our lives?

In other words, if water, for example, is provided to a village because of public pressure, it is good that the public has been involved in a campaign, that yielded results. But can this public or popular agency not go further than the initial demand for provision of water?

The notion of ‘service delivery’ suggests that the public wait for the state to ‘deliver’. That suggests that the public is passive.

What sometimes happens is that a department of state provides the service that has been demanded - and it is treated in a bureaucratic manner, or as an engineering or other technical/scientific issue. Officials arrive, identify where the water pipes go, where taps will be and so on.

Nomboniso Gasa told me of the first provision of water pipes in her home village, Ntshingeni in the Eastern Cape. Two taps were placed in parts of the village that were considered sacred and inaccessible to most women. Women could not fetch water there. The engineers resisted moving the taps because their plan made sense from an engineering point of view and there were time constraints for them, because a date had been set for the then Minister to attend the official opening.

It required public campaigning by the villagers for the taps to be moved.

There were other problems in location of the two taps that were provided. One was located on land that was a family kraal. The land may have appeared vacant to the engineers, but everybody in the village knew that it belonged to someone else, and it was where a previous kraal was once located. So, this was not only a violation of that family’s property, it was sacred ground to them. So, both taps, which made perfect sense to the engineers, were simply inaccessible to women in the village. The engineers saw ‘empty land’ and thought it was correct to put the tap there. There was no consultation with the villagers.



Resolving this took a long time as the engineers were not interested in listening to villagers who 'knew nothing' about water pathways and why pipes had to be laid the way they had designed them. Villagers insisted that the way the pipes were laid would give problems in the long run. Based on previous experiences with the reservoir that was built by the Transkei government -, which paid no attention to them either - the villagers knew that those pipes would be blocked by shifting soil. This village, like many others in the area, suffered extreme soil erosion from over-deforestation and concentration of households in one area, due to government regulations on trust land settlements. The engineers did not see or care to understand the connections made by villagers, whom they viewed as troublesome and interfering.

Government's plans included participation by villagers, but only to the extent that they were offered short term employment as part of the Extended Public Works Programme. Their duties were to dig the trenches for the pipes and lay them according to the engineering designs.

Tensions mounted as villagers, led by women, insisted that the pipes were to be laid away from sacred land and people's homesteads. The project team and their managers were frustrated because changing their designs and replacing the pipes would cause delays and increase the project costs. Knowing that the project was installing two taps that would not be accessible to them, the women insisted that the taps be moved. To the surprise of the engineering team leaders, the women directed their protest to Bhisho. Knowing that the Minister was going to launch the newly installed water project at Chris Hani's village, which is next to Ntshingeni, the women threatened to protest there and embarrass the government. Eventually, the project leaders and regional politicians agreed to move the pipes and taps away from people's kraals and homesteads.

Even though this delayed the project, at last taps were reinstalled where women could freely access them. Despite the advice of villagers about the shifting soil, the project team refused to move the other two taps. There was no training for post installation maintenance for issues like blocked pipes, water pressure and similar issues. Consequently, if taps were blocked, the villagers had to inform the regional office which was two hours drive away. No doubt, the regional office which had to service other villages was overwhelmed and under resourced.

So, to fix a minor problem often took days and sometimes weeks. This meant that provision of running water was interrupted. Most importantly, most of the taps were blocked, just as the villagers had warned. So, a project that was launched with great enthusiasm and pride fell apart.

Today, 26 years after the first taps were laid, they have fallen into disrepair. Pipes have been blocked and some have broken down. In that same village as with others in the area, similar challenges are experienced with the provision of electricity.

## **Accountability and beyond**

This is just one example of the consequences of failure to consult the public on issues affecting their own lives. Collaboration needs to be demanded both by leaders and communities, and other affected parties themselves. It is important that we do not artificially limit our understanding of public involvement in matters affecting the quality of their lives. Campaigning needs to go beyond the call to hold officials accountable, and encourage direct public involvement in as many spheres of life as possible

One of the reasons for demotivation and despair is that people are passive, or cannot see what they can do in the face of the difficulties they face. It is important that campaigners identify how this can be remedied, ways in which people can be active in matters affecting their own lives.

When we speak of public involvement we need to speak of the public in a broad sense, drawing in all sections of a community, so that a public demand derives from a consensus that is drawn from a range of sectors of a community, not just men or women or businesspeople or youth or workers - but as broad a consensus as possible.

It is important in advocating public action, to recognise that better resourced communities are better able to articulate and have their grievances heard. It is critical that we do not simply see 'civil society' as an undifferentiated body of organisations. NGOs and foundations are generally accountable to funders and trustees - not directly to communities, though some do important work in support of and with communities, or other less resourced people and sectors. There must be self-consciousness on the difference in location and resources so that many people and communities can realise their aspiration for a better life, preferably acting for themselves, but with assistance where necessary and possible.

## **Ethics in public life**

Many people are unhappy about what they see as an absence of morality and ethical conduct in public life. We need to restore or create a sense of what ethical conduct means and demand its return

Ethics are the moral principles that govern a person's behaviour. The foundation of ethics is placing value on human dignity. Ethics, as I understand it, must have strong relational qualities encompassing solidarity, responsibility, and freedom. Inasmuch as individuals may not undermine a person's dignity, the same can be said of the state in protecting citizens. The ethical and political practices of the state must enhance the quality of life for all people, particularly the vulnerable and poor. Human dignity conceives human beings as ends in themselves and not as tools to achieve particular ends.

Any notion of ethics that we advance assumes that we are not isolated individuals and that we cannot act in any manner we see fit in relation to others. We cannot cause harm to others or state resources, whether physically, through violence or other acts of aggression, through insults and attacks on personal dignity like racism, or through acts of dishonesty, as in stealing or corruption.

Drawing from our constitution and the constitutional court, dignity is a central ethical concept for South Africans emerging from apartheid, a principle that is not however honoured equally. Many are still subjected to indignity by state officials and those private individuals who perpetrate such acts believe they, too, can insult or attack others without bearing consequences.

Allied to the emphasis on dignity is the weight placed on gender equality and protecting women and children from gender-based violence. The current laws are amongst the most advanced in the world yet remain a dead letter for many, with police seldom responding or responding with sensitivity, and secondary victimisation too often following in the limited number of cases that reach the courts, where complainants often battle to tell their story to an unsympathetic forum.

There is a pervasive sense of impunity because those whose dignity is undermined remain the poorest of the poor, and are mainly black South Africans and foreign-born Africans and Asians. They are routinely attacked. It is admirable that the Helen Suzman Foundation is litigating in support of Zimbabweans who face arbitrary expulsion with the planned revocation of the Zimbabwean Exemption Permit (ZEP).

It is a scandal that post-apartheid South Africa perpetuates practices and tolerates attitudes that ought to have disappeared with the onset of democracy.

If we agree on respect for dignity and that no harm can be done to innocent individuals, then, where such attacks occur, these ought -ethically - to evoke not only legal consequences, but also our empathy and compassion for those who have suffered harm.

The notion of ubuntu - whose meanings are partly contested and open to more than one interpretation - but basically describes a common humanity or humanism - needs to be retrieved from commercialisation and become a central and dynamic part of a national ethic of care and shared responsibility for the wellbeing of all.

There is a tendency to treat ethics in an ahistorical manner. Having suffered under great oppression and humiliation for many generations, we know of laws and ethics that were determined by those in power, and who were white. What all South Africans experienced is that 'might makes right'. An integral part of building our nation should surely have been a continuous engagement with the meanings and implications of our constitution, including what ethics prevail in a new South Africa.

It takes many decades, even generations, to build and consolidate norms and standards in a society. Because of our late start as a democracy, and the legacy of apartheid, leaders must define and demonstrate, over a relatively short time and at every opportunity, what is and is not acceptable. Politicians, public servants, business people and members of civil society must be mindful that they contribute either to strengthening or weakening these norms and standards.

The real question then is who determines what is proclaimed to be the model of acceptable behaviour. If it is the ethically challenged, as during the Zuma presidency, then we will be in trouble once again. Over time, ethical leaders must inculcate values that increase the numbers of people who wish to and actually do the right thing. We need pace-setting leadership and management that deliberately seeks to integrate desirable standards of behaviour into every activity.

A very big risk is posed by the acceptance of communities of corrupt and criminal 'leaders' who distribute handouts from, for example, corrupt tenders, cigarette smugglers, drug peddling and other illicit transactions. Such a phenomenon will make it very difficult to establish ethical norms and standards that are consistent with the Constitution. That's why the fight against corruption and criminality cannot be fought by law enforcement alone. It will require a

national effort in which law enforcement must play an important but supportive role.

South Africa has had endless changes, but no overall change plan. The centrepiece of a change plan should be the establishment of ethical norms and standards.

Given this situation, we cannot claim that the conduct of state officials, leaders and public representatives accords with an ethical approach which demands recognition of the multiple handicaps imposed by inequality. The truth is that in practice, the majority of poor South Africans live outside the confines and provisions of our constitution.

### **What type of public discourse do we need?**

I don't believe there is much to be gained in current ideological and political debate. Most politicians do not operate with the rigour of evidence and science.

There is enough in the Constitution to address all our ideological and political concerns. But the focus has to be two or three levels below the contents in the Constitution, notably, with the rebuilding of a capable state.

I will avoid specific policy matters. Whatever the policy, it is of dubious value when we are incapable of implementing it. We are extremely poor at getting anything done because we don't adequately cascade broad intentions into the next steps. These include appropriate designs of the solutions, operational policies, processes, procedures, and the careful selection of people.

Given that all around us the state is falling apart, our time would be better spent in stabilising institutions, improving their productivity and in the process finding synergies across a fragmented government.

On corruption, I will try to be constructive rather than accusatory. We need to get beyond outrage at the corruption and incompetence. Irrespective of our good intentions, if one doesn't know how to turn dysfunctional institutions around, efforts to address ethics, norms and standards will be very difficult, if not outright impossible.

It is in this context that I will refer to what we experienced and learnt in SARS, which, I believe, has wider application to other state institutions.

### **Institutions are more important than many people think.**

Institutions, especially state institutions, play a foundational role for us as individuals and for society. We are born with little more than a basic operating

system. We interact with and absorb from our family, our neighbourhood, our workplace, our religious and civil society organisations, our schools and other state structures. Every generation learns afresh, for better or for worse.

When our environment, which is regulated by the State, is functional and healthy our development as individuals and communities is boosted. When our institutions are broken and dysfunctional, there are serious implications for our present and could destroy our future.

This evening, I focus on rebuilding state institutions because while some of us may in principle be opposed to a strong state, a weak state is definitely not in our national interest. At this time the South African state is largely dysfunctional, very weak in its general regulatory role, appears to be incapable of performing some of its functions and is unable to adequately protect its citizens. Only the criminals and their collaborators desire a weak state.

*How many of us thought it would be easy to build a successful thriving democracy?*

Building a capable, efficient, democratic, and just state with rights and services for all, has been a huge challenge, right from the start. The newly elected government in 1994 had to operate under difficult and complex conditions, among others:

- Apartheid was evil. It was not benign. In 1969, in response to fresh security legislation, Helen Suzman declared that ‘There is another interpretation of violence, apart from violence against the State...violence can also mean the unfettered use of power by the state against a citizen, so as to deprive him of his normal civil rights. In this sense we have seen a great deal of violence in South Africa. Mass removals of African people from their homes is a violence...Banning, house arrests, detention without trial, banishment are all a violence.’
- The apartheid government failed to prepare black people for participation in a democratic government. In fact it did anything and everything to actively destroy any potential for empowerment.
- Many new entrants into Government after 1994, both politicians and public servants, had no exposure to or training in leading and managing state institutions, let alone good governance practices.

The challenge posed by all these factors required a miracle to succeed. We had the first miracle - the political miracle which provided relative stability and, in the words of Pravin Gordhan, sufficient ‘operational trust’ among the main role

players to enable the government of the day to focus on - to use a much-overused phrase - providing a better life for all.

South Africa, according to its pronouncements, claims to follow a developmental economic model where the state through its institutions intends to play an important role in the economic and social development of the country. Therefore, the effectiveness of the organs of state is critical for the wellbeing of the citizens and the country.

It would, consequently, be logical to ask, how successful are we in building effective state institutions?

## **Reports of poor governance**

Over many years, the Auditor-General (AG) in South Africa has consistently reported that only a few state institutions could attain clean audits. Many have had adverse opinions, and some received disclaimers.

In presenting the 2019/2020 PFMA audit, the current AG, Tsakani Maluleke, said that although there are signs of improvement with regard to some auditees, her office ‘cannot yet see the progressive and sustainable improvements required to prevent accountability failures and deal with them appropriately and consistently across national and provincial government’.

The Judicial Commission of Inquiry into Allegations of State Capture was launched in January 2018. The Commission through its public hearings and its final reports reinforced what had been revealed by the AG and provided a much wider perspective on the damage done by state capture. Many of the revelations about state capture and corruption were preceded by and even prompted by civil society organisations, litigation, and the media. Very few people can claim to be shocked at the main findings of the Commission.

Commentators have concluded that state organisations, in general, are not well governed. The discourse seems to suggest that if the governance mechanisms are strengthened to identify and remove the corrupt people, the systems will automatically begin to deliver.

## **What is governance?**

The Institute of Internal Auditors in the United States states that ‘Public sector governance encompasses the policies and procedures used to direct an organization’s activities to provide reasonable assurance that objectives are met and that operations are carried out in an ethical and accountable manner’.

They add: ‘In the public sector, governance relates to the means by which goals are established and accomplished. It also includes activities that ensure a government’s credibility, establish equitable provision of services, and assure appropriate behaviour of government officials - reducing the risk of public corruption.’

In the general discourse in South Africa, governance is often seen by many as a ‘back-end’ process that detects irregularities, fraud, and corruption. There is a wider meaning to governance. It includes ensuring that capabilities are in place to deliver on the mandate, and that these capabilities are well managed.

### **A systems view of organisations**

In a modern institution, hundreds and often thousands of different activities take place daily, even hourly. Taken as a whole, this makes for a complex scenario. It requires inter-dependent organisational formations and their activities to align and join up to provide a *predictable* service.

That choreography is determined by the design, staffing, technology and management of systems and subsystems within and outside the institution; all working in a synchronised manner with each other. Any institution is only as effective as the constituent parts of its systems. Friction should be minimised. The more seamless the interaction between the systems, the more effective the institution will be at an operational level. A metaphor sometimes used is that activities should flow as smooth as silk.

It is worthwhile to appreciate the importance of systems and institutions for nation-building and progress. In *The Fifth Discipline*, Peter Senge writes that ‘when placed in the same functioning system, people, however different, tend to produce similar results’. That is the power of a large functioning system, corrupt or not corrupt. It has a self-sustaining objective of its own and manages events to that end. So, simply replacing corrupt individuals with honest ones in a corrupted system cannot overcome the inertia of the system or the resistance to change.

### **What is the state of our systems?**

In the state sector in South Africa, it seems that whole systems are open to manipulation at multiple points. The result is substantial leakages that are reflected in overpricing of inputs and supplies, payments for non-existent supplies, poor-quality outputs and sometimes no delivery to the citizens at all.



Often, more is spent for less, and even that ‘less’ comes with future high maintenance, repairs and even replacement costs.

Many state institutions are no longer appropriately designed, capacitated and managed. Professionals were driven out by senior politicians and public servants who were and are dismissive of the need for deep technical knowledge of the core business and of operations management. Instead, state institutions have hired and promoted layers of generalists who report to other generalists.

Many of our managers and leaders are not systemic. We are mainly event- and transaction-driven interventionists. By continuous non-systemic actions and instructions, we invariably break existing systems. There is little analysis, generation of options, objective selection of these options, nor sufficient design and realistic planning. We usually just make announcements. When that does not succeed – and it often does not, because we have broken the delivery mechanisms – we make even more announcements. From land distribution to fighting crime, the more we fail, the louder and more strident we become.

Such managers and leaders have a ripple effect on each layer of management causing the subordinate managers to operate at several levels below what is required. That behaviour over a prolonged period causes all levels of authority to become transactional. The result is fragmentation and friction in the production, management, and quality of management systems.

Management is in continuous crisis mode. Activities do not take place in a predetermined and *predictable* manner. Huge backlogs build up. Visibility of operations is impaired. Often what happens has had to be expedited. Thus, discretion begins to play a larger than necessary role, opening the institution to greater vulnerability to abuse, theft, fraud, and corruption. Collusion between corrupt and self-serving internal and external interests become easier and meets only limited resistance from the remaining pockets of integrity and good governance in institutions.

Two examples of non-systemic interventions are:

- more pipes and taps are added to get clean drinking water to people with little or no thought given to new sources of water.
- distribution of electricity was extended to many more people without increasing the generation of power.

## **Most state institutions perform very poorly**

While the headlines on the AG's findings with regard to infringements, irregularities, and outright acts of criminality have attracted attention, in fact most state institutions consistently perform very poorly across the board. Outputs are below the simple quantitative targets and are of poor quality.

There has been little focus on improving the capabilities of executives in the production line or operations. Similarly, there is little or no strengthening of the systems of controls and assurances. It is no wonder then, that irregularities and infringements continue unabated, whereas the focus on upstream activity could have helped, as the saying goes, to 'get it right from the start'.

The health of underlying operations is neglected. Yet, operations data and information are the earliest indicators of whether institutions are performing well and are effectively governed. *In other words, long before an AG's audit, if our institutions are effectively managed, we would know whether state organs which regulate and provide for example, water and sanitation, electricity, road and rail transport, health, safety, and security, etc., are performing below, on par or above the norms.*

It seems that the current mindset and practice of the executive and oversight organs are to respond in the main to the furore that arises from reports of the AG. At best this is like using one's rear-view mirror to guide one's forward movement. At worst, it is a cynical pantomime of governance.

## **We have to understand what has gone wrong and why?**

In an efficient and effective institution, management identifies fraud and corruption, not necessarily because they are looking to unearth malfeasance, but because efficient management identifies out-of-norms activities. It is a normal task for the management to compare present performance with that of the past and compare performance among branches. The better institutions will even benchmark against national and international norms.

There are identifiable reasons as to why our governmental systems in South Africa are not sufficiently robust and susceptible to abuse and manipulation. Our public administration has a weak centre. To aggravate matters, we have had change after change, without a robust change-management plan, leading to fragile institutions and systems.

Some of the specific factors that impacted on our public service are:

- After 1994, many administrations were amalgamated. Overnight, that new public administration had to serve the whole of South Africa.
- The new dispensation included a new sphere of government including provincial parliaments, creating a complex governmental system.
- The legislatures have failed to play their role in ensuring good governance.
- The authority of the Public Service Commission is minimal. There was and is no effective centre to the public service.

-There isn't an annual intake into the public service. Recruitment is in the main driven by individual vacancies and are not batched as part of a recruiting cycle. Such an approach makes it very difficult to plan recruitment and manage the careers of public servants. Among other things, it impacts negatively on selection processes, formal induction, institutionalising probation, the formal universal training of all entrants and the building of deep technical and managerial competence.

-There is no system of managing the career paths of public servants across the three spheres of government (national, provincial, and local). Persons recruited into one institution are there forever, causing artificial upward pressure. Many candidates are promoted beyond their capability. There is also pressure to move from one institution to another in search of better prospects, thus increasing instability.

-The manner of appointing heads of institutions, managing their careers, the short duration of their contracts, and the politicisation of their roles, discourages capable candidates from entering the public service.

- In line with the 'New Public Management' philosophy, our leaders and managers encouraged the contracting out of services without creating the capability to manage those contracts. Ultimately, we have a bloated, inefficient and ineffective public service.

Nonetheless, we could still have managed the system well, but we let it drift to this dysfunctional level where socioeconomic development and service delivery are no longer at the centre of the goals of the State. Centre stage has been taken by the abuse of power and corruption.

## **What can be learnt from the SARS experience?**

Some of us in the senior management of SARS had participated in the national liberation struggle. The Freedom Charter, although adopted long ago was, and is a living document for us. Drawn by its aspirations and driven by its values, we were determined to make SARS an effective institution and a resource for the new South Africa.

We believed that there was a place in SARS for all patriots: a home for anyone prepared to work hard to make the country succeed. We valued the institutional knowledge of those we found in SARS. We stopped voluntary retirement packages, since all these did was to encourage the most capable and confident to leave. I find it difficult to understand why white employees would have been driven out or discouraged. Surely the best way to compensate for the effects of apartheid was to harness the very persons who had benefitted from better education and job reservation and to put these skills to work, sincerely and effectively in the interests of a new South Africa.

It is an age-old approach of the liberation movement that we should, while offering ‘operational trust’, continuously draw people towards our goals. The die-hard racists will always isolate themselves. It is usually not necessary to expend time and energy on them.

We experimented at SARS. We made mistakes. We learnt a great deal from our counterparts in other countries and from the private sector. By 2010, SARS and the National Treasury were world class institutions.

### **Building a compliance culture**

Although the purpose of SARS is to collect revenue, it did not make the mistake of thinking that revenue collection was its main output. We determined that we had to increase the levels of compliance to tax and customs laws. If we did our work efficiently, revenue would flow into the fiscus.

We put to good use our lessons from countries that had effective tax and customs institutions. A common compliance strategy guided most developed countries. We noted that a compliance strategy can be distilled into three levers: Education, Service and Enforcement.

Enabled by research and analytics, SARS:

- built an efficient regulatory regime with robust modernised systems that brought greater transparency to transactions and relationships;
- developed capability to objectively identify risks;
- made it easier to comply and difficult not to comply;
- actively drew the majority of taxpayers into this well-defined and regulated regime;

- built a formidable hard enforcement capability - investigations are scarce and costly - which could then be focused on the smaller numbers that remained deliberately outside the regulatory regime or on the margins;

*In my view the same approach could apply to building compliance in general and not only for tax and customs. It could, for example, apply to building norms and standards with regard to traffic control, fighting crime, or mobilising the population in the face of a pandemic. Dedicated and effective research, analysis, and management of compliance is the opposite of wishful thinking, and mindless parroting.*

## **Managing risks in SARS**

In South Africa there is no shortage of information peddlers, corrupters, influencers, and fixers. How do you blunt the impact that such people can have? The no-gifts policy which was then well known, was only one part of many other measures adopted.

- We kept our lives simple. We avoided social and work situations where we knew there would be persons who would try to take advantage of our presence. When meeting taxpayers, we did so at the office and were always accompanied by a fellow employee.
- A new operating model created dedicated front offices to interact with the public, thus insulating our processing and enforcement personnel who managed accounts, assessed tax liabilities and audited.
- There was an independently operated phone line to receive alerts about corruption. There was also a suspicious-activity reporting system that alerted us to fraud and corruption.
- All tax advisers had to be registered with SARS. Dedicated centres to service tax advisers were established.
- To avoid bias, auditors and investigators were not allowed to select or initiate cases. Case selection became an independent function.
- Access to taxpayer records was controlled, and we improved our technology systems so that any query would leave footprints.

## **SARS governance system**

In SARS we sought to account to our principals by delivering on our mandate. Accordingly, we focused on ‘*upfront*’ governance by:

- 1) Embedding and strengthening three lines of checks and balances into the institution:
  - the normal vertical line of management - the first line;

- the assurance line. Besides the normal assurance, this second line used the natural tension between role-players in a shared value chain to good effect. Examples are all legal divisions, and debt management with respect to auditors' assessments.
  - resourced and improved internal audit, so that gradually the Auditor General could place greater reliance on its work and shift its own focus from the mundane.
- 2) Empowering individuals in authority and reducing the role of committees in decision making.
  - 3) Developed rules and obligations according to whether a situation was usual, unusual or exceptional on a continuum that increased governance requirements. This enabled us to apply clear rules to categories of risk, rather than flounder from transaction to transaction. The point was and is that any and every activity must be under governance, including the purchasing of medication and equipment in a pandemic.
  - 4) Creating a small dedicated governance unit that interacted with EXCO, internal audit, the auditor general, parliament and any other oversight structure. This unit understood all the issues, developed appropriate plans with the SARS divisions concerned, then monitored the implementation of corrections. It reported regularly to the EXCO.

## **Enablement**

Delivery is the output of the operations arm of an institution. Operations is the most predictable part of a business since it works, or should work, according to standard operating procedures. In the beginning, when we sought to improve productivity at SARS, we focused on operations, working faster and pushing ourselves harder. However, after a period of consistent progress, when making further impact became harder, we then looked at the whole value chain. Operations, we recognised, would benefit if we could improve our analytics, design and planning.

Delivery, in other words, would benefit from the pre-implementation phases. This 'enabling' part of SARS comprised engineers, analysts, designers, who formulated operational policy and procedure, and did benchmarking. The experts were like an internal consulting capability. Over many years, we built up this capability to about 300 highly skilled people. They ensured that the operations of SARS not only continually improved, but could match the best in the world.

We used that capability to assist other state institutions such as the Department of Home Affairs, Government Employees Pension Fund, Department of Health in the Eastern Cape, and the National Treasury.

Many of you might have known that when the Department of Home Affairs' movement control systems collapsed three months before the World Cup, SARS came to the rescue. That collaboration continued up to 2014. The ID card system was researched and designed at the SARS design shop.

I quote from the SARS Strategy Plan 2013/14,  
SARS will continue to adopt a whole of government view to achieve value chain efficiencies

‘Significant efficiency and effectiveness improvements have been gained through addressing SARS’s historical operational bottlenecks. To achieve even further improvements, SARS will need to optimise its entire value chain and try to get greater operational and systems integration between its own activities and those of its state partners. Examples of where this collaboration has started to deliver value include the joint effort in the rollout of the movement control system with the Department of Home Affairs, that will enable SARS to better track the length of time that taxpayers spend in the country; the collaboration with SARS, South African National Defence Force and others as part of the Border Control Operational Control Committee and the Inter-Agency Clearing Forum, to improve the security response at the borders and the ongoing collaboration with National Treasury’s FIC as part of the Multi-Agency Working Group, to improve the integrity of the state procurement system.

‘These collaborations aim to save taxpayer money by leveraging the investments made by the government in SARS’s modernisation programme for the interest of the state as a whole.’

## **Corruption**

Broken institutions and systems mean that the normal flow of activities does not take place in a predetermined and predictable manner. There is a build up of huge backlogs. Visibility of operations is impaired. Management is in continuous crisis mode. These situations mainly depend on intervening expeditors and super-managers. Discretion begins to be exercised when it should not be necessary, thus increasing risk of abuse, theft, fraud and corruption. Collusion between corrupt and self-serving internal and external interests becomes easier and will meet only limited resistance from the remaining pockets of integrity and good governance in the institutions.

Corruption can take place at different levels:

- Policy;
- Programme/project; and
- Transactional or operational aspects.

All three are underpinned by a social milieu, pockets of which may look the other way, accept corrupt practices as normal, or even encourage them.

Corruption at the policy level is dangerous and can cause damage quickly, but with enduring effect. Obviously, this corruption cannot be controlled by operational means. It should be addressed by transparent, open government, robust policy making, good strategic management practices and by an active civil society.

At the programme/project level, corruption takes place through the diversion of projects, by tampering with project design, or in the awarding of major contracts. Single incidents may not appear to be of national consequence, but they can become so widespread that they undermine institutions and communities. It can, and should, be addressed by the professionalisation of government and by good governance mechanisms, including transparent reporting. Civil society organisations can play an effective role through social auditing of the delivery of services to communities, and by targeted litigation in instances of blatant corruption.

Then there is corruption at the operational level. Corrupt transactions manifest in quality, cost or delivery issues, and will include kickbacks and or extortion. When systems are broken, many individuals take the opportunity to intercept transactions to further bleed the system. Corruption at the operational level can be controlled to a large extent at the policy/strategic and programme levels through the appropriate design of processes and checks and balances.

Policy level corruption cannot be corrected at the programme level and programme level corruption cannot be corrected at the transactional or operational level. In short, we cannot solve the corruption problem only by investigating individual incidents, from the bottom upwards. We have to determine what the appropriate treatment/action is for the level of corruption.

## **Fight corruption while rebuilding**



Corruption should be seen as a symptom of a dysfunctional state apparatus. In most instances, the systems have broken down to such an extent that the current system becomes incapable of delivering on its mandate. It has become so dysfunctional that it cannot be revived by simply removing corrupt individuals. *Removing the corrupt is a necessary step but insufficient.* We should incorporate an anti-corruption strategy into a rebuilding of institutional capability so that both strategies leverage off each other. This unified strategy has to have a clear transformational agenda that is transparent, has integrity and is effective and recognises that:

- Strong systems are the key to strong institutions;
- We have to prioritise.
- Beyond the values and competency of individuals, we must address inbuilt design flaws and weaknesses that give rise to fragmentation and instability in the public service.

#### **Here are four scenarios**

(1) **Low fixing and low combatting of corruption** will result in no progress. The downfall of institutions will probably accelerate.

(2) **Low fixing and high combatting of corruption**

Suspensions and arrests take place. Fear and suspicion predominate. Improvement in performance is unlikely.

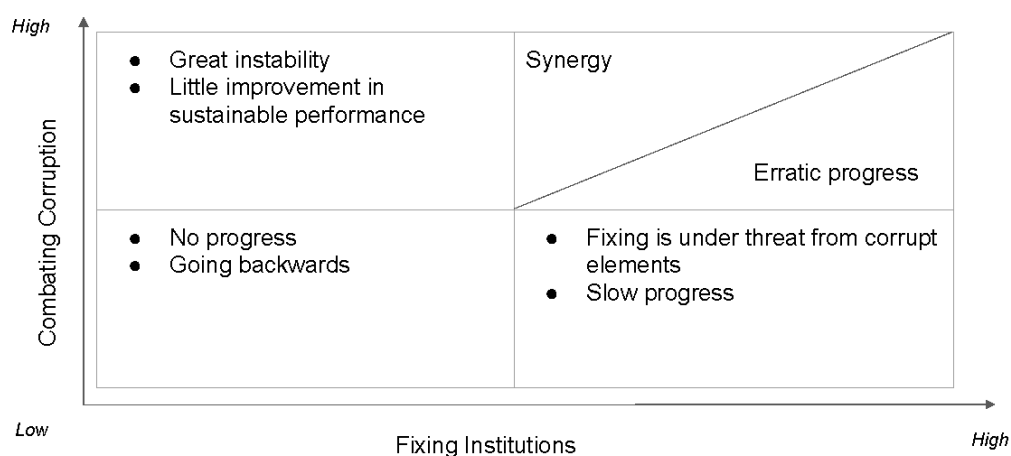
(3) **High fixing and low combatting of corruption**

There will be some progress but it will be interrupted and limited by corrupt elements

(4) **High fixing and high combatting of corruption**

If not well coordinated, there will be erratic progress. If both programmes are aligned there should be synergistic steady improvement

## Integrating the Fight Against Corruption with Fixing Institutions



### **What can be done? Plans for big change need a base line**

Sadly, no matter how desperate we are to move forward, substantial change cannot immediately happen. It is important to know from where you depart and the precise destination so that the change plan can be sufficiently specific and takes account of the impact on all interdependencies.

There is therefore a phase of fixing and stabilising the institution to achieve a steady base line. But a focus on fixing broken systems will already result in considerable improvement as compared to the period of dysfunctionality. Once control and predictability have been instilled, successful big change becomes possible and easier to achieve.

### **The Way Forward**

Whatever public administration model we follow, coherence and effectiveness can only be achieved on the back of a values-based systemic professional public service that has the appropriate technical and managerial skills. Such a change endeavour can only be driven from the centre of government.

To achieve this, the Public Service Commission (PSC) should play its constitutional role of ensuring a fair and effective public service. Unfortunately, many of the PSC's duties are now in fact undertaken by the Department of Public Service and Administration (DPSA), which is itself subject to the prevailing instability and dysfunctionality of most state institutions.

South Africa has to find solutions to the structural and operational problems of the public service and its interface with political principals. A contextual issue is our pure proportional voting system at national and provincial levels, which places enormous power in the hands of party bosses. This needs to be reviewed. Hierarchies of many of the political parties are unlikely to enthusiastically support a dramatic change in the electoral legislation. But some combination of constituency and proportional representation system, operating already in local government, deserves serious consideration.

This has to be a medium to long-term effort. It will take painstaking and dogged determination, day after day, until traction is gained that will lead to successive years of repairing and improved productivity. Much like the effect of compound interest, sustained fixing and increased productivity over a number of years will grow the base-capability of state institutions. Of course, there will be opportunities for rapid progress. We should be ready to leverage such opportunities, should they arise.

### **Recommended initiatives: top-down**

Starting small, the following can be done:

- Mobilising and organising communities and their organisations as part of a norms and standards building programme.
- Initiating a small number of well-designed programmes to make a small number of selected institutions functional and effective at the national and provincial levels;
- Initiating the centrally driven systemic improvement of a few key functions that cut across the whole of government, such as procurement, human resource management and operations management; and
- Rationalising, depoliticising and rebuilding law enforcement institutions as parts of one interdependent system.

These are examples of a top-down approach. They are deliberately prioritised to a few institutions and to a few cross-cutting functions because our capabilities are limited.

In addition, this effort must be complemented by a bottom-up approach so that the two approaches reinforce and influence each other.

### **Recommended initiatives: bottom up**

A bottom-up approach can be to leverage the islands of ‘excellence’ that still exist in the public service despite the corruption and incompetence. Some police stations, clinics, licencing offices and schools are well run. As citizens we can

instantly recognise them when we are there. These places are led by exceptional and determined local leaders who often go through hardship and personal sacrifice to maintain relatively good local working environments. Supporting such islands, learning from them, and growing their impact on the neighbouring areas and institutions will be an important part of the overall plan.

## **An enabling environment**

An enabling environment is critical to the success of these initiatives. There needs to be a consensus by all to address the interface between politicians and state institutions. That consensus must:

- Acknowledge that the public service must be protected from party-political machinations, including intra-party feuding;
- Commit to stop destabilising the public service and also commit to a professional public administration that owes its allegiance to the Constitution and not to politicians;
- Clarify the distinction and interdependency between technical, managerial and policy capability and the role of political principals; and
- Lead to effective changes in the design of state institutions to overcome the inherent fragmentation and instability.
- Be underpinned by a well-informed, organised and mobilised civil society.

## **Civil society in the period ahead**

Recent events once again demonstrated the power of civil society during state capture. Zuma provoked a mighty groundswell of determination to rid the state of him and the Guptas. Indeed, the fledgling alliance between civil society formations, a small number of progressives in the ANC, and opposition parliamentary parties, successfully protested, marched, and litigated against state capture. The string of stirring victories and the potential damage to the ANC finally caused a narrow majority to ditch Zuma.

Unfortunately, once again, on the threshold of victory, civil society retired into the background and allowed politicians to occupy the foreground. It seems to be a recurring pattern that should be broken. That members of this audience should reclaim that space would be the final thought I would like to leave with you.