

31 August 2018

## SUBMISSION ON NATIONAL ANTI-CORRUPTION STRATEGY

### 1 INTRODUCTION

- 1.1 BUSA welcomes the opportunity to submit written comments to the National Anti-Corruption Strategy ('the NACS').
- 1.2 BUSA is a confederation of business organisations including chambers of commerce and industry, professional associations, corporate associations and unisectoral organisations. It represents a cross spectrum of South African business, large and small across the economy on macro-economic and cross-cutting policies and issues that affect business at national and international levels. BUSA's function is to ensure that business plays a constructive role in the country's economic growth, development and transformation and to create an environment in which businesses of all sizes and in all sectors can thrive, expand and be competitive. As the principal representative of business in South Africa, BUSA represents the views of its members in a number of national structures and bodies, both statutory and non-statutory.
- 1.3 South Africans are increasingly aware of the scourge of corruption that is stifling the country. Corruption is a significant barrier to South Africa's sustainable economic, political and social progress. The negative impact of corruption on the economy and on South Africa's ability to deliver inclusive growth and transformation cannot be ignored. Corruption not only discourages long-term and foreign direct investment but also diverts limited public financial resources that are required, both to provide much needed social support as well as to stimulate the economy and create jobs. Furthermore, it increases the risk of further sovereign ratings downgrades, with extremely negative ramifications for the country.
- 1.4 BUSA, in its own 'Approach to Integrity in Business' (attached), identified the following guiding principles required to address corruption:
  1. Embed a culture whereby the highest ethical standards, levels of accountability, and good governance principles must be implemented and enforced by business.

2. A transparent, zero-tolerance approach must be adopted, and for those who are found to be involved in corruption, there must be legal and visible consequences.
3. Business should implement processes, controls and procedures to ensure compliance with anti-corruption legislation, including creating the conditions to enable whistle-blowers to come forward.

## **2 IMPLEMENT THE NACS IMMEDIATELY, IN CONJUNCTION WITH SOCIAL PARTNERS**

- 2.1 BUSA appreciates the extensive process that has led to the NACS, as well as the content thereof, however, we are of the view that the NACS cannot be engaged upon or implemented in a 'business-as-usual' manner. Such an approach would result in the process losing credibility and traction. Given that corruption has reached crisis levels and threatens South Africa's democratic edifice, the NACS must not be treated as another strategy or reduced to another nice-to-have, talking points document. It is imperative that the NACS be given practical expression and the weight it deserves by ensuring that it is undergirded by a comprehensive implementation framework. In addition, a thorough review of how the NACS could be used to bolster existing accountability measures ought to be considered.
- 2.2 There is widespread social consensus on the necessity to tackle corruption in South Africa. Civil society, government, labour and business are at one that this is a national issue. Nedlac has engaged in social dialogue since the Nedlac Summit in September 2017 with the aim of addressing corruption. A draft Declaration is in place; and corruption has been placed on the Nedlac agenda as part of the Sovereign Downgrade Task Team as well as the Jobs Summit. Given our recent history, there is a unity of purpose that corruption has to be decisively, and visibility addressed.
- 2.3 Implementation of the NACS has to be focused, prioritised and decisive steps have to be taken from within different areas of government and in partnership with civil society to give effect to the strategy.
- 2.4 BUSA submits that the NACS ought to augment existing systems within the government and broader society, and that the strategy be used to identify areas for improvement and strengthening. BUSA cautions against the NACS being located outside of existing processes and frameworks, and the strategy running parallel to these processes and frameworks. By way of example, the Public Finance Management Act and the Municipal Finance Management Act, as well as a plethora of rules and regulations, govern the supply chain system in the public sector. As such, the NACS should serve as a tool used to determine how best these frameworks are enforced and enabled to be more effective.
- 2.5 A number of BUSA members are engaged in the World Economic Forum's Partnering Against Corruption Initiative (PACI) that has useful case studies that can be drawn upon. There is merit in investigating the use of technology in combatting corruption and enabling

trust and integrity. These are contained in the White Paper on the Future of Trust and Integrity and the Tech for Integrity Platform. The role of technology in e-governance; mobilising public-private co-operation and building cultures of integrity are all elements of the PACI initiative.

- 2.6 BUSA submits that the wording of the objectives and pillars of the NACS imply tweaking, adjustment, improvement and small steps. The wording needs to be put into the active voice and be bold statements of what will be done differently.
- 2.7 BUSA is also of the view that some of the pillars could be combined for greater impact and focus. For example, pillars 1 and 2; pillars 3 and 7; pillars 7 and 8; or pillars 6 and 8 and 9 could be combined.
- 2.8 BUSA further submits that it is preferable to limit the scope of potential programmes so that they can be speedily implemented. Alternatively, the programmes can be sequenced so that it is clear which programmes will be prioritised and given effect in the short term. This is essential to get traction and demonstrate serious intent to root out corruption.
- 2.9 The NACS possible programmes appear to overemphasise government programmes, and broad civil society awareness interventions are inadequately focused on the role of political parties; state-owned enterprises; and provincial and local authorities. There also appears to be inadequate reference to legislative reform to close loop-holes, or a mechanism to raise legislative red-flags.

### **3 STRATEGIC PILLARS OF NACS**

#### **3.1 Support citizen empowerment in the fight against corruption.**

- Awareness-raising campaigns, such as that underway by GCIS, are important, but can only go so far. As contemplated in the National Development Plan, South Africa requires active citizenry and embedding integrity is a pivotal way in which this can be tangibly demonstrated. Recent examples of 'twitter investigator' where the public have actively engaged in investigation through social media demonstrate the power of active citizenry and how it can be leveraged to address corruption.
- To reinforce positive anti-corruption messaging, examples of institutions and individuals that act with integrity should be showcased.
- Information campaigns on rights and processes are important – they should be consistent and structured, and easily accessible.
- Systems (electronic or otherwise) to should be established to protect the anonymity of whistle-blowers and to promote whistle-blowing. Details on whistle-blower protection should be fully articulated and include access to legal advice and support. The manner in which whistle-blowers are protected in France should be considered for adoption. Guidelines to support whistle-blowers will be meaningless in the absence of more tangible support, advice and legal support.

**3.2 Develop sustainable partnerships with stakeholders to reduce corruption and improve integrity management.**

Partnerships between government and civil society, and between civil society and business are already in place, for example in Nedlac, and should be leveraged. Proliferation of structures and processes should be avoided where possible to avoid watering down the impact of strategic partnerships.

**3.3 Improve transparency by government, business and civil society sectors.**

This is an important element of the strategy, but the possible programmes are unlikely to deliver the necessary results.

- A comprehensive monitoring and reporting mechanism should be developed to enable business, civil society and government to monitor and follow key investigations that pertain to corruption.
- Further, transparency in appointment processes of key positions within government and state-owned enterprises should be included.
- Lifestyle audits for key people in government, business and civil society should be introduced.

**3.4 Improve the integrity of the public procurement system to ensure fair, effective and efficient use of public resources.**

Improved transparency in procurement systems and decisions is important. Centralised information management of tender processes will go a long way towards ensuring rigour in the process. The introduction of random and targeted annual forensic reviews is supported under the auspices of a credible and independent structure.

**3.5 Support the professionalisation of employees.**

The title of this pillar does not reflect the proposed programmes.

- BUSA supports the capacitation, training and professionalisation of staff engaged in procurement and supply chain.
- Likewise, capacitation, training and professionalisation should be extended to those charged with governance; and those engaged in the auditing profession.
- Ethics, including conflict of interests, should be a required course that all directors, and top and senior management in the private and public sector, and those holding public office, need to undergo and demonstrate competence before being appointed. There should be annual online refreshers as a condition of service.
- People holding public office (including serving on boards, and in parliament), should be asked to sign a commitment that they will automatically step down if they are found (through civil, disciplinary or criminal processes) to be engaged in irregular or corrupt activities.

- 3.6 **Improve adherence to integrity management and anti-corruption mechanisms and improve consequence management for non-compliance of these actions across government, business and civil society sectors.**
- While the suggested programmes appear to be sound, they are predominantly suited to the public sector, and should be implemented as a matter of course.
  - Consequence management involves taking the necessary civil, disciplinary and criminal action when potential corruption is detected.
  - A register of offenders (where there is an investigation and where there is a finding of guilt) should be maintained and should be publicly accessible so that individuals or companies that have been investigated or found guilty are not able to repeat such conduct.
- 3.7 **Strengthen oversight and governance mechanisms in government sector.**
- Other than resourcing and capacitation of Chapter 9 and 10 Constitutional oversight bodies and those of the police and intelligence services, as well as municipal oversight structures, the programmes under this pillar do not inspire confidence.
- 3.8 **Strengthen the resourcing, co-operation and independence of dedicated anti-corruption agencies.**
- The suggestion of a co-ordinating agency is not supported. While the concept of a single, dedicated and capable anti-corruption unit may be compelling, it will undermine existing and lawfully constituted structures. The answer is not to create new structures, but rather to fix and enable existing ones.
  - It is also desirable to strengthen bilateral co-operation and engagement with relevant international custodians of anti-corruption agreements.
- 3.9 **Build specific programmes to reduce corruption and improve integrity in sectors particularly vulnerable to corruption (vulnerable sector management) with an initial focus on the Justice, Crime Prevention and Security Cluster.**
- It is unclear whether a separate pillar is required in this regard, as this is part of implementation of the strategy.

#### 4. CONCLUSION

BUSA appreciates the opportunity to give comment and endorses the overall objectives of the NACS. Our appeal is that we do not spend time seeking a final and perfect strategy, nor that we pursue multiple, unachievable actions, but rather that we strike while the proverbial iron is hot. There is opportunity to make a real difference.

The NACS has a pivotal role to play in resetting the national integrity compass. It is crucial that there be alignment of purpose while also ensuring creating visibility in relation to anti-corruption efforts.

Yours Sincerely



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