

8 Conclusions and recommendations

COLLETTE SCHULZ HERZENBERG

Conflict between public and private interests is recognised as one of the most prevalent challenges at all levels of public life in South Africa. Mega-events, like the 2010 World Cup, provide fertile ground for conflict of interest situations to manifest. The magnitude and uniqueness of the event, the nature of the construction industry, the vast sums of money involved, weak internal institutional oversight and accountability, opaque decision-making and the dearth of publicly available information all contribute to an environment conducive to conflicts of interest and corruption. While the chapters of this monograph each tell their own compelling stories, each case study speaks to a set of common issues. These, in turn, allow for several conclusions and policy recommendations to be drawn from the analyses.

TRANSPARENCY IN MEGA-EVENT DECISION-MAKING

Mega-events are globally recognised as occasions that typically violate good governance practices, undermining transparency and participation in political and administrative decision-making.¹ Certainly, civil society does not have the same say in this arena of public life as it does in others.² The Scandinavians, recognising the governance defects, have coined a term ‘democracy deficit’ in an attempt to describe the lack of transparency and popular involvement in mega-project decision-making.³ The secretive nature of mega-events was also noted in a recent publication, *Development and Dreams*, which assessed aspects of the 2010 World Cup.⁴

The lack of transparency in the construction industry compounds the problem. The nature of the contractual agreements between the South African government and the corporate sector are largely undisclosed, with little public participation or access to information. Costs are kept secret, even when public money is spent. Commercial confidentiality currently seems to take precedence over public interest. Therefore, publication of financial information and routine inspection of books and records do not normally take place.⁵

Moreover, public access to information on government tenders and government budgetary allocations and spending are particularly challenging. This issue will be explored further.

In addition, the lines of accountability are blurred across multiple actors and institutions at different levels of government, making it difficult to identify to whom the various actors are accountable. An inevitable consequence of winning the right to host a mega-event is considerable pressure on government to deliver the required stadia, infrastructure and other facilities. Given the enormity of this undertaking as well as vast budgets and tight deadlines, it is likely that the usual monitoring and accountability mechanisms and procedures within government for conflicts of interest are strained, inadequate or simply non-existent. And without the necessary checks and balances in the public and private sectors, conflicts of interest and ensuing corruption may go undetected.

MEGA-EVENT ORGANISERS

Similarly, Horne and Manzenreiter draw attention to the non-transparent nature of mega-event organisers when they state that ‘considerable secrecy and

lack of transparency continue to pervade the undemocratic organisations that run mega-events'.⁶ The case study of FIFA by Jennings aptly demonstrates the absence of transparency and accountability within that organisation, as well as various conflicts of interest that permeate the organisation. Again, Rose turns the spotlight on FIFA's official suppliers, Match, illustrating the murky nature of the organisation's tender processes. The extent to which these companies also stand to benefit financially from the 2010 World Cup sits in stark contrast to the high indebtedness of many municipalities as they struggle to meet their financial obligations for stadia and related construction projects.

MEGA-EVENTS AND THE PUBLIC INTEREST

Seemingly, in the context of mega-events, public and personal interests are in perpetual conflict, often with the former being sacrificed in favour of the latter. The lack of openness and transparency in decision-making compounds the problem by creating positive conditions for narrow, personal interests to trump the broader public interest.

Authors looking at the Cape Town and Durban stadia all identify the location of stadia as an ongoing tension between the public and the private interest. Again, current and future (over)spending is identified as a related and salient public interest issue. The building and future maintenance of stadia in various cities (Durban and Port Elizabeth in particular) are likely to impact on their respective municipalities' capacity to prioritise pro-poor spending and deliver services and infrastructure. In addition, the longer-term financial viability of several stadia remains questionable. Anchor tenants have been difficult to secure in the Cape Town and Port Elizabeth stadia.

Another public interest issue, illuminated in the Soccer City management deal, is the ceding of profits by the respective municipality, in this instance the City of Johannesburg. Despite heavy investments by local taxpayers, they stand to receive little financial return from the hosting of the World Cup in their locality. As such, the costs of erecting soccer stadiums for a once-off event appear to exceed the benefits for local communities.

Finally, the role of mega-event organisers, like FIFA and the LOC, has come under scrutiny since they are in the business of defining 'the public interest'. Undeniably, the public-private dimensions of any mega-event are bound to be complex. However, mega-events are increasingly criticised for their poor per-

formance records in terms of the cost-benefit analyses, social and environmental benefits and public support.⁷ The physical and economic scale of many such events is such that whole nations may be affected in both the medium and long term by the success or failure of a single project.⁸

Perhaps it is naive to suggest that a corporate-minded organisation such as FIFA should prioritise the host nation's public interest. Organisers are most likely to regard these events as profit-maximising opportunities first and foremost. Nevertheless, sporting events of this nature are sold as a 'public good' and as development vehicles. And since these values underpin the rationale of the event it becomes imperative that its legacy is judged from that perspective.

THE ROLE OF THE HOST GOVERNMENT

These observations raise further questions: What is the role and responsibility of host governments in the context of a mega-event? Should governments mediate between conflicting interests? If so, whose interests should they prioritise?

Of course, it is the task of government to ensure a successful event. More importantly, though, democratic governments are mandated by their electorates to ensure that public spending contributes in a meaningful way to that country's development goals. Thus, any substantial public expenditure accompanying once-off mega-events should generate significant and measurable public goods and benefits. Yet the case studies raise a number of associated questions: Was the public purse used most effectively? What of the stadia – will they serve the public interest in the years to come? And, if so, at what expense to the taxpayer?

Ultimately, this issue forces us to consider the power dynamics between the various actors involved. And, on the face of it, governments appear to lack agency vis-à-vis the powerful international and corporate elites that have a financial stake in the game. Power is disproportionately allocated in favour of FIFA and corporate entities to the detriment of host governments and their citizens. Yet, governments are best placed to safeguard the public interest that could be otherwise sacrificed in favour of private interests. But, as Schoonbee and Brümmer argue in their chapter, 'national government was structurally conflicted' and was unable to arbitrate effectively between competing interests.

Their conclusion: had government retained more independence, an outcome far less burdensome may have been achieved.

Moreover, governments themselves are compromised when they are required to do business with certain private entities. As Rose points out in the Match chapter, 'it is a tricky situation for the South African government: hosting the World Cup necessitated getting into bed with FIFA'. However, he continues, future global sports events for which South Africa bids will require a little less naivety. Instead, he argues, government can play a more proactive role by paying greater attention to 'the pre-contracted suppliers for conflicts of interest, to get a truer sense of the real economic gains for the country than was obtained for the 2010 World Cup'.

CONFLICTS OF INTEREST AND CORRUPTION IN SOUTH AFRICA

There is mounting discussion in South Africa's body politic about the increase in conflicts of interest and corruption in the public sphere. Recently, the Auditor-General reported to Parliament that many public servants and their families are doing business with government departments.⁹ The government is aware that corruption poses a key governance challenge to its tenure. In President Jacob Zuma's 2009 State of the Nation Address to Parliament, he gave priority to greater accountability of elected and public officials in government. He also tasked government with setting up an inter-ministerial committee on corruption that will examine ways to combat corruption.¹⁰ In the 2009 Budget Speech, the Finance Minister, Pravin Gordhan, was more pointed, stating that there will be a revision of government's procurement and tendering system to ensure greater transparency. Furthermore, government is to adopt a more systematic and integrated approach to rooting out tender fraud and corruption by enlisting multiple institutions such as the South African Revenue Service, the National Prosecuting Authority and the Auditor-General and government departments.¹¹ The case studies presented here echo many of these concerns and issues. They also contribute rich material and much-needed insight into key conflict of interest situations relating to government tendering processes, black economic empowerment and unequal elite access to state resources.

Government tenders and procurement

Several case studies highlight the deficiencies of current tendering and procurement practices, particularly in municipal government. The chapters on Soccer City and the Eastern Cape focus on tender contracts in construction and advertising and both are excellent examples of the generalities. They highlight how the awarding of government tenders is often opaque and fraught with irregularities. There is also a dearth of information on government tenders. The public, the media and political parties have little opportunity to monitor and evaluate the terms of the contracts being awarded, the merit of competing bidders and the reasons for a particular outcome or preferred bidder. Moreover, the results of awarded tenders are seldom made public. Information is not easily accessible, and is often treated confidentially. Requests for information about the basis on which tenders were awarded are usually met with silence by municipalities.

These conditions make irregularities very hard to detect. It also leads to allegations of favouritism and even corruption, especially when the least competitive bidders are successful. For instance, the ECTB was accused of maladministration and mismanagement when the least competitive bidder won their advertising and branding contract. Bribes are said to be commonplace in some municipalities. An example is the case of the unsolicited bribe in Mthatha municipality, where it is alleged that a bribe was solicited from a potential bidder. The person soliciting the bribe was linked to the evaluation and adjudication committee, a municipal structure that oversees the tender process.

Black economic empowerment and tenders

BEE is the governing ANC policy designed to promote black ownership of the economy. BEE credentials are important criteria in tender bids for government contracts. They place an obligation on bidding companies competing for government contracts to demonstrate black ownership, and thus their commitment to broad-based empowerment.

However, as Rose demonstrates in the Soccer City chapter, it has led to cases of ‘fronting’ where companies transfer shares to so-called ‘black partners’ at a minimal value to secure a lucrative state contract. As Rose states, ‘This pressure on companies bidding for tenders provides fertile ground for irregularities and tender-rigging to occur.’ Combined with the generally poor transparency

of tender deals, companies are arguably incentivised to generate deceitful empowerment credentials. The policy has also been criticised for its unintended consequences – namely nepotism, cronyism and the creation of a small, but wealthy, politically connected empowerment elite.

The protection of whistle-blowers

The suspension of an alleged whistle-blower by the ECTB reflects a wider problem in South Africa of the general lack of protection of whistle-blowers by government departments, despite the existence of legislation for this purpose. The Protected Disclosures Act 26 of 2000 (PDA), is a crucial tool in preventing corruption. Yet its practical implementation has been marred by negative perceptions among citizens about speaking openly and confidently about wrongdoing.¹² The public sector has also been slow to implement whistle-blowing policies.¹³ However, there is some evidence of a gradual shift in attitudes towards a more supportive whistle-blowing culture in the country.¹⁴

Laws on access to information

The Promotion of Access to Information Act 2 of 2000 (PAIA), is often the public's only legal recourse to access tender-related documentation, but this route is both costly and time-consuming. The Act gives effect to Section 32 of the Constitution and, subject to justifiable limitations, establishes mechanisms or procedures that enable people to obtain access to records of public bodies as swiftly, inexpensively and effortlessly as is reasonably possible. Although enshrined in law, access to information is often notoriously difficult to gain. The procedural difficulties in getting access to information are a major problem.¹⁵

Financial disclosure regulations

Of particular concern are financial disclosure requirements for elected and non-elected officials. Despite South Africa's array of extensive and progressive disclosure laws for elected officials, practical implementation varies dramatically across the spheres and levels of government, making monitoring and oversight more difficult.¹⁶ Moreover, institutional support and capacity for disclosure is sorely lacking, especially at the levels of provincial and local gov-

ernment. In addition, weak internal investigatory bodies undermine oversight and the enforcement of sanctions.¹⁷ Finally, the inability of citizens, in some cases, to exercise their right to access the disclosure documents severely curtails transparency and undermines the accountability of public decision-making.¹⁸

In the public sector, among non-elected officials, the PSC has repeatedly expressed concerns about the low rates of compliance with the financial disclosure framework for senior managers.¹⁹ The PSC observations are of concern and highlight the serious problem of the lack of public accountability in the public service. Mechanisms to ensure oversight and accountability are simply not being used effectively.

RECOMMENDATIONS FOR POLICY MAKERS

This research provides policy makers with an opportunity to identify weaknesses in South Africa's integrity frameworks and accountability mechanisms. One can also start to reassess the overall integrity of mega-event governance. A set of recommendations follows. They are aimed primarily at South African policy makers. However, they should also be of interest to future hosting nations to the World Cup and event organisers generally. Where potential risk exists, policy makers should regard that as sufficient need for integrity systems to be put in place. We hope that what follows helps policymakers set an agenda for new anti-corruption interventions.

Government tendering and procurement

Greater transparency is critical. Tendering and procurement processes at all levels of government require far greater levels of transparency and openness. One measure is to allow public access to decision-making and procedural bodies. The use of PAIA should not be regarded as the first option for public access to tender documents and information, but strictly as a last resort. Not only will public access provide scrutiny and help to identify corrupt outcomes, it will also cast greater legitimacy over government decisions. In addition, the Municipal Finance Management Act 56 of 2003 requires revision. At present it does not allow for sufficient multi-party political oversight of municipalities' financial and tendering decisions. A combination of these transparency measures will also assist with monitoring of companies that produce questionable or deceit-

ful empowerment credentials. The City of Cape Town has introduced measures to ensure greater transparency in their tendering practices and this may provide a model for other municipalities and other levels of government to emulate.

Existing anti-corruption mechanisms

Existing integrity measures, such as disclosure regimes, need to be strengthened and enforced across all government institutions at the three levels of government. Recommendations to extend the disclosure regime to junior civil servants and middle managers in the public sector should be fast-tracked and enforced.²⁰ Access to information and the protection of whistle-blowers are paramount in the fight against corruption. These values need to be encouraged and entrenched further, particularly in the public sector. South Africa has decent legislation in this regard in the PAIA and PDA. Institutions must implement both laws in an effective way if they are to have a meaningful impact. Where corruption and criminal activities are suspected, investigations should be given the highest priority. It is imperative that government sends clear signals to all public officials and business people that corruption will not be tolerated.

Enhancing public interest outcomes and the value of public goods

When confronted with an opportunity to host mega-events governments should adopt economic models that base their evaluations of heavily state-financed projects on criteria that prioritise public good and long-term sustainability. Governments may lack the leverage necessary to hold private international organisers to account but can still enforce the principle of the public interest as central to all its decision-making.

With many more mega-events being proposed globally, and much larger ones at that, it is crucial that related infrastructural projects become economically viable and environmentally, socially and ethically sustainable. To achieve this, politicians, policy makers and event organisers must find innovative ways to overcome the twin dilemmas of ethics and effectiveness in performance management. They should instead be regarded as mutually supportive concepts that contribute positively to the governance of mega-events.

NOTES

- 1 William L Richter and Frances Burke (eds), *Combating corruption, encouraging ethics: a practical guide to management ethics*, Lanham, MD: Rowman & Littlefield Publishers, 56.
- 2 Ibid.
- 3 Ibid.
- 4 Richard Tomlinson, Orli Bass and Udesh Pillay, Introduction, in Udesh Pillay, Richard Tomlinson and Orli Bass (eds), *Development and dreams: the urban legacy of the 2010 Football World Cup*, Cape Town: HSRC Press, 2009, 6.
- 5 Transparency International, *Preventing corruption on construction projects: risk assessment and proposed actions for funders*, July 2006, 12, http://www.transparency.org/global_priorities/public_contracting/projects_public_contracting/preventing_corruption_in_construction (accessed 17 March 2010).
- 6 J Horne and W Manzenreiter, An introduction to the sociology of sports mega-events, in J Horne and W Manzenreiter (eds), *Sports mega-events: social scientific analyses of a global phenomenon*, Malden, MA: Blackwell Publishing, 13. Also see Tomlinson, Bass and Pillay, Introduction, 6.
- 7 Richter and Burke, *Combating corruption encouraging ethics*, 54.
- 8 Richter and Burke, *Combating corruption encouraging ethics*, 55.
- 9 Auditor-General, *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*, RP 242/2008, published by authority, August 2008, <http://www.agsa.co.za/Reports%20Documents/government%20employees%20and%20doing%20business%20with%20national%20departments.pdf> (accessed 17 March 2010). Also see Gary Pienaar, Public servants still profit from state procurement, Idasa, 15 July 2009, <http://www.idasa.org.za/gbOutputFiles.asp?WriteContent=Y&RID=2578> (accessed 17 March 2010).
- 10 Jacob Zuma, State of the nation address by His Excellency J G Zuma, President of the Republic of South Africa, at the Joint Sitting of Parliament, Cape Town, 11 February 2010, South African Government Information, <http://www.info.gov.za/speeches/son/index.html> (accessed 16 March 2010).
- 11 Pravin Gordhan, Budget Speech 2010 by the Minister of Finance Pravin Gordhan, 17 February 2010. South African Government Information, <http://www.info.gov.za/speeches/2010/10021715051004.htm> (accessed 16 March 2010).
- 12 Lorraine Martin, Ten years of whistle blowing protection in South Africa: a review of the past and lessons for the future, presentation at the conference: Open Democracy Advice Centre review: 10 years leading the campaign for the right to know, Cape Town, 12 March 2010.

- 13 Ibid.
- 14 Ibid.
- 15 Alison Tilley, The usage of the Promotion of Access to Information Act experiences: achievements and challenges, presentation at the conference: Open Democracy Advice Centre review: 10 years leading the campaign for the right to know, Cape Town, 12 March 2010.
- 16 Collette Schulz Herzenberg and Rosemary Vickerman, Financial disclosure requirements in South Africa 2004-2008: holding elected politicians accountable, Institute for Security Studies Occasional Paper 192, August 2009, <http://www.issafrica.org/pgcontent.php?UID=3118> (accessed 19 March 2010).
- 17 Ibid.
- 18 Ibid.
- 19 See the following reports: PSC, Fact sheet: monitoring compliance with the requirements of the financial disclosure framework for the 2008/2009 financial year, Pretoria: Public Service Commission, September 2009, http://www.psc.gov.za/docs/reports/2009/FACT%20SHEET%20FOR%202008%202009%20FINANCIAL%20YEAR%20first%20draft%20_3%20September%202009_.pdf (accessed 19 March 2010). PSC, Overview of the implementation of the financial disclosure framework: financial year 2007/2008, Pretoria: Public Service Commission, 2009. <http://www.psc.gov.za/docs/reports/2009/overview.pdf> (accessed 17 March 2010).
- 20 Sibusiso Ngalwa, Lifestyle audits for junior civil servants too – Diphofa, *The Sunday Independent*, 14 March 2010, 4.