

## Appendix A      Establishing the Office of Public Integrity and Anti-Corruption

### Final Recommendations on the Establishment and Implementation of the Office of Public Integrity

#### 1. MANDATE OF THE OPI:

NACAC recommends that Cabinet advance legislation to establish an Office of Public Integrity and Anticorruption (OPI) as a new permanent, independent institution with the mandate to **prevent, investigate and remedy systemic corruption** involving government and other organs of state and to **enhance transparency and integrity** in their workings.

#### 2. FUNCTIONS OF THE OPI

To fulfil its mandate, NACAC recommends that the OPI, at a minimum, be empowered and appropriately resourced to perform the following functions:

1. **Develop** appropriate and relevant **frameworks and measures** by which it can **monitor, inspect, detect and expose** corruption risk and enhance transparency and integrity in government and other organs of state. Such measures may include but not be limited to:
2. **Gathering, storing and processing of data** relevant to the assessment of corruption risk and its mitigation, including establishing and maintaining data repositories and systems supporting this purpose;
3. **Conducting** national, provincial and local **inquiries and public hearings** into allegations of systemic corruption and its impacts on victims.
4. **Conduct systemic audits** into the corruption risk of institutional policies and practices in government and other organs of state, including those of their officials and functionaries. Such systemic audits may be triggered by:
  1. **Voluntary submission** of the government institution or organ of state, as the case may be;
  2. **Proactive** thematic, sectoral or institutional projects determined by the OPI.
5. **Conduct civil investigations** into systemic corruption involving government or any organs of state. Investigations may be triggered by:
  1. Proclamation of the President of the Republic of South Africa; or
  2. *MeroMeru motu*<sup>1</sup> on reasonable suspicion of systemic corruption stemming from reports, analytical insights and/or preliminary inquiries in the day-to-day course of its work.
    1. *MeroMeru motu* investigations must be authorised by the Chairperson of NACAC.
6. **Protect public property and recover assets or the value of assets** acquired through corrupt dealings that are the subject of a civil investigation.
7. **Remedy systemic corruption risks and their drivers** in government institutions or organs of state, by

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<sup>1</sup> Mero motu is a Latin term that means "**on his mere motion**." It refers to doing something voluntarily, without any suggestion or influence from another person.

1. developing and issuing **standards, guidelines and practice notes** guiding institutional policy or practices for mitigating systemic corruption risk and promoting public transparency and integrity;
2. **informing, advising on or recommending the development of appropriate national, provincial or local government policy or legislation** for mitigating systemic corruption risk and promoting public transparency and integrity, including participating in their proceedings, investigations and inquiries;
3. **giving or receiving advice from** relevant regulatory or supervisory authorities on the implementation and enforcement of institutional policy or practices for mitigating systemic corruption risk and promoting public transparency and integrity;
4. **participating in the proceedings, investigations and inquiries** of relevant regulatory or supervisory authorities pertaining to corruption, the mitigation of corruption risk and promotion of public transparency and integrity;
5. **coordinating and conducting training and development programs** on corruption risk mitigation and the promotion of public transparency and integrity for the staff of government institutions and organs of state.
8. **Cooperate and collaborate** with other agencies, organs of state and any foreign government or international organisations in the prevention and investigation of systemic corruption.
9. **Coordinate implementation of the National Anti-Corruption Strategy (NACS)** by public, private and civil society sectoral partners to reinforce an all-government and all-society response to corruption including by:
  1. Convening social partners to identify, align and implement priority projects and initiatives;
  2. Assessing and reporting on the implementation and impact of the NACS and its priority projects and initiatives;
  3. Convening periodic national, provincial and local public integrity dialogues in collaboration with relevant social partners and stakeholders;
  4. Leading the periodic review and update of the NACS through a national consultative process.
10. **Coordinate and oversee the receipt, review and referral of whistleblower disclosures across government** and organs of state. This should include but not be limited to:
  1. receiving, reviewing and referring of whistleblower disclosures to the relevant and appropriate authorities;
  2. leading whistleblower protection and support functions across government in line with relevant whistleblower legislation;
  3. receiving and managing dedicated resources for the protection and support of whistleblowers;
  4. advising on and supporting the implementation of any national, provincial or local policy and legislation, as well as institutional policies and practices, on the appropriate treatment of disclosures and protection and support of whistleblowers.
11. **Lead public education and social and behavioural change programs** that will, over time, build a societal values-base that is intolerant of corruption.

### 3. POWERS OF THE OPI

In order to fulfil its mandate, NACAC recommends that the OPI be vested with the following powers:

1. Supporting cross-cutting operational functioning of the OPI:
1. Power to raise, receive and manage funds enabling the fulfilment of its mandate and functions including from:
  1. Parliamentary appropriations;
  2. Government institutions and organs of state for services rendered;
  3. Asset recovery as a proportion of assets recovered provided for in legislation;
  4. Disbursements from the Criminal Asset Recovery Account; and
  5. Donors, paying due regard to the real or perceived independence and integrity of the OPI.
2. Power to appoint staff and to determine an appropriate remuneration and rewards structure.
3. Power to obtain professional assistance or advice from such persons or organizations as it considers appropriate, including from the private sector.
4. All powers necessary or expedient for the efficient and effective execution of its functions, under the Constitution, its legislation or any other written law.
2. Supporting mandate to develop and implement frameworks and measures to monitor, inspect, detect and expose corruption-risk
  1. Power to **conduct inquiries and public hearings** including attendant powers to:
    1. summons witnesses at those hearings;
    2. direct the production of records or other physical or digital evidence in conjunction with those hearings
  3. Supporting its mandate to conduct systemic audits:
    2. Power to **access and analyse materials classified** as restricted, confidential or secret, such powers being regulated by the relevant legislation.
    3. Power to **undertake *in situ* inspections** of the physical and digital records and operational processes of government institutions and organs of state without prior notice for the purposes of assessing systemic corruption risk.
  4. Supporting its mandate to conduct civil investigations:
    1. Powers to **access and analyse materials classified** as restricted, confidential or secret, such powers being regulated by the relevant legislation.
    2. Powers of **search and seizure** authorised through statute and actioned through a warrant granted by a Special Tribunal or court of law upon application by the OPI in *ex parte* proceedings.
    3. Power to **direct the production of** records or other physical or digital **evidence** relevant to an investigation.
      1. Power to petition a Special Tribunal or court of law to enforce a directive for the production of records or other physical or digital evidence relevant to an investigation.
    4. Power to **summons and interview** witnesses relevant to an investigation **under oath**.
      1. Power to petition a Special Tribunal or court of law to enforce a summons directing a witness to participate in an interview under oath.
    5. Power to **refer evidence of criminal conduct** discovered in the course of investigations and/or systemic audits to any relevant and appropriate law enforcement agency for further investigation.

6. Power to **collect**, under the explicit direction of a prosecutor assigned by the NPA, **evidence of criminal conduct and prepare a criminal docket** for referral to the relevant and appropriate law enforcement agency for ongoing investigation and/or for prosecution by the NPA.
7. Power to **undertake joint-operations** with the relevant and appropriate law enforcement agencies.
8. Power to **prepare and publish reports on its investigations** including its methods, findings and requisite remedial action.
5. Supporting its mandate to protect public property and recover assets acquired by corrupt dealings:
  1. Powers to institute civil proceedings for purposes of the preservation or recovery of public property, or to freeze or confiscate proceeds of corruption or those related to corruption that is the subject of an investigation or systemic audit.
  2. Powers to institute civil proceedings for the payment of compensation for or recovery of the value of public property that has been disposed of or has depreciated in value.
6. Supporting its mandate to remedy systemic corruption risks and their drivers
  1. Power to set out **binding remedial action** to government institutions or organs of state subject to a civil investigation or systemic audit, as the case may be, directing the implementation of institutional policy or practices for mitigating systemic corruption risk and promoting public transparency and integrity;
  1. **supervising the implementation of such remedial action;**
  2. petitioning a Court to **enforce the implementation of such remedial action.**
  2. Powers to **institute and/or initiate other civil punitive proceedings** to punish and deter further corruption or unethical conduct.

#### 4. **STATUS OF THE OPI**

1. NACAC recommends that the OPI be established as an institution supporting constitutional democracy under Chapter 9 of the Constitution to assure the conformity and preservation of its status and institutional arrangements with the STIRS criteria established in the Glenister Judgments of the Constitutional Court, which now form part of South Africa's constitutional law, and which give the fullest expression to South Africa's treaty obligations and public international law. NACAC further recommends that the OPI's mandate, powers and functions be elaborated in comprehensive legislation.
2. Acknowledging the complexity and uncertainty of the prescribed process for making a constitutional amendment as would be required to give effect to Recommendation 4.1, above, NACAC recommends, as a last resort, the establishment of the OPI as a statutory body with the following arrangements:
  1. The same principles outlined in Recommendation 5, below, continue to apply.
  2. The OPI legislation be subject to amendment or abrogation by a resolution supported by a special majority of the National Assembly.

#### 5. **ESTABLISHMENT OF AN OPI**

NACAC recommends that the OPI be established as follows:

1. The OPI is set up as a Council of not fewer than five (5) but not more than nine (9) fit and proper persons with—

1. appropriate qualifications relating to the objects of the OPI;
2. a credible record of expertise and experience relating to the objects of the OPI;
3. an impeccable record of honesty, integrity and service to society.
2. The Council must comprise:
  1. one (1) Chairperson who must be appointed in a full-time capacity to the OPI; and
  2. not fewer than four (4) and not more than eight (8) ordinary members who may be appointed in either a full- or part-time capacity to the OPI;
3. The Chairperson of the OPI must direct the work of the OPI and the staff of the OPI.
4. The Council and its Chairperson must be appointed by the President on the recommendation of a resolution supported by a majority of the National Assembly following an open, transparent and participatory public process.
5. Council members must each be appointed for an uninterrupted term of five (5) years which may be renewed for not more than one additional five-year term.
6. Removal of a member of the Council must follow a legislated procedure which includes a transparent and public inquiry conducted by the National Assembly followed by a majority vote of the Assembly or, in the case of the removal of the Chairperson or the dissolution of the entire Council, a special majority vote of the Assembly supporting a motion to this effect.
7. The Council must appoint a Chief Executive Officer as head of the administration and accounting officer. The Council may appoint other such executive officers and staff as required to fulfil the administrative functions supporting the mandate and objects of the OPI.
8. The Council may establish one or more committees necessary for the proper performance of its functions. These committees may consist of members of the Council, staff of the OPI, representatives of government institutions and organs of state, and members of the public.
9. NACAC further recommends that the OPI must have a Special Tribunal or dedicated court of law for the purposes of adjudicating civil proceedings emanating from any investigation or systemic audit of the OPI.

## 6. **TRANSITIONAL ARRANGEMENTS**

1. NACAC recommends that, in the transitional phase, such legal measures as are necessary be enacted to empower the Special Investigating Unit (SIU) to perform these functions as the precursor to the OPI, thus enabling the intended functions of the OPI to be operationalised with immediate effect.
2. NACAC recommends that upon its establishment and the appointment of its council, the OPI absorbs the resources of the SIU, including the full portfolio of work aligned with the mandate, functions and powers of the OPI.
3. NACAC further recommends that the establishment of the OPI be given the necessary priority by Cabinet and Parliament to be concluded within the next three (3) years.