

A COMPARATIVE ANALYSIS OF ANTI-CORRUPTION LEGISLATION AND ANTI-CORRUPTION AGENCIES IN THE EASTERN CAPE AND NORTHERN CAPE PROVINCES: A GOVERNANCE PERSPECTIVE

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NORTHERN CAPE PROVINCES: A GOVERNANCE PERSPECTIVE

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PORT ELIZABETH

DECEMBER 2012

DECLARATION

I, Victoria Thozama Majila - student number 204061776, hereby declare that the thesis for Doctor Philosophiae (Public Administration) is my own work, and that it has not previously been submitted for assessment or completion of any postgraduate qualification to another University or for another qualification.

Victoria Thozama Majila

TO WHOM IT MAY CONCERN

I hereby certify that I have language edited the Doctor Philosophiae thesis entitled 'a comparative analysis of anti-corruption legislation and anti-corruption agencies in the Eastern Cape and Northern Cape provinces: a governance perspective' by Ms VT Majila, Faculty of Arts, Nelson Mandela Metropolitan University.

I am a professional language editor.

Ms R Van der Merwe

December 2012

ACRONYMS

AAPAM:	African Association for Public Administration and Management
ACA:	Anti-corruption Agency
ACPO:	Association of Chief Police Officers
BEE:	Black Economic Empowerment
CASAC:	Council for the Advancement of the South African Constitution
CCA:	Country Corruption Assessment
CCCC:	Ecuador's Commission for the Civic Control of Corruption
COSATU:	Congress of South African Trade Unions
CPIB:	Singapore's Corrupt Practices Investigation Bureau
DCEC:	Botswana's Directorate of Corruption and Economic Crimes
DPSA:	Department of Public Service and Administration
DSO:	Directorate of Special Operations
FICA:	Financial Intelligence Centre Act
GDP:	Gross Domestic Product
ICAC	Hong Kong Independent Commission against Corruption
ISS:	Institute for Security Studies
MFMA:	Municipal Finance Management Act
NDPP:	National Director of Public Prosecutions
NEPAD:	New Partnership for Africa's Development
OECD:	Organisation for Economic Co-operation and Development
PCA:	Singapore's Prevention of Corruption Act

PDA:	Protected Disclosures Act
PERSAL	Personnel Salary System
POBO:	Hong Kong's Prevention of Bribery Ordinance
PSA:	Public Service Act
PSC:	Public Service Commission
SADC:	Southern African Development Community
SANPS:	South African National Public Service
SAPS:	South African Police Service
SASSA:	South African Social Security Agency
TI:	Transparency International
TISA:	Transparency International South Africa
UN;	United Nations
UNDP:	United Nations Development Programme
UNESCAP:	United Nations Economic and Social Commission for Asia and the Pacific
USAID:	United States Agency for International Development
UNODC:	United Nations Office on Drugs and Crime
UNODC/ROSA:	United Nations Office on Drugs and Crime, Regional Office for Southern Africa

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ABSTRACT

This thesis analysed and compared the effectiveness of the anti-corruption legislation and anti-corruption agencies in the Eastern Cape and Northern Cape provinces. The thesis consists of six chapters. This study is based on the assumption that the struggle against corruption is best approached by developing a system of laws, institutions and supporting practices which promote integrity and make corrupt conduct a high-risk activity. It is imperative that a systemic approach is embarked upon in order to address the manner in which the major institutions and processes of the state are conquered and exploited by corrupt individuals and groups.

With the magnitude in which hurdles exist that hamper the effectiveness of the country's anti-corruption legislation and anti-corruption agencies; South Africa is incapable of curbing corruption. With the purpose to determine a desired state of affairs, characteristics of effective anti-corruption agencies and anti-corruption legislation were presented. These served as a yardstick in measuring how effective such agencies and legislation are in South Africa.

Reasons for failure of agencies and legislation are discussed. After discussing types of anti-corruption agencies, those that perform better than

others were identified. Through literature review, the status quo concerning anti-corruption initiatives in South Africa was assessed. It was revealed that the level of the success of South African anti-corruption agencies and legislation has been limited. In the case of anti-corruption agencies, weaknesses such as fragmentation; insufficient coordination; poor delineation of responsibility; and assimilation of corruption work into a broader mandate were identified as major causes.

Measures that are needed, such as informed citizens; a need to foster and sustain high levels of professional and ethically imbued civil servants; and legislation that supports the transition towards a corruption-free society that are needed to complement implementation of anti-corruption legislation, were also recognised. Ways of addressing such shortcomings that the writers identified are also presented.

The methodology and design followed in the study are described. This is followed by the analysis and interpretation of the survey. The research findings are then presented. Based on the findings a number of recommendations that would assist in improving the effectiveness of anti-corruption agencies and anti-corruption legislation are made. Flowing from the discussion of effective anti-corruption models that were identified by literature a model that would be ideal for South Africa is recommended.

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CHAPTER 1

GENERAL INTRODUCTION TO THE STUDY

1. BACKGROUND

Many countries suffer from various degrees of corruption. South Africa is no exception. The undeniable fact, therefore, is that corruption cannot be reckoned as a mere country- or region-specific problem; it is a far wider phenomenon (Mutthirulandi, 2003:1). However, there has been a growing global movement to condemn corrupt practices, resulting in the removal of certain leaders from office. These are leaders such as the following:

- I. Alberto Fujimori, President of Peru, who was removed as being “morally unfit” by the Peruvian National Assembly, owing to corruption charges (World Money Watch, 2006: Online);
- II. General Khin Nyunt, Burma’s prime minister, who was removed from office because he failed to take action against corruption (Voice of America, 2007: Online);
- III. Shanghai’s top leader, Chen Liangyu, who was dismissed for alleged corruption (CBS News, 2006: Online); and
- IV. Andrzej Lepper, Polish deputy premier, who was dismissed after his name was linked to a major corruption case (PR-Inside, 2007: Online).

In South Africa, as in other countries, the challenge of preventing and combating corrupt behaviour is common to most societies and is currently being undertaken by public and private institutions.

The South African government is paying attention to corruption and its effects, and is intent on preserving its economic and democratic transformation (Chipkin, 1997:349). According to Van Vuuren (2005:8), corruption poses a major challenge in the provincial and local government spheres of government, negatively affecting the capacity of the public sector to deliver services to the poor. According to the United States Agency for International Development (USAID) (1999:5), corruption poses a serious challenge and undermines democracy and good governance by subverting formal processes. USAID (1999:5) further explains that corruption in public administration results in the unequal provision of services.

International development agencies highlight the struggle against public sector corruption as a top priority (Schacter & Shah, 2001:1). The World Bank (2000:2), for example, describes corruption as a “cancer” on development and declares “there is nothing more important” than the fight against it.

South Africa has followed this trend by embarking on a number of anti-corruption initiatives. Within the United Nations system, South Africa has initiated the following three initiatives: the adoption of the United Nations Convention against Transnational Organised Crime (2000); the launch of the Global Programme against Corruption (2000); and the work on the preparation of a United Nations Convention against Corruption (2002).

South Africa also plays a prominent role in fighting corruption within the African context, such as the one in the New Partnership for Africa's Development (NEPAD), particularly with regard to good governance and in the adoption of the Africa Union Convention on Preventing and Combating Corruption. Within the Southern African Development Community (SADC), the Protocol against Corruption was adopted in August 2001 (which South Africa ratified in 2003) and a number of organisational and training initiatives have been undertaken, including the creation of the Southern African Forum against Corruption (Country Corruption Assessment Report, 2003:3-7).

The Country Corruption Assessment Report (2003:4) states that commitment to good and clean governance, and thus anti-corruption, has been one of the priorities of the democratic South Africa and its government since 1994. The government of South Africa has undertaken a number of other important anti-corruption measures. These measures range from the adoption of the Public Service Anti-Corruption Strategy as the blueprint for anti-corruption work in the public sector (2002), the promulgation of an anti-corruption related legislative framework (1997-2004) and the development of investigating and prosecuting anti-corruption capacities, to efforts to develop partnerships with business and civil society.

Other significant advances that South Africa has made include: international agreements to which South Africa has acceded; and the mechanisms and processes that have been put in place to fight corruption (The Presidency, 2005:3). The international agreements include the United Nations Convention against Corruption,

the SADC Protocol against Corruption, and the African Union Convention on Preventing and Combating Corruption.

2. RATIONALE

South Africa is regarded as a country that has produced legislation that is an international example of good practice (Institute for Security Studies [ISS], 2003:1). The ISS (2003:1) further argues that this legislation, if enforced, should equip the country's anti-corruption agencies with a tool that could effectively be used as both a punitive instrument for offenders and a deterrent for those contemplating corrupt activities. Such statements are contrary to what the researcher has observed during the years of service in the South African public service.

The researcher is currently employed by one of the Eastern Cape Provincial Departments. This is the third Eastern Cape Provincial Department in which the researcher has worked since the new era. The researcher was motivated to analyse anti-corruption legislation and agencies owing to the disappointment and discontentment the researcher has experienced over this period. Experience gathered by the researcher over these years of service made it evident that such an analysis was necessary.

According to Upadhyay (2002:4), anti-corruption agencies are meant to conduct inquiries into and investigations of improper conduct or corruption committed by a person holding public office; to give direction to the concerned authority to take appropriate actions against such person; and to file a case before the court of law

against any public official or other person upon investigation of corruption. Anti-corruption legislation should serve to deter corrupt actions, prosecute corruptors and resurrect a sense of justice (World Bank, 2007:4).

However, there is still low public awareness of and high tolerance for corruption, and the lack of integrity and accountability in government-business transactions are still rife. Moral scruples against bribery are low, resulting in greater incidence of corruption. Only small percentages of corrupt officials are disciplined. In most cases corrupt officials escape prosecution.

Supervisees seem to be the front line troops who collect bribes and share them with supervisors. Bribes are sometimes paid to supervisors in exchange for turning a blind eye to the acts of corruption. However, if this kind of bribery is embedded in a department, it tends to be a condition of employment, organised by supervisors for their own gain. In some instances, authoritative officials collect payoffs and buy the silence of subordinates by sharing the gains with them, either through high pay and perks or under-the-table benefits.

At times, corrupt supervisors tolerate petty corruption of supervisees as a way of assuring their complicity in the maintenance of the system. When major decisions are made at the top but supervisees provide essential inputs, supervisors pay off supervisees. An example is when major contracts are being awarded which is likely to be a domain of top officials. The top officials would need corrupt junior officials' help in assessing bids and overseeing implementation. Junior officials earn high salaries because their superiors are buying acquiescence.

The fundamental reason serving to account for the study therefore was to address the researcher's concern as to whether these anti-corruption agencies are apolitical, capable of detecting and punishing corruption or whether they are: only a response to international demands and not a reform towards good governance; tools to repress political rivals and members of the opposition; and meant to identify members of previous governments as targets of investigation. Heilbrunn (2004:3) argues that an anti-corruption agency is effective when it responds to national consensus and when a broad domestic coalition supports such a reform. The researcher also wished to find out whether anti-corruption legislation is being effectively enforced.

3. STATEMENT OF THE PROBLEM

South Africa faces both real and perceived problems with corruption. According to the Transparency International Corruption Perception Index (2005:2), for example, the African country perceived to be the least corrupt is Botswana, which rates 31st out of the 159 countries world-wide with the most and least public sector corruption.

The Transparency International Corruption Perception Index scores relate to perceptions by business people and country analysts. This index ranges between ten for (highly clean) and zero for (highly corrupt). South Africa is rated 46th, coming third as the least corrupt African country after Botswana (5.9) and Tunisia (4.9), according to the perception index. South Africa's score dropped to 4.5 in 2005 from 4.6 in 2004.

Ferreira and Bayat (2005:15) regard the following as visible signs that corruption in South Africa appears to be seriously undermining the citizens' faith in the very foundations of society: ghost employees in the civil service; fraud in hospitals and school meal schemes; corruption in the police force; and the leaking of examination papers. Ferreira (2005:4) asserts that, despite the evidence available, corruption is substantially less visible than many other forms of crime and this is perhaps the reason why it has not been addressed with the appropriate vigour. Ferreira (2005:4) further argues that corruption involves fewer conscious victims and witnesses because it is a consensual crime in the sense that all participants are usually willing parties who together have an interest in concealing it.

It is important to note that one of the most serious development challenges facing South Africa is corruption. According to Partners in Transition (2002:1), corruption undermines democracy, reduces accountability and representation in policy-making, suspends the rule of law, and ultimately results in unequal service provision. In the Handbook on Fighting Corruption (1999:7), similar sentiments are shared as it is stated that corruption poses a serious development challenge. It is widely recognised that corruption impedes every development objective that a country seeks to promote.

The Presidency (2005:1) stated that laws, policies and programmes have been put in place to extirpate corruption in South Africa. Social partnerships that include regional, continental and international partners have been established, yet more will have to be done to fight corruption. The Presidency (2005:1) further argued that a comprehensive and multidisciplinary approach is required to prevent and combat

corruption effectively. South Africa clearly has to continue to strengthen its capacity in its anti-corruption programmes and improve on the performance of the criminal justice system. It is evident that whereas certain of the efforts may have yielded results, others are lagging behind.

The Public Service Commission (2002:8) has found that “Provincial governments are in many ways more vulnerable than national departments and face special challenges. Management in provinces is generally less developed, and systems, procedures, controls and other elements of governance and integrity are also often weaker. Provincial administrations have experienced serious impediments in provinces that have had to integrate former homelands into their organisational set-up.”

Van Vuuren (2005:92-93) states that provincial governments have, in certain instances, been affected by a lack of capacity to ‘deliver,’ combined with poor accountability and oversight. This has affected their ability to spend their budget and, where they have done so, has made the disbursement of funds vulnerable to corruption by public officials and eager private sector representatives. One such example has been the Eastern Cape province where massive under-spending, mismanagement and probable corruption (both at a grand and petty level) led to central government intervention (Van Vuuren, 2005:92-93).

The provincial governments should acknowledge their responsibility to keep the provinces honest and to be accountable to the citizens (Cwati, 2004:26). The Eastern Cape Province does not seem to be coping, whereas the Northern Cape

Province appears to be managing. The Department of Public Service and Administration (DPSA) (2003:120) revealed that when a further breakdown of corruption on the provincial level was done, it showed the Eastern Cape (with 25 cases) as the province where the most corruption at the provincial level was exposed, followed by KwaZulu-Natal with 19 cases; whereas the Free State (three cases) and Northern Cape provinces (one case) proved to be the least corrupt provinces. Furthermore, Kwazulu-Natal and Eastern Cape provinces have been identified as provinces where crime syndicates have been involved with the assistance of government officials (Heath, 2001:4).

4. RESEARCH QUESTIONS

The study sought to provide answers to the following questions:

- I. What is the reason for significantly different levels of corruption between the Eastern Cape province and the Northern Cape province?
- II. What constitutes corruption at the provincial level?
- III. What is the impact of good governance on corruption?
- IV. How does corruption impact on service delivery?
- V. To what extent are the Eastern Cape and Northern Cape provinces affected by corruption?
- VI. What initiatives have been taken by the Eastern Cape and Northern Cape provinces to fight corruption?
- VII. Which factors impact on the effectiveness of anti-corruption legislation and agencies?

VIII. How do the Eastern Cape and Northern Cape provinces monitor and evaluate the effectiveness of the anti-corruption legislation and agencies?

5. ASSUMPTIONS

This study is based on the major assumption that the struggle against corruption is best approached by developing a system of laws, institutions and supporting practices which promote integrity and make corrupt conduct a high-risk activity. Corrupt practices and integrity weaknesses will emerge unless there is a minimum of systemically integrated and effective control mechanisms, management practices, transparency measures, ethics codes, laws and law enforcement, leadership and supervising institutions in place.

In this study it is assumed that anti-corruption legislation is established to advance the investigation and prosecution of corruption-related crimes; the prevention of corrupt acts through such actions as the simplification of procedures and the policing of conflicts of interest; the education of the public, the media, and government officials on what constitutes corruption and why it must be combated, and the coordination of the activities of different government agencies responsible for these actions.

In South Africa, these anti-corruption measures are inadequate. Officials easily escape prosecution because the legislation on corruption is inadequate, ambiguous and ineffective.

It can be argued that the public is not well educated on the advantages of good governance and as a result citizens tend not to participate in promoting it. South African citizens do not appear to be aware of the fact that it is their responsibility to insist on honesty and integrity in government.

6. AIMS AND OBJECTIVES OF THE STUDY

The main aim of the study was to conduct a comparative analysis of anti-corruption legislation and anti-corruption agencies in dealing effectively with corruption in the Eastern Cape and Northern Cape provinces. Specifically the study sought to address the following:

- I. to examine the nature and extent of corruption in the Eastern Cape and Northern Cape Provincial Departments of Social Development;
- II. to identify factors affecting the effectiveness of anti-corruption legislation and agencies;
- III. to compare and analyse effectiveness of anti-corruption legislation and agencies in both the Eastern Cape and Northern Cape provinces;
- IV. to identify and analyse factors associated with compliance or non-compliance with the anti-corruption in the Eastern Cape and Northern Cape provinces;
and
- V. to provide recommendations for improving the effectiveness of the anti-corruption legislation and agencies in the Eastern Cape and Northern Cape provinces.

7. LITERATURE REVIEW

South Africa developed strategic and legislative anti-corruption frameworks in the form of acts and agencies. Legislation passed to support the government's fight against corruption includes the following:

- I. The Prevention of Organised Crime Act (No. 121 of 1998);
- II. The Regulation of Interception of Communications and Provision of Communication Related Information Act (No. 70 of 2002);
- III. The Witness Protection Act (No. 112 of 1998);
- IV. The Criminal Procedure Act (No. 51 of 1997);
- V. The Prevention and Combating of Corrupt Activities Act (No. 12 of 2004), which provides the legal definition of corruption and creates a range of offences. It also allows for people found guilty of certain offences (such as those related to tenders) to be 'blacklisted' and it requires senior officials to report corrupt activities;
- VI. The Promotion of Access to Information Act (No. 2 of 2000), which gives effect to Section 32 of the Constitution of the Republic of South Africa (Access to Information) by setting out how one can obtain access to information held by the state. By so doing, it promotes transparency and prevents government from operating in secret;
- VII. The Promotion of Administrative Justice Act (No. 3 of 2000), which gives effect to Section 33 of the 1996 Constitution (Just Administrative Action). It ensures that decisions that affect the public are taken in a way that is procedurally fair and it gives people the right to request written reasons for

decisions they disagree with. In this way, it creates greater transparency - people may be less tempted to act corruptly if they know they will have to explain themselves to the public;

- VIII. The Protected Disclosures Act (PDA) (No. 26 of 2000), also called the 'Whistleblowers Act' was passed to encourage employees to disclose information about unlawful and irregular behaviour in the workplace. It offers protection from victimisation for 'whistleblowers', as long as they meet the requirements and follow the procedures set out in the Act;
- IX. The Public Finance Management Act (PFMA) (No. 1 of 1999) and the Municipal Finance Management Act (MFMA) (No. 56 of 2003). These Acts set out the requirements for dealing with public finances at the national, provincial and local government spheres of government; and
- X. The Financial Intelligence Centre Act (FICA) (No. 38 of 2001), which creates the Financial Intelligence Centre and was designed to combat money laundering.

The report which was prepared by the Public Service Commission on a review of South Africa's national anti-corruption agencies (2001:8) divides the anti-corruption agencies that had been established in South Africa into three groups. These are constitutional and oversight bodies; and the criminal justice agencies. The constitutional and oversight bodies are the following:

- I. The Office of the Auditor-General which has a constitutional mandate to audit and report on the accounts, financial statements and financial management of all public sector agencies;

- II. The Office of the Public Protector, mandated to investigate and make recommendations to state departments on any conduct which may have resulted in prejudice to citizens, that is, acting as a buffer between the citizen and the state;
- III. The Public Service Commission as an oversight body responsible for monitoring and evaluation has been mandated to play an active role in evaluating the effectiveness of anticorruption agencies and to suggest improvements where necessary; and
- IV. The Independent Complaints Directorate which is responsible for investigating incidences of police misconduct.

The Criminal Justice Agencies include the following:

- I. South African Police Service Commercial Crime Unit which investigates all cases of commercial crime;
- II. South African Police Service Anti-Corruption Unit, responsible for investigation of allegations of corruption amongst South African Police Service members;
- III. The National Prosecuting Authority and its Directorate of Special Operations (the Scorpions);
- IV. The Special Investigating Unit and the Financial Intelligence Centre, created in terms of the Financial Intelligence Centre Act to deal with such crimes as money-laundering; and
- V. The South African Revenue Service which, as a collector of tax, plays a vital role in supporting the democratic transition.

Other anti-corruption agencies referred to here are listed below:

- I. The Department of Public Service and Administration;
- II. The National Intelligence Agency;
- III. The South African Revenue Services; and
- IV. The National Anti-Corruption Forum.

In addition, South Africa has also taken the following measures:

- I. Reformed management practices, including appointment and disciplinary procedures;
- II. Instituted financial disclosure requirements and performance systems for managers in the public service;
- III. Established a new, fair and transparent supply chain management system to prevent corruption in procurement;
- IV. Introduced a Public Service National Anti-Corruption Hotline System; and
- V. Instituted stringent financial management, risk management and fraud prevention requirements for public bodies.

According to the DPSA (2003:4), a number of other anti-corruption initiatives were launched post-1994, culminating in the adoption of the Public Service Anti-Corruption Strategy. The Batho Pele (People First) principles set out the required levels of professional ethics in the public service in terms of service delivery. In 1997 the Code of Conduct for the Public Service which sets the standards of integrity for public servants was adopted. This was followed by the establishment of an Inter-

Ministerial Committee on Corruption tasked with the development of a national anti-corruption campaign.

In 1998 a Moral Summit was held by religious and political leaders and a Code of Conduct for leadership was adopted. The Public Sector Anti-Corruption Conference (1998) adopted the following key points to fight corruption in partnership:

- I. A definition of what South Africans understand by corruption was required;
- II. Renewed commitment of stakeholders to fighting corruption was necessary;
- III. A process to coordinate anti-corruption activities had to be implemented; and
- IV. Resolutions and recommendations for a national campaign against corruption were to be adopted (Transparency International South Africa [TISA], 2002:2).

The National Anti-Corruption Summit which adopted parameters for the development of South Africa's National Anti-Corruption Programme was held in 1999. The first meeting of the Cross-Sectoral Task Team on Corruption was held in this same year and the 9th International Anti-Corruption Conference was also hosted in 1999.

In 2000 the government and the United Nations Office on Drugs and Crime, Regional Office for Southern Africa (UNODC/ROSA) jointly held the International Anti-Corruption Expert Round Table. In 2001 the government and the UNODC/ROSA signed an agreement on the United Nations Support to the National Programme against Corruption. The Public Service Anti-Corruption Workshop was held. The tripartite (government, business and civil society) National Anti-Corruption Forum was launched. An anti-corruption partnership agreement was entered into

between the government and UNODC on 9 March 2001, and among various anti-corruption activities, it also envisaged the preparation of a Country Corruption Assessment Report.

A joint Country's Corruption Assessment Report by the United Nations and the Government of South Africa was presented to the country's parliament and public on 2 April 2003. This report was prepared within the framework of the United Nations Global Programme against Corruption and the project of the United Nations Office on Drugs and Crime (UNODC) to support South Africa's Anti-Corruption Programme.

According to the United Nations Information Services (2003:1), this report was the first comprehensive description and analysis of the corruption and anti-corruption scenario in South Africa. The report analysed the strengths and weaknesses of the legislative framework; institutional capacities for prevention, investigation and prosecution; management policy and practice; ethics and public education; and the role of civil society, mass media and political parties. It also examines the position of South Africa within the global and regional contexts. The main findings of the report are, *inter alia*, the following:

- I. South Africa contributes actively and substantially to international and regional anti-corruption efforts. Several pieces of legislation and enforcement structures are unique in the region and of the highest international standards.
- II. The country is making progress in terms of legislation, though it is still lacking a comprehensive, specific anti-corruption law. Such legislation is currently under consideration by parliament. There is no legislation regulating the private funding of political parties and campaigns.

III. South Africa has improved in terms of increased institutional capacity to investigate and prosecute corrupt practices. However, there is a need to enhance management capacities of individual government departments and to promote and strengthen coordination among anti-corruption entities (United Nations Information Services, 2003:2).

The second National Anti-Corruption Summit took place in November 2004. The Summit aimed to strengthen inter-sectoral co-operation and assess its progress in terms of addressing corruption measured against global standards. In February 2004, the Prevention and Combating of Corrupt Activities Bill was passed. The Bill, which replaced the Corruption Act of 1992 (Act 94 of 1992), is informed by the government's strategy to combat corruption at all levels of South African society. The Bill made provision for witness protection programmes and compelled people in positions of authority, particularly senior managers in government, parastatals and the private sector, to report corrupt activities. Failure to blow the whistle on corruption will carry a maximum penalty of ten years' imprisonment (South Africa Year Book, 2004/05:330).

New laws, such as the Promotion of Access to Information Act (No. 2 of 2000) signed into law in February 2000, have since helped to increase transparency in government. The Public Finance Management Act (No. 1 of 1999), which became effective on April 1, 2000, helped to raise the level of oversight and control over public funds and improved the transparency of government spending, especially with regard to off-budget agencies and parastatals. Notwithstanding these efforts,

complaints still exist about the lack of certainty and consistency in interpreting and implementing the legislation (United States Trade Representative, 2004:435).

8. SCOPE AND LIMITATIONS OF THE STUDY

This study focused on assessing the effectiveness of the anti-corruption agencies and legislation in relation to public sector corruption. In this study corruption was approached from a governance perspective. According to USAID Anti-corruption Strategy (2005:16), corruption can be understood as the abuse of public office, powers, or resources for private gain. Public sector corruption is a symptom of failed governance (Shah, 2006:2).

A wide consensus has also recently emerged that corruption is a symptom of failed governance and hence curtailing corruption requires addressing the causes of mis-governance (Huther & Shah, 2001:2). To be able to understand good governance, governance needs to be defined first. Governance describes the process of decision-making and the process by which decisions are implemented (or not implemented) (United Nations Economic and Social Commission for Asia and the Pacific [UNESCAP], 2006:1).

Good governance accomplishes this in a manner essentially free of abuse and corruption, and with due regard for the rule of law (wikipedia.org). Singh (2003:1) summarises this explanation by stating that good governance means effective, accountable and transparent governance. The effects of corruption seriously

constrain the development of the national economy and significantly inhibit good governance in the country (Pillay, 2004:586).

The assessment was conducted in the Eastern Cape and Northern Cape provinces. The assessment done based on three broad forms of corruption as it is not manifested in one single form. Broad forms of corruption as explained by Schacter and Shah (2004:17) are the following:

- I. Petty administrative or bureaucratic corruption are corrupt acts which are isolated transactions by individual public officials who abuse their office, for example, by demanding bribes and kickbacks, diverting public funds, or awarding favours in return for personal considerations. Such acts are often referred to as petty corruption even though, in the aggregate, a substantial amount of public resources may be involved.
- II. Grand corruption is the theft or misuse of vast amounts of public resources by state officials, usually members of, or associated with, the political or administrative elite.
- III. State capture or influence peddling is collusion by private actors with public officials or politicians for their mutual, private benefit. That is, the private sector 'captures' the state legislative, executive, and judicial apparatus for its own purposes. State capture coexists with the conventional (and opposite) view of corruption, in which public officials extort or otherwise exploit the private sector for private ends.

9. RESEARCH METHODOLOGY

9.1 RESEARCH DESIGN

The study in question was conducted within both the quantitative and qualitative paradigms. This is what is referred to as methodological triangulation. Denzin and Lincoln (2000:391) describe methodological triangulation as using more than one research method within one study. In studies that address more encompassing domains of interest, triangulation contributes to the investigator's ability to achieve a complete understanding of that domain (Knafl & Breitmayer, 1989:237). Methodological triangulation provides richer data by the possibility of exposing information that may have remained undiscovered if one method had been used (Duffy, 1887:133). Methodological triangulation raises researchers above the personal biases that stem from single methodologies (Denzin, 1989:236).

The qualitative research method is referred to as the interpretative ethnographic model of social science research because of its focus on understanding the people who derive meaning from their world (Dzvimbo, 1996:17). The qualitative design was considered suitable. Qualitative research emphasises the "thick description" of a smaller number of subjects within a specific setting (Rudestam & Newton, 1995:39). According to Hammersley and Atkinson (1983: 24), qualitative research then is most appropriate for those projects where the goal is a deep narrative understanding.

Quantitative research is the systematic scientific investigation of quantitative properties and phenomena and their relationships. Through quantitative research

the fundamental connection between empirical observation and mathematical expression of quantitative relationships will be provided. Although a distinction is commonly drawn between qualitative and quantitative aspects of scientific investigation, it has been argued that the two go hand-in-hand (Wikipedia, 2006: Online).

9.2 PARTICIPANTS

Participants were drawn from the Eastern Cape and Northern Cape Provincial Departments' officials. The total sample size was 108.

Departments that were identified for purposes of this study were the Departments of Social Development in the Eastern Cape and Northern Cape provinces. The reasons for selecting these departments were because the following functions, which were also selected areas for the study, are administered and managed by these departments:

- I. Child Support Grant;
- II. Social relief of Distress; and
- III. Disability Grant and Old Age Grant.

The National Minister of Social Development committed the National Department of Social Development to addressing the irregularities that exist in the social grants system, and to ensuring that social grants reach only the legitimate beneficiaries (Skweyiya, 2005: Online). This commitment initiated a national campaign by the

department to eradicate fraud and corruption. For this reason the Departments of Social Development in the Eastern Cape and Northern Cape provinces were selected.

The following statements clearly prove that there have been numerous cases of corruption that warrant investigation in the selected areas. Examples of corruption investigated by the Special Investigating Unit during its existence include the following:

- I. In the Eastern Cape it was found that syndicates were involved, with the assistance of government officials, in generating government cheques, cashing them and laundering the money (Heath, 2001:3).
- II. Some 160 people in the Eastern Cape have been convicted of social grant fraud (Cull, 2005:1).

Punt (2006:176) supports views of the above authors and states that “The public sector primarily holds monopolies on basic and essential services like welfare grants. Recipients of these services are thus highly vulnerable, often suffering from exploitation and human rights abuses”.

9.3 SAMPLING METHOD

Because the study sought to use a representative sample, stratified random sampling was utilised. The population group was divided into strata. A sample was

selected so that certain characteristics are in the same proportion as they are to the population.

When dealing with a sample frame that is not homogeneous and contains subgroups such as employees and clients, those subgroups need to be represented in the sample. In order to achieve this, random selection from each subgroup in the sampling frame was used to select a sufficient number of subjects from each stratum. Sufficient refers to a sample size large enough to be reasonably confident that the stratum represents the population (Wasserstein & Davis, 2001:24).

Over-sampling was applied to cater for incidents where other employees and clients were no longer with the departments. The Personnel Salary (PERSAL) system in the departments is not accurate (Frazier, 1999:12). It takes time for people who, for example, are deceased, retired or have resigned, to be removed from the system.

Departmental employees were selected from the PERSAL system. Employees to be served with questionnaires were randomly selected using a table of random numbers.

Anti-corruption officials who are attached to the Premiers' offices of both the Eastern Cape and Northern Cape provinces as well as heads of Child Support Grant, Social Relief of Distress, Disability Grant and Old Age Grant units from the Eastern Cape and Northern Cape Provincial Governments were interviewed. The sample of the proposed study was composed of the following:

- I. 50 officials drawn from each of the departments (100) forming **Group A**;
- II. Heads of Child Support Grant, Social Relief of Distress, Disability Grant and Old Age Grant units from the Eastern Cape and Northern Cape Provincial Governments (6) which formed **Group B**; and
- III. Senior managers of each department's Anti-Corruption units (2) forming **Group C**.

9.4 DATA COLLECTION

A survey was conducted to gather information in the form of written questionnaires and semi-structured one-on-one interviews. Reasons why questionnaires can form an important element of this study are that questionnaires are flexible, easy to apply and (usually) relatively inexpensive. Questionnaires also have advantages over some other types of surveys in that they do not require as much effort from the respondent as verbal or telephone surveys do, and often have standardised answers that make it simple to compile data (Wikipedia, 2006: Online). Questionnaires also have their limitations. These can be summarised as follows: Questions set could not be fully understood in the same manner; there is no opportunity to probe any further the answers supplied by respondents; and there is no control over who actually answers the questionnaire (Doublet, 2002:32). However, questionnaires offer an objective means of collecting information about people's knowledge, beliefs, attitudes, and behaviour.

The questionnaire was composed of three sections that were divided in the following manner: Section A required bibliographical information; Section B consisted of brief

statements using a five-point Likert-type scale, ranging from strongly disagree to strongly agree. Section B contained anti-corruption legislation and anti-corruption agencies related statements. Section C allowed respondents to open up by responding to three open-ended questions.

Semi-structured interviews are guided conversations where broad questions are asked which do not constrain the conversation, and new questions are allowed to arise as a result of the discussion. A semi-structured interview is therefore a relatively informal, relaxed discussion based around a predetermined topic. This technique allows each person involved in the interview to feel comfortable and also allows for two-way communication and openness (Ellison, 2006:2). Interviews were conducted in order to gain information on areas that had been catered for by the literature review.

Document review was done through gathering data from pre-existing sources. These sources included reports of previous research or assessments by academics, interest groups, public officials; documents published by institutions and organisations such as the World Bank and Transparency International; government departments such as the Department of Public Service and Administration and Public Service Commission, as well as information from media reports. This review provided information on the functioning of the anti-corruption agencies and details on compliance with anti-corruption legislation.

9.5 PROCEDURE

Questionnaires were sent via e-mail to **Groups A** with clear instructions on how to answer the questions. **Groups B and C** were interviewed face-to-face utilising semi-structured interviews. Interviews were not audio-taped owing to the sensitivity of the subject. Extensive notes were therefore taken. Anonymity and confidentiality were taken into consideration as officials would not provide information if they feared disciplinary or criminal sanctions. Respondents may also have feared retaliation if they provided information.

9.6 DATA ANALYSIS

When analysing the data, data capturing was done manually by the researcher. Statistical procedures were utilised to interpret and analyse the quantitative data to determine the results. Quantitative data was analysed by using statistical methods which began with the collection of data based on a theory or hypothesis, followed by the application of descriptive statistical methods such as percentage and frequency of occurrence. Descriptive statistics were used to describe the basic features of the data in a study which provided summaries about the sample and the measures.

Qualitative data was analysed by thematic content analysis. Codes were utilised in assigning units of meaning to the descriptive or inferential information compiled during the study. The tape-recorded interviews were transcribed verbatim. The researcher listened to the transcripts to avoid omissions or distortions of meaning. These topics were subsequently assigned labels or codes where the labels used are

close to the terms they represented. The coding was then checked by the researcher to prevent unintentional omissions or incorrect recording of the data obtained from the participants.

After data labelling, writing reflective comments, and revising or check coding the data was categorised. This is a process that is commonly known as pattern coding. Pattern coding is a way of grouping summaries into a smaller number of sets, themes, or constructs (Miles & Huberman, 1994:69). Memoing was then used as a tool to organise the themes and categories, and subsequently, integrating clusters into more general concepts. Memoing refers to the theorising write-up of ideas about codes and their relationships as they strike the analyst while coding (Glaser, 1978: 83). Memoing is one of the most useful and powerful sense-making tools at hand (Miles & Huberman, 1994:72).

9.7 ETHICAL CONSIDERATIONS

Permission to conduct the study was obtained from the Heads of the Eastern Cape Department of Social Development and Northern Cape Department of Social Development. Ethical clearance was sought from the Human Research Ethics Committee at the Nelson Mandela Metropolitan University.

Informed consent was obtained from all participants. Participants were assured of confidentiality, privacy and voluntary participation. They were made aware that they were free to withdraw from the study at any point if they wished to do so. In addition,

they were informed that they were not obliged to answer any question that they considered personal or were uncomfortable about answering.

10. DEFINITION OF TERMS

BLACKLIST

To blacklist is to record a name in a blacklist as deserving of suspicion, censure, or punishment; especially to put in a list of persons stigmatised as insolvent or untrustworthy (Webster's Dictionary, 2006:Online). These persons are put on a blacklist so as to cause to be boycotted (Wordreference, 2006: Online). A blacklist is a list of persons or things considered undesirable or deserving punishment (Answers.com, 2006: Online).

WHISTLEBLOWER

A whistleblower is an employee, former employee, or member of an organisation who reports misconduct to people or entities that have the power to take corrective action. Generally, the misconduct is a violation of law, rule, regulation and/or a direct threat to public interest. Safety violations and corruption are examples (Wikipedia, 2006: Online).

KICKBACKS

A kickback is a payment made to a person in a position of trust to corrupt his judgment (Answers.com, 2006: Online). It is a bribe, usually from someone in the business/private sector to someone in government/politics, to either 'look the other way' or to allow the business person to carry on with an unscrupulous venture (Urbandictionary, 2006: Online).

11. STUDY OUTLINE

This study was undertaken in six chapters. Chapter 1 provides a general introduction to the entire study. It includes the background, rationale for conducting the study, research questions, aims and objectives of the study.

Chapter 2 focuses on the definition and analysis of corruption. This chapter provides a comprehensive approach to understanding the nature of corruption. A survey of relevant literature on corruption is provided. This is done by discussing the extent, forms, causes and effects of corruption.

Chapter 3 provides properties of effective anti-corruption legislation and anti-corruption agencies. Attention is given to what anti-corruption legislation and anti-corruption agencies ought to be rather than the somewhat abstract study of corruption itself.

Chapter 4 presents the methodology followed in the study. It describes the research design, participants, research instruments, methods of data collection and analysis as well as ethical considerations.

Chapter 5 presents and discusses the findings obtained from the analysis of the qualitative and quantitative data.

Finally, chapter 6 provides a summary of the findings, conclusions drawn from the findings and the limitations of the study. Recommendations for the improvement of anti-corruption legislation and agencies have been provided. Lessons learnt as well as examples of best practice have been highlighted. Areas for future research have been identified.

CHAPTER 2

NATURE OF CORRUPTION IN THE PUBLIC SERVICE

2.1 INTRODUCTION

This chapter will focus on the definition and analysis of corruption. It will also provide a comprehensive understanding of the nature of corruption. A survey of relevant literature on corruption will be provided. This will be undertaken by discussing the extent, forms, causes and effects of corruption.

Corruption is a global problem and curbing it is a top priority in many countries. Prioritising the fight against corruption has led to the enactment of anti-corruption legislation and establishment of anti-corruption agencies in some countries. However, devising and implementing these remedies does not necessarily mean that corruption has been curbed. This is due to corruption being viewed as a complex phenomenon.

The United Nations Office on Drugs and Crime (UNDC, 2006: Online) aligns itself with this notion when it states that corruption is a complex phenomenon; that its character differs from country to country, depending on the prevailing social, economic and cultural conditions and, particularly, the legal context. Mollah and Uddin (2002:3) concur with this opinion when perceiving corruption as a complex process involving human behaviour and many other variables, some of which are difficult to recognise or measure.

Researchers have reached consensus that the degree of corruption is a function of multiple factors of a society (Hoon, 2003:1; Onyejekwe, 2004:6; Paul, 2000:14; Panday, 2005:4). The literature unanimously acknowledges that corruption is an ancient, wide and pervasive problem that continues to be a factor in everyday lives around the world in developed, developing and underdeveloped countries (Bardhan, 1997:108; Sheifer & Vishny, 1993:1320; Paldam, 2002: 215).

Corruption also has a long tradition as a field of academic inquiry (Rose-Ackerman, 1997:51). Public administration, political science, sociology, criminal law and economics are among the disciplines that contribute to the knowledge of the subject (Jain, 2001:71). Certain fundamental aspects of the problem such as how corruption is generated or how it can be successfully fought are not fully understood and discrepancies remain (Clarke & Xu, 2004:2067).

Research has mostly enhanced the knowledge about simple cause-effect relationships. However, researchers, governments and international institutions have realised that partial investigations do not provide a true comprehension of the phenomenon (Goudie & Stasavage, 1998:113) and a complete theoretical and empirical framework for corruption is still lacking (Ades & Di Tella, 1997:496). It has also been suggested that generously funded anti-corruption programmes have failed on a global scale precisely because partial analyses have encouraged a non-integrated approach (Williams & Beare, 1999:115; Goudie & Stavage, 1998:113).

According to Aidt (2003: 632) and Bac (1998:101), a number of researchers have reached a consensus that the non-existence of a complete and integrated

framework for corruption must be attributed to its extremely complex nature. Complexity has been advanced as an argument to explain the lack of a precise and comprehensive definition, which is far from being just a semantic issue since it determines what gets modelled and what is empirically tested (Aidt, 2003:633). Gaviria (2002:245) cites this intricate nature as resulting in differing performances among various countries in attempting to curb corruption.

Although the complexity factor is often mentioned in the corruption literature, few studies analyse its nature in detail. Devising effective and practical anti-corruption initiatives is unlikely without understanding the complexity of corruption. This chapter aims at providing an exposé on the elements of this complexity.

According to Doig and Riley (UNDP, 2006: Online), patterns of corruption vary from society to society and over time. To be able to understand the nature of corruption, perhaps the phenomenon itself needs to be defined and its extent, causes, forms and consequences need to be examined. Most observers note that corruption is a symptom of deeper problems of how a political leadership administers the key financial functions of a state (Heilbrunn, 2004: 5).

In South Africa, legislation and agencies have been established for the purpose of combating corruption. However, corruption still seems to be concentrated among the wealthy individuals in our country. Acknowledging the necessity to understand the nature of corruption, Luo (2005: 122-124) summarises it as follows:

“Firstly, corruption is context-based. Depending on the individual, ideology, culture or other context, the term ‘corruption’ can mean different things to different people. Secondly, corruption is norm-deviated. Although corrupt behaviour can arise in a number of different contexts, its essential aspect is an illegal or unauthorised transfer of money or an in-kind substitute. Thirdly, corruption is power-related. In order to be eligible as a corrupt transaction, a corruptor or bribee must necessarily be in a position of power, created either by market imperfections or an institutional position that grants him discretionary authority. Fourthly, corruption is virtually covert. Because of the nature of the operation, corruption is hidden in the underground informal arena. Fifthly, corruption is intentional. The motivation of personal gain conveys the very connotation of corruption. Sixthly, corruption is ex-post opportunistic. Unlike normal transactions, corrupt practices are not codified in any explicit way, or written in any form of documentation. Lastly, corruption is perceptual. It relates to individual behaviour as perceived by the public as well as by political authorities”.

Emphasising the importance of taking into consideration the impact that a changing political environment may have on corruption Luo (2002: 144) states that, politics do not only affect the understanding and explanation of corruption, but also produce and identify certain social behaviours as corrupt. According to Richter and Burke (2007:77), it is therefore necessary to examine not only corruption practices per se, but also the attitude and performance of the political system towards corruption. Richter and Burke (2007:77) also highlight aspects such as the exposure of corruption by the press, by the party in power and by different factions; and the

reaction of government to corruption, whether administratively or judicially, as detrimental to the fight against corruption.

Although there may be a situation where certain behaviour is generally considered corrupt but no legal precedent has been established for it (in this case, the legalist definition lags behind the moralist definition), law-based norms are the most widely used (Luo, 2005: 122-124). This is because the legal definition of corruption is generally more operational, clear-cut, consistent and precise than the moral definition (Richter and Burke, 2007:77). Moreover, it usually does not take long for judiciary rules or institutional stipulations in a given political context to “catch up” through the modification of the legal framework (Luo, 2005: 122).

The person bribed must necessarily be acting as an agent for another individual or organisation, because the purpose of the bribe is to induce him or her to place his or her own interests ahead of the objectives of the organisation for which he or she works (Rose-Ackerman, 1975:157). In general, corruption leads the corruptor to secure private gains at significant public expense (Luo, 2005: 122-124). Although not all corruption is detrimental to social welfare, it violates legal codes or institutional rules stipulated in a given political context (Luo, 2002:115). Without this essence, corruption cannot be distinguished from gift-giving and interpersonal links (Luo, 2005: 122-124).

Emphasising how corruption always depends on power; and how power does not necessarily emanate from the law, Richter and Burke (2007:77) state that people in public service gain power from the actual influence they exert on procedural costs

afforded by businesses. Richter and Burke (2007:77) add that nevertheless, bureaucratic corruption (involving governmental officials) constitutes the most corruptible and corrupted part in many societies.

There are no formal written agreements signed when corruption happens. Contact is made through oral communication so that it cannot be documented and used to prosecute a responsible entity (Richter and Burke, 2007:77). This is done so that those who are involved remain unidentified. Overall, corruption is an informal, veiled system transforming benefits derived from one's public roles and power to personal gain (Luo, 2002:115).

Corruption fills the interstices of the formal system, causes its decomposition and provides new impetus for its re-composition (Luo, 2000: 199). Richter and Burke (2007:77) assert that Illegal misconduct may not necessarily be corruption if there is no personal gain. Echoing the above assertion, Luo (2005: 119) adds that:

Addressing its sensitivity to the rationality underlying corruption enables differentiation of purposive dereliction of duty for personal gain from other careless mal-administrative behaviours. Parties in these practices are also not protected by any legal system. Corrupt transactions are, therefore, particularly endangered by ex-post opportunism posed by the other party. Since corruption payments are a form of investment which have no value outside the transaction, the payer places him- or herself in the potential hold of the receiver, who can later demand additional payment or who may not (or insufficiently) perform the agreed service, without fears of countermeasures from the payer. As a result of this opportunism, ex-post

uncertainty associated with a corrupt transaction is formidable, especially for the bribing party.

Since corruption is a perceptual term judged by others, the concept becomes dynamic, subject to change in social attitudes and political ideologies (Richter and Burke, 2007:77). As such, corruption can be further classified as “white”, “black” or “grey” (Luo, 2000:196). Although according to Richter and Burke (2007:77) all these classifications violate legal codes or institutional rules, each of these has different moral implications. “White” corruption (that is, some types of misconduct) can be tolerated by mass opinion; “black” corruption is clearly condemned; and in between falls “grey” corruption, which is often ambiguous (Luo, 2000:196). Accordingly, the legal definition of corruption remains important for “black” and “grey” corruption, but is not as important for ‘white’ corruption (Richter and Burke, 2007:77).

Under certain circumstances, the public may reasonably feel that an act legally defined as corruption is a necessary tool to survive (Luo, 2005:119). This explains in part why anti-corruption laws and rules in many transition economies have been changing so rapidly (Heidenheimer and Johnston 2002:39). The nature of “perception” is even more prominent when one considers the dynamic nature of “norms”, “duties” and “rules” (Luo, 2005:119).

From the above, it is evident that corruption is a multifaceted phenomenon. This is possibly the reason why those who write about corruption first attempt to define it. Defining the concept is appropriate because it would not be easy to analyse, measure, assess or fight corruption without first determining its essential qualities.

Defining corruption provides a better understanding as to what is being assessed in terms of this research.

2.2 CORRUPTION DEFINED

Despite the assumption that most people know corruption when they see it, defining the concept does raise difficult theoretical and empirical questions (Johnston, 1996:321). Authors have attempted to provide a definite, complete, analytic and formal description of corruption. However, these authors continue to disagree about the definition (Senturia, 1931: 448; Tanzi, 1998: 559). According to Jain (2001:71) and Klitgaard (1988:47), there has been consensus across disciplines that key features of corruption include the following:

- I. A discretionary power over the allocation of resources;
- II. Higher rents associated with its misuse; and
- III. High probability of evading regulations/penalties associated with the wrongdoing.

Agreeing on the involvement of the above-mentioned features has not made defining corruption any easier, as authors disagree on the meaning of the terms used. Authors confess that there are problems in the common use of those terms (Bardhan, 1997: 1320). Argandoña (2003:255) concludes that it is difficult to define corruption in terms that are clear and universally valid.

Certain authors define corruption as the abuse of entrusted authority for private gain which includes corruption in both the public and private sectors (USAID Anticorruption Strategy, 2005:16; Nye, 1967:27; Friedrich, 1966:70). Such researchers provide a focused definition of corruption: “the abuse of public office, powers, or resources for private gain” which is narrower and widely used. This definition focuses on the activities of government officials and their interaction with the general public. According to Lanyi and Azfar (2005:5-6), this definition is also understood differently by the various scholars and practitioners in the field of governance:

- I. Abuse could be defined as including some or all of the following: a crime, an administrative violation, the infringement of a political standard, or an ethical lapse.
- II. Public power could be defined as the authority of any arm of the state, including executive bodies, the legislature, and the judiciary — and any agent of these branches. More expansively, one might include any organisation or activity that is funded or supervised by the state (for example, a public foundation or a bank), or perhaps any structure in which decision-making power over policies and resources is exercised by some representative, delegate, or fiduciary (for example, a corporation or labour union).
- III. Lastly, private gain simply refers to personal, kin, partisan, or other narrow interests that benefit the individual instead of the relevant public (or that benefit at the public’s expense) (Lanyi & Azfar, 2005:5-6).

Rose-Ackerman (1978:216) and Klitgaard (1988:53) focus on the interactions among the parties involved, that is, an individual who is in charge of carrying out a public function, an individual who actually performs the operation of the agency, and a private individual with whom the agent interacts.

Mollah and Uddin (2002:3) regard corruption not as a single, separate, independent entity which can be isolated and destroyed, but as a complex set of processes that involve human behaviour and many other variables, many of which are difficult to recognise and measure. Corruption is a social, legal, economic and political concept enmeshed in ambiguity and consequently it encourages controversy (Khan, 2004:3; Mollah & Uddin, 2002:3).

The ambiguity and controversy might result from the fact that a number of competing approaches to understanding corruption are available. According to Khan (2004:2), authors place approaches to corruption into five groups, namely public-interest-centred, market-centred, public-office-centred, public-opinion-centred and legalistic.

Proponents of the public-interest-centred approach believe that corruption is in some way injurious to or destructive of public interest (Rogow & Laswell, 1970:54). Market-centred enthusiasts suggest that norms governing public office have shifted from a mandatory pricing model to a free-market model, thereby considerably changing the nature of corruption (Tilman, 1970:62-64). Public-office-centred protagonists stress that misuse by incumbents of public office for private gain is corruption (Theobald, 1990:2).

The public-opinion-centred authors emphasise the perspectives of public opinion about the conduct of politicians, government and probity of public servants (Leys, 1970: 31-37). The legalistic approach suggests that corruption be viewed in terms of legal criteria in view of the problems inherent in determining rules and norms which govern public interest, behaviour and authority (Scott, 1972:5).

The above-mentioned approaches have concentrated on the nature of corruption. However, they do not provide a clear meaning of corruption to any satisfaction. According to Khan (2004:3), there are four divergent views on the definition of corruption. The definitions contain moralists, functionalists, social censurists and social constructionist realists (Khan, 2004:3).

The moralists view corruption as an immoral and unethical phenomenon that contains a set of moral aberrations from moral standards of society, causing loss of respect for and confidence in duly constituted authority (Gould, 1991:468). One of the well-known proponents of this view, Nye (1979:419), portrays corruption as a behaviour that deviates from the formal duties of a public role (elective or appointive) because of private-regarding (personal, close family, private clique) wealth or status gains, or violates rules against the exercise of certain types of private-regarding influence.

However, defining corruption in this manner might result in a number of limitations. It individualises a societal phenomenon and attempts to dichotomise as to what is good and what is bad. In the process, societal contexts are ignored and the gap

between formal norms and the underlying practice-girded norms are not analysed (Caiden & Caiden, 1977:301).

The functionalists view corruption in terms of the actual function that it has (or performs) in socio-economic development. Claims are made by functionalists that corruption flourishes as a substitute for the market system, offers an acceptable alternative to violence and increases public participation in public policy (Leff, 1979:25; Gould, 1980:49).

Certain functionalists believe that political bureaucratic leaders may see a national interest in actively pursuing or tolerating a degree of administrative corruption (Klitgaard, 1988:53). The major criticisms against functionalists are that they ignore the political significance of deviance and lack any consideration of power, interest and social structure in their analyses. At the same time the whole question of the origins of corruption is not considered (Lo, 1993:3). The social construction reality sees corruption in a different light as they view it from a broad societal perspective.

The proponents of social construction believe that in understanding corruption one should take into consideration the capacity of the state to produce a particular form of social relations and shift the theoretical emphasis to the interplay of law, ideologies and political economy (Lo, 1993:5). On the other hand, social construction reality views corruption as problematic and the other actors involved can be studied by relating them to contextual information on their social positions, interests and

stakes in the system as well as on the political, economic and social conditions within which they function (Pavarala, 1996:25).

The African Association for Public Administration and Management (AAPAM) Report (1991:2) provides a broader definition of corruption, referring to it as the use of one's official position for personal and group gain and that includes unethical actions like bribery, nepotism, patronage, conflict of interest, divided loyalty, influence peddling, moonlighting, misuse or stealing of government property, selling of favours, receiving kickbacks, embezzlement, fraud, extortion, misappropriation, under- or over-invoicing, court tempering, phoney travel and administrative documents and use of regulation as bureaucratic capital (AAPAM Report, 1991:2). The following definitions of political corruption and administrative corruption are adopted here as they conform to the above definitions of corruption:

- I. Political corruption is “the behaviour of (elected) public officials which diverges from the formal components – the duties and powers, rights and obligations – of a public role to seek private gain”.
- II. Administrative corruption is defined as “the institutionalised personal abuse of public resources by civil servants” (Gould, 1991:468).

Sheepchaisara (1999:2) identifies two separate categories of administrative corruption: the first occurs where, for example, services or contracts are provided “according-to-rule” and the second, where transactions are “against-the-rule.” In the first situation, an official receives private gain illegally for doing something which he or she is ordinarily required to do by law (Anti-corruption Gateway for Europe and

Eurasia, 2006: Online). In the second situation, the bribe is paid to obtain services which the official is prohibited from providing (Anti-corruption Gateway for Europe and Eurasia, 2006: Online).

“According-to-rule” and “against-the-rule” corruption can occur at all levels of the government hierarchy and range in scale and impact from “grand corruption” to more ordinary, small scale varieties (Sheepchaisara, 1999:2). Corruption involves behaviour on the part of officials in the public sector, whether politicians or civil servants, by means of which they improperly and unlawfully enrich themselves, or those close to them, by the misuse of the public power entrusted to them (Huberts, 2001: 3).

Corruption needs to be defined to enable one to expose complexities that are associated with the concept of corruption and the limitations of any singular definition. The above analysis has shown that a level of aptitude is required in how corruption is viewed. Taking these into account allows the realisation of what to focus on and needs to take into consideration not only conceptual difficulties, but also social and political processes which interpret and shape perceptions of corruption.

The diagnosis of how widespread this behaviour is also needs to be done. The Handbook for Fighting Corruption (1999:15) states that it is advisable to examine the extent of corruption as it provides the first analytical cut of the assessment.

2.3 EXTENT OF CORRUPTION

According to the Handbook for Fighting Corruption (1999:15), an evaluation of the extent to which corruption occurs provides the first analytical cut of the assessment. According to Lanyi and Azfar (2005:2), examining the extent of corruption is about determining to what extent corruption, if it exists, arises solely from incentives for individual government officials and private sector players; alternatively, to what extent corruption appears to be systemic.

The Handbook for Fighting Corruption (1999:15) suggests that the extent of corruption can be sporadic or pervasive. Sporadic corruption occurs in isolated intervals with no apparent order, while pervasive corruption permeates most government institutions in a country, affecting activities within a specific institution (The Handbook for Fighting Corruption, 1999:15).

The U4 Anti-Corruption Conceptual Glossary (2006: Online) refers to pervasive corruption as endemic or systemic. As opposed to exploiting occasional opportunities, endemic or systemic corruption occurs when corruption is an integrated and essential aspect of the economic, social and political system (U4 Anti-Corruption Conceptual Glossary, 2006: Online).

Systemic corruption is not a special category of corrupt practice, but rather a situation in which the major institutions and processes of the state are routinely dominated and used by corrupt individuals and groups, and in which most people have no alternatives to dealing with corrupt officials (Johnston, 1997: 9).

The Anti-Corruption Conceptual Glossary (2006: Online) states that sporadic corruption occurs irregularly and therefore does not threaten the mechanisms of control nor the economy as such. It is not crippling, but it can seriously undermine morale and sap the economy of resources (Anti-Corruption Conceptual Glossary, 2006: Online). However, sporadic corruption can pose problems for development, although it does not have the same corrosive effect on political and economic systems as pervasive corruption (Handbook on Fighting Corruption, 1999: 23).

While the harm caused by pervasive corruption makes it a key development issue, the comparatively lesser damage caused by sporadic corruption may not merit spending resources that could be invested in other development objectives (Handbook on Fighting Corruption, 1999: 23). Johnston (1997: 8) explains that in cases of systemic corruption, however, a lasting and pervasive pattern of abuses that few would hesitate to call corrupt is encountered.

Systemic corruption within the public sector can be defined as the systematic use of public office for private benefit that results in a reduction in the quality or availability of public goods and services (Buscaglia, 1997:273). According to Meagher (2005:8), where systemic corruption is prevalent, networks and alliances exist that rely on exchanges to meet their objectives. Meagher (2005:8) further explains that these

networks use elements of the state and the political system to mediate their corrupt exchanges.

Systemic corruption deals with the use of public office for private benefit that is entrenched in such a way that, without it, an organisation or institution cannot function as a supplier of goods or services (Buscaglia, 1999:8). The probability of detecting corruption decreases as corruption becomes more systemic (Hosen, 2004:2). Therefore, as corruption becomes more systemic, enforcement measures of the traditional kind affecting the expected punishment of committing illicit acts become less effective and other preventive measures, such as organisational changes (for example, reducing procedural complexities in the provision of public services), salary increases, and other measures, become much more effective (Buscaglia, 2001: 6).

Caiden (2003:6) regards the following as characteristics of systemic corruption:

1. The organisation parades for external consumption a code of ethics that is contradicted by internal practices.
2. Internal pressures, mostly informal so that there is no written record, encourage, abet and hide violations of the external code.
3. Non-violators are excluded from the inner circle and any benefits emanating out of violations.
4. Violators are protected and, when discovered, treated leniently whereas their accusers are victimised for revealing hypocrisy.

5. Non-violators suffocate in the venal atmosphere and their conscience troubles them thereafter.
6. Prospective whistle-blowers are terrorised and forever discredited; they need to be permanently protected from retaliation.
7. Violators become so accustomed to their wrongdoing that they come to think themselves invincible; they feel when they have been exposed that they have been unfairly picked out.
8. Collective guilt finds expression in rationalisations of the internal violations which no one intends to discontinue without strong external pressure.
9. Internal investigators rarely act and find ready excuses to discontinue investigation.
10. Internal authorities maintain that any incidents are isolated, rare occurrences (Caiden, 2003:6).

Certain authors further categorise varieties of corruption in terms of their nature and the manner in which these varieties happen. Corruption can be foreign-sponsored, institutionalised, and the outcome of political scandal and administrative malfeasance (Caiden, 1988:23). In foreign-sponsored corruption the main actors are public officials, politicians, and representatives of donor and recipient countries.

Bureaucratic elites, politicians, businessmen and middlemen are responsible for political scandal (Kpundeh, 2006:7). Many observers see the supply side of corruption by international business in the form of foreign-sponsored bribery as the most significant contributing factor to corruption (Camerer, 2006: Online). In

administrative malfeasance petty officials and interested individuals play major roles (Khan, 2004:5).

Corruption primarily takes place in three different ways: collusive, coercive and non-conjunctive (Arora, 1993:1-19). In collusive corruption the corruptees themselves are willing and active participants in the process and use of corruption as an instrument for inducing wrong action or inaction on the part of authorities, deriving benefit greater than the costs of corruption on their part (Khan, 2004:5). Khan (2004:5) further explains that corruption is forced upon the corruptee by those in the position of power and authority in coercive corruption. In non-conjunctive corruption benefits are obtained at someone else's cost and victims are unaware of their victimisation (Arora, 1993:1-19).

Certain authors further identify strategies through which corruption is perpetrated. According to Arora (1993:1-19), major strategies such as mystification, distancing, folklore, colonisation and pacification have been used by beneficiaries to protect, promote and sustain corruption in diverse contexts.

Summarising the findings on the effects of corruption, Elliott offers the following explanation:

“When it is pervasive and uncontrolled, corruption thwarts economic development and undermines political legitimacy. Less pervasive variants result in wasted resources, increased inequity in resource distribution, less political competition and greater distrust of government. Creating and exploiting opportunities for bribery at

high levels of government also increases the cost of government, distorts the allocation of government spending, and may dangerously lower the quality of infrastructure. Even relative petty or routine corruption can rob government of revenues, distort economic decision making, and impose negative externalities on society, such as dirtier air and water or unsafe buildings” (Elliott, 1997:175-176).

It is apparent that a simple perception of the level of corruption is, insufficient. A meaningful distinction as to how pervasive or sporadic corruption is will be provided. Sporadic corruption arises solely from incentives for individual government officials and private sector players when pervasive corruption is systematic. However, corruption is deadly, whether sporadic or pervasive. It is also clear that there are motivations that make people engage in corruption, hence an overview of the underlying causes of corruption will be provided below.

2.4 CAUSES OF CORRUPTION

A number of authors believe that the root causes of corruption are greed and dishonesty. Dishonesty breeds corruption (Farha, 2006:1). Greed and the desire to enjoy lifestyles beyond their reach make many government officials resort to bribes (Gururaj, 2006:2).

Another factor that encourages corruption is the fact that corrupt officials go unpunished (Zuhua, 2006: Online). Apart from greed and dishonesty, additional causes of corruption are social, organisational and institutional (Stork, Hasheela &

Morrison, 2004:11). In the Report of the Nepru National Integrity Survey conducted in 2003, Stork, Hasheela and Morrison (2004:11- 13) tabulate these as follows:

Corruption due to social causes will thrive where:

- I. Leaders in key positions are not capable of inspiring and influencing conduct of the highest moral standards;
- II. Religious and ethical teaching is weak;
- III. Punishment for offenders is lenient;
- IV. Large numbers of people have to compete for insufficient services such as schools or medical supplies in hospitals; and
- V. There is great inequality in the distribution of wealth and income.

Additional organisational features may create an environment conducive to the following corrupt practices:

- I. Policies and procedures. Outdated and inadequate policies and procedures;
- II. Excessive discretion. Discretion is an important lubricant of productive management but too much of it can facilitate corruption;
- III. Insufficient supervision. If supervision is too inadequate to ensure that policies and procedures are being followed, even the best policies can be easily frustrated;
- IV. Insufficient publicity. Ignorance is a fertile ground for corruption and insufficient publicity of an institution's aims and procedures is a major cause of corruption; and

V. Insufficient deterrents (Stork, Hasheela & Morrison, 2004:11- 13).

Institutional causes are at a national level, which are linked to governmental policies and procedures. These can be outlined as follows:

- I. Lack of government transparency and accountability. This allows for mismanagement and misuse of public funds where there are insufficient checks and balances in place to ensure accountability in the management of public funds;
- II. Lack of political will. Government in certain cases lacks the political will to deal firmly with the problem of corruption. Leaders engage in corruption as a means of sustaining themselves or protecting themselves as they may be engaged in corruption;
- III. Abuse of power. Excessive power vested in the executive wing of government is likely to be abused and will even hinder the effort of the government institutions established to fight corruption;
- IV. Inadequate legal and institutional framework. When the existing legal and institutional frameworks are faced with a number of inadequacies, such as insufficient power to enforce the laws, insufficient funding, insufficient manpower or a lack of autonomy, for example, they are not able to function effectively;
- V. Public reaction. This is a vital factor in the fight against corruption. The public perception of corruption plays a pivotal role in fighting corruption. When corruption becomes a means for survival owing to prevailing circumstances or

any other reason, it becomes an acceptable norm and the political will to fight or oppose corruption is absent. It becomes normal and a way of life; and

- VI. Lack of press freedom. When existing laws hamper or limit access to information, the fight against corruption is affected because information plays a vital role. As they play an important role in exposing cases of corruption, the media are especially affected in that they will not have the autonomy to function independently and will face restrictions in their reporting. Those in authority are also likely to use these laws to victimise the media (Stork, Hasheela & Morrision, 2004:11-13).

In explaining causes of corruption, researchers further provide a list of potential causes, including the wealth of a country (Mauro, 1995:681), democracy (Sung, 2004: 179), political institutions (Gerring & Thacker, 2004:295), ethno-linguistic diversity and political stability (Treisman, 2000: 399), trade openness (Wei, 2000), public sector recruitment and wages (Tanzi, 1998:559), and voting turnout (Adsera, Boix & Payne, 2003:445).

The list does not end there. Certain authors mention factors such as population density, geography, mineral wealth, state formations, colonial legacies, social heterogeneity, clientelism and inequality, religion, media and political culture as additional causes of corruption (Gerring & Thacker, 2004:295).

Klitgaard (1988:75) identifies the political and bureaucratic monopolies and discretion, and the weak mechanisms of accountability as basic causes of corruption. Widespread corruption is an indication that the state is functioning poorly

(Rose-Ackerman, 1997:5). In fact, the entrenched characteristic of official corrupt practices is rooted in the abuse of market or organisational power by public sector officials (Buscaglia, 1997:277).

Buscaglia (1997:277), further states that low compensation and weak monitoring systems are traditionally considered to be the main causes of corruption. Huntington (1968:15) argues that where economic opportunities are relatively plentiful and political opportunities scarce, people may try to buy their way into political power; and where political opportunities are plentiful and economic advantage more difficult, people are more likely to use political power to enrich themselves.

Where civil society is weak, citizens and private interests are vulnerable to exploitation by political and/or bureaucratic monopolies and, because they lack the political means and organisational strength to insist on their formal rights, often respond to corruption in evasive or illicit ways (Alam, 1995:419), minimising its costs or fighting it with more corruption. Government salaries remain grossly insufficient, and, therefore officials devote much of their energy to finding illicit incomes rather than carrying out their nominal duties (Theobald, 1990:22-24).

When diagnosing causes of corruption, Lanyi and Azfar (2005:12) differentiate between the causes of individualistic corruption and systematic corruption as follows:

Table 2.1: Diagnosis of Causes

Location & Type of Corruption	Individualist	Systemic
Diversion of state revenues to personal and campaign accounts	Weak accounting and auditing systems; No controls on campaign finance or money laundering; Lack of transparency and criminal enforcement	Network control of state, parties, and firms translate into state fiscal autonomy from political processes and the ability to self-enrich and perpetuate control
Customs — Bribery, fraud, and collusion in customs administration	Lack of transparency, monitoring, and audit control (for example, via computers) of valuations and levies; Low official pay and professionalism; Incentive effects of high duties	Patronage system requires bureaucrats to buy positions and pass bribe shares upwards; Imbalances mean government is the main employer and can impose will on traders; Trade reform would threaten status quo sustained by elite collusion, lack of political competition, and reliance of campaign funds on corruption
Procurement & Infrastructure — Bid-rigging, kickbacks, over-invoicing	Vague design parameters and bid procedures; Weak inspection and audit; No competition; No established bid protest procedures	Elite and mafia networks embedded in state and private sector institutions engage in collusion and self-enrichment; Weak corporate governance and absent or inadequate official asset declarations; Campaign finance dependent on bribery

Judiciary & prosecutors	Low judicial status and pay;	Lack of real political challenge and competition;
Bribery, favouritism	No checks and balances in appointments and tenure; Vague laws and procedures;	Weak norms of legality and accountability; Carryover of 'telephone justice' from Soviet era;
	Ineffective appeal system, oversight, and sanctions	Social imbalance and lack of economic restructuring mean no effective constituency for enforcement of contracts, property rights, and civil liberties

Adapted from Lanyi and Azfar (2005:12)

Bannon (1999:4) sees the causes of corruption as always contextual, rooted in a country's policies, bureaucratic traditions, political development, and social history. Still, corruption tends to flourish when standards are lax or poorly defined, regulatory institutions and enforcement practices weak, and government policies generate economic rents (Bottelier, 1998:4). Bottelier (1998:4) further explains that the opportunity for corruption is a function of the size of the rents under the control of a public official, the discretion that the official has in allocating those rents and the accountability that the official faces for his or her decisions.

Klitgaard (1998:3-6) suggests that the dynamics of corruption in the public sector can be depicted in a simple model depicted below:

$$C = M + D - A$$

Where:

C (corruption) = **M** (monopoly) + **D** (discretion) – **A** (accountability)

Interpreting this depiction, Bannon (1999:4) states that corruption will tend to emerge when an organisation or person has monopoly power over a good or service which generates rent, has the discretion to decide who will receive it (thus on how rents will be allocated), and is not accountable.

Expanding on the depiction, the World Bank (1999:4) provides the following explanation:

“Monopoly rents can be large in highly regulated economies, and corruption itself often breeds demand for more regulation. The discretion of public officials may be large, exacerbated by badly defined, ever-changing and poorly disseminated rules and regulations. Accountability may be weak. The ethical values of a well-functioning bureaucracy may have eroded or never existed. Rules on conduct and conflicts of interest may be unenforced, financial management systems may have broken down, and there may be no mechanisms to hold public officials accountable. Watchdog institutions such as the ombudsperson, comptrollers, the media and special anticorruption bodies may be ineffectual or politicised. Combating corruption begins by designing better systems. Monopolies must be dismantled or carefully regulated. Official discretion must be clarified and circumscribed. Transparency must be enhanced. The probability of being caught as well as the penalties for corruption (for both givers and takers), must be increased and enforced” (World Bank, 1999:4).

According to Heymans and Lipietz (1999:9), the following conditions may influence the extent to which the execution of such discretion becomes vulnerable to corrupt practice:

- I. In the absence of clear rules and codes of ethics, discretionary power easily becomes abused.
- II. Low civil service salaries and poor working conditions, with few incentives and rewards for efficient and effective performance, are strong incentives for corruption.
- III. The less effective the government works in general, with slow budget procedures, lack of transparency, inadequate strategic vision and weak monitoring mechanisms, the more fertile the environment for corrupt practice.
- IV. The overall culture of governance also plays an important role. If political leaders and top bureaucrats set an example of self-enrichment or ambiguity over public ethics, lower level officials and members of the public might follow suit. If informal rules come to supercede formal ones, even the most stringent legal principles and procedures lose their authority. Hence, bribery and corruption may become the norm, even in the face of formal rules intended to support clean governance. Because of government's major role in most developing economies, opportunities for corruption are often more numerous. Furthermore, these countries have often inherited large colonial bureaucracies, where the new leadership has not had much opportunity to indigenise the machinery of government. The moral epicentre that may make for good governance has often been absent as a result. In such

environments, corruption has had fertile ground to take root (Heymans & Lipietz, 1999: 9).

It can, therefore, be deduced that corruption occurs as a result of an incompetent manner in which the country is being governed. Corruption can also be associated with historical and cultural traditions, levels of economic development, political environment, and government policies. To be able to successfully conduct the assessment of anti-corruption strategies it might be important to be aware of possible forms of corruption that could occur.

2.5 FORMS OF CORRUPTION

Corruption is a broad concept that covers a wide range of practices and transactions. Jayawickrama (1998:2) and the UN Anti-Corruption Toolkit (2004:10) place acts involving corruption into two broad categories, namely conventional bribery, or 'petty corruption' and grand corruption. Petty corruption occurs when a public official demands, or expects, 'speed money' or 'grease payments' for doing an act which he or she is ordinarily required by law to do, or when a bribe is paid to obtain services which the official is prohibited from providing (Jayawickrama, 1998: 2). Kovács and Tisné (2004:49) define petty corruption as the everyday corruption that takes place at the implementation end of politics, where the public officials meet the public. Petty corruption is bribery in connection with the implementation of existing laws, rules and regulations (U4 Anti-Corruption Glossary, 2006: Online).

Petty corruption refers to the modest sums of money usually involved, and has also been called 'low' and 'street' level to indicate the kind of corruption that people can experience in their frequent encounters with public administration and services like hospitals, schools, local licensing authorities, police, taxing authorities and so on (Amundsen, Sissener & Søreide, 2000:18). Petty corruption can involve the exchange of very small amounts of money, the granting of minor favours by those seeking preferential treatment or the employment of friends and relatives in minor positions (UN, 2004:10). Therefore, petty corruption is different from grand corruption which is sometimes referred to as political corruption (U4 Anti-Corruption Corruption Glossary, 2006: Online).

Grand corruption means that important decisions are taken by high ranking officials responsible for public funds for personal motives, disregarding the consequences to the wider community (Wescott, 1997:3). According to Moody-Stuart (1997:42), grand corruption occurs when a person in a high position who formulates government policy or is able to influence government decision-making seeks, as a *quid pro quo*, payment, usually off-shore and in foreign currency, for exercising the extensive arbitrary powers vested in him or her. High level or 'grand' corruption takes place at the policy formulation end of politics (U4 Anti-Corruption Corruption Glossary, 2006: Online).

Grand corruption usually involves the giving of a benefit to a political leader or senior public official by a businessman in return for a decision in his favour (Wescott, 1997:3). Grand corruption is corruption that pervades the highest levels of government (UN Anti-Corruption Toolkit, 2004:10). It refers not so much to the

amount of money involved as to the level in which it takes place; grand corruption is at the top levels of the public sphere, where policies and rules are formulated in the first place (U4 Anti-Corruption Corruption Glossary, 2006: Online).

Petty corruption is, however, often overlooked as an area of concern in the public debate (Van Vuuren, 2004:11). In certain cases the term 'petty corruption' is used in the context of relatively small bribes. However, even in this usage it has been rightly noted that pettiness of corruption refers only to the size of each transaction and not to its total impact on government income or policy (Scott, 1972:66).

According to Wescott (1997:3), development programmes such as the UNDP do not condone petty corruption but they recognise that grand corruption is where the greatest damage is done. The most critical difference between grand corruption and petty corruption is that the former involves corruption of the central functions of government, while the latter develops and exists within the context of established governance and social frameworks (UN, 2004:10).

Transactions that are considered corrupt in certain societies may be considered normal in others, depending on local traditions and values (Scott 1972:8). However, sources such as Lanyi and Azfar (2004:12), the UN Anti-Corruption Toolkit (2005:6), Sajo (2002:1), Hoffmann (2001: 6) and Zeller (2006:12) agree that forms of corruption are bribery, extortion, misappropriation, self-dealing, and patronage.

According to the UN Anti-Corruption Toolkit (2004:12) and Lanyi and Azfar (2005:6), there is another form of corruption called political corruption and campaign finance

improprieties. Lanyi and Azfar (2005:6) add an additional type, shirking as another form of corruption. However, bribery is the most naked form of abuse of office because economies where it occurs are at a rudimentary level (Zeller, 2006:12).

2.5.1 Bribery

Hoffmann (2001:6) states that bribery constitutes a form of corruption and can be executed towards public officers or decision-makers in the private sector. Lanyi and Azfar (2005:14) define bribery as informal payments or gifts demanded by, or offered to, public officials. Lanyi and Azfar (2005:14) further explain that these payments could be demanded for services that public officials are expected to provide for licenses, or in exchange for choosing a contractor or arranging favourable privatisation deals.

According to Thobabeen (1991:62), buying contracts can also be called kickbacks when government officials may use their bargaining power with contractors and their discretion in awarding contracts to obtain a fee. A percentage, usually 5 per cent, of the contracts is returned or kicked back to the public officials by the contractor (World Bank, 1997:20).

Bribery is a crime implying a sum or gift given that alters the behaviour of the person in a manner not consistent with the duties of that person (Sall, 2006:2). It is the offering, giving, receiving, or soliciting of any item of value to influence the actions as an official or other person in the discharge of a public or legal duty (Answers.com, 2006: Online). It may be any money, goods, right in action, property, preferment,

privilege, emolument, object of value, advantage, or promise or undertaking to induce or influence the action, vote, or influence of a person in an official or public capacity (Alserhan, 2011:21). Hence, Voskanyan (2000:13) regards bribes as one of the main tools of corruption.

Examples of permitted grease payments include discreet payments to obtain a business license in a foreign country, to secure a required visa, to receive police protection or to obtain a telephone service (McPhillips, 2006: Online). Nevertheless, most economists regard bribery as negative because it encourages rent-seeking behaviour; hence a state where bribery has become a way of life is a kleptocracy. Kleptocracy involves the systematic theft of public funds and property by public officials (Wedeman, 1997:459).

The UN Anti-Corruption Toolkit (2004:11) divides bribery into two categories, namely active and passive bribery. In criminal law terminology, the terms may be used to distinguish between a particular corrupt action and an attempted or incomplete offence (Saidi, 2004:8). Active bribery would include all cases where payment and/or acceptance of a bribe has taken place (UN, 2004:11). It would not include cases where a bribe was offered but not accepted, or solicited but not paid (Anti-Corruption Internet Database, 2006: Online).

According to Stevens (2006: Online), active bribery, as termed in international treaties like the OECD Convention, occurs when a firm tries to bribe a public official to obtain a trading advantage. Active bribery occurs on the supply side as it is an offence committed by the person who promises or gives the bribe (U4 Anti-

Corruption Corruption Glossary, 2006: Online). Active bribery is understood as the promise to give, or the giving of, any payment or any other advantage, whether directly or through intermediaries, to someone holding a public office (public bribery) or to someone in business (private bribery) with the intention and expectation of obtaining an unlawful benefit in return for the bribe (Hoffmann, 2001:6).

Passive bribery refers to the receiving of the bribe (UN, 2004: 11). Passive bribery, which is the offence committed by an official who receives the bribe occurs on the demand side (U4 Anti-Corruption Corruption Glossary, 2006: Online). Passive bribery is understood as acceptance of a payment or any other advantage, whether directly or through intermediaries, from someone in return for which the person who has accepted the bribe favours the giver in an unlawful way (Hoffmann, 2001:6).

In this sense, therefore, offering a bribe is called active bribery; receiving or accepting it is called passive bribery. However, certain authors view this distinction as insufficient. In a number of situations the recipient could have induced or pressured the briber and would have been, in that sense, the more active (US Working Group on Bribery, 2004:56). Stevens (2006: Online) supports this view by stating that it is passive bribery when a firm complies with a demand for a bribe.

The UN Anti-Corruption Toolkit (2004:12) identifies specific types of bribery which include the following:

- I. Influence-peddling in which public officials or political or government insiders peddle privileges acquired exclusively through their public status that are

usually unavailable to outsiders; for example access to or influence on government decision-making. Influence-peddling is distinct from legitimate political advocacy or lobbying.

- II. Offering or receiving improper gifts, gratuities, favours or commissions. In certain countries, public officials commonly accept tips or gratuities in exchange for their services. As links always develop between payments and results, such payments become difficult to distinguish from bribery or extortion.
- III. Bribery to avoid liability for taxes or other costs. Officials of revenue collecting agencies, such as tax authorities or customs, are susceptible to bribery.
- IV. Bribery in support of fraud. For example, payroll officials may be bribed to participate in abuses such as listing and paying non-existent employees (“ghost workers”).
- V. Bribery to avoid criminal liability. Law enforcement officers, prosecutors, judges or other officials may be bribed to ensure that criminal activities are not investigated or prosecuted or, if they are prosecuted, to ensure a favourable outcome.
- VI. Bribery in support of unfair competition for benefits or resources. Officials responsible for making contracts for goods or services may be bribed to ensure that contracts are made with the party that is paying the bribe and on favourable terms. In certain cases where the bribe is paid out of the contract proceeds themselves, this may also be described as a “kickback” or secret commission.

VII. Bribery to obtain confidential or “inside” information. Employees are often bribed to disclose valuable confidential information, undermining national security and disclosing industrial secrets.

Subramuniaswami (2006:381) identifies three kinds of bribery, as listed below:

- I. The first is the most common - withholding services one has been paid to perform until that additional, secret compensation is paid.
- II. The second kind is a little more subtle. It involves favours-contracts, concessions and legal immunity which are given to those who pay a bribe in cash or kind. The briber offers money to purchase a secret, unauthorised use of influence, position or authority.
- III. The third form of bribery which is even more subtle is to provide a service and then extract a reward. This is, however, the most easily detected of all, because when asked for another service, it is denied, that is if the gift, after the first service was performed, was not given or was not large enough.

It is, therefore, evident that a bribe is the gift bestowed to influence the receiver’s conduct. Because threats can be implicit, the distinction between extortion and bribes is not always clear (Lanyi & Azfar, 2005:14). However, according to Voskanyan (2000:14), the converse of bribery is extortion - the abuse of power in such a way to secure a response in payment of money or other valuables.

2.5.2 Extortion

Voskanyan (2000:14) describes extortion as either wresting or wringing from a person, extracting by torture or obtaining from a reluctant person by violence, torture, intimidation, or abuse of legal or official authority, or in a weaker sense by importing, overwhelming arguments or any powerful influence, money from a person by force or by undue exercise of authority or power. Whereas bribery involves the use of payments or other positive incentives, extortion relies on coercion, such as the use or threat of violence or the exposure of damaging information, to induce cooperation (UN, 2004:15).

Lanyi and Azfar (2005:14) describe extortion as the threat of the use of force or other forms of intimidation to extract payments, for example, a regulator who threatens to shut a factory down based on the violation of some standard if a payment is not made. In certain cases, extortion may differ from bribery only in the degree of coercion involved (UN, 2004:15).

Extortion is also often used loosely to refer to everyday situations where one person feels indebted against their will to another in order to receive an essential service or avoid legal consequences (Goel, 2009:47). According to the UN Anti-Corruption Toolkit (2004:15), with other forms of corruption, the “victim” can be the public interest or individuals adversely affected by a corrupt act or decision, whereas in extortion cases a further “victim” is created, namely the person who is coerced into cooperation. Extortion is a criminal offence whereby an individual obtains money,

goods and services or desired behaviour from another by wrongfully threatening or inflicting harm to his or her person (Criminal Law lawyer Source, 2006: Online).

While extortion can be committed by government officials, such officials can also be victims of it (UN, 2004:15). For instance, according to the World Book (1985:355), extortion originally meant the crime of obtaining payment by threatening to disclose misuse of official power by government officials. An official can extort corrupt payments in exchange for a favour or a person seeking a favour can extort it from the official by making threats (UN, 2004:15).

Goel (2009:46) writes that extortion is commonly practised by organised crime groups. Extortion can be an asset in a clientelistic system for patrons who can distribute opportunities to extort (Sajo, 2002:1). Brinkerhoff and Goldsmith (2002:15) support this statement by adding that clientelism is associated with corruption.

2.5.3. Misappropriation

Misappropriation is the intentional, illegal use of the property or funds of another person for one's own use or other unauthorised purpose, particularly by a public official, a trustee of a trust, an executor or administrator of a dead person's estate or by any person with a responsibility to care for and protect another's assets (Clarke, Xu & Xijun, 2010:6). Lanyi and Azfar (2005:14) shorten this statement as the theft or private use of public funds or equipment which can vary from relatively innocuous practices like asking your official driver to pick up your children from school, to sinister ones like the theft and dilution of vaccines that lead to the proliferation of

resistant strains of diseases. This can include, at high levels of government, theft that takes place directly from the treasury and involves large amounts of money (Lanyi & Azfar, 2005:14).

2.5.4. Self-dealing

Self-dealing is the conduct of a trustee, an attorney, a corporate officer, or other fiduciary that consists of taking advantage of his or her position in a transaction and acting for his or her own interests rather than for the interests of the beneficiaries of the trust, corporate shareholders, or his or her clients (Thefreedictionary.com, 2006: Online). Self-dealing is a situation where one takes an action in an official capacity which involves dealing with oneself in a private capacity and which confers a benefit on oneself (Kernaghan & Langford, 1990:152). According to Lanyi and Azfar (2005:15), self-dealing is the practice of hiring one's own firm or a firm belonging to close relatives or friends to provide public services. The definition can be extended to selecting such a firm as the purchaser of a privatised company (Lanyi & Azfar, 2005:15).

2.5.5 Patronage

Patronage is the act of a so-called patron who supports or favours some individual, family, group or institution (Encyclopedia, 2006: Online). Nelson (1996:45) defines patronage as an act and substance of giving:

- I. The giver: a) the support of a patron, usually given with the air of superiority, b) the power to give resources, opportunities and jobs to individuals without regard to merit.
- II. The receiver: the resources, opportunities and jobs given by a superior on any basis other than merit. Patronage happens when leaders of a political party that comes to power place many of their faithful followers into important public offices (U-S-history.com, 2006: Online).

Originally the term “patronage” was coined in Latin (*patronatus*) for the formal relationship between a *patronus* and his *clientes* (<http://experts.about.com>). Political patronage is defined as the dispensation of favours or rewards such as public office, jobs, contracts, subsidies, prestige or other valued benefits by a patron (a person who is responsible for controlling their dispensation) to a client (The Canadian Encyclopedia, 2006: Online). Generally, it can be described as a system where an individual(s) in a powerful position (the patron) offers hand-outs in return for support (Noël, 2006:2).

Orac and Rinne (2000:1) state that patronage suggests the transgression of real or perceived boundaries of legitimate political influence, and the violation of principles of merit and competition in civil service recruitment and promotion. The merit system evolved in America in response to the troubles created by political patronage under the “spoils system” where its roots extend back to ancient China where the first merit system was developed (United States Office of Personnel Management, 1999:5).

Nonetheless, it is important to recognise that governments the world over accept that certain political appointments are fully legitimate (Orac & Rinne, 2000:1). However, Magilavy (2001: 2) is opposed to the appointment of public officials to the public service made as a reward for political activity. A small number of these appointments are justified as a means for political leaders to fashion a circle of government policymakers and managers who share a common agenda (Orac & Rinne, 2000:1).

Competency is essential to ensure that the goals of the public service are achieved (Canada, 2001:1). Patronage is clearly a problem when these appointments pervade public administration, resulting in severely undermining merit principles (Orac & Rinne, 2000:1). Orac & Rinne (2000:1) further state that somewhere between these two extremes the line between appropriate and inappropriate uses of patronage is crossed.

This use of public offices as rewards for political party work is known as the spoils system which is popular in numerous countries (U-S-history.com, 2006: Online). There were justifications for the spoils system, but the true motivation is to secure jobs for party activists and to enable the functioning of large political parties without the need for external funding (Meir, 2005:2). The spoils system is opposed to a system of awarding officers on the basis of some measure of merit independent of political activity (Liff, 2010:4).

According to Orac and Rinne (2000:1), a straightforward definition of patronage, “the power of appointing people to governmental or political positions” and “the positions so distributed”, fails to convey the negative connotation that patronage has.

Patronage is at times defended as a process that makes job, contract and subsidy allocation less expensive and an antidote to the excessive bureaucratisation of government (Noël, 2006:2). Certain authors claim that patronage appointments help build a stable political environment. Patronage is, therefore a recognised and legitimate power of the executive branch (Answers.com, 2006: Online). Such overt political patronage is seen as a tool for rewarding and enforcing loyalty; loyalty is the criterion for selecting a person rather than more meritocratic considerations (Lokanc, 2007:36-37).

The arguments in favour of patronage have a certain degree of merit, but none are really convincing as having loyal workers is a necessity at the highest levels of policy making; but the law recognises this and allows the highest-level political appointments, the “confidential” employees, to be appointed based on political affiliation (Meir, 2005:2). Political appointments are allowed where elected officials may hand-pick political advisers (McCourt, 2000:5). However, the vast majority of bureaucrats need to be professionals for whom capability is more important than loyalty (Meir, 2005:2). Hence, where civil servants are unionised, resistance to bureaucratic patronage is even greater (Noël, 2006:2).

Lanyi and Azfar (2005:15) define patronage as the hiring of one’s own friends and relatives, even when they are not the best qualified, or accepting bribes in exchange

for government jobs. Nepotism and cronyism are identified as more specific forms of patronage. Offering government jobs in exchange for political support is a questionable practice, but there is debate about whether it is a form of corruption (Lanyi & Azfar, 2005:15). However, patronage can consequently be seen as one of the possible major deficiencies of a system of excess bureaucracy, defined as a system with a weak bureaucratic structure, the availability of large public resources to the patron, and that these public resources be easily divisible in order to target specific groups and individuals (Lokanc, 2007:36-37).

According to Golden (2000:12), civil service regulations guide the appointment process for positions in the public administration. Despite these regulations, countries continue offering government jobs in exchange for political support. There may be relatively many of these in certain countries or relatively few in others, but in most cases they should be narrowly confined to senior staff members who are working directly with politicians (McCourt, 2000:5).

In his study of patronage appointments in United States cities early in the twentieth century, Key (1935:15) enumerated the following five methods of evasion of civil service laws that are used to classify the manner in which civil service regulations are violated. These are as follows:

- I. limiting the scope of merit laws;
- II. appointing the “right guys” to civil service commissions;
- III. budgetary sabotage;
- IV. manipulating the selection process; including fixing assessment results; and

V. manipulating the movement and promotion of personnel.

Voskanyan (2000:15) describes the assignment of government positions to political supporters as a form of corruption which has long been a practice in politics. While civil service regulations may effectively curtail the number of patronage jobs, political appointments remain at the top levels of government and provide a legitimate way for elected politicians to influence bureaucracy through the appointment of legal executive officials (Voskanyan, 2000:15).

Holmes (1993:205) identifies three major forms of patronage, which are as follows:

- I. Nepotism. In this context it is the granting of public office on the bases of family ties;
- II. Shared experience. Here the patron and client have usually worked together in the past and are on good terms and the patron promotes or has promoted the client on the basis of these past experiences and warm relationship; and
- III. Shared interest. In this case, the patron does not have common experience with someone he or she wishes to promote, but rather a common interest.

Nelson (1996:45) classifies patronage as voluntary and inclusive patronage (voluntary) versus coercive and exclusive patronage (violent dictatorships). Exclusive systems serve patronage for a small proportion of the population while inclusive systems redistribute a modest proportion of the patronage to a larger proportion of the population (Nelson, 1996:45).

2.5.6 Shirking

Lanyi and Azfar (2005:15) define shirking as avoiding or neglecting a duty or responsibility. Shirking is a widespread practice in the public sectors of many developing and transitional countries, where public officials routinely come late to work, leave early, are regularly absent from work, or perhaps never come to work at all. This definition is wide and is intended to capture intentional neglect of duty as well as overt acts of corruption (ACPO, 2003:2). In this regard these workers purchased their jobs and never actually intended to y work and those who hired them were aware of this (Lanyi & Azfar, 2005:15).

The sale of jobs, which is related to shirking, appears to be a widespread practice in certain transitional countries (Anderson, Azfar, Kaufmann, Lee, Mukherjee & Ryterman, 1999:20). In certain cases, they may have other jobs, so that the government “job” is simply an income supplement financed by the taxpayer (Lanyi & Azfar, 2005:15). Shirking belongs in a class of opportunistic behaviour which includes shirking, adverse selection, moral hazard, and free riding (Ostrom, Schroeder & Wynne, 1993: 43).

2.5.7 Political corruption and campaign finance improprieties

Political corruption and campaign finance improprieties are certain interactions between the elite and politicians, particularly those that lead to the former being favoured in terms of policy (Lanyi & Azfar, 2005:15). These might include exchanges of campaign financing for political favours like procurement or privatisation deals.

However, other commentators insist that these types of interactions are, for the most part, legitimate forms of political exchange (Huntington, 1968:8).

The party funding challenge is prevalent throughout the world, even in the comparatively older, more established democracies (Sokomani, 2005:1). Owing to the acuteness of this problem, certain authors (Drew, 1999:1; Etizoni, 1984:10) call it the 800 pound gorilla. Drew (1999:1) views the conditions surrounding campaign financing as one of the most poisonous elements in contemporary society. Corruption in political financing manifests itself in many ways, often illegally, but in many cases more or less within the law, if not the ethics of the situation (Bailey, 2004:12).

Lanyi and Azfar (2005:8) further classify corruption by providing the following sector specifics:

- I. Government budgetary funds are misused and embezzled;
- II. Government procurement is subject to bid-rigging, kickbacks, and official collusion in over-invoicing; and
- III. Officials responsible for delivering public services, such as education, health, or public utilities are involved in theft, self-dealing, and bribery.

From the above it is evident that corruption demonstrates itself in different forms. Some are more evident than others. Some are regarded as less harmful and widespread. However, there is not a single kind of corruption that can be regarded

as legal and they all lead to shadow economies. This is an undeniable fact which clearly shows that corruption has negative effects.

2.6 EFFECTS OF CORRUPTION

The purpose of this section is to review the impact that corruption has, considering the experiences of various countries as proven by studies that have been conducted. There have been claims that not everything is bad about corruption. Its effects can be positive too (Mollah & Uddin, 2002:11). Although the term 'corruption' generally has a negative connotation, it can in certain circumstances be a distinctly beneficial phenomenon (Voskanyan, 2000:27).

Corruption, among other things, assists in capital formation, fosters entrepreneurial abilities, allows business interests to penetrate the bureaucracy, and permits the logic of market to insinuate itself into transactions from which public controls exclude it (Theobald, 1990:2). Certain researchers argue that corruption in the form of bribing can be an important arm in the hands of entrepreneurs seeking to do business with a hostile or indifferent government and may stimulate the development process (Goudie & Stasavage, 1997:30; Voskanyan, 2000:28).

Leff (1964:8) argues that in many developing countries excessive bureaucratic control and regulations create uncertainty for entrepreneurs, so bribery can assist bureaucrats to negotiate excessive regulations and minimise uncertainty over enforcement. In addition, according to one school of corruption apologists, bribery

could enhance efficiency by cutting the considerable time needed to process permits and paperwork (Voskanyan, 2000:28).

However, evidence has proven that corruption has adverse effects. According to Kaufmann (1997:2), on closer examination the argument that all corruption is not bad is debatable for the following reasons:

- I. First, it ignores the degree of discretion that politicians and bureaucrats can have, particularly in corrupt societies. They have discretion over the creation, proliferation, and interpretation of counterproductive regulations. Thus instead of corruption being the grease for the squeaky wheels of a rigid administration, it becomes the fuel for excessive and discretionary regulations. This is one mechanism whereby corruption feeds on itself.
- II. Secondly, available empirical evidence refutes the “speed money” argument by showing a positive relationship between the extent of bribery and the amount of time that enterprise managers spend with public officials.

Corruption has a negative, deleterious and devastating influence on investment and economic growth, administrative performance and efficiency and political development (Mollah & Uddin, 2000:11). Certain investigations revealed that the excessive tolerance of corruption can have serious negative effects on economic and political development (Gray & Kaufmann, 1998:7).

Corruption tends to shift government spending away from the social areas towards the construction of unneeded projects or lower quality investments in infrastructure

whereby corrupt politicians choose investment projects, not on the bases of their intrinsic economic worth, but on the opportunity for bribes and kickbacks these projects present. Political corruption has particularly damaging effects on the allocation of resources because it tends to divert resources away from the function to which they would have been allocated in the absence of corruption (Voskanyan, 2000:29).

Tanzi and Davoodi (1997:10) state that corruption tends to be associated with higher public investment and high corruption tends to reduce government revenue, which in its place reduces the resources available to finance spending, including public investment. High corruption also tends to be associated with poor quality of infrastructure, which reduces its contribution to output. Tanzi and Davoodi (1997:139) further argue that large-scale corruption has powerful effects on both the quality and the quantity of public investment.

When corrupt politicians influence the approval of an investment project the rate of return as calculated by cost-benefit analysis ceases to be the criterion for project selection (Abbey, 2005:7). “White elephants” and “cathedrals in the desert” end up being produced (Tanzi & Davoodi, 1998:9). When corruption plays a large role in the selection of projects, certain projects are completed but never used while others are so poorly built that they will need continuous repair and their output capacity will disappoint (Voskanyan, 2000:31). In these circumstances, it is not surprising that capital spending often fails to generate the economic growth (Tanzi & Davoodi, 1998:10).

According to Tanzi and Davoodi (1998:9), widespread corruption in the investment budget will not only reduce the rate of return of new investments in a country, but will also affect the rate of return the country gets from its existing infrastructure. This implies that the existing infrastructure may also be contaminated because past investments were administered or distorted by corruption (Voskanyan, 2000:31). Higher spending on capital projects might reduce the resources available for other spending.

Pollock (1937:29) writes that vast amounts of finances have been and continue to be wasted under the patronage system. Calculating the cost of patronage has only begun. Pollock (1937:29) further explains that despite the fact that these patronage costs are almost beyond calculation, and even though one cannot formulate a perfectly correct balance sheet, it is possible to indicate the items of loss which are directly attributed to the spoil system.

According to Stuart (1997:42), development based on corrupt practices has driving forces with particular characteristics such as:

- I. a focus towards large scale capital-intensive investment and away from those which maximise use of local labour and resources;
- II. inadequate attention to long-term affordability and maintenance;
- III. inadequate care for protecting the environment; and
- IV. decisions taken secretly, outside normal government procedures and with little or no consultation.

The damage corruption causes is not only economic. It also undermines social values and can imperil democracy itself (Stuart, 1997:42). Corruption tends to concentrate wealth, not only increasing the gap between rich and poor but providing the wealthy with illicit means to protect their positions and interests, which, in turn, can contribute to social conditions that foster other forms of crime, social and political instability and even terrorism (UN, 2004:17).

Continuance of corruption in a country leads to economic malaise and the squandering of public resources, lowers governmental performance, adversely affects general morale in the public service, jeopardises administrative reform efforts and accountability measures and perpetuates social and economic inequalities (UN, 1990:Online). Patronage costs may be listed under three headings: losses of a general, moral character; losses to political parties; and losses in public administration (Pollock, 1937:29). Patronage poses a challenge to administrations where there are many political cadre posts (McCourt, 2000:5).

Corruption reinforces political instability and underdevelopment (Ouma, 1991:473). In short, corruption impedes economic growth, stifles entrepreneurialism, misuses national resources, weakens administrative capacity, contributes to serious political decay and undermines stability, democracy and national integration (Khan, 2004:6). According to Mauro (1995:681) and Schleifer and Vishny (1993:599), corruption retards economic growth, lowers investment, decreases private savings, and hampers political stability. Foreign direct investment reacts negatively to the presence of corruption within the public sector in developing countries (Leiken, 1996:55). The existence of official corruption distorts market systems by introducing

uncertainty in social and economic interactions (Andvig, 1991:51). Official corruption is an essential input for the growth of organised criminal groups with the capacity to pose a significant international security threat (Leiken, 1996:56).

Scholars have contributed to the economic analysis of corruption. When analysing the effects of corruption, Mauro (1998:683) reports regression analysis which shows that a country that improves its standing on the corruption index from 6 to 8 (0 being the most corrupt, 10 the least) will experience a 4 percentage point increase in its investment rate and a 0.5 percentage point increase in its annual per capita GDP growth rate. This analysis is supported by Tanzi (1998:565) who provides a summary of these effects as they have been quantified in recent studies, and which include:

- I. Reducing investment and hence growth by increasing costs and uncertainty;
- II. Reducing spending on health and education because these expenditures do not lend themselves easily to corrupt practices on the part of those who control the budget strings;
- III. Reducing spending on operations and maintenance for reasons similar to the point above;
- IV. Increasing public investment because public projects are easier to manipulate by public officials and private bidders;
- V. Reducing the productivity of public investment and infrastructure;
- VI. Reducing tax revenues due to corrupt tax and customs administration; and

VII. Reducing direct foreign investment because corruption acts as a tax: the less predictable the level of corruption (the higher its variance), the greater its impact on foreign investment.

A higher variance makes corruption act like an unpredictable and random tax (Tanzi, 1998:565).

A number of studies have provided evidence that corruption has serious financial implications for both the economy in terms of slow growth (Ades & DiTella, 1996:6; Mauro, 1995:681), as well as its effects on democracy in terms of decreasing government effectiveness, stability (Adsera, Boix & Payne, 2003:445, Mauro, 1995:681); and political legitimacy (Doig & Theobald, 2000:75).

In addition to the above-mentioned negative impact of corruption, there is also an element of disproportionality and inequality (U4, 2006: Online). Schaeffer (2002:20) supports this view by stating that corruption also has a direct and adverse effect on the general welfare of the citizens, especially the poor, as corruption affects the poor disproportionately. Corruption has distributional consequences which affect income inequality and poverty by reducing economic growth, the progressivity of the tax system, the level and effectiveness of social programmes, and by perpetuating an unequal distribution of asset ownership and unequal access to education (Gupta, Davoodi & Alonso-Terme, 1998:29).

The poor are more vulnerable to extortion and intimidation for basic services, as well as to the harsh consequences of corruption on their country's overall development (Transparency International, 2006: Online). Surapaneni (2006:19) is of the same opinion and states that while corruption impacts negatively on most of the segments

of the society, the poor are more vulnerable, both in terms of being easy targets for being subjected to extortion, bribery, double-standards and intimidation as well as in terms of being hit by the negative and harsh consequences of corruption on a country's overall development processes.

Corruption has a direct and indirect impact on the poor (Jones, Dietsche & Weinzier, 2006:30). It impacts directly through increasing the cost of public services, lowering their quality and often altogether restricting poor people's access to such essential services as water, health and education; and impacts indirectly through diverting public resources away from social sectors and the poor, and through limiting development, growth and poverty reduction (Surapaneni, 2006:19).

The UNODC (2002:10) summarises known negative impacts of corruption as follows:

- I. It undermines economic growth by diverting resources to inefficient or unproductive sectors or actors; by reducing income tax and other revenue sources; by increasing the cost of doing business; by reducing the quality of contracted works; and ultimately undermines investor confidence and contributes to capital flight;
- II. It undermines poverty reduction efforts, as fewer resources will be available for social programmes; through poor targeting of beneficiaries, both in terms of the overall effectiveness of services, and making services accessible to more citizens on an equitable basis;

- III. It undermines the safety, environmental health and the sustainability of cities, in that health and zoning regulations are ignored; and by weak enforcement of environmental protection policies and regulations, may even compromise the needs of future generations; and
- IV. It threatens political stability, particularly in the case of systemic corruption. The loss of public confidence in the rule of law, justice and governance institutions can lead to political instability and even civil strife (UNODC, 2002:10).

Certain researchers have succeeded in differentiating between the effects of grand corruption and the effects of petty corruption. According to Westcott (1997:1), grand corruption leads to increased transaction costs and reduces predictability, and it impedes sustainable development because it distorts the decision-making process and leads to the wrong people being awarded the wrong projects at the wrong prices.

Grand corruption is considered to be particularly bad for the legitimacy of the government, affecting countries' policy and law-making processes; weakening public institutions and altering countries' public spending priorities (for example, by allocating more public spending to lucrative sectors to ensure pay-offs and kickbacks from large public and infrastructure works); exhausting the countries' natural resources and public wealth; and hindering business and investment (Transparency International Press Release, 2004: 86). Grand corruption leads to a broad erosion of confidence in good governance, the rule of law and economic stability (UN, 2004:10).

Unlike grand corruption, which impacts negatively on a country by taking large sums of money away from the public purse, the impact of petty corruption is described in the following manner:

- I. Petty corruption directly impacts on individuals, particularly the poor and vulnerable.
- II. It is often just as damaging to the poor, and is more immediate and tangible than the larger corruption cases which make breaking news and scandals.
- III. Bribes are often simply demanded and the non-payment thereof can result in devastating consequences, ranging from the denial of access to essential public services to unjust sentencing and imprisonment.
- IV. Petty corruption is not only detrimental to development processes but is also a threat to basic human rights (both civil rights such as guarantees of fair trial and justice, as well as socio-economic rights such as access to health, education, and others).
- V. As is often the case with petty corruption, it is not only those who can afford it who are asked to pay, but those who are thought to have no other options.
- VI. It is estimated that lower income households spend a larger proportion of their income on bribes and find these to be a heavy financial burden.
- VII. Petty corruption can go as far as threatening national security as it affects millions of people around the world as they go about their daily lives (U4 Helpdesk Query, 2006: Online).

Petty corruption has negative consequences (as listed above), ranging from affecting the livelihoods and the human rights of individuals, particularly the poor and

the vulnerable, to facilitating varied forms of criminal activity (U4 Helpdesk Query, 2006: Online). The TI Global Corruption Barometer (2004:5) concludes that while the two may affect particular target groups and aspects of a country's governance and development processes to a different degree, the overall damaging impact of grand or petty corruption is equally serious. Corruption in its all forms and manifestations has negative ramifications as both grand and petty corruption are judged as significant obstacles (U4 Helpdesk Query, 2006: Online).

From the above it can be deduced that corruption has negative consequences on economic growth, investment, and social welfare. In countries infested with corruption, contracts are not necessarily awarded to the most competitive businesses but to those that are willing to pay the highest bribe. In these countries projects are not chosen based on the benefit they will provide to the citizens, but on enriching corrupt politicians. Studies have proved that in such countries, procurement and recruitment processes are riddled with nepotism and depraved client-patron connections.

SUMMARY

This chapter recapitulated the nature of corruption from the literature to provide a framework for the subsequent attempt to examine the effectiveness of anti-corruption agencies and legislation. The manner in which selected authors define corruption highlights key concepts in the definition and identifies areas where the controversy lies. The lack of an authoritative consensus on how corruption should be defined has been highlighted. It has been revealed that a definition of corruption

should not be restricted to a particular sector or transaction as it may omit critical parts of the problem. However, narrow definitions are proven to be suitable when the problem of corruption is limited.

Different causes of public corruption were elaborated on, such as the nature of the regulatory environment, lack of transparency in government, the influence of powerful business interest groups, low salaries of public servants, weakness in the legal framework, and the self-sustaining cycle of corruption. It can also not be denied that greed and selfishness stimulate corruption, encouraging those who are corrupt to ignore the suffering that is inflicted by their actions on fellow humans.

It is clear that a combination of factors including, *inter alia*, political, economic, social, cultural and behavioural contribute to corrupt practices and ethical bankruptcy. Studies reveal that a lack of accountability and transparency is possibly the single most important factor contributing to widespread corruption. Among other factors that perpetuate corruption is low ethics and mortality in the public service. It has also been stated that public officials can be persuaded by both domestic and international private sectors to engage in corruption.

The inability of governments to monitor the integrity of public officials also owes much to a low level of public awareness of the nature and real costs of corruption, and to a high level of tolerance of corruption. The nature of public sector corruption appears to vary among countries. However, corruption encountered in the developing and transitional world is either grand or petty, with the latter regarded as causing little public outcry. In this type of corruption, public officials charge extras for

services, seek small favours, or use public facilities and equipment for their own marginal personal gain. Such actions are regarded as warning signs that governments should not provide unacceptably low salaries.

Grand corruption is not readily identifiable and is managed by powerful people in a country. Such corruption retards the economy significantly and benefits the minority at the expense of the many. It occurs in infrastructure projects and deals where special market advantages are sought or access to powerful positions is secured. Corruption analyses also attribute its existence to monopoly power, unrestricted discretion, and lack of accountability and transparency.

Corruption is known for being a damaging factor in the economic malaise, government performance, public resources and general morale in the public service in certain countries. It is also viewed as having a negative effect on administrative efficiency.

This chapter also reviewed the role of corruption in economic development by taking into account its different types and levels and their elements that are most critical for economic activities. When the environment of the country is corrupted, the confidence of the public in government tends to be undermined; wrong economic choices are engendered; the government's ability to implement policies are constrained, the poor are made to pay the price; and the government's strategy of private sector oriented growth is threatened. Countries with such environments lose much needed revenue and human talent for development, priorities for public policy are distorted, and scarce resources are shifted away from the public interest.

Authors view corruption as preventing the poor from participating in decision-making and development. Corruption also has a tendency of exacerbating inequality and poverty in a country by reducing the country's growth. Amongst the problems pointed out by the above review are biased tax systems favouring the rich and influential; lower social spending; unequal access to education; low investments in social programmes; interest-group lobbying; and increased investment risks for the poor.

People who observe that politicians and public officials are not prosecuted, and judges either ignore or get involved in corruption themselves, merely follow the example. When corruption grows rapidly, people finally accept it as a way of life. In the chapter that follows, characteristics of effective anti-corruption legislation and anti-corruption agencies will be reviewed.

CHAPTER 3

ANTI-CORRUPTION AGENCIES AND ANTI-CORRUPTION LEGISLATION

3.1 INTRODUCTION

The purpose of this chapter is to provide characteristics of effective anti-corruption legislation and anti-corruption agencies. Greater attention will be given to what anti-corruption legislation and anti-corruption agencies ought to be rather than the somewhat abstract study of corruption itself. It is structured in two main sections. The first section analyses a range of legislative avenues that can be followed in curbing corruption. The second section assesses the main features of effective anti-corruption agencies.

Since fighting corruption has become a key priority for a number of countries, initiatives have been taken towards achieving this goal. Such initiatives have multiplied through the inauguration of specific anti-corruption institutions or through watchdog organisations and anti-corruption legislation. These agencies and laws are meant to keep an “eye” on public ethics and to achieve levels of transparency, especially with regard to public sector decision-making.

The European Commission (2006:2) describes what is the overall objective of these efforts, namely to contribute to the prevention and control of corruption so that corruption no longer undermines the confidence of the public in the political and judicial system, democracy, the rule of law, and economic and social development.

Both comprehensive anti-corruption legislation and implementing this legislation are necessary to advance the rule of law and prevent corruption (American Bar Association: 2006: Online). Anti-corruption agencies are regarded as part of a number of strategies that can reduce corruption in a government (Heilbrunn, 2004:18).

It is, therefore, evident that countries worldwide have embarked on various anti-corruption initiatives. It is clear that anti-corruption agencies have been an integral part of these initiatives.

3.2 ANTI-CORRUPTION AGENCIES

Del Mar Landette (2002:3) writes that strategies to combat corruption are often led by independent anti-corruption agencies created specifically to spearhead the fight. Specialised and independent anti-corruption agencies present the advantage of being exclusively devoted to fighting corruption (Transparency International, 2000:41).

Heilbrunn (2004); Stapenhurst and Langseth (1997); Pope and Vogl (2000); Del Mar Landette (2002); Man-wai (2006); Jennett and Hodess (2007); Neumann (2005); Lincoln (2000); Camerer (1999) and Boone (2002) provide a compendium of features of effective anti-corruption agencies (ACAs). In addition, Stapenhurst and Langseth (1997) and Heilbrunn (2004) provide reasons why ACAs fail which also point in the same direction as to what an anti-corruption agency ought to be.

3.2.1 Features of Effective Anti-Corruption Agencies

Among characteristics that are identified by writers are political backing, adequately resourced, independent, educational and integrity. Other than sufficient monetary resources, a number of important requirements that can be identified for an anti-corruption agency to function effectively include sufficient staff and resources with specific knowledge and skills, special legislative powers, high level information sharing and co-ordination, and operational independence (Camerer, 1999:2).

According to Heilbrunn (2004:18), crucial elements of effective anti-corruption agencies include the independence of a commission, a clear reporting hierarchy, and commitment by the government to enact reforms that may be politically difficult. Staphenurst and Langseth (1997:324-325) argue that to operate successfully, an anti-corruption agency should possess the following:

- I. Committed political backing at the highest levels of government;
- II. Political and operational independence to investigate even the highest levels of government;
- III. Adequate powers of access to documentation and to question witnesses;
and
- IV. Leadership which is publicly perceived as being of the highest integrity.

As corrupt practices become even more sophisticated, conventional law enforcement agencies are less well placed to detect and prosecute corruption cases (TI, 2000:41-42). It is suggested that specialised and independent anti-corruption

agencies should have preventive and educational components, as well as the ability to gather intelligence, process complaints, and advise government and private agencies (TI, 2000:41-42). In addition to those highlighted by Stapenhurst and Langseth (1997:324-325), the TI Sourcebook (2000:96) also identifies the following two elements that an anti-corruption agency must possess to operate successfully:

- I. Adequate resources to undertake its mission; and
- II. User-friendly laws (including the criminalisation of 'illicit enrichment').

According to Heilbrunn (2004:14-15), strategies such as the independence of commissions need a clear reporting hierarchy that comprises executive officials, parliamentary authorities, and oversight committees; and governments must have a commitment to enact reforms that may be politically difficult. Given that prevention is always better than prosecution, a small investigative and monitoring unit with appropriate authority and political independence may be much better placed than other government agencies to ensure that effective preventive steps are identified and taken (Stapenhurst & Langseth, 1997:324). Heilbrunn (2004:14-15) further suggests that how a government is able to enact these strategies requires negotiations among key actors in the government, civil society and the media. The TI Sourcebook (2000:104) provides the following indicators for assessing anti-corruption agencies as integrity pillars:

- I. Are the appointing procedures for the head of the agency such as to ensure that he or she is competent, independent of the party in power, and likely to discharge the agency's duties without fear or favour?

- II. Once appointed, is the head of the agency independent from political control in the day- to-day conduct of the agency's affairs?
- III. Is the agency adequately resourced?
- IV. Do other staff enjoy independence from political interference in the discharge of their duties?
- V. Are there "no go" areas for investigators?
- VI. Are staff adequately trained?
- VII. Are staff adequately remunerated?
- VIII. Is the Office of the President or Prime Minister within the agency's jurisdiction? (If so, are the staff confident enough to exercise that jurisdiction should occasion arise?)
- IX. Are staff in sensitive areas subjected to random "integrity tests"?
- X. Are there arrangements to ensure that the agency itself cannot become a source of corruption?
- XI. Can the services of staff whose integrity has become doubtful be quickly dispensed with?
- XII. Is the agency accountable to the executive, the legislature, the courts and the public?

A prime challenge in many countries is to mobilise the necessary political will to establish such agencies (Pope & Vogl, 2000:6). In support of this statement, the Anti-Corruption Handbook (2005) states that while the approach taken in designing a successful national strategy will vary depending on a country's prevalent patterns and levels of corruption, as well as the political and economic systems currently in place, it is possible to say that anti-corruption strategies should be driven by political

will (Anti-Corruption Handbook, 2005:1). Participatory approaches to fighting corruption, and especially the importance of active involvement by civil society and the media, are now generally accepted as fundamental to any successful anti-corruption reform programme. However, political will is frequently the missing ingredient (Lincoln, 2000:41).

Del Mar Landette (2002:56) provides the following good practice guidelines:

- I. Clear, strong and enforceable legal framework. The basis for an effective anti-corruption agency is the support of a legal framework that clearly sets the scope of action of the agency; provides it with all the tools necessary to perform its functions effectively; and that can be enforced by the agency through the justice system.
- II. Independence and freedom of action. ACAs' independence of resources, structure and power should guarantee their freedom of action. In the case of Ecuador's Commission for the Civic Control of Corruption (CCCC), although it is free from political and bureaucratic interference and has the ability to hire and dismiss its staff, its independence is curtailed by the lack of power and limited resources. The power and independence of the agency could be expanded by allowing it to supplement its formal budget with proceeds from the sale of assets and properties of those found guilty of corrupt and illegal acts. This additional income could help to finance the recruitment and training of specialised prosecutors and to improve salaries and working conditions of the staff, and deter officers from becoming corrupt.

- III. “Four-Point” System for fighting corruption. A model similar to Hong Kong’s Independent Commission Against Corruption (ICAC) three-pronged approach should be followed by the commission, adding a fourth dimension, prosecution, making it a ‘four-point system’ where the concepts of education and prevention complement investigation and prosecution, making these four areas interdependent and supportive of each other.
- IV. Cooperation, community involvement and accountability. The CCCC must recognise that in the fight against corruption it cannot act alone, nor can it single-handedly eliminate corrupt behaviour. It must be the leader and key instrument of a national anti-corruption system, made up of all the government agencies that have the mandate to regulate public and private sector activities, together with private sector and civil society allies. Cooperation among these organisations is crucial for the success of the national anti-corruption strategy. In terms of community involvement and accountability, the CCCC’s model of having seven Commissioners responsible and accountable to each of the constituencies that elected them provides an innovative mechanism to involve civil society and to ensure public support for the anti-corruption agency’s work, as well as offering a strong accountability mechanism.

Analysts such as Pope and Vogl (2000); Stapenhurst and Langseth (1997); and Jennett and Hodess (2007:2) emphasise the importance of the procedures in which the ACA’s employees are dismissed and fired, and their integrity. From the outset, the shape and independence of a commission may well be determined by how the office holder is appointed or removed (Stapenhurst & Langseth, 1997:324). National

anti-corruption agencies should not be run by hand-picked supporters of politicians in power as such leaders could be deployed to intimidate political opponents (Pope & Vogl, 2000:8).

The challenge of making executive appointments to anti-corruption agencies is to ensure that persons of integrity are selected, that they enjoy independence from political (and private sector) interference, and that they are held to account for their actions (Jennett & Hodess, 2007:2).

If the appointing mechanism ensures consensus support for an appointee through parliament, rather than government, and an accountability mechanism exists outside government (for example, a parliamentary select committee on which all major parties are represented), the space for abuse for non-partisan activities can be minimised (Stapenhurst & Langseth, 1997:324). Furthermore, credibility and effectiveness depend on the exemplary behaviour of the anticorruption agency itself. It must act, and be seen to act, in conformity with international human rights norms. It must operate within the law and be accountable to the courts (Pope & Vogl, 2000:8).

Jennett and Hodess (2007:2) further provide a criterion for selecting appointees, that is, executive, non-executive and seconded personnel for anti-corruption agencies. Pope and Vogl (2000:8) add that appointment procedures need to address the issue of whether the proposed mechanism sufficiently insulates the process to ensure that persons of integrity are given the leadership and that they are protected from political pressures while they are in office. Comparative analysis of ACAs suggests

that more important than the status of an ACA's personnel in determining the probabilities of success or failure, are the following aspects:

- I. Integrity. Integrity of staff is crucial to the credibility and effectiveness of an ACA. Staff members at all levels should, therefore, undergo some form of integrity checks to minimise the risk of staff undermining the agency's role in curbing corruption. Some agencies have their own internal oversight body to investigate breaches of its code of conduct, or a body that monitors and reviews all complaints held against the ACA.
- II. Regulation of appointments and dismissals. The regulation of appointments and dismissals by the ACA of its non-executive staff without the interference of third parties is an important asset which helps determine the quality of personnel - since managers will be able to dismiss staff if they fail to live up to professional and/or moral expectations - and work in favour of the agency's independence, since it acts as a safeguard against undue influence over appointments by the political elite, as well as a protection of officers from political, economic or personal interference and pressures.
- III. Expertise and continuous training are essential if the highest professional standard of an ACA is to be maintained.
- IV. Adequate salary levels are necessary to maintain staff morale and to act as a disincentive to engagement in corrupt activities (Jennett & Hodess, 2007:2).

3.2.2 Reasons for Failure of Anti-Corruption Agencies

As stated earlier, some authors identify variables that determine the failure of ACAs. According to Pope and Vogl (2000:6), although anti-corruption agencies can be critical in preventing corruption before it becomes rampant, not only are they difficult to set up but they often fail to achieve their goals once they have been established.

ACAs are expected to:

- I. combat corruption in an independent, knowledge-based manner by developing a specialised repressive, preventive and educational/research capacity;
- II. overcome inadequacy of traditional law enforcement structures and processes and assume a leading role in implementing national anti-corruption strategies; and
- III. re-assure public opinion of the government's commitment to fight corruption.
(De Sousa, 2010:16).

Although according to Lo (2006:2), it is often said that the organisational uniqueness of the ICAC symbolises a success model for anti-corruption, De Sousa (2010:12) argues that there is no standardised model of what an ACA should look like. However, De Sousa (2010:12) acknowledges that relevant literature identifies the following series of requisites that need to be in place for a particular agency to be classified as an ACA:

- I. Distinctiveness from other enforcement agencies with competences in this domain. In relation to other law enforcers, ACAs are primarily or exclusively mandated to combat corruption;
- II. The development of preventive and/or repressive dimensions of control;
- III. Durability: it cannot have an occasional or perennial existence;
- IV. Powers to centralise information (collection, storage, processing, and diffusion; information hub);
- V. Articulation of initiatives undertaken by other control actors (interface);
- VI. Knowledge production and transfer (role of research, membership of and participation in international forums and networks);
- VII. Rule of law (checks-and-balances and accountability to sovereign authority);
and
- VIII. Existence, known by and accessible to the public at large.

When the above-mentioned authors identify requisites, some highlight variables that lead to the failure of ACAs. Pope and Vogl (2000:6), Heilbrunn (2004:14) and the TI Sourcebook (2000:95) underscore a number of these factors. According to the TI Sourcebook (2000:95), anti-corruption agencies fail owing to the following reasons:

- I. Weak political will – vested interests and other pressing concerns overwhelm the leadership;
- II. Lack of resources – there is a lack of appreciation for the cost-benefits of a “clean” administration and the fact that an effective agency needs proper funding;

- III. Political interference – the agency is not allowed to do its job independently, least of all to investigate officials at the higher and highest levels of government;
- IV. Fear of the consequences – a lack of commitment and a readiness to accommodate the *status quo* lead to agencies losing independence, resources, or both;
- V. Unrealistic expectations – fighting systemic corruption is a long-term exercise;
- VI. Excessive reliance on enforcement – the effective preventive capacities of the agencies are not fostered;
- VII. Overlooking the elimination of opportunities – relying on enforcement after the event, corruption levels continue unabated;
- VIII. Inadequate laws – without enforceable and effective laws, an agency is hamstrung;
- IX. Being overwhelmed by the past – a new agency, usually small and needing to settle in, can be overwhelmed by inheriting the total backlog of unfinished business from other enforcement agencies, crippling it from day one;
- X. Failure to win the involvement of the community, for example, a lack of public awareness campaigns;
- XI. Insufficient accountability – if the agency is not itself accountable in appropriate ways, it can become an agency for persecuting government critics;
- XII. Loss of morale – as people lose confidence in the agency, its staff lose morale; and
- XIII. The agency itself becomes corrupt.

Anti-corruption agencies may be so beholden to their political masters that they dare not investigate even the most corrupt government officials; they may lack the power to prosecute; and they may be poorly staffed (Pope & Vogl, 2000:6). Heilbrunn (2004:14) summarises key variables that might explain a failure to reduce corruption through the establishment of an anti-corruption agency as the absence of laws necessary for its success; a lack of independence from interference by the political leadership; an unclear reporting hierarchy; the absence of oversight committees, and the size of a country, either geographically or in terms of its population.

Heilbrunn (2004:15) explains variables that lead to the failure of anti-corruption agencies to reduce corruption as follows:

- I. The failure by many governments either to enforce existing laws or the commissions having no mandate to enforce laws;
- II. Interference by the political leadership;
- III. Monopolisation of information by the executive branch therefore eliminating any accountability from independent agencies; and
- IV. Non-existence of oversight committees that provide control over the ACA and protect it from any persecution of political opponents.

Anti-corruption agencies have proven to be successful in Hong Kong, Singapore and Botswana (Del Mar Landette, 2002:3). However, according to Man-wai (2006:198), the Hong Kong model in fighting corruption has been the most successful.

3.2.3 Hong Kong Independent Commission against Corruption

Heilbrunn (2004:3) differentiates among four types of anti-corruption commissions: first, the universal model with its investigative, preventative, and communicative functions.

“The universal model is typified by Hong Kong’s Independent Commission against Corruption (ICAC). Second, the investigative model is characterised by a small and centralised investigative commission as operates in Singapore’s Corrupt Practices Investigation Bureau (CPIB). Both the universal and investigative models are organisationally accountable to the executive. Third, the parliamentary model includes commissions that report to parliamentary committees and are independent from the executive and judicial branches of state. The parliamentary model is epitomised by the New South Wales Independent Commission against Corruption that takes a preventative approach to fighting corruption. Finally, the multi-agency model includes a number of offices that are individually distinct, but together weave a web of agencies to fight corruption” (Heilbrunn, 2004:3).

Hong Kong’s Independent Commission against Corruption (ICAC), Singapore’s Corrupt Practices Investigation Bureau (CPIB) and Botswana’s Directorate of Corruption and Economic Crimes (DCEC) possess common elements that contribute to their success, such as the following:

- I. A strong, enforceable legal framework;

- II. Independence of action, resources and staff, and the power to investigate and pursue corruption at the highest levels of government;
- III. Political and bureaucratic support, and the capacity to access information, witnesses and documentation; and
- IV. Community involvement and support, and adequate accountability mechanisms that involve civil society (Del Mar Landette, 2002:4).

The well-known successful anti-corruption agency, the Hong Kong ICAC, is said to consist of eleven components, that is, a three-pronged strategy; enforcement led; professional staff; an effective deterrence strategy; an effective prevention strategy; an effective education strategy; adequate law; a review mechanism; equal emphasis on public and private sector corruption; a partnership approach; a top political will; independence, and adequate resources. The table below illustrates and describes these components:

Table 3.1: Hong Kong Model

COMPONENT	DESCRIPTION
1. Three-pronged Strategy	The three-pronged approach adopted by the Hong Kong ICAC consists of deterrence, prevention and education. As a result, the Commission consists of three separate departments: the Operations Department to investigate corruption: the Corruption Prevention Department to examine the systems and procedures in the public sector, to identify corruption opportunities and to make recommendations to plug the loopholes; and the Community Relations department to educate the public against the evil of corruption and to enlist their support and partnership in fighting corruption.

<p>2. Enforcement led</p>	<p>The ICAC devotes over 70 per cent of its resources to the Operations Department, the reason being that any successful fight against corruption must start with effective enforcement on major targets, so as to demonstrate to the public the government's determination to fight corruption at all costs, as well as to demonstrate the effectiveness of the anti-corruption agencies.</p>
<p>3. Professional staff</p>	<p>Fighting corruption is a very difficult task, because one confronts people who are probably very intelligent, knowledgeable and powerful. Thus the corruption fighters must be very professional in their approach. The ICAC ensures that their staff members are professionals in their diverse responsibilities.</p>
<p>4. Effective deterrence strategy</p>	<p>The ICAC's strategy to ensure effective enforcement consists of the following components: i. An effective public complaint system to encourage reporting of corruption by members of the public and referrals from other institutions. ii. A quick response system to deal with complaints that require prompt action. iii. A zero tolerance policy. So long as there is reasonable suspicion, all reports of corruption, irrespective of whether they are serious or relatively minor in nature, will be properly investigated. iv. A review system to ensure all investigations are professionally and promptly investigated. v. Publication of any successful enforcement in the media to demonstrate effectiveness and to deter the corrupt.</p>
<p>5. Effective prevention strategy</p>	<p>The corruption prevention strategy reduces the corruption opportunities in government departments and public institutions, through an enhanced system control; enhanced staff integrity; streamlined procedures; proper supervisory checks and control; efficiency, transparency</p>

6. Effective education strategy

and accountability; and promoting a staff code of ethics.

The ICAC has a wide range of education strategies in order to enlist the support of the entire community in a partnership to fight corruption. It includes: i. Media publicity to ensure effective enforcement cases are well publicised, through press releases, media conferences and interviews, as well as the making of a television drama series based on successful cases. ii. Media education – the use of mass media commercials to encourage the public to report corruption; to promote public awareness of the evils of corruption and the need for a fair and just society, and as a deterrence to the corrupt. iii. School ethics education programme, starting in kindergarten up to university level. iv. Establishing an ICAC Club to accept members who wish to perform voluntary work for the ICAC in community education. v. Corruption prevention talks and ethics development seminars for public servants and business sectors. vi. Issuing corruption prevention best practices and guidelines. vii. In partnership with the business sector, setting up an Ethics Development Centre as a resource centre for the promotion of a staff code of ethics. viii. Organising exhibitions, fairs, television variety shows to spread the message of a clean society. ix. Wide use of websites for publicity and reference, youth education and ethics development

7. Adequate law

Hong Kong has comprehensive legislation to deal with corruption. In terms of offences, apart from the normal bribery offences, it created two unique offences: 1. Offence for any civil servant to accept gifts, loans, discounts and passage, even if there are no related corrupt dealings, unless specific permission is given. 2. Offence for any civil servant to be in possession of

	<p>assets disproportionate to his or her official income; or living above his or her means. On investigative power, apart from the normal police power of search, arrest and detention, the ICAC has the power to check bank accounts, require witnesses to answer questions on oath, restrain properties suspected to be derived from corruption, and hold the suspects' travel documents to prevent them from fleeing the jurisdiction. Not only are they empowered to investigate corruption offences, both in the government and private sectors, they can investigate all crimes which are connected with corruption.</p>
<p>8. Review mechanism</p>	<p>With the provision of wide investigative power, there is an elaborate checks and balance system to prevent abuse of such wide power. One unique feature is the Operations Review Committee. It is a high-powered committee, with the majority of its members from the private sector, appointed by the Chief Executive. The Committee reviews each report of corruption and investigation to ensure all complaints are properly dealt with and there is no 'whitewashing'. It publishes an annual report to be tabled before the legislature for debate, thus ensuring public transparency and accountability. In addition, there is an independent Complaint Committee where members of the public can lodge any complaint against the ICAC and/or its officers and there will be an independent investigation. It also publishes an annual report to be tabled before the legislature.</p>
<p>9. Equal emphasis on public & private sector</p>	<p>Hong Kong is one of the earliest jurisdictions to criminalise private sector corruption. The ICAC places equal emphasis on public and private sector corruption. The rationale is that there should be no double standards</p>

corruption	<p>in society. Private sector corruption can cause as much damage to society, if not more, than public sector corruption. Serious corruption in financial institutions can cause market instability. Effective enforcement against private sector corruption can be seen as a safeguard for foreign investment and ensures that Hong Kong maintains a high level of integrity in its business environment.</p>
10. Partnership approach	<p>One cannot rely on a single agency to fight corruption. Each member of the community and each institution has a role to play. The ICAC adopts a partnership approach to mobilise all sectors to fight corruption together. The key strategic partners of ICAC include: 1. Civil Service Commission 2. All government departments 3. Business community 4. Professional bodies 5. Civic societies and community organisations 6. Educational institutions 7. Mass media 8. International networking</p>
11. Top political will, independence and adequate resources	<p>In Hong Kong there is clearly a top political will to eradicate corruption which enables the ICAC to be a truly independent agency. The ICAC is directly responsible to the very top, who is the Chief Executive of Hong Kong. This ensures that the ICAC is free from any interference in conducting their investigations. The strong political support was translated into financial support. The ICAC is probably one of the most expensive anti-corruption agencies in the world! In 2002, its annual budget amounted to US\$90M, about US\$15 per capita. One may wish to multiply this figure with one's own country's population and calculate the anti-corruption budget that needs to be given to the equivalent of Hong Kong's! However, looking at the ICAC budget from another angle – it represents only 0.3 per cent of the entire government budget or 0.05 per cent of Hong Kong Gross Domestic</p>

Product (GDP). One may infer that such a small 'premium' is a worthwhile investment for a clean society (Man-wai, 2006:196-201).

Source: (Man-wai, 2006:196-201)

Hong Kong's experience proved that given a top political will, a dedicated anti-corruption agency and a correct strategy, even the most corrupt country like Hong Kong can be transformed into a clean society (Man-wai, 2006: 201).

3.2.4 State of Anti-Corruption Agencies in South Africa

South Africa has adapted the Multi-Agency Model as used by the United States of America and most of Western Europe, which involves putting measures in place to address gaps, weaknesses, and new opportunities for corruption (Meagher & Volland, 2006:20). According to Boone (2002:43), the presence in South Africa of no fewer than 12 agencies which have anti-corruption as part of their mandate is proof, if it were needed, that there is strong political will to tackle corruption and that resources are being made available. One would infer that it is unnecessary to have a number of agencies working towards the same goal. In a developing country such as South Africa available resources would better be utilised optimally by one agency towards strengthening its functionality in promoting anti-corruption strategies.

The Public Service Anti-Corruption Strategy (2002:14) states that of the 12 agencies, only the Special Investigating Unit (SIU) has an exclusive (albeit narrow) anti-corruption mandate and none of the existing mandates promote a holistic approach to fighting corruption. The Public Service Anti-Corruption Strategy

(2002:14) further argues that this situation of fragmentation, insufficient coordination, poor delineation of responsibility and assimilation of corruption work into a broader mandate directly affects the resourcing and optimal functioning of these agencies.

To address this situation the following actions are recommended:

- I. A clear definition of the roles, powers and responsibilities of the twelve agencies in order to increase their efficiency, including the allocation of new roles to negate deficiencies in areas of focus and to promote a holistic and integrated approach;
- II. Establishment of formal coordinating and integrating mechanisms within the national executive and between departments and agencies involved in anti-corruption work. Coordination at the level of departments and agencies must be regulated by a protocol and this mechanism must be accountable to the national executive through the governance and administration structures;
- III. Well defined accountability arrangements for all the institutions (departments and agencies); and
- IV. Increased institutional capacity of institutions (departments and agencies), in particular the competencies of employees, and a focus on prevention (Department of Public Service and Administration, 2002:14).

Echoing the same sentiments of the Department of Public Service and Administration above, Boone (2002:43) writes that as a number of representatives involved in the South African campaign have noted, the sheer number of agencies makes an integrated national approach to the problem difficult. Writers such as Heilbrunn (2004:3), Del Mar Landette (2002:4) and Man-wai (2006:196-201), as

shown above in section 3.2.3, are in favour of the Hong Kong ICAC model, which is a typical example of a single anti-corruption agency.

3.2.5 Single Anti-Corruption Agency Approach

Hong Kong, through the Independent Commission against Corruption (ICAC), has provided the standard for powerful, centralised anti-corruption agencies (Meagher & Volland, 2006:10). The issue of having one anti-corruption agency in South Africa has been debated by a number of researchers, including Meagher and Volland (2006), Camerer (1999), and the Public Service Commission (2001). There have been conflicting opinions. For some, the question is whether South Africa can afford a single agency approach to fighting corruption while others recommend that the country should establish such an agency.

While some support the idea of establishing a single anti-corruption agency in South Africa, real concerns exist about its location, funding and mandate (Public Service Commission, 2001:5). The Public Service Commission (2001:5) argues that a single agency should not be encouraged because the current mechanisms are not functioning optimally; it is important to establish whether existing agencies can be restructured and transformed before planning the establishment of a new body; and risks involved in establishing a new single agency include the addition of another layer of bureaucracy to the law enforcement sector and the diversion of already scarce resources from existing agencies and other government priorities. However, according to Camerer (1999:11), in the light of the criteria which underlie effective anti-corruption agencies, a number of conclusions can be drawn in relation to the relative success of both the Hong Kong and South African case studies in fighting

corruption (Camerer, 1999:11). Camerer (1999:11) indicates that criminal investigations are central to the ICAC's mandate; activities are supported by a well-resourced police force and criminal justice system and that it acts within a 'supportive' political environment, while in South Africa tension exists when it comes to institutional capacity to deal with corruption; and owing to a lack of support by a sympathetic context to corruption reform or an effectively functioning criminal justice system, the weaknesses in the system become apparent. The first key variable that might explain a failure to reduce corruption through the establishment of an anti-corruption agency is the absence of legislation necessary for its success (Heilbrunn, 2004:15).

It can be deduced that anti-corruption agencies are meant to spearhead the fight against corruption. However, there is evidence that for ACAs to be able to serve this purpose there are characteristics they cannot do without. A number of such features have been presented by a preponderance of literature.

The literature provides reasons why such agencies fail. Various types of anti-corruption agencies are identified as well as identifying which operate better than others and writers agree that as an anti-corruption agency the Hong Kong ICAC is the best in the world. It has been established that the success of anti-corruption agencies also hinges on effective anti-corruption legislation.

The situation regarding anti-corruption agencies in the country has proved not to be based on the studied literature. The level of South African anti-corruption agencies' successes has been limited, attributing that to weaknesses such as fragmentation,

insufficient coordination, poor delineation of responsibility, and assimilation of corruption work into a broader mandate. Ways of addressing shortcomings identified include a clear definition of the roles, powers and responsibilities of ACAs in order to increase their efficiency; establishment of formal coordinating and integrating mechanisms within the national executive and between departments and agencies involved in anti-corruption work; well-defined accountability arrangements for all the institutions (departments and agencies); increased institutional capacity of institutions (departments and agencies), in particular the competencies of employees, and a focus on prevention and/or establishment of an anti-corruption agency.

3.3 ANTI-CORRUPTION LEGISLATION

According to the World Bank (2001:1), having anti-corruption legislation in place is an obvious first step when embarking on an anti-corruption programme. Authors such as Heilbrunn (2004), Messick and Kleinfeld (2001), Del Mar Landette (2002), Theobald (1990), Kaplow (1992), Mollah and Uddin, (2002) and others, including organisations such as Transparency International, the World Bank, United States Agency for International Development (USAID), and the DPSA have identified key factors that determine the effectiveness of anti-corruption legislation.

Mollah and Uddin (2002:23) argue that while a well-functioning, competent and clean judiciary is the key to upholding the rule of law on a day-to-day basis, anti-corruption laws turn out to be an effective means of an anti-corruption strategy. According to Messick and Kleinfeld (2001:1), achieving objectives such as informed

and vigilant citizenry, and government employees imbued with a service ethic takes time, while enacting an anti-corruption law is a relatively speedy and inexpensive way to address the problem.

3.3.1 Elements of Effective Anti-Corruption Legislation

The above-mentioned authors identify other characteristics such as detection, investigation and prosecution of cases, and punishment, prevention and enforcement aspects as imperative for effective anti-corruption laws. Del Mar Landette (2002:23) highlights specific anti-corruption legislation that defines public standards of behaviour and their enforcement through investigation and prosecution as a requirement while Messick and Kleinfeld (2001), Mollah and Uddin (2002), and Hin (2011) emphasise the prevention of corruption.

Messick and Kleinfeld (2001:1) states that an obvious first step is to ensure that laws are in place to deter corruption. Prevention is regarded as better than cure. According to the DPSA Report (2006:22), the costs of preventing corruption are far less than investigating it, holding disciplinary inquiries, and taking cases to court. In Singapore the principal law is the Prevention of Corruption Act which governs the primary offences of corruption and the powers of the enforcement agency (Hin, 2011: 124). The World Bank Group (2007:3) explains that anti-corruption laws work to deter corrupt actions, prosecute corruptors and resurrect a sense of justice. However, Transparency International (2007: Online) argues that although it is widely recognised that the prevention of corruption should be at the forefront of reform

efforts, effective detection and punishment through relevant anti-corruption laws and proceedings is equally important.

Mollah and Uddin (2002:23) add that anti-corruption laws work to resurrect a sense of justice which has become a rare commodity in endemically corrupt countries, while the USAID Handbook (2002:11) promotes the application of sanctions to corrupt acts as an important step towards establishing accountability. The World Bank (2001:1) supports this notion and argues that laws that punish bribery and other forms of corruption have proliferated throughout the developing world (World Bank, 2001:1).

Messick and Kleinfeld (2001:2) identify three aspects of effective anti-corruption law. Anti-corruption laws should contain bright-line rules, be tailored to enforcement capacity, and be supported by complementary measures. The World Bank (2001: 2-3) advises that countries with weak enforcement institutions should consider including the following bright-line rules in their anti-corruption laws:

- I. No government employee may receive any gift, payment, or anything of value in excess of a small sum from anyone who is not a member of that person's immediate family.
- II. No employee may hold, directly or indirectly (that is, through family or other agents), an interest in a corporation or other entity affected by that employee's decision.
- III. Every year all employees above a certain pay level must publicly disclose all assets they hold directly or indirectly.

- IV. No employee may hire a relative (with a precise specification on how distant a relation must be before he or she is a 'relative').
- V. All employees must disclose any relationship with people hired and with firms or entities to which they award a contract or concession. (Since in many countries the pool of talented workers and qualified firms is small, this rule leaves decisions about 'corruption' to public opinion.)

Those who formulate anti-corruption legislation need to ensure clarity and non-ambiguity of the law: that it is simple to apply, and that it demands little or no judgment in determining its applicability (Messick & Kleinfeld, 2001:2). Laws written this way are said to contain "bright-line rules" and are contrasted with those containing standards that are open to interpretation by enforcement agencies (Kaplow, 1992:557–629). When drafting such acts, the instinct is to list every activity that can conceivably be considered corrupt, and to avoid deliberate misinterpretation, as people are creative in finding ways to enrich themselves or their friends and family at the public's expense (World Bank, 2001:1).

According to Messick and Kleinfeld (2002:2), bright-line rules are easy to understand, simple to apply, and demand little or no judgment in determining their applicability. This statement is supported by Kaplow (1992:557-629) who states that such laws are contrasted with those which contain standards that are open to interpretation by enforcement agencies. The World Bank (2001:1-2) is also against broadly drawn provisions that set out a general standard such as the provision found in the laws of several nations making the "abuse of public office for private gain" a crime.

Sanctions are centred on legislation that criminalises corruption (USAID, 2002:11). The aim of imposing stiff penalties is to make corruption a high-risk activity. Adequate anti-corruption legislation should, apart from the normal bribery offences, create two unique offences:

- I. An offence for any civil servant to accept gifts, loans, discounts and passage, even if there are no related corrupt dealings, unless specific permission is given.
- II. An offence for any civil servant to be in possession of assets disproportionate to his/her official income; or living above his or her means (Man-wai, 2006:200).

The World Bank Group (2007:1) provides the following considerations that should be taken into account when creating anti-corruption laws:

- I. The laws should match the enforcement capacity of the country's institutions. Since the level of integrity and capacity will be rather low in most countries where corruption is rampant, a law should be easy to understand and unequivocal in its applicability.
- II. Bright-line rules should be introduced: they are easy to understand and apply but come at the cost of reduced flexibility. Examples include a ban on the hiring of relatives or friends regardless of qualification and a ban on receiving any gift in excess of a small set value or a mandatory declaration of assets.

Having reviewed anti-corruption legislation in 21 countries, (Australia, Bangladesh, Cambodia, the Cook Islands, Fiji Islands, Hong Kong, China, India, Indonesia, Japan, the Republic of Kazakhstan, the Republic of Korea, the Kyrgyz Republic, Malaysia, Mongolia, Nepal, Pakistan, Papua New Guinea, the Philippines, Samoa, Singapore and Vanuatu), Chêne (2010:7) concludes that good practice examples of anti-corruption laws have been developed in Singapore, Hong Kong and, to some extent, in Malaysia.

Chêne (2010:7) identifies the following highlights about each country's legislation: Singapore's Prevention of Corruption Act (PCA) was enacted in 1960. The law explicitly defines corruption in terms of various forms of "gratification" and combines extensive prevention measures with severe sanctions and penalties. Hong Kong's Prevention of Bribery Ordinance 1970 (POBO) is a comprehensive piece of legislation that covers all types of bribery, both in the public and the private sectors, and Malaysia's Anti-Corruption Act 1997 provides for offences and penalties for private and public sector corruption, including active and passive bribery, attempted corruption and abuse of office, corruption through agents and intermediaries, corruption in public procurement and electoral corruption.

3.3.2 Enforceability of Legislation

Having tough laws is no guarantee that there is effective enforcement (Hean, 2010:151). Supporting this view, Del Mar Landette (2002:25) states that regardless of how well-written and well-intentioned anti-corruption laws are, they are completely ineffective without enforcement, making it essential that civil and criminal laws are

used consistently to enforce and penalise corrupt activities. If there are tough laws but lax enforcement, corruption will still flourish because the corrupt escape detection and investigation (Hean, 2010:151).

Stapenhurst and Kpundeh (1999:101) point out that independent enforcement mechanisms should be implemented to increase the likelihood of corruption being detected and punished. The law must define what constitutes corrupt offences, and their punishment, and identify the powers of enforcement against them (Hin, 2011: 124). Stapenhurst and Kpundeh (1999:101) suggest that investigators, prosecutors, and adjudicators must be able to perform their professional duties in a transparent independent fashion and enforce the rule of law against all who breach it, whatever their positions (thus depoliticising law enforcement).

Theobald (1990:85) and Del Mar Landette (2004:25) further underscore the issue of de-politicisation of anti-corruption legislation enforcement as another factor that contributes towards its effectiveness. According to Theobald (1990:85), the experience of many developing countries, including Nigeria, suggests that the main weakness of legal reforms and instruments in combating corruption is that they ultimately depend on the will and perseverance of political leaders. Where political power is used to shield corrupt activities of family, friends or political supporters, no laws, codes or punishment will have an impact on corruption (Del Mar Landette, 2004:25). Moreover, the employees of implementing institutions are often easily manipulated for political purposes (The World Bank, 2001:1-2). World Bank surveys have found the police and other enforcement agencies to be some of the most corrupt and least trusted government agencies (The World Bank, 2001:1-2).

Hean (2010:150) asserts that enforcement of such laws is vital as corruption offences are particularly difficult to deal with. Corrupt practices are consensual in nature, with both the giver and the taker motivated by mutual interests (Lian, 2008:4). Unlike general crime where there is a victim who reveals what happened, in corruption offences both the giver and the receiver are guilty parties who have the motivation to hide and not tell the truth, which makes investigation and evidence-gathering more challenging (Hean, 2010:150). Effective laws are enforcement-friendly laws that provide the necessary authority which is particularly necessary because corrupt practices, by their very nature, make the eventual conviction in a court of law difficult (Lian, 2008:6).

The World Bank (2001:1-2) further suggests questions that should be asked by those who draft anti-corruption legislation: They are as follows:

- I. What is the capacity of the institutions that will enforce the law? Are the police, prosecutors, courts, and other enforcement agencies staffed by honest, technically competent professionals?
- II. Are they independent of the executive in theory?
- III. Are they independent of the executive in practice?
- IV. To whom, and in what ways, are they accountable?

3.3.3 Complementary Measures

Statutes outlawing bribery, nepotism, and other corrupt acts should be complemented by laws that help bring corruption to light (The World Bank, 2001:3).

The World Bank Group (2007), the TI Source Book (2000) and Mollah and Uddin

(2002) are in agreement that legislation supporting the transition towards a corruption-free society includes a freedom of information law, a whistleblower protection law, conflict of interest laws, procurement laws, and party financing laws. To this list the World Bank (2001:3) adds media freedom.

The entire legislative anti-corruption framework should be supplemented with laws such as the following:

- I. Criminal laws including the relevant offences; elements of criminal procedure; laws governing the liability of public officials, as well as laws governing the tracing and seizure of the proceeds of corruption and, where applicable, other property used to commit, or in connection with, such offences;
- II. Elements treated as regulatory or administrative law by most countries, including relevant public service standards and practices and regulations governing key functions;
- III. Legislation governing court procedures and the substantive and procedural rules governing the use of civil litigation as a means of seeking redress for malfeasance or negligence attributable to corruption; and
- IV. Any area of professional practice governed by established rules, whether enacted by the state or adopted by the profession itself, may also be open to internal or external review (United Nations, 2004:76).

Anti-corruption legislation should also work with existing civil service rules, regulations and codes of conduct by clarifying and increasing the effectiveness of these legal instruments (Del Mar Landette, 2002:23). Anti-corruption laws generally

encompass a variety of statutes that prohibit bribery, nepotism, conflicts of interest, and favouritism in the awarding of contracts or the provision of government benefits (The World Bank, 2001:1). Anti-corruption legislation should work with existing civil service rules, regulations and codes of conduct by clarifying and increasing the effectiveness of these legal instruments (OECD, 1999:15).

The Handbook on Fighting Corruption (1999:9) avows that freedom of information legislation improves accountability by enhancing the transparency of financial management systems and audit government operations; counteracts official secret acts and claims of national security that impede corruption inquiries; requires government to disclose information about its activities at the request of any citizen and can be used by watchdog groups to monitor government behaviour; and informs citizens of the procedures for government service, curtailing attempts to subvert the system or to demand gratuities for information that legally should be public. To fight corruption, many governments have passed laws designed to increase transparency in government services (Hanna, Bishop, Scheffler & Durlacher, 2011:13).

Freedom of information laws, whereby citizens can demand the disclosure of information regarding government activities and a whistleblower protection law in order to encourage the reporting of corruption cases can further reinforce the impact of increased transparency on accountability (Kameswari, 2006:30). In recent years, several countries have adopted whistleblower protection laws which encourage government employees to reveal, without fear of retaliation, corrupt acts uncovered in the course of their work. A whistleblower protection encourages the reporting of corruption cases (World Bank Group, 2007:1).

Each of the provisions of whistleblower protection legislation should be designed with one or more of the following objectives in mind:

- I. protection of whistleblowers;
- II. ensuring that disclosures are properly dealt with;
- III. protection from exposure of identity;
- IV. protection from detrimental/reprisal action;
- V. protection from liability (for example, from any criminal or civil liability arising out of the disclosure); and
- VI. redress for detriment or reprisal (for example, damages in tort or compensation) (Sinha, 1994:131).

The experience of many developing countries suggests that the main weakness of legal reforms and instruments in combating corruption is that they ultimately depend on the will and perseverance of political leaders (Theobald, 1990:85). Where political power is used to shield corrupt activities of family, friends or political supporters, no laws, codes or punishment will have an impact on corruption (Del Mar Landette, 2002:23).

Sinha (1994:131) states that public procurement is the most common procedure where corruption occurs. A lack of transparency in the management of state resources, in budgetary processes and resources allocation facilitates the possibility for corrupt activities (Del Mar Landette, 2002:23). Therefore, reforms in this area are geared at improving financial management systems to serve as tools for preventing, discovering and punishing fraudulent operations (Del Mar Landette, 2002:23).

The Asian Development Bank (2006:26-27) suggests that the comprehensive legislation for public procurement as a central precondition of clear, transparent and fair public procurement should be considered to increase the effectiveness of the legal and institutional frameworks for curbing corruption. Effective financial management systems set clear responsibilities for managing resources, and facilitate the audit of expenditures, reducing the opportunities for the unofficial use of resources (Del Mar Landette, 2002:23).

Kameswari (2006:30) advises that disclosures should be made at the time of the bidding and again within six months of the completion or abandonment of a contract. Competitive procurement removes personal discretion from the selection of government suppliers and contractors by prescribing an open bidding process, thereby guarding against corruption (USAID, 2002:36-37). The consolidation and standardisation of multiple government agency rules into a single public sector procurement code can help to execute procurement decisions in an efficient, fair, impartial, transparent and accountable manner, and can also facilitate the detection and punishment of corrupt actions (Del Mar Landette, 2002:23).

If effective, procurement laws can act both as an important deterrent to corruption and as a contribution to an environment in which further remedies can be developed (World Bank Group, 2007:1). The OECD Report (2004:1) stresses that there is a need for developing a comprehensive, integrated and multi-disciplinary approach that includes measures from raising awareness and prevention to effective sanctioning of corruption in public procurement.

Anti-money laundering regulations also contribute towards curbing fraudulent practices (Mollah & Uddin, 2002:23). The UN Anti-Corruption Toolkit, (2004:429) affirms that money-laundering statutes can contribute significantly in the detection of corruption and related offences by providing the basis for financial investigations. Banking secrecy laws are also a serious obstacle to successful corruption investigations.

Besides known criminal acts that are involved in corruption, the Global Programme against Corruption (2004:429) identifies other behaviours that are worth sanctioning by means of criminal or administrative law. These are the following:

- I. Favouritism and nepotism;
- II. Conflicts of interest;
- III. Contributions to political parties;
- IV. Creation of slush funds;
- V. The accumulation of assets 'off the books' with the purpose of using such funds to pay bribes; and
- VI. Possession of unexplained wealth by introducing offences that penalise any (former) public servants who are, or have been, maintaining a standard of living or holding pecuniary resources or property that are significantly disproportionate to their present or past known legal income and who are unable to produce a satisfactory explanation.

Jayawickrama, Pope and Stolpe (2002:24) point out additional measures that are needed to complement anti-corruption laws such as providing for more innovative evidence-gathering procedures, such as integrity testing; amnesty regulations for

those involved in the corrupt transaction; and the abolition and/or limiting of enhanced banking .Effective implementation of mutual legal assistance instruments and legislation is not possible without personnel who are well-trained with respect to the applicable laws, principles and practices (United Nations, 2004:562).

While many measures can be implemented without laws, many major or fundamental changes require a basis in national constitutions or statute law such as the following:

- I. Basic judicial independence and separation-of-powers safeguards;
- II. Basic human rights such as the freedoms of association and expression;
- III. Rules to protect the independence of key groups such as the media; and
- IV. The creation of independent anti-corruption institutions (United Nations, 2004:296).

3.3.4 State of Anti-Corruption Legislation in South Africa

The United Nations (2003), Godi (2007), the Gauteng Anti-Corruption Strategic Framework (2009), Chêne, (2010) and Woods (2011) all commend South Africa for having a relatively sophisticated and comprehensive legal framework which deals with corruption, transparency in procurement, and financial management. However, the above authors also identify flaws in these laws when assessing their effectiveness, while several provide measures of how to mitigate these failures.

According to the United Nations Office on Drugs and Crime (2003:6), South Africa has unique legislation which empowers the general public to require information

from the public sector (and to a lesser extent from the private sector) and to challenge administrative decisions. The United Nations Office on Drugs and Crime (2003:6) further expounds the fact that these laws greatly enhance transparency and contribute to clean government, and provide state-of-the-art protection to whistle-blowers in a workplace. The Gauteng Anti-Corruption Strategic Framework (2009:8) argues that the elements of an effective anti-corruption framework exist in South Africa and in Gauteng.

The existing South African anti-corruption legislative framework is stable (DPSA, 2002:12). However, it is fragmented; there are capacity constraints in complying with it. It has proven to be ineffective; since the common law crime of bribery was repealed by this Act, prosecution of bribery cases has been insignificant. There are serious weaknesses and shortcomings in the capacity and will of public sector bodies to implement and to comply with the laws and there are overlapping mandates which affect the law enforcement agencies and the constitutionally created bodies (United Nations, 2003:6).

According to Godi (2007:6), the public sector has uneven capacity to enforce and comply with the legislation; the courts are overloaded and struggle to retain experienced prosecutors; and the legislative mandates of some law enforcement and other agencies overlap. These laws do not function optimally and are not effectively adhered to; South Africa continues to rank amongst the highest in terms of levels of corruption and perceptions of corruption; and there are inefficiencies within and between institutions with anti-corruption mandates, a lack of effective follow-up on complaints of corruption, inefficient application of disciplinary systems,

underdeveloped management capacity in some areas and societal attitudes which weaken anti-corruption efforts (Gauteng Provincial Government, 2009:8).

Regarding the effectiveness of this law-directed anti-corruption approach, every indication has been that corruption, particularly in the public sector, continues to escalate and has now reached the point where South Africa is widely perceived as having one of the highest levels of public sector corruption in the world (Woods, 2011:1). Woods (2011:5) attributes this failure to poor management which results in weak application of laws and regulations, and subsequently deteriorating application of internal systems which, in turn, leads to opportunities for corruption.

The DPSCA (2002:12) recommends that review and consolidation to improve its efficiency is required. In particular, the process of review and consolidation must focus on the following:

- I. Establishing a workable legal definition of corruption;
- II. Extending the scope of legislation to all officials in public bodies, corruptors and their agents;
- III. Reinstating the common law offence of bribery;
- IV. Creating presumption of prima facie proof to facilitate prosecution of an offence under the revised legislation;
- V. Establishing extra-territorial application and jurisdiction, and compliance with international conventions to which South Africa is a signatory;

- VI. Improving the civil and recovery elements of the legislative framework, in particular tax legislation that prohibits rebates related to bribes, the applicability of Sections 297 and 300 of the Criminal Procedure Act, recovery of losses in terms of the Public Finance Management Act of 2003, prevention of organised crime, recovery from pension provisions, freezing of assets and return of assets to institutions that incurred losses;
- VII. Enabling the State and individuals to claim for damages;
- VIII. Prohibiting corrupt individuals from further employment in the public sector as well as prohibit corrupt businesses (including principals and directors of such businesses) from gaining contracts funded from state revenue;
- IX. Regulating post-public service employment;
- X. Establishing responsibility for maintaining the witness protection system; and
- XI. Making legislation easy to understand and apply in terms of the public service anticorruption strategy (DPSA, 2002:12-13).

The United Nations (2003:6) recommends that proper legislative changes are needed to better define the mandates and facilitate co-ordination in the fight against corruption; legislative efforts are needed to provide for the inclusion of certain corporate governance measures; and finally, promulgation of adequate legislation and regulatory mechanisms for the private funding of the political parties and political campaigns is needed. Godi (2007:6) suggests that this failure should be resolved by

organisational and structural means, clarification of roles, and improved co-operation and co-ordination.

DPSA (2002) suggests that South Africa's anti-corruption legislation should establish the following offences and obligations:

- I. Offences of accepting undue gratification; giving undue gratification; accepting or giving undue gratification by or to an agent; fraudulent acquisition of private interest; using office or position for undue gratification; dealing with, using, holding, receiving or concealing gratification in relation to any offence; and offences in respect of tenders as well as attempt, conspiracy, preparation and abetting;
- II. Offences related to bribery of public officers, foreign public officials, bribery in relation to auctions, and bribery for giving assistance, in regard to contracts;
- III. Corruption of witnesses and deliberate frustration of investigations;
- IV. Possession of unexplained wealth; and
- V. The obligation to report corrupt transactions (DPSA, 2002:13).

It is clear that among characteristics that make anti-corruption legislation successful are detection, investigation and prosecution of cases, and punishment, prevention and enforcement aspects as being imperative for the effectiveness of anti-corruption laws. While having anti-corruption legislation in place has proven to be an apparent first step, it has been revealed that there are other complementary measures that are needed, such as informed citizens; a need to foster and sustain high levels of professional and ethically imbued civil servants; and legislation that supports the

transition towards a corruption-free society. Such measures should include a freedom of information law; a whistleblower protection law; conflict of interest laws, procurement laws, and party financing laws. For laws to be effective they need to be enforceable.

It has been established that effective implementation and enforcement of legislation is a critical step in efforts to achieve their effectiveness; as well the capacity of the institutions that will enforce the law; the honest and technical competency of the police, prosecutors, courts, and other enforcement agencies professionals; the independence of the executive in theory and in practice, and accountability of the executive (to whom and how). A literature examination of the *status quo* with regard to anti-corruption legislation in South Africa has revealed that it has not been successful, highlighting additional Acts that need to be regarded as offences by legislation itself.

3.4 THE COUNTRY'S PROGRESS IN THE FIGHT AGAINST CORRUPTION

In Chapter 1 pieces of legislation passed and anticorruption agencies established to support the government's fight against corruption were mentioned. Other significant strides that the government has made include the following:

- I. Reformed management practices, including appointment and disciplinary procedures;
- II. Instituted financial disclosure requirements and performance systems for managers in the public service;

- III. Established a new, fair and transparent supply chain management system to prevent corruption in procurement;
- IV. Introduced a Public Service National Anti-Corruption Hotline System;
and
- V. Instituted stringent financial management, risk management and fraud prevention requirements for public bodies.

A National Anti-Corruption Strategy was also formulated. As part of its implementation, in September 2003 the Cabinet decided to require all public service departments and entities to have a minimum level of anti-corruption capacity (Department of Public Service and Administration, 2006:7). In 2006, Guidelines for Implementing the Minimum Anti-Corruption Capacity Requirement in Departments and Organisational Components in the Public Service were developed.

Notwithstanding all the above-mentioned measures, according to the National Planning Commission, (2011:401) evidence gathered by the commission indicates that South Africa suffers from high levels of corruption that undermine the rule of law and hinder the state's ability to effect development and socio-economic transformation. Research from the Transparency International's Corruption Perception Index indicates that South Africa has fallen from a respectable 34th place in world rankings in 2000, to 64th place in 2011 (Corporate Governance Framework Research Institute 2012:42).

Echoing the same sentiments, Cronin (2012:1) states that, the challenges of corruption have escalated significantly in South Africa over the past decade

threatening democratic achievements, undermining the capacity of the state to advance socio-economic transformation, and eroding the solidarity culture that once underpinned the broad-based anti-apartheid struggle.

The National Planning Commission (2011:401) refers to it as the twin challenges of corruption and lack of accountability in our society which require a resilient system consisting of political will, sound institutions, a solid legal foundation and an active citizenry that is empowered to hold public officials accountable. Emphasising the aspect of accountability, Mary Robinson's speech delivered to the Nelson Mandela Annual Lecture covered the following:

"In the context of ideas of freedom and democracy, of citizenship and common purpose, inherent in the concept of truth is the need for transparency and accountability in government action. In order for citizens to remain the stewards of democracy, issues of accountability and transparency in governance are key. It is therefore with great concern that I have followed the progress of South Africa's "Protection of State Information" legislation – knowingly styled by its detractors as the "Secrecy Act". Perhaps it is not my place to pronounce on the levels of corruption at play in today's South Africa. But, from my experience as a human rights lawyer, I can give you a certainty: if you enact a law that cloaks the workings of state actors, that interferes with press freedom to investigate corruption, that stifles efforts by whistleblowers to expose corruption, you are sure to increase those levels of corruption tomorrow. The public interest demands that basic truth, of having both transparency and accountability in government. Secrecy is the enemy of truth in this regard" (Robinson, 2012:2-3).

The National Planning Commission (2011:401) agrees that the performance of state systems of accountability has been irregular, enabling corruption to thrive. The problem statement of the Public Sector Integrity Management Framework regarding this reads as follows:

“A myriad of challenges are apparent in the public service as far as implementation of ethical and anti-corruption measures is concerned, chief among them is non compliance with legislation and lack of enforcement... There is great frustration about the delayed response of departments in preventing and combating corruption. Sometimes it takes several months for disciplinary processes to even be started. Officials are often suspended on full pay for months, if not years. Furthermore, there are significant inconsistencies in the type of sanctions applied. Allegations of corruption reported to the anti-corruption hotline are referred back to departments for follow-up, but because departments do not have sufficient investigative capacity, initial investigations are never completed. The ineffectiveness of the Protected Disclosure Act, 2000 has also resulted in the lack of confidence in blowing the whistle against unethical conduct and corruption. Furthermore, the Country Corruption Assessment (CCA) conducted in 2002, amongst others, highlighted gaps in our knowledge of corruption in relation to incidents, trends, perceptions, causes as well as anti-corruption measures in place to fight corruption. The lack of a central database of cases of corruption was also highlighted” (Department of Public Service and Administration, 2011: 5).

According to Pillay (2004:1), corruption is likely to appear on every observer’s list of factors that threaten to obstruct South Africa’s path towards sustainable development. However, rather than diminishing, corruption has proliferated in all

segments of the South African National Public Service (SANPS), making it the “common cold” of South African social ills (Pillay, 2004:1). The importance of transparency to public accountability has been demonstrated in theory and in practice. Dissatisfaction about lack of access to information on service delivery has emerged as a factor in public protests (National Planning Commission, 2011:407).

According to the Congress of South African Trade Unions (COSATU) (2012:102), the union has been pushing consistently for decisive steps to be taken, particularly by the government, to act against various corrupt practices. Among measures that COSATU proposed are the following:

- I. developing a framework on post-tenure rules, including a cooling-off period during which public representatives and senior officials will be prohibited from accepting appointments to a board, employment or any other substantial benefit from a private sector organisation that has benefited from a contract, tender or partnership agreement with the public service/state in a process that the official has participated in; and
- II. setting up measures to ensure politicians do not tamper with the adjudication of tenders, that the process of the tendering system is transparent, and that there is much stronger accountability of public servants involved in the tendering process (COSATU 2012:102).

The National Planning Commission (2011:406) blames increased opportunities for corruption on the practice of outsourcing and tendering for services which has increased considerably in the last decade. According to Cronin (2012:5), the

canonisation of “BEE” as a central programme of government brought into play a dangerous nexus between political office, personal enrichment, and established capital. The vast range of tender opportunities in the public service has also come with increased opportunities for corruption as both officials and contractors use the tender system to enrich themselves (National Planning Commission, 2011:406).

At the heart of black economic empowerment (BEE) has been the sale (typically a highly leveraged sale) of share-holding stakes in existing corporations to politically-connected black individuals and consortia (Cronin, 2012:5). Making an example of the Arms Deal, the United Democratic Movement (2012:3) states that, the government seems recklessly determined to create elite projects that often seem designed as nothing more but a way for the ruling party and its cohorts to distribute lucrative state tenders among themselves. Tightening up on tendering is critical because state procurement through deliberately manipulated tendering processes has become a major area for rent-seeking and corruption (Cronin, 2012:11).

The Department of Public Service and Administration (2011:5) states that the implementation of anti-corruption and good governance measures has not been satisfactory. The DPSA highlights the following implementation gaps:

- I. Limited implementation and adherence to the Code of Conduct. Various government reports have identified a culture of unethical and undesirable conduct by some public servants;
- II. Non-compliance with the Financial Disclosure Framework. Since the inception of the Financial Disclosure Framework in April 2000 and subsequent

expanded application to all senior managers in 2001, a hundred percent compliance rate has not been achieved;

- III. Non-compliance with Section 30 of the Public Service Act dealing with remunerative work outside the public service and Section 31 dealing with recovery of losses;
- IV. Non-compliance with the Minimum Anti- Corruption Capacity Requirements;
- V. Non-adherence to supply chain management prescripts which results in tender related malpractices, fraud and corruption as a result of improperly awarded tenders, goods and services provided at grossly inflated prices, officials benefiting from government contracts, unnecessary purchases and payments for services not rendered;
- VI. Weak enforcement and inconsistent application of disciplinary measures;
- VII. Resignation and transfer to other departments before disciplinary processes could be instituted or concluded; and
- VIII. Ineffective implementation of the Protected Disclosures Act, 2000 (DPSA, 2011:5).

Protection for whistleblowers is essential to create a culture of disclosure of wrongdoing. While the Protected Disclosures Act (2000) provides some protection for whistleblowers, it does not do enough. In fact, the percentage of people who identify themselves as prepared to 'blow the whistle' has dropped by 10 percent over the last four years (National Planning Commission, 2011:404).

The National Planning Commission, 2011:405) further identifies the following weaknesses that need to be addressed:

- I. The scope of protection in law is too narrow.
- II. The range of bodies to which a protected disclosure may be made is too narrow.
- III. There is no public body tasked with providing advice and promoting public awareness, and no public body dedicated to monitoring whistle blowing.
- IV. The possibility of conditional amnesty for whistleblowers implicated in corruption is not clear.
- V. Adequate security for whistleblowers has not been established. Physical and economic protection may be required in some cases. Opinions vary on what constitutes 'adequate protection'.

Martin (2010:19) asserts that whistle blowing in South Africa is regulated and applied differently in different contexts and gaps and concerns remain at both a policy and implementation level. The Department of Public Service and Administration (2011: 5) also identifies the following policy gaps:

- I. The ambiguity with regard to the acceptance of gifts found in the Code of Conduct (Chapter 2 of the Public Service Regulations, 2001, as amended, and the Financial Disclosure Framework (Chapter 3 of the mentioned Regulations);
- II. Limited application of the Financial Disclosure Framework, resulting in "unregulated public servants" having business interests which are in conflict with public interest; and
- III. Despite the Public Service Anti-Corruption Strategy identifying the need to regulate post-public employment when it was introduced in 2002, no

measures have been put in place in this regard (Department of Public Service and Administration, 2011: 5-7).

It has been stated in Chapter 2 by the UN Anti-Corruption Toolkit (2004:10) that corruption leads to a broad erosion of confidence in good governance, the rule of law and economic stability. According to the National Development Plan (2011:408), South Africa's rule of law is generally in good shape, although more could be done to realise the transformative promise of the Constitution. Challenges such as inefficiencies in the court administration that deny people the right of access to justice, and judicial appointments that call into question the impartiality of selection processes must be addressed (National Planning Commission, 2011:408).

The government is duty bound to ensure that an agency responsible for investigating corruption should be sufficiently independent to prevent political interference in the cases it investigates (Berning & Montesh, 2012:7). However, citing examples, authors attribute South Africa's failure to fight corruption to political interference. Referring to the disbanding of the Scorpions, Berning and Montesh (2012:7) explain that intense political pressure as a consequence of pursuing investigations that involved high level politicians contributed to the downfall of the DSO. According to Rosenberg (2010:4), the politically-tinged firing of the head of the Office of the National Director of Public Prosecutions (NDPP), Vusi Pikoli, raised serious questions about the political independence of senior civil servants in South Africa.

Even if South Africa adopts the best possible statute to establish a truly independent anti-corruption agency, a great deal will depend on who is appointed to manage and

run it (Berning & Montesh, 2012:2). Again, such failure to fight corruption is ascribed to patronage. The Public Service Act (PSA) provides for civil service hiring based on “equality and other democratic values and principles enshrined in the Constitution.” However, merit and open competition are often subordinated to political affiliation and nepotism (Rosenberg, 2010:4). A 2006 survey by the Public Service Commission found that the favouring of friends and family was the biggest problem undermining professionalism in management decisions (Rosenberg, 2010:4).

SUMMARY

This chapter reviewed characteristics of effective anti-corruption legislation and anti-corruption agencies. Anti-corruption agencies are meant to spearhead the fight against corruption. However, it has been established that to be able to serve this purpose there are characteristics that must be present. A number of such features have been presented by a preponderance of applicable literature.

The literature provides reasons why such agencies fail; briefly identifying types of anti-corruption agencies and which rate better than others and concisely discussed the Hong Kong ICAC as an anti-corruption agency that writers agree is the best in the world. It further clarified the fact that the success of anti-corruption agencies also hinges on anti-corruption legislation. The situation regarding anti-corruption agencies in the country has proved not to be based on the studied literature. The level of the success of South African anti-corruption agencies has been limited, attributed to weaknesses such as fragmentation, insufficient coordination, poor delineation of responsibility and assimilation of corruption work into a broader mandate.

Ways of addressing shortcomings that the writers identified include a clear definition of the roles, powers and responsibilities of these institutions in order to increase their efficiency; the establishment of formal coordinating and integrating mechanisms within the national executive and between departments and agencies involved in anti-corruption work; well-defined accountability arrangements for all the institutions (departments and agencies); increased institutional capacity of institutions (departments and agencies), in particular the competencies of employees and a focus on prevention, and/or establishment of an anti-corruption agency.

In the chapter that follows, the methodology that has been followed in conducting the study will be presented. The research design, participants, research instruments, methods of data collection and analysis as well as ethical considerations will also be described.

CHAPTER 4

RESEARCH DESIGN AND EMPIRICAL DATA ANALYSIS

4.1 INTRODUCTION

This chapter presents the methodology followed in the study. It describes the research design, participants, research instruments, methods of data collection and analysis as well as ethical considerations. The chapter also describes alternative relevant methodologies and justifies the methodology employed. Finally, the analysis of the empirical data is presented.

4.2 RATIONALE FOR DATA COLLECTION

Data can be obtained by making use of a questionnaire; personal interviewing; observation of events as they happen; abstraction, where the sources of information are documents, and postal questionnaires, if the targeted geographical area or number of respondents is large (Willemse, 1990:8-11). Data was collected through self-administered questionnaires from seventy-eight employees of the Eastern Cape and Northern Cape Departments of Social Development and interviews were conducted with selected senior managers from both provinces.

4.3 RESEARCH METHODOLOGY

In this section data collection methods and techniques utilised are highlighted and justified. A discussion on the advantages and limitations of both the method and technique is also presented.

4.3.1 DATA COLLECTION METHOD

In the social sciences, different methods are utilised in order to describe, explore and understand social life. Such methods can generally be subdivided into two broad categories, the quantitative method, which is concerned with attempts to quantify social phenomena and collect and analyse numerical data; and the qualitative method which emphasises words over quantification, and is concerned with understanding the meaning of social phenomena.

In this empirical study the quantitative and qualitative approaches were employed. The questionnaire entailed a qualitative component while semi-structured interviews were also used. According to Mouton and Prozesky (2001:270), qualitative research is used to provide an emic perspective by studying human action as its primary goal is to describe and understand human behaviour. Quantitative methodology requires methods such as experiments and surveys to describe and explain phenomena (Brynard & Hanekom, 1997: 29).

A survey was employed for this study because it is appropriate for the topic under investigation. However surveys, like any other technique, have advantages and

disadvantages. Kelley, Clark, Brown, and Sitzia (2003:262) identify the following advantages of surveys:

- I. Surveys produce data based on real world observations;
- II. The breadth of coverage of many people or events means that it is more likely than other approaches to obtain data based on representative sample, and can therefore be generalisable to a population; and
- III. Surveys can produce a large amount of data in a short time for a fairly low cost.

However, surveys also have the following disadvantages:

- I. The significance of the data can be neglected if the researcher focuses too much on the range of coverage to the exclusion of an adequate account of the implications of such data for relevant issues, problems, or theories; and
- II. Data produced are likely to lack details or depth on the topic being investigated (Kelley, Clark, Brown & Sitzia, 2003:262).

It can be deduced that a survey is a suitable method of collect data in this study. Corruption is a phenomenon that cannot be directly observed. In this instance, a survey is employed to assess attitudes and characteristics of a wide range of subjects utilising a number of techniques.

4.3.2 DATA GATHERING TECHNIQUE

Four frequently used techniques of data collection are scrutiny of relevant literature, interviews, questionnaires and observation (Brynard & Hanekom, 1997:31). The data for this study was gathered by means of a literature review, questionnaires and interviews.

According to Majila (2006:53), literature reviews assist in obtaining a perspective on the research findings related to the topic of the research. They also have the following advantages:

- I. Literature reviews are versatile. They can be conducted for almost any topic and can provide information either at the overview level or in depth.
- II. Literature reviews are relatively inexpensive and efficient. A large amount of data can be collected quickly at minimal cost.
- III. No scheduling or coordination is involved. The cooperation of others is not required.
- IV. The only resources needed are a good library or online database and a competent reviewer.
- V. Literature reviews can be an excellent first step in a project or study because they provide a conceptual framework for further planning and study (Marrelli, 2003:43).

Marrelli (2003:43) also highlights the following disadvantages associated with literature reviews:

- I. An effective literature review requires a high level of skill in identifying resources, analysing the sources to identify relevant information, and writing a meaningful summary.
- II. Literature reviews are limited to collecting information about what has happened in the past, and usually within organisations other than the researcher's own workplace. They cannot provide data about current actual behaviour.

According to Brynard and Hanekom (1997:30), questionnaires allow respondents time to think about the answers to questions. Palys (1997:144) explains that they involve written responses to a document that is prepared ahead of time. Moreover, a large number of respondents distributed over a large geographical area can be reached (Brynard & Hanekom, 1997:30). Interviews provide a researcher with a "direct personal contact" with the respondent who is asked questions relating to the research problem, and serve as a qualitative technique to solicit first-hand or primary source information (Bless & Higson-Smith, 2000:104-105).

It becomes clear that combining the above-mentioned techniques maximises utilisation of the strengths they each possess in answering the research questions. Such assimilation results in a reduction of their individual weaknesses.

4.4 APPLICATION OF THE DATA GATHERING TECHNIQUE

The targeted participants were drawn from the officials of the Eastern Cape and Northern Cape Provincial Departments. The total sample size was 108. The

population of 100 officials and eight selected senior managers was targeted. A response rate of eighty-four was achieved. The research findings are based on 79 completed questionnaires and five interviews.

4.4.1 THE QUESTIONNAIRE

The questionnaire which encompasses the significant indicators identified through the literature review is attached as Annexure A. The first page briefly explained the purpose of the study and assured respondents of their anonymity. The questionnaire utilised in this study was divided into two main sections, as follows:

Section A required biographical details such as gender, age, educational qualifications and occupational information; and two open-ended questions requesting further input. The open-ended questions provided respondents with an opportunity to express their views with regard to the effectiveness of anti-corruption agencies and anti-corruption legislation;

Section B contained 29 statements relating to anti-corruption legislation and anti-corruption agencies to which respondents responded to, using a five-point Likert scale; and one request to add additional information. The five-point Likert scale had the following rating values:

RATING VALUE

1 = STRONGLY DISAGREE

2 = DISAGREE

3 = NEUTRAL

4 = AGREE

5 = STRONGLY AGREE

4.4.2 INTERVIEWS

Guided face-to-face interviews were conducted by the researcher except for one interview which was conducted telephonically. Interviews were not recorded owing to the sensitivity of the research topic.

The researcher took down detailed field notes during the interviews. The interviews were then summarised as recommended by Lofland and Lofland (1995:88), namely that it is generally not necessary to transcribe every word, exclamation, or pause that occurs in an interview. In analysing the data the researcher used coding. According to Patton (1990:381), coding is the process of identifying, and categorising the primary patterns in the data.

During the process of content analysis, the data was labelled with codes and a data index was developed. Miles and Huberman (1994:56) refer to codes as tags or labels for assigning units of meaning to the descriptive or inferential information compiled during the study. The data indexing through coding assisted in reducing and organising data for analysis. The researcher read through the interview notes. As specific words and/or sentences that illustrate a particular code were encountered, they would be highlighted and assigned a code.

The researcher compiled memos and documented the study as it unfolded. According to Lincoln and Guba (1985:342), writing memos about coding categories can help to uncover properties of that category and develop rules for assigning subsequent data to the category. Out of the targeted eight interviews, five were conducted: two in the Eastern Cape and three in the Northern Cape. One of the Northern Cape interviews was conducted telephonically because the interviewee was out of the province during the researcher's visit. Analysis of data acquired through interviews was done per province. Interview schedules are attached as Annexures B and C.

4.5 ANALYSIS OF THE EMPIRICAL RESEARCH

Results of the empirical study are analysed in this section in order to achieve the set objectives. The section provides the result of each statement as presented by respondents in terms of figures and percentage, explains the responses using descriptive statistics, and presents the participants' responses to the interview questions.

4.5.1 ANALYSIS QUESTIONNAIRE RESULTS

This analysis is divided into two sections, namely Sections A and B.

SECTION A

The tables and bar charts below illustrate responses according to gender:

TABLE 4.1: EASTERN CAPE

Category	Frequency table: Gender	
	Count	Percentage
Female	19	53
Male	17	47

TABLE 4.1: NORTHERN CAPE

Category	Frequency table: Gender	
	Count	Percentage
Female	27	63
Male	16	37

FIGURE 4.1: GENDER: EASTERN CAPE

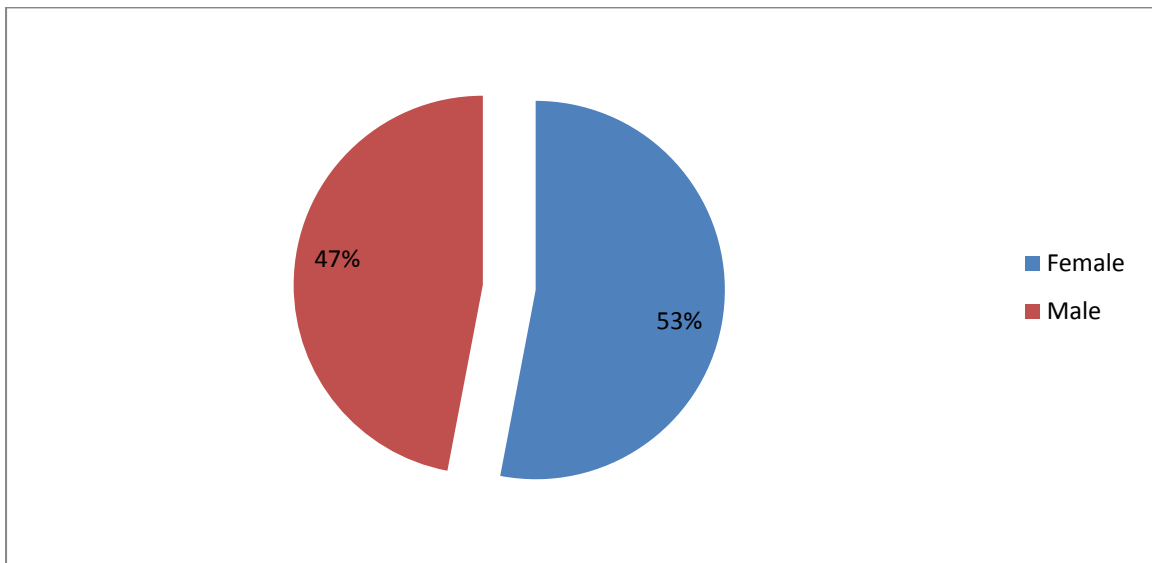
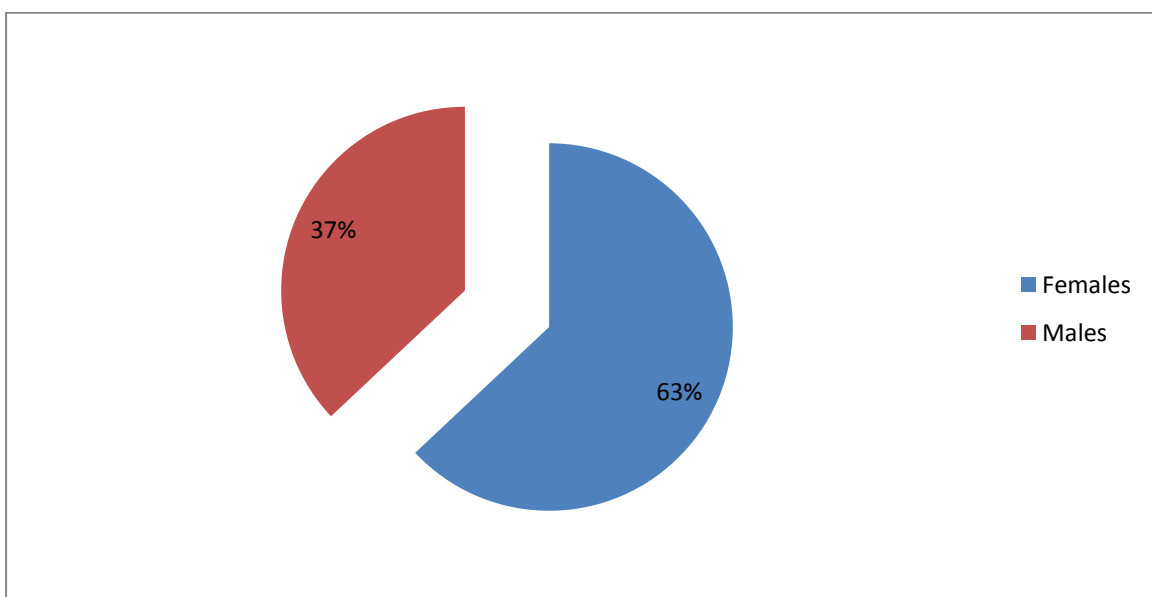


FIGURE 4.2: GENDER: NORTHERN CAPE



In the Eastern Cape 53 per cent of the respondents were female and 47 per cent were male, while 63 per cent of the Northern Cape respondents were female and 37 per cent were male.

The ages of the respondents are shown in the frequency tables below. These are also displayed on bar charts.

TABLE 4.2: EASTERN CAPE

Category	Frequency table: Age	
	Count	Percentage
20 – 29 years	5	14
30 - 39 years	9	25
40 - 49 years	10	28
50+ years	12	33

TABLE 4.2: NORTHERN CAPE

Category	Frequency table: Age	
	Count	Percentage
20 – 29 years	7	16
30 - 39 years	11	26
40 - 49 years	13	30
50+ years	12	28

FIGURE 4.3: AGE: EASTERN CAPE

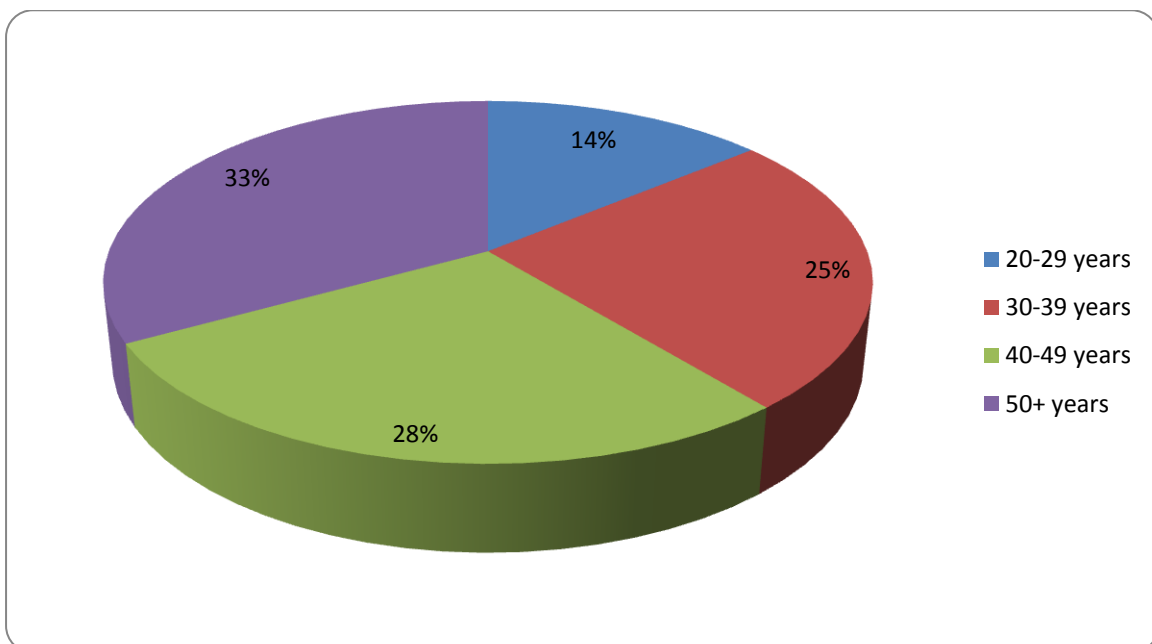
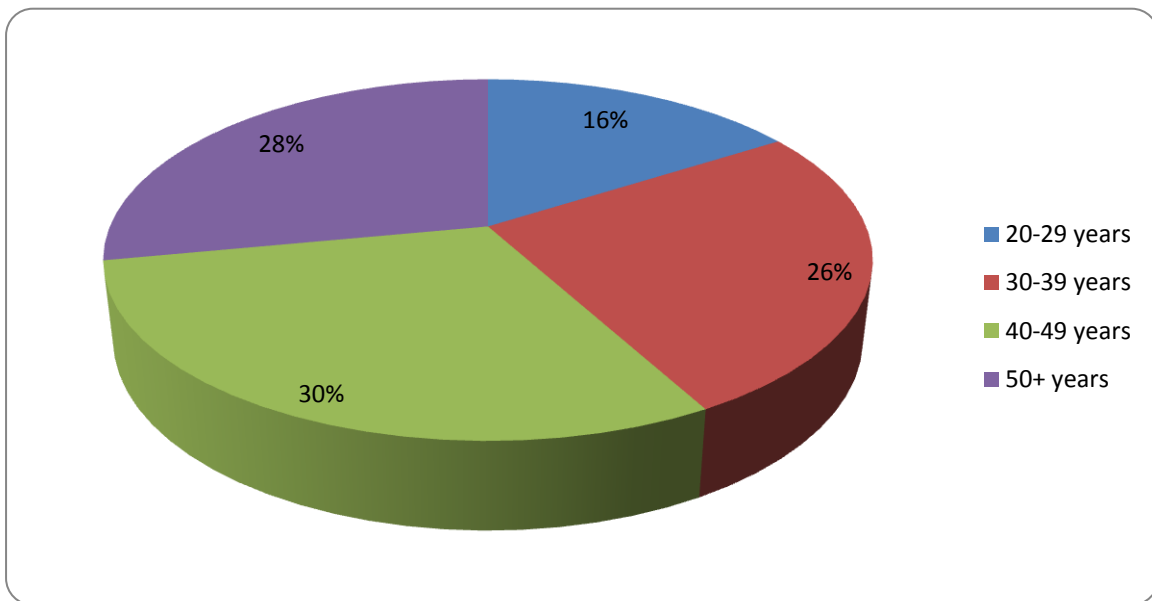


FIGURE 4.4: AGE: NORTHERN CAPE



33 per cent of the Eastern Cape respondents were 50 years and above while 30 per cent of the Northern Cape respondents were 40 to 49 years of age.

Respondents' education is illustrated in the frequency distribution tables and pie charts below.

TABLE 4.3: EASTERN CAPE

Category	Frequency table: Education	
	Count	Percentage
High School	21	57
Technical College	3	9
Tertiary Institution	12	34

TABLE 4.3: NORTHERN CAPE

Category	Frequency table: Education	
	Count	Percentage
High School	27	62
Technical College	6	15
Tertiary Institution	10	23

FIGURE 4.5: EDUCATION: EASTERN CAPE

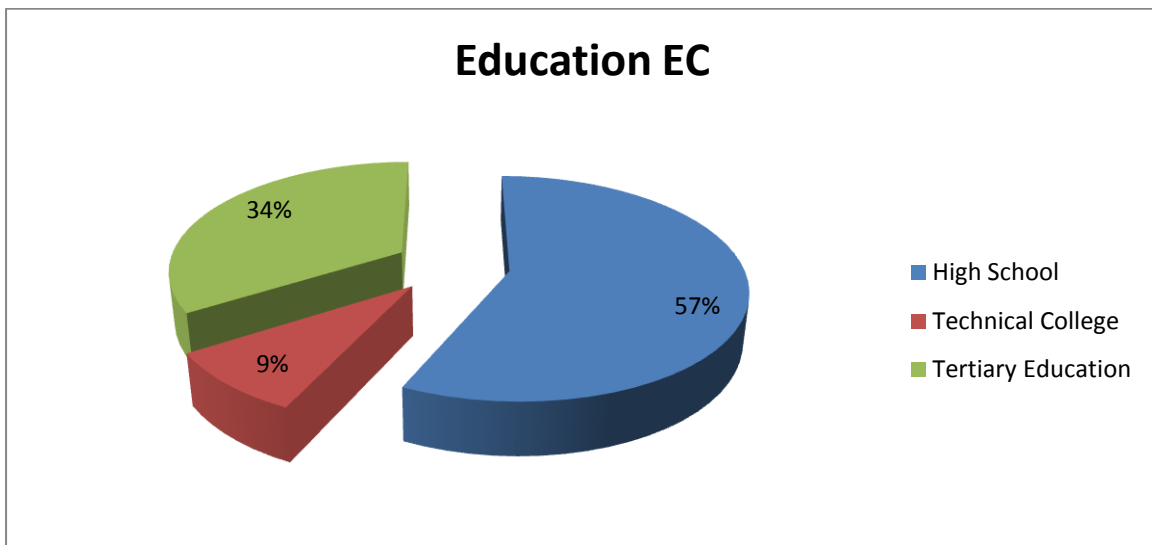
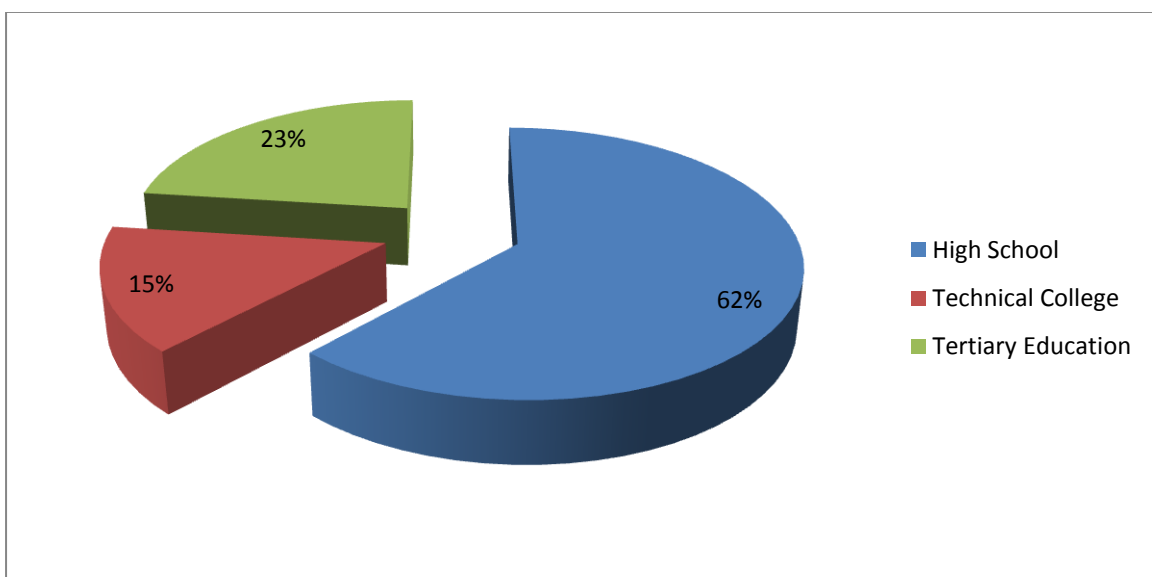


FIGURE 4.6: EDUCATION: NORTHERN CAPE



In both provinces the highest percentages were for respondents who had obtained high school education: in the Eastern Cape 57 per cent of respondents had obtained high school education and in the Northern Cape 62 per cent of respondents indicated high school education as their highest level attained.

Frequency tables and pie charts below indicate the number of years respondents have been with the departments.

TABLE 4.4: EASTERN CAPE

Category	Frequency table: Duration in the Dept.	
	Count	Percentage
1-3 Years	3	8
4-6 Years	4	11
7-10 Years	11	31
10+ Years	18	50

TABLE 4.4: NORTHERN CAPE

Category	Frequency table: Duration in the Dept.	
	Count	Percentage
1-3 Years	6	13
4-6 Years	18	43
7-10 Years	8	18
10+ Years	11	26

FIGURE 4.7: DURATION IN THE DEPARTMENT EASTERN CAPE

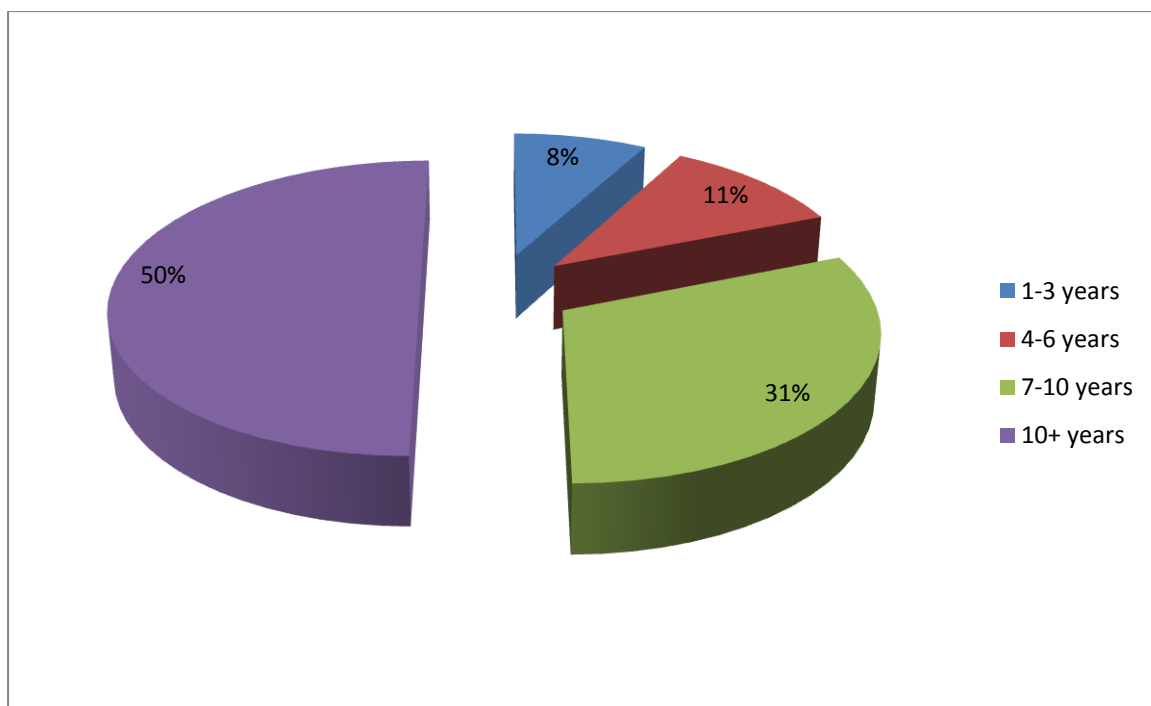
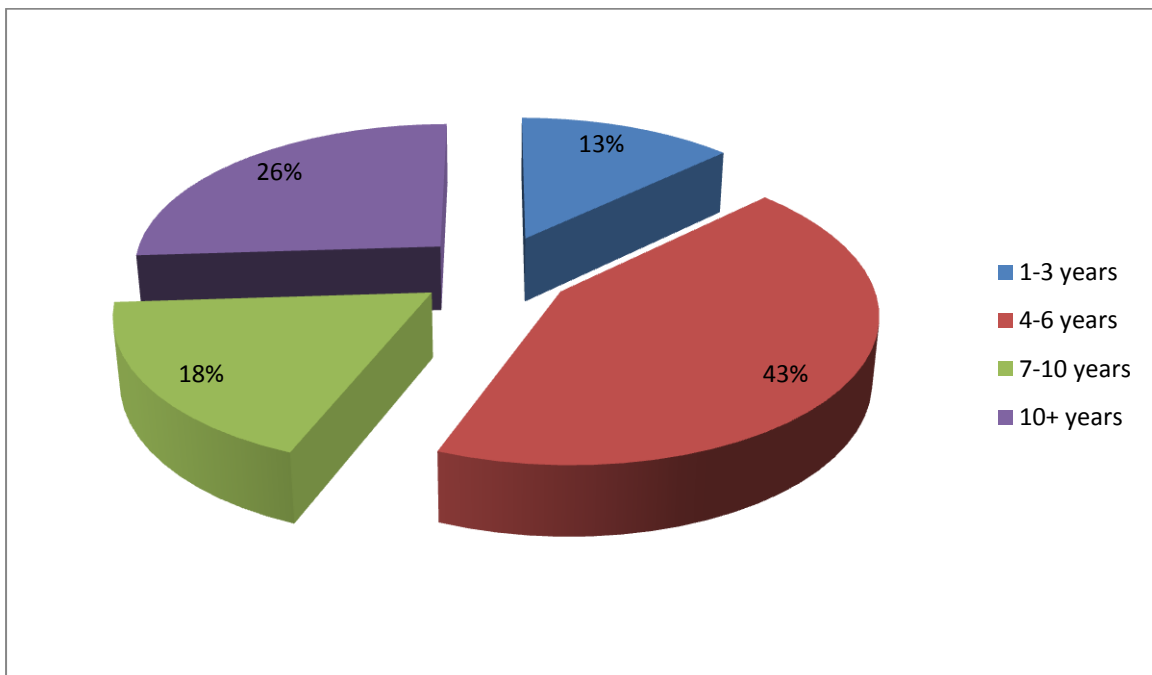


FIGURE 4.8: DURATION IN THE DEPARTMENT NORTHERN CAPE



In the Eastern Cape, 50 per cent of the respondents have been with the department for more than ten years while in the Northern Cape, 43 per cent of the respondents have been with the department for between four to six years.

In Section A respondents were also requested to indicate positions they hold and (optional) the number of years they have held such positions. Fewer than 50 per cent of the responses from both provinces were returned. Of the 48 per cent of responses from the Eastern Cape, 30 per cent have held the same position for more than ten years, of which 97 per cent are in the lower levels of the hierarchy. Only 3 per cent hold management positions.

Only 38 per cent of the respondents from the Northern Cape responded to this question. The highest percentage was those respondents who have been with the

department for a period of five to ten years. 75 per cent of the respondents occupy lower levels while 25 per cent hold management positions.

In this section respondents were also requested to respond to the following:

- I. How effective are anti-corruption legislation and anti-corruption agencies in the province?
- II. If anti-corruption legislation and anti-corruption agencies in the province are ineffective, why is this so?
- III. Please add any additional remarks in the space provided below.

Coincidentally, the respondents from both provinces provided similar responses to the two questions and the accompanying request in Section A. The responses are summarised as follows:

Section A1

- I. The anti-corruption agencies and the anti-corruption legislation are ineffective.
- II. Levels of corruption continue to escalate in the country.

Section A2

- I. Persons who are responsible for the implementation of anti-corruption measures are those who are mostly involved in committing acts of corruption.

- II. The government does not involve communities in its fight against corruption.
- III. Individuals who expose corruption are not protected from victimisation.
- IV. There are no awareness campaigns that provide information and feedback to the communities regarding corruption.

Section A3

- I. Anti-corruption initiatives only exist in theory.
- II. Citizens who do not have access to the media should be reached through public places such as churches and schools.
- III. Corruption occurs mostly in supply chain management and recruitment processes which leads to poor service delivery.
- IV. Corrupt individuals who are suspended and even discharged are reinstated within a few months in even higher positions.
- V. Corruption in South Africa has become intertwined with the societal fibre. The government needs to take responsibility by inculcating good morals. A culture of influencing the youth to believe that 'tenderpreneurship' is the best way of accumulating wealth must be uprooted.

SECTION B

In this section, questionnaire responses are presented by means of frequency tables per statement per province.

Statement B1

The province enforces anti-corruption legislation.

TABLE B 4.5: EASTERN CAPE

Category	Frequency table: Age	
	Count	Percentage
Strongly disagree	11	30.5
Disagree	11	30.5
Neutral	7	19
Agree	5	14
Strongly agree	2	6

TABLE 4.5: NORTHERN CAPE

Category	Frequency table: Age	
	Count	Percentage
Strongly disagree	13	30
Disagree	15	35
Neutral	3	7
Agree	8	19
Strongly agree	4	9

Statement B2

Officials are charged under anti-corruption legislation.

TABLE B 4.6: EASTERN CAPE

Category	Frequency table: Age	
	Count	Percentage
Strongly disagree	9	25
Disagree	10	28
Neutral	8	22
Agree	7	19
Strongly agree	2	6

TABLE 4.6: NORTHERN CAPE

Category	Frequency table: Age	
	Count	Percentage
Strongly disagree	10	23
Disagree	13	30
Neutral	5	12
Agree	10	23
Strongly agree	5	12

Statement B3

Officials are convicted in terms of anti-corruption legislation.

TABLE B 4.7: EASTERN CAPE

Category	Frequency table: Age	
	Count	Percentage
Strongly disagree	13	36
Disagree	16	44
Neutral	3	8
Agree	2	6
Strongly agree	2	6

TABLE 4.7: NORTHERN CAPE

Category	Frequency table: Age	
	Count	Percentage
Strongly disagree	9	21
Disagree	13	30
Neutral	3	7
Agree	10	23
Strongly agree	8	19

Statement B4

Officials generally understand the whistle blowing procedures.

TABLE B 4.8: EASTERN CAPE

Category	Frequency table: Age	
	Count	Percentage
Strongly disagree	9	25
Disagree	19	53
Neutral	4	11
Agree	4	11
Strongly agree	0	0

TABLE 4.8: NORTHERN CAPE

Category	Frequency table: Age	
	Count	Percentage
Strongly disagree	10	23
Disagree	15	35
Neutral	4	9
Agree	8	19
Strongly agree	6	14

Statement B5

Officials are free to blow the whistle when they are aware of corrupt activities.

TABLE B 4.9: EASTERN CAPE

Category	Frequency table: Age	
	Count	Percentage
Strongly disagree	12	33
Disagree	13	36
Neutral	5	14
Agree	5	14
Strongly agree	1	3

TABLE 4.9: NORTHERN CAPE

Category	Frequency table: Age	
	Count	Percentage
Strongly disagree	10	23
Disagree	16	37
Neutral	5	12
Agree	9	21
Strongly agree	3	7

Statement B6

Whistleblowers are protected in terms of anti-corruption legislation.

TABLE B 4.10: EASTERN CAPE

Category	Frequency table: Age	
	Count	Percentage
Strongly disagree	9	25
Disagree	10	28
Neutral	15	41
Agree	2	6
Strongly agree	0	0

TABLE 4.10: NORTHERN CAPE

Category	Frequency table: Age	
	Count	Percentage
Strongly disagree	11	26
Disagree	12	28
Neutral	10	23
Agree	6	14
Strongly agree	4	9

Statement B7

Most prevalent cases of petty corruption practised on a smaller scale involve small amounts of money and bribes.

TABLE B 4.11: EASTERN CAPE

Category	Frequency table: Age	
	Count	Percentage
Strongly disagree	1	3
Disagree	3	8
Neutral	5	14
Agree	17	47
Strongly agree	10	28

TABLE 4.11: NORTHERN CAPE

Category	Frequency table: Age	
	Count	Percentage
Strongly disagree	5	12
Disagree	7	16
Neutral	5	12
Agree	16	37
Strongly agree	10	23

Statement B8

The most prevalent cases of grand corruption are found where public officials in high positions, in the process of making decisions of significant financial value, routinely demand bribes or kickbacks to ensure that tenders or contracts are awarded to specific contractors.

TABLE B 4.12: EASTERN CAPE

Category	Frequency table: Age	
	Count	Percentage
Strongly disagree	0	0
Disagree	4	11
Neutral	3	8
Agree	19	53
Strongly agree	10	28

TABLE 4.12: NORTHERN CAPE

Category	Frequency table: Age	
	Count	Percentage
Strongly disagree	0	0
Disagree	3	7
Neutral	2	5
Agree	26	60
Strongly agree	12	28

Statement B9

Anti-corruption agencies in the province are financially adequately resourced.

TABLE B 4.13: EASTERN CAPE

Category	Frequency table: Age	
	Count	Percentage
Strongly disagree	9	25
Disagree	11	30
Neutral	12	33
Agree	2	6
Strongly agree	2	6

TABLE 4.13: NORTHERN CAPE

Category	Frequency table: Age	
	Count	Percentage
Strongly disagree	9	21
Disagree	12	28
Neutral	12	28
Agree	7	16
Strongly agree	3	7

Statement B10

Anti-corruption agencies are independent of the party in power.

TABLE B 4.14: EASTERN CAPE

Category	Frequency table: Age	
	Count	Percentage
Strongly disagree	12	33
Disagree	14	39
Neutral	4	11
Agree	4	11
Strongly agree	2	6

TABLE 4.14: NORTHERN CAPE

Category	Frequency table: Age	
	Count	Percentage
Strongly disagree	10	23
Disagree	15	35
Neutral	3	7
Agree	10	23
Strongly agree	5	12

Statement B11

Anti-corruption agencies are likely to discharge their duties without fear or favour.

TABLE B 4.15: EASTERN CAPE

Category	Frequency table: Age	
	Count	Percentage
Strongly disagree	10	28
Disagree	16	44
Neutral	4	11
Agree	5	14
Strongly agree	1	3

TABLE 4.15: NORTHERN CAPE

Category	Frequency table: Age	
	Count	Percentage
Strongly disagree	8	19
Disagree	13	30
Neutral	4	9
Agree	11	26
Strongly agree	7	16

Statement B12

Anti-corruption agencies have political backing at the highest levels of the provincial government.

TABLE B 4.16: EASTERN CAPE

Category	Frequency table: Age	
	Count	Percentage
Strongly disagree	11	31
Disagree	18	50
Neutral	3	8
Agree	3	8
Strongly agree	1	3

TABLE 4.16: NORTHERN CAPE

Category	Frequency table: Age	
	Count	Percentage
Strongly disagree	9	21
Disagree	12	28
Neutral	3	7
Agree	12	28
Strongly agree	7	16

Statement B13

Anti-corruption agencies have always retained their credibility.

TABLE B 4.17: EASTERN CAPE

Category	Frequency table: Age	
	Count	Percentage
Strongly disagree	10	28
Disagree	16	44
Neutral	6	17
Agree	3	8
Strongly agree	1	3

TABLE 4.17: NORTHERN CAPE

Category	Frequency table: Age	
	Count	Percentage
Strongly disagree	10	23
Disagree	15	35
Neutral	7	16
Agree	8	19
Strongly agree	3	7

Statement B14

Anti-corruption agencies lack transparency.

TABLE B 4.18: EASTERN CAPE

Category	Frequency table: Age	
	Count	Percentage
Strongly disagree	1	3
Disagree	4	11
Neutral	5	14
Agree	15	42
Strongly agree	11	30

TABLE 4.18: NORTHERN CAPE

Category	Frequency table: Age	
	Count	Percentage
Strongly disagree	7	16
Disagree	10	23
Neutral	3	7
Agree	15	35
Strongly agree	8	19

Statement B15

Heads of anti-corruption agencies are hired on merit.

TABLE B 4.19: EASTERN CAPE

Category	Frequency table: Age	
	Count	Percentage
Strongly disagree	8	22
Disagree	16	44
Neutral	6	17
Agree	6	17
Strongly agree	0	0

TABLE 4.19: NORTHERN CAPE

Category	Frequency table: Age	
	Count	Percentage
Strongly disagree	10	23
Disagree	12	28
Neutral	4	9
Agree	9	21
Strongly agree	8	19

Statement B16

Anti-corruption agencies are free from political interference.

TABLE B 4.20: EASTERN CAPE

Category	Frequency table: Age	
	Count	Percentage
Strongly disagree	11	30
Disagree	15	42
Neutral	4	11
Agree	5	14
Strongly agree	1	3

TABLE 4.20: NORTHERN CAPE

Category	Frequency table: Age	
	Count	Percentage
Strongly disagree	9	21
Disagree	12	28
Neutral	4	9
Agree	10	23
Strongly agree	8	19

Statement B17

Members of the public are free to complain to anti-corruption agencies without fear of recrimination.

TABLE B 4.21: EASTERN CAPE

Category	Frequency table: Age	
	Count	Percentage
Strongly disagree	10	28
Disagree	17	47
Neutral	4	11
Agree	3	8
Strongly agree	2	6

TABLE 4.21: NORTHERN CAPE

Category	Frequency table: Age	
	Count	Percentage
Strongly disagree	10	23
Disagree	13	30
Neutral	3	7
Agree	11	26
Strongly agree	6	14

Statement B18

Anti-corruption agencies act within a reasonable time regarding corruption complaints.

TABLE B 4.22: EASTERN CAPE

Category	Frequency table: Age	
	Count	Percentage
Strongly disagree	10	28
Disagree	12	33
Neutral	7	19
Agree	5	14
Strongly agree	2	6

TABLE 4.22: NORTHERN CAPE

Category	Frequency table: Age	
	Count	Percentage
Strongly disagree	7	16
Disagree	19	44
Neutral	5	12
Agree	10	23
Strongly agree	2	5

Statement B19

Anti-corruption agencies initiate investigations independently.

TABLE B 4.23: EASTERN CAPE

Category	Frequency table: Age	
	Count	Percentage
Strongly disagree	9	25
Disagree	18	50
Neutral	7	19
Agree	1	3
Strongly agree	1	3

TABLE 4.23: NORTHERN CAPE

Category	Frequency table: Age	
	Count	Percentage
Strongly disagree	10	23
Disagree	15	35
Neutral	4	9
Agree	8	19
Strongly agree	6	14

Statement B20

Anti-corruption agency employees enjoy independence from political interference in the discharge of their duties.

TABLE B 4.24: EASTERN CAPE

Category	Frequency table: Age	
	Count	Percentage
Strongly disagree	9	25
Disagree	16	44
Neutral	5	14
Agree	4	11
Strongly agree	2	6

TABLE 4.24: NORTHERN CAPE

Category	Frequency table: Age	
	Count	Percentage
Strongly disagree	9	21
Disagree	12	28
Neutral	4	9
Agree	10	23
Strongly agree	8	19

Statement B21

There are no 'no go' areas for certain investigations.

TABLE B 4.25: EASTERN CAPE

Category	Frequency table: Age	
	Count	Percentage
Strongly disagree	1	3
Disagree	2	6
Neutral	3	8
Agree	18	50
Strongly agree	12	33

TABLE 4.25: NORTHERN CAPE

Category	Frequency table: Age	
	Count	Percentage
Strongly disagree	7	16
Disagree	18	42
Neutral	3	7
Agree	10	23
Strongly agree	5	12

Statement B22

Anti-corruption agency employees are adequately trained.

TABLE B 4.26: EASTERN CAPE

Category	Frequency table: Age	
	Count	Percentage
Strongly disagree	9	25
Disagree	16	44
Neutral	6	17
Agree	4	11
Strongly agree	1	3

TABLE 4.26: NORTHERN CAPE

Category	Frequency table: Age	
	Count	Percentage
Strongly disagree	10	23
Disagree	11	26
Neutral	6	14
Agree	10	23
Strongly agree	6	14

Statement B23

Anti-corruption agency employees are adequately remunerated.

TABLE B 4.27: EASTERN CAPE

Category	Frequency table: Age	
	Count	Percentage
Strongly disagree	10	28
Disagree	16	44
Neutral	5	14
Agree	4	11
Strongly agree	1	3

TABLE 4.27: NORTHERN CAPE

Category	Frequency table: Age	
	Count	Percentage
Strongly disagree	12	28
Disagree	12	28
Neutral	10	23
Agree	6	14
Strongly agree	3	7

Statement B24

Anti-corruption agency employees dealing with sensitive cases are subject to random integrity tests.

TABLE B 4.28: EASTERN CAPE

Category	Frequency table: Age	
	Count	Percentage
Strongly disagree	7	19
Disagree	10	28
Neutral	16	44
Agree	2	6
Strongly agree	1	3

TABLE 4.28: NORTHERN CAPE

Category	Frequency table: Age	
	Count	Percentage
Strongly disagree	9	21
Disagree	12	28
Neutral	12	28
Agree	7	16
Strongly agree	3	7

Statement B25

There are arrangements to ensure that anti-corruption agencies do not become corrupt themselves.

TABLE B 4.29: EASTERN CAPE

Category	Frequency table: Age	
	Count	Percentage
Strongly disagree	9	25
Disagree	16	44
Neutral	9	25
Agree	2	6
Strongly agree	0	0

TABLE 4.29: NORTHERN CAPE

Category	Frequency table: Age	
	Count	Percentage
Strongly disagree	10	23
Disagree	11	26
Neutral	8	19
Agree	10	23
Strongly agree	4	9

Statement B26

Anti-corruption agencies are accountable to parliament.

TABLE B 4.30: EASTERN CAPE

Category	Frequency table: Age	
	Count	Percentage
Strongly disagree	8	22
Disagree	13	36
Neutral	13	36
Agree	2	6
Strongly agree	0	0

TABLE 4.30: NORTHERN CAPE

Category	Frequency table: Age	
	Count	Percentage
Strongly disagree	9	21
Disagree	10	23
Neutral	12	28
Agree	7	16
Strongly agree	5	12

Statement B27

I have blown the whistle on alleged corruption.

TABLE B 4.31: EASTERN CAPE

TABLE 4.31: NORTHERN CAPE

Category	Frequency table: Age		Category	Frequency table: Age	
	Count	Percentage		Count	Percentage
Strongly disagree	13	36	Strongly disagree	10	23
Disagree	15	42	Disagree	12	28
Neutral	8	22	Neutral	7	16
Agree	0	0	Agree	9	21
Strongly agree	0	0	Strongly agree	5	12

Statement B28

I am too afraid to blow the whistle on alleged corruption.

TABLE B 4.32: EASTERN CAPE

TABLE 4.32: NORTHERN CAPE

Category	Frequency table: Age		Category	Frequency table: Age	
	Count	Percentage		Count	Percentage
Strongly disagree	2	5.5	Strongly disagree	5	12
Disagree	4	11	Disagree	10	23
Neutral	2	5.5	Neutral	1	2
Agree	18	50	Agree	15	35
Strongly agree	10	28	Strongly agree	12	28

Statement B29

Government is taking the issue of corruption in the public sector seriously.

TABLE B 4.33: EASTERN CAPE

Category	Frequency table: Age	
	Count	Percentage
Strongly disagree	12	33
Disagree	14	39
Neutral	4	11
Agree	4	11
Strongly agree	2	6

TABLE 4.33: NORTHERN CAPE

Category	Frequency table: Age	
	Count	Percentage
Strongly disagree	10	23
Disagree	15	35
Neutral	3	7
Agree	10	23
Strongly agree	5	12

Statement B1: The province enforces anti-corruption legislation.

70 per cent of the Eastern Cape respondents and 65 per cent of the Northern Cape respondents did not support the statement that the province enforces anti-corruption legislation. Although at varying percentages, very few respondents supported the statement: the Eastern Cape respondents at 10 per cent and those in the Northern Cape at 28 per cent.

These results indicate that enforcement of anti-corruption legislation is poor. The Public Sector Integrity Management Framework (2006:5) explains that the ineffectiveness of the Protected Disclosure Act, 2000 has resulted in a lack of confidence in whistle blowing against unethical conduct and corruption. This requires that hurdles that hinder the implementation of this Act are addressed.

Statement B2: Officials are charged under anti-corruption legislation.

The statement that officials are indicted under anti-corruption legislation was refuted at the rate of 53 per cent by both provinces. 19 per cent of the Eastern Cape respondents were neutral while 25 per cent supported the statement. 12 per cent of the respondents from the Northern Cape were neutral while 35 per cent supported the statement.

The responses indicate that few officials are charged under anti-corruption legislation. The Prevention and Combating of Corrupt Activities Act 2004 stipulates the charging of offenders. Section 26 lists punishable corruption offences and their penalties. These include a fine of up to five times the value of the improper benefit, or life imprisonment if a sentence is handed down by a High Court.

Statement B3: Officials are convicted in terms of anti-corruption legislation.

In both the Eastern Cape and the Northern Cape large number of the respondents did not support the statement that officials are successfully convicted in terms of anti-corruption legislation: in the Eastern Cape 80 per cent held this view, as did 51 per cent of the respondents in the Northern Cape. 12 per cent of the Eastern Cape respondents and 42 per cent of the respondents from the Northern Cape agreed with the statement, while eight per cent from the Eastern Cape and seven per cent from the Northern Cape remained undecided.

Section 26 of the Prevention and Combating of Corrupt Activities Act 2004 provides for conviction of those involved in corruption. However, the results indicate that officials are not convicted in terms of anti-corruption legislation.

Statement B4: Officials generally understand the whistle blowing procedures.

A vast majority of respondents in both provinces (78 per cent in the Eastern Cape and 58 per cent in the Northern Cape) responded negatively to the statement that officials generally understand the whistle blowing procedures. 11 per cent of the respondents from the Eastern Cape and 33 per cent from the Northern Cape supported the statement, while 11 per cent and nine per cent respectively remained neutral.

These results indicate that the whistle blowing procedures are not completely understood by officials. The Protected Disclosures Act 26 of 2000 provides procedures in terms of which any employee may disclose information relating to an offence or a malpractice in the workplace by his or her employer or fellow employees. Unfortunately, few officials are aware of such procedures. It is necessary that officials be familiarised with these procedures.

Statement B5: Officials are free to blow the whistle when they are aware of corrupt activities.

The statement that officials are free to blow the whistle when they are aware of corrupt activities was discounted by 69 per cent of the respondents from the Eastern Cape and 60 per cent from the Northern Cape. 17 per cent of the Eastern Cape respondents and 28 per cent from the Northern Cape responded positively. 14 per cent of the Eastern Cape respondents and 12 per cent from the Northern Cape remained neutral.

The responses indicate that officials are not free to blow the whistle despite the provisions in section 2 (1) of the Protected Disclosures Act that stipulate the objects of the act are to:

- I. protect an employee, whether in the private or the public sector, from being subjected to an occupational detriment on account of having made a protected disclosure;
- II. provide for certain remedies in connection with any occupational detriment suffered on account of having made a protected disclosure; and
- III. provide for procedures in terms of which an employee can, in a responsible manner, disclose information regarding improprieties by his or her employer.

Statement B6: Whistleblowers are protected in terms of anti-corruption legislation.

Only six per cent of the Eastern Cape respondents and 23 per cent of the Northern Cape supported the statement that whistleblowers are protected in terms of anti-corruption legislation. 41 per cent of the Eastern Cape respondents and 23 per cent from the Northern Cape responded impartially; and the majority of both provinces' respondents, the Eastern Cape at 59 per cent and the Northern Cape at 54 per cent, responded negatively.

Section 3 of Protected Disclosures Act prohibits subjecting any employee to any occupational detriment by his or her employer on account, or partly on account of having made a protected disclosure. However, the responses show that employees do not believe that whistleblower protection is provided in terms of this Act.

Statement B7: Most prevalent cases of petty corruption practised on a smaller scale involve small amounts of money and bribes.

The statement that most prevalent cases of petty corruption practised on a smaller scale involve small amounts of money and bribes was supported by the majority of respondents from both provinces, namely the Eastern Cape at 75 per cent and the Northern Cape at 60 Per cent. 11 per cent from the Eastern Cape and 28 per cent from the Northern Cape contradicted the statement.

These results indicate that individuals accumulate wealth through eliciting small bribes. This must not be overlooked. Its pettiness refers only to the size of each transaction and not to the damage it causes. In setting out the general offences of corruption, section 3 of Prevention and Combating of Corrupt Activities Act 12 of 2004 includes this kind of corruption.

Statement B8: Most prevalent cases of grand corruption are found where public officials in high positions, in the process of making decisions of significant financial value, routinely demand bribes or kickbacks to ensure that tenders or contracts are awarded to specific contractors.

81 per cent of the Eastern Cape respondents and 88 per cent of the Northern Cape respondents identified with the statement that most cases of grand corruption are prevalent where kickbacks are paid to ensure that tenders or contracts are awarded to specific contractors. A small percentage discounted the statement, namely 11 per cent from the Eastern Cape and 7 per cent from the Northern Cape. Impartial respondents from the Eastern Cape amounted to 8 per cent and from the Northern Cape, 5 per cent.

Concerning the conviction of corruption offenders, section 28 of the Prevention and Combating of Corrupt Activities Act provides that enterprises that are involved in corrupt offences be endorsed on the Register for Tender Defaulters. This register serves to name and shame those convicted of tender irregularities. Despite this Act and its provisions, the results indicate that kickbacks are paid to secure tenders and contracts. This conclusion is justified because the Register for Tender Defaulters does not have any names listed. It has been blank since its establishment.

Statement B9: Anti-corruption agencies in the province are financially adequately resourced.

The statement that anti-corruption agencies in the province are adequately financially resourced was discounted by 55 per cent of the respondents from the Eastern Cape and 49 per cent of the respondents from the Northern Cape. 33 per cent of the Eastern Cape respondents and 28 per cent from the Northern Cape remained neutral whilst 12 per cent of the Eastern Cape respondents and 23 per cent from the Northern Cape supported the statement.

Chapter 14 of the 2030 National Development Plan (2011:447) states that fighting corruption requires an anti-corruption system that is well-resourced. However, the responses show that anti-corruption agencies in the provinces are financially inadequately resourced. This is detrimental to the success of anti-corruption initiatives.

Statement B10: Anti-corruption agencies are independent of the party in power.

The statement that anti-corruption agencies are independent of the party in power was discounted by both provinces: the Eastern Cape respondents by 72 per cent and the Northern Cape by 58 per cent. 17 per cent of the Eastern Cape respondents and 33 per cent from the Northern Cape supported the statement. 11 per cent of the Eastern Cape respondents and 7 per cent from the Northern Cape remained neutral.

Anti-corruption agencies in South Africa are accountable to the executive. According to Chapter 14 of the 2030 National Development Plan (2011:448), this compromises the independence of anti-corruption agencies, since this may leave them vulnerable to political pressure and interference. Hence the responses imply that anti-corruption agencies are dependent on the party in power.

Statement B11: Anti-corruption agencies are likely to discharge their duties without fear or favour.

72 per cent of the Eastern Cape responses and 49 per cent from the Northern Cape disagreed with the statement that anti-corruption agencies are likely to discharge their duties without fear or favour. 17 per cent of the Eastern Cape responses and 42 per cent from the Northern Cape agreed with the statement. 11 per cent of the Eastern Cape responses and 9 per cent from the Northern Cape remained impartial.

The results indicate that anti-corruption agencies are unlikely to discharge their duties without fear or favour. As shown by responses to statement B10 above, anti-

corruption agencies depend on the party in power. They are, therefore, unable to make credible judgments.

Statement B12: Anti-corruption agencies have political backing at the highest levels of the provincial government.

81 per cent of the Eastern Cape responses and 49 per cent from the Northern Cape refuted the statement that anti-corruption agencies have political backing at the highest levels of the provincial government; 11 per cent of the Eastern Cape responses and 44 per cent from the Northern Cape supported the statement; and 8 per cent of the Eastern Cape responses and 7 per cent from the Northern Cape were neutral.

To tackle corruption, there must be political will and support for anti-corruption agencies (Chapter 14 of the 2030 National Development Plan, 2011:449). However, the results indicate that anti-corruption agencies do not receive the intended support. Chapter 14 of the 2030 National Development Plan (2011:449) describes political will as not referring merely to public statements of support, but to providing sufficient resources and taking action against corrupt officials.

Statement B13: Anti-corruption agencies have always retained their credibility.

72 per cent of the Eastern Cape respondents and 58 per cent from the Northern Cape disproved the statement that anti-corruption agencies have always retained their credibility. 11 per cent of the respondents from the Eastern Cape and 16 per cent from the Northern Cape supported the statement while 17 per cent from both the Eastern Cape and Northern Cape remained neutral.

Chapter 14 of the 2030 National Development Plan (2011:451) proposes that integrity systems be improved in order to strengthen the individual accountability of public servants. Nevertheless, according to the results, anti-corruption agencies have been unable to retain their credibility.

Statement B14: Anti-corruption agencies lack transparency.

The statement that anti-corruption agencies lack transparency was supported by 72 per cent of the respondents from the Eastern Cape and 54 per cent from the Northern Cape. Only 14 per cent of the respondents from the Eastern Cape and 39 per cent from the Northern Cape refuted the statement. 14 per cent of the respondents from the Eastern Cape and 7 per cent from the Northern Cape were neutral.

Chapter 14 of the 2030 National Development Plan (2011:451) advises that it is in the best interests of civil society that public officials and elected representatives manage public resources in an efficient, transparent and accountable fashion. However, according to the respondents, anti-corruption agencies lack the required transparency.

Statement B15: Heads of anti-corruption agencies are hired on merit.

66 per cent of the respondents from the Eastern Cape and 51 per cent from the Northern Cape refuted the statement that heads of anti-corruption agencies are hired on merit. 17 per cent of the respondents from the Eastern Cape and 40 per cent from the Northern Cape supported it, while 17 per cent of the respondents from the Eastern Cape and 9 per cent from the Northern Cape remained impartial.

The results show that heads of anti-corruption agencies need to be hired on merit. This becomes evident, as hiring unqualified personnel has dire consequences for any organisation. According to the Country Brief (2012:1), the Council for the Advancement of the South African Constitution ('CASAC') has outlined South Africa's international obligations based on a comprehensive analysis of the conventions and protocols as follows:

- I. Establish independent anti-corruption agencies;
- II. Ensure that steps are taken to investigate and prosecute corruption;
- III. Prevent corruption by removing obvious opportunities for corruption;
- IV. Educate the public on the harms of corruption;
- V. Ensure transparency and access to information when combating corruption;
- VI. Establish mechanisms that encourage participation by the media, civil society and non-governmental organisations, in the fight against corruption;
- VII. Adopt measures that address corruption the public and private sector; and
- VIII. Co-operate with, and assist, other states in criminal matters.

Statement B16: Anti-corruption agencies are free from political interference.

72 per cent of the respondents from the Eastern Cape and 49 per cent from the Northern Cape did not support the statement that anti-corruption agencies are free from political interference. 17 per cent of the respondents from the Eastern Cape and 41 per cent from the Northern Cape supported it. 11 per cent of the responses from the Eastern Cape and 9 per cent from the Northern Cape remained neutral.

The responses indicate that anti-corruption agencies are not completely free from political interference and also reflect a lack of credibility. Fighting corruption requires an anti-corruption system that is free from political manipulation.

Statement B17: Members of the public are free to complain to anti-corruption agencies without fear of recrimination.

A response rate of 75 per cent from the Eastern Cape and 53 per cent from the Northern Cape refuted the statement that members of the public are free to complain to anti-corruption agencies without fear of recrimination. 14 per cent of the respondents from the Eastern Cape and 40 per cent from the Northern Cape supported the statement whilst 11 per cent of the responses from the Eastern Cape and 7 per cent from the Northern Cape remained neutral.

A large percentage of responses disagreeing with the statement indicates that citizens are afraid to stand up against corruption. This means that stumbling blocks that impede the progress in the fight against corruption exist. This, therefore, calls for immediate action by the government in emphasising the importance of public participation in combating corruption and promoting integrity. Principles of participatory democracy as enshrined in section 59(1) (a), 72(1) (a) and 118(1) (a) of the Constitution should be adhered to.

Statement B18: Anti-corruption agencies act within a reasonable time regarding corruption complaints.

The statement that anti-corruption agencies act within a reasonable time regarding corruption complaints was discounted by 61 per cent of the respondents from the

Eastern Cape and 60 per cent from the Northern Cape. The statement was supported by 20 per cent of the respondents from the Eastern Cape and 28 per cent from the Northern Cape. 19 per cent from the Eastern Cape and 12 per cent from the Northern Cape responded impartially.

The negative response to the statement indicates that complaints are not promptly attended to. This is against the Batho Pele principles that were developed to instil a culture of accountability. Furthermore, in promoting accountability the Public Finance Management Act and the Municipal Finance Management set out the requirements for dealing with public finances at the national, provincial and local government spheres of government.

Statement B19: Anti-corruption agencies independently initiate investigations.

75 per cent of the respondents from the Eastern Cape and 58 per cent from the Northern Cape did not agree that anti-corruption agencies independently initiate investigations. Only 6 per cent of the respondents from the Eastern Cape and 33 per cent from the Northern Cape supported the statement. 19 per cent of the respondents from the Eastern Cape and 9 per cent from the Northern Cape remained neutral.

The results indicate that anti-corruption agencies are unable to initiate their own investigations. This shows a lack of independence. It is contrary to the recommendation by the CASAC that one of South Africa's obligations is to establish independent anti-corruption agencies (Country Brief, 2012:1).

Statement B20: Anti-corruption agency employees enjoy independence from political interference in the discharge of their duties.

The statement that anti-corruption agency employees enjoy independence from political interference in the discharge of their duties was discounted by 69 per cent of the respondents from the Eastern Cape and 49 per cent from the Northern Cape. 17 per cent of the respondents from the Eastern Cape and 42 per cent from the Northern Cape supported the statement. 14 per cent of the responses from the Eastern Cape and 9 per cent from the Northern Cape were impartial.

The high percentage of responses who disagreed with the statement indicates that anti-corruption agency employees are unable to discharge their duties without political interference. This interferes with their independence. Without employee independence, anti-corruption agencies are exposed to exploitation for personal benefit.

Statement B21: There are no “no go” areas for certain investigations.

83 per cent of the respondents from the Eastern Cape refuted the statement that there are no ‘no go’ areas for certain investigations. 58 per cent of the respondents from the Northern Cape discounted the statement. Only 9 per cent of the respondents from the Eastern Cape and 35 per cent of the respondents from the Northern Cape supported the statement. 8 per cent of the respondents from the Eastern Cape and 7 per cent from the Northern Cape remained neutral.

The majority of responses indicate that not all cases are investigated. Responses to statement B16 indicate that anti-corruption agencies are not free from political interference. Where political corruption is rampant, political interference hinders the

functioning of anti-corruption agencies. Therefore, a mechanism that prevents anti-corruption agencies from taking instructions from political parties need to be devised.

Statement B22: Anti-corruption agency employees are adequately trained.

The majority of the respondents discounted the statement that anti-corruption agency employees are adequately trained, that is, 69 per cent from the Eastern Cape and 49 per cent from the Northern Cape. 14 per cent of the respondents from the Eastern Cape and 37 per cent from the Northern Cape supported the statement. 17 per cent of the respondents from the Eastern Cape and 14 per cent from the Northern Cape remained impartial.

These results indicate that anti-corruption agency employees lack adequate training. However, according to Jennett and Hodess (2007:2), expertise and continuous training are essential if the highest professional standard of an ACA is to be maintained. This means that equipping anti-corruption agency personnel with the necessary skills is crucial.

Statement B23: Anti-corruption agency employees are adequately remunerated.

72 per cent of the Eastern Cape and 56 per cent of the Northern Cape respondents did not support the statement that anti-corruption agency employees are adequately remunerated. 14 per cent of the respondents from the Eastern Cape and 21 per cent from the Northern Cape supported the statement. 14 per cent of the respondents from the Eastern Cape and 23 per cent from the Northern Cape remained neutral.

The majority of the responses disagreeing that the anti-corruption agencies are adequately remunerated indicates that these employees can easily be bribed. Besides reducing employee resistance to corruption, low salaries also discourage skilled individuals from applying for employment. .

Statement B24: Anti-corruption agency employees dealing with sensitive cases are subject to random integrity tests.

The statement that anti-corruption agency employees dealing with sensitive cases are subject to random integrity tests was discounted by 47 per cent of the Eastern Cape respondents and 49 per cent of the Northern Cape respondents. 9 per cent of the respondents from the Eastern Cape and 32 per cent from the Northern Cape supported the statement. 44 per cent of the responses from the Eastern Cape and 28 per cent from the Northern Cape remained neutral.

A large percentage of the responses indicates that random integrity testing of anti-corruption agency employees is not performed. Judging by responses to statements B15 and B21, it is evident that the integrity of the agencies is not one of the sought-after characteristics. The fact that heads of these agencies are handpicked by corrupt politicians and are instructed not to investigate certain cases is indicative of dishonesty. The National Development Plan (2011:402) states that Vision 2030 promotes a zero tolerant South Africa for corruption where leaders hold themselves to high ethical standards and act with integrity.

Statement B25: There are arrangements to ensure that anti-corruption agencies do not become corrupt themselves.

Respondents from both provinces (the Eastern Cape, 69 per cent and the Northern Cape, 49 per cent) refuted the statement that there are arrangements to ensure that anti-corruption agencies do not become corrupt themselves. Only 6 per cent of the Eastern Cape and 28 per cent of the Northern Cape respondents supported the statement. 36 per cent of the respondents from the Eastern Cape and 28 per cent from the Northern Cape remained neutral.

The high negative response to the statement implies that anti-corruption agencies are capable of being corrupt themselves. This is supplementary to the outcomes of statements such as B10, B11, and B16. Lack of independence, fear of taking informed decisions, and hiring puppet heads is disastrous for any organisation. The government should ensure that anti-corruption initiatives are depoliticised.

Statement B26: Anti-corruption agencies are accountable to parliament.

The respondents (the Eastern Cape 58 per cent and the Northern Cape 44 per cent) discounted the statement that anti-corruption agencies are accountable to parliament. 6 per cent of the respondents from the Eastern Cape and 28 per cent of those from the Northern Cape supported the statement. 36 per cent of the responses from the Eastern Cape and 28 per cent from the Northern Cape were impartial.

The above responses imply that anti-corruption agencies are not accountable to parliament. This is true. However, anti-corruption agencies in South Africa are accountable to the executive instead of to parliament. This means that government accountability needs to be strengthened.

Statement B27: I have blown the whistle on alleged corruption.

78 per cent of the Eastern Cape and 51 per cent of the Northern Cape respondents did not support the statement that they have blown the whistle on alleged corruption. Not a single respondent from the Eastern Cape supported the statement. On the other hand, 33 per cent of the respondents from the Northern Cape supported the statement. 22 per cent of the responses from the Eastern Cape and 16 per cent from the Northern Cape were neutral.

Section 34(1) of the Prevention and Combating of Corrupt Activities Act 12 of 2004 compels persons in positions of authority, particularly senior managers in government, parastatals and the private sector to report corrupt activities. However, this response shows that employees do not blow the whistle.

Statement B28: I am too afraid to blow the whistle on alleged corruption.

The respondents supported the statement that they are too afraid to blow the whistle on alleged corruption. 78 per cent of the Eastern Cape respondents felt this way, as did 63 per cent of the Northern Cape respondents. The statement was refuted by 16.5 per cent of the respondents from the Eastern Cape and by 35 per cent from the Northern Cape. 5.5 per cent of the respondents from the Eastern Cape and 2 per cent from the Northern Cape returned impartial responses.

These results clearly indicate that employees are afraid to report corruption activities. As indicated under statements B5 and B6, these activities do take place despite the existence of the protection provided for in the Protected Disclosures Act.

Statement B29: Government is taking the issue of corruption in the public sector seriously.

72 per cent of the respondents from the Eastern Cape and 58 per cent from the Northern Cape discounted the statement that the government is taking the issue of corruption in the public sector seriously. 17 per cent of the respondents from the Eastern Cape and 35 per cent from the Northern Cape supported the statement. 11 per cent of the respondents from the Eastern Cape and 7 per cent from the Northern Cape returned neutral responses.

This result indicates that the government does not take the issue of corruption seriously despite the existence of institutions such as the Public Service Commission (PSC). If it did, then prioritised support for anti-corruption reforms would be evident. Particular attention should be given to the implementation of the anti-corruption legislation and the functions of the anti-corruption agencies. The PSC, an oversight body responsible for monitoring and evaluation, is mandated to play an active role in evaluating the effectiveness of anti-corruption agencies and to suggest improvements where necessary.

Responses to Section B30 are summarised per province below:

Section B30: Eastern Cape

Persons who hold the highest positions in government are the most corrupt and are seldom investigated. These individuals are involved in tender corruption. Their family members, friends and partners are also involved. Recruitment processes are riddled with corruption and rampant nepotism. Respondents suggested that the government

refrain from issuing tenders. This will promote employment of qualified individuals, and subsequently improved service delivery.

Major problems are posed by the lack of communication with whistleblowers, the lack of awareness campaigns, and inoperative anti-corruption legislation. The poor are punished while the politically connected are untouchable. Because these political cronies are rich, they also pay bribes to make cases disappear.

Section B30: Northern Cape

One respondent narrated a story of intimidation by a police officer who threatened to shoot her and her children for reporting a corruption activity. The matter was reported at the beginning of 2012. However, nothing has happened to date. The rest of the inputs were as follows:

Citizens need to be informed about corruption so that they know which procedures to follow when faced with it. Individuals who work in anti-corruption agencies and anti-corruption units in government departments need to be empowered with relevant skills so that they are able to do their job. More information about procedures for reporting corruption as well as motivation why reporting of corruption is essential, is needed. The authorities have a direct interest in tendering and filling of vacant posts.

The government is unable to deliver on its mandate because unqualified individuals hold high positions and tenders are awarded to consultants who do not have the required expertise to provide the necessary services. Individuals who hold high

political and government positions are above the law. Anti-corruption agencies are governed by the ruling party.

4.5.2 ANALYSIS OF INTERVIEW RESULTS

The researcher anticipated to interview four senior managers per province. However, owing to unforeseen circumstances, two interviews were conducted in the Eastern Cape and three in the Northern Cape. Two of the targeted senior managers in the Eastern Cape were unavailable. In the Northern Cape, the senior manager whom the researcher interviewed was the person responsible for the three targeted functions in the department as a result of organisational restructuring subsequent to the establishment of the South African Social Security Agency (SASSA). Through snowballing, one interview was conducted with one of SASSA's senior managers.

The participants were asked twelve questions. They were also requested to provide reasons for their responses. Yes / No responses were further interrogated.

The responses for the Eastern Cape interviewee to each of the questions are summarised as follows:

1. Are citizens able to complain to relevant anti- corruption agencies without fear of recrimination?

Yes. However, it is only those who are literate and/or reside in urban and semi-urban areas that are able to do so. Persons in rural areas do not know what to do and where to go to.

Anti-corruption agencies only exist in cities but they are not accessible, even to those who reside in these cities. The only place that individuals can go to in order to report corruption is a police station. The problem with this is that corruption is not a priority to the police. Police officers are not even equipped to deal with corruption cases.

2. Describe the enforcement of anti-corruption strategies in this province. How effective are the units in carrying out their mandate?

The participants did not know of any anti-corruption strategies in this province. Anti-corruption units are ineffective. They exist for compliance purposes. They do not fulfil the rationale for their existence. The units are not well resourced. The participant made an example of the unit in their department. The unit comprises only two officials. This makes it difficult to resolve cases. Furthermore, the function is not even decentralised to the seven districts of the department.

3. What role does the South African Police Force play in combating corruption in the province?

The police play a role to some extent. As previously indicated, they are not trained to handle corruption related complaints. Numerous reported cases remain uninvestigated.

4. Are the correct protocols and procedures followed when reports of alleged corruption are made?

The procedures are incorrect. For example, a person who is not trained in this area of work cannot be expected to deal with such complaints. They are unable to implement the provisions of the legislation.

5. Do you think information is freely available and directly accessible to those who will be affected by decisions and their enforcement?

There are no awareness campaigns to inform citizens about corruption and how they can report it. Everything has been made complicated for an average South African citizen.

6. Are corrupt officials held liable for their actions in the province? Please provide reasons for your answers.

No, this only happens in high profile cases. Examples were made of Messrs Bheki Cele and Jacki Selebi. However, the view is that corruption is corruption, regardless of the amount of money involved. Individuals who steal

small amounts from pensioners are as corrupt as those who receive bribes amounting to millions of rands. An example was made of the arms deal.

The emergence of political factions further complicated the fight against corruption in South Africa. Persons who affiliate to a faction that holds power are protected from being charged. Those who belong to a rival faction are made examples of. This has cascaded down to the administrative level. Officials have turned into politicians so that they are protected from being charged. This is the reason that charging people for corruption is seen as a mechanism to punish detractors, and/or as publicity stunts.

7. What is your experience about the existence of anti-corruption agencies in the provinces?

No personal experience, but the observation is that there is nothing much to say about them. Individuals hear about the anti-corruption agencies but they are unsure exactly what it is that they do.

8. Are these agencies effective in carrying out their mandate?

The agencies are selective in carrying out their mandate. Poor citizens are prosecuted. However, decisions are taken by the ruling faction not to take legal action against those who commit major corruption in the country. Sometimes, for whatever reason, affiliates of the ruling party are made examples of or charged as a way of getting back at them.

9. Does your department have an anti-corruption unit or officials responsible for anti-corruption strategies? If yes, please explain. If no, why not?

Yes, an ineffective one. The unit is unable to service the districts which are closer to the people. This leads to justice being delayed or denied. The citizens have lost hope.

10. In your opinion, are these units or officials able to execute their duties without interference?

Interference is always prevalent. Corruption has permeated every facet of our society. Those who are in power use public funds in:

- I. Mobilising smear campaigns against whistleblowers, portraying them as disgruntled employees; and
- II. Using propaganda to influence society into thinking that whistleblowers are guilty.

11. What is your view on government's intervention strategies relating to corruption?

As previously stated, the government's anti-corruption strategies are ineffective. Anti-corruption agencies need to be visible and accessible; and information needs to be readily available and accessible to every citizen. A

strategy needs to be implemented and must not merely exist on paper. No implementation is visible.

12. Is there anything else relating to corruption in your province that you might wish to add?

Our province is well-known for corruption. The government needs to ensure that agencies are independent and not aligned to any political party and are well resourced. Public awareness campaigns need to be conducted.

One of the directors admitted to being unaware of the fact that an anti-corruption toll free number exists in the province.

A summary of the Northern Cape responses to each of the questions is provided below:

1. Are citizens able to complain to relevant anti- corruption agencies without fear of recrimination?

Not in all instances: individuals are still scared of losing their jobs and being targeted for victimisation. They use the Hotline (toll free line).

2. Describe the enforcement of anti-corruption strategies in this province. How effective are the units in carrying out their mandate?

A provincial anti-corruption strategy does not exist. It was drawn up at some stage but has not been adopted. Good strategies do exist in the country. However, not everyone is informed about them owing to language diversity in the province. The units that implement the strategies lack independence and this impacts negatively on their execution.

3. What role does the South African Police Service (SAPS) play in combating corruption in the province?

To some extent they try, but they are ineffective. Their performance has deteriorated and they are incompetent. Investigating standards and the training they receive have declined. A general lack of respect for human rights and the society has prevailed. In-fighting, professional jealousy and indifference are also rampant. Extensive lack of proper management and lack of trust also exist in the police force. Individuals are appointed to take up positions for which they do not qualify. From a personal experience, the Independent Complaints Directorate does not provide feedback.

4. Are the correct protocols and procedures followed when reports of alleged corruption are made?

Yes. The correct protocols and procedures are followed. Although individuals are afraid to reveal their identities, they know what procedures to follow. The information from the Hotline goes to the Director-General in the Office of the

Premier. The Director-General's office dispatches the information to the heads of relevant departments to pursue the cases.

5. Do you think information is freely available and directly accessible to those who will be affected by decisions and their enforcement?

Yes. Awareness campaigns are constantly conducted to provide necessary information to the communities. A manual that guides citizens on the implementation of the Promotion of Access to Information Act and the Promotion of Administrative Justice Act has also been developed. However, language and distance pose barriers for the rural citizens of the province to access such information. To overcome such obstacles, the province uses community radios to reach rural areas.

6. Are corrupt officials held liable for their actions in the province? Please provide reasons for your answers.

Some corrupt officials are held liable for their actions (an example was made of employees that were dismissed from the Department of Education). However, most cases are not pursued, particularly those that involve high profile individuals. Conversely, there are some authorities who are not afraid to stand their ground. In one instance an official made an example of his boss).

7. What is your experience about the existence of anti-corruption agencies in the provinces?

From personal experience, individuals do report cases to the Public Protector and the SAPS. There have been cases of whistle blowing in the departments. However, in the SAPS the anti-corruption unit no longer exists. Another problem is the lack of political will to support the agencies.

8. Are these agencies effective in carrying out their mandate?

They do not have adequate capacity. Specialised skills are lacking. Corruption cases reported to the police are deprioritised. The Public Protector is preferable even though it is ineffective. However, it is a better option than the other agencies.

9. Does your department have an anti-corruption unit or officials responsible for anti-corruption strategies? If yes, please explain. If no, why not?

Yes, the Internal Audit unit is responsible for anti-corruption in the Department of Social Development. SASSA has an internal investigation unit that works closely with law enforcement agencies. Officials that are charged with this responsibility are supposed to conduct investigations. However, it is difficult because there is no strategy in place to implement. Unfortunately, the personnel do not possess the necessary skills. Individuals are charged.

However, owing to the manner in which cases are handled, culprits escape the long arm of the law.

10. In your opinion, are these units or officials able to execute their duties without interference?

No. Political and administrative authorities always influence their actions. They are not given an opportunity to do their work without interference. Sometimes they are instructed to stop doing their work. Support is lacking.

11. What is your view on the government's intervention strategies relating to corruption?

South Africa needs to practise what it preaches. It is among those countries that are known worldwide for having an abundance of anti-corruption agencies and legislation. While corruption is escalating, fewer cases are taken to court and fewer convictions are made. The country needs to establish a capacitated specific agency that deals only with corruption. Instructions are given not to investigate 'important people' who are involved in corruption. There is inconsistency in the way corruption is being fought.

12. Is there anything else relating to corruption in your province that you might wish to add?

Whistleblowers should be protected. There is no information-sharing amongst departments. Knowledge about matters in other departments might assist with investigations, since corrupt individuals tend to work in syndicates on most occasions.

SUMMARY

In this chapter, data was analysed to show whether anti-corruption legislation is being effectively enforced. This data also sought to shed some light on whether anti-corruption legislation and anti-corruption agencies in the Eastern Cape and Northern Cape provinces deal effectively with corruption. The data gathering method as well as the data gathering technique utilised were discussed. The response rate of seventy-eight per cent was considered reasonable and satisfactory. The findings will be provided in Chapter 5 following the interpretation of responses that will link them to the theoretical framework presented in the previous chapters.

CHAPTER 5

INTERPRETATION OF THE EMPIRICAL SURVEY AND FINDINGS OF THE STUDY

5.1 INTRODUCTION

This chapter identifies and explains themes that emerged during the survey. The chapter also interprets responses in association with the theoretical framework outlined in Chapters 1, 2 and 3. In interpreting these, the analysis of the empirical study and the literature review will be divided into three themes: perceptions towards anti-corruption legislation, perceptions towards anti-corruption agencies, and perceptions towards complementary measures. The themes are now discussed below.

5.2 DISCUSSION OF THEMES

Participants' narratives revealed a common pattern about the constraints and frustrations around the effectiveness of anti-corruption agencies and anti-corruption legislation in South Africa. The following converging themes emerged as responses from the participants and were analysed:

- I. Corrupt systems;
- II. Political interference;
- III. Exclusion of citizens;

- IV. Incompetence and incapacitation; and
- V. Unprotected and victimised whistleblowers.

5.2.1 Corrupt Systems

Participants associated acts of corruption more with systems than with individuals. Respondents stated that “*Corruption in South Africa has become intertwined with the societal fibre.*” Procurement, recruitment and law enforcement systems were identified by participants as corruption-prone areas. The statement “*Corruption occurs mostly in supply chain management and employment processes which leads to poor service delivery*”, revealed this reality.

The public sector is obligated by law to act with absolute integrity and impartiality. These two elements require transparency. Transparency is an integral part of in public procurement systems. Transparent procurement processes are essential in order to reduce corruption.

In terms of corrupt recruitment systems, a respondent had this to say: “*Recruitment processes are riddled with corruption and insurmountable nepotism*”. Respondents also added that “*The government is unable to deliver on its mandate because unqualified individuals hold high positions and tenders are awarded to consultants who do not have the required expertise to provide the necessary services.*” It becomes evident that as nepotism becomes pervasive, qualified individuals are marginalised in favour of relatives and friends.

With regard to the corrupt law enforcement systems, participants responded as follows:

“Persons who affiliate to a faction that holds power are protected from being charged. This has cascaded down to the administrative level. Officials have turned into politicians so that they are protected from being charged”.

“The agencies are selective in carrying out their mandate. Poor citizens get prosecuted. However, those who commit major corruption in the country, decisions are taken by the ruling faction not to take legal action. Sometimes, for whatever reason affiliates of the ruling party are sacrificed or charged as a way of getting back at them”.

“Persons who hold highest positions in government are the most corrupt and are seldom investigated”.

This area is characterised by issues such as erosion of the rule of law, selective applicability of legal prescriptions, arbitrary government, and impartiality. When the rule of law is eroded, citizens are subjected to the capricious rule of men. Laws cease to apply equally to everybody. In support of good governance, laws need to be enforced fairly and impartially.

5.2.2 Political Interference

The interviews revealed that investigations into corruption are open to political interference. Participants also highlighted politically motivated withdrawals of corruption charges against politically connected culprits. Respondents stated that *“The poor are punished while the politically connected are untouchable”*.

This shows that politicians make decisions that are influenced by vested interests on behalf of the agencies. As indicated above, such decisions are made to protect some individuals. It becomes clear that politically aligned anti-corruption agencies end up being inefficient and misdirected. Individual and group interests become the main concern over communal needs.

5.2.3 Exclusion of Citizens

Respondents emphasised the exclusion of citizens from decisions that affect them. In this regard, participants stated that *“The government does not involve communities in its fight against corruption”*. The government’s evasion of community involvement includes denying them participation in, awareness of and access to information. Participants also mentioned the following: *“There are no awareness campaigns that provide information and feedback to the communities regarding corruption”*.

This indicates that participation as one of the pillars of good governance results in organised civil society. The public needs to be mobilised against corruption in order to promote civic engagement in governance processes.

This kind of accountability augments contact between citizens and governments. In this way transparency, accountability and good governance are amplified. In turn the chances that power is abused by those in authority are decreased.

5.2.4 Incompetence and Incapacity

Participants indicated that anti-corruption agency employees are obstructed by incompetence. The study revealed that personnel are often incompetent owing to the hiring of unqualified individuals. In this regard respondents had this to say: *“Individuals are hired to occupy positions they do not qualify for”*.

“... a person who is not trained in this area of work cannot be expected to deal with such complaints”.

Responses also showed that the agencies themselves are incapacitated. To this account, the participants stated the following:

“... do not have enough of the required capacity. Specialised skills are lacking”.

This is attributed to a lack of political will which leads to a lack of operational independence, increased political interference, and inadequate resources.

Participants also stated the following:

“Another problem is lack of political will to support the agencies”.

“Anti-corruption agencies are governed by the ruling party”.

“Interference is always prevalent”.

“Persons who affiliate to a faction that holds power are protected from being charged. Those who belong to a rival one are made examples of. This has cascaded down to the administrative level. Officials have turned into politicians so that they are protected from being charged. This is the reason charging people for corruption is seen as a mechanism to punish detractors ...”. Because anti-corruption agencies need to be able to exercise their power, free from political influence, and have adequate resources, participants had this to say: *“... need to ensure that agencies are independent, not aligned to any political party and are well resourced”.*

Statements by the participants also show that the agencies’ incompetence is also caused by the fact that the agencies are induced into refraining and are directed away from their apparent task.

5.2.5 Victimization of unprotected whistleblowers

While whistleblowers are often perceived as martyrs who are committed to promoting integrity in the country’s governance, less gratitude is shown by the government. This becomes evident as participants indicated that whistleblowers

undergo victimisation for their selfless actions. Participants stated that *“Individuals who expose corruption are not protected from victimisation”*.

“Those who are in power use public funds in

- I. mobilising smear campaigns against whistleblowers, portraying them as just disgruntled employees; and*
- II. using propaganda to influence the society into thinking that whistleblowers are the guilty ones”*.

Individuals who observe corrupt acts choose not to report these. Fear of retaliation is cited as the reason for withholding such information. Participants stated that *“... individuals are still scared of losing their jobs and being targeted for victimisation”*. This shows that whistleblowers are vilified instead of being lauded.

Whistleblowers are supposed to be protected by law against retaliation. However, the mere existence of a whistleblower protection law is useless if it is incorrectly applied or is not applied at all. This deters whistleblowers from reporting acts of corruption. If whistleblowers do not have confidence in the investigating agency, they shy away from reporting acts of corruption. Whistleblowers' loyalty does not mean faithfulness to the authorities but to the government and its values. Whistleblowers act in the best ethical interests of the public.

It can be deduced that systemic corruption is not much different from organised crime. This kind of setup has its own corresponding system of recruitment and chain of command. It also has its arrangement of incentives and punishment. Fighting

systemic corruption necessitates a politically shrewd and firm leadership. To paralyse enforcement of this illegal system the government needs to devise effective ways of involving societies, enabling answerability, decreasing discretion, and increasing transparency.

5.3 INTERPRETATION OF RESPONSES

The trend of both provincial responses has been similar. The only difference has always been varying percentages. For this reason interpretations will not be done per province. As the study unfolded, it emerged that there are complementary measures that the legislation and anti-corruption agencies cannot do without. These emerged with the literature review and when the questionnaires were being compiled, when the questions for the interviews were formulated and when the responses were received.

5.3.1 PERCEPTIONS TOWARDS ANTI-CORRUPTION LEGISLATION

There is evidence that existing anti-corruption legislation is failing to accomplish its objective. Despite numerous pieces of legislation passed to support the government's fight against corruption, progress is not commendable. This was the emerging theme when high percentages of respondents from both provinces did not support the statement that the provinces enforce anti-corruption legislation. This again became apparent when the Department of Public Service and Administration (2011:5) highlighted the fact that chief among challenges in South Africa is non-compliance with anti-corruption legislation and the lack of its enforcement.

Some of the characteristics of effective anti-corruption legislation identified by authors are detection, investigation and prosecution of cases, punishment, prevention and enforcement. Responses refuting both statements, namely that officials are indicted under anti-corruption legislation and officials are successfully convicted in terms of anti-corruption legislation proved that the country's legislation does not possess the essentials. This is supported by the Department of Public Service and Administration (2011:5). The framework states that there are significant inconsistencies in the type of sanctions applied. Stork, Hasheela and Morrison (2004:11-13) write that corruption associated with social causes thrives where punishment for offenders is lenient. Along the same lines, Zuhua (2006: Online) adds that another factor that encourages corruption is the fact that corrupt officials go unpunished.

The literature reviewed revealed that the Protected Disclosures Act (PDA) (No. 26 of 2000), also called the Whistleblowers Act, was passed to encourage employees to disclose information about unlawful and irregular behaviour in the workplace. It added that the Act offers protection from victimisation for whistleblowers, as long as they meet the requirements and follow the procedures set out in the Act. This has not proven to be the case as the Public Sector Integrity Management Framework (2011:5) states that the ineffectiveness of the PDA has resulted in a lack of confidence in 'blowing the whistle' against unethical conduct and corruption.

This has been supported by a negative response to the statements that officials generally understand the whistle blowing procedures, that officials are free to 'blow the whistle' when they are aware of corrupt activities and thirdly, that whistleblowers

are protected in terms of anti-corruption legislation. It is also justified by the assertion by the Public Sector Integrity Management Framework (2011: 5) that there is non-compliance with and ineffective implementation of the Financial Disclosure Framework.

The National Development Plan (2011:404) supports the above assertion and reveals that the percentage of people who identify themselves as prepared to 'blow the whistle' has dropped by ten percent over the last four years. Weaknesses of the PDA that the National Development Plan (2011:405) highlighted are that the scope of protection in law is too narrow; the range of bodies to which a protected disclosure may be made is too narrow; there is no public body tasked with providing advice and promoting public awareness, and no public body dedicated to monitoring whistle blowing; the possibility of conditional amnesty for whistleblowers implicated in corruption is not clear, and adequate security for whistleblowers has not been established. According to Caiden (2003:6), some of the characteristics of systemic corruption are the terrorising and discrediting of prospective whistleblowers; the protecting and treating of violators leniently and the victimising of accusers for revealing hypocrisy.

The fact that the majority of respondents identified themselves with the statements that most prevalent cases of petty corruption practiced on a smaller scale involve small amounts of money and bribes, and that most prevalent cases of grand corruption are found where public officials in high positions, in the process of making decisions of significant financial value, routinely demand bribes or kickbacks for ensuring that tenders or contracts are awarded to specific contractors, shows reality.

This is supported by Pillay's (2004:1) statement that rather than diminishing, corruption has proliferated in all segments of the South African National Public Service, making it the "common cold" of South African social ills.

The Transparency International Global Corruption Barometer (2004:5) corroborates this revelation as it explains that while the two may affect particular target groups and aspects of a country's governance and development processes to a different degree, the overall damaging impact of grand or petty corruption is equally serious. The National Development Plan (2011:401) adds that evidence gathered by the National Planning Commission indicates that South Africa suffers from high levels of corruption that undermine the rule of law and hinder the state's ability to effect development and socio-economic transformation.

Negative responses to all the anti-corruption legislation-related statements is an indication that the statement by the United Nations Office on Drugs and Crime (2003:6), namely that South Africa has unique legislation which empowers the general public to require information from the public sector and to challenge administrative decisions, is not necessarily true. This, then, is contrary to the suggestion by the United Nations (2003:6) that proper legislative changes are needed to better define the mandates and facilitate co-ordination in the fight against corruption.

5.3.2 PERCEPTIONS TOWARDS ANTI-CORRUPTION AGENCIES

According to respondents, anti-corruption agencies are not adequately financially resourced. This is detrimental to the country's fight against corruption. Important requirements identified by Camerer (1999:2) for an anti-corruption agency to function effectively include sufficient staff and resources with specific knowledge and skills.

Anti-corruption agencies are not independent of the party in power. This has been highlighted by the majority of respondents who refuted the statement posed. Again, interview participants stressed the need for agencies not to be aligned with any political party. Authors such as Camerer (1999:2), Heilbrunn (2004:18), The Transparency International Global Corruption Barometer (2004:5-6) and Stapenhurst and Langseth (1997:324-325) emphasise independence, both operationally and politically, as one of the crucial elements for an anti-corruption agency. Heilbrunn (2004:18) also adds that the government should be committed to enacting reforms that may be politically difficult.

The statement that anti-corruption agencies are likely to discharge their duties without fear or favour was strongly challenged by respondents. This was also supported by respondents' contributions that anti-corruption agencies are governed by the ruling party.

Disproval of the statement that anti-corruption agencies have committed political backing raises concern. Pope (2000:95) identified weak political will as one of

reasons why anti-corruption agencies (ACAs) fail. Where there is a lack of political will, 'leaders' engage in corruption as a means of sustaining themselves or to protect themselves as they may be engaged in corruption. When corruption becomes a means for survival owing to prevailing circumstances or any other reason it becomes an acceptable norm and the political will to fight or oppose corruption is absent (Stork, Hasheela & Morrison, 2004: 11-13).

Jennett and Hodess (2007:2) advise that the integrity of staff is crucial to the credibility and effectiveness of an ACA. However, the statement that anti-corruption agencies have always retained their credibility was refuted by the majority of respondents. This is also supported by interview participants who raised the following issues: poor ordinary citizens are prosecuted; and when it comes to those who commit major corruption in the country, decisions are taken not to prosecute.

Pope and Vogel (2000:8) suggest that appointment procedures need to address the issue of whether persons of integrity are given the leadership; and that they are protected from political pressures while they are in office. Staff members at all levels should, therefore, undergo some form of integrity checks to minimise the risk of staff undermining the agency's role in curbing corruption (Pope and Vogel, 2000:8).

Pope (2000:104) suggests that appointing procedures for the head of the agency should ensure that he or she is competent and independent of the party in power. Pope (2000:104) discourages what is referred to as fear of the consequences. Jennett and Hodess (2007:2) add that some agencies have their own internal

oversight body to investigate breaches of their code of conduct, or a body that monitors and reviews all complaints against the ACA.

The literature review revealed that the Promotion of Access to Information Act (No. 2 of 2000) gives effect to Section 32 of the Constitution of the Republic of South Africa, 1996 by setting out how one can obtain access to information held by the state. By doing this, it promotes transparency and prevents the government from operating in secret. Again it was pointed out by Robinson (2012:2-3) that in order for citizens to remain the stewards of democracy, issues of accountability and transparency in governance are paramount.

However, responses strongly indicated that anti-corruption agencies lack transparency. This is supported by Robinson (2012:2-3) who states that enacting Protection of State Information legislation (Secrecy Act) cloaks the workings of state actors, interferes with press freedom to investigate corruption, and stifles efforts by whistleblowers to expose corruption, and will surely increase levels of corruption. The public interest demands that basic truth, having both transparency and accountability in government (Robinson, 2012:2-3).

Responses further indicated that heads of anti-corruption agencies are not hired on merit. This is confirmed by interview participants who explained how the government cannot deliver on its mandate because unqualified people are holding high positions. This is contrary to Pope and Vogl's (2000:8) opinion that national anti-corruption agencies should not be run by hand-picked supporters of politicians in power, as such leaders could be deployed to intimidate political opponents.

Jennett and Hodess (2007:2) identify making executive appointments to anti-corruption agencies as a challenge since it fails to ensure that persons of integrity are selected, that they enjoy independence from political (and private sector) interference or are held to account for their actions. Stork, Hasheela and Morrison (2004:11-13) explain that excessive power vested in the executive wing of the government is likely to be abused and will even hinder the effort of the government institutions established to fight corruption.

Pope (2000:95) reveals that one of the reasons anti-corruption agencies fail is political interference. This has been evident in this study with the majority of respondents refuting the statement that anti-corruption agencies are free from political interference. Pope (2000:95) again states that where there is political interference, the agency is not allowed to do its job independently, least of all to investigate officials at the higher and highest spheres of government.

Citing examples, authors attribute South Africa's failure to fight corruption predominantly to political interference. Referring to the disbanding of the Directorate of Special Operations (Scorpions), Berning and Montesh (2012:7) explain that intense political pressure as a consequence of pursuing investigations that involved high level politicians contributed to the downfall of the Scorpions. According to Rosenberg (2010:4), the politically tinged firing of the head of the Office of the National Director of Public Prosecutions (NDPP), Vusi Pikoli, raised serious questions about the political independence of senior civil servants in South Africa.

Alam (1995:419) indicates that where civil society is weak, citizens and private interests are vulnerable to exploitation by political or bureaucratic monopolies, or both. This is authenticated by the vast majority of responses that disagrees with the statement that members of the public are free to complain to anti-corruption agencies without fear of recrimination. The TI Sourcebook (2000:95) warns that anti-corruption agencies fail owing to failure to win the involvement of the community.

In the literature review Stork, Hasheela and Morrison (2004:11-13) highlight the fact that when the existing legal and institutional frameworks are faced with a number of inadequacies, such as insufficient power to enforce the laws, insufficient funding, insufficient manpower or a lack of autonomy, they are not able to function effectively. The study revealed that the majority of respondents disagree that anti-corruption agencies act within a reasonable time regarding corruption complaints.

Pope and Vogel (2000:6) state that anti-corruption agencies may lack the power to prosecute. This was confirmed by the majority of responses who disagreed that anti-corruption agencies independently initiate investigations or that anti-corruption agency employees enjoy independence from political interference in the discharge of their duties. Del Mar Landette (2002:56) stresses that ACAs' independence of resources, structure and power should guarantee their freedom of action. Stapenhurst and Langseth (1997:324-325) argue that to operate successfully, an anti-corruption agency should have leadership which is publicly perceived as being of the highest integrity.

According to the responses there are no 'no go' areas for certain investigations. This is supported by Pope and Vogl (2000:6) who state that anti-corruption agencies may be so beholden to their political masters that they dare not investigate even the most corrupt government officials. Among variables that reduce the effectiveness of an anti-corruption agency identified by Heilbrunn (2004:14) are the absence of laws necessary for its success a lack of independence from interference by the political leadership, unclear reporting hierarchy, and the absence of oversight committees.

Pope (2000:95) identifies the following integrity pillars for an anti-corruption agency: adequately trained employees; adequately remunerated employees; random integrity testing of employees; arrangements to ensure that anti-corruption agencies do not themselves become corrupt; and accountability of agencies to parliament as pillars for anti-corruption agencies. However, owing to negative responses to related statements it is clear that the country's agencies lack such support systems.

Stapenhurst and Langseth (1997:324) expound the view that if the appointing mechanism ensures consensus support through parliament, rather than government; and an accountability mechanism exists outside government (for example, a parliamentary select committee on which all major parties are represented), the space for abuse for non-partisan activities can be minimised.

Jennett and Hodess (2007:2) add that expertise and continuous training are essential if the highest professional standard of an ACA is to be maintained, and adequate salary levels are necessary to maintain staff morale and to act as a

disincentive to engagement in corrupt activities. Pope (2000:95) again explains that an anti-corruption agency fails if the agency itself becomes corrupt.

The statement that the government is taking the issue of corruption in the public sector seriously was rejected by the majority of respondents. This is not surprising as respondents' contributions and interview participants indicated that the public is not involved in anti-corruption initiatives. De Sousa (2010:12) asserts that being known by and accessible to the public at large is one of requisites that need to be in place for a particular agency to be classified as an ACA.

5.3.3 PERCEPTIONS TOWARDS COMPLEMENTARY MEASURES

As the study proceeded, a number of supporting mechanisms that have been devised by the government to support the fight against corruption became prominent. These complementary measures that emerged throughout the study are the following:

- I. The Batho Pele (People First) principles;
- II. National Anti-Corruption Strategy;
- III. Public Service National Anti-Corruption Hotline System;
- IV. Minimum Anti-Corruption Capacity Requirement;
- V. Financial Disclosure Framework;
- VI. Financial management and procurement systems; and

- VII. Civil service rules, regulations, codes of conduct and statutes that prohibit bribery, nepotism, conflicts of interest, and favouritism in the awarding of contracts or the provision of government benefits, or both.

According to the literature review and the empirical survey, these have not proved to be assisting as well as intended. The Batho Pele (People First) principles that were meant to set out the required levels of professional ethics in the public service in terms of service delivery do exist. However, according to the respondents' contributions, despite its existence, public servants still generally lack moral values.

Participants indicated that there are no provincial anti-corruption strategies. The minimum anti-corruption capacity requirement, which was meant to assist in the implementation of the national anti-corruption strategy, is not being complied with (Department of Public Service and Administration, 2011: 5).

One of the participants admitted to not having known that an anti-corruption toll free number existed in the province. The Department of Public Service and Administration (2011:5) complains that allegations of corruption reported to the anti-corruption hotline are referred back to departments for follow-up, but because departments do not have sufficient investigative capacity, initial investigations are never completed.

Although the literature reveals that financial disclosure requirements and performance systems for managers in the public service have been instituted, participants revealed that public servants are often involved in government tenders.

This is supported by the Department of Public Service and Administration (2011:5), which accentuates non-compliance with the Financial Disclosure Framework.

Interview participants highlighted the fact that corruption mostly occurs in supply chain management and in the filling of vacant posts. Supporting this notion, the Department of Public Service and Administration (2011:5) states that supply chain management prescriptions are not adhered to; fraud and corruption is widespread as a result of improperly awarded tenders; goods and services are provided at grossly inflated prices; officials benefit from government contracts; unnecessary purchases are made; and payments are made for services that have not been rendered.

The literature review further revealed that in 1997 the Code of Conduct for the Public Service, which sets the standards of integrity for public servants, was adopted. Notwithstanding its existence, the interview participants have highlighted high levels of bribery, nepotism, conflicts of interest, and favouritism. This is confirmed by the Department of Public Service and Administration (2011:5), which elucidates the fact that there is limited implementation of and adherence to the Code of Conduct. The Department of Public Service and Administration (2011:5) also reveals that certain public servants display a culture of unethical and undesirable conduct.

5.4 FINDINGS

As mentioned in Chapter 1, the main aim of the study was to conduct a comparative analysis of anti-corruption legislation and anti-corruption agencies in the Eastern

Cape and Northern Cape provinces in order to deal effectively with corruption. Specifically the study sought to address the following:

- I. To examine the nature and extent of corruption in the two provinces;
- II. To identify factors affecting the effectiveness of anti-corruption legislation and agencies;
- III. To compare and analyse the effectiveness of anti-corruption legislation and agencies in both the Eastern Cape and Northern Cape provinces; and
- IV. To identify and analyse factors associated with compliance or non-compliance with the anti-corruption legislation in the two provinces.

This has been achieved through the analysis in sections 5.2.1, 5.2.2 and 5.2.3 above. The study compared two provinces and the findings reveal that there has not been much difference realised in the manner in which the two provinces perform. Two distinctions that could be acknowledged are around the magnitude of negative and impartial responses. Majority responses from both provinces would disprove. However, Eastern Cape percentages were always higher than those of the Northern Cape ones. Again, there were always more impartial Eastern Cape responses than those of the Northern Cape.

Consequently, the positive response percentage from the Northern Cape was a little higher than that of the Eastern Cape, which did not cause any significant difference as the negatives remained higher. This is attributed to the fact that the Northern Cape respondents were not completely ignorant about the subject. The study

revealed that, although not at a satisfactory level, there are information-sharing initiatives that the province is employing. Key findings are as follows:

5.4.1 Corruption that exists in the country is systemic.

Corruption in the country is a symptom of deeper problems of how a political leadership administers the key financial functions of the state. It is concentrated among the wealthy individuals in the country, and has reached kleptocracy level which often involves the systematic theft of public funds and property by public officials.

It is aggravated to a degree where the incompleteness of the formal system enables perpetrators to pursue their corrupt activities subtly protected by secrecy; and can continue reproducing themselves in the shadow of the formal system.

There is a systematic use of public office for private benefit that results in a reduction in the quality or availability of public goods and services. Networks and alliances exist that use elements of the state and the political system to mediate their corrupt exchanges which they rely on to meet their objectives. Political leaders and top bureaucrats often set an example of self-enrichment over public ethics which causes lower level officials and members of the public to follow suit.

5.4.2 Most corruption occurs in procurement and recruitment processes.

There is overwhelming evidence that public procurement activities are most vulnerable to corruption in the country. A lack of transparency and accountability were recognised as major threats to integrity in public procurement practices.

Irregularities in recruitment and selection manifest themselves through patronage, nepotism, cronyism, favouritism and spoils system. The study reveals that opportunities and jobs are often not awarded on the basis of merit.

Principles of merit and competition in civil service recruitment and promotion are being violated. Again there is evidence that public office is often used as a reward for political party work and spoils system, the motivation of which is to secure jobs for party activists.

5.4.3 There is a lack of a clear, strong and enforceable legal framework.

The legislation lacks the bright-line rule in order to be easily understood and simple to apply. It contains standards that are open to interpretation by enforcement agencies, which makes it vulnerable to deliberate misapprehension. This has led to unprotected whistleblowers being victimised

as a result of blowing the whistle and has also resulted in communities who are too afraid to blow the whistle on alleged corruption.

Clearly, tough anti-corruption legislation exists in the country. However, having such laws does not guarantee effective enforcement. Therefore, without enforcement, corruption will continue to thrive because the culprits are neither detected nor investigated. Well-written legislation with good intentions is incapable of being effective without being adequately enforced.

Besides implementation gaps, the study has revealed that anti-corruption legislation enforcement is being politicised. When this happens, whether laws should be enforced in an appropriate manner ultimately depends on the will and determination of political leaders. Political power is used to shield corrupt activities of family, friends, or political supporters, or both.

5.4.4 There is no devotion by agencies to fighting corruption.

Although the country is suffering from systemic corruption in which high-level officials are often implicated, no agency is completely devoted to investigating and prosecuting the corrupt. Existing agencies are unable to perform the necessary functions adequately.

5.4.5 There is a lack of political will towards anti-corruption initiatives.

The findings from the study further reveal that the government is not taking the issue of corruption seriously. This has been attributed to insufficient political support in the implementation of anti-corruption measures. The country lacks the political will to fight corruption at the level it should.

Although political will is a critical starting point for sustainable and effective anti-corruption initiatives, there is no demonstrated credible intent by the government to fight corruption successfully at a systemic level. Where there is no political will, it is proposed that public service reform, transparency and accountability strengthening will simply be reduced to oratory statements.

5.4.6 There is limited access to information.

Access to information is another basic civil right that hampers the implementation of anti-corruption initiatives. The country upholds a culture of secrecy where little information is released to the public at large and which forbids public scrutiny of government agencies. Despite the existence of a relevant act of parliament that is meant to set out how people can obtain access to information held by the state, citizens are still not empowered with the knowledge that they have a right to such information.

The Act should promote transparency and prevent the government from operating in secret. However, the study has revealed that access to

information is minimal, which encourages a lack of government transparency and accountability. This also promotes mismanagement and misuse of public funds due to insufficient checks and balances in place to ensure accountability.

5.4.7 The ACAs are functionally and technically incapacitated.

The ACAs suffer a lack of core capacities, that is, capacities that are necessary for managing anti-corruption agencies, which are linked to the core issues and challenges of anti-corruption agencies, and capacities that are associated with particular areas of professional expertise or knowledge, which are mostly linked to specific functions of anti-corruption agencies. This might be because anti-corruption agency employees are inadequately trained and remunerated which might demotivate them from performing their functions effectively.

5.4.8 Anti-corruption agencies lack credibility independence and accountability.

Generally speaking, anti-corruption agencies do not appear to be credible in the provinces which formed part of this study. This has manifested itself through low levels of professional and ethical standards, and limited independence and accountability. Communities have lost trust in them owing to their behaviour. They are not seen as institutions that conform to human

rights norms and standards. Employees of these implementing agencies are often easily manipulated for political purposes.

The rule of law which encompasses checks and balances and accountability to sovereign authority often does not apply. These are reasons anti-corruption agencies are unable to initiate investigations independently, and are accountable to the executive, which leaves them open to manipulation.

SUMMARY

Based on the literature study and the empirical survey responses, the study has revealed that both anti-corruption legislation and the agencies have failed to achieve their set objectives. The results were interpreted against the backdrop of the major assumption that the struggle against corruption is best approached by developing a system of laws, institutions and supporting practices which promote integrity and make corrupt conduct a high-risk activity, as explained in Chapter 1 and which motivated the researcher to undertake the study.

In the chapter that follows, recommendations on how to mitigate problems that are responsible for this failure will be presented and then the chapter will conclude the study.

CHAPTER 6

SYNOPSIS, CONCLUSION AND RECOMMENDATIONS

6.1 INTRODUCTION

Chapter 5 described the findings of the study after an analysis of the data gathered. This chapter seeks to present a summary of the findings and conclusions drawn from the findings, as well as the limitations of the study. Recommendations for the improvement of anti-corruption legislation and agencies will also be provided. Lessons learnt as well as examples of best practices will be highlighted. Areas for future research will also be identified. To guide the flow of recommendations that will be provided in this chapter, a summary of the findings is presented below.

6.2 SUMMARY OF FINDINGS

Subsequent to the analysis of literature, questionnaire responses and interview results, a number of findings became apparent. The findings are summarised below.

It became evident that there is systematic use of public office for private benefit. This results in inferior quality or the unavailability of public goods and services. This is facilitated by networks and alliances that use the political system and state resources to sustain unethical behaviour. A precedent of promoting self-enrichment over public ethics has emerged from the findings of this research. It appears that certain political leaders and top bureaucrats are involved.

It was also found that public procurement and recruitment are the sectors most prone to corrupt behaviour. This was attributed to a lack of transparency and accountability. It became clear from the study that principles of merit and competition in recruitment and promotion are being violated owing to the extensive levels of patronage, nepotism, cronyism, favouritism and the spoils system.

The survey established that, in addition to implementation lacunae, anti-corruption legislation enforcement is being politicised. Abusing their power, certain political leaders prescribe the manner in which legislation is implemented so that the corruption of their family members, friends and political supporters is shielded. It is proposed that existing anti-corruption agencies are unable to devote their efforts in their entirety to perform the necessary functions to fight corruption.

A glaring lack of political will towards anti-corruption initiatives has emerged as a finding from this study. This was identified as the main cause of failure of anti-corruption initiatives in the country. Access to information was also identified as one of the major impediments to the success of anti-corruption initiatives. This was ascribed to the country's practice of upholding a culture of secrecy.

It was also revealed that anti-corruption agencies are functionally and technically incapacitated. Anti-corruption agencies appear to lack credibility, independence and accountability. The empirical component of this study revealed that employees of anti-corruption agencies are inadequately trained and inadequately remunerated. The survey further revealed that the rule of law is not applied as stringently as it should be in South Africa. It is proposed that a lack of fear for any criminal

prosecution is a further reason why anti-corruption agencies are open to manipulation. As the study unfolded, its limitations became palpable and these are briefly discussed below.

6.3 LIMITATIONS OF THE STUDY

In Chapter 1 it was stated that this study focused on assessing the effectiveness of the anti-corruption agencies and legislation in relation to public sector corruption. The study was approached from a governmental (public sector) perspective only.

The study was also conducted in only two provinces. For this reason, it is difficult to draw generalisations on the findings. However, because all provinces in South Africa are governed by the same anti-corruption agencies and legislation, these findings are capable of providing a synopsis on how effective these agencies are. In this process a number of lessons were learnt and these now follow.

6.4 LESSONS LEARNT

Firstly, conducting research on corruption has proven to be extremely difficult. Problems ranged from the researcher not being allowed to mention the term “corruption” to participants not being completely willing to open up. During the early days of the study it was not easy to discuss corruption without startling those present. It is most commendable that the issue of corruption is currently being more widely discussed in the country. It is hoped that this is the beginning of making the issue of corruption more public.

Secondly, it was learnt that public organisations regard junior employees as a threat when corruption-related research is undertaken. The researcher experienced this firsthand, especially during the data collection phases. Permission was granted to conduct the research in the selected departments and provinces. However, when the time came for the phase of data collection, the researcher experienced certain challenges. However, these challenges were eventually resolved and the process of data collection proceeded.

Thirdly, when conducting similar studies to this one, it is not advisable to separate public sector corruption from private sector corruption. A perception that corruption occurs only in the public sector is misleading. Most of the private sector corruption appears to go unnoticed by the relevant authorities or media. This creates the impression that corruption in the private sector is not as widespread as it is in the public sector.

Fourthly, a country's political system can significantly determine the effectiveness of anti-corruption initiatives in that particular country. The mere existence of legislation and agencies does not guarantee that corruption will be successfully curbed. Success lies in the genuineness with which the efforts are being pursued, the enforcement of the rule of law and other legislative prescriptions including codes of conduct for public functionaries.

As lessons were learnt, further areas of study were identified. These are presented below.

6.5 FURTHER AREAS OF STUDY

As previously stated, it is suggested that those who conduct similar studies in future should not separate private corruption from public corruption. Since corruption reaches across all sectors of society, eradicating it would require a combined effort from all sectors. The private sector plays a pivotal part in perpetuating corruption. When corrupt acts take place, the supply chain is fed largely by the private sector. Furthermore, besides paying bribes to public servants, corruption also happens between one private organisation and another.

6.6 SYNOPSIS

This study sought to conduct a comparative analysis of the ability of anti-corruption legislation and anti-corruption agencies in the Eastern Cape and Northern Cape provinces to deal effectively with corruption. In carrying out the investigation, a survey was employed. The data gathered for this study was achieved by means of a literature review, the administration of questionnaires and interviews. The triangulation methodology was accordingly deemed the most appropriate method to achieve the primary aims and objectives of the research.

As the literature was reviewed and the empirical study analysed, it was revealed that there are hurdles that hamper the effectiveness of the country's anti-corruption legislation and anti-corruption agencies. The investigation was based on the major assumption stated in Chapter 1, namely that the struggle against corruption is best approached by developing a system of laws, institutions and supporting practices

which promote integrity. The rationale for the study was depicted in Chapter 1 as well as the research questions.

6.7 SUMMARY OF CHAPTERS

6.7.1 Chapter 1

This chapter provided a general introduction to the entire study. The background, rationale for conducting the study, research questions, scope and limitations of the study as well as the research methodology were also discussed.

6.7.2 Chapter 2

Chapter 2 focused on the definitions and analyses of corruption. This chapter also provided a comprehensive approach to the understanding of the nature of corruption, and a survey of relevant literature on corruption was undertaken. This was done by discussing the extent, forms, causes and effects of corruption.

6.7.3. Chapter 3

Chapter 3 outlined properties of effective anti-corruption legislation and anti-corruption agencies. Attention was given to what anti-corruption legislation and anti-corruption agencies should be, rather than the somewhat abstract study of corruption itself.

6.7.4. Chapter 4

Chapter 4 outlined the methodology followed in the study. It also described the research design, participants, research instruments, methods of data collection and analysis, as well as ethical considerations.

6.7.5 Chapter 5

Chapter 5 outlined and discussed the findings obtained from the analysis of the qualitative and quantitative data.

6.7.6 Chapter 6

Chapter 6 presented a summary of the findings, the conclusions drawn from the findings and the limitations of the study. Recommendations for the improvement of anti-corruption legislation and agencies were also presented. Lessons learnt as well as examples of best practice were highlighted. In addition, Areas for future research were identified.

6.8 EXAMPLES OF BEST PRACTICE

In Chapter 3, good practice examples of anti-corruption laws were identified as those of Singapore, Hong Kong and, to some extent, Malaysia. The following highlights were reviewed: Singapore's Prevention of Corruption Act (PCA) was enacted in 1960. The law explicitly defines corruption in terms of various forms of "gratification"

and combines extensive prevention measures with severe sanctions and penalties. Secondly, Hong Kong's Prevention of Bribery Ordinance 1970 (POBO) is a comprehensive piece of legislation that covers all types of bribery, both in the public and the private sectors. Finally, Malaysia's Anti-Corruption Act 1997 provides for offences and penalties for private and public sector corruption, including active and passive bribery, attempted corruption and abuse of office, corruption through agents and intermediaries, corruption in public procurement and electoral corruption.

The literature review has revealed that good practice examples of anti-corruption ACAs are Hong Kong's Independent Commission against Corruption (ICAC), Singapore's Corrupt Practices Investigation Bureau (CPIB), and Botswana's Directorate of Corruption and Economic Crimes (DCEC). The New South Wales Independent Commission against Corruption was also mentioned as a parliamentary model.

Based on the evidence gathered, it is suggested that a single anti-corruption agency should be established in South Africa. The literature review revealed that reasons cited in the past for objecting to this opinion were, among others:

- I. Perceived un-affordability of a single agency;
- II. Confusion over where it would best be located, how it would be funded and what its mandate would be;
- III. Establishing whether existing agencies could be restructured and transformed before planning the establishment of a new body;

- IV. Risks involved in establishing a new single agency including the addition of another layer of bureaucracy to the law enforcement sector;
- V. The diversion of already scarce resources from existing agencies and other government priorities; and
- VI. Weaknesses such as fragmentation, insufficient coordination, poor delineation of responsibility and assimilation of corruption work into a broader mandate.

The researcher supports the view of authors who propose the adoption of a single anti-corruption agency. The literature and the survey revealed that criminal investigations are central to a single anti-corruption agency's mandate. Its investigation activities are supported by a well-resourced police force and criminal justice system. It also acts within a "supportive" political environment. These are regarded as befitting the criteria which underlie an effective anti-corruption agency.

South Africa should establish an agency that will be able to address systemic corruption instead of the Multi-Agency Model that addresses gaps, weaknesses, and new opportunities for corruption. In addition, the model which South Africa has adopted is used by wealthy countries such as the United States of America and most of Western Europe, while South Africa is a developing country. As revealed by the literature review, South Africa's scarce resources would better be utilised optimally by one agency towards strengthening its functionality in promoting anti-corruption strategies instead of being distributed over twelve anti-corruption agencies.

6.9 RECOMMENDATIONS

Recommendations consistent with the findings drawn from the empirical study and literature review are proposed below:

Recommendation One: Develop and implement an articulate systemic anti-corruption framework

To address the manner in which the major institutions and processes of the state are taken over and exploited by corrupt individuals and groups, a systemic approach should be embarked upon. This approach must be undertaken to ensure enhanced transparency, dismantled monopolistic powers, restricted discretionary powers and the elimination of impunity.

Recommendation Two: Increase transparency in order to curb corruption

It is essential that the access to information right enshrined in the 1996 Constitution is upheld for all. Espousing this right augments democratic principles of openness, transparency and accountability. Like many countries around the world, South Africa has passed freedom of information legislation, for example, the Promotion of Access to Information Act and The Promotion of Administrative Justice Act. The former sets out the procedure to obtain access to information held by the state while the latter ensures that decisions that affect the public are taken in a way that is procedurally fair. These two Acts are meant to promote transparency and prevent the government from operating in secret.

Nevertheless, this study has revealed that transparency is still lacking in South Africa. Access to information is another basic civil right that when infringed upon, hinders the implementation of anti-corruption initiatives. The country should reverse the apparent culture of secrecy. When little or no information is released to the public, the scrutiny of government agencies becomes difficult. In order to enhance levels of trust between communities and the government, the public should be further mobilised against corrupt behaviour by public officials and politicians at all spheres of government.

Recommendation Three: Dismantle monopolistic powers should

While the researcher acknowledges that monopoly of power is possibly linked to corruption of the political system, it is strongly suggested that, for the benefit of the country's survival, no political party should have exclusive control over power. Domination of South Africa's political environment by one political party for an extended period has led the current government to use its means to its own ends. Where systemic corruption exists, the longer the same political party remains in power, the more the processes are influenced on their behalf.

The influence persists to ensure that anti-monopoly measures are not undertaken or that, if they are undertaken, they are merely superficial, taken to strengthen and extend the ruling party's monopoly position and to weaken legislation in order to entrench its philosophy. It has been revealed by the study that because excessive power has been vested in the executive wing of government, it is being abused.

Recommendation Four: Restrict discretionary powers of politicians and bureaucrats

Discretion is a vital tool in management. It is meant to enable decision-makers to make decisions which represent a responsible choice. However, too much discretion exacerbates corruption. The research has revealed that those in positions of power abuse this enabling instrument in order to sustain corruption. For this reason, in order to promote transparency and effective control systems, excessive discretionary powers should be limited.

Recommendation Five: Increase salaries of anticorruption agency's employees

Employees of the anti-corruption agency should be paid adequate remuneration. This will possibly promote motivation and commitment amongst employees. By so doing, officials will be discouraged from finding other sources of income and could rather be encouraged to concentrate on their primary duties in terms of fighting corruption.

Recommendation Six: Eliminate conflicting incentives

As stated in Chapter 5, corruption investigations are open to political interference. Politically motivated withdrawals of corruption charges against politically connected culprits have become prevalent. Professional judgment should not be unduly influenced by personal interest.

Recommendation Seven: Eradicate the culture of impunity

According to the literature reviewed and the findings from the empirical survey, professional ethics in the public service have deteriorated despite the existence of measures such as the Batho Pele principles and codes of conduct. Excessive levels of loss of moral values were emphasised. This behaviour is associated with the erosion of the rule of law, selective applicability of law, arbitrary government and partiality. It appears that certain laws have ceased to apply equally to everybody. Politically connected individuals are exempted from punishment. In support of good governance, all legislation should be enforced fairly and impartially.

Recommendation Eight: Strengthen the national procurement systems

Government procurement is subject to bid-rigging, kickbacks and official collusion in over-invoicing. Despite existing detailed arrangements for the conduct of public institutions around the procurement of goods and services, high levels of corruption crimes are committed. The vulnerability of public procurement to corruption should be eliminated through the strengthening of transparency and accountability.

Recommendation Nine: Immunise recruitment processes against corruption

Merit-based appointment of government employees is the basis for the public service. The Public Service Commission developed a Toolkit on Recruitment and Selection in the public service. The toolkit is meant to provide guidance in selecting the most competent persons available, within the parameters of legislation on

Affirmative Action and Employment Equity. It encourages merit-based recruitment for senior civil service positions. It is recommended therefore that the Public Service Commission Toolkit on Recruitment and Selection in the public service be complied with, together with all other prescripts in the public service. This should be stringently monitored and controlled.

Recommendation Ten: Instill a political will towards anti-corruption initiatives

The government itself should take the issue of corruption seriously. Sufficient political support should be provided for the implementation of anti-corruption measures and strategies.

Recommendation Eleven: Develop clear, strong and enforceable anti-corruption legislation

As revealed by the survey, the existing anti-corruption legislation is ineffective. Limited compliance with anti-corruption legislation and a lack of enforcement thereof are the major problems. According to the respondents the current anti-corruption laws in South Africa fail to detect, investigate, prosecute, punish, prevent or enforce as they are expected to. Significant inconsistencies in the type of sanctions applied, lenient punishments, non-punishment and loopholes that lead to offenders getting away without being prosecuted were also stressed.

The legislation must be written in a manner that makes it easy to understand. It should also be straightforward to apply. The vulnerability of legislation to deliberate misinterpretation should be avoided. Enforceability of anti-corruption legislation will enhance the protection of whistleblowers from victimisation, encourage communities to blow the whistle when necessary, and facilitate successful investigations.

Results also revealed that, in addition to the implementation gaps, anti-corruption legislation enforcement is being politicised. Political leaders interfere with the enforcement of laws in shielding those who are close to them. It is therefore recommended that the implementation of anti-corruption legislation be depoliticised.

Taken further, the anti-corruption legislation should also be amended. This needs to be done through broadening the scope of protection in the whistleblower law and the range of bodies to which a protected disclosure may be made. An organisation that is tasked with providing advice and promoting public awareness and a public entity dedicated to monitoring whistleblowing should be established. Anti-corruption laws should be able to protect whistleblowers from being terrorised and discredited. It should avoid ambiguities that lead to protection and the soft treatment of culprits and ill-treatment of whistleblowers for revealing hypocrisy.

Recommendation Twelve: Establish a devoted anti-corruption agency

It is recommended that South Africa should establish a centralised anti-corruption agency tasked with deterrence, prevention, education and prosecution of corruption cases.

The literature review revealed that Hong Kong's Independent Commission against Corruption (ICAC) symbolises a universal model. Functions of the universal model are investigation, prevention and communication. These functions have been discussed in detail in Chapter 3. The New South Wales Independent Commission against Corruption takes a similar approach to fighting corruption as the Hong Kong's Independent Commission against Corruption. However, the New South Wales Independent Commission against Corruption reports to parliament and is independent from the executive and judicial branches of state.

South Africa takes a multi-agency model that includes a number of offices which are meant to be individually distinct, but together weave a web of agencies to fight corruption. However, this is not happening. As exposed by the literature review, the model is riddled with the following problems:

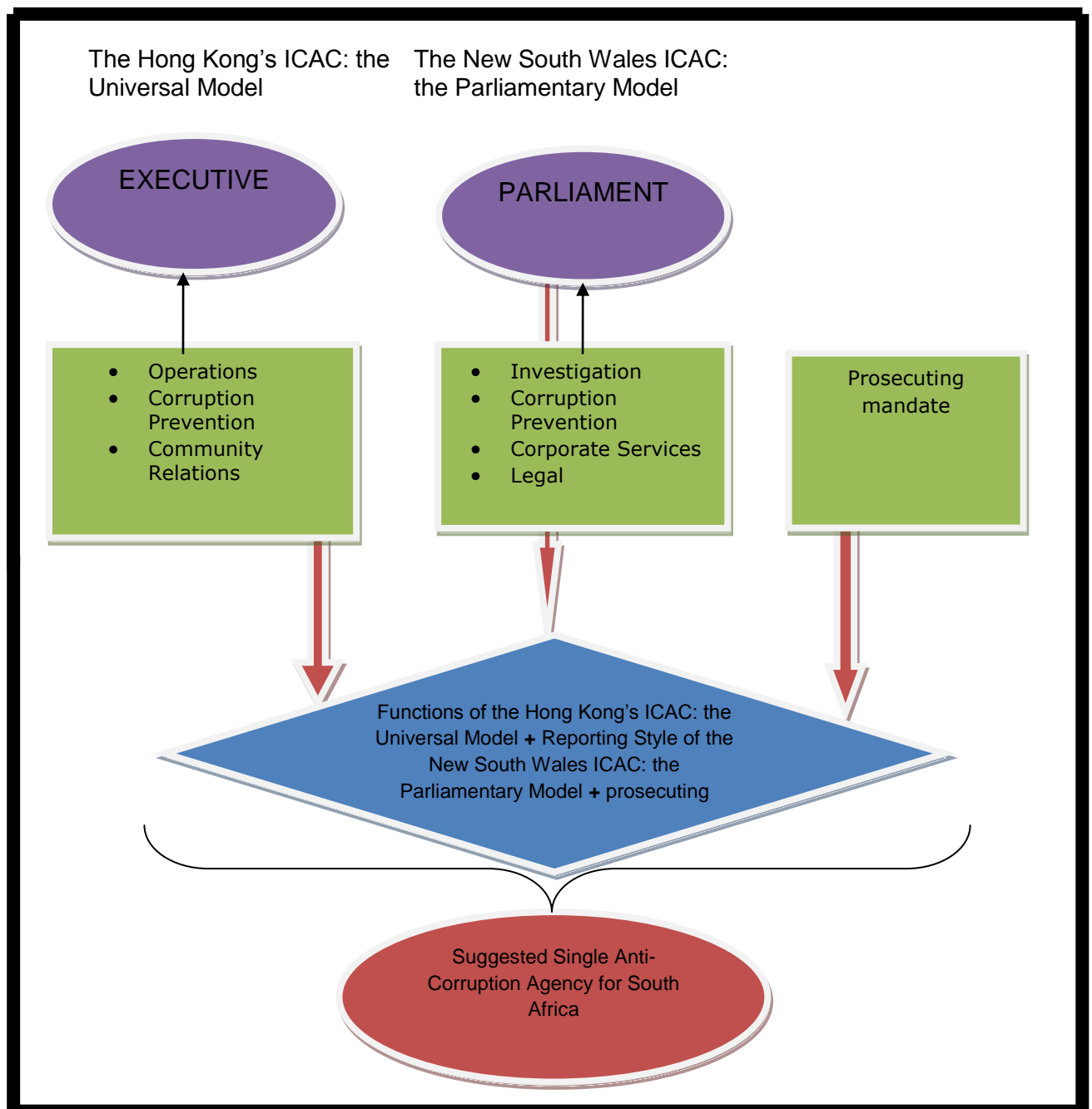
- I. Fragmentation;
- II. Insufficient coordination;
- III. Poor delineation of responsibility; and
- IV. Under-resourcing and under-capacitating.

Moreover, of the 12 agencies, only the Special Investigating Unit (SIU) has an exclusive anti-corruption mandate, with no power to promote a holistic approach to fighting corruption. Based on this exposé, a suitable model for South Africa is provided below as part of the recommendations.

6.10 THE RECOMMENDED MODEL

Based on the discussion of anti-corruption models in Chapter 3, the following model is recommended for South Africa:

Figure 6.1: The Proposed Model



The model is derived from primarily two models, the Hong Kong's ICAC: the Universal Model and the New South Wales ICAC: the Parliamentary Model. As indicated above, the two Independent Commissions against Corruption almost have the same core functions. The difference between the two is that the Hong Kong's ICAC accounts to the executive while the New South Wales ICAC accounts to the parliament.

Neither of the ICACs has a prosecuting mandate. Owing to the findings highlighted in Chapter 5 that relate to the ineffectiveness of anti-corruption agencies, the suggested anti-corruption agency needs to be authorised to prosecute individuals implicated in corruption. The findings have shown that when prosecutions begin to implicate politically connected individuals, the functioning of the agency is often manipulated by those who have authority.

The agency should emulate the Hong Kong ICAC's functions, that is, deterrence, prevention and education. As depicted by Figure 6.1, the agency should be divided into three departments: the Operations Department; the Corruption Prevention Department and the Community Relations Department.

The Operations Department would be responsible for investigating alleged corruption. The Corruption Prevention Department would examine the systems and procedures in the public sector, identify corruption opportunities and make recommendations to eradicate ambiguity and inadequacy in the anti-corruption legislation. The Community Relations Department would focus

on educating the public against the immorality of corruption and soliciting their support and partnership in combating corruption.

The agency should allocate sufficient resources to the Operations Department. This would indicate the government's commitment to fighting corruption as this division would deal with investigations. The agency should also ensure that its personnel are highly skilled in their various tasks.

The agency's strategy to ensure effective enforcement should consist of an effective public complaint system to encourage the reporting of corruption by members of the public and referrals from other institutions; a quick response system to deal with complaints; proper investigation of all reports of alleged corruption, irrespective of whether they seem to be serious or minor in nature; a review system that ensures that all investigations are professionally and promptly investigated; and the publication of successful enforcement in the media to demonstrate effectiveness and to deter the corrupt.

The agency should have a corruption prevention strategy which will reduce corruption opportunities in government departments and public entities through improved systems control, improved staff integrity, streamlined procedures, proper supervisory checks and control, efficiency, transparency and accountability, and the promotion of a staff codes of conduct and ethics.

The agency should have a wide range of education strategies in order to enlist the support of the entire community in a partnership to fight corruption.

These should include media publicity; media education; school ethics educational programmes; community education; ethics development seminars for public officials and the private sector; the issuing of anti-corruption prevention best practices and guidelines; websites for publicity and reference; and youth education.

The country's anti-corruption legislation should be adequately comprehensive. In terms of offences apart from the normal bribery offences, it should add acceptance by any public officials of gifts, loans, discounts and passage, even if there are no related corrupt dealings, unless specific permission is given; and for any civil servant to be in possession of assets disproportionate to his or her official income, or living above his or her means, as offences.

In terms of investigative power, the agency should have powers to search, arrest and detain; check bank accounts; require witnesses to answer questions under oath; restrain properties suspected to be derived from corruption; and hold the suspects' travel documents to prevent them from fleeing the jurisdiction of the investigation. Employees of the agency should not only be empowered to investigate alleged corrupt offences in the government and the private sector. They should investigate all crimes which are connected with possible corruption.

With the provision of wide investigative powers, there should be an elaborate system of checks and balances to prevent the abuse of such powers. The

agency should place equal emphasis on public and private sector corruption in order to prevent double standards in society. Effective enforcement against private sector corruption will safeguard foreign investment and ensure the maintenance of high levels of integrity in the business environment.

Ideally the agency should adopt a partnership approach to organise all sectors to fight corruption together. The key strategic partners of the agency should be all government departments, the business community, professional bodies, non-governmental organisations, community-based organisations, institutions of higher learning the mass media and international organisations.

South Africa should demonstrate the political will for the agency to succeed in the eradication of corruption. Such political support should be translated into the provision of sufficient resources, both human and financial. The Hong Kong ICAC, which the suggested agency seeks to emulate, is one of the most expensive anti-corruption agencies in the world.

In terms of reporting the agency should resemble the New South Wales ICAC. It should be accountable to parliament. This will ensure that the agency is free from any interference in discharging its mandate. As in the case of the NSW ICAC reporting to the Premier, it is proposed that while independent of the politics of government, the agency would report informally to the president.

Committees that would be responsible for checks and balance would also be appointed by parliament. For example, in the case of Hong Kong ICAC, the Operations Review Committee is a high-powered committee, with the majority of its members from the private sector. However, it is appointed by the Chief Executive. This committee reviews each report of corruption and investigation to ensure that all complaints are properly dealt with and that there is no “whitewashing”. It publishes an annual report to be tabled before the legislature for debate. The Hong Kong ICAC also has an independent Complaints Committee where members of the public can lodge any complaint against the ICAC or its officers, or both, and there will be an independent investigation. It also publishes an annual report to be tabled before the legislature.

None of the effective agencies highlighted in Chapter 3 have the power to prosecute. However, it is recommended that the proposed agency be authorised to prosecute. It is crucial that the agency is granted power to prosecute in order to uphold a coherent sequence in handling anti-corruption cases. This will also facilitate holding the agency accountable for being ineffective.

6.11 CONCLUSION

This study conducted a comparative analysis of anti-corruption legislation and anti-corruption agencies in dealing effectively with corruption in the Eastern Cape and Northern Cape provinces. It examined the nature and extent of corruption in the

Eastern Cape and Northern Cape Provincial Departments of Social Development; identified factors affecting the effectiveness of anti-corruption legislation and agencies; compared and analysed the effectiveness of anti-corruption legislation and agencies in both the Eastern Cape and Northern Cape provinces; and identified and analysed factors associated with compliance or non-compliance with the anti-corruption in these provinces.

An examination of relevant literature relating to anti-corruption legislation and anti-corruption agencies expounded the view that anti-corruption initiatives fail in most countries. The literature attributed this situation to the following impediments:

- I. Weak political will;
- II. Lack of resources;
- III. Political interference;
- IV. Inadequate laws;
- V. Insufficient accountability; and
- VI. Failure to involve the community.

The study highlighted acute interference by politicians in investigations pertaining to corruption. This hinders the functioning of anti-corruption agencies. The more politicians make decisions that are influenced by vested interests on behalf of the anti-corruption agencies, the more these agencies are likely to become ineffective.

Other obstacles that anti-corruption initiatives are faced with are the exclusion of citizens from decisions that affect them; the lack of political will; incompetent agency employees and the victimisation of whistleblowers.

Unless a suitable and effective mechanism for fighting systemic corruption is devised, South Africa will not succeed in improving the effectiveness of anti-corruption agencies and anti-corruption legislation.

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ANNEXURES

Dear Sir/Madam

I am studying for a Doctoral degree in Public Administration at the Nelson Mandela Metropolitan University. My study entails conducting a comparative analysis of anti-corruption legislation and anti-corruption agencies in the Eastern Cape and Northern Cape Provinces to deal effectively with corruption.

You are humbly requested to spend approximately 20 minutes of your time completing the attached questionnaire. The information you provide will be kept strictly confidential and only aggregate figures will be reported on.

Kindly place the completed questionnaire in the box that has been provided in your department for this purpose.

Thank you for your co-operation. It is much appreciated.

Yours sincerely

.....

Ms VT Majila
(PhD) Researcher

SECTION A

BIOGRAPHICAL DETAILS

1. Gender Female Male
2. Age level 20-29 30-35 36-39 40-50 51-55
3. Highest level of education (Specify) High school Technical college Tertiary institution
4. How long have you been working in this department 1-3 yrs 4-6yrs 7-10 yrs 10+ yrs

5. Present position _____

6. Number of years in the position _____

7. (a) How effective is anti-corruption legislation and anti-corruption agencies in the province?

(b) If anti-corruption legislation and anti-corruption agencies in the province are ineffective, why?

8. Please add any additional remarks in the space provided below.

SECTION B: QUESTIONNAIRE: PLEASE MARK THE APPROPRIATE BLOCK WITH AN "X"

LEGEND:

- 1. = **Strongly disagree**
- 2. = **Disagree**
- 3. = **Neutral**
- 4. = **Agree**
- 5. = **Strongly agree**

	1.	2.	3.	4.	5.
1. The province enforces anti-corruption legislation.					

	1.	2.	3.	4.	5.
2. Officials are indicted under anti-corruption legislation.					

	1.	2.	3.	4.	5.
3. Officials are successfully convicted in terms of anti-corruption legislation.					

	1.	2.	3.	4.	5.
4. Officials generally understand the whistle blowing procedures.					

	1.	2.	3.	4.	5.
5. Officials are free to blow the whistle when they are aware of corrupt activities.					

	1.	2.	3.	4.	5.
6. Whistleblowers are protected in terms of anti-corruption legislation.					

	1.	2.	3.	4.	5.
7. Most prevalent cases of petty corruption practiced on a smaller scale, involve small amounts of money and bribes.					

	1.	2.	3.	4.	5.
8. Most prevalent cases of grand corruption are found where public officials in high positions, in the process of making decisions of significant financial value, routinely demand bribes or kickbacks for ensuring that tenders or contracts are awarded to specific contractors.					

LEGEND:

1. = **Strongly disagree**
2. = **Disagree**
3. = **Neutral**
4. = **Agree**
5. = **Strongly agree**

	1.	2.	3.	4.	5.
9. Anti-corruption Agencies in the province are adequately financially resourced.					

	1.	2.	3.	4.	5.
10. Anti-corruption Agencies are independent of the party in power.					

	1.	2.	3.	4.	5.
11. Anti-corruption Agencies are likely to discharge their duties without fear or favour.					

	1.	2.	3.	4.	5.
12. Anti-corruption Agencies have committed political backing at the highest levels of the provincial government.					

	1.	2.	3.	4.	5.
13. Anti-corruption Agencies have always retained their credibility.					

	1.	2.	3.	4.	5.
14. Anti-corruption Agencies lack transparency.					

	1.	2.	3.	4.	5.
15. Heads of Anti-corruption Agencies are hired on merit.					

	1.	2.	3.	4.	5.
16. Anti-corruption Agencies are free from political interference.					

	1.	2.	3.	4.	5.
17. Members of the public are free to complain to anti-corruption agencies without fear of recrimination.					

LEGEND:

- 1. = **Strongly disagree**
- 2. = **Disagree**
- 3. = **Neutral**
- 4. = **Agree**
- 5. = **Strongly agree**

	1.	2.	3.	4.	5.
18. Anti-corruption Agencies act within a reasonable time regarding corruption complaints.					

	1.	2.	3.	4.	5.
19. Anti-corruption Agencies independently initiate investigations.					

	1.	2.	3.	4.	5.
20. Anti-corruption Agency employees' enjoy independence from political interference in the discharge of their duties.					

	1.	2.	3.	4.	5.
21. There are no "no go" areas for certain investigations.					

	1.	2.	3.	4.	5.
22. Anti-corruption Agency employees' are adequately trained.					

	1.	2.	3.	4.	5.
23. Anti-corruption Agency employees' are adequately remunerated.					

	1.	2.	3.	4.	5.
24. Anti-corruption Agency employees' dealing with sensitive cases are subject to random integrity testing.					

	1.	2.	3.	4.	5.
25. There are arrangements to ensure that Anti-corruption Agencies do not themselves become corrupt.					

	1.	1.	3.	4.	5.
26. Anti-corruption Agencies are accountable to parliament.					

	1.	2.	3.	4.	5.
27. I have blown the whistle on alleged corruption.					

	1.	2.	3.	4.	5.
28. I am too afraid to blow the whistle on alleged corruption. .					

	1.	1.	3.	4.	5.
29. Government is taking the issue of corruption in the public sector					

seriously.					
------------	--	--	--	--	--

30. Please feel free to add any additional thoughts, information or comments in the space provided below:

INTERVIEW SCHEDULE FOR THE ONE-ON-ONE INTERVIEWS MEANT FOR HEADS OF ANTI-CORRUPTION UNITS IN THE OFFICES OF THE PREMIER

The interviewee will be assured of anonymity and confidentiality of the contents of the interview.

The interviewing schedule is composed of the following three major parts: the opening; the body; and the closing. The opening will make the interviewee feel welcomed and relaxed. It will also clearly indicate the objectives of the interview. Finally, the opening will indicate the expected length of the interview.

The body of the interview schedule will list the topics to be covered and potential questions. The closing will maintain the tone set throughout the interview and will be brief but not abrupt. Interviewers will then thank the interviewee for his or her time.

1. Opening

- The purpose of the interview will be provided to the interviewees. (I would like to ask you some questions about corruption that when answered will allow an analysis of anti-corruption legislation and anti-corruption agencies in the province in dealing effectively with corruption).
- Interviewees will be motivated by ensuring them that the information will be used to help improve the fight against corruption in our country.
- Interviewees will also be informed of the estimated duration of the interview.

(The interview will take about 30 minutes). Interviewees will then be asked if they understand, and requested to ask any question that they might be having.

2. Interview Questions

2.1 Provincial efforts in promoting good governance

- a. Do you think citizens are able to complain to relevant anti-corruption agencies without fear of recrimination?
- b. Describe the enforcement of anti-corruption law in this province.
- c. What do you think of the incorruptibility of the police force in the province?
- d. Do you think decisions taken and their enforcement are done in a manner that follows rules and regulations
- e. Do you think information is freely available and directly accessible to those who will be affected by such decisions and their enforcement
- f. Do you think officials are held liable for committing corruption offences?

2.2 Anti-corruption agencies in the provinces

- a. What is your experience about existence of anti-corruption agencies in the provinces?
- b. Are these agencies effective in carrying out their mandate?

2.3 Anti-corruption officials

- a. What does your job entail?
- b. Are you free to execute your duties without interference?

2.4 Is there anything else relating to corruption in your province that you might wish to add?

3. Closing

3.1 I appreciate the time you took out of your day for this interview.

3.2 Thanks you again.

INTERVIEW SCHEDULE FOR THE ONE-ON-ONE INTERVIEWS MEANT FOR HEADS OF SELECTED UNITS IN THE DEPARTMENTS OF SOCIAL DEVELOPMENT

The interviewee will be assured of anonymity and confidentiality of the contents of the interview.

The interviewing schedule is composed of the following three major parts: the opening; the body; and the closing. The opening will make the interviewee feel welcomed and relaxed. It will also clearly indicate the objectives of the interview. Finally, the opening will indicate the expected length of the interview.

The body of the interview schedule will list the topics to be covered and potential questions. The closing will maintain the tone set throughout the interview and will be brief but not abrupt. Interviewers will then thank the interviewee for his or her time.

4. Opening

- The purpose of the interview will be provided to the interviewees. (I would like to ask you some questions about corruption that when answered will allow an analysis of anti-corruption legislation and anti-corruption agencies in the province in dealing effectively with corruption).
- Interviewees will be motivated by ensuring them that the information will be used to help improve the fight against corruption in our country.
- Interviewees will also be informed of the estimated duration of the interview.

(The interview will take about 30 minutes). Interviewees will then be asked if they understand, and requested to ask any question that they might be having.

5. Interview Questions

5.1 Provincial efforts in promoting good governance

- g. Do you think citizens are able to complain to relevant anti-corruption agencies without fear of recrimination?
- h. Describe the enforcement of anti-corruption law in this province.
- i. What do you think of the incorruptibility of the police force in the province?
- j. Do you think decisions taken and their enforcement are done in a manner that follows rules and regulations
- k. Do you think information is freely available and directly accessible to those who will be affected by such decisions and their enforcement
- l. Do you think officials are held liable for committing corruption offences?

5.2 Anti-corruption agencies in the provinces

- c. What is your experience about existence of anti-corruption agencies in the provinces?
- d. Are these agencies effective in carrying out their mandate?

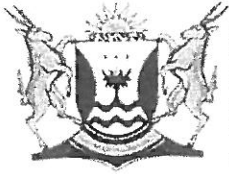
5.3 Anti-corruption officials

- a. Does your department have an anti-corruption unit or officials responsible for anti-corruption strategies? If yes, please explain. If no, why not?
- b. In your opinion are these units or officials able to execute their duties without interference?

5.4 Is there anything else relating to corruption in your province that you might wish to add?

6. Closing

- 6.1 I appreciate the time you took out of your day for this interview.
- 6.2 Thanks you again.



Province of the
EASTERN CAPE
SOCIAL DEVELOPMENT &
SPECIAL PROGRAMMES

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Tel: +27 (0)43 605 5152 - Email address: noluvo.mhlo@socdev.ecprov.gov.za – Website: www.socdev.ecprov.gov.za

MEMORANDUM

TO : T MAJILA
FROM : GENERAL MANAGER: DEVELOPMENT & RESEARCH
SUBJECT : REQUEST FOR PERMISSION TO CONDUCT RESEARCH
DATE : 06 OCTOBER 2011

Your letter addressed to the Head of Department Social Development and Special Programmes regarding the above matter refer:

Permission is hereby granted for you to draw participants of your Research Project from this Department.

The Research Unit of the Department will be in touch with you so as to ensure that the findings from this research are utilised for continuous improvement by the Department.

The Department further wishes you success in this endeavour.

B P Z Tshiki
General Manager: Development & Research

11/10/2011
Date

Approved/~~Not Approved~~

N Hackula
Head Of Department

19/10/2011
Date

