

The risk associated with allowing public servants and public office bearers to have business interests in companies doing business with the State

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There is a new old enemy that is silently threatening our national democratic movement. The 1994 historic breakthrough has opened a completely new chapter for everyone. A Chinese puts it nice when he said you open the window for fresh air, you also attract flies and all manner of things you did not intend that they come through. This is exactly what is happening in our country.

A new culture of crass materialism, crass individualism and greed is threatening to erode the moral and ethic of our revolution. The source of concern in the case of the public sector is:

- a) Politicians with business interests
- b) State official with business interest or involved in shady relationships with the private sector.
- c) Unionists having shady relationships with private business and service providers.

In the COSATU 9th National Congress held in September 2009, we used a detail report analyzing corruption in the Public Service by the Auditor General and the Public Service Commission. The Auditor General report details the many shenanigans by state officials and politicians to enrich themselves at the expense of the public. Fighting corruption is not only a moral imperative but a major issue of social justice in this country. Resources being intended for the public good are being diverted to individuals' pockets and rob the poor of the much needed basic services.

Opportunities that should accrue to those who truly deserve them are monopolized by a handful of people who control budgets in departments and state agencies. It is also theft of our taxes that we work so hard to pay in order to improve public services.

Politicians with Business Interests

The first is the corrupting relationship between politicians and business on the one hand, and the relationship between unions and service providers on the other hand. The negative element in this relationship is the 'peddling' of influence in which some politicians and individuals in unions facilitate business access to government; unions facilitate access to workers for service providers like medical aids.

The second issue of concern is the lifestyle of leadership compared to ordinary people and members. The ostentatious show of wealth has become a social norm among the elite from expensive parties to crass materialism, to cite a few examples. It is as if there are two standards for leaders and ordinary people. The notion of some being more equal than others is a dangerous cancer that can alienate society from the state and members from the union leadership. Who can trust the credibility of a politician or a union leader who preaches moderation and patience to the working class, while they line their pockets with public resources?

The issue of the issue of the car allowance for Ministers should have been handles sensitively. Spending so much money on vehicles is to spit in the face of poor people living in shantytowns. This is what gives politics a bad name and to be conceived as a stepping-stone to easy and quick wealth.

The third problem is the phenomenon of feathering ones' nest while still in public service. We have often referred to this phenomenon of politicians, public servants and unionists leaving the service to go and work in the same sector in the private sector, without a cooling off period as *'throwing the javelin'*. We have seen many manifestations of this phenomenon.

State officials corrupting the State

The extent of corruption in the public service by public servants was poignantly confirmed by the Auditor General report entitled 'Report of the Auditor General to Parliament on a performance audit of entities that are connected with government employees and doing business with national departments' of August 2008 which was presented to Parliament in August 2009. The report focused on government

employee related entities doing business with national departments. The purpose of the report was to facilitate public accountability by informing parliament of the findings of the performance audit, enhance transparency and the applicability and understating of relevant laws and to reduce the risk of corruption.

The report focused on the 2005-2006 financial year transactions and it is based on audit at provincial levels, which were completed in August 2007 and July 2008. The provincial audit found that the extent of business done by employee or spouse related companies at provincial level for the period 1 April 2005 to 31 January 2007 amounted to approximately R540, 2 million. Furthermore, the report found that in the majority of cases employees did not have approval to perform other remunerative work.

The report paints a bleak picture of the public service that is supposed to be caring for the public, but is promoting their own narrow material and financial interests. Furthermore, the report indicates that the level of accumulation and misappropriation of state resources has reached alarming proportions. This corruption is so endemic that departments are not enforcing the laws and officials are exploiting gaps in the laws to win government tenders.

Some of the relevant laws include the requirement for designated employees to disclose their financial interests by submitting a financial disclosure form with their departments and the Public Service Commission every year, application by employees to obtain approval for the performance of other remunerative work, that all companies doing business with government department should register for VAT if their supplies exceed R300 00 per annum. The AG reported that some companies did business with departments despite not being registered for VAT. Only designated employees are required to disclose their financial interest. Designated employees are those occupying position of at least a director. Deputy Directors do not need to disclose their financial interest. However, they must seek prior approval to do remunerative work outside their official work.

The report focused on among others the following issues:

1. **Non-compliance with regulations on the conduct of remunerative work by government employees:**

The Public Service Act provides that employees must seek approval to do remunerative work outside their official duties. Most importantly the Act provides that if an officer receives any remuneration or reward without approval, such remuneration should be paid into the national revenue account. However, the AG report is silent on this potentially effective remedy that the State can use to deprive corrupt officials of their profits.

The explanatory manual on the code of conduct of the public service further provides that it is mandatory to obtain prior approval to perform remunerative work outside official hours. The AG report identified 30 employees who are directors and / or members of close corporations (CC), which did business with national departments where they were employed. It found that 30 employees involved as directives or members of companies or close corporations (CC) did not have approval to perform remunerative work and that the total amount payable to these companies was R32 123 890.

Furthermore, 19 employees were identified as directors or members of companies or CC's that were doing business with other departments. Of the 19 employees 16 (84 %) did not have approval to perform other remunerative work. Of the 3 that did get the approval one was employed at the department of Home Affairs and did business with other departments amounting to R20 954 545. The Ag report attributed non-compliance of laws on remunerative work on among others, the lack of control systems to manage performance of the remunerative work by employees, no database or register to monitor remunerative work, lack of knowledge of the relevant laws for e.g. some of the designated employees did not seek approval because they thought that the financial declaration forms submitted to their national departments and the Public Service Commission were sufficient.

2. **Declaration of registrable interest**

Public service regulations require employees to disclose their interests. Of the 30 employees who were directors or members of companies or CC's did business with departments where they were employed, five were designated employees. Of these five employees, one had not

submitted a financial disclosure form, three failed to declare their interests and one incorrectly indicated on the form that he resigned from the CC. The amount paid to these companies for 2005-06 was R30 644 013.

3. Declaration of interest in standard bidding documents:

In terms of the supply chain management rules there must be disclosure of interest if the bidder has a relationship with a person employed by the department that issued the tender. This is different from previous guidelines where there was a requirement to indicate whether there was a connection with a person employed by the state and not necessarily the department. As a result, if an employee of a department is a director or member of a CC that conducts business with another department there is no requirement to disclose his or her spouse's interest in the company.

The AG report found that in respect of employee related companies or CC's involved in business with other departments tenders to the value of R2 897 593 were approved but the companies or CC did not disclose the employee's or their spouse's interests because they followed the regulations which required disclosure if there is a connection with the department and not the state. In respect of companies involved in business where the employees were employed, a tender to the value of R30 303 249 was approved by the Department of Education but the company did not disclose the employee's interest.

Therefore, the disclosure of a connection or link with the department issuing the tender leaves room for collusion among employees in different departments. The declaration of interest should include interest with the State and not only with department issuing the tender.

4. Deviation from supply chain management processes

The supply chain management practice notes prescribe procurement procedures for goods and services for different thresholds. For example three verbal or written quotations are required where the contract value is above R2000 but not exceeding R10 000, for contract R10 000 but below R200 000, three written quotations are required. The regulations further provide that the values should not be split into parts to avoid complying with the prescribed thresholds. The report found that there was non compliance with the regulations, e.g. two or more quotations

with a total value in excess of R30 000 were issued within a short period for the same product or service.

5. Cases where conflict of interest existed

On conflict of interest, four quotations were submitted by a CC of which an employee was a member for the attention of the senior administrative officer (SAO) in the procurement office of the department of Agriculture. It was established that the SAO was the father of the CC member employee in the department. Furthermore, the SAO failed to disclose his interest in the contract when he evaluated the contract in question. In the department of Arts and Culture the designated employee did not submit his financial disclosure nor did he apply for remunerative work. The designated employee signed the agreement with the CC as representative of the department whilst he also had a 50% membership in the CC.

In the department of education a designated employee resigned as a director of a subsidiary but still retained her shareholding in the company and her directorship in the holding company of the company (the subsidiary) that did business with the department. There was no indication on the declaration of interest by the company that an employee working at the department had an interest in the company. The employee did not disclose her directorship of the holding company nor did she disclose the shares that she held in the subsidiary. The subsidiary received a tender to the value of R30 303 249 from the department. The table below represents a summary of employee related companies and / or CCs doing business with national departments.

	NO. OF EMPLOYEES	NO. OF COMPANIES	AMOUNT PAID R
EMPLOYEE-RELATED COMPANIES AND/OR CC'S DOING BUSINESS WITH OWN NATIONAL DEPARTMENTS	30	30	32 123 890
EMPLOYEES' SPOUSE-RELATED COMPANIES AND /OR CC'S DOING BUSINESS WITH OWN DEPARTMENTS	19	20	1 966 148
EMPLOYEE-RELATED COMPANIES AND/OR CC'S DOING BUSINESS WITH OWN NATIONAL DEPARTMENTS	19	22	42 208 015

We had welcome the work of the An ad hoc task team was set up comprising representatives in the National Treasury, the South African Revenue Service, the Financial Intelligence Centre, the Office of the Auditor-General and the Special Investigations Unit to discuss and enable improved compliance within the government supply chain management and procurement business segment.

Analysis of the procurement of smaller values showed:

- Numerous instances of three quotes made on the same piece of paper;
- Multiple instances where three quotes were sent from the same fax number;
- A consistent payment pattern of R30 000 or just below for a single service provider (SP);
- Payments slightly above and below R30 000 threshold, suggesting that these are fictitious services delivered;
- Spikes in the departmental payments in the R25 000 to R30 000 expenditure range;
- Constant round number payments to the same service provider;
- Two or more payments made against the same order number – indicating the possibility of splitting orders; and
- Sequential order numbers awarded to the same SP in quick succession

The leakage takes many different forms, including the non-declaration of tax. For example, analysis shows that of the amount paid by government departments to vendors in a 6-month period in late 2007 to 2008, *only 10.31% was declared for tax purposes* by the vendors who benefited. Yet these vendors were all able to claim tax registration certificates.

There are numerous examples of tender processes in **Provincial Departments** having being manipulated or abused and in which serious questions must be raised as to the benefit or value for money achieved.

For example:

- The award of a contract for Internet rollout in provincial schools where about R1 bn was spent for one consultant to carry out the project. The overall financial implication is about R3 bn.
- R36 m worth of contracts were awarded in 2007/08 without following a competitive bidding process in the Health Department;
- The biggest consulting contract was made when R465 m was awarded in 2008/09 in contracts for consultants to provide business advice, project management and other related services. There is serious doubt as to the benefit that accrued to the province.
- Over R220 m was paid to a consultant for “business advisory services”, although there is no contract in place. An employee of the consultancy firm was subsequently appointed the CFO of the Department, which made the award.
- One province has spent R1 bn overall for its motor sport programme in the province. This includes:
 - R490 m for motor sport events, but poor contract crafting and management (such as the refurbishment of the racing complex) had placed significant burdens on the province without clear benefits and returns;
 - R40 m was spent to sponsor to a particular motor racing team;
 - When the rights purchase to host events was cancelled, the obligations of existing contracts remain. In this instance, the Executive Manager of the Premier’s office was subsequently appointed Chief Operations Officer of a company established to manage the contracts.
- A provincial department of health developed a project to introduce a smart card system for health in which R600 m was budgeted. The project was suspended after R324 million was spent with little benefit.
- In Gauteng R140 million was spent on the GUARIDE for the Confederation Cup without funds in the budget.
- Provincial departments have spent huge sums on conferences. For example, R1.3 million was spent in a single day on a conference held in one province.

- In another province, 82 luxury vehicles for traditional leadership were acquired at a cost of R59 m without funds in the budget.
- A provincial Sports Department started a new building without funds in the budget. The building is not fully complete but there is no allocation and no report on spending yet.
- A province awarded R91 m in contract to a US company for transport services, without conducting a competitive tender process. R45 m already spent and the contract cannot be cancelled because of penalties that shall have to be paid.

There are numerous examples of poor contract management clear inflated pricing. We heard in the past that a provincial department pays R25 per bottle of 500ml Valpre water and R26 for a loaf of bread;

- The variances in the building of schools of the same size and specifications in a same country are simply staggering are reflected below:

1. Eastern Cape	R13.5m
2. Free State	R38m
3. Gauteng	R24.7
4. KwaZulu Natal	R19m
5. Limpopo	R27m
6. Mpumalanga	R32m
7. North west	R12.5m
8. Northern Cape	R24m
9. Western Cape	R27m

We also have heard confronting to circumvent BEE requirements. For example, in once case that certain individuals would entice people in a poor community to join their companies as “directors” and then open bank accounts in their names. However only the real people in charge would have signing powers on those accounts into which tender payments would be made. In worse case scenarios, these dishonest characters would take the money and disappear, leaving the recruited individual with incomplete task and huge debts.

Waging an all-round battle against crass materialism and corruption

If we ever wondered why individuals change the ideological and political stance the answer is provided in the AG report. If we wondered why comrades could be so unreliable politically and simply shift loyalties with lightning speed the answer lies in the section of the report. If we want to understand the divisions and battles waged for leadership positions in our organisations – the answer is provided. If you want to know why some people leave their thriving business to join government, which pays peanuts in comparison; - the possible answer may lie in the examples provided in the AG report. All of this combines to spell five words: our revolution is in danger! As more and more join this, the more the needs of workers and the poor take a back seat. Individualism takes root, then soon we will be en-route to Zimbabwe and other failed revolutions elsewhere in the world.

We are happy the ANC NGC, held recently stated categorically that the ANC must lead a campaign against this scourge. As we have said in our view the NGC did not adequately respond to this challenge and its paper on leadership renewal dealing with important matter.

We insist that those who want to be public representatives must choose from being representatives who live within the salaries provided for these positions or choose to be business persons. No one should be allowed to choose both. Those who chose both must be asked to resign. Clearly simple declaration of interest is not good enough. Secondly if a spouse of anyone in power is in business, that person together with all kids must avoid a conflict of interests and must be forbidden from doing business with the government or the union in the case of unions.

All this means government must review all of its regulations and ensure that the new is introduced to address the *throwing the javelin syndrome*. COSATU insist that instead of the cooling off period one year, this should be extended to five years. The cabinet ministerial book has to be scrapped and a new one that represents the ethos and revolutionary morality of the ANC led liberation movement put in its place.

Government should blacklist entities and their directors, employees who conduct business without disclosing their interest should be banned from doing business with government again, and all companies applying for government business should indicate the extent shareholding by government employees and their spouses as well. In the event that an employee participates in a conflict of interest situation and derives a benefit, such benefit or gain should be paid back to the State. Instead of misusing state resources through moonlighting and manipulation of tenders, public servants should utilise their time and skill to promote socio-economic programmes to benefit the poor and the working class.

Thank you once more for inviting me to share these thought with you.