

# Corruption in Infrastructure Delivery: **South Africa**

**CASE STUDY**

Glenn Hollands

Partnering to  
**COMBAT CORRUPTION**  
*Series Editor: M. Sohail*



Corruption in Infrastructure Delivery: South Africa.



# Corruption in Infrastructure Delivery: South Africa

A case study

Prepared by Glenn Hollands of Mbumba Development Services

*'This unseemly scramble for political power in municipal government appears to be driven by the desire to abuse elected positions to lay hands on the economic resources that the local authorities have the possibility to access. This includes the power of members of municipal executive authorities to determine the outcomes of municipal tendering processes, regardless of the fact that the Municipal Finance Management Act expressly prohibits the involvement of councillors and mayors in adjudicating bids for municipal tenders.'*

President of South Africa, Thabo Mbeki,  
National Council of Provinces, 4 November 2005

South Africa

2007



Water, Engineering and Development Centre  
Loughborough University  
Leicestershire  
LE11 3TU UK

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## ACRONYMS

ACF	Anti-Corruption Forum
APRM	African Peer Review Mechanism
CMIP	Consolidate Municipal Infrastructure Programme
CSO	Civil society organization
CSVR	Centre for the Study of Violence and Reconciliation
DHLG&TA	Department of Housing Local Government and Traditional Affairs
DORA	Division of Revenue Act
ECNGOC	Eastern Cape NGO coalition
GEAR	Growth, Employment and Redistribution
GGLN	Good Governance Learning Network
IDASA	Institute for Democracy in South Africa
IDP	Integrated Development Plan
ISRDP	Integrated Sustainable Rural Development Programme
ISS	Institute for Security Studies
MDB	Municipal Demarcation Board
MEC	Member of the Executive Committee
MIG	Municipal Infrastructure Grant
NAC	Network Against Corruption
NACF	National Anti-Corruption Forum
NAP	National Anti-corruption Programme
NCPS	National Crime Prevention Strategy
NEPAD	New Partnership for Africa's Development
NGO	Non-governmental organization
NPS	National Prosecuting Service
ODAC	Open Democracy Advice Centre
OTP	Office of the Premier
PAIA	Promotion of Access to Information Act
PDA	Protected Disclosures Act
PSAM	Public Service Accountability Monitor
PSC	Public Service Commission
SADC	Southern African Development Community

SAPS	South African Police Service
Scopa	Standing Committee on Public Accounts
SIU	Special Investigations Unit
SMME	Small medium and micro enterprise
T-SA	Transparency South Africa
WEDC	Water Engineering Development Centre

## **1. Introduction**

The primary purpose of this research is to investigate the causes and effects of corruption as it affects the delivery of infrastructure and services to the poor in South Africa. The research also assesses the efficacy of anti-corruption measures in protecting the interests of the poor. The research was designed and implemented by a South African company, Mbumba Development Services, according to the guidelines and principles provided by the contracting agency – WEDC (the Water Engineering Development Centre) at Loughborough University, UK.

The agreed objectives of the research include:

1. Determine the main causes of corruption.
2. Determine the effects of corruption on services (in particular water supply, sanitation, drainage, access roads and paving, transport and solid waste) and service users who are poor.
3. Outline the type of anti-corruption measures that have been applied.
4. Assess whether anti-corruption measures impact on pro-poor livelihoods and can be used effectively by the poor.
5. Assess the effect of corruption and anti-corruption measures on shared community assets and the capabilities of the poor.
6. Outline the extent to which the views of the poor are included in policy deliberations on corruption.

## 2. Research methodology

The research mainly involved a *case study* approach that *focused* on particular acts of corruption involving public finance related to municipal service provision. The case studies were selected loosely according to the following criteria:

- The corruption involved significant public finance or other resources (value in excess of R100,000).
- The misappropriation of the finance / resources resulted in negative consequences for service delivery to poor communities.
- Anti-corruption measures were deployed and resulted in successful prosecution, and such measures have generally attracted community interest and/or participation.
- The particular case of corruption is sufficiently resolved that stakeholders are willing to comment and review the proceedings. (Ideally the guilty parties should have been convicted and sentenced).

The anticipated research activities included:

- *A literature review* (specific to South Africa): The review will include an overview of the relevant legislative and policy instruments intended to combat corruption.
- *A scan of recent cases of corruption in the South African province of the Eastern Cape*: This activity will include liaising with select stakeholder groups (for example, the agency responsible for investigating the corruption) in order to identify which cases best match the above criteria. This may require accessing the databases of certain government bodies or NGOs.
- *Development of research instruments*: Development will be based on the *Methodology Outline* in the Research Pack.
- *Planning the research strategy*: This process will assess the specifics of the selected case studies and choose both the approach best suited to local circumstances and the particular configuration of stakeholders. In broad terms, the research strategy will interact with three distinct groups, namely anti-corruption agencies, service users / community stakeholders (the victims of corruption) and people involved in or convicted of corruption.

Not all of these research strategies proved to be feasible during the actual implementation of the research. Interviews were conducted with the following agencies:

- The Directorate of Special Operations (Scorpions) – two respondents

- The Special Investigations Unit
- An internal investigator in the Department of Social Development
- The internal auditor in a municipality
- A civil servant currently facing charges of irregular conduct
- A special advisor from the National Treasury attached to the Eastern Cape Provincial Treasury
- Two officials within the Eastern Cape Department of Housing, Local Government and Traditional Affairs
- The Office of the Auditor General (informal discussions)
- A private investigator (informal)

A few limitations to the original planned methodology must be noted. It did not prove feasible to hold focus groups with community members who had been directly exposed to corruption, largely because these groups proved difficult to identify in relation to specific instances of corruption. One of the cases studied (social grant fraud in the Department of Social Development) was chosen because of the willingness of the informant to share information, the direct impact on the poor and the fact that very significant amounts of money were involved. Although the case study did not fall completely within the focus on municipal infrastructure corruption, it does contribute to the broader contextual understanding of corruption in South Africa. This study also illustrates a very concerted effort by the relevant government department to eliminate corruption. One of the reasons for selecting the *social grant case study* was the anticipated benefit of being able to interview those convicted of corruption. Although the internal investigator in the department was of great help in this regard, the response of the Department of Correctional Services to repeated requests was disappointing – no permission for the interviews could be secured over a three-month period of both written and informal approaches. Given the difficulties of assembling different stakeholders around a particular act of corruption, it was not possible to assemble the anticipated *stakeholder workshops*. In June 2006, however, a paper summarizing some of the research findings was presented at a seminar hosted by the NGO Afesis-corplan. Participants at this event included the Auditor General, members of the provincial treasury and representatives of municipalities and government. Document analysis for this research project has been extensive and ranged from national survey documents to technical reports from the Auditor General and the National Treasury, to the Integrated Development Plan of Qaukeni municipality. The case study on Qaukeni proved to be difficult as none of the investigators or other people involved were prepared to answer specific questions on the case or to release their reports. There is some discussion on this aspect of the case study in the last section of the report.

### **3. Report structure**

The report begins with an overview of corruption in South Africa and how corruption is presented in some of the more authoritative surveys and publications. The study of corruption has to be related to the broader social and economic aspects of South African society in order to fully understand its significance in policymaking and political discourse. This part of the paper includes a brief sample of levels of corruption in the civil service and the control measures that are invoked. This is followed by a brief examination of how corruption is defined and how the term is used in current discourse. Of importance here is the idea that corruption and measures to combat it have both a literal or practical dimension as well as a figurative or symbolic importance. The next section of the paper describes how the public experiences corruption and how this understanding is represented in various survey instruments. The general findings of these surveys, including comparisons with other countries, are used to ask the question '*How corrupt is South Africa?*'. The paper then outlines the various anti-corruption agencies and their programmes. This includes an outline of the relevant legislation and some discussion of the manner in which these multiple programmes intersect and complement each other. A lengthy section is included on the role of civil society in combating corruption. The report then moves on to its main purpose, focusing on local government and emerging patterns in financial practise and management problems. This section contains an outline of the Eastern Cape municipal environment, including a brief list of most councils and the typical problems related to procurement and other financial issues. The section includes examples of corruption countrywide, a detailed description of the services that are a municipal responsibility and the manner in which service infrastructure is funded and delivered. Minor case studies are used to show how difficult it is to discern 'corruption' from other instances of poor municipal service strategy. Finally the case study of Qaukeni is presented, showing that although this municipality is generally regarded as uniquely corrupt and anarchic, the breakdown in municipal governance is in fact traceable to much more endemic problems in allocating service responsibilities and linking the necessary financial resources.



## 4. Overview of corruption in SA

### 4.1 Corruption and development

Research into corruption in South Africa proves to be surprisingly difficult, not just because of the sensitivity and confidentiality issues that arise when approaching primary sources, but because the literature itself is scattered across many different thematic sectors and few agencies involved in social research seem to have dedicated publications or databases. The same situation appears to apply to government records:

*... there is no central database of detected corruption incidents or cases, or of suspected corruption, or of studies of systematic weakness. Almost all of the work that that has been done on the qualification<sup>1</sup> of corruption has been based on perceptions – of households, of business, of elite groups. Little has been done to relate perceptions to actual experience (UN and DPSA, 2003).*

Corruption is an issue that dominates political and administrative discourse in South Africa. It is an issue of both substantive and symbolic importance. South Africa has developed an impressive array of pro-poor infrastructure and service delivery programmes based on what are generally regarded as socially enlightened policies. Two of the best-known macro-level programmes are the Reconstruction and Development Programme (RDP) and its more conservative successor, Growth, Employment and Redistribution (GEAR). These programmes consist of interlinked administrative and social policies and principles designed to overcome the legacy of underdevelopment and inequality that resulted from apartheid.

*In brief the RDP was the mandate given to the ANC-led government to transform society in fundamental ways. As in other areas of South African society, all types of infrastructure came under policy scrutiny when the new government assumed power in 1994 (Khosa, 2002).*

The fortunes of the ANC government – indeed the entire notion of a *developmental state* – rest on their ability to ensure that the principles and social investments set out in the RDP/GEAR are seen to be optimized through a responsive, effective and delivery-oriented civil service (see, for example, ‘Batho Pele’ section of GSA, 1998a). Clearly this requires that those spheres of government charged with particular service responsibilities have sufficient revenue to meet their obligations – the Division of Revenue Bill published annually by the Treasury ensures that this is the case. According to the Minister of Finance’s Budget Speech 2003/04, since 1994 public spending on health, education, welfare, housing and other social services has increased from 52.9 per cent of non-interest expenditure to 58.3 per cent (2003/04). There are other legal provisions, such as the Public Finance Management Act, that seek to ensure that public finance is effectively and legitimately deployed by government and the civil service at large and that the expenditure and outcome are reported and in the public domain.

South Africa became a democracy in a period when international initiatives to prevent or control corruption had significantly increased (ISS, 1997). The Institute of Security Studies (ISS) notes that in this period of about two decades the United Nations, the OECD, the Council of Europe and the Organisation of American States have all been involved in programmes to combat corruption (ibid). The Southern African Development

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<sup>1</sup> It is presumed that this is an error and is meant to read ‘quantification’

Community (SADC) and subsequently NEPAD (the New Partnership for Africa's Development) have also taken a position on corruption, drawing attention to its impact on national economies and investor confidence (ibid). Perhaps most importantly, South Africa is currently (February 2006) nearing the end of the first step in implementing the African Peer Review Mechanism (APRM). The APRM is a voluntary exercise entered into by member states of the African Union as a form of self-monitoring. The *blueprint* for this exercise is the Declaration on Democracy, Political, Economic and Corporate Governance that sets out values, codes and standards in these sectors (NEPAD, 2003). The purpose of the APRM is to ensure that members meet these norms and standards in both policy and practice, thus creating the conditions for 'political stability, high economic growth, sustainable development and accelerated sub-regional and continental economic integration ...' (ibid). Member states engage in four types of review, namely:

- A country review
- Periodic reviews at intervals of two to four years
- Self-initiated reviews
- Reviews undertaken in response to impending political or economic crisis. It is suggested that these can be 'called for by participating Heads of State and government in a spirit of helpfulness to the Government concerned' (ibid).

It is common knowledge that one of the main obstacles to the 'normalization' of South African society are the high levels of crime that have prevailed since the first democratic elections in 1994. This resulted in the National Crime Prevention Strategy (NCPS) being launched in May 1996:

*Fraud, corruption and graft involving government funds are seen to be undermining public confidence in democratic government itself, and therefore deserving urgent attention (ibid).*

There is a body of opinion within South Africa that believes that the emergence and growth of corruption are more than simply a malaise that affects the public service, and that it constitutes an affront to the new democratic order and the principles it represents.

*Corruption and mal-administration are inconsistent with the rule of law and the fundamental values of our Constitution. They undermine the constitutional commitment to human dignity, the achievement of equality and the advancement of human rights and freedoms. They are the antithesis of the open, accountable, democratic government required by the Constitution. If allowed to go unchecked and unpunished they will pose a serious threat to our democratic state (Chaskalson, 2000).*

## **4.2 Corruption in the civil service**

The Public Service Commission (PSC) in South Africa has also involved itself in measures to combat corruption, including ethical / integrity frameworks. In September 2004 the PSC launched the National Anti-corruption Hotline that allows government employees, the public and concerned third parties to report corruption. Since its establishment the PSC has referred 1,390 corruption complaints to departments for further investigation – about 70 per cent of these could not be substantiated after the departments were investigated. In 2005 the PSC also conducted 45 investigations on its own initiative or because it had received complaints. These related to alleged corruption,

mal-administration (including alleged human resource management and procurement-related transgressions), unethical behaviour and service delivery complaints. The Public Finance Management Act (PFMA), read in conjunction with the Treasury Regulations, requires that the department report finalized financial misconduct cases to the PSC. (In terms of the PFMA, financial misconduct is any material losses through criminal conduct, unauthorized, irregular, fruitless and wasteful expenditure.) In the 2004/05 financial year, 513 such cases were reported to the PSC, down from 582 in 2003/04, however the decrease may have been due to non-reporting by departments (ibid). The majority of cases involved fraud and theft, however there was a decrease in this form of misconduct from the 2003/04 level (50 per cent). Where employees were charged, 77 per cent were found guilty of financial misconduct and 38 per cent of those found guilty were dismissed. The PSC claims that this indicates that government does not tolerate this form of corruption. The total cost of this misconduct was estimated at over R120 million, of which about R97 million was recovered (ibid). The PSC also co-operates with the National Anti-Corruption Forum (NACF), a body consisting of representatives of the public and private sector and civil society (ibid). A summit of the NACF in March 2005 adopted resolutions which created the basis for the National Anti-corruption Programme (NAP), to be initiated in April 2006 and run over the next three years. The Department of Public Service and Administration is also monitoring the implementation of the Public Service Anti-corruption Strategy due to run until the end of 2007 at a cost of R10.5 million. The NAP will include the establishment of 'a cadre of over 400 anti-corruption practitioners...' (Fraser-Moleketi, 2006).

The civil service relies to a large extent on 'whistle-blowers' to reveal corruption and therefore it is important that they be protected. The PSC acknowledges that it knows of whistle-blowers who have not been adequately protected. Deputy Chairperson of the Public Service Commission, John Ernstzen, acknowledged that the identities of many whistleblowers had 'somehow' been revealed, resulting in them having to receive 'maximum protection' and becoming subject to 'hardships'. As a result 'a number of other people were too fearful of exposing other cases of corruption' (ibid). Norman Maharaj (PSC Commissioner for the Western Cape) suggested that the best the PSC could offer public servants who 'blew the whistle' was protection from unfair dismissal, intimidation or any other risk to their job security – personal safety was 'probably outside of the PSC's domain' (ibid).

### **4.3 Defining corruption**

Since the experience of corruption varies greatly from country to country and is often shaped by cultural values, it makes sense to focus on a specifically South African definition. Sam Sole is a journalist with the *Weekly Mail and Guardian* who has specialized in cases of government corruption and mal-administration. Sole is particularly interested in the connection between corruption and accountability and argues that South Africa's democratic trajectory has been marked by considerable effort to 'contain and roll back corruption' (Sole, 2005) and increase individual accountability, however this has been accompanied by a 'drift' towards *institutional immunity* in the political sphere. Sole notes that simple definitions of corruption do not suffice because corruption may take clearly illegal forms, such as fraud, or it may be the vastly more subtle practices of *rent-seeking, patronage and abuses of power* (ibid). Sole therefore offers a broad definition of corruption that seeks to encompass the many irregular practices and habits that undermine the core values of the democratic programme in South Africa:

*Corruption is the wilful subversion (or attempted subversion) of a due decision-making process with regard to the allocation of any benefit (ibid).*

Sole argues that this definition is apt for the South African context because the emphasis is on subversion of the decision-making process. The subversion may take place through inducement or through the exercise of patronage or other forms of collective behaviour, or even 'by dint of ideological conviction' (ibid, p.87). Of interest is Sole's idea that the motivation for the subversion is less important than its result, i.e. to be corrupt the subversion of the decision-making process need not be motivated by graft. This definition seems particularly well suited to the *grey area* in many irregular transactions where the motivation can be a combination of graft, patronage or an undisclosed *common purpose* between the parties perpetrating the corruption.

Key to Sole's understanding is the question of 'accountability', a value that is as important at the level of prevailing business and political culture and the 'social bedrock of ethical standards and norms' (ibid) as it is within legal frameworks, statutory oversight bodies, etc. One of the few ways of understanding the gap between formal policy and principle on corruption, which is generally of a high order, and the day-to-day evidence of fresh misappropriation and self-enrichment, is the recognition that informal cultures of secrecy and collusion and networks of solidarity may be stronger and more pervasive than formal accountability systems (ibid). Sole also cites accountability failure in the private sector, often due to expediency; for example it is easier, cheaper and less damaging to a company profile to allow a corrupt executive to resign rather than take effective disciplinary / legal action. By implication, then, accountability is not a consideration limited to public office.

Sole notes that *rent-seeking* and *patronage* are critical elements in understanding corruption. Drawing on a paper by Jonathan Hyslop, Sole defines rents as 'something for nothing' or nodes of competition for 'easy money'. The idea is that the resulting transaction yields income that is higher than the minimum that would have resulted had there been alternative opportunities. Rents may be legal (subsidies and transfers organized through the political process or 'super-profits' made by innovators before the competition catches up) or illegal (transfers by private *mafias*) (ibid, p.88).

Using Hyslop's definition of *patron-client relationships*, Sole draws attention to the repetitive nature of such relationships between patrons and clients that exist in a long-term relationship of exchange. The power and status of the patron and client invariably differ, but the relationship is nonetheless personal and under normal circumstances may entail nothing more than legal donations or recommendations. Under conditions of fierce competition, however, the patron who is unwilling to break the law finds that they cannot retain their client base. While not always based on the family, 'in societies where the idea of the family has a particular power and prestige, patronage relations are likely to be stronger than in those social orders which emphasize individualism' (Hyslop, 2004). Hyslop suggests that such networks may well operate in modern forms of organization where the links are ideological or institutional loyalty (Sole, 2005, p.89). This insight, notes Sole, is particularly important in South Africa, with its ruling ANC party.

A contrasting and more generic definition of corruption is offered by Stiaan van der Merwe (ECNGOC, 2001):

*The abuse of public power for private or sectional gain or sectional profit.*

Van der Merwe, however, goes on to critique his own definition in terms of its exclusionary effect. By defining corruption as an action in the public sector, for example, this understanding of corruption does not extend to bribery of bodies within civil society. Van der Merwe suggests that a broader understanding of corruption demands a look at issues of power, be it military, physical, economic, political, cultural, technological, bureaucratic or gender based, and that this has 'to be factored into a profile of corruption' (ibid). Framing a concept of 'public power', i.e. power exercised by public officials in the public interest, it is obvious that this form of power can be abused:

*Instead of using public power to the benefit and well being of relevant publics it is used for selfish, greedy and ulterior purposes. Ultimately such abuse of public power takes place directly or indirectly, at the expense of those supposed to benefit from exercising public power and responsibility. Public power is abused for individual gain or for sectional gain (for example, my friends, my family my race) (ibid).*

Van der Merwe also alludes to two dimensions of corruption, namely the micro and the macro. Micro refers to the behavioural aspects of corruption, i.e. attitudes or actions by groups or individuals in different sectors and different social levels which lead to abuse of public power for sectional or individual gain. The relative proportions of that gain are less important than the behaviour or attitudes that lead to the problem (ibid). This is the dimension of corruption that is commonly examined in research and reports on corruption.

By contrast, the macro or systemic dimension of corruption refers to structural aspects and systems. Here entire social systems – be they political, economic, organizational, cultural or religious – operate in a manner that facilitates the abuse of power and justifies the fact that personal or sectional gain occurs at the expense of a broader public. Van der Merwe suggests that this is a poorly understood dimension of corruption. The abuse of power occurs, for example, at the level of powerful economic and political players in the international or transnational arena where monopolistic and discretionary practices occur in ways that defy accountability. These, van der Merwe suggests, need to be 'unpacked and cited as corruption per se' (ibid). The problem in using this definition is that it easily spreads into the realm of political economy or economic justice and the parameters of its application become increasingly blurred, as van der Merwe recognizes (ibid):

*Undoubtedly this dimension of the problem might cause the most discomfort and controversy, even to many who are at the moment very active in highlighting the problem of corruption and the need to address it in all its forms and wherever it rears its head.*

There appears to be insufficient evidence to argue that institutional reform initiatives and reconfiguring broad-level policies for large-scale public service reform are misdirected (what interventions would change by virtue of recognizing the *corruption dimension* rather than the acknowledged problems of justice, morality and institutional rationality?) Van der Merwe warns, however, that macro-level corruption becomes more controversial when 'ideological differences enter the stage to inform and guide analyses of problems and the processes to address structural corruption on all levels' (ECNGOC, 2001). Under these circumstances it is invariably a more conservative and limited understanding of corruption that prevails, thus the study of corruption is often tainted with the notion of 'corruption as (a luxury) item on a conservative, individualistic, behaviourist agenda' (ibid). As van der

Merwe implies, this often lends studies into corruption a ‘politically incorrect’ quality or a sense that such concerns are strategically misdirected or even serve a neo-conservative agenda. The issue of corruption is therefore vulnerable to attack from politicians in speeches ostensibly designed to contextualize, but which in fact often distract from or cloud major problems of corruption in government.

Frequently government seems more concerned to moderate public views on corruption than address the problem itself. As Sole suggests, the reasons for this may be largely political, i.e. exposure of corruption can be used to undermine the credibility of political opponents – a scandal thus becomes the terrain of political contest (Sole, 2005, p.88). But South Africa’s history and cultural / ethnic diversity, make this a double-edged sword:

*Loud and frequent accusations of corruption and mismanagement from government’s opponents have been met with counter-accusations of racism and wanting the democratic state to fail.*

In February 2006, at the time that deputy president Zuma was appearing in court on rape charges – he is still expected to face corruption charges – and Parliament was plagued by fresh allegations of fraud by MPs involved in the ‘Travelgate’ scandal, Parliament adopted a report of the joint co-ordinating committee on the self-assessment process of the African Peer Review Mechanism (APRM) which claimed that corruption in South Africa is ‘exaggerated’. The committee stressed the ‘major strides in curbing corruption’:

*There are perceptions that exaggerate the true state of affairs with regard to the prevalence of corruption in the country (South Africa Press Association, 2006).*

One aspect of anti-corruption activity in South Africa that clearly has substance is the legal framework. Corruption in South Africa is prosecuted in criminal terms through the Corruption Act (No.94 of 1992) that effectively makes corruption a criminal offence. There is an important distinction between the laws designed to promote clean and transparent governance and financial accountability and laws that deal with the mechanics of corruption and criminality and its prosecution. Some of the key legislation to deal with the latter emerges from South Africa’s experience with international organized crime and money-laundering syndicates and includes: the International Cooperation in Criminal Matters Act, the Proceeds of Crime Bill, the Money Laundering Bill and the Special Investigating Unit and Tribunals Bill. This last Bill is the legal underpinning for what is arguably the country’s most effective programme to combat corruption. A full outline of the institutions involved in anti-corruption activities is provided in the section on *Anti-corruption programmes*. For the record it must also be noted that since 1994 various commissions of enquiry have been launched into alleged corruption including:

- Skweyiya Commission (corrupt practices by officials and the misuse of state funds in a former apartheid ‘homeland’)
- Budlender Commission (irregular use of assets in former homelands)
- Heath Commission (state and other property in the Eastern Cape and forerunner to the Special Investigations Unit)
- Browde Commission (irregular contracts, appointments, promotions and improvements to service contracts), which also led to the White Commission (on salaries for civil servants)

- Krugel Commissions (conduct of attorneys practicing under the Transvaal Law Society) (see ISS, 1997)
- Jali Commission (conditions and corruption in prisons)

There are many important forms of corruption in South Africa that will fall outside the scope of this study. One of the most damaging forms of corruption, in that it calls into question fundamental matters of justice and *rule of law*, is corruption in the criminal justice system.

*In South Africa, corruption in the criminal justice system is said to be pervasive. This obviously has severe consequences for public perceptions of the institutions of criminal justice, which many South Africans (especially the poor) already doubt, as the legal system was previously perceived as one of the main vehicles for enforcing apartheid (ISS, 1997).*

This commonly manifests itself in the theft and sale of police dockets, and a scan of those officials charged with such corruption suggests that the police, prosecutors and court interpreters are all involved (ibid). The theft of warrant vouchers and the withdrawal of charges for payment are also common in the Department of Justice, according to the Institute for Security Studies. This results in dangerous criminals often going free, many wasted hours of police investigative work and the loss of credibility of the system in the eyes of the public.

#### **4.4 Patterns of corruption and public perception**

As already noted, generally the quantification and statistical analysis of these incidents of corruption is lacking and much of the analytical writing on the topic is based on perception surveys. The *Country Corruption Assessment Report: South Africa, April 2003* by the United Nations and the Department of Public Service and Administration suggests that the South African public generally perceives a high incidence of corruption in the public sector, but does not have the personal experience of corruption to substantiate their views.

*It is very likely that similar factors influence the perception of corruption. In a country with a low level of corruption, perceptions of corruption, like those of crime, are often based on what happened to a friend of a friend, rather than on direct experience. Most people interviewed aren't able to cite an example where they were themselves subject to corruption. Further, the perception surveys do not capture the extensive work which has been done to establish a comprehensive and effective legal database, or to strengthen departmental capacity to deliver services and to deal with corruption (UN and DPSA, 2003).*

Various studies that attempt to access the views of those who have been the *victims of crime* have been carried out by the United Nations, the Department of Safety and Security, Statistics South Africa in collaboration with South African universities (ibid). From the early 1990s to date these point towards slightly increasing concern about the prevalence of corruption, particularly within the police and an increased public propensity to report corruption.

*In all three surveys, police officers were perceived as being the public officials who were the most vulnerable to incidences of corruption. Moreover policemen were also perceived as the public officials most likely to be*

*involved in corruption. Reporting levels of corruption have increased in South Africa during the period 1996–2000. Reporting corruption to police has increased from some 3 per cent to 6 per cent when it comes to reporting to the police, and from 2 per cent to 9 per cent in terms of reporting corruption to other public agencies. Nevertheless, more than half of the respondents contend that it is now more difficult to ‘get the right official to deal with a problem’ or to ‘get a fair treatment’ (ibid, p.95).*

The October 2001 Markinor Omnibus survey of 2,000 metropolitan and 1,500 rural respondents included questions on corruption. One of the questions gives some indication of the relative levels of corruption that were perceived across different government functions at this time:

*During the past 12 months, has any government or public official asked or otherwise made it clear to you or anyone in your family, that he/she expected money, a present or a favour (i.e. more than the official charge) in order to get the following:*

**Table 1. Respondent’s personal experience of corruption**

No.	Category	Yes	No	Don’t know
1.	Any	10.8%		
2.	Job	4.4%	91.6%	4.1%
3.	Pension or other welfare payment	2.3%	93.5%	4.2%
4.	Electricity or water	3.2%	92.5%	4.4%
5.	Housing or land	2.6%	92.2%	5.1%
6.	Medical care	1.0%	93.9%	5.1%
7.	Schooling	1.7%	93.8%	4.5%
8.	ID document, passport, birth or death certificate, other documents or licenses	3.2%	92.2%	4.6%

Source: Markinor Omnibus Survey 2001

The Markinor results suggest that requests for bribes occur most commonly in job seeking, in obtaining municipal services (electricity and water) and in obtaining services from the Department of Home Affairs (identity documents, etc.) The impression that there is a particular corruption problem within the police, Department of Home Affairs and local government is reinforced by the results of another question in the same survey, namely:

*How likely is it that a person in need of services from government to which he/she is entitled, would have to offer money, a present or a favour (i.e. more than the official charge) to get it?*



**Table 2. Likelihood that citizens have to use bribery to access services**

No.	Category	V. Likely	Likely	Unlikely	V. Unlikely	Don't know
1.	Customs official	6.6%	16.0%	23.0%	32.5%	21.9%
2.	Police officer	14.7%	22.4%	20.3%	29.5%	13.2%
3.	Home Affairs	9.6%	17.6%	22.4%	31.9%	18.6%
4.	Local Govt official	9.4%	18.8%	21.1%	32.2%	18.6%
5.	Tax/revenue	4.2%	9.4%	24.0%	37.2%	25.2%
6.	Doctor/nurse	4.2%	11.0%	25.0%	42.5%	17.4%
7.	Teacher/Professor	4.4%	12.7%	24.4%	40.9%	16.5%
8.	Official in court	9.8%	16.4%	20.2%	34.3%	19.3%

Source: Markinor Omnibus Survey 2000

In terms of the Markinor results, it appears that most cases of corruption go un-reported, as only 11.2 per cent of those who had experienced corruption said that they or someone else had reported it to the police or another government agency.

Obviously the qualifying factor that the respondent had to actually *be exposed to corruption*, in most of these questions does not do justice to what the respondent may know about corruption. Research reports are typically, and sometimes justifiably, dismissive of perceptions relating to both discussions with friends and rumour. This does not always do justice to citizens' efforts to gain knowledge by talking to *connected* acquaintances or by simply reading the newspaper and listening to radio news. First-hand experience of corruption is not necessarily a pre-requisite for holding a view on the issue and being concerned, although the factual basis of that view can obviously be questioned.

The Markinor survey suggests that there is more concern about corruption than the first-hand experience might initially suggest:

*What is your interpretation of the seriousness of corruption in South Africa?  
With which one of the following statements do you agree most?*

**Table 3. Respondent's perception of the seriousness of corruption**

Statement	Agree
South Africa has a lot of corruption and it is one of the most serious problems the country is confronted with	41.1%
South Africa has a lot of corruption, but this country is confronted with other, more serious problems	39.1%
South Africa does not experience a lot of corruption, but it is still one of the most serious problems the county is confronted with	11.6%
South Africa does not experience a lot of corruption and it is not among the serious problems the country faces	2.9%
Don't know	5.2%

Source: Markinor Omnibus Survey 2000

The Country Corruption Assessment Report suggests that the demographic pattern of these results must be recognized. For example of the 41 per cent of respondents who felt that corruption is a very serious problem in South Africa: 44 per cent were 35 years or older, 45 per cent were employed, 48 per cent had a tertiary education, 54 per cent were from the Indian community and the same percentage were from white communities (54 per cent) (both racial minorities who constitute a disproportionate percentage of the upper and middle class). The Country Report notes, 'This is consistent with the pessimistic view, which is commonly found in these communities in surveys on crime and police effectiveness... Still some 80 per cent of respondents think that there is a lot of corruption in South Africa' (ibid, p.96).

As already outlined, the South African government has taken a range of anti-corruption measures, including legislative and policy reform as well as special programmes and the establishment of anti-corruption agencies. The Markinor survey also looked into the public's views about these efforts.

*How well would you say government is handling the following?*

**Table 4. How well is the government handling corruption?**

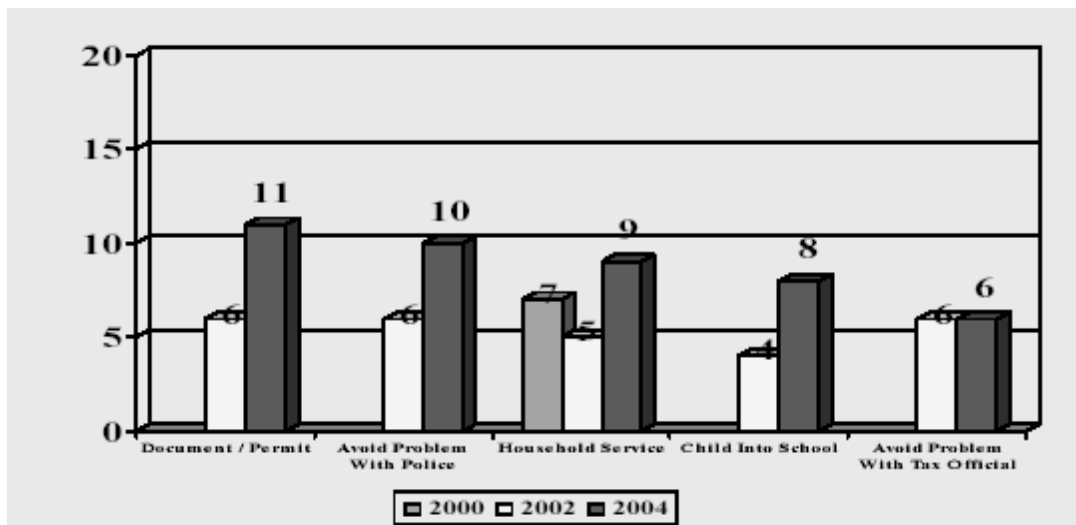
	<b>Very / fairly well</b>	<b>Not very / at all well</b>	<b>Don't know</b>
Reducing the Crime Rate	36.4%	62.3%	1.3%
Fighting Corruption in Government	35.3%	57.0%	7.7%
Maintaining Transparency and Accountability	35.1%	46.2%	18.7%

*Source:* Markinor Omnibus Survey 2000

The majority of respondents do not think that government is reducing the crime rate or fighting corruption in government very well, and the largest percentile in the transparency / accountability option have concerns about this aspect of government.

A slightly different enquiry by *Afrobarometer* in 2004 seems to reinforce the picture that when forced to pay a bribe, offer a gift or do a favour, South Africans have the most serious problems with obtaining a document or permit (much of this may relate to previous observations about the Home Affairs Department). Similar problems are experienced with the police (already discussed), obtaining household services (typically a municipal function), getting a child into school and avoiding problems with tax officials. Significantly the problem has increased since 2002 for all transactions except the tax officials, where it remains static. Of particular interest is the 'household services' issue where experience of corruption has increased by 4 per cent since the 2002 survey (*Afrobarometer*, 2005).

**Figure 1. Victimization by corruption in South Africa**



Source: Afrobarometer Briefing 10, March 2005

South African politicians and civil servants often remind the public that corruption is a two-way process. For every corrupt politician or official taking a bribe there is a business or individual offering the bribe (or as the operational head of one of the Special Investigation Units (SIU) noted in an interview, it is a relationship of ‘corruptor and corruptee’.) There appears to be a worrying inference here, namely that corruption in government should be less strongly condemned if civil society demonstrates an equal propensity to become corrupt – or what might be termed ‘corruption by popular mandate’. The propensity for business to engage in corrupt interaction with government is an essential element of on-going and expanding corruption. Business surveys are important but usually treat the business sector as any other respondent. This approach ignores a critical distinction, namely that while the poor may be forced to pay bribes for services to which they are entitled, business may confront the same demands for government services but – unlike poor citizens – they are able to pro-actively offer bribes to secure unusual advantage / increased profit.

#### **4.5 How corrupt is South Africa?**

Generally South Africa fares slightly worse than average, according to the measure used by Transparency International (TI) when it comes to perceptions of corruption. The 2001 Transparency International Annual Corruption Perception Index ranks South Africa at 36 among the 102 countries it surveyed. With a score of 4.8 out of 10 South Africa is slightly under the ‘acceptable’ average score of 5. In terms of the TI index, South Africa is less corrupt than Tunisia, Mauritius, South Korea, Greece, Brazil or Poland but slightly more corrupt than Namibia, Taiwan, Italy, Hungary and Malaysia. By contrast, the 2004 Afrobarometer survey claims that the 24 per cent of South Africans who perceived MPs to be involved in corruption are more positive about their elected representatives than Malawi (36 per cent), Mali (38 per cent) or Nigeria (53 per cent) (Afrobarometer, 2005). South Africans see corruption as a serious problem ‘but perhaps not as pressing as problems such as poverty, unemployment, HIV/Aids and crime in general’ (UNDP/SA, 2001; GSA, no date).

The most recent Afrobarometer survey (October / November 2004) suggests that South Africans are likely to see less corruption in government in 2005 than they did during the 1990s. In 1997 nearly 50 per cent of the survey respondents felt that 'all' or 'most' national government officials were involved in corruption, but this had dropped to 21 per cent in October / November 2004 (ibid). Similar perceptions relating to Members of Parliament had dropped from 50 per cent to 24 per cent. A significant body of the respondents feel that the South African Police Service is corrupt (36 per cent). Afrobarometer compares this to perceptions of the police in Namibia (37 per cent), Senegal (41 per cent), Tanzania (44 per cent), Zambia (47 per cent), Malawi (48 per cent), Ghana (53 per cent), Kenya (59 per cent), Uganda (67 per cent and Nigeria (70 per cent). Against these states, South Africa compares favourably, however in Lesotho (28 per cent), Botswana (23 per cent) and Cabo Verde (8 per cent) there appears to be a significantly more healthy public perception of the police. The fact that the highest percentile of the South African respondents perceive corruption in the police is consistent with the Markinor and other United Nations surveys already mentioned. Again local government officials and councillors are the next level of government where negative public perceptions prevail, with 24 per cent of the public perceiving corruption; Members of Parliament are similarly perceived (ibid).

#### **4.6 Anti-corruption programmes and measures**

South Africa has an unusually impressive array of legislation, programmes and dedicated organizations which function to criminalize, expose or in other ways combat corruption. But as Lala Camerer of the Institute of Security studies warns, in the light of the opening up of the political process in South Africa and the exposure of politicians and civil servants to public scrutiny and sometimes harsh media attention, '... it should come as no surprise that anti-corruption rhetoric forms part of the political agenda' (Camerer, 1999, p.1). Camerer points out that in Nigeria the production of political rhetoric around corruption has replaced the actual tackling of the issue. Camerer is not the only analyst to warn of similar risk in South Africa – Sole, a journalist who specializes in corruption assignments, has made similar observations. In the interviews with corruption investigators summarized in a section of this report, the extent to which these agencies, especially the Special Investigations Unit, are under extreme pressure to produce outcomes that are politically favourable to government, is very evident.

The symbolism and the message that the state is 'getting tough on corruption' often seems to be regarded as more important than the actual functioning of the anti-corruption bodies that have been set up.

*The establishment of an anti-corruption agency or agencies with extensive investigate powers, a high public profile, honest staff and government support, is a key aspect of such reforms. However, even when such agencies are created, it is common that they are often starved of resources needed to achieve their purpose. Analysts have warned that repetitive rhetoric that is not matched by sustainable reform will lead to indifference... (ibid).*

It must be acknowledged, however, that the budgets assigned to the SIU and the Scorpions have in recent times become more realistic. Perhaps more importantly, the integrated and more holistic measures to prevent and deter corruption are also growing stronger, namely public service training, codes of ethics, proper disciplinary procedures, staff circulation systems (in customs, revenue and contract-awarding agencies) and

watchdog units within departments (ibid). It is self-evident that any anti-corruption agency will need adequate resources, sufficient staff that are appropriately skilled and experienced and the capacity to manage and co-ordinate information from diverse sources. Furthermore such an agency will not be effective unless it is free to deploy these capabilities in an independent manner, free of political and bureaucratic influence.

Camerer, for example, suggests that anti-corruption experts should be drawn from the fields of law, finance, economics and accounting (ibid, p.2). These experts need to be organized into units or teams that have broad powers including the right of access to information and the legal instruments to seize both evidence and the proceeds of corruption. As we shall see later, the SIU and the *Scorpions* are generally understood to be particularly well equipped in this regard. Centrally co-ordinated access to all departmental information is also critical to ensure that information held across different agencies is not compartmentalized. Camerer states further that anti-corruption agencies need to be shielded from political pressure that may seek to impinge upon the ambit of its work and its staff must be free from political, economic and personal pressures. In South Africa the matter of independence is critical, given the history of persistent political pressure to bring certain agencies under the authority of the South African Police Service (SAPS), an agency that is widely perceived to have serious problems of corruption and to be subject to political influence.

An outline of the respective anti-corruption agencies is presented below:

**Table 5. South Africa’s anti-corruption agencies**

<b>Agency</b>	<b>Role</b>
South African Police Services – Commercial Branch	Investigates all forms of commercial crime – including extensive investigations into fraud in SA government departments, for example, fraud within the Department of Social Development (previously welfare) (see case study that accompanies this report).
Office for Serious Economic Offences (OSEO)	Established in 1991 with its own Act, the OSEO prioritizes cases involving large sums of money and uses multi-disciplinary teams with extensive powers. It was widely regarded as poorly staffed.
Special Investigation Unit (formerly the Heath Special Investigating Unit)	Established in June 1995 under Justice Heath, the unit investigates state corruption or mal-administration with a view to recovering assets.
Directorate of Special Operations (Scorpions)	Established under the National Prosecuting Authority in January 2001, the Directorate investigates and prosecutes organized crime, particularly that deemed to be serious and complex or which alternatively involved money-laundering or racketeering.
Independent Complaints Directorate	Acts on complaints of police misconduct, including alleged corruption.
National Directorate Public Prosecutions	Controls and guides prosecutions and institutes criminal proceedings and oversees Scorpions.
National Intelligence Agency	Gathers intelligence and work may include corruption cases.
Public Service Commission	Monitors, evaluates and investigates the public service.
<i>Chapter 9 Institutions: These are state institutions charged with supporting constitutional democracy and are required to be independent and impartial and to answer only to the Constitution and the law.</i>	
Auditor General (AG)	Audits the accounts of government at all levels and thus provides control over the financial activities of the executive. When required the AG also undertakes forensic and performance audits of government institutions where corruption is alleged.

Public Protector	The Public Protector acts in accordance with the Public Protector Act of 1994 and the Constitution and may investigate state mal-administration, abuses of state power or tardy performance by state officials and corrupt or improper use of public funds. The main focus is mal-administration rather than crime.
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*Sources:* Institute of Security Studies: Monograph No.15 September 1997 and Occasional Paper No.38 of March 1999, [www.siu.org.za/news.asp](http://www.siu.org.za/news.asp) accessed 23 January 2006, and [www.ndpp.gov.za/dso/dso-introduction](http://www.ndpp.gov.za/dso/dso-introduction) accessed 18 may 2006.

Two anti-corruption institutions, the Auditor General and the Special Investigations Unit (SIU), are probably the most important when considering corruption at municipal level and corruption that affects infrastructure services. These institutions are therefore discussed separately below.

#### **4.7 The Auditor General (AG)**

In the early to mid-1990s the AG's reports were mostly concerned with irregularities in state finance emerging from the legacy of apartheid, in particular the state of accounts in former apartheid structures and the problems that arose in taking over the accounts of former 'homeland' governments (ISS, 1997). The AG has also probed fraud in the payment of social grants and highlighted irregular registration of pension beneficiaries and general problems in the verification of beneficiary details (ibid). Unauthorized expenditure by state bodies seems to affect all spheres of government (national, provincial and local) according to the AG's findings.

Details of the AG's comments on local government financial reporting are documented later in this report, but it is worth emphasizing a few general observations now:

*In recent years a growing trend of non-submission of financial statements by accounting officers of local authorities has been observed. This in effect delayed and impeded the public accountability process (Auditor General, 2003, p.6).*

Municipal financial statements were often unavailable for the preceding four years:

*Given the inherent problem of inadequate accounting records and the resultant failure to compile financial statements, a more concerted effort will have to be made in order to update the financial records of many of the local authorities (ibid, p.5).*

As a result of working with incomplete financial records, the AG's role was largely reduced to 'conducting audit tests on the compliance with legislation as it pertains to financial matters' (ibid, p.6). This weakened the role of the AG in so far as this office was supposed to act in protecting the public interest. 'In short, without financial statements, public accountability cannot be achieved' (ibid). This is an important insight to which this report will return repeatedly.

As a Section 9 institution with limited influence over other organs of state, it appeared that the AG tended to report the same shortfalls year after year and to get little assistance from other spheres of government who were supposed to exercise an oversight function:

*A significant number of findings contained in the previous report were repeated in the above report. As such it is disappointing to note that the first-mentioned report has not yet been dealt with by the legislature (ibid, p.5).*

Further concluding comments by the AG for the period ending 2002 also suggest that the appointment of municipal managers and management teams after the December 2000 elections (that introduced new municipal forms with supposedly enhanced administrative and managerial capability) had done little to enhance financial management in municipalities and much of the work undertaken in this regard was done by consultants. The AG warned of fruitless expenditure where consultants were employed while 'existing financial staff are already remunerated to do the task' (ibid, p.17)'.

The Auditor General's office exists as powerful proof that the new South African state is serious about tackling corruption and outlawing wasteful or irregular government expenditure. The AG meets many of the criteria suggested by Camerer; it uses expert auditors, it has the power to access government financial records and as its reports illustrate, it is independent. However, its actual impact appears weak in terms of its ability to enforce correct public accountability, and thereby ensure that resources that are directed – as policy dictates – to the poor. The case studies in this report will show that alone, the AG cannot guarantee that fiscal resources are not lost to corruption and actually reach those in greatest need. Eastern Cape municipalities routinely ignore the reports of the AG and fail to furnish the AG with the necessary financial records on which to base a meaningful audit. The AG can reveal and investigate corrupt municipal tendering processes for example, only if the council concerned are prepared to approve follow-up forensic audits. As this report will show, however, much municipal corruption emanates from councillors and especially those in senior office. In order to move beyond the simple reporting of corruption, the AG needs to involve other organs of state and/or some of the anti-corruption agencies and, more challengingly, it needs to develop working relations with organized civil society. In the case of the anti-corruption agencies, evidence of co-operation is strong, but in the case of the municipalities, especially the Eastern Cape provincial government, the picture is more mixed, as the above comments of the AG illustrate.

Nor is the AG 'untouchable', in the manner that other anti-corruption initiatives worldwide have shown themselves to be above departmental politics. Eastern Cape politicians and mayors routinely criticize the AG when they are the targets of unfavourable reports and attempt to mislead the public about the AG's mandate. Local press reports in 2003 indicated a particularly strong political challenge by the OR Tambo District Municipality to the reporting and investigative powers of the AG. In February 2003 Zoleka Capa, executive mayor of the OR Tambo District Municipality, accused the AG of producing a 'flawed report' on her municipality after the AG report implicated both Capa and the municipal manager Moffat Qithi in financial irregularities (*Daily Dispatch*, 14 February, 2003). Capa said the report was 'not authentic' and based on unknown informants. She further suggested that the provincial MEC did not have the right to authorize investigations by the Auditor General and that the AG should have sought permission from the municipality before launching its investigation. Councillors failed to attend the meeting where the AG's report was to be presented to council by staff of the provincial department and AG – the councillors said they were busy with 'joint operations' and outreach projects (ibid). Nor was Capa prepared to respond to the MEC's request for an explanation of the irregularities identified in the AG report – instead she sent a memo questioning the legality of the AG's investigation. Over a period of slightly less than one

year, Capa and the council found various reasons, including overseas trips, to avoid providing explanations to the provincial government (ibid). But where the province has generally supported the mandate of the AG in relation to municipalities, it has also launched its own criticism of the AG in relation to provincial-level reports. In November 2001, for example, provincial treasury called for the withdrawal of audit reports after the AG detailed about 40 possible instances of criminal misconduct by civil servants in the finance department (*Daily Dispatch*, 29 November, 2001). The problem is not confined to the Eastern Cape. Former national Minister of Mineral and Energy Affairs Penuell Maduna also attacked the AG in relation to investigations regarding the Strategic Fuel Fund and the minister's own conduct. Another Section 9 institution, the *Public Protector*, vindicated the AG's position and found that Maduna's attack on the AG was unconstitutional. The ANC, however, used its majority in the parliamentary committee to shield Maduna from sanction (Ellis, 2001).

The examples suggest that while government is anxious to publicize the existence and operation of Section 9 institutions and other anti-corruption agencies, it frequently has some difficulty in coming to terms with the actual outcome of such investigations.

#### **4.8 The Special Investigation Unit (SIU)**

This unit began its life as an Eastern Cape-based programme geared towards recovering state assets through the civil courts. The success of the unit, then headed by Justice Heath, was noted by President Mandela, who then authorized an expanded brief for the unit that would include the protection of state assets countrywide. The current role of the SIU is to investigate (SIU, 2004/05):

- serious mal-administration in any state institution;
- improper or unlawful conduct by employees of the state;
- unlawful appropriation or expenditure of public money or property;
- any irregular or unlawful acts or transactions that relate to state property;
- intentional or negligent loss of public money or damage to property;
- corruption in the affairs of any state institution; and
- unlawful or improper conduct by any person who has caused or may cause serious harm to the interests of the public.

The SIU uses civil legal action to remedy corruption or wrongdoing, for example to compel the repayment of wrongful benefit, to cancel irregular contracts, or to stop transactions that were not properly authorized (ibid). A special court, the Special Tribunal, has been set up to deal solely with SIU cases and thus avoid the delays that plague the ordinary courts. It has been suggested that the early success of the unit arose in large part from its purely civil nature:

*While the unit does not institute criminal prosecutions, in terms of the relevant legislation, all matters of a criminal nature that come to its attention are referred to the relevant prosecutorial authorities... (Camerer, 1999, p.4).*

The SIU works closely with the National Prosecuting Authority, the Auditor General, the Public Protector, the Attorney General and the South African Police Services. The SIU does not have powers of arrest or prosecution, but is able to hand a *court-ready*



*document* to the police or the Scorpions (Directorate of Special Operations). It institutes civil actions through the Special Tribunal that is headed by judges. The Special Tribunal is able to follow up successful civil actions by granting judgements that include the attachment of assets, 'In this manner, transactions, measures or practices leading to losses by state institutions may be prevented, set aside or losses may be recovered' (ibid, p.5). The SIU frequently uses the Assets Forfeiture Unit of the NPA, although it can seize property itself (SIU, 2004/05, p.2). Although the unit focuses on public entities, it is able to investigate private agencies that are linked to or accomplices in public sector corruption (ibid). Under Justice Heath the unit concentrated on the recovery of money lost to corruption rather than criminal proceedings. Heath's rationale was that this approach would not only replenish the state coffers but also act as a deterrent to those considering corrupt practices:

*Criminal action should be secondary. The recovery of money proves that economic crime does not pay and this is essentially the message to convey. Recovery will not only act as a deterrent, but will replace what has been removed from the coffers and thus strengthen the economic climate (Heath quoted by Camerer, 1999, p.5).*

To date the SIU remains an independent statutory body, accountable only to parliament and the President who has to approve its investigations (SIU, 2004/05, p.2). In 1999 the unit employed 71 staff that included a mix of experienced investigators, attorneys, auditors and accountants and information technology experts (Camerer, 1999, p.5). Heath at the time considered this complement inadequate and sought to expand both the resources and the powers of the SIU. In a typical business-like manner, Heath proposed that the SIU boost its resources by appropriating a percentage of the monies recovered through its investigations – government dismissed this idea (ibid). The powers of the SIU are considerable and extend to (ibid):

- the searching of premises when authorized by a magistrate or judge;
- seizing documentation and other evidence;
- ordering people to appear before it to answer questions; and
- making an order for the return of money or property and issuing interdicts to prevent the loss of such money or property.

Concern has understandably been expressed about the extent of these powers and, in conjunction with independent funding, the prospect of the SIU becoming 'untouchable'. The SIU has generally responded to these concerns by pointing out that it is bound by the Constitution and the Special Investigating Unit and Tribunal Act No. 74 of 1996 (ibid). For example the Act requires that the SIU first refer allegations of corruption to the necessary authorities, then after a lengthy process the Department of Justice submits a draft proclamation to the office of the President. Only once the office of the President has issued a formal proclamation of referral can the SIU begin investigating. This process hampers the timely initiation of investigations and ultimately makes them less effective (ibid). In recent times the process has been partly streamlined but the authorizing proclamation from the President's office remains a key check on the powers of the SIU. The SIU is answerable to both the Minister of Justice and the President and both authorities appear to regard the SIU as sufficiently powerful and are not disposed to removing procedures that would further streamline its operation. In 1998 the SIU was publicly criticized for exercising undue powers that by-passed the courts (ibid). Although

such criticisms were often linked to those who had become 'victims' of SIU investigations, and it was never demonstrated that the rights of innocent people had been abused by the SIU, the government appeared to take the criticism seriously. It warned of litigation arising from the SIU operating outside of its legal parameters and in October 1998 the Minister of Justice proposed that the SIU no longer operate independently but be rationalized with other anti-corruption agencies and answer to a special committee within the cabinet (Cape Times, 8 October, 1998). Justice Heath responded by accusing government of political interference and the Justice Ministry amended its position and affirmed its support for an independent SIU (Camerer, 1999, p.6). The SIU was established anew on 31 July 2001 with Willie Hofmeyer as its head.

As Lala Camerer notes, calls for the rationalization or improved co-ordination of anti-corruption agencies are difficult to analyse according to political intent. Improved departmental efficiency and reduced duplication are convincing motives for rationalizing the structure. Camerer makes the point, however, that diverse forms of corruption require diverse anti-corruption agencies and that the real answer to improved effectiveness is better communication and co-ordination. She also notes that, 'Talk of rationalization to form a single anti-corruption agency clearly threatens the independence of existing structures' and that one government proposal at least 'reeks of centralized political control' (ibid). Perhaps the most worrying government suggestions in this regard are those that would place the most effective anti-corruption agencies under the South African Police Service – an institution with its own corruption problems and with huge deficiencies in investigative capacity and subject to a politically sensitive Ministry.

Various high-level political interventions have sought to 'rationalize' the functioning of the SIU and it appears that its survival as an independent investigative agency rests primarily on media / civil society reactions to these proposals and secondly on the SIU's own efforts to show that it is highly cost effective in recovering state assets and deterring the theft of further assets. In July 2001 after Willie Hofmeyer, a former ANC activist, was appointed to head the SIU, the unit proceeded to have a less prominent profile in the media, however Hofmeyer has been widely acknowledged as a credible head who has greatly advanced its anti-corruption drive. Hofmeyer did not press as strenuously as Heath for additional SIU funding (Redpath, 2004). The SIU has a current budget of about R50 million per year and employed 200 staff in 2005 with a projected growth to 550 by October 2006 (Le Roux, 2006). Hofmeyer has consistently cited lack of skilled investigators as the main inhibitor to the growth of the SIU. In 2004/2005 the SIU claimed to have saved the government 'projected future losses' of R3.5 billion, which would have been lost to the state over the next ten years (ibid). The largest projected savings was nearly R500 million a year linked to false claims against the Department of Correctional Services medical aid fund (ibid). In 2004/05 actual cash recoveries were only R12 million, however, the unit projected that it had saved further losses of R92 million anticipated for the year (ibid). Evidence gathered by the unit for that period contributed to 45 civil cases, 165 criminal proceedings and 207 disciplinary actions. The SIU is paid by the departments it investigates although these departments are not officially obliged to use its anti-corruption services. Hofmeyer has tended to stress the co-operative relationship between the SIU and government:

*...departments are increasingly turning to the SIU rather than private forensic firms to assist them with the investigation of corruption. The fact that they are prepared to pay the costs of the investigation is an indication of how keen*

*they are to use the services of the SIU, and of their commitment to root out corruption' (SIU, 2004/05).*

While claims like these have something of a public relations element to them, the SIU's future sustainability seems to rest, in large part, on being contracted by these departments. Between 2006–08 the SIU planned to generate income from the Departments of Correctional Services (R6 million), Social Development (R22 million), Transport (R16.8 million) and the Eastern Cape Department of Housing, Local Government and Traditional Affairs (R6 million), the latter being mostly related to corruption within municipalities (ibid). The main forms of corruption under investigation within these departments / sectors are outlined in the table below:

**Table 6. The main forms of corruption under investigation in key sectors**

Agency	Focus of Investigation
Department of Social Development	About 43,700 officials illegally drawing child support, old age, disability and other welfare grants
Department of Transport	About 15 per cent of the driver's licences issued at certain 'problem' licensing stations were found to be fraudulent. By September 2005 734 cases had been referred to the police for arrest. <sup>2</sup> (One traffic official was found to have made an illegal income of about R75,000 per month over a five-month period by issuing fake licences. A driving school station in Mpumalanga was found to have forged 1,240 foreign licence conversions.)
Department of Correctional Services	This investigation followed up on the work done by the Jali Commission in 2001. The SIU investigated general corruption in the DCS, procurement irregularity and, most critically, the defrauding of the medical aid fund through false claims, estimated at R500 million per year. The Provincial Commissioner of the DCS in the Eastern Cape was dismissed for false travel claims, the head of a prison was dismissed for facilitating the escape of inmates and various officials were prosecuted for fraud, theft and corruption (ibid).
Eastern Cape Department of Housing, Local Government and Traditional Affairs	Municipal councillors and officials from 13 municipalities found to be involved in the irregular procurement of goods and services, non-recovery of loans, irregular appointments and 'councillors having an interest in front companies granted contracts they were unable to fulfil'. Various forensic reports had indicated widespread instances of corruption 'but very little corrective action was taken' (ibid, p.16). In December 2003 the corruption in Qaukeni local municipality was deemed to be of such a serious nature that the MEC for Local Government and Housing suspended the entire council and the SIU was asked to appoint an administrator. This created the basis for a larger investigation (through proclamation R26/2005 in June 2005) that covered several municipalities. As of September 2005 the SIU had recovered R1.9 million, issued summonses for R732,398 million, and set aside contracts to the value of R3 million. In addition 16 criminal cases had been registered, six police investigations had been launched, three arrests had been made, four staff had been dismissed and six disciplinary actions had been launched.

*The Directorate of Special Operations (Scorpions):* As a result of the pressure for rationalization (already outlined), South African anti-corruption agencies tend to operate in a highly competitive environment where comparisons are continually made between investigations launched and finalized, the number of arrests, the number of successful prosecutions, timelines from launching investigations to successful conviction and the value of the assets recovered. Staffing and institutional costs also have to be reasonably commensurate with the results obtained (see for example Redpath, 2004).

In 2002/03 the budget of the *Scorpions* was much higher than that of the SIU; it was R267 million and employed 531 people – more than twice that of the SIU. In that year the *Scorpions* arrested 318 people and obtained 117 prosecutions, of which 104 were successful – a further 177 prosecutions were pending (Redpath, 2004, p.1). The average time from the declaration of an official investigation to the last date of prosecution was 23 months and three weeks and the average court time per prosecution was 11.7 days. Institute of Security Studies researcher Jean Redpath interprets these figures as an indication of business-like practice and focus by the *Scorpions*.

*On average 90 per cent of cases prosecuted result in convictions. In one region of the DSO, the rate is even higher, at 97 per cent. This suggests that the DSO is astute in choosing to prosecute only those cases likely to be successful in court. The data also suggests that the DSO is unlikely to make a frivolous arrest: the ratio of envisaged and finalised prosecutions to arrests is 92 per cent, suggesting that almost all arrests lead to prosecutions (ibid).*

This increasing tendency to measure the performance of anti-corruption agencies in monetary or ‘business’ terms was not limited to the DSO, and the annual reports of the SIU tend to reflect the same conceptual criteria. The impact of such thinking on anti-corruption endeavours, particularly in terms of which cases are prioritized and the possibility that important cases of abuse of state assets may be ‘dropped’ due to lack of certainty of a successful outcome or because the recoverable assets do not match the potential investment by the investigators, have yet to be fully analysed. The DSO has enjoyed a high profile and largely positive media coverage (up to the point when it was linked to the high-profile prosecution of political figures such as Shabir Shaik and the Deputy President Jacob Zuma, where then-head of the National Prosecuting Authority, Bulelani Ncuka, was alleged to have urged prosecution due to political differences). According to Redpath, the DSO enjoyed a high public approval rating in 2002/03 that was based largely on media reports (ibid, p.2).

The successful cases in which the DSO has been involved include:

- A fishing company, Hout Bay Fishing Industries, involved in illegal harvesting and exporting of marine resources, including hake and lobster, in collusion with officials from the Department of Environmental Affairs and Customs and Excise. Total penalties imposed on the company, including the forfeiture of vessels, amounted to R40 million (ibid).
- ‘Advance fee fraud’ or ‘419’ scams by 18 Nigerian nationals using the identity of South African institutions were prosecuted under racketeering law (Prevention of Organised Crime Act). Fines imposed amounted to R700,000 and three people were imprisoned for a total of 50 years (ibid).
- The Road Accident Fund, which compensates victims of road accidents, was defrauded by claimants including doctors, attorneys and touts. The investigation was originally begun by the Heath SIU but was passed on to the DSO. In 2001/02 27 professionals had been arrested and as of March 2004 the matter was still under investigation (ibid).
- The Land and Agricultural Bank of South Africa was defrauded through false loan applications, false and inflated securities, corrupt bribes and payments by officials in the amount of R100m. In 2002 three of the accused were sentenced to periods of between five and 15 years (ibid).

Redpath notes that it is very difficult to make comparative assessments between the SIU, the DSO and the National Prosecuting Service (NPS), for example. The DSO has a high conviction rate as already outlined but then so do ordinary prosecutors (about 80 per cent). Redpath calculates that in cost terms, each DSO conviction is worth 214 ordinary NPS convictions, however she also makes the point that the vast volume of NPS convictions (88 per cent) are heard in the lower courts and therefore must involve less serious crimes (ibid, p.4). In other words the vastly more expensive DSO conviction – on average about R2.6 million as against R2.231 for the NPS, may be ‘value for money’ given the likelihood of more serious / complex crime. Furthermore NPS prosecutions declined significantly after 1994 and are only picked up again to this level towards the end of 2004 (ibid).

#### **4.9 Legislation**

As outlined in the introduction to this paper, the democratically elected ANC government has been vigorous in legislating against corruption since coming to power in 1994. After apartheid, the entire value framework for governance had to be built anew and the project followed international trends in this regard.

*The 1996 Constitution:* This document effectively established South Africa as a constitutional state governed by the rule of law. The emphasis of this constitution is one of building unity, respecting human rights, ensuring equality between citizens and restoring lost citizenship (see GSA, 1996, Sections 1-12). The constitution established both protection of economic and social rights (food, health care, housing, social security, etc.) and property rights (arbitrary deprivation of property is outlawed, expropriation is subject to the law and payment of compensation, the state must help citizens to gain access to land on an equitable basis, past deprivation of property on racial grounds must be reversed, etc.) (ibid, Chapter 2 Bill of Rights). The Constitution created a framework of social and governmental accountability by providing that all executive organs of state must account to the National Assembly and setting out mechanisms for this to be enforced – parliamentary portfolio committees for instance (Sole, 2005, p.94). A key mechanism in this regard – and one that is unpacked in some detail by Sole – is the Standing Committee on Public Accounts (Scopa) which functions to oversee government spending. The establishment of Scopa ‘followed the convention of other liberal democracies in appointing an opposition Member of Parliament to sit as Committee chair.’<sup>3</sup> Chapter 9 of the Constitution established a number of oversight bodies including the Auditor General, the Public Protector and the Human Rights Commission – the functioning of these bodies had already been discussed.

*The Public Finance Management Act:* Sets out the fiduciary responsibilities of finance officers and managers in government and allows them to be held personally responsible for financial misconduct or other governance failures. At local government level the Act is mirrored by the Municipal Finance Management Act (MFMA), whose functioning will be discussed in more detail under the local government section and also in relation to the Qaukeni case study (ibid, p.95).

*The Finance Intelligence Act:* Obliges banks to keep improved records regarding the banking activities of clients and to report suspicious transactions – the purpose being to detect and trace money laundering (ibid).

*The Special Investigations Act and other legislation related to the seizure of assets and the recovery of government funds:* Allows special units like the SIU and the Asset Forfeiture Unit to investigate fraud and theft and for the proceeds of crime and irregularly acquired assets to be seized (ibid).

*The Promotion of Access to Information Act:* Allows the public broad access to information held by government and the private sector.

*The Protected Disclosures Act:* Provides special protection for whistle-blowers through a series of set procedures that must be complied with.

*The Prevention and Combating of Corrupt Activities Act:* Applies to both private and public sector and outlaws the offer or receipt of 'gratification' that has not been earned and requires persons in authority to report corrupt activity. More severe sentences are introduced for offences against the Act (ibid).

#### **4.10 Measures**

It is not feasible to review all anti-corruption measures that are invoked in South Africa, but it is important to record a number of linked initiatives. South Africa has set up a *Public Service Anti-Corruption Strategy* that seeks to improve the co-ordination of anti-corruption activities across line departments. The concentration of prosecuting authority in a National Director of Public Prosecutions has allowed stronger co-ordination through this office and aided the functioning of intelligence gathering, investigation and prosecution – the Scorpions are an example of this operational capacity (ibid, p.96). Corruption, excessive use of force, or other forms of irregular conduct by the police are taken up by the *Independent Complaints Directorate* (ICD), which has earned a reputation for fierce independence in the turbulent period of political transition and in the SAPS's difficult experiences of introducing a more service-orientated form of policing. The *South African Revenue Service* (SARS) has restructured itself along more corporate lines and now works less as a government bureaucracy. It has tried to plug gaps in the tax revenue net and deal in a more business-like manner with registered taxpayers (ibid). The *Competition Commission and Tribunal* checks all major mergers and acquisitions and responds to complaints of uncompetitive behaviour – in 2005 the Commission imposed serious sanctions on the motor industry.

One example of these provisions in action is the *Public Service Commission*. The PSC is charged with setting standards for and monitoring the performance of the civil service. One of the most commonly used measures for preventing corruption is *disclosure provisions* amongst civil servants. Public office holders and senior managers are required to disclose their financial interests regarding shares, directorships, sponsorships, property and remunerated work outside of the public service. These measures are only effective, however, if there is compliance – in this case a form has to be completed by all senior managers and returned. The following table indicates that such compliance is often hard to achieve (Ernstzen, 2006).

**Table 7. Public office holders' compliance with financial interests reporting**

Province	Forms returned
National departments	72%
Eastern Cape	32%
Free State	48%
Gauteng	22%
KwaZulu-Natal	45%
Limpopo	49%
Mpumalanga	65%
Northern Cape	53%
North-West	81%
Western Cape	80%

While these figures may be very loosely indicative of integrity patterns amongst government officials across the country, there is some concern that between 19 and 78 per cent of government managers who received the forms neglected to return them, thus resulting in a very incomplete assessment of potential or real conflicts of interest. The PSC has indicated that it would only regard a 100 per cent return ratio as acceptable.

#### **4.11 Civil society and corruption**

Civil society in South Africa has played a major role in creating the value framework and the institutional strategies for preventing and combating corruption. Much of the core rationale for the 'Section 9' agencies, for example, emerged from the experiences and knowledge generated by human rights organizations, para-legal advice offices and victim support initiatives that protected or tried to protect vulnerable citizens from the worst abuses of the apartheid state.

South Africa has a relatively well developed and sophisticated NGO sector that has invested extensively in the building of a strong and independent civil society sector which is capable of monitoring and acting as a check against the exercise of untoward state power. The *2003 Country Corruption Assessment Report for South Africa* urges that:

*Civil Society can play both a creative role in promoting democracy by educating and socializing citizens into a democratic modus operandi which includes for example, ethics training and remaining critical and vigilant of the state apparatus lest it abuses its monopoly of power (UN and DPSA, 2003, p.82).*

In fact it can be argued with some certainty that this project is already well advanced. Dozens of NGOs in South Africa have programmes dedicated to precisely these objectives. The Country Corruption Assessment report refers to some of these organizations (Idasa, ODAC and the Black Sash) (ibid, p.79). The Country Assessment Report notes an 'obvious' role for civil society organizations, including the media, in fighting corruption and acting as a 'watchdog' to promote public sector accountability and service delivery. In outlining impediments to this relationship between state and society, the report focuses less on the extent to which government has accepted an independent and vibrant civil society scrutinizing government practice and more on issues confronted

by the civil society organizations (CSOs) themselves in adjusting from an adversarial relationship with the apartheid state to a co-operative but critical relationship with the new democratic state.

*Many CSOs have had to struggle with defining a new role post-1994. In particular, civil society has had to confront the issue of how to be critical of a government that led the liberation struggle and how to confront allies now in government who are involved in corrupt activity without being seen to question the integrity of the ruling party. CSOs, as well as the media, are confronted with the dual challenges of promoting dialogue with government to increase transparency, while being at the same time a critical partner in the dialogue (ibid, p.82).*

This is an important and often overlooked dimension of the unfolding relations between state and CSOs. However since the government was co-author of the report, the above observation is also slightly disingenuous, in that it appears to remove any responsibility from the shoulders of government itself for creating the social conditions for constructive independent and critical interaction between itself and CSOs. Despite enjoying unrestricted legal and constitutional space for their activities, NGOs have often been subjected to criticism and exclusion for questioning government policy or practice and some experience a steady narrowing of the space for independent interaction with government (Smith et al., no date). It is interesting therefore that the Country Assessment Report acknowledges the unique resources that CSOs bring to the fight against corruption, not just in terms of particular skills but also in terms of superior access to particular constituencies and communities (ibid, p.82).

The Country Assessment Report assigns these organizations to categories according to their main function. Thus the Open Democracy Advice Centre (ODAC) an initiative of the Institute for Democracy in South Africa (IDASA) and the Black Sash, are cited as good examples of advocacy around anti-corruption legislation. The Public Service Accountability Monitor (PSAM) and Transparency South Africa (T-SA) are also regarded as particularly strong examples of *advocacy* organizations (despite the fact that there are significant differences between these institutions in operational terms). Under *research* the report notes the work of the Centre for the Study of Violence and Reconciliation (CSVR) for its work corruption in the South African Police Service (SAPS) and a handful of other NGOs for more sporadic research programmes around corruption (ibid). In relations to 'research', the report suggests that the Institute for Security Studies (ISS) 'is the only applied policy research organization with a dedicated anti-corruption programme (the Organised Crime and Anti-Corruption Programme) which also has a regional focus' (ibid).

Of the organizations listed as undertaking work around corruption, all bring slightly different but linked strategies to the issue. The ODAC, for example, offers advice and training on the *Promotion of Access to Information Act (PAIA)* and the *Protected Disclosures Act (PDA)*, thus ensuring that government information is placed in the public domain and strengthening the position of whistle-blowers. The Public Service Accountability Monitor (PSAM) is based at Rhodes University and its focus is the Eastern Cape government departments. The PSAM has developed a strong reputation for tracking departmental mal-administration and specific cases of reported misconduct. Through strong media liaison and an effective website the PSAM has proved highly adept at publicizing breakdowns in governance and the abuse of public office (ibid). However the PSAM experience also illustrates government's ambivalent reaction to the



exposure of irregular or corrupt practice. The following quote from the Country Assessment Report is an understatement given the furious and sometimes defamatory responses that the PSAM has often received from government. (It is also curious that the Country Assessment Report makes no analysis of the antipathy between government and the PSAM.)

*Although respected by many in the provincial government, much of the whistle blowing and subsequent monitoring activity is regarded with suspicion by some members of the public sector in the Eastern Cape (ibid).*

By contrast Transparency South Africa (T-SA) has a remarkably low public profile considering that it specializes in anti-corruption initiatives. T-SA seems to adopt a quasi-academic approach to corruption work and links with similar organizations internationally through the Transparency network. T-SA has, however, played some role, along with the South African NGO Coalition, in bringing together CSOs concerned with corruption, and hosted the 2002 Civil Society Anti-Corruption Summit (ibid, p.83). The Country Assessment Report opines that the summit was of limited success due to its broad focus, but urges that T-SA has much potential to assist CSOs in mobilizing against corruption (ibid).

The media and particularly certain sections of the print media continue to perform some of the most important exposure functions related to corruption, as the many press clippings and articles cited in this paper illustrate. The role of the media in this regard, however, is tenuous for several reasons:

- A general trend towards low-quality tabloid-type journalism based on commercial pressures and a redefinition, purely in financial terms, of who constitutes an 'important readership'. Apart from the familiar shift towards 'sensationalism', this has been particularly damaging to proper investigative journalism.
- Emerging evidence that the main state broadcaster is becoming increasingly subject to regulation and political intervention by government. The recent withdrawal of an authorized TV documentary on President Mbeki and the confirmation by senior SABC journalists that they may not air the views of certain analysts, is a recent indication of the above.
- Journalists often work in an uncertain managerial environment where, among other concerns, the exposure of corruption can have unanticipated consequences.

The Country Assessment Report captures these concerns in a particularly apt manner:

*Perhaps the single biggest source of whistle blowing, the South African media continues to play an important watchdog function, exposing abuse of power by the private and public sector in particular. Often accused of only seeking to sensationalize a story to ensure newspaper sales, South Africa is fortunate to have a free press. Increasingly also, and perhaps reflective of what is happening on the ground, the press are reporting on 'good-governance' related stories. The Media Institute of South African (MISA) reports that journalists are often under pressure from both interest groups as well as those who are alleged to be involved in corrupt activity to report the 'right angle'. Political pressure is likely to exacerbate the practice of not following up on stories (i.e. a 'sensationalist' style of reporting on allegations of corruption) (ibid, p.84).*

The Country Assessment Report acknowledges that it may not have fully captured corruption work being done within other sectors:

*Singling out the handful of CSOs with a specific focus on anti-corruption issues is an easy task, but may only give part of the picture. There is likely to be good work which is being done in the field about which little is known. A recent IDASA/Co-operative for Research and Education (CORE) survey of 'the State of Civil Society in South Africa notes that some 62 per cent of respondents run programmes and projects in an area defined as Transparency and Governance' (ibid, p.83).*

One development that the Country Assessment Report does not capture is a recent NGO re-configuration that saw the closure of the Urban Sector Network and the establishment of the Good Governance Learning Network (GGLN) in 2003. The GGLN (no date) purports to create 'an interface for institutions working on issues of local governance' and to document and disseminate good practices and build awareness about the value of participatory local governance (GGLN, no date). Within the network there are several member organizations whose work relates to improving transparency and accountability in municipal government. The example of Afesis-corplan<sup>4</sup> is set out below:

#### **Box 1. Afesis-corplan**

During the last four years Afesis-corplan has investigated indicator-based survey instruments at neighbourhood or ward level as well as a more general study that examines the perceptions of local governance by three key groupings, namely: elected officials, organized civil society and the general public (Afesis-corplan, 2000). The methodology involves in-depth interviews rather than large-scale survey formats, and the organization claims that it is well suited to revealing attitudes and interrogating perceptions as the draft findings are presented back to the respondents in focus groups. Afesis-corplan claims the methodology is both participatory and goal oriented – the goal being to direct stakeholder's attention to key problems and achievements rather than simply to produce an evaluation or status quo report. According to the organization, the approach tends to highlight gaps in perceptions between stakeholder groups – which makes it particularly well suited to pre-empting the crises (protests and destruction of municipal property) that occurred at municipal level in 2005–06. Limited verification of reported information occurs through accessing relevant documents and reports. The most recent round of surveys, completed late in 2004, covered six municipalities across five provinces and incorporated one metro and five local municipalities.

Some of the findings by Afesis-corplan include (Afesis-corplan, 2005):

The key decision-making structures of council (i.e. mayoral committees or executive committees) are often closed to public scrutiny and even when they are not formally closed, the public and even some officials regard them as such.

All respondent groups across all municipalities were 'not happy' with the level of public attendance at council meetings.

Basic provisions for transparency and accountability, such as presentation of the AG's report at a public forum, are often overlooked or conducted as a token exercise for

compliance purposes. The secondary city case study was a notable exception to this trend.

In five out of the six case studies, ward committees were identified as the primary forum for community participation. (However the DPLG National Ward Committee Survey (conducted by Afesis-corplan and Idasa) released in March 2005 indicated that the effective functioning of these structures is still questionable.)

It appears that the public's widespread lack of knowledge of their right to attend ward committee meetings is a key reason for non-attendance. Even when they do attend such meetings, many citizens do not think they have made an impact on decision-making within the municipality.

Most municipalities are implementing a system for disclosure of business interests. However implementation seems to be confined to filling out registers – no follow-up is undertaken. Across all case studies, no more than 25 per cent of all respondents regarded such systems as effective.

Most of the proposals forwarded from ward committees, area-based management units and community participation and action forums to council are concerned with the issue of service delivery.

A positive feature is that the majority of respondents (40–60 per cent) said that the service delivery standards of the municipality *are made available to the public*. (Opportunities to ensure that the standards are met remained an unknown factor.)

In all case studies bar one, the largest percentile of respondents said that corruption had occurred within the previous year – the highest was 88 per cent. The most commonly perceived corruption was nepotism in the employment of municipal staff.

#### **4.12 Partnership with government**

Formal civil society partnerships with government around corruption are rare and mostly limited to provincial initiatives of limited impact. The Eastern Cape provides an example of a partnership that seemed to offer much potential but fell apart shortly after it was launched. The Eastern Cape's anti-corruption strategy can be traced back to March 1998 when the Speaker of the Eastern Cape Legislature, Mkhangelisi Matomela, introduced a successful motion for a campaign against corruption and fraud (Cwati, 2004). This motion also proposed that all departments would have units against fraud and corruption that would report directly to Members of the Executive Committee (MECs) and be co-ordinated by the Premier's Office Unit reporting directly to the Premier (ibid). This co-ordinating body was known as the Anti-Corruption Forum (ACF) and was regarded as the key structure for developing strategies against corruption. The ACF comprised government, criminal investigation agencies, business and civil society. Cwati describes the membership in April 2000 as follows:

- Mvuyo Tom, Director-General of the Eastern Cape (Chair)
- Mzwandile Msoki – Public Service Commissioner of the Eastern Cape
- Sarah Hugo – a representative of the Eastern Cape NGO coalition (ECNGOC)

- Les Holbrook – Border Kei Chamber of Business Co-Chair
- Cyril Langbooi – a labour representative
- Wayne Malgas and Superintendent Witbooi – from of the Investigation Agencies
- Lulama Ntshingwa – Eastern Cape Council of Churches

With four of its seven members from civil society it would be tempting to view the ACF as predominantly a civil society structure. It is important to recall, however, that it reported to the Office of the Premier (OTP). The purpose of the ACF was as follows:

*... to strategize on and advance anti-corruption objectives and to advise and coordinate implementation of policy for the combating and prevention of corruption in society (ibid, p.40).*

The functions of the ACF were mainly to co-ordinate the different stakeholders and improve communication between them. It would also launch an anti-corruption campaign, and co-ordinate the components of that campaign and the contribution of the various stakeholders. It would also recommend and commission appropriate research, and establish a database of the incidence of corruption, misconduct and mal-administration and the form of response to these cases. Further it would assist and guide the various stakeholders in their own anti-corruption programmes and devise a broad communication strategy in conjunction with the OTP (ibid, p.42). Clearly the overall aim of the ACF, at least formally, was a more co-ordinated, timely and effective response to corruption that involved government and civil society. This was the overall impression created by Dr Tom in his briefing to the media after his first meeting with the ACF on 22 May 2000 (ibid). According to Cwati (ibid) the ACF met on a number of occasions between April 2000 and March 2001, but it was generally not regarded as a successful exercise largely because its champions did not get the required administrative and institutional support: 'little organizational capacity (human and financial resources) was allocated to support the Director-General'. Cwati also notes how the ACF's terms of reference overlapped with those of the Network Against Corruption (NAC) (ibid, p.42–3). This explanation begs closer scrutiny. The NAC was set up by Premier Stofile shortly after the 2000 Eastern Cape anti-corruption summit, and at the time when President Thabo Mbeki was strongly backing a national campaign against corruption. The Eastern Cape legislature convened the Network Against Corruption, whose members were reportedly drawn from all provincial role-players (*Daily Dispatch*, 23 November, 2000).

*Membership of the Network Against Corruption (NAC) was drawn from representatives of the legislature, including the Presiding Officers, Chairpersons of Committees, Chairpersons of Standing Committees, Head of the Petitions Office, as well as representatives of all other stakeholders that have an interest in fighting corruption. The NAC was an attempt to involve NGOs and oversight / anti-corruption bodies (the Special Investigating Unit, the Auditor General of the Eastern Cape, etc.) in ensuring that the legislature effectively deals with corruption. It provides an interesting model of CSO intervention at a provincial level and may justify further research to ascertain if it would prove an effective model at local government level. The model for the Forum reflects developments in the early stages of the National Anti-*

*corruption Forum (NACF), based on the National Anti-corruption Summit's resolution to create a structure in which all sectors of society take co-responsibility to fight corruption, and the realization that corruption is not a problem unique to the public sector. This is reflected in the founding document (UN and DPSA, 2003, p.81).*

At the launch of the NAC in October 2000, Nomsa Thomas of the Public Protector's office noted that public officials in the province had acquired a reputation for mismanagement of public resources, their corrupt activities, and for their failure to deliver services (*Daily Dispatch*, 16 October, 2000). The key civil society participant was the Public Service Accountability Monitor (PSAM) based at Rhodes University, a watchdog body which monitors the performance of the public service. The NAC was to use the good offices of the provincial legislature in an effort to improve the flow of information to and from standing committees, the public and even the Anti-Corruption Forum (*ibid*). The PSAM proved to be surprisingly effective and goal-oriented in its tracking of corruption, far more so than the rather limited efforts of the Eastern Cape NGO Coalition (ECNGOC). This probably surprised the provincial government and did not win it any friends within the ranks of the ECNGOC.<sup>5</sup>

Cwati shows convincingly that the objectives and functions of the ACF and the NAC overlapped and led to deteriorating relations between the respective bodies – but does not ask why. Cwati also does not question the notion that a legislature and a provincial executive controlled by the same party (ANC) and with a handful of individuals in key powerful positions, could not frame a working relationship between these two governance structures on the matter of corruption.

There is a general consensus – reflected by Cwati, the PSAM and media reports at the time – that the demise of the ACF and the NAC was occasioned by a particular incident of alleged corruption involving a senior provincial politician. In mid-2000 media reports began to emerge about Health MEC Bevan Goqwana, who was rumoured to be involved in private health-related businesses, including an ambulance service, whilst holding public office. Press reports at the time and the investigations of the PSAM indicated that these rumours had substance. Goqwana had admitted to owning a private specialist medical practice and an ambulance service whilst in public office at the end of October 2000. He also allegedly admitted to owning and profiting from these businesses while he was a full-time public servant, working as a state doctor in Umtata (in the former Transkei) (*ibid*, p.47). Amidst considerable public concern and media speculation, the Speaker formally requested that the Premier either convene a Commission of Inquiry to investigate the matter or that it be referred to the Office of the Public Protector for investigation. In response to media questions the Speaker also announced that the Network Against Corruption (NAC) would seek an inquiry.

This initiative was immediately criticized by Premier Makhenkesi Stofile who claimed that Goqwana had nothing to answer for and accused the NAC and Matomela of being 'clumsy', 'partisan' and a 'political critic of government' (*ibid*). The PSAM claimed that the Speaker's referral of the Goqwana matter to the NAC was in keeping with the constitution and simply a fulfilment of Matomela's 'parliamentary oversight obligations'. This led to strong public criticism of the PSAM by premier Makhenkesi Stofile, who indicated his distrust of the PSAM, labelled it 'partisan' and suggested that it needed a watchdog of its own (*ibid*). The Anti-Corruption Forum (ACF) – based in the premier's office and supposedly the executive counterpart of the NAC – then condemned the NAC and called for its disbandment.

*Soon after this, members of the ACF, who were closely aligned to the Premier, started to issue calls for the NAC to be disbanded. As reported in the local Daily Dispatch on 14 March, 2002, the Chief Whip of the Eastern Cape Legislature, Sicelo Gqobana, announced the closure of the Network Against Corruption due to its alleged ineffectiveness (ibid, p.48).*

The end of the NAC was described as follows by the PSAM: 'As part of the ensuing stand-off between the executive and legislature, both the ACF and the NAC have been effectively disbanded' (*The Herald*, 21 November, 2001).

Cwati has described the measures that were invoked after the ACF and the PSAM had collapsed or were dormant. The Director-General of the Province, Dr Tom, asked the Public Service Commission (PSC) to investigate the matter in April 2001 (Cwati, 2004, p.48). A multi-agency team conducted the investigation, led by the Office of the Public Service Commission. Cwati (ibid, p.49) summarizes the findings of the investigation report concerning the reasons for the closure of the NAC/ACF:

- Lack of capacity within the Office of the Premier and Provincial Director General (Chair of the Forum) to ensure that the Anti-Corruption Forum functioned well and to implement the Provincial Anti-Corruption strategy effectively.
- The lack of a central database and monitoring and evaluation system for the recording, tracking and evaluation of corruption cases (whether criminal, civil and/or disciplinary cases).
- The inability of the Provincial Administration to come to a successful resolution (whether criminal, civil and/or disciplinary) of corruption cases.
- The Anti-Corruption strategy was not publicized effectively, with the result that stakeholders had a limited knowledge of its content.
- Only head office staff and senior regional officials were trained in the Code of Conduct and Ethics, leaving out the regions where the majority of employees are deployed.
- The lack of an interdepartmental Ethics Unit.
- The lack of a centralized information database on appointments, performance agreements, job descriptions and financial disclosure and security-vetting practices.
- The absence of a clear protocol for co-operation and co-ordination between the Special Investigative Unit, Auditor General and Public Protector, often leading to duplication of investigations.
- The Provincial Administration had not started with implementation of the Protected Disclosures Act and with mechanisms to protect departmental whistle-blowers.

Besides some reference to the breakdown in trust between the Speaker and the Premier and allegations of conspiracies and 'hidden agendas', the task team explained much of the problem in terms of incapacity, poor systems, lack of training and missing institutional components. Such findings are familiar in that they are not necessarily 'wrong' but also manage to avoid assigning direct responsibility. Most remarkably these PSC findings fail to address the obvious need to find an explanation for the Premier's response to what were clearly legitimate requests for a corruption investigation made by one of his own senior party members and a body that he himself had helped to establish. The report records but does not comment on the remarkable assertion by the Premier's office and elements of the ACF that not only the civil society members but also some government actors were motivated not by the need to expose and investigate corruption but by a 'hidden agenda' about 'causing maximum embarrassment to the Premier and Provincial Administration' (ibid, p.49).

Taken at face value, the unhappy saga of the ACF and the NAC suggest that the Premier maintained an understanding that these anti-corruption initiatives existed and operated entirely at his own pleasure. The notion of partnership between civil society and government, a key element of the ACF/NAC publicity campaign at the time, implied a significantly different and more balanced relationship within this partnership. The OTP seemed to imply (in the statements already quoted above) that the NAC has exceeded its brief and launched an unreasonable demand for an inquiry into the Health MEC Goqwana's affairs.

The action against the NAC might have been reasonable if Goqwana had clearly not acted in any way that might be considered irregular. However Goqwana had admitted running his own businesses whilst in the employ of the state. The simple question therefore was: 'Is this legally acceptable or not?'. In terms of the South African Public Service Act it is illegal for public officials to own, run, or be involved in private business interests without having obtained the prior authorization of their MEC. This authorization can only be given in very exceptional circumstances. Goqwana and the Premier then collectively asserted that such authorization had been obtained but the Premier did not disclose the *exceptional circumstances* that had led to him grant the waiver (Public Service Accountability Monitor, 2003). A further issue related to the period prior to 1999, when Goqwana was not yet an MEC but a state doctor answerable to then-Health MEC Trudy Thomas. Thomas publicly denied having any knowledge of Goqwana's private business dealings in this period or of having approved such arrangements (ibid). In this last instance, therefore, the Premier was unable to provide the necessary confirmation of having legally approved Goqwana's conduct – he was not in a position to do so.

Premier Stofile then introduced further complexity into the matter by asserting that it was Dr Goqwana's right to own the business of his choice on the grounds that this was guaranteed by the Bill of Rights in the new Constitution and that the Bill of Rights superseded the South African Public Service Act and the various codes of conduct applying to members of the Executive (ibid). This appeared to be an erroneous reading of the relationship between the Bill of Rights and any number of laws that regulate the behaviour and rights of those in the employ of the state. As the PSAM noted at the time:

*If generalized, the Premier's argument would be a recipe for chaos in the public sector with officials being paid full salaries out of public funds and simultaneously running private businesses for the purposes of generating additional income (ibid).*

The reasons for the Premier defending the behaviour of the Health MEC in the above instance may never be fully understood. The PSAM has suggested that:

*Arguably, the above examples serve to create the public impression that one set of legal and ethical standards is currently becoming entrenched for members of the Eastern Cape Provincial Executive, whilst a separate and more onerous set of standards is being applied to the conduct of ordinary public officials. Under circumstances in which officials can point to the public flouting of codes of conduct which apply to members of the provincial Executive it will prove increasingly more difficult to persuade these officials to comply with public service codes and regulations (ibid).*

Civil society participants within the ACF/NAC initiative may have overlooked the inevitable hierarchy of political authority that existed between the executive and the legislature. Whereas the legislature was supposedly constitutionally separate and independent from the executive, the events described above show that the legislature's attempts to assert its powers in respect of alleged corruption were thwarted by the executive powers wielded by the Premier's office. The implication of this is that anti-corruption initiatives and partnerships will be supported in the Eastern Cape provided they do not regard the Province's most senior political leadership as being within their ambit of inquiry. It is worth noting that this interpretation is supported by most of the informants who were interviewed for this study. For the provincial government the question may be, 'Why then tolerate any form of anti-corruption activity and especially those risky initiatives that call for partnership with civil society?' Answering this is a speculative exercise but without doubt considerations of symbolism and public opinion must be factored in. There is also every possibility that senior officeholders wish to have departments that are generally corruption free, provided this does not impinge upon their own discretion in matters of financial opportunity.

For civil society some tentative lessons may be drawn:

- Partnerships with government in anti-corruption programmes need to be carefully analysed against the broader context of governance and the demonstrated political culture of the time. Getting caught up in periods of high optimism and strong rhetoric can lead to naïve strategies that ultimately waste the time and resources of NGOs.
- The terms of reference for state and non-state actors in joint initiatives need to be very carefully considered and the parameters of anti-corruption strategies should be defined 'up front'.
- Conflicting views on alleged incidents of corruption are inevitable when state and non-state actors are involved. This should be anticipated from the outset and a system for resolving disputes must be developed. Such a system should be capable of generating consensus on whether the matter requires further investigation and the extent of the investigation that is appropriate. If such consensus is impossible, resolution may have to be sought within the right of the respective parties to conduct their own research on the matter and publish findings independently. Such actions should not be conceived of as undermining the basic partnership.
- Building a clear and informed understanding of the relevant legislation and policy that determines what is legal or illegal, regular or irregular, good practice or poor practice, is essential – even though it may be a long and ongoing exercise. Interim systems of



norms and values that summarize the legislative / policy provisions may be useful as temporary measures and for quick application in the longer term.

- Civil society actors need to build networks of support outside of the partnership forums, i.e. with the media and civil society organizations that have relevant programmes. These should be arranged around principle and common purpose rather than populism or mass support.
- Within the civil society component of these partnership arrangements there will be specialized organizations that focus on corruption. The role of such organizations and their overall strategy needs to be broadly understood by the CS sector, which must be in a position to support these organizations when they are (almost inevitably) criticized or attacked by government. A CS component that is more concerned about preserving its relationship with government (as the ECNGOC appears to have been) rather than effectively dealing with corruption, will ultimately undermine its own mission.
- Civil society actors need to be wary of being drawn into departmental politics in government and it should be made clear from the outset that individual politicking and cabalism should be kept out of the partnership forum. Civil society actors do, however, need to think about how officials who show a strong commitment to transparency and accountability can be protected and supported, particularly when they fall out of favour with their government colleagues.
- The overall outputs and functioning of partnership forums against corruption need to be monitored, recognizing that there is a necessary balance between government's public relations needs and symbolism and the imperative for civil society to be involved in effective measures against corruption. Constant assessment of this balance should determine whether the forum is viable or whether the CS component should withdraw.

## **5. Local government**

### **5.1 Problems in managing municipal finances**

In response to weak financial controls and more serious irregularities, national government and provincial MECs have frequently signalled an intention to pull offending municipalities into line with administrative interventions and forensic audits. During 2004 twelve Eastern Cape municipalities were targeted for forensic audits by the provincial MEC. In the Free State, three municipalities were placed under provincial administration. The actual state of municipal finances is often difficult to determine at any particular point due to belated reporting by most municipalities. The September 2003 report of the Auditor General cited a 57 per cent failure of municipalities to submit financial statements 20 months after the due date. Thus the AG was obliged in many instances to provide the public with an incomplete 'compliance' report on the state of municipal finances. As of 31 May 2003 the AG was owed R2.5 million in overdue audit fees by municipalities.

### **5.2 Eastern Cape scenario**

When considering the comments of the Auditor General (AG) set out above it is clear that the situation in the Eastern Cape has not changed for some time. The Auditor General's comments in 2003 on the period 1 July 2001 to 30 June 2002 reveal a constant battle to present the public with an accurate picture of the state of municipal finances and financial management. The first difficulty relates to the fact that although the province's 202 municipalities were amalgamated into 45 through re-demarcation in 2000, by 2002 these municipalities still had to be audited as the original 202 entities due to an incomplete financial and administrative merger process and because 'Certain TLCs experienced significant problems in the presentation of financial statements prior to the demarcation process' (Auditor General 2003, p.3-4). There were also weaknesses in the oversight role exercised by the provincial government, including its apparent failure to take action on the recommendations of its own *Standing Committee on Public Accounts (SCOPA)*. Of the 2002 municipalities, 79 per cent submitted financial statements late or failed to submit (57 per cent were outstanding 20 months after the due date) (ibid, p.7). The AG warned that due to the non-maintenance of key financial records, such as the debtor's register, bank statements, funds and reserves register, general ledger, trial balance, etc., there was no certainty of identifying all irregularities. The most common deficiency (33 cases) was the absence of a fixed assets register. Other problems included property valuations not being done according to schedule, stocktaking not being carried out and budgets not being approved (or being erroneously approved) and tax returns being absent or faulty. Councils were not collecting monies owed to them and were not paying their own creditors. Some municipalities did not seem to be solvent; about 20 had made inadequate provision for bad debt and at least four made continuous use of bank overdrafts (ibid, p.12).

The AG's special reports do not indicate cases of corruption or suspected corruption and on the face of it, any or none of the irregularities identified could be symptomatic of corruption. The AG does however report suspected corruption to oversight bodies like the provincial government and the anti-corruption agencies (interviews with corruption investigators). What is clear from the AG reports is that the Eastern Cape local government, as a sector of state, is one in which corruption may easily take root and remain concealed in the confusion of poor management and weak administration.

*Based on the contents of this report, it is clear that the finances of many of the municipalities as well as the quality of their administrative functions require significant improvement. Cognisance is taken of the action taken in employing consultants to assist failing municipalities. However, this in itself is seen as a short-term solution that could result in fruitless expenditure, especially where existing financial staff are already remunerated to do the task...All too often councils in receipt of this assistance accept the situation as it is without having the will or realization to employ suitable and competent staff to establish and maintain a vibrant local government to serve the needs of its inhabitants. Furthermore a number of councils have for too long accepted the situation of cash handouts by government as a means of survival and have a reluctance to levy and, more importantly, to collect service charges from its consumers (ibid, p.17).*

### **5.3 Policy and legislation related to municipal corruption**

The principle policy instrument in addressing this problem in the foreseeable future will be the Municipal Finance Management Act (56 of 2003), signed into effect on 1 July 2004. The Act aims to create more direct accountability within council, specifically with regard to the decisions and controls exercised by mayors, mayoral committees and finance officers. National intervention in municipal finances becomes possible after provincial intervention. A *Municipal Finance Recovery Service* was created which will investigate the reasons for financial crisis in the municipality in question, determine the overall state of its finances and prepare an appropriate *recovery plan*. While these technical controls are to be welcomed, they do not necessarily address the basic problems of political principle and the subverting of local accountability that have created the possibility of wasteful local bureaucracies led by avaricious politicians.

As already indicated in the discussion of SIU investigations into local government corruption, an important component of that corruption relates to the defrauding of tender and contracting procedures by councillors and staff who receive kickbacks from the successful tendering organization or who, through other means, hold a financial interest in the outcome of the process.

### **5.4 Municipal corruption: National examples**

One of the most prevalent forms of corruption at municipal level – and indeed in all spheres of government – is abuse of *tendering and procurement* procedures for private gain. Despite increasingly stringent measures to prevent councillors and senior officials from benefiting from tender awards, the irregular award of large infrastructure and service tenders seem to persist. ‘Local government is considered to be particularly vulnerable to corruption given both the size of its operations, the size of its budget allocation and the role that councils play in the tendering process’, noted the Institute of Security Studies researcher, Hennie van Vuuren (ISS, 2006). Recent high-profile cases include:

- Cape Town Metro: Controversy resulted from a R100m security contract that was awarded to Jama Security, a company until recently owned by the provincial MEC for Transport and Public Works Mcebisi Skwatsha. Skwatsha resigned from the company six days before he had to declare his business interests to the provincial parliament and passed ownership of the company on to his brother.

The tender award was revoked following a court order in favour of the Western Cape Security Association (*The Cape Times*, 7 June, 2005).

- The assignment, below market value, of prime beachfront property in Cape Town to companies that were linked to senior office holders in the ANC. (ANC Mayor Nomandla Mfeketo later intervened to stop the deal.)
- Cape Town Metro awarded tenders under the poverty relief programme to upgrade roads in the poor area of Gugulethu – the successful tendering organization, BTH Construction, was unable to meet the required project standards and the provision of the infrastructure suffered. It cost the city R13.6 million to repair the shoddy work done by the contractor. Mayoral committee member for roads and transport Danile Landingwe allegedly intervened to ensure that BTH Construction was kept in the running for the 2003 tender despite a tender committee finding that an award to BTH would expose the council to ‘extreme risks’. The Speaker launched an internal investigation after pressure from opposition parties and the Public Protector (*The Citizen*, 28 July, 2005).
- In Gauteng Province more than 100 local officials and councillors were dismissed or forced to resign over the last five years as a result of investigations launched by the provincial government and Auditor General in the province’s 15 municipalities. Local government MEC Qedani Mahlangu notes that the most common offences were mal-administration, fraud and corruption (*Business Day*, 16 January, 2006).
- In the Free State province the legislature’s public accounts committee chairman Abrie Oosthuizen filed a report by the public accounts committee after meeting municipalities during August 2005 to consider reports of the Auditor General on the financial statements of all municipalities. The report found that in Matjhabeng, Tokologo, Naledi, Moqhaka, Kopanong, Maluti-a-Phofung, Nala, Dihlabeng, Phumelela and Xhariep District Municipalities financial controls were absent; ‘almost nothing was in place’. Matjhabeng and Mangaung municipalities were singled out for improper handling of tenders and for employees and councillors’ having interests in companies dealing with municipalities. ‘Evidence heard (from Matjhabeng) could not satisfy the committee that the transaction relating to a tender for mechanical equipment was valid, as an amount of R3,151,347 was paid to the contractor three days before he was awarded the tender’ (*The Citizen*, 16 September, 2005). In 2004, local government MEC Malefetsane Joel Mafereka appointed Zola Majavu to lead an investigation into alleged corruption and mal-administration in the Moqhaka local municipality. The report was due to be completed in January 2005, and was apparently handed over to the MEC and to the Premier, but never made public despite the fact that some officials have already been disciplined. The municipality’s weakness in service delivery caused it be targeted for Project Consolidate support but in the same period (2005) the municipal manager received a performance bonus of R106,000 and the four other senior managers in the municipality were awarded bonuses of R90,000 each (DA, 2006).
- In Mangaung municipality Mojalefa Matlole, the municipal manager, and Mzwandile Silwana, the chief of operations, were formally dismissed in May 2006 after an internal investigation into their conduct. The two officials were arrested by the Scorpions in July 2005 along with Papi Mokoena, the executive mayor, his wife Granny, as well as Zongezile Zumane, the previous speaker of the Mangaung local

council. They were allegedly involved in fraud and theft involving municipal tenders worth R150 million.

- In KwaZulu Natal province the municipal managers (and some former mayors) of Okhahlamba, Greater Kokstad, Umtshezi, Nqutu and Mooi Mpfana have been ordered to repay a collective total of R7 million which was regarded as irregular expenditure. Irregular expenditure included improper use of discretionary funds, pension schemes and appointments to management positions; interest-free loans and allowances for councillors; tenders and consultants' fees; leave pay and compensation; and the sale of prepaid electricity vouchers (*The Citizen*, 2006).

An open and impartial procurement procedure is one of the most important safeguards in preventing corrupt practice in the securing of goods and services. In June 2005 the National Treasury issued new regulations aimed at curbing corruption in the tendering and procurement function and improving accountability and transparency for the award of municipal bids. These regulations mirror provisions within the Municipal Finance Management Act and include (*The Cape Times*, June 7, 2005):

- Anyone who is in the service of the state is not eligible to bid for, or be awarded a municipal contract for, the provision of goods and services.
- Tenders with a value in excess of R200,000 are considered 'big tenders' and require competitive bids. A three-stage process will ensure that specification, evaluation and adjudication are handled by different committees.
- All bids must be published in a bid register which must be open to public scrutiny, including being published on the municipality's website.
- Councillors may not be involved in supply-chain management systems and are excluded from bid committees:

*No councillor of any municipality may be a member of a municipal bid committee or any other committee evaluating or approving tenders, quotations, contracts or other bids, nor attend any such meeting as an observer (GSA, 2003a, Section 117).*

- Officials who serve on bid committees must abide by a strict code of ethics regarding the receipt of gifts and must withdraw from any bid process where a family member has an interest.
- Companies supplying goods and services to a municipality must declare any gifts, awards or favours to officials or risk being listed by the National Treasury as an organization prohibited from doing business with the public sector.
- Any dispute regarding a bidding process must be mediated by an independent and impartial person.

In addition to stronger supply chain management functions, the functioning of audit committees is expected to make a significant impact on the transparency of council's financial decisions (personal communication with Geoff Walton, internal auditor, Buffalo City Municipality). The audit committee is an independent advisory body that must advise council and staff on matters relating to: internal financial control and internal audits, risk management, accounting policies, the adequacy, reliability and accuracy of financial reporting and information, performance management and effective governance. The committee must also ensure compliance with the Municipal Finance Management Act, the annual Division of Revenue Act and any other applicable legislation (GSA, 2003a,

Section 166(2)(a)). The audit committee must also review the financial statements of the municipality in order to provide council with a credible assessment of its financial position and to respond to any issues raised in the Auditor General's report (ibid, Section 166(2)(b)&(c)). The audit committee must carry out any investigations into the financial affairs of the municipality that council may direct (ibid, Section 166(2)(d)). In terms of section 166 (4) of the Act the members of the audit committee must have appropriate experience and the majority may not be in the employ of the municipality (no councillors may serve on audit committees).

Why this need for such vigorously independent oversight of elected local politicians and their staff? An example of a governance incident from the Nelson Mandela Metropolitan Municipality illustrates the need for the empowerment of such committees and how, prior to the enactment of the Municipal Finance Management Act (MFMA), such accountability structures might be sidelined by political forces within council.

## **Box 2. Audit committee sidelined**

In September 2001 the local media in the Nelson Mandela Metropolitan municipality (NMM) began to carry reports that executive mayor Nceba Faku had used the mayor's discretionary fund to pay his own accounts. Payments made included parking fines, clothes and tuition fees for relatives (The Herald, 21 November, 2001). The mayor also reimbursed his driver R27,000 for payments made on his behalf. In the 2000/01 financial year payments from the fund amounted to R87,000 and were R40,000 over budget (ibid). The audit committee had first indicated its concern regarding this matter in November 2000, however the alleged 'irregular expenditure' continued and further correspondence followed in January and again in July 2001. The audit committee questioned whether the principles of 'good corporate governance' had been followed and asked to meet the mayor so that he could explain why private payments from the fund continued after the committee had expressed its concern. The municipal manager Graham Richards replied to the committee that the mayor was not accountable to it and was not inclined to meet the committee to provide an explanation. The chairperson of the audit committee, Paul Leese accepted that the committee had no legal standing to enforce its request but pointed out that his committee had been trying for 12 months to clarify the use of the discretionary fund. Leese accused the municipal manager of ignoring the ethical aspects of the issue (ibid). Leese also referred to an opinion from the Auditor General that the matter should be explained. In reply the municipal manager Richards suggested that the audit committee had overstepped its authority:

*In that the executive mayor is not accountable to your committee, he is not inclined to provide you with the explanations in the current context (ibid).*

After much persistence by the audit committee, the matter was partially discussed in council but only as a 'green paper' i.e. subject to confidentiality limits that precluded full public scrutiny. The incident suggests that a 'toothless' audit committee may be a waste of time and resources and may simply lend a semblance of legitimacy to what are often very dubious governance practices. The reworked 2003 provisions of the MFMA appear to remedy this only partially, i.e. the audit committee functions at the pleasure of council and senior politicians.

Returning for the moment to tendering and procurement rules, it becomes clear that, while impressive in themselves, the effective use of these regulations and indeed other anti-corruption laws assumes that municipalities have a minimal level of administrative capability and are able of developing and following their own policies. Tangible evidence of such capability is not present in provinces like the Eastern Cape. In an October 2001 survey of Eastern Cape municipalities, the Standing Committee on Housing and Local Government reported as follows (it should be noted that the table below is a 'snapshot' of these municipalities at this time – it does not imply that the situation has remained unchanged):

## 5.5 Profiling financial problems

**Table 8. Snapshot of tendering and procurement rules in Eastern Cape municipalities as of 2001**

Municipality	Procurement practice / other financial issues
Sakhisizwe	No procurement policy in place. Claim that tenders are advertised. No lists of service providers are kept. (Without such a record it is impossible to keep a 'track record' of the performance of specific service providers or to discern whether there is a history of favouring certain companies.)
Engcobo	Council adjudicates tenders – no policy in place. Claim that tenders are advertised. No lists of service providers are kept.
Intsika Yethu	Irregular hiring of project manager for housing development led to litigation and confiscation of municipal property. No procurement policy. Council sometimes has insufficient funds to advertise its meetings to the public.
Nyandeni	No treasury regulations to control finances. No procurement policies in place – but tenders are assessed by consultants who make recommendations to council. Due to a financial crisis, an amount of R343,000 intended for housing subsidies was used instead to pay salaries.
Elundini	Draft procurement policy in place. Council approves tenders but is assisted by a provincial government team (Municipal Mentoring Project). Heads of departments may approve tenders of less than R5,000.
Ndlambe	The procurement policy is in place but allows for council to approve tenders. Both Ndlambe and the district municipality for the area claimed to have no knowledge of how the contractor responsible for road maintenance was appointed.
Senqu	Reported to be using 'outdated' Treasury Regulations. Last audited statements were for year ending June 1996 and only for a part of the municipality. Procurement policy is not reported. No budget formulated at time of survey.
Maletswai	Reported to be using 'outdated' Treasury Regulations. Procurement and asset management policies still to be developed. Financial controls were absent and the billing system was described as 'incorrect'. Cash flow problems foreseen with possibility that creditors and staff would not be paid. Alleged that contracts went to large consortiums in Port Elizabeth and East London.
Gariep	Procurement and asset management policies still to be developed. 'The financial situation in Sterkstroom (a town within the new municipality, it was once a municipality in itself) is unclear and is being investigated by the Auditor General. Financial mismanagement has been noted in Sterkstroom, but the town clerk involved is still the acting head'.
Tsolwana	Procurement policies have been developed. Financial mismanagement was suspected with regard to a R38,000 IDP allocation that was unaccounted for. (This was not unusual; many <i>planning grants</i> in other municipalities could not be accounted for.)
Emalahleni	About R6.8 million outstanding to the municipality in property rates. Municipality operated three different credit-control policies. Municipality operating on bridging loan and owed substantial amounts to Eskom (electricity), Telkom

	(telecommunications) and Department of Water Affairs (water). Financial statements outstanding for Lady Frere (one of the constituent towns) '...mostly due to the fact that the municipal offices were set alight and the town clerk murdered in 1997'. Procurement and asset management policies still to be developed. One consultant (Sakhisizwe) appointed to many projects that have not been completed – the district municipality indicates that R4 million is unaccounted for.
Lukanji	Sound financial management in the larger town (Queenstown) reported, but lack of controls in the smaller town (Whittlesea). Claims that all policies including procurement are in place. ( <i>Very little financial information is provided – sound financial standing of the municipality seems to have been accepted 'on faith' by the Standing Committee.</i> )
Ngqushwa	No credit control policy in operation and previous year's financial records were not audited. Council adjudicates tenders informally – no policy. Annual reports have never been compiled.
Umzimkhulu	Municipality able to generate revenue only from one town (Umzimkulu) and not from rural areas – its largest component. About 30 per cent of the people in the town pay for services. No accounts are issued due to theft of three computers – this also resulted in the loss of financial data. Financial statements were available. Procurement policy drafted but not yet adopted by council. Audit queries have resulted from the use of indigent funds – i.e. funds meant to subsidize services to the poor – to pay for other operational costs.
Mbizana	Uses the procurement policy of the previous transitional council. No policy for asset management. Annual report is not produced. <i>Very little financial information is provided.</i>
Ingquza Hill	Previous financial records (from constituent municipalities) are mostly missing. Criminal investigations were pending and the new council (2001) requested a forensic audit. Procurement policy in draft form – council uses policy of the district municipality
Umzimvubu	About 93 per cent of the municipality's revenue comes from transfers from national government, i.e. own revenue is negligible. Previous Mount Ayliff municipality financial records described as being in a state of 'havoc' – its telephone bill as at December 5, 2000 was R100,000 and it owed R1.8 million to the Department of Water Affairs. SAPS and Scorpions investigations underway into financial affairs. A procurement policy was being developed by consultants.
Ntabankulu	Draft procurement policy has been developed. Financial statements were available.
King Sabata Dalindyebo	The municipality owed the following: pension contributions (R5.8 million), receiver of revenue (R39 million), staff allowance deductions (R13 million), Department of Water Affairs (R31 million), audit fees (R0.5 million), Public Investment Commissioner (R17 million) and district council levy (R1.1 million). Council was using the previous procurement policy (outdated) and had no asset management policy.
Makana	Financial statements were available. Procurement and asset management policies were being developed. Council had provided free basic water to indigent households over the previous 18 months but would not do so for the 2001/02 financial year due to financial constraints.
Sundays River	Unspecified policy for procurement in place. Most non-transfer revenue comes from the sale of electricity. <i>Very little financial information is provided.</i>
Mbhashe	No Treasury Regulations are in place. Outdated legislation is used for procurement. No annual reports are compiled.
Mnquma	Do not adhere to Treasury Regulations. Standing committee found that financial controls were 'lacking.' There is no procurement policy. <i>This is renowned as one of the worst run and most consistently conflict-ridden municipalities in the province and possibly the country – the report fails to indicate this.</i>
Great Kei	No procurement policy in place but claim to comply with central government legislation. An asset register has been compiled.



Buffalo City	Adhere to Treasury Regulations and able to produce financial statements and other documents. Have drafted own procurement policy. <i>The complex financial situation and the state of financial controls are not reflected in the standing committee's report on this, the second-largest municipality in the province.</i>
Nxuba	No creditors had been paid over the previous seven months due to financial crisis. No procurement policy is reported. Annual reports are produced.
Nkonkobe	Appeared to be problems with the creditor's register and age analysis thereof. No new policies with regard to procurement had been developed or applied.
Amahlathi	Statutory fund contributions not made due to lack of finance. Procurement policy under development – currently using outdated legislation.
Inxuba Yethemba	Municipality makes use of an R4 million overdraft facility with the bank. Financial statements are produced but no annual reports. Procurement policy not yet in place.
Blue Crane Route	Debt collection outsourced via tender. Financial statements had not been audited for two years due to outstanding payment to the AG. Of concern was the fact that the finance committee also acts as the audit committee
Camdeboo	Use national legislation for procurement, i.e. no policy in place. Council's standing committees award tenders based on the type of work / service required. Also operate an 'advisory committee' in relation to tenders.
Baviaans	One of the amalgamated municipalities had not been audited for four years. The municipality was owed R121,000 in (illegal) advances to its own councillors. No report on procurement procedures.
Kou-kamma	Municipality claims that its Equitable Share transfer does not match its development need – it has minimal own revenue-sourcing potential. Audited statements available for one of the two constituent towns only. Procurement policy in place but process controlled by council.
Kouga	Financial statements were available and a procurement policy is in place.

Source: Report of the Standing Committee on Housing and Local Government, 16 October, 2001

The above extracts from the Standing Committee report are not intended to present a current or balanced picture of the state of municipal finance or financial controls. Instead the table illustrates in broad terms the kind of financial situation that prevailed in most municipalities and in particular the forms of irregularity that might constitute corruption or create the potential for corruption to occur. Pertinent issues include:

- Decreasing cost recovery from service provision and increased reliance on inter-governmental transfers. While the provision of the *Equitable Share* transfer was intended to ensure that the needs of indigent households were met, it was generally used to prop up the core running costs of the municipality, in particular salaries and allowances. This relinquishing of control over revenue may have increased the likelihood of corruption as the link between service provision and service payment became weaker. In other words, if local citizens were not paying for services, they were less likely to ask how municipal revenue is used. The example of Nyandeni, where R343,000 was allegedly intended for housing subsidies but was used instead to pay salaries, illustrates this point and suggests a level of *institutional corruption* occasioned by the abuse of pro-poor policy rather than a simple act of fraud or graft.
- While the municipalities generally claim a 'culture of non-payment' for services, it is not clear that they have billed fairly or effectively or whether they have invoked any form of effective credit control directed to those consumers who can pay for services – the determination of *indigence* having long been a very uncertain and inefficient process in most municipalities.

- The municipal re-demarcation process 1998–2000 amalgamated two or three municipalities into single larger entities. ‘In many former TLCs the financial statements were not audited for the past two to four years’ The effects of the poor financial records and reports of the disestablished municipalities were carried over into the new municipality. In many instances therefore further corruption or irregular practice might have been encouraged by the absence of reliable *base* data on which to build accurate financial records.
- The absence of a single and generally accepted set of *Treasury Regulations* also created the space for varying standards of practice in financial management and reporting. This latitude may have been abused by those who sought to benefit from practices that lacked rigor or where opportunities arose for circumventing proper checks and balances. Perhaps the most serious of these ‘gaps’ was the different forms of procurement practice – or in some cases the absence of any transparent system – used to purchase goods and services.

## 5.6 Corruption and infrastructure services

*Why, in assessing infrastructure related corruption, is it important to look at municipal governance?*

In South Africa, local government is constitutionally assigned a broad range of functions that entail responsibility for infrastructure services. Section 156 of the Constitution provides that a municipality has the executive authority and the right to administer the local government matters listed in Parts B of Schedules 4 and 5. This is reflected in the tables below:

**Table 9. Municipalities’ responsibility for infrastructure services**

Part B of Schedule 4	Part B of Schedule 5
<i>Explanation: local government functions over which national and provincial government may (concurrently) pass laws and exercise oversight</i>	<i>Explanation: local government functions over which only province may legislate and exercise oversight but where national government may set minimum standards</i>
air pollution	Beaches and amusement facilities
Building regulations	Billboards and advertisement displays
Child-care facilities	Cemeteries, funeral parlours and crematoria
Electricity and gas reticulation	Cleansing
Fire fighting	Control of public nuisances
Local tourism	Control of liquor outlets
Municipal airports	Facilities for the accommodation, care and burial of animals
Municipal planning	Fences and fencing
Municipal health services	Licensing of dogs
Municipal public transport	Licensing and control of food outlets
Municipal public works	Local amenities
Pontoons ferries, jetties, piers and harbours	Local sports facilities

Storm water management
Trading regulations
Water and sanitation services

Markets
Municipal abattoirs
Municipal parks and recreation
Municipal roads
Noise pollution
Pounds
Public places
Refuse removal
Refuse dumps and solid waste disposal
Street trading
Street lighting
Traffic and parking

In terms of the constitutional obligations allocated to different spheres of government, South African municipalities carry the primary responsibility for infrastructure services. Furthermore municipalities are, according to President Mbeki's 2000 address to the nation, obliged to deliver free basic services (water, electricity, solid waste and sanitation) to households who could not otherwise afford these services. Municipalities are also required to provide these services in a way that is sustainable and affordable to all households. This policy essentially reflected an increasingly clear 'reality' in local service consumption where cost recovery has been very low.

### **5.6.1 Consolidate Municipal Infrastructure Programme (CMIP)**

At the end of 2005 government committed to a revised set of basic service targets (Fraser-Moleketi, 2006):

- Access to clean water for all communities by 2010
- Electricity for all houses by 2012
- Eradicating the bucket sanitation system by 2006/07

These would be achieved by developing a Municipal Infrastructure Investment Strategy; technical 'hands-on support' to 'less capacitated municipalities' and twenty-one rural and urban nodes; implementing a national framework for local economic development to improve market and public confidence; extending and prioritizing Project Consolidate support to municipalities; and improving the capacity of Provincial Departments to provide improved support to local government. The South African municipal infrastructure development is driven by a well-co-ordinated programme of funding and management support, located within national government. At its launch in 1997 the Consolidated Municipal Infrastructure Programme (CMIP) was described as a '...national programme for upgrading, extending and rehabilitating municipal infrastructure' (Idasa, 1997, p.23). The CMIP was the implementation component of the Municipal Infrastructure Investment Framework – a government policy that pledged a basic level of services to all households in South Africa within the next 10 years. The CMIP was to operate through an application-based system that was open to all municipalities. Apart from the basic service target, CMIP also set out to link the delivery of infrastructure with housing, to improve service delivery generally and to ensure its long-term sustainability. The CMIP

also undertook to integrate urban and rural services and to strengthen municipalities. The CMIP initially defined the infrastructure it would fund as (ibid):

- i) Connector: (for example, water pipes that link reservoirs)
- ii) Internal bulk: (roads or other infrastructure maintained by the municipality)
- iii) Service infrastructure (public lighting, solid waste sites, storm-water systems, etc.)

The CMIP was organized into three categories of provision that were based on the existing assessment of the state of municipal infrastructure and the type of interventions that were required to improve it. Each category or 'window' had its own criteria:

**Table 10. The Consolidated Municipal Infrastructure Programme's categories of provision**

<b>Funding Category 1</b>	<b>Funding Criteria</b>
Providing new or upgrading existing internal bulk and connector infrastructure	Local need and demand Priority with respect to national and provisional development strategies Cost effectiveness Efficiency and speed of implementation Service charge payment performance Affordability of service levels Previous delivery performance (for repeat funding) Service charge payment performance Capacity to manage project Financial sustainability No double-funding
<b>Funding Category 2</b>	<b>Funding Criteria</b>
Restoration of collapsed service infrastructure	Current state of repair Local need and demand Cost effectiveness Efficiency and speed of implementation Service charge payment performance Capacity to manage project Service charge payment performance Financial sustainability
<b>Funding Category 3</b>	<b>Funding Criteria</b>
Special cases, based on merit	Technically deserving of special treatment Local need and demand Cost effectiveness Service charge payment Financial sustainability

Source: Idasa, 1997, p.24–5

By 2003/04 the CMIP was being replaced by the Municipal Infrastructure Grant (MIG). The MIG will eventually replace all existing grants for municipal infrastructure development including (ibid):

- CMIP
- Local Economic Development Fund
- Water Services project
- Community-based Public Works Programme
- Municipal Sports and Recreation programme
- National Electrification Programme to local government
- Urban Transport Fund

The consolidation process is expected to continue into the period 2005/06. In his 2003 address to the national assembly on the tabling of the Medium Term Budget Policy Statement and the Adjustments Appropriation Bill, Finance Minister Trevor Manuel announced that local government would receive the largest percentage increase of all spheres of government due to its 'vital role in delivering basic services to poor communities' and that a 'stepped up' infrastructure delivery programme would be available through the MIG. Total national transfers to local government would rise from R12 billion in 2003/04 to R17.1 billion in 2006/07. The increased allocation to local government (the 2004 Medium Term Expenditure Framework set aside R16.6 billion for infrastructure grants) was to accelerate the roll out of free basic electricity, water, refuse removal and sanitation to poor households, to strengthen infrastructure delivery and to consolidate local government financial management and policy reforms to comply with the Municipal Finance Management Bill (GSA, 2003b, p.78).

The National Treasury allocates funds to the CMIP / MIG in the form of 'conditional grants' subject to the Division of Revenue Act (DoRA). The Act, (Section 11.1 (a)) stipulates that funds may only be transferred 'In terms of a policy framework approved by the Minister' and requires stringent accounting and reporting regarding the use of such funds. The Intergovernmental Fiscal Review 2001 shows a doubling of expenditure on infrastructure between 2000/01 and 2003/04. The programme has been able to spend an annually increasing budget in all but one financial year and has successfully satisfied the stringent obligations of DoRA in terms of financial accountability and reporting (ibid).

In general, local government – constantly under transformation pressure and with an array of new forms, expanded boundaries and nationally prescribed systems – has proved to be a poor vehicle for delivering fiscal allocations intended for development and infrastructure provision:

*Given the challenges of rising personnel costs, water and electricity losses, inefficiency in service delivery and outstanding service payments, it is critical that municipalities take appropriate measures to address these issues. Changes and shifts in powers and functions, increased service delivery responsibilities, general economic development, population growth and urbanization, infrastructure disparities and income inequality all contribute to the tough challenges facing the local government sphere (ibid, p.85).*

While the Division of Revenue Act (DoRA) has expedited the flow of funding to local government, provincial stakeholders argue that it has also undermined the influence of provincial governments over allocations of funding. Provincial government officials claim to be unable to over-rule resolutions taken by local councils or influence the appointment of capable service providers. Provinces claim that this inhibits their legal responsibility for oversight of large infrastructure projects and thus weakens the monitoring and evaluation

function expected of this sphere of government. There is little evidence, however, that provinces such as the Eastern Cape have the capacity to effectively monitor such projects. The Department of Housing, Local Government and Traditional Affairs, for example, currently has one qualified engineer to check on the quality of all housing and infrastructure projects (personal communication with Madyaka (Department of Housing, Local Government and Traditional Affairs – Eastern Cape), March 8, 2006).

Most of the criticisms levelled at the CMIP programme relate to institutional failing and the capacity of officialdom and are not necessarily a reflection on the programme itself. Whereas CMIP emphasizes the delivery of physical infrastructure it cannot retain long-term responsibility for the services and benefits that arise from this infrastructure – this is clearly the responsibility of the municipality. Municipal incapacity, poor planning and misguided budget prioritization has often resulted in under-used and poorly maintained / vandalized infrastructure, and as a consequence, inferior services (my own observations, partly confirmed by McIntosh Xaba & Associates, 2003). The CMIP has also been accused of failing to articulate a coherent contribution to local economic development beyond the creation of employment during construction. Further it is argued that CMIP makes no systematic attempt to ensure that infrastructure contributes to an enabling environment for local economic development. It is debatable, however, whether it was feasible to assign these ambitious development objectives to CMIP rather than recognizing that the programme was merely one of a set of pre-conditions to effective local level economic strategy.

McIntosh Xaba & Associates' evaluation of CMIP projects in Kwa Zulu-Natal, Eastern Cape and Limpopo suggests a tightly co-ordinated system of programme management and financial accountability with engineers and project managers central to the delivery process. Municipal stakeholders are reported to view CMIP primarily as an infrastructure programme and regard the potential local economic development objectives of CMIP – such as building human capital, pulling in private investment and creating a conducive environment for industry – as incidental to the programme (McIntosh Xaba & Associates, 2003). There can be little doubt, however, that CMIP has created some of the most tangible benefits for poor service users including increased mobility, access to short-term employment in the construction of infrastructure, less time spent in the collection of firewood and water, access to better quality of water and reduced incidences of water-borne illnesses (ibid).

The Eastern Cape had the highest allocation of CMIP funding for the 2002/03 financial year. According to the Department of Provincial and Local Government (DPLG) November 2002 Report, the Eastern Cape was allocated R444.1 million, which is equivalent to 24 per cent of all national allocations. The largest share of the Eastern Cape 2002/03 provincial infrastructure allocation is directed to the OR Tambo District (27.95 per cent), which gets a total of R124 million. The Chris Hani District has the second-largest allocation of R71.66 million (16.15 per cent). Alfred Nzo and Amatole districts are allocated R48.22 million (10.87 per cent) and R46.57 million (10.50 per cent), respectively. The fifth and sixth-largest share of the infrastructure grant is directed to the Nelson Mandela Metropole, at R39.75 million (8.96 per cent) and Ukhahlamba District, at R38.92 million (8.77 per cent). Buffalo City is allocated R30.62 million (6.90 per cent) and the remaining infrastructure grant funding is allocated to the Cacadu District, at R16.93 million (3.82 per cent) (GSA, 2004a, p.4). In the Eastern Cape, CMIP projects have on the whole been water supply, solid waste disposal site replacements, bulk sanitation services, storm-water upgrading and access roads.

It is very difficult to quantify the extent to which CMIP / MIG development impact has been compromised by clearly identified acts of corruption. Most of the anti-corruption agencies interviewed in the course of this study have pointed out that the most serious instances of irregularity leading to compromised delivery of service infrastructure arises from the manner in which large infrastructure projects are contracted out to service providers. However none of the informants was able to provide specific examples and quantify the amounts involved or the impact on basic service delivery. The most common criticism is one of lack of transparency or nepotism in the tender process. This problem, however, assumes a new dimension when it arises (as many of the informants suggested) precisely because of, rather than despite, government policy. The cited policy was local economic development (LED) and black economic empowerment (BEE). These policy frameworks dictate that black-owned companies and emerging contractors are the preferred service providers. Few potential bidders on CMIP projects would ignore these imperatives; indeed they would be out of business quite quickly. Nonetheless, the express intention of promoting small and medium-sized enterprises has rarely been achieved. Emerging contractors have invariably been unable to meet the terms of large government contracts and have been appointed in irregular ways, with the result that project failure is the rule rather than the exception (Auditor General 2003b). Attempts to overcome this by forming partnerships with established businesses or joint ventures have often replicated the existing divisions of labour and reward, with so-called small, medium-sized and microenterprises (SMMEs) taking up the role of labour contractors. Alternatively the emerging contractor acts as the facilitator between communities and the main contractor, with little on-site transfer of skills (McIntosh Xaba & Associates, 2003, p.8–9).

*There are problems, usually problems in the private sector, meeting equity objectives on the one hand, or black economic empowerment not having the experience and capacity to carry out projects successfully. Where they do, often there are problems and transparency (many contracts and tenders are not open to public inspection). Within this range of activities there is also the problem of corruption (for example, backhanders, nepotism in both private and public sector, favouritism, etc....) (Hemson et al., 2004, p.52).*

In some instances infrastructure projects appear to have been developed for political or symbolic reasons without any reasonable assurance of functional value to beneficiaries. In general this is not defined as corruption but there are instances where the project is clearly for the short-term benefit of local political careers. Where functional service provision was demonstrably unlikely, and where it is likely that the project's political sponsors were aware of these pitfalls, some of the criteria seem to be present which would meet a broad definition of corruption. The following project is not a watertight example of this eventuality, but it raises key questions about how public funds can be fruitlessly expended without any obvious suggestion of graft:

### **Box 3. Case Study: Middledrift waste disposal**

This project, drawn from the 2003 evaluation by McIntosh Xaba & Associates (assisted by, amongst others, Mbumba Development Services), demonstrates ostensibly the problem of costly CMIP infrastructure being under-used, poorly maintained and vandalized. The Middledrift Waste Disposal site in the Eastern Cape was part of the highly acclaimed Middledrift development process that was awarded 'best practice

status' in a review undertaken by Stanford University. Solid waste disposal was deemed necessary to service the increasing number of residential sites (it was estimated that the project would serve over 1,480 households). Previously, plastic and other solid waste had been strewn throughout the area causing disease, the spread of vermin, unsightly pollution and stock losses when cattle ingested the plastic. The waste disposal site was built at a cost of R542,000 (excluding official's time) and consisted of:

- a drainage facility;
- an incinerator;
- a sorting site;
- an office block;
- toilets; and
- a guarded checkpoint.

Currently all of these facilities, except the actual hole into which waste is tipped, are neglected or unusable and some have been vandalized. The incinerator has never been used. The considerable investment has in fact yielded nothing more than the hole into which rubbish is deposited. The hole addresses the primary need of waste disposal, but could have been provided at a fraction of the cost.

McIntosh Xaba & Associates suggested also that the direct and indirect costs (including environmental impacts and official personnel's time) entailed in this type of service provision were frequently underestimated or ignored in decisions about the scale and nature of infrastructure to be constructed. The analysis suggests a tendency for municipalities to adopt conventional services solutions that rely on high levels of professional input. In retrospect the circumstances of this community and the available skills required a more modest approach. But what if the problem was less about naivety and more about conjuring vote-winning demonstrations of local leaderships 'commitment to development'? What if the council behind this debacle had done the same thing in a number of other infrastructure projects and had in all probability factored the likely collapse of the infrastructure against the political capital that accrued when this project was presented to the community?

There is a broad band of problems that exist in a grey area where incapacity merges with more questionable behaviour by officialdom. The effects of municipal incapacity on the CMIP programme have already been described. In summary these relate to ill-advised appointment of contractors and inability to enforce contracts, but these shortfalls can be very difficult to distinguish from partiality in appointments and deliberate non-enforcement of contracts. It also carries over beyond the construction phase into the inability to correctly diagnose technical problems once infrastructure is installed and generally weak operation and maintenance procedures. The view of many corruption investigators who provided insight into this study is that ill-advised appointments make systems failure inevitable and that this should not be treated as a benign 'weakness' – but rather as a form of corruption. The Auditor General has echoed this sentiment in reports over the past decade. Nonetheless it is more than likely that significantly more resources are lost to weak municipal management and operational incapacity than to corruption *per se*, and that this problem is pronounced amongst those municipalities, especially those that are unable to undertake their own capital investment. Weak municipalities cannot



communicate and transact with communities in an effective manner, therefore the infrastructure that is provided by CMIP cannot recoup costs. This initiates a cycle in which infrastructure is poorly maintained, services break down and services payments diminish (McIntosh Xaba & Associates, 2003, p.12). The imputed 'autonomy' of local government has contributed to the deepening of this crisis, as CMIP staff at provincial and national level have been reluctant to interfere in the affairs of local government. Some remedy to this crisis of local capacity has been achieved through innovative approaches to capacity building and technical support such as the Municipal Mentoring Project and, most recently, Project Consolidate.

### **5.6.2 Housing delivery**

In August 2003 the Portfolio Committee on Housing from the national parliament held a series of *Imbizos* (events where politicians and officials interact with the public and hear concerns – the events are frequently quite orchestrated as public relations exercises) in the Eastern Cape. The aim of the exercise was to assess housing and infrastructure provision, check the adherence of contractors to building standards and general quality, establish the progress of the People's Housing Process (PHP) programme, check consistency with integrated development plans and assess the involvement of *emerging contractors* (including women). The findings selected below are not intended to be balanced or representative but simply to focus in on problems related to infrastructure (GSA, 2003c).

#### ***Umzimkhulu Municipality***

- In some instances, like the Raloti project where 102 houses were built to replace shelters lost to veld fires, the PHP process had combined with a building contractor to provide units of 40m<sup>2</sup> with 'VIP' toilets at a cost of R14,750. Although infrastructure such as running water and taps was still needed, the beneficiaries seemed to be reasonably satisfied with the outcome and the remaining subsidy would cover the outstanding infrastructure.
- In the Riverside project 502 houses were scheduled and 300 had been built by 'local builders'. It was found that the interior walls in the houses of the first phase were not affordable. Material had been lost to theft and some partial structures were vandalized, with the result that the project had to employ security guards. Poor quality materials had resulted in rotten doors and houses lacked steps that made access for the elderly difficult.
- In the Umzimkhulu Town Extension 6 project the budget of R8,000 per house (40m<sup>2</sup>) had proven inadequate despite the use of local builders and a 'building coordinator'. Doors and windows had been built without lintels and walls had cracked.

#### ***Umzimvubu Municipality***

- Tyoksville project: 700 subsidies had been approved but only 102 units were completed at the time of the visit. The PHP model is used and the building teams are made up of the beneficiaries but the project manager was based in East London. The project had cash-flow problems and materials (locally procured) were not supplied on time 'The community seemed to be in a state of despair as many houses are incomplete' (GSA, 2003c). The delegation from the Portfolio Committee also identified four other projects in the municipality where a total of 2,232 houses were to have been built – none of the construction targets had been *met*. *In subsequent discussions, the local community attributed the problem to the government's inability*

*to resolve land claims over the prospective developments. It was also noted that civil servants had been involved in the illegal invasion of land (ibid, p.3).*

### **Buffalo City Municipality**

- Duncan Village Hostel B: the original single-sex hostel was built in 1960 and damaged by fire during 1985 resistance activity. After a number of false starts the project was upgraded in 1995 as municipal renting stock for 302 family units and 96 single occupations, with a plan to form a housing association. Various agencies including the local and district municipality contributed to the R8 million upgrade. Many of the units were illegally occupied at the time of the visit and families had 'absconded' and illegally rented out their units. Illegal electrical connections had been made and the upgrade suffered from poor quality (no lintels, walls cracking, leaks, no steps, etc.).
- Haven Hills South Housing Development: Developed by an NGO (van der Leij Habitat Foundation) as a demonstration project for 'integrated and sustainable urban living environment' with high-density options. It included 132 project-linked low-cost units, 354 rental apartments and 70 credit-linked plot and plan dwellings. The project began in September 2002 and an R28 million tender was awarded to Grinaker-LTA construction, a large national firm. It was reported that the project was progressing well and all units would be completed and occupied by mid-August 2003.

The above examples illustrate the typical problems and successes that emerge from housing provision in terms of the PHP model and more conventional housing approaches. The problems of poor construction, project disruption (community conflict, theft and vandalism) are common to both conventional and PHP approaches. In the Haven Hills project, success was provisionally achieved through much higher unit costs and hands-on expertise. These resources are scarce outside of an urban context. In general, though, the policy imperative to use emerging contractors or beneficiary-owned and beneficiary-driven project approaches, while laudable in its developmental motives, in fact introduces an increased likelihood of poor construction and community conflict. Such an environment proves to be corruption-friendly since cost cutting, project failure and beneficiary discontent can be blamed on a wider set of factors and the actual service provider can shirk accountability.

### **5.6.3 Operational considerations**

Acquiring service infrastructure is only the first step to using it effectively. Infrastructure may be developed effectively but its use may be 'corrupted' by discriminatory laws or conventions, as happened under apartheid. In the 'new' South Africa, local government is legally obliged to provide services in a manner that is consistent with nine distinct principles set out in the Local Government White Paper (GSA, 1998b, p.93):

*Accessibility:* Stresses non-discriminatory (race, gender, sexual orientation) access to services, at least at minimum level. Historical unevenness in service provision is to be addressed by building new infrastructure and rehabilitating/upgrading that which already exists. The mechanism for rolling this out is capital investment in bulk and connector infrastructure via infrastructure grants, at this stage through the Consolidated Municipal Infrastructure Programme (CMIP). Municipalities are also urged to consider the 'ease of use' of this infrastructure, particularly for the disabled (ibid). The question of 'eligibility' is thus firmly established – all citizens are eligible for municipal services irrespective of their social and economic circumstances. Much debate has centred on this principle and the

extent to which it has been carried through to implementation programmes and municipal logistics (see for example Bond, 2000).

*Affordability:* The White Paper (GSA, 1998b) notes the importance of considering the affordability of the actual service – even though the service infrastructure may be in place. It urges:

- Tariff levels that consider both the economics of providing the service and the potential of the poor to access the services, i.e. financial sustainability has to be offset against the needs of the poor and their possible contribution to service costs (ibid).
- Service levels have to reflect local affordability patterns but not in such a way as to perpetuate the existing spatial (and racial) inequality between ‘low, middle- or high-income users...’ (ibid).
- Cross-subsidization is envisaged within particular service types and across services (for example, income from electricity can legitimately be used to subsidize water provision) (author’s own example). Higher income users may thus subsidize lower income users and commercial users may subsidize residential users (GSA, 1998b).

*Quality of services:* Quality relates to attributes like relevance to purpose, whether the service is delivered on time, convenience to users, safety, continuity (minimal breakdown) and responsiveness to service users.

*Accountability:* The stress here is on the municipality retaining ultimate responsibility for service provision. Perhaps recognizing the overarching international movement to privatization and ‘outsourcing’, the White Paper emphasizes that council remains responsible for delivering appropriate services of the required standard.

*Services and development:* Integrated development is called for, with consideration of the social and economic impacts of the services provided. Importantly ‘sustainability’ is defined as encompassing resource usage, including financial viability and development that is both environmentally sound and socially just.

*Value for money:* This attribute compares cost inputs with the quality and value of the service outputs and the aim is ‘the best possible use of public resources to ensure universal access to affordable and sustainable services’. It might be argued that this is the most important measure to apply in any assessment of the current service delivery patterns, i.e. useful appraisal is less about the reach and scale of service delivery (where the challenges and achievements are fairly well documented) and more about whether the significant resources allocated to services are optimally deployed.

*Impact on local commerce and industry:* When considering cross-subsidization between commercial and residential service users and generally when considering tariff levels, municipalities are urged to consider the impact of rates and service charges on commerce and industry in order not to compromise the ‘job-creating and competitive nature’ of such enterprises.

Service provision strategies must therefore be measured against the above principles (in addition to the technical indicators used by the engineering sector) in order to establish to what degree they meet a broader set of policy expectations. Different generations of *indigent policy* have tried in varying degrees to meet these principles. Indigent service policy has included measures for cross-subsidization by more affluent households, but has generally proved to be inadequate or has simply been neglected by municipalities

due to political expediency or incompetence. By way of illustration, unpaid consumer debt for municipal services, was estimated at R22 billion in 2002 and had risen to R28 billion by 2004 (Idasa, 2003 and 2005).

Where infrastructure services to poor households fail it is generally a result of one or more of the following reasons:

- The municipality's own strategic assessments are flawed, i.e. planning has failed to identify where services are needed and has not prioritized accordingly (generally, since the introduction of *Integrated Development Planning* in 1998/99, poor neighbourhoods are adequately factored into planning).
- The municipality has prioritized immediate operating issues over longer-term infrastructure investment – capital budgets are often inadequate and do not allow for the necessary extension of infrastructure. This remains highly prevalent, despite frequent pleas from the National Treasury and other authorities. It is often exacerbated by lack of maintenance budgeting for existing infrastructure. For the 2004/05 financial year, the National Treasury expressed concern that 43 per cent of municipal budgets go to personnel costs (excluding expenditure on bulk services), with persistently high packages for senior managers and executives (*Business Day*, 7 September, 2004). (This issue is explored in a later case study on Qaukeni municipality.)
- The municipality cannot service its capital budget because it cannot generate its own revenue surpluses and because it is unable to compile credible proposals to the Municipal Infrastructure Investment Fund (MIIF). According to the National Treasury report for 2004/05, about R45 billion is directed to infrastructure projects over a five-year period.
- The necessary capital funds are drawn down by the municipality from national government, but the funds are not deployed as intended. This invariably relates to inept project preparation or inept / corrupt tender and procurement procedures, resulting in the appointment of consultants who are incapable of doing the work. Recently appeals to public oversight bodies like the National Prosecuting Authority, the Public Protector, or one of the investigating agencies have resulted in many tenders being suspended.

Clearly from the above there will be many instances where irregular or corrupt practises are difficult to separate from financial and managerial incapacity. A study by the National Treasury of financial and project management capacity and potential competency to implement the Municipal Finance Management Act found that of South Africa's 284 municipalities, about 18 per cent have high capacity, about 38 per cent have medium capacity and 44 per cent have low capacity (*Business Day*, 5 August 2004). In 2003 the National Treasury observed that the main personnel issues at local government level were (National Treasury, 2003):

- high total personnel costs;
- cost of merging a number of municipalities each with different pay systems;
- structure of employee benefits;
- skills level of staff; and
- personnel implications of creating municipal entities dealing with utilities such as water and electricity.

*[The] Key challenge is to attract quality people while moderating total personnel costs (ibid).*

This implies that the impact of corruption on municipal service provision may be distinct from other spheres of government because the current systems of local government, even in their legitimate form and operating within the law, are profligate.

*At the minimum, in order to improve service delivery and expand services to communities where services do not exist or are underdeveloped, local governments will have to free up resources to provide for basic services and increase capital expenditure (ibid, p.197).*

Increased costs attached to the provision of services are not necessarily related to expanded capacities or an increased scope for service provision.

*However, in the main, the amalgamation of smaller municipalities into larger ones and the resultant pressure to equalise salaries have driven up total personnel costs. Also, generous employee benefits such as leave payouts; retirement provisions and medical aid subsidies have increased costs too (ibid, p.198).*

This may have resulted in local government becoming the preferred level of government for employees who wish to earn comparatively well without being exposed to high levels of expectation regarding performance.

*Municipal employees generally earn higher than their counterparts in national and provincial departments...in the top 18 municipalities, salaries and wages and allowances amount to 30 per cent of total expenditure. The average annual employee salary cost across these municipalities is about R107,000 (ibid).*

The combined salary bill for the top 18 municipalities in the 2002/03 year was R13.9 billion (ibid). In a study of six municipalities in 2006 the National Treasury found that between 1997/1998 and 2002/03 these municipalities were paying between 41 per cent and 186 per cent more in nominal terms to each employee in a period where the consumer price index increased by just 40.5 per cent (ibid, p.199). The beneficiaries of these patterns are not municipal workers and frontline staff but a relatively small group of managers. In a further study of six municipalities it was found that managers constitute 13.5 per cent of staff on average but consume 28.4 per cent of staff costs. Amatole District municipality in the Eastern Cape, for example, has a relatively high proportion of managers (36.3 per cent of total staff), but a more worrying factor is that this group consumes 61.8 per cent of staff costs (ibid, p.200).

Nor is there any indication that this expenditure is directed to service priorities. In five of the country's metropolitan municipalities and Buffalo City:

*The number of employees in the major service sectors (electricity, water, sewerage and sanitation and refuse collection) is quite low, suggesting that these services are not very labour intensive. On average these services account for about 30 per cent of staff (ibid, p.201).*

The above situation, especially when considered in relation to the indifferent level of performance of local government and the need for constant assistance and financial support from other spheres of government, suggests an entrenched form of fraud. Indeed, there is clearly a view that this broad pattern of generous benefits and

remuneration combined with general incapacity and poor service provision is itself a new form of institutional corruption. This perspective is clearly illustrated in some of the interviews with corruption investigators that formed part of this survey.

Beyond legal parameters, politicians and senior civil servants are expected to be alert to the strategic and administrative challenges that the actual rollout of vast housing, water, sanitation and electrification programmes present. Under the banner of *Batho Pele* (people first) government has bound its officials to a set of across-the-board performance and ethical benchmarks which in theory give citizens strong rights in respect of service and clearly directed and properly monitored state expenditure. Without such an assurance, government risks growing alienation from its primary support base – the urban and rural poor. Much policy debate within the country focuses on the difficult question of appropriate cost recovery mechanisms for infrastructural services, essentially deciding upon the question of where the issue of *willingness* to pay for services intersects with the *ability to pay*.

Investigations by the National Treasury in the 2003/04 financial year, suggested that of the 27 million people who received *free basic services* at a cost of R6.3 billion, only about 12 million or 44 per cent are actually poor (Cities Network, 2004). While the cost of running municipalities continued to grow in 2004, there was little correlation with the percentage of communities who accessed municipal services. At a seminar presentation in East London in 2003 Andre Olivier of Organisation Development Africa estimated that at metro and secondary city level access to full municipal services ranges from about 50 per cent of all citizens (Polokwane) to just fewer than 90 per cent (Sol Plaatje). Buffalo City, in the Eastern Cape, provides less than 70 per cent of its citizens with basic water, sanitation and electricity. Olivier also noted a general trend towards the ‘squeezing’ of infrastructure and operational / expenditure due to the escalation of salary expenditure and interest and redemption charges. Paul Whelan of Idasa’s budget information service has shown a strong real growth in Equitable Share transfers to local government from 2002 to 2005/06 thus increasing local government’s scope for discretionary spending. Local revenue generation strategies, on the other hand, seem to have been de-prioritized, with no significant improvement in credit control and debt collection and expensive but ineffective customer-care facilities / call centres.

#### **5.6.4 Service delivery support – Eastern Cape**

Service delivery support for local government is generally based on the assumption that municipalities lack the capacity to provide services in an effective manner and not on the possibility that municipal authorities may wilfully misappropriate resources earmarked for service provision. Collaboration between the Special Investigations Unit (SIU) and the Department of Housing and Local Government and Traditional Affairs in the Eastern Cape since 2004 and the explicit acknowledgement that corruption exists as a priority issue in at least 13 municipalities (see interview with Madyaka) is a significant break with the general ‘hands-off’ approach that provincial and national government usually take on the matter. It is useful to outline some of the history and current developments regarding support to local government in the province where this study is centred.

Since 1995 the Eastern Cape local government sector has had the support of several national and provincial support programmes including the Presidential Project Team, Project Liquidity, the Municipal Support Programme and the Municipal Mentoring Programme. In addition there has been various initiatives from within the provincial Department of Housing Local Government and Traditional Affairs and the district-based

Planning Implementation and Management Services (PIMS) driven by national government. Not all of the above have directly targeted service delivery for intervention but in all cases the anticipated benefits have included service delivery objectives. In most instances the interventions have not had 'corruption' included in their brief.

It is therefore noteworthy that currently the most significant support programme, Project Consolidate, does include 'corruption'. Project Consolidate emanates from a review of the last decade of service delivery that revealed service delivery backlogs in most municipalities including a lack of access to electricity, clean drinking water and sanitation (Seti, 2005). Project Consolidate involves two linked strategies (ibid):

- hands-on support to build the capacity of municipalities to fulfil their developmental mandate; and
- refinement of policy, fiscal and institutional matters.

The hands-on support programme is focused on the following elements:

- public empowerment, participation and community development;
- capacity building, systems, human resource development and improved organisational culture;
- integrated human settlement development;
- free basic services which target poor households, appropriate billing systems and the reduction of municipal debt;
- local economic development, job creation, public works programmes and municipal infrastructure;
- an anti-corruption campaign;
- special interventions in rural and urban development nodes, and in municipalities where provincial and national government has had to intervene according to provisions of section 139 of the Constitution; and
- performance monitoring, evaluation and communication.

The refinement of policy and frameworks focuses on:

- intergovernmental relations;
- financial viability of different categories of municipalities and revenue generation;
- intergovernmental fiscal relations; and
- long-term economic growth path (all information drawn from Project Consolidate booklet).

Project Consolidate received a Cabinet endorsement in May 2004 and is to be implemented by teams of experts in each province, co-ordinated by a national unit in the Department of Provincial and Local Government. In the Eastern Cape Project Consolidate is run by civil engineer Hamish Scott (a private consultant), overseen by officials within provincial government (Seti, 2005). The table below lists the municipalities targeted by Project Consolidate.

**Table 11. Municipalities targeted by Project Consolidate.**

Project Consolidate: Eastern Cape
Alfred Nzo District Municipality
Umsombovu Local Municipality
Amatole District Municipality
Buffalo City Local Municipality
Mbashe Local Municipality
Mnquma Local Municipality
Ukhahlamba District Municipality
Elundini Local Municipality
Chris Hani District Municipality
Emalaheni Local Municipality
Engcobo Local Municipality
Intsika Local Municipality
Sakhisizwe Local Municipalities
Qaukeni Local Municipality
O R Tambo District Municipality
King Sabata Dalindyebo Local Municipality
Mbizana Local Municipality
Mhlontlo Local Municipality
Ntabankulu Local Municipality
Nyandeni Local Municipality
Port St Johns Local Municipality
Alfred Nzo District Municipality
Umzimkhulu Local Municipality
Umzimvubu Local Municipality

Source: Ministry for Provincial and Local Government, Press Statement, 29 October, 2004

According to Hamish Scott, the project will deploy a facilitation team in the Eastern Cape who will assess particular projects and programmes in the target municipalities. Where blockages are encountered, the teams will assist the municipality to resolve the problem. Project Consolidate will not take over the function as has happened in more serious interventions; 'The projects remain with the people / agencies who initiated them' (ibid). Nor does Project Consolidate bring additional funding to the problem – it works within existing municipal budgets and has only two years (until 2007) to achieve its objectives. These circumstances may mean that the project focuses on short-term solutions rather than longer term capacity-building goals. Given its extensive list of priorities and emphasis on 'working with municipalities', Project Consolidate is unlikely to devote much time or effort to problems of corruption and its 'campaign' against corruption is likely to be geared towards making politically correct public statements on the issue.

Interventions like Project Consolidate have to be viewed against macro patterns of local government behaviour that suggest a neglect of municipal service infrastructure. Nationally 83.2 per cent of the overall local government budget is for operating



expenditure and only about 16.8 per cent for capital projects (Local Government Transformer, December 2005–January 2006). The salaries and allowances paid to councillors and officials are R10 billion more than the money spent on municipal services (ibid). At national and provincial level the priorities for capital spending seem to be sound, i.e. water and sanitation followed by roads and storm-water drainage, then housing and finally electricity. The delivery of these capital projects, however, remains an on-going problem despite the steadily increasing CMIP/MIG allocations and the fact that the Eastern Cape has received a massive 24 per cent of CMIP/MIG allocations in past financial years. There appears to be no long-term mechanism in place to ensure that the corrupt awarding of infrastructure projects is stopped, that successful bidders have the skills and equipment to do the job and that every aspect concerning sustainability, including appropriate technology and cost / maintenance inputs required of the community, are carefully considered prior to construction.

The much-lauded concept of municipal autonomy in South Africa is currently, and in practical terms, more about shielding corruption and incompetence than providing the constitutional space for local leaders and communities to make informed choices about policy and service options.

## 5.7 The Case of Qaukeni Municipality

### 5.7.1 Brief profile

Qaukeni is one of seven local municipalities in the OR Tambo District Municipality in the Eastern Cape. The other are: King Sabata Dalindyebo, Nyandeni, Port St John's, Mhlontlo, Ntabankulu and Mbizana. The district municipality covers an area of 2,575km<sup>2</sup> and was established in 2000 with the amalgamation of the Flagstaff and Lusikisiki municipalities and their respective rural councils (ibid, p.10).

*Population:* The estimated population of the municipality is 269,000 with a projected negative growth rate of -0.5 per cent due to the high instance of HIV/Aids (ISRDP, 2003). Within the district 93.3 per cent of the population reside in rural areas, thus there are 32,894 traditional dwellings in Qaukeni, compared to only 11,672 formal dwellings and 282 informal dwellings (shacks) (ibid). The average household in the district contain 5.3 people. About 55 per cent of the population is female and 45 per cent male due to migrant labour patterns in the area – many households are therefore headed by women.

**Table 12. Age distribution**

Age group	Percentage (%)
0–14 (youth dependency)	44
15–64 (potentially economically active)	49
65+ (age dependency)	7

*Source:* Municipal Demarcation Board

*Housing and services:* There is an estimated housing backlog of 33,502 units – mostly for rural areas (ibid). About 93 per cent of households have no formal sanitation services, while the water supply to 78 per cent of the population either does not meet the minimum standard outlined in South African policy or is entirely absent. The Integrated Sustainable Rural Development Programme (ISRDP) 2003 lists the following 'challenges' in respect to housing:

- lack of institutional capacity at municipal and provincial level;
- access to land;
- limitations and inflexibility of subsidy packages; and
- lack of management and finance skills amongst contractors.

*Economic:* At the district level 71.5 per cent of the potentially economically active population is unemployed and 88 per cent of households live below the poverty line. According to the Qaukeni IDP, approximately 34 per cent of the employed population are unskilled/elementary workers; 20 per cent are professional workers, of which 1 per cent are located in the craft/trade industry, plant machinery sector, 6 per cent in the service sector, 10 per cent in the technical sector and 6 per cent are clerical. Given the fact that the area lacks economic infrastructure, there is a surprisingly low rate of employment in the informal sector:

*The informal sector employs about 13,548, whilst the formal sector creates about 63,974 jobs. The informal sector therefore employs about 18 per cent of the labour force (Qaukeni Local Municipality, 2002).*

*Education:* In Qaukeni 48,364 people who are of school-going age have no education (ibid). About 0.9 per cent of the population have a tertiary education, 16 per cent have a secondary education and about 29 per cent have a primary education (ibid).

*The literacy rate within the O.R. Tambo [District] is about 45–50 per cent but Qaukeni has a 40 per cent literacy rate, one of the poorest in the district (ibid).*

*Health:* Qaukeni has a high infant mortality rate – about 88 deaths per 1000 live births. The table below indicates the incidence of HIV/Aids and its increase over recent years:

**Table 13. Incidence of HIV/Aids and its increase**

Year	% per population
1997	10.7
1998	16.0
1999	17.5
2000	22.1

Source: Demarcation Board

In addition to the problems of unemployment and infrastructure / housing backlogs already outlined, Qaukeni also faces food insecurity, a stagnant or decaying local economy, poor health facilities and widespread environmental degradation. The government sector is the largest contributor to Gross Geographical Product and Mthatha is the only significant economic node, but it is comprised mostly of a wholesale and retail sector that have ‘very little growth potential and have little to offer towards needed employment opportunities’ according to the ISRDP. Agriculture is predominantly subsistence, and more viable agriculture is undermined by lack of infrastructure as well as little training or financial support for local aspirant farmers. Regional state-driven development strategies have recently begun to look to tourism, mari-culture and

agroforestry to improve the local economy. The area, like most of the Transkei region, is plagued by high levels of crime that impact negatively on tourism potential (ibid, p.18).

### 5.7.2 Infrastructure Services (Qaukeni, 2002)

**Table 14. Water provision in Qaukeni**

Water in dwelling	On site	Public tap	Tanker	Borehole	Natural	Other/ unspecified	Total
721 (2%)	1,209 (3%)	4,492 (10%)	178 (0.4%)	948 (2%)	36,579 (82%)	158 (0.8%)	44,185

**Table 15. Telephone provision in Qaukeni**

Dwelling	Neighbour	Public phone	Other nearby	Not nearby	No access	Unspecified	Total
431 (1%)	134 (0.34%)	5,040 (11%)	858 (2%)	2,019 (5%)	35,651 (81%)	52 (0.1%)	44,185

**Table 16. Sanitation provision in Qaukeni**

Flush	Pit latrine	Bucket latrine	None	Unspecified	Total
882 (2%)	23,395 (53%)	415 (0.9%)	19,188 (43%)	305 (0.7%)	44,185

**Table 17. Energy provision in Qaukeni**

Electricity from local authority	Electricity (other supplier)	Gas	Paraffin	Candles	Other source	Unspecified	Total
1,100 (2%)	183 (0.4%)	150 (0.3%)	6,235 (14%)	36,165 (82%)	1 0%	203 (0.8%)	44,185

The above data suggests that the municipality is only able to meet people's service needs in very limited ways, and there remains a high degree of reliance on natural resources or service agencies outside of the municipality (for example Telkom for telecommunications and Eskom for electricity).

As a former homeland area (or Bantustan), Qaukeni faced a particularly difficult set of problems around land tenure and general access to land as the following 'issue' list from the IDP illustrates:

**Table 18. Qaukeni ‘issue’ list**

Lack of access to land, security and tenure	To provide tenure rights to approximately 10 per cent of people without security and tenure rights by 2004, focusing on women.	Develop and implement a reform programme. Provide safety and security to farmers.
Land invasion and mismanagement	To reduce land invasion by 50 per cent by 2003. To institute, develop and monitor a broad plan by year 2003.	Enforce land-use planning regulation and punish offenders seriously with heavy fines. Develop and implement an efficient land-use management plan. Educate the populace on the effects of land invasion and provision of services, especially in informal settlements.

Source: Qaukeni IDP Report 2002, p.31

The IDP document notes that there were insufficient skills amongst staff to effectively address these problems. However the strategy that followed, i.e. to appoint ‘fresh’ staff, possibly even school leavers, and have them trained to the point where they became effective, was naïve and had rarely if ever worked in the previous seven years of transforming municipal government.

*Priority Project:* Starting in 2002 the Qaukeni IDP indicates that the municipality planned to facilitate the provision of 500 low-cost houses and 100 middle-income houses per annum over the next five years at a total cost of R53 million (funds were to come from the Department of Housing) (ibid, p.36). It planned to ensure that 23 pre-schools were built by 2004 at a cost of R632,500. The municipality also planned to create plantations of trees, build a clothing factory, set up community gardens, spend nearly R72 million on access roads, provide new taxi and bus ranks, and set up three tourism information centres. Clearly the IDP suggests that the municipality had a clear idea of the development challenges it faced as indicated in the following project budgets (ibid, p.36–85):

- Water supply mainly to rural villages: six projects of total value R20.7 million (various bulk water feasibility studies were also to be undertaken)
- Sanitation mainly to rural villages to acceptable RDP standard (an on-site ventilated pit latrine): eight projects of total value R33.9 million
- Clinics: R31 million
- Electrification: R22 million
- Nutrition: R11 million
- Maternal / child health: R7.5 million

The municipality, through its IDP, also planned to spend significant amounts on training staff, developing administrative systems, improving co-ordination and instituting gender equity (ibid, p.37–50). The priority projects identified above suggest that the municipality had recognized the seriousness of the service backlogs it faced and had begun to cost the rectification of these problems. Various national funding sources, such as the Municipal Infrastructure Grant (MIG), would have allowed it to implement these projects

to a limited degree – since it had no prospect of funding its own capital projects, it should have been obvious to council that the optimum use of national infrastructure grants was essential.

**Table 19. Comparison of operating and capital budgets: Qaukeni (R million)**

	2001/02	2002/03	2003/04	2004/05
Operating	26.4	31.3	33.7	35.8
Capital	21.3	125.7	100	65.2

Source: Qaukeni IDP Report, p.105–7

The IDP document thus projects a massive increase in capital spending over this four-year period, whereas the National Treasury showed that budgeted operational expenditure for municipalities typically tended to be four to five times that of capital expenditure across the rest of the country. In terms of these IDP projections Qaukeni therefore reflected, at least on paper, a much better set of spending priorities than most other municipalities across the country.

*Capital investments in municipal infrastructure are essential if municipalities are to fulfill their development mandate. It has taken time for capital expenditure to feature as a significant part of municipalities' funding priorities, largely as a series of amalgamations, insufficient capacity and a shortage of financing options (National Treasury, 2003, p.25).*

The above figures from the IDP document may, however, be misleading. The National Treasury's data for 2004/05 shows that Qaukeni budgeted about R28.1 million for capital projects and that just over 7 per cent of this would be contributed by own revenue, while 93 per cent came from grants and subsidies (National Treasury 2005, Table A1). This is just 43 per cent of the projected expenditure shown in the IDP for the same period and only 68 per cent of the operational budget for the same period. In this respect Qaukeni resembled the national pattern already described. In light of this the motivation for the inflated capital budget figures in the IDP must be questioned. Was this simply a ruse to over-sell the municipality's development intentions, along with making a large operational budget seem reasonable?

While the deployment of the capital budget showed at least an in-principle commitment to development, the projected operating expenditure was more problematic. In 2001/02 more than 49 per cent of the budget was to be spent on wages and salaries and only slightly less than 2 per cent on maintenance and repairs (ibid, p.107). Thus the considerable capital projects that Qaukeni planned, plus the existing infrastructure in the area, would be unlikely to be properly maintained or repaired. In 2002/03 for example, the municipality had planned to spend more than R125 million on capital projects but only slightly more than R500,000 on maintenance and repairs. This pattern would continue to 2004/05 when salaries and wages would constitute about 45.7 per cent of operating costs and repairs and maintenance just 1.8 per cent (ibid). Subsequent figures from the National Treasury show that Qaukeni did considerably worse than this, and budgeted expenditure on salaries, wages and allowances in fact rose to 54 per cent by 2004/05 (National Treasury, 2005, Table B1). This problem exists as a general feature of local government in South Africa:

*The main personnel issues at local government level are high total personnel costs, the cost of merging a number of municipalities, each with different pay systems, the structure of employee benefits, the skill level of staff... At the minimum, in order to improve service delivery and expand services to communities where services do not exist or are underdeveloped, local governments will have to free up resources to provide for basic services and increase capital expenditure (National Treasury, 2003, p.96–7).*

In a study for the National Treasury of five municipalities covering the 2002/03 financial year, the municipalities were paying each municipal employee on average between 41 per cent and 186 per cent more in nominal terms in 2002/03 than they were in 1997/98. Given a consumer price index rise of 40.5 per cent, it was concluded that most municipalities gave significant real increases over this period, and it was further noted that 'the steepest rise was in 2001/02, the first year of the new municipal boundaries' (ibid).

In this respect the Qaukeni IDP narrative is rather disingenuous, in that it offered an 'in-principle commitment' to keep 'salary, wages and allowance as close to 35 per cent<sup>6</sup> of the budget as possible' and to 'Increase repairs and maintenance to at least 10 per cent' (ibid), whereas its actual budget plans specified nothing of the sort. Apart from a fairly high staff complement, the other explanation for high staff expenditure would be the actual packages paid. In this regard it is worth noting that Qaukeni was one of nine municipalities in the Eastern Cape that failed to report its senior manager remuneration packages to the National Treasury and thus contravened the law (National Treasury, 2005, Table C1). A press report in January 2003 indicates that the salary of the Qaukeni municipal manager was R386,945 (Daily Dispatch, 27 January, 2003). (The average budgeted municipal manager yearly salary was R436,875<sup>7</sup> in 2003/04 for the four local municipalities within the OR Tambo District Municipality that did report to the National Treasury.) Despite having arguably the worst performing municipalities, the Eastern Cape had the second-highest number of senior managers and spent the second-highest amount (R66,207,746) on their remuneration of all provinces in 2003/04 (ibid, Table C10). In 2003 the Intergovernmental Fiscal Review expressed concern about the rapid increase in personnel expenditure and pointed out that the remuneration of municipal employees, particularly managers, tended to be higher than similar grades in national and provincial government. Smaller municipalities like Qaukeni tended to pay managers at a level comparable to an assistant or deputy director in the public service (National Treasury, 2003, p.201). Managerial-level salaries were unregulated and not in any way related to the municipality's financial position or what it was paying its non-managerial staff. In January 2003 South African Municipal Workers Union official Dale Forbes noted that:

*These salaries are draining municipalities' service delivery...and the salaries are unjustifiable compared with those of other municipal employees (Daily Dispatch, 27 January, 2003).*

In 2002/03 Qaukeni would employ 127 staff, giving it a staff to population ratio of 1:2,202 people – this was fairly average by standards in the region. Adjoining municipalities had similar ratios, viz. Port St Johns had 1:2,513 and Mbashe had 1:3,290 (Municipal Demarcation Board, 2003, p.55–6). In terms of operating budget the average expenditure by household was R1,002 per annum, compared to R1,456 in a reasonably well-performing municipality like Amahlati. How did this institutional capacity translate into service delivery? By 2003 Qaukeni had the fifth lowest percentage (15 per cent) of

households serviced with RDP-level water (piped water within 200m of dwelling), but within this group of municipalities it had the largest operating budget (R44,264,843) (ibid). The municipality that shared this untenable position (also 15 per cent of households serviced with RDP water) was nearby Nyandeni,<sup>8</sup> with a budget of R27,623,290. It is important to note that the provincial average of households serviced by RDP sanitation was just over 67 per cent, whereas Qaukeni stood at 56 per cent (ibid). Furthermore Qaukeni had the lowest percentage of households serviced with basic electricity (3 per cent) along with Ntabankulu municipality.

The picture thus emerges of a municipality that issued plans to spend increasing amounts on much-needed infrastructure projects, provided that all of these projects were funded by national government, whilst reducing maintenance as a percentage of overall operating expenditure and steadily increasing an already inflated item for salaries and allowances. Some might regard this entire scenario as a systematized form of corruption. If the reports of various anti-corruption agencies are to be believed, Qaukeni was regarded as one of the most corrupt municipalities in this period, and the figures above suggest that it was also one of the worst performing in terms of providing basic infrastructure services. Whether there is a causal link between these two factors could only be determined through access to informants and financial records.

The Qaukeni IDP suggests a high degree of dependency on national transfers, however the IDP narrative does not appear to be overly concerned by this factor:

*It should be borne in mind that the listed programmes or actions are not all funded by Qaukeni Local Municipality but by various Sectors or Governments Departments, all with different programmes for individual projects (Qaukeni, 2002, p.107).*

In fact by 2004/05 Qaukeni was budgeting for 90.3 per cent of its revenue to come from subsidies and grants and was reflecting no anticipated revenue from electricity, water or sanitation services. The only own revenue it did reflect was R571,000 from property rates, R484,000 from refuse services and R3,549,000 from 'other' (National Treasury, 2005, Table B1). This reflects that the budgeted income set out in the IDP below was significantly incorrect, i.e. budgeted rates income in 2004/05 was just 18.8 per cent of that projected in the 2002 IDP, however budgeted revenue from refuse in 2004/05 was nearly four times that projected in the IDP. On the whole, this picture of dependency is significantly different to the vision outlined in the 2002 IDP (Qaukeni, 2002, p.104):

*The key to successful implementation of the Municipality's Integrated Development Plan and strategies is their efficient management of scarce financial resources or limited income. The Municipality has several possible sources of income:*

- *Service fees: Charging residents for water, refuse collection, sewerage and other services that they use*
- *Rents: Charging rents for buildings, land or facilities owned by municipalities*
- *Fines and licenses*
- *Interest on investments*
- *Rates: Levying assessment rates and land value*
- *Grants: From national, provincial and regional (district municipality) government for capital projects and agency functions*

The financial situation in 2004/05 suggests that apart from refuse collection, few of the local revenue sources were realized and the municipality looked almost entirely to grants to finance its activities. This also contrasts strongly with the budget scenarios outlined in the IDP.

**Table 20. Estimated income (budget)**

Item	Budget (Rands)			
	2001/2	2002/3	2003/4	2004/5
Water	315,000	330,750	347,290	364,655
Sanitation	190,000	199,500	209,475	219,950
Refuse	115,000	120,750	126,790	133,130
Rates	796,000	2,750,000	2,887,500	3,031,875
Other	361,000	379,050	398,002	417,903
<b>TOTAL</b>	<b>1,777,000</b>	<b>3,780,050</b>	<b>3,969,057</b>	<b>4,167,513</b>

**Table 21. Estimated grant transfers**

Item	Budget (R'000)			
	2001/2	2002/3	2003/4	2004/5
Equitable share	33,724	30,352	27,316	24,585
Free basic services	9,069	8,162	7,346	6,611
Governance	2,413	0	0	0
Transitional	127	100		
<b>Total</b>	<b>45,333</b>	<b>38,614</b>	<b>34,662</b>	<b>31,196</b>

Source: Qaukeni 2002, p.107

Thus budgeted own income in 2001/02 would be just under 3.8 per cent of total income, with the balance coming from national transfers. In 2002/03 it would rise to slightly less than 10 per cent of total income and this pattern would not change significantly by 2004/05. In fact in the revised National Treasury budget for 2005, total grant income for Qaukeni stands at R43,041,000. While it is within South African fiscal policy that municipalities should be supported by central government to meet development and basic service needs, the effect on governance practice of de-linking public expenditure from local revenue contribution may not have been fully understood. Clearly the councillors and officials were not spending the money of local residents or businesses but that of various remote government departments who may have been less concerned or less capable of monitoring the outcome of such expenditure.

One of the interesting projects outlined, which appears to have identified and addressed potential for corruption, was a project called the 'Promotion of Uniformity Accountability and Responsibility to Promote Free Corruption in the Public Service' (the IDP document appears to have made a slight mistake with the project title). Unfortunately the situation analysis component of the Qaukeni IDP gives no indication of the underlying conditions or problems that motivated this project. The objective of the project was 'To inculcate a



sense of responsibility, accountability and commitment towards the utilization of state property'. The project was targeted at the administration and the major activities were the 'Training of officers and integration of registry services in terms of Government standard norms, treasury Directives and Transport Regulations' (ibid, p.51). An amount of R203,295 was to be obtained from the Department of Arts and Culture to be spent in the 2002/03 financial year. This was a very unusual item to appear in a municipal IDP and some credit is due to the planners / municipal contributors for even registering that there was a shortfall in accountability / corruption-free public service within Qaukeni.<sup>9</sup> The proposed solution, namely training and a budget provision, is typical of the IDP policy framework and its limitations in addressing such problems through technical / project-based provisions. It is also worth noting that a similar problem amongst councillors is not identified or provided for – subsequent developments proved that a major part of the corruption problem arose from within council.

### **5.7.3 Service expectations: Policy**

The Municipal Demarcation Board's (MDB) assessment of municipal powers and functions in May 2003 confirmed that OR Tambo (ORT) District Municipality was one of two districts where communities have least access to basic services (Municipal Demarcation Board, 2003, p.4). The Board voiced particular concern about the lack of infrastructure to render a potable water service and noted efforts since 1995 to build institutional and financial capacity and to create the technical capability for water and sanitation services as a priority (ibid, p.8–9). The official service expectation of Qaukeni must be understood; the municipality was not responsible for providing electricity – only two other local municipalities within the district had this capability – nor did it render a fire-fighting service (ibid, p.10). In terms of macro-policy, municipal health functions rested with the district. Some local municipalities provided primary health services, but Qaukeni was not one of them. Qaukeni was judged to be capable of taking responsibility for local roads and was performing this function plus the associated task of storm-water management (ibid, p.22).

Street trading is an authorized local authority function and Qaukeni had 11 staff allocated to this function (the second-highest in the province) – similar-sized municipalities tended to have far fewer staff assigned to this function (ibid, p.30) Qaukeni also had the second-highest staff allocation (70) to refuse services in the province – only a metro municipality had a higher allocation (101).<sup>10</sup> By contrast, Qaukeni was only able to partially perform its potable water supply responsibilities and had only 10 staff assigned to this function (ibid, p.64). Thus two functions, namely street trading and refuse services, accounted for more than 63 per cent of Qaukeni's staff. Qaukeni, like most local municipalities, had made budget provision in 2002/03 for promoting local tourism, a function that was shared with the district. The MDB found that while municipalities in the ORT district tended to perform less than 50 per cent of the core functions (planning fire-fighting, roads, refuse, storm-water, cemeteries and traffic), they did tend to make provision for those services they had taken on in their budget and to allocate staff (ibid, p.45).

### **5.7.4 Political conflict and corruption in Qaukeni**

Qaukeni came to prominence as an SIU pilot investigation in November 2004, when the SIU and the provincial Department of Housing, Local Government and Traditional Affairs (DHLG&TA) reported the outcome of an initial investigation in Qaukeni and how this would shape the further launch of a three-year 'probe' into other municipalities (*Daily Dispatch*, 11 November, 2004). The SIU initial investigations found that (ibid):

- an amount of R732,398 had been 'overpaid' to six mayoral committee members on the Qaukeni council;
- there had been unsubstantiated expenditure in the amount of R33 million;
- R40,968 had been overpaid on municipal contracts;
- procurement fraud had occurred: front companies were awarded contracts that they were unable to fulfil and tendering companies had direct links with officials and councillors; and
- development projects had been subject to ineffective financial and management controls.

Measures by the SIU at this stage included the setting aside of contracts worth R33 million due to improper procurement procedures, the recovery of an amount of R1,068,563 and the issuing of summonses against the 'mayoral committee' councillors who had been overpaid for the recovery of the full amount (*ibid*). (The provincial government had already suspended the council and it was later to be dissolved.)

#### **5.7.5 Crisis timeline**

- September 2002: DHLG&TA declines to intervene after conflict breaks out between mayor Ntsubane and speaker Ngozi (both ANC members) (*Daily Dispatch*, 24 September, 2004).
- January 2003: Qaukeni meets with MEC Nkwinti but refuses to meet with OR Tambo District Municipality Mayor Capa – ANC chief whip in Qaukeni Qhuba claims Capa had caused the factionalism in Qaukeni.
- May 2003: Violence, including the drawing of knives and a single gunshot, disrupts the first council meeting of 2003 (*The Herald*, 1 May, 2003).
- May 2003: DHLG&TA gives Qaukeni 14 days to respond to damning AG report which had resulted in a no-confidence vote against Ntsubane and Ngozi by rival mayor Laleni in 2003. Laleni's bid was foiled by the Mthatha high court but Laleni refused to relinquish office to Ntsubane and Ngozi.
- December 2003: Eastern Cape Provincial government intervenes in Qaukeni in terms of section 139(1)(b) of the Constitution – council is suspended and Administrator R. Sogo is appointed to restore peace, stability and service delivery. (GSA, 2004b). A strategic support team comprised of strategic, political and operational agencies is tasked to review the IDP, redesign the municipal organogram, implement an information technology system and improve the financial management.
- March 2004: Attempt on life of Administrator Sogo in drive-by shooting on the R61 near Fort Donald, allegedly by suspended Municipal Manager Stanley Kango.
- June 2004: The Select Committee on Local Government and Administration (National Council of provinces) makes an oversight visit to Qaukeni to verify the report to the NCOP by the Eastern Cape MEC – recommends that intervention continue, stronger community involvement in intervention, disciplinary actions be sustained and the law should take its course against those who committed embezzlement – see Section 5.7.6.

### **5.7.6 Findings of Select Committee on Local Government & Administration**

The report of the Select Committee (SC) on 28 June 2004 illustrates how government, in terms of the oversight and support obligations of the National Council of Provinces, analysed problems within Qaukeni. This report also provides some insight into the form of corruption at work.

*Political instability:* The SC formally ascribes this to ‘the unclear demarcation between governance and political processes’, and the general tone of its analysis suggests that those in political office used this power to infiltrate administrative procedures for their own material advantage and to subvert basic governance procedures (ibid, p.2). The SC report does not comment on the fact that most of the protagonists were from the same party or that some of the conflict appears to stem from internal rifts within the ANC. Nor does the SC note that the key person at district level, Executive Mayor Capa, who was part of the strategic support team, was alleged to be party to these rifts, thus making resolution more difficult (ibid). The political fate of the Qaukeni mayor and the councillors who received unauthorized payments of R732,398 is also not clear, apart from the fact that the council on which they served was ultimately dissolved. While they were sued for the recovery of the funds, there is no indication that they were disqualified from future public office or definitively sidelined by the ANC.

*Institutional weakness / lack of policy:* It is alleged that councillors ‘exploited loopholes and the absence of policies in the municipality’ (ibid). This covered a wide range of abuses such as councillors sitting on tender committees and thus using their influence to award contracts to family and acquaintances. This practice appears to have been ‘shielded’ by failing to institute procedures to check that tender contracts were completed to specification, i.e. poor performance or lack of delivery could not be revealed. The report highlights the consequences of the lack of control procedures rather than the issue of why elected local leadership did not follow the basic principles of fair and transparent practice – laws and regulations notwithstanding.

The SC report clearly suggests that councillors abused their political office to appoint staff members to the municipality either out of nepotism or to strengthen their own position in conflicts with other councillors – the conflict between mayor and the speaker is cited (ibid, p.4). Appointments were not made in accordance with an organogram nor with the constitutional obligations of the municipality. Further, the National Treasury principles of keeping the salary line item within 30 per cent of the total budget was ignored. Labour unions reported the unfair treatment of staff members and ‘huge costs’ had been incurred through irregular dismissals and subsequent reinstatement. The strategic support team was now faced with the prospect of ensuring that staff members were assigned job descriptions that were consistent with the functions of the municipality. The SC report notes that new human resource policies were drafted, job description reviews had begun and regular communication with staff was urged (ibid). Apart from those staff members who could be legally dismissed for direct involvement in corruption or severe mal-administration, the municipality was ‘stuck’ with the current incumbents no matter what their level of qualification or competency (due to the provisions of the South African Labour Relations Act). The prospects for a short-term turnaround in the effectiveness of the administration were therefore limited.

The misuse of operating grants – the Equitable Share, for example – also constitutes a policy failure, however the curious assertion in the SC report is that this was used for ‘capital works’ rather than the provision of basic services. This is something of a reversal

in the pattern of grant abuse, i.e. the possibility of funds going to capital projects rather than (often wasteful) operating costs. Unless the capital projects in question lacked legitimacy or were in some way fraudulent, there is a possibility that this may have been a genuine mistake (ibid). The absence of a free basic services policy is noted and would explain the very poor service delivery levels and lack of scale previously outlined in this report, however the existence of such policies does not constitute a guarantee that free basic services will be effectively provided.

*Service delivery:* The fact that the OR Tambo District Municipality ‘expressed satisfaction with the present levels of service delivery in Qaukeni’ must be cause for concern and suggests that either this supposed oversight / supporting body was poorly informed or else chose to be complicit in trying to conceal the very poor service performance already outlined. Statements like ‘Large areas are now being serviced and there appears to be real opportunities for job creation in communities’ appear to have emanated from the district municipality in an effort to represent the Qaukeni situation in a more positive light. These inputs seem to be more political in nature than a clear quantification and analysis of prevailing development patterns. For example, the poor level of basic water provision is blamed on the limited (R30 million) allocation from the Department of Water Affairs and Forestry, but there is the vague assurance from OR Tambo that ‘the municipality has undertaken not to compromise service delivery in spite of the lack of funding’ (ibid, p.3). The general sense therefore is that the district and the local municipality shared political interests and were bound into certain political dynamics. This shared political interest apparently prevented the district municipality from acting as a completely independent overseer of service standards and clean governance.

The provincial intervention around reviewing and improving the IDP appears also to have been given too much significance – the 2002 IDP, as the previous section of this report has shown, tended to function as an instrument for council to make gestures to development rather than as a guiding blueprint for the activities and priorities of council. It is hard to imagine how a review process would resolve this problem. The process did, however, include a review of project commitments to check on their viability, and this may have brought some realism to the project ambitions in the IDP. It is suggested in the SC report, for example, that the gap between the budget and the IDP was resolved, and that the officials became more directly responsible for the budget (ibid, p.3).

*Finance:* The problem of ‘severe financial mismanagement’ is traced to the lack of professional skills within the CFO and the suggestion that this individual acted in a manner that might be regarded as ‘criminal’ (ibid). The CFO was to face a disciplinary hearing in relation to four charges. Despite the overall seriousness of the alleged behaviour of the CFO and the fact that he was suspended, there was no clear indication that this person faced arrest. While it is alleged that the terms of the Municipal Finance Management Act were not complied with, the new acting municipal manager in fact confirmed that the municipality as a whole was ‘not ready to comply with the requirements of the Municipal Finance Management Act’. It would therefore seem that there was considerable overlap between basic incapacity and overtly corrupt behaviour. The failure of the municipality to recover the VAT owed to it is an example of where mal-administration rather than fraud or theft led to financial losses (ibid, p.2). While the consequences of these are much the same, the remedy by law and by reason has to be distinctly different.

Another cost factor that is worth noting is that of the actual remedial intervention once the corruption and mal-administration had been revealed. In Qaukeni this included the time

and resources of the SIU, the provincial Department of Housing Local Government and Traditional Affairs and political leadership of the OR Tambo District Municipality. Furthermore an acting municipal manager had to be appointed after the incumbent had been suspended (on full pay) and the intervention was headed by an administrator, Sodo, who also had to be paid as a professional person. Subsequent to the attempted shooting of the administrator on 24 March 2004, security had to be provided for the administrator and the acting Municipal Manager (ibid, p.1–4).

### **5.7.7 Conclusions about Qaukeni**

It is unnecessary to provide detailed analysis of the Qaukeni case as considerable discussion has been provided as part of the preceding descriptive material. In general access to detailed information on the motivation and form of corruption proved more difficult than anticipated despite the high publicity accorded to this case. Having reviewed the case, however, it is clear that even with access to financial records and willing informants it would have been impossible to clearly define a causal link between ‘pure’ corruption and the state of infrastructure service to the poor. There are two basic reasons for this:

- a) Corruption was invariably mixed in with problems of incapacity or negligent practice and the distinction became very blurred in some instances.
- b) Not all corrupt practices would necessarily have resulted in weakened service delivery – for example an acquaintance of the municipal manager who secured a contract in exchange for a kick-back might coincidentally have been competent to provide the goods/ services and their streamlined appointment may have even had benefits for the end users.

What can be asserted is that the protracted period (2002/04) of corruption and related conflict in Qaukeni undoubtedly had a negative impact on the manner in which scarce public resources were deployed, both in terms of the day-to-day service functions of the municipality but also in terms of its larger capital projects. Had these factors not existed, Qaukeni would still have been a very poorly resourced and under-skilled municipality. It is reasonable, however, to assume that the proper appointment of staff, the contracting of competent service providers and contractors and oversight and managerial functions that were not tainted by vested interest, would have vastly improved basic services like water and sanitation and expanded their impact on human settlements. Since municipalities like Qaukeni are highly dependent on contractors for running and maintaining basic services, the corruption of the proper tendering and procurement procedures would generally have had particularly serious consequences.

An equally important factor is the entrenched nature of the problems experienced in Qaukeni for the South African local government system as a whole. The IDP document and the overall budgetary data that was discussed bring this out strongly. In 2002, for example, it appears that the planning process was manipulated to present a specific picture of the municipality that was more or less in keeping with the policy prescriptions for developmental and democratic local government – the misrepresentation of the balance between operational and capital costs and the ‘fudging’ of high salary costs are particularly important. The gap between the development principles outlined in the IDP and the hard reality of budgeted expenditure, for example, the low provision for

maintenance and repairs, is a further example of *development subverted*. The tendency to invest heavily in the municipal institution / bureaucracy, be it in terms of office equipment, training, etc., without concomitant service benefits, further illustrates a form of *systemic corruption*. Technocratic interventions that focus on systems, procedures, administrative compliance, etc. frequently sidestep or even exacerbate these problems – in fact where a vast body of existing evidence suggests that the intervention will produce no tangible benefit, its on-going invocation may be seen as a form of corruption, particularly if it consistently provides work to a particular industry or sector. The heavily dependent state of Qaukeni on national transfers may also have contributed to the propensity for corruption, as the large amounts outlined in infrastructure projects may have tended to take on an abstract meaning. Often promised investments were used to advance political objectives and to placate poor neighbourhoods. Project expenditure would be controlled from afar and become less subject to local controls or indeed affordability concerns. What became increasingly blurred in this scenario was the actual service obligations and competency of the local Qaukeni municipality. This was exacerbated by the general confusion around powers and functions and the complexity in policy that for instance distinguished between *Water Services Authorities* and *Water Services Providers*. The possibility that Qaukeni exploited this confusion to build a greedy local bureaucracy with vast responsibilities on paper but very little tangible output is strong, but not necessarily unique to this municipality.

#### **5.7.8 Access to information**

In the course of interviews and literature searches Qaukeni municipality emerged as one of the most significant examples of the collapse of orderly local governance and accountable administration. Qaukeni seems to illustrate how corruption takes root most easily where a host of other political and social issues are present, principally political conflict and generally low levels of administrative and governance skills. Apart from the fact that Qaukeni is located in one of the poorest regions of the country, this municipality was also selected as it had attracted a high level of attention from anti-corruption agencies including the Auditor General, the SIU and the Joint Anti-Corruption Task Team (JACT), and the case had been referred to the highest levels of government, including parliament and the National Council of Provinces (NCOP). It was evident that the provincial government had put considerable effort and resources into trying to resolve the Qaukeni case. It was therefore anticipated that Qaukeni would meet certain research criteria, i.e. it would likely present:

- well-documented outlines of the issues and events;
- an increased likelihood that relevant reports would appear in the public domain;
- a high level of professional analysis of the problem and its likely causes / remedies;
- impact in terms of policy thinking, i.e. the lessons would be unpacked and referred to the relevant policy / law makers; and
- the respective anti-corruption agencies involved would be keen to publicize their work and illustrate in more detail how they had achieved the successes claimed in their own publications.

As it turned out the Qaukeni case study met very few of these expectations, and after the initial literature search the entire exercise became a protracted case of begging information from officials from government and the various anti-corruption agencies with very little success. Written and verbal requests were made to parliament and various

monitoring agencies that work with parliament, to the Eastern Cape Department of Housing Local Government and Traditional Affairs and to the Auditor General. Verbal requests were also made to the Special Investigating Unit. No documentation or interviews resulted from these requests, despite the fact that some officials were clearly anxious to provide the requested information and seemed to recognize the value of the research. Reasons varied from a clear lack of understanding about why detailed information on corruption should be placed in the public domain to the concern that it was not up to the agency in question to make the information public, i.e. many were concerned that they would breach departmental protocols or jeopardize on-going legal action by releasing the information. There was clearly some validity in the latter, as several informants, including the SIU, alleged that some of the criminal cases arising from the investigation had yet to be completed. The Auditor General's office initially seemed willing to provide the 'regulatory report' for Qaukeni but later refused, noting:

*After our telephone conversation I first tried to establish if the reports that have been issued by the Office have been tabled by the Council of Qaukeni. I realized that they have not yet been tabled and as such are not yet Public documents. I would be in a position to provide you with copies if they had been tabled to the Council. I would not know why they have not yet been tabled.*

It must be noted that this response was from an official who was more helpful than most in trying to provide access. Nonetheless this implied that a municipality was able to withhold AG reports from public scrutiny by simply failing to table them in council. In terms of Section 21(3) of the Public Audit Act No. 25 of 2004:

*Audit reports must be tabled in the relevant legislature in accordance with any applicable legislation or otherwise within a reasonable time. If an audit report is not tabled in a legislature within one month after its first sitting after the report has been submitted by the Auditor-General, the Auditor-General must promptly publish the report.*

Furthermore, Section 27 (2) of the Municipal Finance Management Act No. 56 of 2003 says that:

*The mayor of a municipality must, within seven months after the end of a financial year, table in the municipal council the annual report of the municipality and of any municipal entity under the municipality's sole or shared control.*

And in Section 27 (4):

*The Auditor-General may submit the financial statements and audit report —*  
*(a) of a municipality directly to the municipal council, the National Treasury, the relevant provincial treasury, the MEC responsible for local government in the province and any prescribed organ of state, if the mayor fails to comply with subsection (2).*

Section 130(1) further requires that:

*The meetings of a municipal council at which an annual report is to be discussed or at which decisions concerning an annual report are to be taken, must be open to the public and any organs of state, and a reasonable time must be allowed —*

*(a) for the discussion of any written submissions received from the local community or organs of state on the annual report; and*

*(b) for members of the local community or any organs of state to address the council.*

*(2) Representatives of the Auditor-General are entitled to attend, and to speak at, any council meeting referred to in subsection (1).*

The collective interpretation of these provisions must be that a municipality may not delay the tabling of the AG's report and thus effectively prevent it from becoming a public document. The fact that such denial of access to information seems to be the case in the Qaukeni example, calls into question the utility of the legislation outlined and the effectiveness of the various antic-corruption agencies in enforcing public accountability. Further, the fact that it is clearly not in the interests of these agencies to shield the municipality from public scrutiny also suggests that they are perhaps over-sensitive to the constitutional status of local government (see, for example, previous descriptions of Mayor Capa's attacks upon the authority of the AG ) as an autonomous sphere. In addition, for whatever reasons, they fear some form of political repercussions if they were to adopt a confrontational stance to municipalities who fail to comply with the accountability provisions in legislation.

In cases like Qaukeni it seems that there is an acceptance by government that people involved in corruption should be prosecuted and jailed, thus the obvious and simple principles of accountability are well served. What is less clearly accepted is the need to look deep into prevailing municipal political culture and norms to understand why such outrageous abuses of public office could have even been considered by those called upon to serve a local government system widely renowned for its strong democratic and developmental principles. Here it is important to refer back to the seven key interviews conducted in the course of this study, especially the comments on the general governance environment, the precedent set by political leadership, and the various assertions about the link between corruption and culture. When these views are set against the backdrop of fiscal policy for providing municipal infrastructure and services, in particular its *non-discretionary* character, then we can begin to understand some of the possibilities for corruption to occur, if not the specific reasons. Sam Sole's observations are also worth recalling:

*Formal accountability may be extensive on paper, but may be rendered weak by lack of enforcement, or be bypassed by strong informal codes of secrecy and solidarity, and a certain social approval or cachet being attached to 'beating the system' (Sole, 2005, p.87).*



## 6. Concluding remarks

### 6.1 How corrupt is South Africa?

As previously noted, the study of corruption has to be related to broader social and economic aspects of South African society in order to fully understand its significance for policy-making and political discourse. Unlike some developing countries, South African fiscal policy does recognize the importance of focusing state expenditure on poor service needs. According to the Minister of Finance's Budget Speech 2003/04, since 1994 public spending on health education, welfare, housing and other social services has increased from 52.9 per cent of non-interest expenditure to 58.3 per cent (2003/04). The question is what percentage of this actually reaches the poor and how much is lost to corruption. This is an important research challenge and one that this paper makes no claim to have made any impact on. Key to such an exercise would be defining corruption with specific reference to infrastructure services, and then developing systems for collecting quantified data on the various funding and investment mechanisms geared towards providing such infrastructure and frequency of corruption within such projects, as well as the monetary value. Thus a useful *corruption barometer* could measure the:

- number of infrastructure projects where construction or maintenance has been disrupted by irregular financial management procedure or where such irregularity is alleged;
- monetary value of the misappropriated finance;
- *service deficit* for the intended beneficiaries: service deficit = intended service level and scale (as framed by the Integrated Development Plan or other planning instrument) minus the actual service level and scale experienced by the intended beneficiaries (may require on-site inspection); and
- 'severity' of the corruption (rather than incapacity / incompetence) as indicated by Auditor General reports or the reports of anti-corruption agencies, internal disciplinary actions by the municipality / other sphere of government and criminal or civil actions arising from the case.

Currently there is some information on the actual financial inputs to infrastructure projects and some on the outputs (delivery of projects, etc.). In addition there are examples of particularly blatant corrupt practice that have become the focus of investigations and court cases. The media is the primary instrument for ensuring that these cases become public knowledge, but the reporting is of varying standard and usually covers the key development issues poorly and often fails to provide any form of continuity. The majority of these cases only receive media attention when high-profile arrests are made or when the alleged perpetrators are formally charged in court. Internal disciplinary actions by municipalities, individual public complaints, whistle-blowing, investigations begun but not completed and investigations of a forensic nature that remain confidential constitute a huge body of evidence that never enters the public domain.

As in most other countries, corruption in South Africa is a highly charged political issue with much disagreement regarding the relative scale of corruption in the country as a whole, particularly between the government of the day and its political detractors. These tensions are neither unusual nor undesirable in a democracy, however it does begin to pose a problem when corruption is indiscriminately used as a political cudgel to beat government or where government becomes so politically sensitized that it resorts to automatic denial strategies or the deliberate withholding / manipulation of information.

What is of concern is the growing tendency to disregard corruption as an impediment to good governance and in particular local good governance. Thus while government rightfully claims huge strides in strengthening local participatory democracy and more equitable services strategies, it is often blind to very significant gaps in the way that municipalities account to the local public, financially and in the general use of public assets. South Africa needs to be reminded about the fundamental significance of corruption outside the realm of politics, thus the warning of Judge Arthur Chaskalson (2000) is repeated:

*Corruption and mal-administration are inconsistent with the rule of law and the fundamental values of our Constitution. They undermine the constitutional commitment to human dignity, the achievement of equality and the advancement of human rights and freedoms. They are the antithesis of the open, accountable, democratic government required by the Constitution. If allowed to go unchecked and unpunished they will pose a serious threat to our democratic state.*

It is important to acknowledge the government's efforts to combat corruption in the civil service. The programmes of the Public Service Commission and its co-operation with the National Anti-Corruption Forum (NACF) suggest that government is prepared to divert resources to combating corruption and to include representatives of private sector and civil society in this endeavour. This commitment to curb corruption within the civil service becomes much more ambivalent where high-ranking politicians and members of parliament are involved. The same clear principles of clean government do not seem to have been clearly applied in the 'arms deal' case, the differentiated strategies for dealing with MPs who defrauded parliament with false travel claims (known as 'Travelgate'), or even the highly questionable use of state resources by some provincial premiers. The ruling party and many senior politicians' statements on the trial of Deputy President Jacob Zuma for corruption also suggest a greater concern for political unity within the former liberation cadres and 'populism' than clean governance.<sup>11</sup>

Census-type surveys like Markinor and Afro-barometer exist as very useful tools for tracking trends in corruption and the public's perceptions thereof. In general, though, these are, like most census-type surveys, perception based. To strengthen their veracity such surveys have typically tried to avoid recording 'collectively understood realities' on the basis that this is a form of hearsay or 'urban legend'. The emphasis on the respondent's first-hand experience of corruption, for example, being personally asked for a bribe, is very limiting for the following reasons. First, it focuses on outright fraud or graft involving minor amounts – a form of corruption that this report suggests is relatively insignificant. Secondly, it ignores that information that the citizen may have taken the trouble to garner from media, friends or acquaintances, which helps to explain the impact of corruption 'higher up' on their own lives. Finally there is also the problem that a corrupt interaction with government is only likely to be reported if the respondent 'came away clean'. Where the respondent felt legally compromised by the interaction, the matter is unlikely to be reported. Where these surveys offer considerable value is in confirming other evidence that particular sectors of the state, namely the South African Police Services, the Department of Home Affairs and local government, have particularly serious problems of corruption.

## 6.2 How useful are South Africa's anti-corruption programmes?

Virtually all South Africa's anti-corruption agencies haven't proven their worth at some level and would appear to have a role in future endeavours against corruption. There is undoubtedly some scope for more rationalized terms of reference but the wholesale closure of certain agencies or merger into other agencies needs to be treated with great caution. Pressure from government for rationalization probably poses the greatest threat to public faith in these agencies and it is not entirely clear that such proposals are motivated entirely by pragmatic considerations of efficiency and effectiveness. In general the different agencies should remain free to deploy their respective capabilities in an independent manner, free of political and bureaucratic influence. One of the greatest concerns is the state's general tendency to argue for absorption of the more effective SIU and Scorpions into the less effective and arguably more corrupt SAPS. At the same time the SIU, Asset Forfeiture Unit and Scorpions need to be sensitive to not abusing their elite position for institutional prestige (although their so-called 'untouchable status' is undoubtedly of operational and political value). These agencies need to continue their already strong work for greater co-ordination between themselves, the police and the prosecuting authorities. Of greatest urgency is the current antipathy between the SAPS and the Scorpions.

### Box 4. Local partnerships

In terms of the specific focus of this report, there is a need for these agencies plus the internal auditors and inspectorates that exist within government to develop much-improved consultation and reporting mechanisms with communities that become victims of corruption. This could become a very rewarding focus for partnerships with CBOs and NGOs who could play a facilitator role. Analysis of resolved cases must be taken into community forums to reinforce sound notions of citizenship and to give concrete expression to the idea of accountability. Such activities must provide answers to communities in terms of how their access to services was diminished, who was responsible and what remedy has been put in place. Furthermore these engagements between the official 'watchdogs' and civil society must provide the lessons for framing pro-active community monitoring measures to prevent the recurrence of corruption.

In the case of higher level anti-corruption partnerships like the ACF and NAC in the Eastern Cape which bring government and civil society together, there is a vast body of experience which suggests that these are important but difficult to sustain and that their function easily degenerates into symbolism and public relations (for details on how these partnership forums work see Section 4.10). These forums are prone to naivety about 'who is in authority' and the acceptable parameters for corruption investigations. These forums often generate a form of short-term 'political capital' for government that dissipates immediately the forum collapses or dissolves into conflict. Where these forums are highly penetrated by political forces from government or party they invariably have little to do with clean governance and may ultimately jeopardize the credibility of the participating CSOs.

A promising development outlined in this report is the expansion of a sector of NGOs clearly dedicated to good governance and in some instances anti-corruption objectives. This includes not just dedicated institutions like ODAC and the resilient PSAM, but the

emergence of stronger *governance projects* within established NGOs and their organized collaboration towards improved local governance – the Good Governance Learning Network being the most prominent and recent example.

### **6.2.1 Local government corruption**

Corruption in South African local government is systemic and rooted in policy and systems rather than in arbitrary acts of fraud and graft. This type of corruption is most serious in diverting state resources away from pro-poor development objectives. Tackling corruption is difficult due to the merging of corruption with vast problems of incapacity and systemic weakness. Often it becomes difficult to distinguish incapacity from deliberate fraud or negligent disregard for proper procedure. The corrupt therefore have the opportunity to shield or excuse *corruption* by claiming *incapacity*.

The Auditor General is clearly a key watchdog body for protecting the public interest with respect to proper management of public funds. In relation to local government, the AG appears to have been largely thwarted by large-scale and severe lack of compliance with basic municipal auditing requirements. The least accountable and most problem-ridden municipalities simply do not respond to the AG's injunctions, either because they cannot or because they refuse. The AG's impotence may be partially solved by stronger legal provisions and greater enforcement, but this will require political will from national government and the Treasury and to date that will has been lacking. Clearly an alternative strategy is for the AG to enter into much closer consultation and engagement with local civil society in pressuring for greater accountability from local authorities. Similarly key legislative provisions like stronger audit committees can only become effective if they are known to local civil society and used to their full potential. Clearly such pressure will only be effective where the municipality has the capacity to resolve the broad range of administrative and financial shortfalls. Many of these shortfalls relate to technical and professional capacities and will not be resolved by increased local public pressure, however it is equally clear that municipalities may not embark on the necessary technical solutions with any conviction unless there is such pressure from civil society. Furthermore, in the discussion of the infrastructure funding programmes (CMIP and MIG), it is apparent that serious problems arise in terms of *administrative and financial culture*, i.e. a propensity for institutional and bureaucratic extravagance and waste while infrastructure and service delivery receives the bare minimum of attention and often seems to be driven by short-term political imperatives (rolling out projects that enhance council's status). Qaukeni provides an extreme example of this form of systemic breakdown, where irregular practice led to service disruption and widespread conflict that eventually became a form of localized anarchy. While legal and criminal actions have flowed from government and SIU interventions and many administrative support interventions have been invoked, the role of local civil society has been minimal and it is doubtful that local people are aware of the full details of how the council collapsed due to corruption and mal-administration. Unless these issues are unpacked, the *high-rolling* will continue and community-level institutions will have little opportunity to begin changing perceptions of the state and of what it means to be a good citizen or a respected local leader.

## 7. Endnotes

1. It is presumed that this is an error and is meant to read 'quantification'.
2. One traffic official was found to have made an illegal income of about R75,000 per month over a five-month period by issuing fake licences. A driving school station in Mpumalanga was found to have forged 1,240 foreign licence conversions.
3. Sole presents a very strong case to show that Scopa's credibility was severely damaged by government in the 'arms deal case', when it responded favourably to an Auditor General's recommendation for a full forensic audit of a complex deal involving contracts of billions of Rands, foreign loans and 'offset investments'. Scopa (including leading ANC MPs) approved a multi-agency probe but was criticized by the Executive, who intervened and ultimately forced the resignation of the Chair plus the senior ANC MP on Scopa. The subsequent probe cleared government of wrongdoing despite persistent evidence of irregularity. The report was regarded as much compromised by its contradictory findings and by the removal of the SIU and two key members of the AG team.
4. It should be noted that the author of this report is also a part-time staff member of Afesis-corplan and therefore has a direct interest in the programme described.
5. Author's own observation having interacted with both the ECNGOC and the PSAM.
6. It is unclear where this figure is derived from as the National Treasury guideline for salaries and allowances as a component of operating costs is 30 per cent.
7. By way of comparison: At this time the highest salary for a medical specialist in the public sector was R225,385 (although it was generally acknowledged that this was too low).
8. Nyandeni was also subject to serious corruption allegations in this period and became the focus of anti-corruption interventions.
9. The 'analysis' section of the IDP is relatively brief and for obvious reasons does not deal with institutional problems that might indicate corruption or breakdowns in governance – this was a general failing of the IDP approach and was probably inevitable given that council held final authority over the approval of the IDP document.
10. Since the MDB's figures on staff allocation per line function exceed the total municipal staff complement it must be assumed that these staff were not exclusively assigned to the function, i.e. refuse staff would also perform cleansing functions for example.
11. For example: ANC General Secretary Kgalema Motlanthe asserted at the August 2006 start of Zuma's trial for corruption that 'The ANC is united ...All members of the ANC support Zuma in his hour of trials and tribulations...People feel he was treated unfairly...' (*Daily Dispatch*, 1 August, 2006).

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Appendix 1.  
Case Study: Pension Fraud in the Eastern Cape

## **A1.1. Introduction**

The Department of Social Development estimates that between R1.5 to R1.8 billion in social grants is being paid out illegally every month to fraudulent beneficiaries across South Africa (SIU, no date). Head of the Special Investigating Unit (SIU) in South Africa, Willie Hofmeyr estimates that this translates into 600,000, beneficiaries, or 6 per cent of the total registered beneficiaries who need to be removed from the social system (ibid). To date the SIU claims that it has contributed to the removal of more than 130,000 fraudulent cases from the social grants register, thus saving the state R4.5 billion (ibid). Whereas most defrauders of the system are members of the public, the SIU claims to have identified 43,000 public servants who were drawing both social grants and salaries from the public service. The unit accomplished this by comparing the social pensions database against the public service salaries database (ibid). The SIU also claims that their investigations have had an indirect 'knock-on effect', with a further 80,000 people having stopped collecting R167.4 million in fraudulent social grants and 36,000 people (whose grants had a value of R115.3 million) asking to be taken off the register (ibid). Presumably then, many of the yet unidentified defrauders of the system are also civil servants. The annual value of the irregular and unlawful pensions drawn by public servants was about R50 million, according to Hofmeyr, but when combined with the discontinued collections and requests for de-registration, the total is R333 million. Of this, about R7.3 million had been recovered as of March 2006 (ibid).

## A1.2. The Eastern Cape

In July 2004, the Department of Social Development in the Eastern Cape released a report that indicated that a total of 1,476 public servants had defrauded the Eastern Cape Social Development Department of about R10 million in social grants over the preceding two years (*Daily Dispatch*, 26 July 2004). At the time of the report (July 2004) the *Daily Dispatch* reported that the department was investigating 593 public servants who allegedly defrauded the government of R6.2 million in social grants (ibid). By November 2005 the department's spokesperson Gcobani Maswana informed the media that 2,421 government officials, including police, had illegally collected social pensions totalling R26.5 million (*Daily Dispatch*, 11 November 2005). The department provided a profile of the illegal recipients: one official from Premier Nosimo Balindlela's office, 338 police officers, 1,129 officials from the education department, 671 from health, 79 from social development, 75 from public works, 49 from agriculture, 25 from correctional services, 12 from economic affairs and tourism, 25 from housing, six from transport, six from finance, and five from sports, art and culture.

The impact of this type of fraud on the poor is very direct, as the grants targeted for theft are the main instruments for alleviating the most severe forms of economic marginalization in South Africa. Old-age pensions, child-support grants and disability grants are the pillars of the welfare system in South Africa. Because of the many dependents in most poor households and the support networks within the extended family, these grants support poor households *in general* rather than just the targeted beneficiaries. Understandably, therefore, government has set out to highlight the selfishness inherent in this fraud and its role in worsening poverty. Departmental spokesperson at the time, Gcobani Maswana, noted of the fraudsters 'They are illegally benefiting from the child support grant, old age, care dependency and disability grants' (ibid). SIU spokesperson and legal representative Naomi Shivali Goodley echoed this view, 'Many of the problems that led to the fraud and thefts were as a result of basic human greed – greed that has hurt the poorest of the poor' (*Daily Dispatch*, 25 January 2001). It appears, however, that the instances of fraud arise from different circumstances and with different motives. Some officials were genuinely unemployed when they first started drawing the social grants, but failed to cancel the grants when they took up employment in government. Others had set out directly to defraud government by drawing grants to which they were never entitled.

The authorities made provision for those who were willing to repay the amounts, however those who failed to make arrangements to pay the fraudulently drawn social grants were arrested. Government appears to have initially treated the problem as one of a *systems flaw* and allowed considerable space for the officials involved to repay the outstanding amounts and avoid prosecution. 'The department encouraged officials about to start negotiating repayments to contact the department's Inspectorate Unit charged with tracking fraud and corruption' (*Daily Dispatch*, 26 July 2004). There is little direct evidence at this stage to indicate whether this facilitated a more effective form of recovery of state funds – possibly allowing as yet unidentified perpetrators to come forward without fear of punishment – or whether it simply sent a message of tolerance towards those who defraud government. By November 2005 the department had recovered only R417,000 (approximately 1.6 per cent) from the officials, who have been made aware of their illegal actions (*Daily Dispatch*, 11 November 2005).

### A1.2.1 State of the administration

It appears that the general state of administration at the Department of Social Development district offices may have contributed to opportunities to commit fraud. By way of example, an inspection of the Butterworth district was undertaken by four members of Internal Control on 10 and 11 September 2002 (Department of Social Development, 2002). The unit made the following findings and recommendations:

- Personnel files: Appointment letters and duty sheets were not filed – for two staff members there were no files at all.
- The telephone register was not up to date and no personnel calls had been recorded.
- Beneficiary vouchers were not properly filed, but were instead stored in brown envelopes in no chronological order and did not include ‘stubs’.
- Leave forms were not available for inspection.
- For two vehicles there was no proper control, tires were missing / not fitted, and logbooks had not been properly completed.
- In outlying offices there was a shortage of trained officials to run the computerized system (Socpen) that allows beneficiary payments to be checked.
- At one sub-district office the computer was not connected to a power source, the paymaster arrived for work at 13.00, cheques were left unguarded in a van eight registrations for disability grants were incomplete and lacked medical records or any form of identity for the beneficiary, and new applications were being handled by an untrained ‘volunteer’.
- Two sub-offices lacked any form of supervision and ‘everyone does as they please and do not work according to procedures’.
- In many instances no registers were kept or existing registers were deemed inadequate. The team recommended that standardized registers be developed; ‘...seeing that lack of registers or inadequate registers means no control over state monies’.

### A1.2.2 Examples of fraud notification

The Department of Welfare had a register of 123 fraud cases maintained by its internal Inspectorate. Seventeen randomly selected extracts from the period 1999–2002 reveal in a superficial way how the initial indications of fraud are detected / recorded.

**Table A1.1. Initial indications of fraud**

Place	Date	Possible indication of fraud
Queenstown	17/11/2001	Possible theft of cheques after death of beneficiary
Sterkspruit	17/11/2001	Beneficiary claims they never received their grant ( <i>this is a very common complaint at all offices</i> )
Zwelitshwa	19/11/2001	Beneficiary claims no grant received for October
Uitenhage	19/11/2001	Beneficiary never applied for grant for her children. The file was processed without her knowledge.
Bizana	19/11/2001	Possible fraudulent identity document

Elliot	23/11/2001	Possible pension fraud with Post Office vouchers – value R20,000
King William's town	12/12/2001	Beneficiary claiming pension while suspected of working and owning several businesses
Willowvale	12/12/2001	Beneficiary cashed cheque at shop and received R1,100 in cash rather than R1,780 as on cheque
Bisho	18/12/2001	R32,630 suspected to be missing after disability grant was drawn whilst beneficiary was in jail
Grahamstown	27/12/2001	Cash voucher from Post Office contains apparent knuckle print – fraud suspected
Bisho	28/12/2001	Twelve cheques that were not correctly endorsed presented at bank
Mdantsane	November 2000	Ten officials dismissed after being found guilty of voucher theft / fraud in the amount of about R3.8 million (this incident was the basis for this case study)
Mdantsane	1999	One official dismissed after being found guilty of theft of vouchers to the value of R130,140
Elliodale	1999	Three officials involved in voucher fraud / theft in the amount of R612,663
Lady Frere	1999	Three officials – theft / fraud of cheques to the value of over R500,000
Idutywa	1999	Three officials – theft / fraud of cheques to the value of over R900,000
Bisho	1999	Seven officials steal cheques to the value of R2.5 million from government office

A scan of the incidence of fraud cases across the various offices reveals that the most cases (21) were reported from the Zwelitsha office; a large urban area near King William's Town, and Bisho, formerly administered as part of the Ciskei homeland. Due to its proximity to the abovementioned towns, Zwelitsha functions as part of the administrative centre of the province. The next highest number of cases (15) emanate from Umtata – the former capital of the Transkei and still the administrative centre for the region informally referred to as 'the former Transkei'. Umtata is well known for its ineffective and corrupt bureaucracy. Bisho, the former capital of the Ciskei and the current capital of the Eastern Cape Province, reported nine cases and Mdantsane, a township near East London previously administrated as part of the Ciskei, reported seven cases. Without knowing the relative workloads on these offices it is impossible to identify statistical patterns of significance, however it is safe to assume that these offices would handle some of the largest numbers of beneficiary payments as they all serve large urban areas with the greatest population concentrations in the province – this in itself explains why reported fraud would be high. However Port Elizabeth and East London are the largest urban centres in the province and Queenstown is the fourth largest city, and these areas reported one, three and four cases respectively, thus the relative 'load' in beneficiary payments is not the sole determinant of incidence of corruption. Apart from high beneficiary payment levels, Zwelitsha, Umtata, Mdantsane and Bisho all had a history of former homeland bureaucracies, cumbersome, inefficient and in many cases disillusioned by their reluctant absorption into the new provincial government. This in itself may explain why corruption was more of a factor than in the other busy welfare offices.

### A1.3. The case study

The case under examination here dates back to 2000. It was not possible to study a more recent case, as it is impossible to gain access to departmental records or legal documents where any aspect of the case is not completely finalized. The case came to public attention in February 2001 when ten officials – namely Buso, Kwatsha, Dulaze, Makasi, Dukashe, Bulwana, Nogqala, Payi, Mbashe and Maxama – were sentenced to a total of 109 years imprisonment for fraud and theft in the approximate value of R3,800,000 (see Table A1). The court also made a compensation order directing the accused to compensate the department. It was not until November 2001 that all of the officials had been dismissed from the Department of Health and Welfare where they had worked in the pensions section. Buso, Dulaze and Mbashe were paymasters, while the others (except Payi, who was a driver) were clerks responsible for drawing or ‘pulling’ the vouchers and checking beneficiary identities. The accused were linked to the fraudulent vouchers via fingerprints. The vouchers should have had fingerprints of the legitimate pensioner recipients; instead the vouchers bore the fingerprints of the accused. The judge found that the accused had acted with *common cause*. This case of corruption led to the formation of a special investigative team (SIU, SAPS criminal record centre, departmental officials and advocates appointed by the state attorney). The department has also allocated R128 million to enable the SIU to employ 200 investigators to continue probing into the social grant fraud (SIU, no date).

**Table A1.2. Mdantsane township, November, 2000: Cash voucher theft / fraud (all employees were dismissed)**

Name	Amount	Sentence (years)
Nombulelo Buso	688,9500	13
Bulelwa Dulaze	9,360	5
Xoliswa Maxama	311,500	12
Msuthukazi Kwatsha	1,027,180	13
Khaya Makasi	30,000	8
Nadile Dukashe	266,520	12
Noluthando Bulwana	485,880	12
Nobesuthu Nogqala	485,880	10
Mfuneko Payi	106,360	12
Nomafengo Mbashe	376,500	12

#### A1.3.1 Detection

In this case the detection arises from technological scrutiny of pension cash vouchers by a fingerprint expert, Franswa Stassen, formerly of the South African Police Services and now the head of the internal inspectorate in the Department of Social Development. Stassen would typically be called upon to investigate after an official from the department reported a case of suspected fraud at one of the pension pay points. Stassen explains his role thus: ‘I was asked to check the pension cash vouchers from a fingerprint expert’s point of view and I found several ‘runs’ of fingerprints, which were made by one and the same person or persons. These ‘runs’ were found to range from small to large amounts of pension cash vouchers’ (Stassen, 2000–01) no date). In other words, the fairly simple

task of looking for an unusual prevalence of the same fingerprint is used to detect the fraud. Stassen notes that the perpetrators of the fraud would also use toe prints or the fingers of latex gloves in an attempt to 'fool' the system (Stassen, 2006).

For example, in a separate case in September 2000 Stassen examined the fingerprints of one Dorcas Mafongosi and found that various prints, including eight different fingers, had appeared on 4,191 pay vouchers with a total monetary value of R4,201,767. All the vouchers had emanated from District 101 Mdantsane in the period 1994 to 1996 (Stassen, no date). In another instance Stassen was able to reveal that the official had used a toe print to subvert the system. 'I compared the abovementioned set of toe prints with prints that appears on forty-nine (49) vouchers emanating from the district 106, Zwelitsha. I found that forty-nine (49) of the vouchers is corresponding with the **left big toe** of **Nonceba Cynthia Andries**. I thus found that the toe prints that appear on the abovementioned vouchers to be made by one and the same person namely **Nonceba Cynthia Andries**. The total value of the forty-nine (49) vouchers is R38,220' (ibid).

What would motivate these officials to put their well-paid jobs (civil servants are generally regarded as well paid in South Africa) at risk and engage in such bizarre behaviour as fraudulently attaching their toe prints to social grant vouchers targeted at the poor? What attitudes and values operate within the Eastern Cape civil service and what do the subjects of this study think about corruption? Before turning to obvious answers to these questions, i.e. the views of those involved in corruption, it is useful to look at some of the useful but rare studies that have been undertaken about corruption in the Eastern Cape civil service.

### **A1.3.2 An insider's view of corruption**

In 2001 the Public Service Accountability Monitor (PSAM), an NGO based at Rhodes University, set out to study how provincial officials perceived and experienced corruption. Their aim was to acquire benchmark information to measure (over the longer term) the effectiveness of various anti-corruption measures in the Eastern Cape. They also set out to track changes in government official's perceptions and experiences of corruption (Allan et al., 2002). The PSAM surveyed 169 officials.

#### *Understanding*

The PSAM found that Bisho officials did not fully understand the concept of corruption. Some 89 per cent thought that the active demanding of bribes or the theft of public resources was wrong. However, about 50 per cent of those surveyed felt that the acceptance of gifts in return for performing public services should not be punished: '48 per cent of respondents thought it was either 'not wrong' or 'wrong but understandable' to accept 'gifts' from citizens for performing services' (ibid, p.1). The PSAM observed that this may have resulted in the under-reporting of exposure to corruption.

#### *Rationalization*

The PSAM identified possible rationalizations for corruption in its survey and based some of its questions on the generally used 'excuses' for corrupt practice. This revealed that 22 per cent of respondents endorsed the view that 'government officials are so poorly paid they have no choice but to ask people for extra payments'. Furthermore 23 per cent felt that 'extra payments and favours make government work more effectively' and 21 per cent of respondents felt that 'there are many more important things to worry about than

whether public officials are making a little extra money on the side'. The PSAM expressed special concern that 42 per cent of respondents felt that 'the coming of democracy' had 'increased the number of acts of corruption in our government and society' (ibid). The PSAM noted:

*'This last finding should be of particular concern given that 75 percent of the survey respondents were employed in the public service prior to 1990 and were thereby competent to make a comparison between the current democratic administration and the previous apartheid and Bantustan administrations' (ibid).*

The PSAM recommendations in respect of the understanding and significance of corruption included training for civil servants in the 'definition, identification and adverse social impact of corruption'. In particular civil servants need to be aware of the risk that gifts exchanged for official services may 'lock' an official into escalating impropriety and illegality, and thus place them under increasing influence of the corruptor.

The PSAM also thought it important to dispel the impression that corruption is a 'victimless' crime: '... when public resources are abused it is the entire society, and specifically its most vulnerable members, that suffer as a result. Social infrastructure such as roads, schools and hospitals are not built. As a result investment and job creation are adversely effected. Less money is available for poverty alleviation and welfare grants'.



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Appendix 2:  
Corruption in Service Delivery: Synthesis of Respondent Views

This report presents the consolidated and summarized views of the respondents to the questions posed in seven interviews conducted in late 2005 and early 2006. The report is an annex to the main report ***'I won't sell my brother': Corruption in Infrastructure Delivery: South African Case Study.***

The main purpose of this study is to present an overview of predominant views about what causes corruption; how it is best combated; why accountability fails and how it should be strengthened; and the overall impact of corruption and anti-corruption measures on public services to the poor. The views outlined here are from a limited number of informants (seven), but most are directly engaged with anti-corruption work on behalf of the key agencies – thus considerable importance may be attached to their opinions.

Within each sub-heading the overall views of the respondents have firstly been summarized and some examples outlined. Particularly useful insights are then explored through quotes and specific arguments. In some cases the author has drawn upon the larger context of the interaction with the informant, for example background information and informal discussion, to elaborate on the specific answer to a question. The concluding remarks are a summary of the main issues with some additional analysis.

## **A2.1. Profile of the respondents**

Five of the respondents were officials whose primary responsibility was to combat or investigate corruption in government. One respondent was an independent consultant mainly working to improve the financial accountability practices amongst municipalities. One official was a senior manager in the civil service who had opted to speak out against irregular practice and as a result became subject to departmental disciplinary action and finally suspension. Individual job descriptions are as follows:

1. Senior manager in provincial government department – currently suspended  
(anonymous interview granted)
2. Special advisor (GTZ sponsored) appointed by National Treasury to assist Provincial Treasury to train municipal finance staff in the Municipal Finance Management Act
3. Senior Special Investigator in the Directorate of Special Operations (Scorpions)
4. Two senior managers in the Eastern Cape provincial Department of Housing, Local Government and Traditional Affairs (DHLG&TA) with responsibility to improve the financial management and reporting obligations of local government
5. Head of the Inspectorate in the Social Development Department (provincial government)
6. National Head of Operations of the Special Investigations Unit (SIU)
7. General Manager Internal Audit in Buffalo City municipality

## **A2.2. General experiences**

All respondents were involved in either reporting, detecting or investigating corruption or in helping to improve financial management in government. The one exception, the provincial manager, may be regarded as a 'whistle-blower' without formal responsibilities related to corruption in his normal course of duties. All regarded corruption as a serious issue for the South African state, and all generally endorsed the Treasury advisor's view that the importance of corruption arises from the fact that it 'hits the people low down' – that is, the poor.

Most respondents had a fairly hands-on experience of corruption and investigations and were able to speak at a level deeper than policy and principle. This constituted a significant benefit over the type of interview that typically results from talking to very senior officials or politicians. The Scorpions investigator, for example, had many years of experience of working as a policeman and had also worked for the Heath Special Investigations Unit. As a member of the Scorpions he had been part of corruption investigations in four provincial government departments and was very concerned by the range of corruption that existed and the fact that it reached to the members of the executive committee at provincial level (the political heads of the various provincial line departments).

The suspended provincial manager who had experienced pressure from his political bosses to implement actions that seemed irregular or questionable shared this view. He alluded to an institutional culture of unquestioning obedience and fear of repercussions should the directives of political heads not be followed. Few of his colleagues at work were prepared to confront the power of their political 'bosses'. The respondent alluded to circumstantial evidence of irregular practice for example, payment for some service providers were prioritized over others.

The managers in the Department of Housing, Local Government and Traditional Affairs (DHLG&TA) were anxious to point out that their role was to support local government in improving financial management. They did not regard themselves as 'investigators' but were able to focus on corruption in municipal councils (as their jobs would dictate) and suggested two main causes: first, inadequate legislation, and secondly, inexperienced or economically vulnerable councillors being tempted into irregular manipulation of the tendering / procurement process.

The Head of the SIU generally talked about much the same problem, noting that corruption and incapacity/poor practice often inter-link to create a complex problem that meets the wider definition of 'corruption' but not the narrow definition of 'fraud' or 'graft'. Those respondents who focused on local government tended to concur that the main problem arises in political office rather than the administration. Apart from the Inspectorate in the Social Development Department (concerned specifically with social grant fraud), there appeared to be a consensus that the general abuse of authority and high political office to direct decisions towards questionable outcomes carries more severe consequences to the operation of accountable governance than the more simple acts of fraud or theft.

One reason for this is that abuse of power and manipulation of the political process for private gain is usually defended and re-interpreted by the perpetrators. Corruption that is 'justified' in this way can entrench itself in the system and even lead to a complete redefinition of norms and values. Blatant acts of fraud and theft simply have to be

exposed and punished and are rarely defended as a form of *political culture* or overtly cast as an alternative system of norms and values.

The views of these respondents suggest a problem of oversight and integrity of political leadership. Those who were in a position to influence institutional culture and provide a particular style of leadership appeared to be directly responsible for engaging in or condoning corrupt activities. Clearly this sets an example and creates institutional norms for those officials further down the chain of command. It was also evident that officially sanctioned anti-corruption initiatives may not receive the support they need in these circumstances. While endorsed in official government policy and publicly championed, anti-corruption initiatives that are 'too successful' or implicate persons in high office can have negative consequences for those responsible for the initiative. The interviewer gained a strong sense that the investigators' own circumstances and careers might be jeopardized by those in high political office who feel threatened by anti-corruption programmes.

Adv. Visagie explained how the SIU conducts its relationship with the government departments under investigation – or what they call 'partners'. The call for the investigation comes from the 'partner' or at least is portrayed as such. In other words the government body under investigation gets credit for 'sorting itself out' (author's phrase) rather than the SIU. The SIU has adopted this approach from experience. Previously it adopted a high-profile approach and took much of the credit for successful investigations, however this caused tensions with government and its position became politically insecure. In Adv. Visagie's words, '...high profile did not work politically'. The SIU is now headed by Willie Hofmeyer, who has a legal background and a strong link to the ruling ANC party; Hofmeyer is well connected but reputed to be fiercely independent.

### **A2.3. Human resources and service delivery**

Most respondents viewed the impact of corruption on service delivery as severe, in that it hampered effectiveness and efficiency in service delivery. The most significant corrupt actions that resulted in impaired service delivery were irregular appointments of staff, irregular appointment of service providers and general subversion of the tendering and procurement process. The Scorpions investigator said that large projects, often infrastructure-related, are affected by this form of corruption because senior government officials and politicians are involved – he had recently been involved in four such investigations.

The respondents from the DHLG&TA shared this view but related it specifically to local government. The scale of the problem is linked to the large financial grants that municipalities access, including the Equitable Share (for operating costs) and MIG infrastructure investment grants (Municipal Infrastructure Grant). These officials felt that previously disadvantaged councillors are too inexperienced to oversee the deployment of these large public finance allocations and, because of their own recent economic vulnerability, find themselves drawn into corrupt actions around tendering and procurement.

*For example, some councillors from a poor background have to make decisions on huge sums of money for procurement; the first question they ask themselves is 'what can I get out of this?'*

The respondents noted that these councillors manipulate the process to their own benefit and often lack the experience and education to foresee that their actions will be detected. The example provided was failure to disclose their interest in a company getting a municipal tender or giving the tender to a company that has no capacity to complete the brief, invariably because some form of undisclosed link exists to that company. Unlike other respondents, the officials from the DHLG&TA did not take the view that this was an inevitable risk arising from government's Black Economic Empowerment (BEE) policy.

*BEE principles are well spelt out and they are not designed to bring the country to its knees. For example you do not award a R20 million contract to someone who does not have an office or is not credit worthy.*

The SIU respondent suggested that the problem lay not in the BEE policy per se but its interpretation and non-compliance with supply chain management legislation. This is a new legal requirement and few municipalities are compliant with its provisions. For example, they do not abide by the provision that procurement procedures for contracts above R500,000 should only attach a limited percentage value to considerations such as affirmative action and equity. The implication is that there is blanket use of BEE principles and a simplistic favouring of emerging (black) contractors at the expense of other criteria. 'Local authorities do not understand the process, particularly in rural areas, and do not use it correctly.'

The DHLG&TA managers also pointed out that the problem is not limited to 'outside contracting' and also applies to the appointment of staff in some situations:

*All appointments are affected by politics, they don't consider qualifications. For example teachers are appointed as section 57<sup>1</sup> managers or even municipal managers and they don't have the necessary qualifications – this is due to party influence. This makes them vulnerable – they cannot stand up to the councillors. This problem is made worse at the local level where*

*communities put pressure on the municipality to appoint local people – people say ‘my child has a BA and is unemployed, why should s/he not have this job.’*

The SIU respondent described the same problem – that is, a mix of contracting irregularity, ill-advised appointments and general incapacity – all of which creates fertile ground for corruption. This helps to explain a well-recognized trend in municipal human resource shortfalls, – that is, the consistent appointment of unqualified and poorly equipped officials to the administration. Of particular interest is the view (also reflected strongly in the interview with the suspended provincial official) that while nepotism or ignorance may influence such appointments, the councillors may also be seeking to protect their own vulnerability by appointing persons who will not be able to challenge the lack of integrity or capacity within council. Clearly poorly educated staff, who owe their positions to the favour of particular councillors, will be less likely to expose or challenge irregular or ill-advised decisions by council. The other important insight from the above quote is the reality that the local skills pool for small rural municipalities is very small, but there is also a legitimate expectation that local people be prioritized for any jobs that do become available. Thus the consensus between community and municipality that local economic circumstances dictate that all public sector appointments should go to local people can result in a significantly under-skilled administration. This blurring of nepotism and community expectations illustrates how ‘corruption’ may be very complex and often indiscernible from other less malevolent social issues.

The problem of senior officials and politicians seeking to build an administration that they can manipulate and tie into relationships of dependency / personal loyalty or outright patronage is also a factor in the Eastern Cape provincial government, according to views of the suspended provincial manager. This respondent suggested that the problem took various forms, ranging from the intention to create capacity shortfalls, to appointments based on tokenism and nepotism rather than merit. Where officials lack skills they are easily dictated to and manipulated; ‘they owe their jobs to the leader’. The respondent suggested that these strategies are planned, – that is, adverts, job descriptions and/or person specifications are designed to lead to the appointment of a ‘lackey’. As a result the department operates with a lack of human and physical resources that obviously impacts on its service provision.

This respondent suggested that the high number of suspensions of senior officials is linked to this problem. Those who oppose the (corrupt) system get suspended but not fired, – that is, they continue to earn salaries but they are ‘taken out of the picture’ and thus cannot stand in the way of those who benefit. The ‘acting’ replacement is invariably a less qualified person, less able to confront wrongdoing by seniors but also often a further waste of resources due to their weak capabilities and the fact that a second salary or allowance has to be paid to the ‘acting’ employee.

The forms of irregularity identified by this respondent included inappropriate grade ‘jumps’ for some staff due to the boss’s influence. Much of this comes from the political level and senior managers are forced to comply with the political head’s directives – they are in effect intimidated. This leads to paralysis in addressing wrongdoing. ‘When I approached my superior with these concerns, the response was “what can I do?” The respondent was faced with the choice of “toeing the line”, which implied sanctioning irregular practice or refusing to implement wrongful directives and placing his own job in jeopardy. He tried to find a compromise that would not make him complicit in wrongdoing but would also avoid an outright challenge to his superiors. ‘When I tackled these issues I



avoided insubordination but I placed my concerns on record', (that is, that he was being compelled to undertake actions that seemed irregular).

In the subsequent court action (which is on-going) his choice appears to have been understood by the court. 'The judge has thus far ruled in my favour – he has recognized that I made my discomfit[ure] known'. Politicians are happy to have a senior manager (who objects to their practices) suspended because the politicians have a limited five-year term – if the person is reinstated after their term, they are not affected. According to the respondent the political heads are not concerned with the waste of state resources that arises from having someone suspended and having another manager appointed (and paid) in an acting capacity.

The Buffalo City Audit General Manager was the only respondent who actually worked in a municipality and described a slightly different and perhaps more positive scenario. Contracting and procurement problems arose not simply from fraud but from a range of issues linked to ineligible contractors being assigned contracts. Sometimes it is simply that the contractor cannot sustain their operation in business terms or is not competent, and this impacts the service or goods provided. There were a number of reasons why the system was not always able to identify and eliminate these contractors from the procurement process – weak management capacity but also irregularity. There are however more blatant instances where the contractors claim for incomplete work. Black contractors on housing projects often have this problem and are prone to systems failure, according to the respondent. The auditor was hopeful that the new laws and regulations would reduce the problem. For example the Preferential Procurement Facilitation Act and the BEE Act plus the Supply Chain Management Regulations (SCMR) are all geared to resolving these shortfalls. The Construction Industry Development Board Act, for example, allows for the certification of contractors according to the size of the contract.<sup>2</sup> The auditor was of the view that there was a need for new BEE contractor management systems.

## **A2.4. Comparing corruption across different spheres of government**

Respondents generally made it clear that they did not have sufficient comparative experience of different spheres of government to say categorically that one in particular suffered from forms of corruption that had most impact on services to the poor. The respondent from the Department of Social Development regarded corruption in national government as most important since this was where the largest defrauding of social grants occurred. He noted, however, that a significant number of municipal staff had been implicated in defrauding the social grant system.

Those who worked at local government level, however, generally thought that corruption at this level was most serious in terms of service implications. Reasons included 'because it has most influence over grassroots services' and 'because local government is the "face of delivery".' The SIU respondent, who was in a position to compare different spheres of government, answered:

*Local government, because it is at the coalface of delivery and this is where it generally breaks down. This is where the poorest of the poor are most affected.*

Only one respondent, the provincial treasury advisor, ventured a brief opinion on why corruption within rural / small local government level might be seen to have taken root more than at other spheres. He suggested that national government is less concerned about corruption in the small municipalities because financially they are not significant. The respondent appeared to be worried by this view, noting that groups of councillors and employers who are corrupt can have a very negative effect where service delivery is already marginal. In other words small municipalities may control limited budgets but the services that flow from these budgets are basic and minimum level, thus misallocation of resources has a critical impact on poor service consumers.

Respondents were asked to agree or disagree with the following statement: 'Would you agree with the view that a significant degree of corruption (in so far as it effects local service delivery) occurs at municipal level?' Two respondents said that they did not know and one did not respond to the question. Four agreed with the statement and two of these offered examples or evidence on which their response was based.

The Scorpions investigator outlined an example of an investigation that he regarded as an illustration of how easily municipalities are 'ripped off'.

*...a recent example was a municipal tender for road signs. It appears that the company that got the tender (a BEE firm) paid municipal staff to steal the old signs so they would have to be replaced. They then used the old boards (refurbished by their sign writers) to replace the missing signs that were reported. The alleged scam was exposed by a rival contractor who hired a private investigator to film the signs being stolen.*

SIU Head of Investigations Advocate Visagie made the following point about the forms of corruption that occur at municipal level and how significant these are:

*...frontline staff corruption – that is, R50 bribes for preferential service – is overrated (although we don't know the full extent of this because it does not leave a paper trail). Housing projects is where difficulties arise socially – because if they are not successful, there is an immediate reaction from the*

*community. Contracts are awarded to people who lack capital / security for example, a contract to build a school. You need large scale on projects like these to make money – the larger established contractors are only able to do so (make money) because they can work at scale. The smaller contractors get into financial difficulty and begin to compromise quality or they go to the administrators for more money / advance payments. Sometimes the administrators grant this because they want to get the job finished (but these payments are irregular), sometimes the job is completed, sometimes it is not and the builder walks away with the money from an incomplete project. Occasionally the contractor enters into the project with no intention of delivering and runs away with the money or provides very poor building quality from the outset.*

*It is not only emerging contractors who rip the public off, but it is emerging contractors who lack start-up capital and who get caught up in the need for up-front payments. You can track these problems back to the officials but bribery may not be so evident. Kickbacks are often difficult to trace. In about 15 cases of this type of wrongdoing, four are municipal councillors. The councillors were linked directly or through family to the contractors. They misrepresented themselves in this situation and did not disclose their interest.*

## **A2.5. Types of services effected by corruption**

Five of the seven respondents felt that all types of services were equally prone to corruption. One (the provincial manager / whistle-blower) explicitly said that it was contracting arrangements and those involved in contracting that determined the likelihood of corruption, rather than the nature of the service. Only the DHLG& TA managers were able to elaborate on this issue and on how lack of capacity for oversight encourages corruption:

*All municipal services where infrastructure is lacking – that is, water and sanitation, drainage, roads and other amenities (but not much in terms of refuse removal) – are prone to corruption. Housing is one of the worst affected. Most public funding goes to basic municipal services – infrastructure and local economic development (LED) are the primary expenditure items. People see government that cannot monitor and manage these projects and they try to take advantage of this incapacity. For example the Municipal Infrastructure Grant for the Eastern Cape is R1 billion, but our department has one engineer to monitor the whole project, that is, check business plans, structures, etc. This is where people take the gap – tenders often deliver poor quality, especially in housing. The same applies within local economic development – there are no top-line staff. The department has severe capacity shortfalls.*

The SIU respondent confirmed that the contracting arrangement determines the likelihood of corruption and that the size of the contract has a bearing, albeit an ambiguous one, on whether corruption will occur:

*All types of projects are targeted for corruption: housing, roads, water, etc. - there is no particular pattern. The size of the contract may have a bearing. The larger contracts give security and are more attractive but are subject to more rigorous process and are therefore more difficult to subvert. The smaller projects are easier to corrupt but the returns are not as high.*

Only the municipal auditor spoke of the actual operation of the service as an issue worth consideration in terms of corruption potential. His view related specifically to Buffalo City Municipality and the potential for corruption within the two main ‘trading services’, that is, water and electricity:

*Water and electricity – electricity especially because electricity services are the trading services with big budgets and the most potential for good returns (from corrupt practices). Environmental services presents less opportunity. Refuse management is mostly outsourced – this carries some risk. The frontline functions associated with electricity and water, that is, meter reading, are checked, but there is still the risk and exposure to opportunity.*

An interesting perspective that was not articulated by other respondents was the explanation of the DHLG&TA managers of why services directed to the poor were particularly vulnerable to corruption. The managers suggested that culture might account for the acceptance of inferior service and questionable governance practice by poor and predominantly black communities.

*It is a cultural thing – black people do not complain, for example in a bank they will stand in a queue for a long time before questioning the service. Therefore in relation to basic services, people are patient, there is no push*

*from the community – delays and poor service are seen as normal for government. Councillors and officials factor this in when planning corruption.*

*There is also a lack of accountability because poor communities do not know their rights – they lack education in this respect. People do not understand that public funds belong to them – they see the money as government's, not theirs. This is made worse by the heavy reliance on national transfers – people are not concerned about money that comes from outside.*

These concise and unusually frank responses came from managers who are themselves 'black' and in all likelihood have experienced poverty in their past. On closer consideration it is apparent that the statement 'It is a cultural thing – black people do not complain...' is not an explanation in itself but a shorthand way of identifying a section of the community with a history of poverty and oppression under apartheid. What might be interpreted from this is that this historical experience of the state and local authority not acting in an even-handed way is what frames the expectations and accepted norms of black citizens, rather than their race or culture. The acceptance of corruption is then perpetuated (after the demise of the apartheid state) by on-going educational deprivation and the lack of terms of reference on which to assess the morality of certain administrative norms. The advent of democratic government brought with it a more socially responsible programme of services expenditure driven by national government on behalf of poor citizens. This, however, inadvertently reinforced a consciousness of dependency, that is, 'it's not our money – why should we be concerned about how it is spent?'

## **A2.6. Is corruption most significant in terms of capital or operational expenditure?**

Most respondents had already addressed this issue in previous answers and the general consensus was that larger capital projects posed the greatest temptation for corruption. The Treasury advisor emphasized the importance of the opportunity to *deal with service providers* as an important condition in framing the basis for a corrupt relationship. At least three respondents acknowledged that while corruption did occur at the operational level, it was not as significant in financial terms and was less likely to negatively impact services to the poor. The SIU respondent adopted a slight different position, suggesting that corruption of operational spending offered less rewards but was also difficult to detect. 'The capital projects present the biggest temptation for large-scale corruption but the safeguards are stronger. The operational level is easier to corrupt and wrongdoing is harder to track – often no paper trail.' The municipal auditor chose to emphasize the prioritization of expenditure on political objectives rather than developmental objectives as a cause for concern.

*The problem is the incorrect prioritization of projects – there is a strong bias to the political and a weak commitment to the developmental. For example the council was reluctant to spend on a risk assessment... (eventually the officials put together a risk management programme for R75,000) but is prepared to spend millions on publicity – (the respondent produced a sheaf of glossy Buffalo City Municipality calendars by way of illustration).*

## **A2.7. The effectiveness of South Africa's stringent tendering and procurement laws and other municipal policies, such as the provision for independent audit committees**

This emerged as a key issue for understanding corruption, given the previous views of the respondents that suggested that the subversion of tendering and procurement lay at the centre of the most important instances of corruption. All respondents seemed to think that the current laws and policies are partially effective or work in certain circumstances (with a particular calibre of political leadership and administrators). Two respondents, the municipal auditor and the SIU head of investigations, felt that the laws and policy were too new to make a final evaluation. The other respondents cited a range of reasons why the provisions are only partially effective.

## **A2.8. Contradiction with Black Economic Empowerment (BEE) Policy**

The provincial manager who had been suspended due to whistle-blowing cited a direct contradiction between fair and transparent tendering practice and BEE principles that create opportunities for corruption:

*It works for certain public servants but the rule can be manipulated and there are gaps. The BEE framework presents many loopholes and is prone to the practice of 'fronting' (black individuals are rewarded for representing essentially white-owned companies, thus misleading the BEE criteria for the awarding of contracts). Senior officials often have a vested interest and know what outcome they want before the tendering process starts. There is a basic contradiction between BEE and fundamental tendering principles.*

The inspector from the Department of Social Development felt that the effectiveness of the provisions was constrained by the difficulty in screening the companies responsible for the provision of the service – and it was often difficult to distinguish between poor judgement and intended subversion of the process:

*Yes, they are effective, but the problem is vetting the companies – they are appointing people who cannot do the work. In some cases this is done out of misjudgement, in other cases they know that the company can't do the work but don't care, that is, it's a corrupt relationship – it's a 50/50 situation (50per cent misjudgement / 50per cent corruption).*



## **A2.9. Depends on the relative skill and determination of the ‘corruptors’**

The Treasury advisor noted the importance of making such provisions workable. But he also pointed out the reality of well-prepared private sector players who are determined to subvert the process and easily find willing partners amongst councillors, officials and community members:

*It's got to be effective – we have no choice. At the moment it may stop the opportunists and ‘chancers’ but not the well-organized corruptors – these are both councillors and officials and ringleaders from the community. The private sector usually drives these endeavours – they take the initiative to offer a bribe / kickback. A councillor approaching community members for bribes, etc. takes more of a risk.*

The same view was expressed by the Scorpions investigator, who also suggested that compliance was left to local discretion and the whim of officialdom and that the involvement of non-governmental agencies had done little to avoid irregularity:

*The laws are okay but officials who manage the process make too many decisions – there is too much discretion. Oversight is lacking. If you can pay-off three or four officials you can still beat the laws. For example the Education Department uses the Independent Development Trust for procurement and yet still this Nkalo<sup>3</sup> got a contract for the supply of furniture, even while he was under investigation for prior irregularity. The prosecutors were contacted beforehand to check whether Nkalo would be pursued, that is, they (the Education Department) knew of his situation and were checking to see what would happen to him. He should never have been eligible for short listing – they are violating their own guidelines. The IDT simply claimed ignorance.*

## **A2.10. The general governance environment**

The managers from the DHLG&TA suggested a more serious situation where a number of factors related to the general governance environment in municipalities would render tendering and procurement policy ineffective. In the first instance the managers noted that certain key provisions like audit committees assumed the existence of certain capacities in local civil society which were not found in the smaller municipalities:

*The problem is compliance. Very few municipalities, for example, have audit committees. These could make a big difference. The allowance paid to audit committee members is insufficient to attract anyone with professional skills – in smaller local authorities there is no local capacity to ensure that the public members nominated to the audit committee can independently oversee the contracts / transactions of the municipality.*

The managers also seemed to look to a general shift in the political culture of municipalities that would be a pre-condition to the effective use of the legal provisions for transparency and accountability:

*After these elections (March 2006) there was the hope that we would see a new generation of less selfish councillors, that the new councillors would be more effective. These new policies (for transparency) came in the mid-term of the previous councillors so they were not properly enforced.*

Furthermore the managers looked to provincial government to support the emergence of a new governance culture in municipalities and the ability to better comply with the accountability provisions. Despite the fact that they were employees of the provincial government, they expressed doubts about its capacity to support a shift in municipal governance culture and offer the necessary oversight.

*The new generation of councillors are expected to do better but the question is 'does province have the necessary capacity to support these municipalities?' Municipalities are not, for example, tabling the Auditor General reports (also not providing the AG with up-to-date financial statements to facilitate the audit), yet the MEC for local government has never reported this to the legislature, as he is required to do. The reason for this is that the MEC does not get proper reports from his department – we do not have the resources to compile those reports. Municipalities do not invite the AG to meetings where the AG's report is tabled – they do not invite us either.*

Once again the importance of political will, rather than administrative procedure, was emphasized as a key obstacle to effective use of the provisions for accountability, for example in the case of audits:

*Councillors do not understand the value of audits – it reflects on the credibility and credit-worthiness of the municipality and therefore their ability to raise loans. Municipalities are hiding the details of their financial situation. In some cases financial statements are done but there are huge backlogs. The past history of audit problems holds up any progress on this matter. The AG refuses to audit where the financials are not up to date – we need to find some sort of cut-off date to solve this problem.*

## **A2.11. New laws will ‘plug’ the gap**

The most optimistic view was expressed by the SIU respondent who seemed to feel that there was a good prospect that the new legislation, in particular the Municipal Finance Management Act, would overcome ‘loopholes’ that had previously allowed tendering and procurement to be subverted:

*The new laws are solid, for example the Municipal Finance Management Act that is still being implemented, the framework of legislation is sound. Compliance is the problem. It’s too early to judge the effectiveness of this new legislative framework. All municipalities will now have to have a ‘supply chain management policy’; at least this will leave a paper trail (if corruption is not prevented) – there has been a change in mindset from the old days of the tender boards. It looks good – time will tell.*

The Buffalo City municipal auditor endorsed the same view and suggested that the focus should be on *intervention* from other spheres of government or outside agencies where the municipality fails to comply with the legislation:

*It is too early to say. It has only recently become law and where it is being done, it seems to have an impact. For example where tender committees operate according to the new laws, you are unlikely to have fraud. BCM were forerunners in this respect. The issue is one of enforcement – what happens if the municipality simply fails to comply? There should be takeover procedures by other spheres of government – limited and specific interventions to ensure, for example, that tendering is properly handled.*

## **A2.12. Public accountability**

Effective checks and balances against corruption require not just legal and technical compliance with tendering and procurement provisions, but the inclusion of the local public in the monitoring and oversight of governance. All respondents indicated serious concern about the effectiveness of these provisions. Reasons cited included deliberate strategies to mislead the public by producing fallacious reports (cited by three respondents). Others felt that the consequences of non-compliance needed to be demonstrated; that is, sanctions needed to be enforced through precedent-setting punitive actions. The most optimistic views related to improving reporting instruments and adjusting current practice to make it more participatory. Key comments are grouped according to overall emphasis:

### **A2.12.1 Deliberate strategy to mislead:**

- Most of the information that is provided in these reports is misleading and there is no action on underperformance because the boss is also guilty. It was different in the other province where I worked – here in the Eastern Cape politicians are involved in administration. There is a culture of obstructing proper audits and investigations, complaints are dismissed as unfounded and anti-corruption agencies are criticized or marginalized. Corruption is seldom an individual affair – there is always a network. The most junior people take responsibility when it is exposed – this is pre-arranged. These networks reach very high up to the provincial MEC, provincial police commissioner and the Premier's office. When the corruption was partly exposed via the press (journalist Eddie Botha) and the PSAM (Colm Allan) there was some attempt to hold a high-level investigation, but the MEC blocked it at the provincial level and charged the investigating officers – in this case it is all rooted in cliques.
- The performance results are exaggerated in these reports – delivery is overblown. Only the Auditor General picks up on the real issues. The reports concentrate on the loopholes (in explaining lack of performance) and blame suppliers.

### **A2.12.2 Sanctions need to be invoked:**

- Punitive action needs to be taken – for example, the municipal manager needs to be jailed when found guilty as an example to others. Sanctions need to be applied properly. At the moment people are learning what they can get away with – we need cases of precedent to change this message.
- There should also be more stringent sentencing of those convicted of fraud. For investigators it is often difficult to prove that money is changing hands (kickbacks for example), but usually it is exposed. The prosecution is okay but the sentencing is the problem, for example, two to three years for stealing millions of Rand! There should be prescribed sentences.

### **A2.12.3 Improved reporting instruments and performance monitoring procedures:**

- IDP reviews are important as another tool, but not all involve the public. The reports on these reviews come into the department in dribs and drabs. The municipalities wait until the last day to complete these reviews – there is little time to engage outsiders in the process, as they are required to do. Twenty-two of the 45 local governments have submitted their IDPs and often the link to the Provincial Growth and Development Plan is very weak. Also there is little linkage with the performance management system because the municipalities lack the tools to do performance management, in fact municipalities are reluctant to do performance management because they know it will expose problems in personnel performance (DHLG&TA managers).

### **A2.12.4 The Buffalo City internal auditor:**

- If it is done correctly IDP review is useful and should ensure budget alignment. Performance assessment must look to properly defined targets – only then can the public tell [if the municipality is performing]. Currently the performance management instruments do not have clearly defined targets, therefore it is impossible to say what is being achieved.

One very important insight is that the work of key institutions for promoting public accountability, such as the Auditor General (AG), can be completely nullified by simple administrative laxity. In the case of the AG, the capacity to present the public with an opinion on the state of municipal finances and financial management is severely impaired by the late or non-provision of financial statements by municipalities.<sup>4</sup>

*Many municipalities don't produce financial reports for a number of years; therefore they have not been audited. The AG needs to have these to do his work – without this it is not useful (SIU Head of Investigations).*

## **A2.13. Are poor citizens able to make use of public accountability safeguards?**

In retrospect this question may have been posed in a somewhat limiting way, in that it asked whether the poor were able to *make use* of the safeguards and not whether the system of safeguards *served the interests* of the poor. Every respondent indicated that the poor were unable to make use of such safeguards. The reasons included:

- Even when their services are negatively impacted by corruption, the poor are manipulated by politicians and do not perceive the source of their problems; ‘... they are simply deprived of the service and are uninformed – they are the main targets for the politicians’ manipulation, that is, to get their support. They are gullible and invariably remain loyal to the politicians’.
- To challenge corruption requires resources that the poor do not have. The community structures accessed by the poor, for example ward committees and leadership structures, are effective only in registering opinion and not in changing governance practice; ‘...only money can make things happen. The poor can’t take up cases and push things further. Ward committees and local leaders are useful only to register opinion – they cannot force action’.
- The watchdog bodies that are effective for example, the PSAM and the Public Services Commission do not require partnership with poor communities for their success and are not geared to reporting at this level.
- The accountability systems described can only be effectively used by a more sophisticated form of civil society; ‘Not in rural areas. These safeguards require a more organized form of (civil) society usually found in urban areas – I’m not aware of poor people being able to use the safeguards’ (personal communication, SIU respondent).

While the respondents did not think that accountability systems were geared towards the direct use by poor constituencies, there was a strong sense that such systems functioned to protect the interests of poor service consumers and that such protection was unlikely to be replaced from the political realm or by other systems for civil representation that could be accessed by the poor. What seemed implicit in most of the replies was that better access and understanding of such systems by the poor required the intervention of a separate set of non-government, non-business support agencies. Some respondents clearly felt that programmes to promote accountability would become more effective if the gap between the agencies acting against corruption and the poor constituencies (who are invariably the victims of corruption) were bridged.

### **A2.13.1 Who is most likely to be involved in corruption: elected councillors, senior staff or frontline staff?**

There was a considerable range of responses to this question but the majority of respondents who addressed themselves to local government indicated that the most serious problem lay with senior councillors and officials. The Scorpions respondent suggested that this related to the specific social profile and economic circumstances of South Africa’s councillors, ‘After taking office they start to “wheel and deal” and it becomes easier as they go along. They may be driven by need but also there is an extended family that also has “needs”...’ The SIU respondent provided an insightful

comment on the incidence of councillor involvement in corruption and the particular policy model for local government in South Africa, suggesting that the increasing tendency to look upon public office in municipalities as 'a job', had expanded the propensity for corruption.

*Councillors – their involvement is disappointingly high. In rural municipalities part-time councillors regard their post as a job despite the fact that they are only paid an allowance. In Qaukeni, for example, there were 50 'full-time'<sup>6</sup> councillors (the implication here was that fulltime 'employment' without commensurate payment creates the need for a second income).*

One respondent indicated an equal spread across all the groups but this comment was based on experience of provincial government rather than local municipalities. The official from the Social Development Department also outlined a different pattern of involvement in corruption, mainly involving junior staff, and suggested that perceptions of high-level corruption may be fuelled by the way that anti-corruption agencies target their investigations.

*Corruption mainly involves frontline staff – some of these people (in the Social Development Department) have much experience but are poorly remunerated. I'd say it's about 98per cent frontline staff and 2per cent councillors. With senior staff it's more about exercising bad judgement.*

*The anti-corruption agencies prefer to go after the 'big names' (senior staff or politically senior) because it brings prestige and recognition. But in our department the problem is not at that level – maybe in other departments but not Social Development...the staff are scared of the inspectorate, I don't know why but they are.*

### **A2.13.2 Are poor communities aware of the level of corruption that occurs and the impact on their lives?**

All but one of the respondents felt that poor communities are not aware of the extent of corruption but do experience the effects when services fail or are poorly provided. There was an overall sense that the poor could not distinguish between different levels of corruption or identify the reasons why they suffered inferior services, '...they don't understand the level of corruption or the amounts involved – to a poor person there is no difference between R2,000 and R200,000' (Provincial Treasury Advisor). Some respondents also suggested that even when poor people experienced the negative results of corruption in local services, they were resigned to it or regarded it as normal. Poor households will engage with corruption in services when they are directly affected, for example, when they are provided with an inferior state-subsidized house or when 'mobilized'.

*...they become aware of the lack of service delivery and may even see the abuse of assets but it takes time and energy to assess these problems. For example, they will see a contractor undertaking an electricity upgrade but the supply fails shortly thereafter (the Mdantsane upgrade was mentioned as an example).*

### **A2.13.3 How do poor communities respond to the corruption that they become aware of?**

Most respondents felt that poor communities do not respond in any clearly discernible way to the corruption that they become aware of – unless specific individuals or households are directly affected. Where the effects of corruption are experienced and suspicion arises, the matter is generally taken to the municipality either as a complaint or a protest. Virtually all respondents who mentioned this, however, thought it was unlikely to result in effective action.

*There are not many avenues for them to respond – they can try via the ward committees to communicate with council but they do not have a very useful voice unless the councillor in question is very effective (implied that this was the exception) – there is a ‘gatvol factor’ (fed up) – poor communities have real grievances (BCM internal auditor).*

A distinctly unusual view was that responses to corruption were shaped by ambivalent attitudes or norms within poor communities themselves where self-interest was the dominant factor:

*Poor communities only report the non-facilitation of services; they don’t know why these services are not delivered. Often they report to the ward councillor who may in fact be part of the problem of non-delivery. Bribery is not regarded as unusual – it is part of the process. The motivating factor is self-interest; they also want to get preferential treatment.*

### **A2.13.4 If there is a relatively low rate of corruption reporting by poor communities, why is this the case?**

Note: the interviewer provided a series of prompts. This deliberately ‘leading’ approach was adopted to present the respondent with a range of possibilities they could either endorse or dismiss (similar to multiple choice). The prompts were:

- fear of repercussions;
- ambivalence towards the authority of the state/courts;
- influence of networks of patronage;
- ‘they also have something to hide’;
- a general culture that corruption is okay; and
- distrust of the police or anti-corruption agencies.

A broad spectrum of opinion emerged as to why there is a low level of corruption reporting by poor communities. One respondent said that most of the concerns listed above constituted a general reason why corruption was not reported. Some respondents referred to their responses in the previous question. Some imparted a sense that corruption was culturally acceptable in certain settings or regarded as a necessary and minor ‘evil’ to get things done. The SIU respondent noted that corruption could be regarded as a necessary part of both traditional and modern transactional norms:

*There is a low level of reporting – it has to do with the ‘corruptor – corruptee’ relationship, a case of quid pro quo. It has to do with the culture of business and tradition – there is a lack of faith.*



One or two respondents appeared to suggest that the poor shared a common culture that made corruption more acceptable. Clearly this does not imply that all poor people are pre-disposed to being corrupt and some were quick to add statements like, 'I do not believe that poor people generally endorse corruption'. However it is obvious that economically vulnerable households can less afford to stand on matters of principle or challenge the actions of those who are more powerful (and corrupt). Poor people may therefore be more disposed to 'adopting' a culture of accepting corrupt practices. Most respondents seemed to suggest that the poor 'learn the ropes' of social networks that are not of their making and beyond their control.

The DHLG&TA managers explained the importance of prior experience and the awareness poor service consumers have of being spatially and administratively marginalized and therefore unable to influence the way governance and administration are conducted. Under these circumstances it is both futile and dangerous to challenge the powerful and the corrupt:

*Poor communities experience situations where corruption is reported but it takes too long to reach any form of conclusion. People are often distant from the local authority / leadership. Ward committees sometimes cover 20 villages – some communities do not know the local councillor. They see the well-educated doing it (corruption) and they are helpless – court processes are drawn out and investigations lacking.*

The inspector in the Social Development Department underlined this view, that is, that vulnerability and fear, combined with a sense of inevitability, function to reduce the likelihood that corruption will be reported.

*Most important is fear of reprisals. The poor eventually realize that they have to pay (kickbacks and bribes) but they do not initiate this.*

Fear of reprisal or negative consequences initiated by those in power was strongly emphasized by the provincial manager who had acted as a whistle-blower. While his comments related to the possibility of reporting corruption by fellow civil servants, he made it clear that citizens and the poor in particular would also confront such dilemmas, that is, the dilemma of whether to trust the people they are reporting the corruption to.

*Reprisals are also relevant as is fear of not getting support from those in power. They do not trust the forums for reporting corruption – such a forum is needed. There is a lack of confidence to report corruption – fact to face interaction is needed, not a 'hotline' – it is not trusted.*

### **A2.13.5 What is the primary motivation for public servants / officials to become involved in corruption?**

*Again prompts were used to guide responses – these were:*

- low salaries;
- occasional financial crisis;
- need;
- unusual opportunity;
- general culture of the bureaucracy; and

- unlikely to be exposed.

There was complete consensus from respondents that public servants become involved in corruption due to greed more than any other motivating factor. In some instances this was combined with occasional financial crisis and opportunity. There was an equally strong consensus that low salaries and need are not contributing factors.

South African public service salaries were regarded by all as more than adequate. The pattern of high-level personnel being involved in corruption was cited as proof that salary scales have little bearing – in fact the higher paid officials and politicians seemed most prone to engaging in the really high-value cases of corruption. Lower level petty graft was regarded as financially insignificant.

*Greed – the level of people involved earn salaries in excess of R500,000 per annum, at a lower level it is mostly small pilfering. There is a difference between planning to rip the public off in a big way and taking a small item out of opportunity (Provincial Treasury advisor).*

More than one respondent mentioned the possibility that officials were unable to cope with the cumulative pressures of a market-based society and tended to get caught up in extravagance and status-seeking purchases. This was probably the predominant explanation for 'greed' and explained why well-paid officials find themselves in financial crisis.

*It is not salaries. Values are wrong – it is about greed. People seek status symbols and get into debt – then they look for external forms of income. It is also about lack of controls and opportunity. In a financial crisis, people will take an opportunity, they recognize that they can subvert the process.*

The same DHLG&TA manager went on to note that local government presents special opportunities in this regard due to its autonomy from other spheres of government and the fact that this weakens any form of oversight.

*Local government provides the opportunity to do this – local autonomy means lack of oversight – 'there is too much autonomy'.*

In contrast the inspector in the Department of Social Development stressed that departmental culture and lack of oversight were not contributing factors and that systems for checking acted as an effective deterrent.

*I can only answer for the Social Development Department [where the problem is] financial crisis brought about by peer pressure / irresponsible spending and unusual opportunity. It's not the culture of the department or disregard for the controls – people do fear getting caught.*

The SIU respondent felt that the main explanation was that the pressures of a market-based society combined with weak administrative systems and poor checks and balances in the public sector that presented opportunities for abuse.

*Greed – they are not underpaid. It is also a matter of opportunism – the low capacity is evident and the person 'takes the gap'. Also about systemic weakness where the policy is not in place, but where it is there is still the compliance problem.*

Political context also has a bearing on corruption, and in the minds of some civil servants the new democratic South African state is not entirely free of its apartheid past. State

authority is somehow synonymous with apartheid authority and is rejected at some level – especially where policing and criminal investigation is concerned. Whether these perceptions are authentic or simply an excuse to reject authority of any form and question the rule of law is obviously a moot point. Some respondents see within this the reversion to traditional authority when the interests of the individual are not served by the new democratic state.<sup>6</sup>

*In the old (apartheid) order there was not less corruption but it was discrete, now it is in the open. People buy into corruption rather than reporting it. The attitude is 'I won't sell my brother'. The state is still seen as the 'Boers', even by those who are part of it.<sup>7</sup> 'You must remember that under tribal culture people don't recognize those who are elected.'* (Scorpions respondent)

### **A2.13.6 To what extent are the public, and especially the poor, pre-disposed to offering a bribe in order to secure services?**

Responses to this were mixed. Three respondents indicated that they could not comment or did not regard this as a significant element of corruption. Four said that such a disposition does exist but two of these said that it was not initiated by citizens and largely resulted from coercion by those in authority – again the overall impression was that it was not a significant factor. The Provincial Treasury advisor ascribed this 'low-level' behaviour to a breakdown in moral values and suggested that it might be cause for some concern. The SIU investigator suggested it was a familiar convention in South African society but evidence of its operation came mostly from *urban legend*. The Scorpions investigator again ascribed it to 'culture' and implied that it was fairly prevalent and well entrenched in certain segments of the population.

*There is a culture of 'pop-up', that is, a tradition of presenting a gift when interacting with authority. The driver's licence scam<sup>8</sup> is an example.*

On reflection it appears that this might be an important point as the convention of 'pop-up' is fairly familiar and widespread amongst poor people who interact with the state. It frequently refers to a blurred form of payment that can include both legitimate and often minor bureaucratic fees charged by the state for processing certain transactions but it can equally refer to irregular payments to state officials to ensure that the citizen's transaction is not hopelessly delayed or otherwise neglected. The defining feature of the 'pop-up' is that it is usually minor in monetary terms and it is not a complex transaction – usually involving only one other person. It is also not limited to transactions with the state.<sup>9</sup>

### **A2.13.7 Are whistle-blowers sufficiently protected?**

The overall impression created by the collective responses was that it is very difficult to protect 'whistle-blowers' even when the will to do so exists (and that is not always the case). Only two respondents felt that whistle-blowers were adequately protected and this related to particular institutional environments, namely the Social Development Department and Buffalo City Municipality. In the case of the Social Development Department it was clear that the protection relied upon the fact that the informants were generally junior people in a large institution – such strategies would be unlikely to work in smaller institutions like municipalities or where the whistle-blower is from a small group of senior managers.

*In the department they are definitely protected, we have one contact only and then we leave them alone (to avoid exposure).*

The Buffalo City internal auditor did not fully explain his confidence in the system for protecting whistle-blowers but noted the difficulty in acting on such information.

*They are protected at the municipality. Investigations are undertaken but these can be expensive if they are detailed – frequently we are looking into more than fraud. The deterrent value is more important. BCM has no hotline – I am against this mechanism because we would not be able to respond effectively to the calls – that is, make follow-ups and report outcomes – our control environment is inadequate.*

The remaining four respondents noted that protection for whistle-blowers could never be adequate. The provincial manager who had personal experience of acting as a whistle-blower highlighted the strong likelihood that persons undertaking to reveal corruption were certain to become the target for both victimization and strategies to discredit or marginalize their revelations:

*They are not well protected. Confidence in the protective measures is lacking and as a result people keep quiet. In the same issue that my case involves, two people were previously suspended, one for about 15 months and another since October 2003 (about 28 months prior to the date of the interview [Feb. 2005]) These lengthy suspensions are typical strategies to remove those who blow the whistle but nothing is done to challenge this, despite the fact that it is a well-known situation – the Auditor General reports consistently highlight this problem but nothing happens. The Public Service Accountability Monitor (PSAM)<sup>10</sup> gets little support from government for its work, they are attacked on racial grounds (the director is white) and are generally ‘slagged off’.*

One of the strongest disincentives to whistle-blowing is probably simply that undertaking such action will almost certainly make one’s working life more difficult, and in the Eastern Cape government departments are already fairly stressful working environments. Protection may well come from informal networks and alliances rather than the official system for protecting whistle-blowers.

*...there are probably not enough guarantees to ensure protection. In reality civil servants do not respond to authority, you need alliances and co-operation. You need to make somebody’s life easier – remember as a public servant you will ‘prioritize that which keeps you out of the shit’.*

By comparison, those in power who are corrupt have an array of informal strategies that they can use against people who expose or threaten to expose their wrongdoing. Anonymity appears to be the safest guarantee but in cases of serious exposure resulting from information that is privileged, it is fairly easy for the ‘exposed’ to work out who the ‘exposer’ was. Once disciplinary action begins it is also easy to work out who is implicated and who is not, and whistle-blowers will be among the latter. As one DHLG&TA manager noted, ‘You can’t be anonymous to infinity’. The most comprehensive outline of problems associated with whistle-blowing came from the Scorpions investigator:

*It is very difficult to protect them. To be useful they have to have inside information. Sometimes they are the only people not receiving ‘dirty money’ so its easy to work out who blew the whistle. When this happens (that is, full*

*investigation and sanctions) its is easy to identify the whistle-blower because 'he is the last man standing'. But sometimes even before it reaches this stage, they are 'worked out', that is, the system is manipulated to ensure that they are sidelined or compromised. New people coming into a corrupt institution often 'pick up the same culture'.*

*An example is the Premier (Eastern Cape Premier Nosimo Balindlela). She came in (to office) trying to fight corruption but then found herself under political pressure. Another example is Shanks Maharaj, who dug his heels in against irregular practice by his superiors, and as a result was suspended on 'trumped-up charges'.*

*Whistle-blowers are usually identified, even if not formally – it becomes evident who the 'culprit' is and 'they work him out'. Informally the whistle-blower is marginalized. People are easily drawn into corruption – it may be a small incident but once they are drawn in they are compromised (there is no going back). The more powerful exploit this to protect themselves. (Scorpions respondent)*

The last point is important, that is, corrupt officials lure in other officials who could expose them and compromise them with small irregular 'favours', thus nullifying their potential to reveal corrupt practice. It appears to be widely deployed and it might be an important component of the induction programme for new civil servants to alert them to this strategy and assist them to remain uncompromised.

It might reasonably be assumed that high-profile cases of exposure offer some protection to the whistle-blower in that it is more difficult for the exposed to take retributive action against the whistle-blower once the case is in the public domain. This apparently is a false assumption – whistle-blowers have sometimes held media briefings in conjunction with anti-corruption agencies, only to find that disciplinary action, suspension, or even dismissal is the result when they return to their workplace. The media, while happy to cover the initial exposure, seldom bother to follow-up the case and publicize what ultimately became of the whistle-blower.

*A lot is done but they (whistle-blowers) can never be protected 100per cent and often end up being the victims. The greatest victimization occurs when the exposure occurs 'up-front', that is, it is overt.*

### **A2.13.8 Are the anti-corruption agencies effective in exposing, investigating and prosecuting corruption?**

It is important to recall that three of the seven respondents actually worked for the anti-corruption agencies under discussion and the remainder had close working relations with the agencies. Overall, however, it appeared that most respondents made a conscious effort to be objective in their assessment.

Most respondents were aware that the different agencies (Scorpions, SIU, SAPS Organised Crime Unit, SAPS Commercial Unit, Asset Forfeiture Unit and JACT) all had different briefs and roles, and that it would be unfair to compare each agency according to a standardized set of criteria. The SIU respondent was particularly keen to point out this division of tasks, how these fitted together into an overall corruption prevention strategy and the difficulty in comparing the various programmes.

*Comparisons are unfair because they operate differently and with different resources (highlighted differences in size). The key is good co-ordination between the different agencies. There is a lot more co-ordination now than in the past, although not between the SAPS and Scorpions – they are still in a conflictual relationship. Since Hofmeyer headed up the SIU, co-ordination is a top strategic objective. We have different roles – the SIU for example gets information from the AG on cases of criminal conduct, after investigating we involve the Scorpions and the SAPS (for arrests – we do not arrest) and the National Prosecutor (including Asset Forfeiture Unit) – each has a role to play. Collectively we try to be a ‘one-stop shop’. The most successful example of this internationally is the Hong Kong Independent Commission Against Corruption – a real one-stop service.*

Most respondents nonetheless regarded effectiveness in investigations and prosecution as important, as well as independence, powers, experience, accessibility and co-ordination – these were reasonable criteria whereby the different agencies might be assessed.

The least favourable comments were reserved for the SAPS units, although the provincial manager victimized for exposing corruption reported having received good support from the Organised Crime Unit and the SIU respondent was particularly careful not to criticize the SAPS. JACT as a provincial co-ordinating body involving different agencies received favourable comment, but has subsequently been shut down – a move that seems at odds with the favourable comment from most respondents.

The SIU probably received the most favourable comment, particularly in terms of comprehensiveness of service and streamlined operation. There were some concerns about the SIU’s political independence (the need to protect this), their funding, their perceived ‘elitism’ and their high case load – which sometimes affected the quality of investigations. The Scorpions were similarly well regarded, although with a few concerns about their elitism, experience and investigative capabilities. There was some concern that the two most prestigious agencies (SIU and Scorpions) were under increasing pressure to take on only the ‘winnable’ cases.

The Provincial Treasury advisor drew attention to the effort and resources that go into what he regarded as mainly symbolic or political gestures against corruption. He cited the ‘Pillay Commission’, launched in 2005 and focusing on corruption in the Eastern Cape government:

*The Pillay Commission, for example, is likely to be swamped with the cases they have undertaken, but it is unlikely they will produce anything new. What will the outcome be? Where are they going with this? It’s a paper storm. The whole thing is a political exercise launched by the Premier who is under pressure to reduce corruption.*

Powers of investigation and subpoena as well as the capacity to properly research cases were valued by some respondents, including the Scorpions investigator, for effective anti-corruption work:

*The Asset Forfeiture Unit under the National Prosecuting Authority is probably the most effective because it can do ‘deep research’ and it has extensive powers. Under the Prevention of Corruption Act (POCA) the AFU can conduct*

*investigations where the perpetrator must answer to the AFU to avoid direct action.*

Amid clear indications of competition, one respondent said ‘...there is competition between the different agencies and the Scorpions tend to get the cream of the cases’. It was also alleged that this had deteriorated into active non-co-operation from some agencies, in particular the SAPS Commercial branch in East London (described as weak, unco-operative and ‘generally not interested’). The JACT model was generally considered a good example of co-ordination, apparently because of their willingness to include officials from different agencies:

*JACT (Joint Anti-corruption Team) is East London based and we (and the police) second people to them. They focus mostly on municipalities and deal with smaller cases of fraud. There is strong co-ordination with them because the Scorpions’ second in command is part of JACT.*

Combining the resources and efforts of all agencies was clearly a priority for some respondents who felt that the large corruption caseload demanded a more co-ordinated and co-operative approach:

*There is too much work for these agencies and not enough resources. The DHLG&TA, for example, has to provide the funds for SIU investigations and the investigators are not always competent. ‘Corruption is the norm not the exception.’ The JACT model is supposed to streamline the process but the courts often let us down – the department of justice does not always understand the cases they have to prosecute. {Some discussion on need for special courts / magistrates to deal with corruption – but led by interviewer – respondent felt that these would help.} The SAPS is more used to criminal cases – they do not always know the (anti-corruption) legislation...we work with all agencies – you have to co-operate to make headway. We have too much evidence of corruption to leave out any of the agencies.*

For those charged with practical departmental strategies against corruption, the challenge seemed to be to get reliable and pragmatic service from these agencies in actual prosecutions. This was seen as far more important than the more political gestures of high-profile arrests geared towards presenting an image of ‘being tough on corruption’.

*I’m not so happy with them (the court and investigative components);<sup>11</sup> sometimes the investigators don’t pitch-up in court and things are delayed. I like to come together and make deals with the investigators, prosecutors, magistrate, defendant – things reach a conclusion more smoothly that way and its better to obtain some form of conviction and sentence than to take a hard line and drag things out or get no conclusion. Some of the agencies (anti-corruption) take a harder line – if you go to jail for two years or 12 years it’s much the same thing – it’s not nice. The Scorpions need help.*

The Inspectorate valued the communication and feedback that it was able to receive from the SIU on joint cases, and praised the SIU’s ability to process large volumes of investigations:

*The SIU has over 700 cases and have handed 150 over for prosecution – they are good at streamlining. All the SIU are ex-SAPS, that is, they are experienced investigators. The SIU also get good management from Frank Khan and they have political backing (although they have to put effort into*

*this). The Scorpions lack experience – many of their staff are graduates with no practical skills. They work as an elite but do not provide good feedback on cases referred. The SIU report back on cases and have good liaison.*

### **A2.13.9 Public confidence in the anti-corruption agencies**

The respondents had very mixed views on this topic but the majority view appeared to be that the public view of these agencies is not positive. The reasons for this varied from the view that the public do not see the results of their work or that 'visible justice' is lacking, to the idea that the public has unrealistic expectations of these agencies and everyone wants their own interests served. One respondent suggested that the agencies are 'over-hyped' and that the public perceives as much. Two respondents felt that the agencies were reasonably well perceived largely due to good marketing (especially in the case of the Scorpions), but that the SAPS had a poor image. The SIU respondent said his organization had less need of positive PR but conceded that all agencies appreciate good PR because it boosts their prestige.

Few respondents appeared to consider public confidence from a governance perspective or that partnerships with civil society might assist their work and broaden civil co-operation. Public confidence was almost exclusively discussed as a public relations function.

### **A2.13.10 Should anti-corruption agencies have some link to poor communities who suffer the loss of services due to corruption?**

All but one respondent felt that such links would be useful – it was not explicitly said, but it was implied that this would give communities more ownership of anti-corruption programmes. While it may not always be possible to target those who were directly disadvantaged by the corruption, a report back could be directed at the community where the problem occurred.

*... you can't always pinpoint who has lost out, for example in the building of a road. Where someone has been 'done-in', that is, an individual, you can make repairation. But it is worth doing report backs at the community level.*

One respondent suggested that this would be best facilitated by giving the agencies more independence to report back to the public on the outcome of cases. The purpose of this would be not just to address those who had been aggrieved by the corruption (the Asset Forfeiture Unit sometimes returns misappropriated state assets directly to the effected community), but to build a stronger form of citizenship by showing that corruption does not go unpunished and that it has consequences. It was even suggested that 'posters be erected on a concluded case with the photos of those convicted and the jail sentences handed down'. The BCM internal auditor proposed that local government should take the responsibility for reporting back to communities and that cases should be reflected on and analysed to facilitate this. The DHLG&TA managers felt that provincial government would welcome such practice, that is, good governance, but could do little to enforce it:

*The department's approach is one of promoting good governance – we do not involve ourselves in sanctions – we just want results. We also try to educate the community about their role but we cannot force this – it is up to council to take up the AG report, for example, and do report backs to the public. All of*



*this is within the reporting frameworks. The problem is enforcement – what do you do if they do not comply – what are the penalties?*

Only one respondent (the Scorpions investigator) was wary of doing this, suggesting that such interventions may not be welcomed by communities where tribal or familial networks would ensure on-going support for those convicted of corruption.

#### **A2.13.11 Is corruption effectively prosecuted and are the consequences of conviction sufficient to function as an effective deterrence?**

This issue had already been partially addressed in other questions and most respondents had indicate some dissatisfaction with the measures / sentences involving corruption cases. Most respondents affirmed this as a problem and indicated reasons like intervention by politicians. It is also widely acknowledged that there is a reluctance to act firmly because of alleged implications in terms of fair labour practice – the following example was outlined:

*...the biggest problem is suspensions – there are long-term suspensions with pay. In Butterworth / Mnquma two officials (Waka and Van Schalkwyk) went home for three years on full pay and then got ‘golden handshakes’. There are many other examples. There is a reluctance to prosecute – accusations should not be made without follow-up, they must fire the guilty party and, if necessary, face the consequences in the CCMA / labour courts. Municipalities need to try for prosecutions but they are scared and try to extricate themselves – they must fire and then review the position – not back off because they anticipate legal costs or a rough time in court.*

The municipal auditor held a slightly different view and suggested that a limited range of options for local government in sanctioning corrupt behaviour often led to paralysis because the only available sanction was too harsh.

*The problem can go very high, for example, the Municipal manager in BCM is currently suspended – this makes the process of investigation / prosecution very difficult and the usual sanction is dismissal – which is not always appropriate and is prone to challenge...*

The auditor also observed that a pattern had developed in local government where local councillors appeared to be beyond challenge unless they had committed a particularly serious offence that warranted criminal action:

*The system for regulating the behaviour of councillors does not work well – the Speaker has to do this and s/he is prone to political influence and often finds it difficult to act independently. There is a need for an ombudsman to do arbitration in these instances.*

## A2.14. Concluding remarks

The seven respondents provided a credible cross-section of views on corruption, why it occurs and how it is best combated. The perspectives outlined were independent but tended to reflect a degree of common experience derived from different agencies and their respective roles in working to reveal, prosecute and deter corruption.

An important revelation is that corruption is seen as more important at the executive (political) level than at the administrative level. This may be partly attributable to the fact that respondents were all employees of the state rather than holders of public office. The point was strongly made, however, and was frequently reinforced by interviewees relating their experiences. The severity of the problem lies in the political precedent that is set, that is, corruption is often disguised as an alternative political culture – norms and values are questioned in order to *regularize* irregular practice. This form of corruption is insidious and becomes blurred in social consciousness because, unlike fraud or graft, its ‘wrongness’ is contested.

Corruption at the local government level was seen as the most significant in terms of impact on infrastructure services to the poor. The most commonly cited reasons were that local government is at the ‘coalface’ of such delivery. Other reasons included the perception that local government, especially small municipalities, does not draw upon significant amounts of state funds and therefore requires less scrutiny in terms of deploying state monies. An obvious reason is that because local government has the lowest capacity of all other spheres of government, it is the most easily cheated.

*Frontline corruption*, that is, bribes for preferential service, is not seen as important in the larger context of corrupt transactions. Corruption occurs at this level and is difficult to trace because it often leaves no ‘paper trail’, however its impact in monetary terms was negligible according to most respondents.

The most significant corruption occurs in large infrastructure projects. The respondents did not link degrees of corruption with a particular type of service but suggested that all large infrastructure projects are vulnerable – especially housing provision. The larger projects pose the greatest temptation to corrupt intervention but also have the strongest safeguards. Corruption in large contracted projects has other complex dimensions. It is often mixed in with racially targeted empowerment policy and legitimate efforts to affirm the role of emerging small contractors. Furthermore it often involves political leadership (councillors). This makes it difficult to investigate and poses political risks for those who expose and prosecute it.

The involvement of councillors in corruption was described as ‘one of the most disappointing developments’. One of the more convincing explanations linked it to the recent notion of councillors as ‘career politicians’, that is, the idea that it is a full-time job with an entitlement to full remuneration and benefits. The link between this and corruption was ambiguous, however, in that both well- and poorly paid local politicians seemed to be implicated in corruption.

The impact of political transition has played a role in the incidence of corruption. Municipal councillors are often from a poor background. Their political naivety allows them to be easily tempted into kickbacks, particularly once they become aware of the huge sums of infrastructure project funds that pass through the municipal coffers on the way to poor communities.

Black Economic Empowerment (BEE) policy has played a role in expanding corruption. Endorsed by all as a general observation, there are conflicting views about the reason for this. First there is the view that the dilution of the principle that contracts should go to the most competent and cost-effective service providers makes corruption inevitable. This is frequently accompanied by the idea that BEE is a new form of racial solidarity geared simply at generating material benefits to select black business people by regular or irregular means. Second, there is a view that BEE policy is not inherently conducive to corruption but that the misinterpretation of BEE principles and clauses within the policy has created fertile ground for corruption.

The most significant corruption is seen to occur within the tendering and procurement transactions between local government and the private sector, however the staffing of local municipal administrations is also seen as problematic. Race and party affiliation have often pushed aside other criteria including the most elementary considerations of competence. The problem does not only emanate from the state, however – frequently the local general public expects that municipal jobs should be reserved for local people and sometimes even family and acquaintances. Where these appointments go to local people who are not qualified for the job, it weakens the capacity of local government.

The widespread use of *suspensions* in government cannot be seen simply as the legitimate outcome of departmental discipline or performance management functions. Suspensions are being invoked for more sinister purposes and are used to take actual or potential dissidents out of the system without entering into a legal process that demands that the facts and details of the issue be revealed.

The underlying reasons for the growth of corruption is a fraught issue. Some ascribe this to *culture and tradition per se* and it would be easy to dismiss these views as racist or ethnocentric. However within the political and cultural discourse of the Eastern Cape there are elements of ‘espoused culture’ which do appear to endorse practises that are undemocratic or built on patronage. Where traditional leaders exercise powers in respect of rural land and services and where such power is based on lineage, there are important questions to be asked about the basis of such power and accountability. This raises the spectre of Mamdani’s bifurcated state, that is, the notion of a parallel or competing ‘state’ (traditional authority) to which certain but not all segments of the populace owe allegiance.

Possibly more important is the ‘learned culture’ that may be a factor in poor communities that had become accustomed to the unequal and unaccountable public service that was the hallmark of apartheid. Unfortunately this convention survived and is now manifest in new configurations of state dysfunctionality. The culture referred to by the respondents was that of ‘acceptance’, that is, little expectation that the state will be even-handed, and a readiness to embrace the corrupt networks and practices that ensure survival and the partial overcoming of these failures within the state. As one respondent noted, challenging entrenched corruption requires resources, skills and a degree of economic immunity – all attributes that the poor do not have.

Municipal finance policy may also have unwittingly contributed to corruption. As the significance of the Equitable Share (operating grant) and Municipal Infrastructure Grant have increased, there has been less emphasis on local revenue generation. Less pressure on poor communities to contribute to the operating costs of services has also meant less responsibility for the manner in which those operating funds and capital investments are deployed. Thus citizens as a whole, but particularly poor citizens, are

inadvertently but increasingly distanced from the machinery of public infrastructure and services funding.

The new laws and policies to combat corruption are seen to be only partially effective and the perceived reasons vary. The most optimistic view is that it is too early to assess the effectiveness of these laws. A promising aspect of the new laws in the Municipal Finance Management Act is the 'supply chain management' provisions, which have the potential to clean up procurement and contracting through vastly more transparent tendering and assessment provisions. Another view is that BEE policy nullifies the good governance safeguards, largely because the BEE provisions are not being properly interpreted in awarding tenders. A more entrenched problem is that the legislation cannot always distinguish between wilful corruption and the unintended results of incapacity and incompetence. There is also a view that suggests that under particular social and political circumstances, even the best laws and policies will be subverted by well-prepared private sector players in partnership with more sophisticated public servants and politicians.

Laws need a degree of political will to be effective and few of the respondents felt that the current governance environment was conducive to building compliance with the legislation. This view seemed to be particularly shaped by the experiences of the Eastern Cape where successive layers of government seem to be incapable of generating an unambiguous commitment to clean governance. One way of demonstrating such commitment would be to take a consistent and firm stand in matters of non-compliance and ensure that severe sanctions are invoked.

There is little capacity within both government and civil society to make the available checks and balances operate more effectively. A contributing factor is the lack of accurate and reliable information – the non-provision of financial statements to the Auditor General being a key example. Public accountability is not a strong feature of the current system even where some watchdog bodies are fulfilling their brief. The Auditor General's work, for example, does not have a broad impact on society and the implications of the AG reports are not unpacked in a clear and understandable way – this appears to be an obvious issue for intervention by NGOs. Public opinion is being misled and manipulated and only a handful of civil society / NGO interventions have been effective in remedying this, including PSAM and some journalists. The many public review processes like IDP reviews and public presentation of the AG's report tend to be ignored or weakly followed.

In view of the problems outlined above it was unsurprising that all respondents thought that the poor had little meaningful access to procedures that ensure government accountability. Factors underpinning this included:

- poor neighbourhoods are susceptible to political manipulation;
- poor neighbourhoods have few resources to take issues up;
- watchdog functions are not premised on partnerships with the poor (but some act in the interests of the poor); and
- the systems of accountability require an organized form of civil society (civil monitoring groups, ratepayer bodies, etc.) rarely found in poor / rural areas.

Very few respondents thought that poor communities were capable of analysing the effects of corruption on their lives. Instead their experiences were largely characterized as that of passive 'victims'. Their responses are limited to the channels already under the control of the prevailing political powers. As previously noted, the expectations of the

poor are framed by historical experiences of spatial and social marginalization. Being economically and socially vulnerable, poor neighbourhoods fear the consequences of confronting corruption.

The involvement of public servants in corruption was overwhelmingly attributed to greed and the pressures of living in a society dictated to by the market. Rampant materialism was frequently cited as the reason for both growing debt and for people resorting to corrupt behaviour. *Real need* was rejected by all respondents as a motivating factor.

Whistle-blowers are seldom protected in the long-term after exposing corruption despite vigorous efforts by government and anti-corruption agencies to do so. The most effective forms of protection rely on retaining anonymity, but this cannot be assured over time. Informal alliances and co-operative networks often offer a better form of protection.

Respondents were reluctant to make comparisons between the different anti-corruption agencies, explaining that they had different roles and operated under different constraints and enabling factors. Relations between the various bodies vary from the co-operative and co-ordinated to outright competition and hostility. The SIU seems to put most effort into co-ordination with other agencies, whereas the South African Police Services special units were least well-regarded. Obstacles confronted by these agencies included increasing pressure to prioritize winnable cases and getting caught up in demonstrations of 'the fight against corruption' that are largely for political symbolism and public relations. Respondents conceded that the public perception of these agencies is generally not good, as the public tend to see through the PR aspect. The SIU and Scorpions may have overcome this to some extent with more sophisticated marketing and good results.

The application of effective sanctions against corrupt behaviour, including the facilitation of prosecution and sentencing by the courts, was regarded as flawed and often not conducive to deterrence. Fear of labour legislation and related litigation often means that no effective disciplinary action is taken. It was also apparent that this reticence is often contrived and may merely be an excuse not to act. Councillors exist largely beyond sanction unless their own party decides to act. The Code of Conduct for councillors and the role of the Speaker (in investigating irregular conduct) have proved ineffective.

## **A2.15. Endnotes**

1. Section 57 of the Municipal Systems Act relates to senior managers appointed by council itself where remuneration and benefits are at the discretion of council – these employees are appointed on performance contracts.
2. Suggestion that this could be followed up with Lawrence James.
3. Nkalo was mentioned in media reports at the time in connection with a tender to supply furniture to the education department and the fact that this deal had gone awry. It subsequently emerged that Nkalo was already under investigation for a previous contract that had not been fulfilled.
4. See accompanying article on this topic
5. It is unlikely that the municipality actually has 50 full-time councillors – they may however regard themselves as, de facto, full-time.
6. There is some recognition of this within social theory, that is, the notion of the traditional state and the modern democratic state competing for the loyalties of its citizens – Mamdani referred to this as the ‘bifurcated state’.
7. Some discussion ensued on this issue, that is, how a largely transformed civil service / police structure, predominantly African with many former liberation figures in key posts, can still be called ‘the boers’ under certain circumstances, and even by those who have responsible positions within the police / civil service.
8. Many driver-testing facilities in South Africa have had to be shut down because of widespread fraud in the issuing of driver’s licences.
9. The last observations are my own and based largely on anecdotal experience of this term and its usage.
10. An independent NGO watchdog that focuses on the Eastern Cape provincial government and analyses departmental finances, planning and other performance aspects.
11. The SD Inspectorate works extensively with the JACT, SIU, Scorpions and Auditor General.

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The sustainability of the livelihoods of the poor in low- and middle-income countries is compromised by corruption in the delivery of infrastructure services. Such services include water supply, sanitation, drainage, the provision of access roads and paving, transport, solid waste management, street lighting and community buildings. For this reason, The Water, Engineering Development Centre, (WEDC) at Loughborough University in the UK is conducting research into anti-corruption initiatives in this area of infrastructure services delivery.

This series of reports has been produced as part of a project entitled *Accountability Arrangements to Combat Corruption*, which was initially funded by the Department for International Development (DFID) of the British Government. The purpose of the work is to improve governance through the use of accountability arrangements to combat corruption in the delivery of infrastructure services. These findings, reviews, country case studies, case surveys and practical tools provide evidence of how anti-corruption initiatives in infrastructure delivery can contribute to the improvement of the lives of the urban poor.

The main objective of the research is the analysis of corruption in infrastructure delivery. This includes a review of accountability initiatives in infrastructure delivery and the nature of the impact of greater accountability.

For more information, please visit WEDC's web page:  
[http://wedc.lboro.ac.uk/projects/new\\_projects3.php?id=191](http://wedc.lboro.ac.uk/projects/new_projects3.php?id=191)

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