The impact of overlapping mandates of the South African public sector anti-corruption agencies on the South African anti-corruption framework

by

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submitted in accordance with the requirements

for the degree of

DOCTOR OF PHILOSOPHY

in the subject

CRIMINAL JUSTICE

at the

UNIVERSITY OF SOUTH AFRICA

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DECEMBER 2021

DEDICATION

I dedicate this thesis to, Evani Govender and my son Aryan Mieko Pillay, and my brothers Harold and Mervin Dorasamy, who are an inspiration to me.

DECLARATION

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I declare that the above thesis is my own work, and that all reference sources I have used or quoted have been indicated and acknowledged by means of complete references.

27 September 2021

SIGNATURE **DATE**

EDITOR'S CERTIFICATION

28 October 2021

I, Marlette van der Merwe, hereby certify that the text and bibliography of the doctoral thesis titled "The impact of overlapping mandates of the South African public sector anti-corruption agencies on the South African anti-corruption framework by Povendran Dorasamy Pillay, have been edited by me according to the Harvard referencing method as used by the Unisa School of Criminal Justice (2019 edition).

Marlette van der Merwe

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ACKNOWLEDGEMENTS

It gives me the greatest pleasure to thank the following persons and organisations for their contributions and support to my research study:

- I give gratitude to God the Almighty for giving me the strength, wisdom and perseverance to complete this research study.
- Professor Bernadine Benson and Dr. Nick Olivier, for their support and professional guidance throughout my research study.
- The University of South Africa, for the opportunity to complete this research study through them.
- The South African Anti-Corruption Agencies their Executive Officers and Commanders, for granting me permission to conduct interviews at their organisations. The Anti-Corruption agencies were the following:
- Special Investigation Unit
- South African Police Service
- Directorate of Priority Crimes Investigation
- Independent Police Investigative Directorate
- Asset Forfeiture Unit
- Finally, Evani Govender and my son Aryan Mieko Pillay, for allowing me time to work when I should have been spending it with them and giving me support through difficult times.
- Marlette van der Merwe, for editing this thesis.
- Elize Nagel, for formatting.

SUMMARY

The purpose of this research study was, firstly, to identify the overlaps of mandates of the South African public sector anti-corruption agencies, and secondly, to study the impact that these overlaps have on the South African anti-corruption framework. The research further led to other focus themes: a comparison of South African anti-corruption agencies (SAACAs) to international anti-corruption agencies, the revision of the mandates of the SAACAs, and the implementation of best practice models in the South Africa anti-corruption agencies.

A qualitative research method was applied in this study; this goes well with the pragmatist worldview. A pragmatist worldview allows researchers the latitude to choose the method, the type of technique and the procedures to be used in the research study. A literature review was conducted, which was followed by interviews with managers/commanders, lawyers and investigators from the SAACAs, namely the Special Investigating Unit (SIU), Asset Forfeiture Unit (AFU), Directorate pf Priority Crime Investigations (DPCI), Independent Police Investigative Directorate (IPID) and South African Police Service (SAPS). A total of 27 interviews were conducted. The sample size was 90 which was reduced to 27. This reduction was due to constraints experienced by the researcher. All the agencies were notified of the research and the purpose to interviews; however, agencies were not prompt in responding, one agency denied permission, and the staff were reluctant to avail themselves to be interviewed. The participants were chosen based on their experience and knowledge of investigation of corruption in South Africa. The data received from the participants were analysed using data collection methods, data analysis and interpretation techniques, and write-up of the findings, suggested by experienced authors.

The findings of the research revealed that there is a great deal of literature focused on the measurement of corruption, but corruption measurement results are based on perceptions instead of verifiable data. Corruption in South Africa is deep-rooted, and stems from decades ago, going back to the apartheid era, when the country used to conduct covert distribution of government monies. ACAs do not want to share information, because they would want successes for their ACA. This negative

impact results in a break in the chain of evidence, ultimately resulting in court cases being lost.

Many countries have followed the single ACA approach of Hong Kong, which is said to be a leader in approaches to fighting corruption in that country. These countries have been successful in fighting to reduce corruption. However, even countries that adopted the single ACA approach, such as Botswana, have been shaken by a series of scandals.

The participants have a good understanding of the corruption, the ACAs in SA, and the impact of the overlaps of the mandates of ACAs. This is confirmed from the interviews undertaken during this research.

The key conclusion is that South Africa has many capable ACAs, a sophisticated anti-corruption legal framework, and support from international donors, to help it fight the scourge of corruption. The country needs the political backing and support of key stakeholders to help it on this journey to reduce corruption. The mandates of the ACAs are complex and widespread; however, certain overlapping does cause them to be less impactful and less successful. The ACAs in the country need some changes, after which they will be able to produce successful outcomes. The mandates of the ACAs do not need a total overhaul, but rather some revision and clarity, in order to be more effective than they are currently. South Africa should not focus on the creation of a single agency approach. Instead, the country should utilise its strengths and improve on its weaknesses.

KEY CONCEPTS

Corruption, investigation, mandate, public body, public money, anti-corruption agencies, legislative framework.

OPSOMMING

Die doel van hierdie navorsingstesis was eerstens, om die oorvleueling van mandate van die Suid-Afrikaanse agentskappe teen korrupsie te identifiseer, en tweedens, om die impak van hierdie oorvleueling op die Suid-Afrikaanse raamwerk teen korrupsie te bestudeer. Die navorsing het verder tot ander fokustemas gelei: 'n vergelyking van Suid-Afrikaanse agentskappe teen korrupsie met internasionale agentskappe teen korrupsie, die hersiening van die mandate van die Suid-Afrikaanse agentskappe teen korrupsie, en die implementering van modelle vir beste teen-korrupsie praktyk in die Suid-Afrikaanse agentskappe vir korrupsie.

In hierdie studie is 'n kwalitatiewe navorsingsmetode toegepas, want dit stem goed met die pragmatistiese wêreldbeskouing. 'n Pragmatistiese wêreldbeskouing stel navorsers in staat om die metode, die tipe tegniek, en die prosedures wat in die navorsingstudie gebruik moet word, te kies. 'n Literatuuroorsig is uitgevoer, wat gevolg is deur onderhoude met bestuurders/bevelvoerders, advokate, en ondersoekers van die Suid-Afrikaanse agentskappe teen korrupsie, naamlik die SIU, AFU, DPCI, IPID en SAPS. Altesaam 27 onderhoude is gevoer. Die deelnemers is gekies op grond van hul ervaring en kennis oor die ondersoek na korrupsie in Suid-Afrika. Die data wat van die deelnemers ontvang is, is met behulp van data-insamelingsmetodes, data-analise en interpretasietegnieke geanaliseer, en die bevindings voorgelê soos deur ervare skrywers voorgestel.

Die bevindings van die navorsing het aan die lig gebring dat daar heelwat literatuur is wat gefokus is op die meting van korrupsie, maar dat die resultate van korrupsie-metings gebaseer is op persepsies in plaas van verifieerbare gegewens. Korrupsie in Suid-Afrika is diep gewortel, en spruit voort uit dekades gelede, terug na die apartheidsera, toe die land vroeër geheime verspreiding van regeringsgelde uitgevoer het. ACA's wil nie inligting deel nie, want hulle wil suksesse vir hul eie ACA bekom. Hierdie negatiewe impak lei tot 'n breuk in die ketting van getuienis, wat uiteindelik daartoe lei dat hofsake verloor word.

Menigte lande het die enkele ACA-benadering van Hong Kong gevolg, wat beskou word as 'n leier in benadering tot die bestryding van korrupsie in die land. Hierdie lande het daarin geslaag om korrupsie te verminder. Selfs lande wat die enkele

ACA-benadering gebruik het, soos Botswana, is egter deur 'n reeks skandale geskud. Die deelnemers het 'n goeie begrip van die korrupsie, die ACA's in SA en die impak van die oorvleueling van die mandate van ACA's.

Die belangrikste gevolgtrekking is dat Suid-Afrika heelwat bekwame ACA's het, 'n gesofistikeerde raamwerk teen korrupsie, en ondersteuning van internasionale skenkers om te help om die plaag van korrupsie te beveg. Die land het politieke steun en ondersteuning van belangrike belanghebbendes nodig, om dit op hierdie reis te help om korrupsie te verminder. Die mandate van die ACA's is kompleks en wydverspreid; sekere oorvleueling veroorsaak egter dat dit minder impak en minder suksesvol is. Die ACA's in die land het 'n paar veranderinge nodig, waarna hulle suksesvolle uitkomste kan lewer. Die mandate van die ACA's het nie 'n totale hersiening nodig nie, maar eerder 'n mate van hersiening en duidelikheid om meer effektief te wees as wat dit tans is. Suid-Afrika moenie op die skepping van 'n enkele agentskapsbenadering fokus nie. In plaas daarvan moet die land sy sterk punte benut en sy swak punte verbeter.

SLEUTELKONSEPTE

Korrupsie, ondersoek, mandaat, openbare liggaam, openbare geld, agentskappe teen korrupsie, wetgewende raamwerk.

ISIFINQO

Inhloso yalesi sifundo socwaningo, okokuqala, bekuwukuhlonza ukweqana kwemiyalelo yezikhungo ezilwa nenkohlakalo eNingizimu Afrika, okwesibili, ukufunda umthelela walokhu kweqana okunawo ohlakeni lokulwa nenkohlakalo eNingizimu Afrika. Lolu cwaningo luphinde lwaholela kwezinye izindikimba okugxilwe kuzo: ukuqhathaniswa kwezikhungo ezilwa nenkohlakalo zaseNingizimu Afrika nezinhlangano zamazwe ngamazwe ezilwa nenkohlakalo, ukubuyekezwa kwegunya lezinhlangano ezilwa nenkohlakalo eNingizimu Afrika, kanye nokuqaliswa kwezibonelo zezindlela ezihamba phambili eNingizimu Afrika ezikhungweni ezilwa nenkohlakalo.

Kusetshenziswe indlela yocwaningo olusezingeni eliphezulu ephathelene nesimo kulolu cwaningo; lokhu kuhambisana kahle nombono womhlaba weprakmathisi. Umbono womhlaba weprakamathisi uvumela abacwaningi ububanzi bokukhetha indlela, uhlobo lwesu kanye nezinqubo ezizosetshenziswa esifundweni socwaningo. Kwenziwa ukubuyekezwa kwezincwadi, okwalandelwa yizingxoxo nezimenenja noma abaphathi, abameli nabaphenyi bezinhlangano ezilwa nenkohlakalo eNingizimu Afrika, Uphiko Oluphenya Ngokukhethekile , Iyunithi Yokudliwa Kwempahla, Uphiko Olubalulekile Lophenyo Lobugebengu, Uphiko Lwamaphoyisa Oluzimele lokuphenya kanye noPhiko Lwezemisebenzi Yamaphoyisa aseNingizimu Afrika (*i-SAPS*).

Kwenziwe izinhlolokhono ezingama-27 sekuphelele. Ababambiqhaza bakhethwe ngokusekelwe ulwazi noma isipiliyoni abanaso lophenyo lwenkohlakalo eNingizimu Afrika. Imininingwane etholakale kubabambiqhaza iye yahlaziywa kusetshenziswa izindlela zokuqoqa ulwazi, ukuhlaziya imininingwane kanye namasu okuhumusha, nokubhalwa kokutholiwe, okuphakanyiswe ababhali abanolwazi olunzulu.

Okutholwe ucwaningo kwembula ukuthi kunenqwaba yezincwadi ezigxile esilinganisweni senkohlakalo, kodwa imiphumela yokukala inkohlakalo isekelwe emibonweni esikhundleni seminingwane eqinisekisiwe. Inkohlakalo eNingizimu Afrika ijule kakhulu, futhi isukela emashumini eminyaka edlule, kusukela esikhathini sobandlululo, lapho izwe lalisabalalisa ngokuyimfihlo izimali zikahulumeni. Izikhungo Ezilwa Nenkohlakalo azifuni ukwabelana ngolwazi, ngoba zifuna impumelelo yezikhungo ezilwa nenkohlakalo zawo. Lo mthelela omubi uholela

ekunqamukeni kochungechunge lobufakazi, okuholela ekutheni amacala ezinkantolo alahleke.

Amazwe amaningi alandele indlela eyodwa yeZikhungo Ezilwa Nenkohlakalo esetshenziswa iHong Kong, okuthiwa ihamba phambili ekulweni nenkohlakalo kuleliya lizwe. La mazwe aphumelele ekulweni nokunciphisa inkohlakalo. Kodwa-ke, ngisho namazwe asebenzisa indlela eyodwa yeZikhungo Zokulwa Nenkohlakalo, njengeBotswana, anyakaziswe wuchungechunge lwamahlazo.

Ababambiqhaza banakho ukuqonda okuhle ngenkohlakalo, Izikhungo Ezilwa Nenkohlakalo eNingizimu Afrika kanye nomthelela wokweqana kwegunya leZikhungo Ezilwa Nenkohlakalo.

Isiphetho esibalulekile ukuthi iNingizimu Afrika ineZikhungo Zokulwa Nenkohlakalo ezinamakhono amaningi, uhlaka oluqinile lokulwa nenkohlakalo kanye nokwesekwa kwabaxhasi bamazwe ngamazwe, ukuyisiza ukulwa nesihlava senkohlakalo. Izwe lidinga ukwesekwa kwezombusazwe kanye nokwesekwa kwababambiqhaza ababalulekile ukulisiza kulolu hambo lokunciphisa inkohlakalo. Amagunya eZikhungo Ezilwa Nenkohlakalo ziyinkimbinkimbi futhi zisabalele; nokho, ukweqana okuthile kubangela ukuthi babe nomthelela omncane futhi baphumelele kancane. IZikhungo Zokulwa Nenkohlakalo ezweni zidinga izinguquko ezithile, emuva kwalokho zizokwazi ukukhiqiza imiphumela eyimpumelelo. Amagunya eZikhungo Zokulwa Nenkohlakalo azidingi ukuguqulwa okuphelele, kodwa kunalokho ukubuyekezwa kokuthile nokucaciseleka, emuva kwalokho bazokwazi ukukhiqiza imiphumela ehlabahlosile. INingizimu Afrika akufanele igxile ekwakhiweni kwe-ejensi eyodwa. Esikhundleni salokho, izwe kufanele lisebenzise amandla alo futhi lithuthukise ubuthakathaka balo.

AMAGAMA ABALULEKILE

Inkohlakalo, uphenyo, igunya, inhlangano yomphakathi, imali yomphakathi, izinhlangano ezilwa nenkohlakalo, uhlaka lomthetho.

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ABBREVIATIONS

ACA:	Anti-Corruption Agency
ACC:	Anti-Corruption Commission
ACECA:	Anti-Corruption and Economic Crimes Act
ACTT:	Anti-Corruption Task Team
ADB:	Asian Development Bank
AFU:	Asset Forfeiture Unit
AG:	Auditor General
AGDI:	African Governance and Development Institute
AIU:	Alien Investigation Unit
AQR:	Association for Qualitative Research
AUCPCC:	African Union Convention on Preventing and Combating Corruption
BACA:	Bhutan Anti-Corruption Commission Agency
BACP:	Business Anti-Corruption Portal
BCA:	Bain Consulting Agency
BRICS:	Brazil, Russia, India, China and South Africa
BUSA:	Business Unity South Africa
CA:	Corruption Agency
CARA:	Criminal Asset Recovery Account
CASAC:	Council for the Advancement of the South African Constitution
CC:	Corruption Controls
CJS:	Criminal Justice System
COGTA:	Co-operative Governance and Traditional Affairs
CPI:	Corruption Perception Index
CPIB:	Corrupt Practices Investigation Bureau
CW:	Corruption Watch
DCEC:	Directorate on Corruption and Economic Crime
DCS:	Department of Correctional Services
DFID:	Department for International Development
DNI:	Director of National Integrity
DPCI:	Directorate of Priority Crimes Investigation
DPSA:	Department of Public Service and Administration
DSO:	Directorate of Special Operations

EFCC:	Economic and Financial Crimes Commission
FATF:	Financial Action Task Force
FIC:	Financial Intelligence Centre
GPAC:	Global Program against Corruption
HAWKS:	Directorate of Priority Crimes Investigation
HKICAC:	Hong Kong Independent Commission against Corruption
IASA:	Institute of Accountability Southern Africa
ICC:	International Criminal Court
ICD:	Independent Complaints Directorate
ICRG:	International Country Risk Guide
IDOC:	Investigative Directorate for Organised Crime
IDSEO:	Independent Directorate of Serious Economic Offences
IG:	Inspectorate of Government
IMC:	Inter-Ministerial Committee
IMF:	International Monetary Fund
IOL:	Independent Online
IPCC:	Independent Police Complaints Commission
IPID:	Independent Police Investigative Directorate
ISS:	Institute of Security Studies
JCPS:	Justice Crime Prevention & Security
KACC:	Kenyan Anti-Corruption Commission
KICAC:	Korea Independent Commission against Corruption
MACC	Minimum Anti-Corruption Capacity
MAWG:	Multi-Agency Working Group
MEC:	Member of Executive Committee
MIG:	Municipal Infrastructure Grant
MP:	Member of Parliament
NA:	National Assembly
NACF:	National Anti-Corruption Forum
NCOP	National Council of Provinces
NDP:	National Development Plan
NDPP:	National Director of Public Prosecutions
NGO:	Non-Governmental Organisation
NIA:	National Intelligence Agency

NIS: National Integrity System

NPA: National Prosecuting Authority

NPC: National Planning Commission

NSSD: National Specialised Services Division

NSW: New South Wales

NSWICAC: New South Wales Independent Commission against Corruption

OECD: Organisation for Economic Co-operation and Development

OECDCCBFPOIBT: The Organisation for Economic Co-operation and Development on Combatting Bribery of Foreign Public Officials in International Business Transactions

OLS: Ordinary Least Squares

OSISA: Open Society Initiative for Southern Africa

PAI: Public Anti-Corruption Initiatives

PAM: Public Administrative Management

PARI: Public Affairs Research Institute

PCB: Prevention of Corruption Bureau

PIC: Police Integrity Commission

POCA: Prevention of Organised Crime Act

PP: Public Protector

PRECCA: Prevention and Combating of Corrupt Activities Act No. 12 of 2004

PRS: Political Risk Services

PSA: Public Service and Administration

PSC: Public Service Commission

SA: South Africa

SAACA: South African Anti-Corruption Agency

SADC: Southern African Development Community

SAIIA: South African Institute of Internal Auditors

SAPS: South African Police Service

SARS: South African Revenue Services

SIU: Special Investigating Unit

SSA: State Security Agency

TI: Transparency Index

U4: Transparency International Anti-Corruption Resource Centre

UK: United Kingdom

UNDP:	United Nations Development Programme
UNODC:	United Nations Office on Drugs and Crime
UNODCCP:	United Nations Office on Drugs Control and Crime Prevention
USA:	United States of America
WASP:	Special Investigation Unit with DPSA (named as the insect)

CHAPTER 1: GENERAL ORIENTATION

1.1 INTRODUCTION

Public sector corruption in South Africa is increasing, despite its preventive anti-corruption resources (Department of the Presidency, 2011:25). The National Planning Commission (NPC) (Department of the Presidency, 2011:25) characterises corruption as the abuse of an official position for individual pick up, which is especially harming to relations between the state and its citizens. Pauw, Woods, Van der Linde, Fourie and Visser (2002:333) agree that corruption is the abuse of position for personal gain. The NPC (Department of the Presidency, 2011:26) emphasises the following adverse effects as the results of corruption: the government's inability to deliver basic services, increased social mobility, as well as the inability to overcome inequality. According to Graythorne (1997:395), corruption enriches and advantages both corrupter and corruptee, and places the interests of the community "up for sale".

According to the Council for the Advancement of the South African Constitution (CASAC) (2011a), a great deal of the literature that focuses on the measurement of corruption is based on perception instead of verifiable data. This, they say, is difficult, and has led to reliance on perception-based indicators, such as the Transparency International's Corruption Perception Index (CPI). The National Anti-Corruption Forum (NACF) (2005:2) agrees with CASAC (2011a) that reliable corruption data remains difficult to collate and analyse, and the process to collate and analyse the data is expensive. South Africa was scored 42 out of 100 in 2013 (Transparency International, 2013). For the period 2018/2019, South Africa scored 44 out of 100, which is still low when compared to the period under review (Transparency Index (TI), 2019).

The CPI is a measurement of perceived levels of corruption within the public sector of countries. This measurement is done worldwide. The scoring is explained on a scale from zero (0) to 100, (0) being countries that are highly corrupt, and 100 as being very clean and least corrupt. Certain countries do score very well; however, there is no country that has scored a perfect 100. In 2008, South Africa was scored 49 out of 100. The 5-year period of comparison between the years 2008 and 2013 indicated that South Africa dropped by seven (7) percent in the scoring, indicating

that the level of perceived public sector corruption in South Africa was becoming worse. The reason for a 5-year comparison of 2008 to 2013 is to ensure that comprehensive and relevant data is sourced. At the time of the research study, it was still this period of 2008 to 2013. The researcher has kept to the initial base line of this period and has added the latest data to indicate the rise in corruption and commercial crimes to the text, below.

Another reason is that the last population census (at the time of the research) was conducted in 2011 (Statistics South Africa, 2012). According to Brodie (2013), it is critical to consider raw figures in the context of demographic changes in a country. Failure to do so could lead to skewed readings of crime statistics. Since the CPI is based on public perception, an accurate account of the population is vital in determining an accurate account of the CPI.

Hartley (2013) writes that the erstwhile Public Protector (PP), Advocate Thuli Madonsela, indicated in her 2013 report to Parliament that there was a significant increase in corruption and service delivery complaints in the public sector for the 2012/2013 financial year. There were 33 777 complaints reported to the PP, which amounted to 6 400 more than in the 2011/2012 financial year (Hartley, 2013). This equates to a 16 percent increase in corruption and service delivery complaints to the PP for the period 2012/2013, compared to the number during the period 2011/2012.

According to Newham (2013), South Africans think that public sector corruption is worsening. This conclusion was reached based on the CPI scoring and the 2013 Afro barometer report. The latter, published in November 2013, titled *Government's falter in the fight to curb corruption*, is a survey-based report that involved 34 countries and 51 000 participants (Newham, 2013). The Department of the Presidency (2011:401) affirms that they have gathered strong evidence that indicates that the country is plagued with extreme levels of corruption. The Department of the Presidency (2011:401) further adds that these extreme levels of corruption undermine the rule of law in the country and hamper the state's ability to effect development and socio-economic transformation.

While South Africa has world-class legislation and regulations (NACF, 2009:12), as well as a corporate governance environment and law enforcement agencies that are well equipped to address corruption (Business Unity South Africa (BUSA), 2014:1), work remains to be done in terms of implementation of the legislation and regulations (NACF, 2009:14). The *Oxford English Dictionary* (2011:1) defines the term 'world class' as "among the best in the world (of a person, thing, or activity*)*".

The NPC (2011:402) indicates that the Promotion of Access to Information Act 2 of 2000, the Promotion of Administrative Justice Act 3 of 2000 and the Prevention and Combating of Corrupt Activities Act 12 of 2004 are pieces of legislation that form a solid foundation from which to fight corruption in South Africa. Other pieces of legislation dealing with corruption in the South African public sector are the Public Finance Management Act 1 of 1999, the Protected Disclosures Act 26 of 2000 and the Local Government: Municipal Finance Management Act 56 of 2003. The South African Corruption Act 94 of 1992 provides adequate remedy for dealing with corrupt officials. Graythorne (1997:395) refers to the strong legislation South Africa had in place to address corruption for that period; however, in present times, when the CPI indicates that corruption is growing in the public sector, having strong legislation in place to deal with it is important.

South Africa's law enforcement agencies are well equipped to deal with corruption (BUSA, 2014:1). The law enforcement agencies are listed by the Department of Public Service and Administration (DPSA) in the Country Corruption Assessment Report South Africa (DPSA, 2003:46-59). However, in present times, when the CPI indicated that corruption is growing in the public sector, having strong legislation in place to deal with it is important, but should be accompanied by stronger enforcement mechanisms. The institutional capacity to fight corruption are the following: the South African Police Service (SAPS), the Directorate of Special Operations (DSO) (renamed as the Directorate of Priority Crimes Investigations (Hawks)), the National Intelligence Agency (NIA), the National Prosecuting Authority (NPA), the Asset Forfeiture Unit (AFU), the Special Investigating Unit (SIU), the South African Revenue Services (SARS), the Auditor General (AG), The Public Protector (PP), the Public Service Commission (PSC) and itself, the DPSA (DPSA, 2003:46-59).

Newham (2013:1) writes that there are 13 public sector agencies that have a legal or policy role in combating corruption. The Department of the Presidency (2011:403) further reflects that South Africa has several other agencies mandated to fight corruption, such as the Independent Police Investigative Directorate (IPID). The researcher addresses the actual number of anti-corruption agencies that investigate corruption in the public sector in SA in Section 1.2, below.

CASAC (2011a:1) states that despite the comprehensive legislation and the existence of numerous anti-corruption institutions, corruption appears to be "waxing and not waning", and that many public figures, and government, have recently expressed concern about the growing levels of corruption in South Africa. Apart from the agencies and legislation, SA has other resources available to prevent corruption in the public sector, such as whistle-blowing and anti-corruption hotlines, which have become a standard and accepted feature of government agencies in combating corruption in South Africa (CASAC, 2011a:25).

South Africa also has the support and resources available from the United Nations Office on Drugs and Crime (UNODC) with whom it entered into an agreement titled, "United Nations Support to South African National Anti-Corruption Programme" (UNODC, 2013:1). Campos and Pradhan (2007:283) inform that South Africa established the Public Sector Accountability Monitor in 1999, to track the actions taken by its government in responding to reported corruption cases. In 2001, South Africa also established the NACF, a collective between government, business and civil society (NACF, 2005:1).

1.2 PROBLEM STATEMENT

Leedy and Ormrod (2014:27) declare that the axis around which a piece of study revolves is a problem statement. Wagner, Kawulich and Garner (2012:15-16) state that a research process starts by identifying an area of interest and involves a rational process in arriving at a final researchable question. They further state that a source of finding a research problem is reviewing previous research, identifying gaps in a field of study, and concluding future research to cover the gaps. Leedy and Ormrod (2014:29) also state that the researcher must be knowledgeable about

the topic of interest, in knowing which projects have made an important contribution to the field.

South Africa is unlike other countries, in that it has a multi-agency approach to fighting corruption, with agencies sharing partial responsibility for the investigation and prosecution of corruption (PSC, 2005:16). This could be true at State level, but other non-State actors are equally and sometimes leaders in the fight against corruption. The Public Anti-Corruption Initiatives (PAI) (2014:4) mentions that South Africa has numerous anti-corruption agencies and laws, which indicate a strong political willingness and commitment towards combating corruption. The PAI (2014:4) highlights that there are many SAACAs, and pieces of legislation that suffer from improper implementation and overlapping mandates. These setbacks have a cascading effect on the initiatives' ability to operate and the implementation of the anti-corruption legal framework.

The problem is exacerbated, since the SAACAs have overlapping mandates in their pursuit of dealing with corruption. This is highlighted in several pieces of literature:

- DPSA (2003:6, 7 & 26).
- UNODC (2008:5).
- CASAC (2011a; 2011b).
- Institute of Accountability Southern Africa (IASA) (2012:4 & 6).
- Public Anti-Corruption Initiatives (PAI) (2014:4).
- Business Anti-Corruption Portal (BACP) (2014:4).

South Africa has a relatively comprehensive and practical framework (DPSA, 2003:6, 7 & 26) that provides a good model for combating and preventing corruption, and several agencies have been established to investigate and prosecute corruption; however, there are overlapping mandates that affect enforcement agencies and constitutionally created bodies, and the legislative framework is ineffective. CASAC (2011a:16) outlines how, despite the plethora of institutions in place to enforce the prohibition of corruption, and the fact that there are many institutions responsible for fighting corruption with overlapping mandates, there is a lack of a comprehensive and coherent response, resulting in the battle against corruption being compromised.

In addition, the UNODC (2008:5), in which South Africa was a participant among 71 countries, stated, under Session (I) titled *Building Anti-Corruption Networks and Coalitions within State Institutions*, that overlaps in the mandates of anti-corruption bodies were discovered, and that overlapping responsibilities render the reform process opaque and vulnerable to corruption. Because multiple agencies' mandates overlap, it was suggested that resources be allocated to determine where the overlaps may exist.

The UNODC's findings are backed up by the Institute of Accountability Southern Africa (IASA) (2012:4 & 6), which claims that South Africa's present anti-corruption system is ineffective, due to overlapping responsibilities and a lack of coordination. The Business Anti-Corruption Portal (BACP) (2014:4) writes, under the section titled *General Comments on the Anti-Corruption Initiatives*, that South Africa's numerous anti-corruption agencies, and the promulgated laws, indicate a political willingness and commitment towards fighting corruption. BACP (2014:4) is in precise agreement with PAI (2014:4) when stating that, as a result of non-implementation and anti-corruption authorities' overlapping mandates, the ACAs and laws suffer. This has further negative effects, such as the operational inability of anti-corruption initiatives and roll-out of anti-corruption strategies and framework.

According to Tamukamoyo (2013:3) of the Institute of Security Studies (ISS), South Africa has anti-corruption bodies and legislation that just comply with international norms and protocols on the surface. South Africa has the following institutional capacity to fight corruption, according to the *Country Corruption Assessment Report South Africa* (DPSA, 2003:46-59) and the Department of the Presidency... (2011:403), respectively, as well as the SAPS, DSO (Hawks), NIA (State Security Agency) (SSA), NPA, SIU, SARS, PP, PSC, DPSA, IPID, Corruption Watch government department hotlines, and UNODC resources.

Below is a table that indicates the statistics of the national commercial crimes reported to the SAPS for the period 2008 to 2013 (SAPS, 2009, 2010, 2011, 2012 & 2013). There was an increase in commercial crimes from the period 2008 to 2013, as indicated in these reports. Brodie (2013:1) informs that the South African national

crime statistics have been provided since 1994. During September each year, the crime statistics are published from the crimes that are reported to the SAPS.

Table 1.1: SAPS National Commercial Crime statistics for the period: 2008/2009 to 2012/2013

CRIME	2008/09	2009/10	2010/11	2011/12	2012/13	% Difference 08/09 & 12/13	2018/19
Commercial crime	*77 474*	*84 842*	*88 388*	*88 050*	*91 569*	*+16.7 %*	*83 823*

(Source: SAPS, 2009, 2010, 2011, 2012 & 2013).

Analysis of the above table indicates that there has been a 16.7% increase in the number of commercial crimes reported from the period 2008/2009 to 2012/2013. The SAPS do not specify corruption separately in its national crime statistics. According to the SAPS (2019) the commercial crime statistics for 2018/2019 total 83 823. When a comparison is done for the periods 2016/2017, 2017/2018 and 2018/2019, it indicates an increase of commercial crime by 14.4%. Due to the link between corruption and commercial type crime, this crime type is used to indicate how commercial type crime (and, therefore corruption) may be increasing.

The table below indicates the statistics of the NPA's conviction rate for corruption matters for the period 2008 to 2013 (NPA, 2009, 2010, 2011, 2012 & 2013). The NPA has changed its format of reporting prosecution of serious corruption, compared to previous years, and it for this reason that the period 2018/2019 is listed separately, below.

Table 1.2: NPA Prosecution of serious corruption for period 2008/2009 to 2012/2013

CATEGORY	2008/09	2009/10	2010/11	2011/12	2012/13	% Difference 08/09 & 12/13
No. of prosecutions for serious corruption matters	*n/a*	*1*	*15*	*4*	*27*	*+185.7%*

CATEGORY	2008/09	2009/10	2010/11	2011/12	2012/13	% Difference 08/09 & 12/13
No. of JCPS[1] personnel convicted of corruption	*n/a*	*40*	*29*	*107*	*152*	*+116.6%*
No. of convictions where at least R5m assets were retained	*n/a*	*n/a*	*0*	*0*	*42*	*+200%*
Conviction rate: complex commercial crime	*1408*	*825*	*742*	*754*	*639*	*-75.1%*

(Source: NPA, 2009, 2010, 2011, 2012 & 2013).

The Anti-Corruption Task Team (ACTT) investigated 57 cases of serious corruption (NPA, 2012). In its annual report for 2013, the NPA defines serious corruption as cases in which assets of at least R5 million were seized by the ACTT dealing with these matters. Twenty-two (22) of the cases were at court, with 15 accused convicted, and 167 still awaiting trial. It is reflected in the NPA annual report for 2013 (NPA, 2013) that 200 JCPS officials were involved in 249 cases involving allegations of corruption. From the 175 cases finalised in the 2012/2013 fiscal year, the number of cases has climbed by 42.3 percent. During the 2012/2013 fiscal year, the conviction rate jumped from 72.6 percent in 2011/2012 to 82.3 percent. In the 2012/2013 fiscal year, 152 JCPS officials were found guilty.

Analysis of the above indicates that there has been an increase in the number of corruption cases investigated and finalised, and that the NPA has had resounding successes in the following:

- Number of prosecutions for serious corruption matters;
- Number of JCPS personnel convicted of corruption; and
- Number of convictions where at least R5m assets were retained.

The NPA has had a significant decrease of 75.1% in the conviction rate of complex commercial crimes. These complex commercial crimes are financial crimes that

[1] JCPS: Justice, Criminal, Prevention & Security. The NPA established this category to determine the state officials who fall under this category who have been convicted for corruption.

require joint investigations by the Hawks and the SAPS Commercial Crime Unit, as well as the use of forensic accountants, and are prosecuted by specialist prosecution expertise from the National Specialised Services Division (NSSD) within the NPA (NPA, 2013). The NPA does not list all corruption statistics under these headings. Some corruption matters are listed under commercial crimes. Tamukamoyo (2014:1) confirms that there are no accurate statistics for corruption in South Africa.

According to the NPA (2019), there are other statistics that are related to corruption and commercial crimes, as follows:

- Serious corruption or offences related to corruption where the amount benefitted per case is more that R5 million, freezing of assets and recovery of losses and proceeds of crime.
- Convictions where the amount was more than R5 million: 17 lower when compared to 39 in 2017/2018.
- Conviction rate of complex commercial crime: 95%.
- Number of government officials convicted of corruption: 210.

According to the UNODC (Southern Africa) (UNODC, 2002:43), South Africa has nothing less than 12 agencies with anti-corruption mandates:

- SAPS: They investigate criminal matters, including corruption.
- NPA: They act against corruption through either the SAPS, their AFU or DSO.
- AG: They conduct forensic audits and reports on accounts, financial statements, and financial management.
- PP: They investigate matters that may have prejudiced citizens and make recommendations.
- PSC: They look at government systems, rules, controls and practices, and provide recommendations for improvement.
- ICD: They investigate misconduct on the part of SAPS members.
- SIU: They investigate serious malpractice, maladministration and corruption in state institutions, and recover public assets.

- DPSA: They investigate public service matters relating to policies, controls and systems, with the primary role of policy development.
- NIA: They provide intelligence to investigating agencies.
- SARS: They implement tax policies but investigate tax-related corruption.

As reflected above, South Africa has many anti-corruption agencies that are mandated to address corruption. When focusing on public sector corruption, the researcher has identified anti-corruption agencies that are mandated to investigate corruption in the public sector, and these are, for the purposes of this research, will only discuss and review their mandates. A review of their mandates reveals the following:

- **South African Police Service (SAPS)**

Section 205 of the Constitution of the Republic of South Africa, 1996 gives the SAPS the following mandate:

> *"The SAPS derives its legislative powers from its mission in terms of section 205 of the Constitution, which include, among other things:* Prevention and Combating of Corrupt Activities Act 12 of 2004".

- **Directorate of Priority Crimes Investigations (DPCI)**

The South African Police Service Act 68 of 1995, as amended by Act 10 of 2012, and in terms of the following section, states:

> *"17 (D) the functions of the Directorate are to prevent, combat and investigate and 1) (a) selected offences, not limited to offences referred to in Chapter 2 and section 34 of the Prevention and Combating of Corrupt Activities Act 12 of 2004".*

- **Special Investigating Unit (SIU)**

The Special Investigating Units and Special Tribunals Act 74 of 1996. The preamble states:

> *"The SIU was established for the purpose of investigating serious malpractices or maladministration in connection with the administration of State institutions, State assets and public money as well as any conduct which may seriously harm the interests of the public. The SIU Act also*

provided for the establishment of Special Tribunals so as to adjudicate upon civil matters emanating from investigations by Special Investigating Units; and to provide for matters incidental thereto.

Terms of section (2)(f) of the SIU Act 74 of 1996: The President may exercise the powers under sub-section (1) on the grounds of any alleged offence referred to in Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, and which offences were [sic] committed in connection with the affairs of any State institution".

- **Asset Forfeiture Unit (AFU)**

The AFU was established in May 1999. This establishment took place in the Office of the National Director of Public Prosecutions:

"The AFU was established to focus on the implementation of chapters 5 and 6 of the Prevention of Organised Crime Act 121 of 1998. (POCA). The AFU was created to ensure that the powers in the Act to seize criminal assets would be used to their maximum effect in the fight against crime, and particularly, organised crime".

- **Public Protector (PP)**

The Public Protector Act 23 of 1994's preamble states:

"WHEREAS section 181 to 183 of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996) provide for the establishment of the office of Public Protector and that the Public Protector has the power, as regulated by national legislation, to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to have resulted in any impropriety or prejudice, to report on that conduct and to take appropriate remedial action, in order to strengthen and support constitutional democracy in the Republic".

- **Independent Police Investigative Directorate (IPID)**

In terms of the Independent Police Investigative Directorate Act 1 of 2011, section 28 (1),

"The Directorate must investigate:
(a) any deaths in police custody.
(b) deaths as a result of police actions.
(c) any complaint relating to the discharge of an official firearm by any police officer.
(d) rape by a police officer, whether the police officer is on or off duty.
(e) rape of any person while that person is in police custody.
(f) any complaint of torture or assault against a police officer in the execution of his or her duties.
(g) corruption matters within the police initiated by the Executive Director on his or her own, or after the receipt of a complaint from a member of the public, or referred to the Directorate by the Minister, an MEC or the Secretary, as the case may be.
(h) any other matter referred to it as a result of a decision by the Executive Director, or if so, requested by the Minister, an MEC or the Secretary, as the case may be".

All groups of participants are clearly aware of the different anti-corruption agencies in South Africa that investigate corruption. These are the SAPS, DPCI, SIU, PP, SARS, AG and the PSC. The participants know these agencies, as they are working at some of these agencies, and they work in the anti-corruption environment.

The researcher has focused this study on the following anti-corruption agencies that investigate corruption within the Public Sector in South Africa:

- South African Police Service (SAPS);
- Directorate of Priority Crime Investigation (DPCI);
- Special Investigating Unit (SIU);
- Asset Forfeiture Unit (AFU);
- Public Protector (PP); and
- Independent Police Investigative Directorate (IPID).

According to the UNODC (2008:5), CASAC (2011a:16), the IASA (2012:4 & 6) and the PAI (2014:4), the following are some of the problems as a result of overlapping mandates of anti-corruption agencies:

- The problem with overlapping mandates as stipulated in CASAC (2011a:16), is that a comprehensive and coherent response is absent, which results in the battle against corruption being compromised.
- Another issue with overlapping missions inside agencies is that it renders the reform process ineffective and corruptible (UNODC, 2008:5).
- IASA (2012:4 & 6) states that the problem of overlapping mandates of anti-corruption agencies is that the current anti-corruption framework in South Africa is not as effective as it could be, and it encumbers the effectiveness of the agencies.
- Anti-corruption programmes' ability to operate, and the implementation of the anti-corruption legal framework, are hampered by anti-corruption authorities' overlapping responsibilities (PAI, 2014:4).

The DPSA (2003:26) points out that the legal framework is fragmented, and that the mandates of governmental agencies sometimes overlap. The table below contains direct quotations from the literature, and has not been paraphrased by the researcher, in the interests of accurate reporting. The researcher has identified some of these overlapping of mandates as follows:

Table 1.3: Overlapping between the IPID and DPCI

AUTHORISATION	IPID	DPCI
MANDATE	The Independent Police Investigative Directorate Act, under the following section states: *"Section 28. (I) The Directorate must investigate:* *(g) Corruption matters within the police initiated by the Executive Director on his or her own, or after the receipt of a complaint from a member of the public, or referred to the Directorate by the Minister, an MEC or the Secretary, as the case may be.* *(2) The Directorate may investigate matters relating to systemic corruption involving the police".*	The South African Police Service Act, as amended under below stated section: *"17D (1) (a) selected offences not limited to offences referred to in Chapter 2 and section 34 of the Prevention and Combating of Corrupt Activities Act, 2004".*
OVERLAPPING	Both these Agencies are mandated to investigate Corruption, and IPID investigates corruption within the police; however, the functions of the DPCI	

AUTHORISATION	IPID	DPCI
	under section 17D give them the power to investigate corruption within the police as well.	

(Source: Independent Police Investigative Directorate Act 1 of 2011; South African Police Service Act 68 of 1995, as amended by Act 10 of 2012).

The table below contains direct quotations from the literature, and has not been paraphrased by the researcher, in the interests of accurate reporting:

Table 1.4: Overlapping between the SIU and the PP

AUTHORISATION	SIU	PP
MANDATE	The Special Investigating Units and Special Tribunal Act, under the below section states: *"4 (1) The functions of a Special Investigating Unit are, within the framework of its terms of reference as set out in the proclamation referred to in section 2 (1) –* *(2) The President may exercise the powers under sub-section (1) on the grounds of any alleged –* *(a) serious maladministration in connection with the affairs of any State institution;* *(b) improper or unlawful conduct by employees of any State institution;* *(c) unlawful appropriation or expenditure of public money or property;* *(d) unlawful, irregular or unapproved acquisitive act, transaction, measure or practice having a bearing upon State property;* *(e) intentional or negligent loss of public money or damage to public property;* *(f) [an] offence referred to in Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities*	The Public Protector Act, under section 6 (4) states that the Public Protector shall, be competent – *"(a) To investigate, on his or her own initiative or on receipt of a complaint, any alleged –* *(i) Maladministration in connection with the affairs of government at any level;* *(ii) Abused or unjustifiable exercise or power or unfair, capricious, discourteous or other improper conduct or undue delay by a person performing a public function;* *(iii) Improper or dishonest act or omission or offences referred to in Part 1 to 4, or section 17, 20 or 21 of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004 with respect to public money;* *(iv) Improper or unlawful enrichment, or receipt of any improper advantage, or promise of such enrichment or advantage, by a person as a result of an act or omission in the public administration or in connection with the affairs of government at any level or of a person performing a public function; or* *(v) act or omission by a person in the employ of government at any level or a person performing a public function, which results in the unlawful*

AUTHORISATION	SIU	PP
	Act, 2004, and which offence was [sic] committed in connection with the affairs of any State institution; or [Para. (f) substituted by s. 36 (1) of Act 12 of 2004]; *(g) Unlawful or improper conduct by any person which has caused or may cause serious harm to the interests of the public or any category thereof".*	*or improper prejudice to any other person".*
OVERLAPPING	*Both these, the SIU and PP, investigate the following:* *(a) Improper or dishonest acts or omissions or offences referred to in Part 1 to 4, or section 17, 20 or 21 of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004.* *(b) Abuse of powers of government officials* *(c) Acts or omissions in terms of public money* *(d) Maladministration in terms of State affairs*	

(Source: PP Act 23 of 1994; SIU Act 74 of 1996).

The table below contains direct quotations from the literature, and has not been paraphrased by the researcher, in the interests of accurate reporting.

Table 1.5: Overlapping between the AFU and SIU

AUTHORISATION	AFU	SIU
MANDATE	*The AFU was established in May 1999. The AFU was established in the Office of the National Director of Public Prosecutions. "The function of the AFU is to focus on the implementation of chapters 5 and 6 of the Prevention of Organised Crime Act. The AFU litigates for the proceeds of crimes".*	*The Special Investigating Units and Special Tribunal Act confirm under section 5 (5) that "a Special Investigating Unit may institute civil proceedings in a Special Tribunal or any court if, arising from its investigation, it has obtained evidence substantiating any allegation contemplated in section 2 (2)".*
OVERLAPPING	*Both these agencies institute civil litigation on behalf of the State. This overlapping is also confirmed by the PSC (2001:3) which indicates that there is an overlap between the roles of the AFU and SIU in terms of recovery of assets.*	

(Source: SIU Act 74 of 1996; Department of the Presidency …, 2011).

1.3 RESEARCH AIM

De Vos, Strydom, Fouché and Delport (2011:94) clarify that the terms ‘goal’, ‘purpose’, ‘objective’ and ‘aim’ are synonyms for each other. Both ‘aim’ and ‘objective’ are both something one plans to do or achieve (*Advanced Learner's Dictionary* (2009), as cited in De Vos et al., 2011:94). Denscombe (2012:49-50) agrees that a research ‘aim’ or ‘purpose statement’ is the direction in which the research must go, and points to the target the research hopes to hit. This author goes on to state that a list of research aims shows the direction of the research, and the scale and scope of the proposed investigations. De Vos et al. (2011:94), further simplify the terms’ 'goal', 'purpose' or 'aim' as a dream, and the other term, 'objective', as the step taken realistically, at grassroots level, within time to achieve the dream.

The aim of this research was to determine the impact of the overlapping of mandates of public sector anti-corruption agencies on the anti-corruption framework in South Africa. The sub-aims of this research are the following:

- To compare the mandates of South African public sector anti-corruption agencies with international public sector anti-corruption agencies.
- To investigate whether the revision of the mandates of SAACAs with the best practices could make investigating corruption more successful.

1.4 OBJECTIVES OF THE RESEARCH

De Vos et al. (2011:108), state that the formulation of the research goal and objectives is the culmination of the problem statement and research questions. They go on to say that the goal of a study is the main part of the study, and the objectives identify the specific issues the research intends to examine. Leedy and Ormrod (2014:3) inform that when the research objectives are in clear concrete terms, the researcher has a good idea of what needs to be accomplished, and efforts can be directed accordingly. The research objectives of this study were the following:

- To explore the impact of overlapping mandates of SAACAs on the anti-corruption framework in South Africa.
- To compare the SAACAs to international anti-corruption agencies.

- To explore whether the revision of SAACAs could improve their investigation success rate.

1.5 RESEARCH QUESTIONS

Denscombe (2012:73) informs that research questions take different forms: questions, propositions or hypotheses. Denscombe (2012:73) states further that although these forms may appear different, in some ways they are similar. They have three aspects in common, these are:

- They are vital for addressing the key concerns of the research.
- They are precise and specific.
- They are an explicit vision of the kind of data that must be collected in the empirical phase of the research.

According to Wagner et al. (2012:18-19), a research question defines what is being studied: it narrows the analysis, leads directly to the hypothesis, and offers guidance for the methodology chosen. Leedy and Ormrod (2014:39) inform that a research question provides guidance in the type of data that has be collected, and the questions suggest how the data has been analysed and interpreted. Denscombe (2012:73) concludes by stating that having good research questions indicates the following:

- The researcher has a good grasp of the issues.
- The researcher has given careful thought to the best way in which to approach the research.

The research questions for this research are as follows:

- What is the impact of the overlapping of mandates of public sector anti-corruption agencies on the anti-corruption framework in South Africa?
- How do South Africa public sector anti-corruption agencies compare to the international public sector anti-corruption agencies, in terms of similarities, differences, conflicts that exist between them, and success rates?

- How could the mandates of the South African public sector anti-corruption agencies be revised, with the use of best practices as revision, to successfully investigate corruption in South Africa?

1.6 KEY THEORETICAL CONCEPTS

Denscombe (2012:48) breaks down the term 'keywords' as things that signify the contents of the proposed research, which can be used when searching for data from indexes, directories and catalogues. Denscombe adds that they may consist of between three and six terms which would pinpoint the main ideas behind a piece of research, and keywords can be used to evaluate proposals, as they provide a brief but careful consideration of the core features of the research.

Wagner et al. (2012:5), state that one of the first things a researcher embarks on is to define what they mean by a term or concept, which allows them to describe the term or measure it; this, they say, is operationalisation. An operational definition defines the conceptual variable in terms of the external behaviours or signs that can be measured or observed (Gravetter & Wallnau (2008), as cited in Wagner et al., 2012:75).

De Vos et al. (2011:43), accept that by defining the behaviour or operations required to calculate it, an operational description assigns value to a construct or variable. Furthermore, they add that the purpose of an operational concept is to define the markers, concrete events or phenomena that constitute an abstract notion.

De Vos et al. (2011:29), define 'terms' as being one or more words designating a specific idea, notion or concept. They go on to say that terms must be available for those aspects which make up the content of a given scientific discipline. Definitions are used to facilitate communication and arguments, to the extent that it is made possible to say something more easily and clearly than would otherwise be possible (De Vos et al., 2011:33).

The key terms in this research are the following:

1.6.1 Corruption

According to Section 3 of the Prevention and Combating of Corrupt Activities Act, the term ‘corruption’ is defined as:

> *“any person who, directly or indirectly;*
> *(a) accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person;*
> *(b) gives or agrees or offers to give to any other person any gratification, whether for the benefit of that other person or for the benefit of another person, in order to act, personally or by influencing another person so to act, in a manner –*
> *(i) that amounts to the – (aa) illegal, dishonest, unauthorised, incomplete, or biased; or (bb) misused or selling of information or material acquired in the course of the exercise, carrying out or performance of any powers, duties or functions and out of a constitutional, statutory, contractual or any other legal obligation;*
> *(ii) that amounts to– (aa) the abused of a position of authority; (bb) a breach of trust; or (cc) the violation of a legal duty or a set of rules;*
> *(iii) designed to achieve an unjustified result; or*
> *(iv) that amounts to any other unauthorised or improper inducement to do or not to do anything”.*

1.6.2 Investigation

Investigation involves observation and systematic interviewing of witnesses to obtain information in order to expose the truth. The truth is obtained by means of a sworn statement and is presented orally in court. Investigation also involves discovering what happened and who is responsible (Lochner, 2014:6-7).

1.6.3 Mandate

As stated by Gottschalk (2015:102), a mandate is the indication of what is to be done and who must do it. Gottschalk adds that a mandate is a mission of importance in terms of what must be investigated. The *Oxford English Dictionary* (2014:1) states that a mandate is an official order or commission to do something.

1.6.4 Public body

According to section 1 (xxii) of the Prevention and Combating of Corrupt Activities Act, *a public body means:*

> *"(a) any department of state or administration in the national or provincial sphere of government or any municipality in the local sphere of government;*
> *(b) any other functionary or institution when- (i) exercising a power or performing a duty or function in terms of the Constitution or a provincial constitution; (ii) exercising a public power or performing a public duty or function in terms of any legislation".*

1.6.5 Public money

It is clearly stated in Section 1 of the Special Investigating Units and Special Tribunals Act, under 'definitions', that 'public money' means "any money withdrawn from the National Revenue Fund or a Provincial Revenue Fund, as contemplated in the Constitution of the Republic of South Africa, 1996 and any money acquired, controlled or paid out, by a State Institution".

1.7 RESEARCH DESIGN AND APPROACH

Research is described as a clear systematic process of collecting information, analysing of information and literature, and interpretation of information data, in order to increase the researcher's understanding of a phenomenon in which they are interested, or are concerned about (Leedy & Ormrod, 2014:2). A research design is like an architectural blueprint that is followed in the construction of a building (Babbie & Mouton (2001), as cited in Wagner et al., 2012:21). Wagner et al. (2012:21), further state that, in social research, the design informs how one is going to conduct the research: which methodology is appropriate, the method of data collection, and the techniques for data analysis. Creswell (2013:49) adds that a research design is one of the circles of qualitative research; the other two are the approach to inquiry, and the philosophical and theoretical framework and assumptions. The interplay of these three factors contribute to a complex, rigorous study.

Wagner et al. (2012:22,127-132), set out six qualitative research designs: ethnography, action research, grounded theory, experimental research, surveys and phenomenology. Similarly, Leedy and Ormrod (2014:141 & 152) state that qualitative research encompasses many designs, namely: case study, ethnography, phenomenological study, grounded theory and content analysis. These authors further suggest that although the approaches are quite different in some respects, they have two things in common: firstly, they focus on phenomena that occur in natural settings; and secondly, they involve capturing and studying the complexity of those phenomena.

The researcher employed the following research designs:

- Content analysis: This identifies the specific characteristics of a body of material (Leedy & Ormrod, 2014:152). The specific characteristics of this study show that there is overlapping of mandates of anti-corruption agencies.
- Phenomenological study: Leedy and Ormrod (2014:152) write that a phenomenological study is meant to understand an experience from the participants' points of view, and the focus is on a particular phenomenon. The participants in this research had to be interviewed for their lived experience and knowledge of the phenomenon. The phenomenon in this research comprises the overlapping mandates of public sector anti-corruption agencies of South Africa.

The researcher used a qualitative research approach in this study. Qualitative research is focused on gaining better knowledge of the processes that shape various behaviour patterns, as well as the social and cultural environments in which they occur (Wagner et al., 2012:126). These authors add that qualitative research aims to tell a coherent story through the eyes of the participants, and that this is accomplished by using a variety of data-gathering methodologies. Focus groups, interviews and observations are examples of these methods. Furthermore, qualitative research's greatest strength is the breadth and depth of data examination and description (Wagner et al., 2012:126).

During this research, the researcher conducted an extensive examination of documentation, which was essential in gathering relevant data that is specific to the

topic. In addition to the examination of documentation, the researcher also conducted unstructured interviews with a sample of participants who possessed specific experience and knowledge on the impact of the overlapping mandates of public sector anti-corruption agencies on the anti-corruption framework in South Africa.

Qualitative researchers, according to De Vos et al. (2011:308), always construct their own design as they go along, using one or more of the existing methods or tools as an aid or guidance. They state further that qualitative research is concerned with comprehending natural observations, as well as the subjective examination of reality, from an insider's perspective. The researcher used an empirical design in this research. Denscombe (2012:73) states that, in empirical research, the research questions have given the researcher an explicit vision of the kind of data that needs to be collected, which is vital in research. Data has been collected in line with the phenomenon of the research question listed above.

1.8 POPULATION AND SAMPLING

The entire set of individuals or units being researched is referred to as a ‘population’ (Wagner et al., 2012:272). The researcher must discover carefully selected sites or individuals who can help the researcher grasp the problem, answer the research questions, and yield the greatest information on the topic in qualitative research, which is intentionally non-random (Creswell, 2014:189; Leedy & Ormrod, 2014:15). In this research, which is to discover the impact of overlapping mandates of public sector anti-corruption agencies on the anti-corruption framework in South Africa, only a selected population have knowledge on this study. These are individuals from the SAACAs, namely SAPS, DPCI, SIU, AFU, PP and IPID, whose legislative mandates have been found to overlap. The population size was 27. This reduction was due to constraints experienced by the researcher. All the agencies were notified of the research and the purpose to interviews; however, agencies were not prompt in responding, one agency denied permission, and the staff were reluctant to avail themselves to be interviewed.

These organisations operate in each of South Africa's nine provinces. Gauteng is home to the headquarters of these organisations. As a result, the Gauteng-based

headquarters of the agencies were chosen as the study's target population. These agencies' headquarters were chosen for the following reasons:

- They perform the same function in terms of the same legislation and policy guidelines as their provincial counterparts.
- They disseminate interpretations of legislation, directives and guidelines to all other provinces, for compliance.
- They conduct corruption investigations at a national level, seeing the cases to a legal end.
- They interact with all the listed anti-corruption agencies at a national level.
- The participants at these sites (who have ultimately been selected for the samples to be interviewed) have the necessary knowledge and first-hand experience of the overlapping mandates. They have, therefore been able to provide valuable insight into the research questions.

Leedy and Ormrod (2014:154) state that the selection of certain entities for analysis by the researcher are defined as the researcher’s sample, and the process of selecting the entities is called 'sampling'. The researcher conducted a sampling method of non- probability sampling.

Non-probability sampling is defined by Wagner et al. (2012:89), as non-random sampling, in which persons are included in a sample because they are knowledgeable enough to engage in a study. According to De Vos et al. (2011:391), the chances of selecting a certain individual are unknown, due to the nature of non-probability sampling, as the population size and members of the population are unknown.

The researcher followed the advice of Christensen, Johnson and Turner (2015:171) regarding non-random sampling, where they state that the researcher must compile the criteria and characteristics so that it is specific persons involved in the research:

- The researcher determined the number of members at each anti-corruption agency at the different levels, namely managers and/or commanders, lawyers and investigators.

- The researcher determined the years of experience of each member at each anti-corruption agency at the different levels.
- The researcher drew a list of names of all members who had more than five years' experience. The researcher wanted participants who served in the anti-corruption environment for a period, because anti-corruption cases are long and drawn out, and a person who has been at the agency for a period would most probably have seen several anti-corruption cases through the court process, and to completion, and would, therefore be in a better position to answer the research questions.
- The researcher conducted the interviews from the alphabetical list until data saturation was reached from each level. Data saturation is a phenomenon that occurs when the data is saturated. This means that all themes and categories have been exhausted, and it is no longer fresh data that will spark insight or show un-researched properties (Creswell, 2014:189).

The above procedure was put in place to avoid sample bias. Leedy and Ormrod (2014:213) inform that a sample procedure must be carefully planned, and careful consideration must be given to the parameters of population. If this is not done, then any conclusion drawn from the data has been distorted, and this, they say, is known as 'bias' (Leedy & Ormrod, 2014:213). They explain bias as any influence or condition that distorts data; bias can creep into research in subtle undetected ways, and it attacks the integrity of facts.

The ideal sample for this research was going to be from six ACAs (SIU, PP, SAPS, AFU, DPCI and IPID). The number of participants were going to be the following:

- Five managers or commanders from each ACA.
- Five investigators from each ACA.
- Five legal representatives or lawyers from each ACA.

Considering the six ACAs being researched, the total number of participants was going to be ninety (90) participants. Due to the following circumstances, however, the number of participants was reduced to twenty-seven (27) participants:

- Request for permission to conduct research with each ACA was sent; after delays, only four (4) ACAs were granted permission to conduct the interviews.
- After numerous attempts to contact the PP for permission, they denied the researcher permission to interview their members.
- The SAPS had mislaid the researcher's permission request and avoided any further attempts to engage with the researcher.
- Although permission was granted by four ACAs, it was extremely difficult to engage with the potential participants, except for the SIU, to conduct the interviews, as they were busy with their investigations and commitments.
- The researcher dropped off interview schedules at the respective ACAs for completion, but to no avail.
- Further delays in attempting to conduct the interviews would have caused the researcher to postpone the research.

The researcher proceeded with the following participants, who were interviewed.

Table 1.6: List of participants

NO	ANTI-CORRUPTION AGENCY	BREAKDOWN OF PARTICIPANTS
1	*SIU*	• *6 Managers* • *8 Investigators* • *6 Lawyers*
2	*DPCI*	• *1 Commander* • *3 Investigators*
3	*AFU*	• *2 Investigators*
4	*IPID*	• *1 Manager*
TOTAL		**27 Participants**

(Source: Compiled by researcher from the interviews conducted with commander/managers, lawyers and Investigators from the SIU, DPCI, AFU and IPID).

1.8.1 Biographical data

Below is the breakdown of the biographical data into the categories of commanders/managers, lawyers and investigators:

- **Commanders/Managers**
  - Gender:
    - Seven males

    - One female
- Rank/ Designation:
    - Six project managers
    - One deputy director
    - One colonel
- Investigation Experience:
    - 05-< 10 years = one member
    - 13-< 15 years = three members
    - 20-< 25 years = four members
- Highest Tertiary Qualifications:
    - Investigation courses = one member
    - Diploma: policing = one member
    - Bachelor's degree: police science = three members
    - Master's degree: psychology = one member
    - Master's degree: administration = two members

- **Lawyers**
    - Gender:
        - One female
        - Five males
    - Rank/Designation:
        - Four forensic lawyers
        - Two senior forensic lawyers
    - Investigation Experience:
        - 05-< 10 years = one member
        - 10-< 15 years = four members
        - 15-< 20 years = one member
    - Highest Tertiary Qualifications
        - Bachelor's: law = five members
        - Master's: law = one member

- **Investigators**
    - Gender:
        - Six females

    - Seven males
- Rank/Designation:
    - Six forensic investigators
    - Two chief forensic investigators
    - One lieutenant-colonel
    - One warrant officer
    - Two investigators
    - One cyber forensic investigator
- Investigation Experience:
    - 05-< 10 years = two members
    - 10-< 15 years = eight members
    - 15-< 20 years = one member
    - 20-< 30 years = two members
- Highest Tertiary Qualifications:
    - Certificate: police administration = one member
    - Hons: criminology = two members
    - Diploma: policing = one member
    - Bachelor of technology: project management = one member
    - Honours: information systems = one member
    - Bachelor of commerce = three members
    - Diploma: information technology = one member
    - Masters: risk management = one member
    - Bachelor's: law = one member
    - Bachelor of technology: forensic investigation = one member

There were predominantly male participants. All the participants were highly experienced and educated. Two of the participants were not as qualified as the rest: one participant had done investigation courses, and the other possessed a certificate in police administration. Apart from their qualifications, however, one had 16 years and the other had 20 years of investigative experience. Thus, to the mind of the researcher, these participants had sufficient exposure to the context of the research field, and, therefore had relevant guidelines associated to add value to this research.

1.9 DATA COLLECTION

Data collection is the process of acquiring information to help the researcher answer the study question (Wagner et al., 2012:269). To answer the research questions, Leedy and Ormrod (2014:153) define data collection as the use of observation, interviews, objects, written documents, audio-visual material, electronic entries, and anything else.

Leedy and Ormrod (2014:30) state that a researcher must peruse literature as an essential strategy to find out what is already known, and not known, about the topic. They add that there are other advantages to reading literature:

- It helps the researcher interpret their results and relate them to what is known.
- It can help researchers improve their work by giving them a way of recording a specific data collection, or a particular approach to data analysis.
- It gives one a hypothetical base on which to generate a hypothesis and build a rationale for one's study.
- It offers possible research designs and methods of measurement.

De Vos et al. (2011:328, 341), detail three information collection methods: participants' observation, interviews, and document study/secondary analysis. Data collection steps, as stated in Creswell (2014:189), include setting the limitations for the study and collecting information through the following methods:

- **Qualitative interviews**. These interviews involved shapeless and generally open-ended questions.
- **Qualitative documents**. These were public documents (for example: newspapers, reports, and minutes of meetings).
- **Qualitative audio and visual materials**. This category involves data collection from websites, and audio-visual material such as photographs, social media, and more. The researcher has not engaged in this method of data collection.
- **Qualitative observation**. The researcher has not engaged in this data collection method for the reason stated in De Vos et al. (2011:329), that observation is recording and observing the conditions, events, feelings, physical settings and activities, through looking rather than asking.

Reading literature is very important, as stated by Leedy and Ormrod (2014:30) and Denscombe (2012:59-60) who confirm the following as ways of identifying literature:

- **Expert advice**. The researcher sought advice from his supervisor and co-supervisor and referred to lecture notes.
- **Internet searches**. The researcher searched the Internet using keywords, and Google Scholar was useful.
- **References in textbooks**. Textbooks identifying crucial works on a topic were reviewed by the researcher.
- **Online databases**. These included bibliographies, indexes and archives that contained lists of books, articles and many kinds of documents of value to the researcher. Online databases were also searched.

The researcher collected data by means of the following methods, as stated by De Vos et al. (2011:28, 341), Creswell (2014:189) and Leedy and Ormrod (2014:153-156):

1.9.1 Interviews

Interviewing is the most common way of data or information collection in qualitative research, according to De Vos et al. (2011:342), the researcher conducted unstructured interviews with the participants. A precise interview plan was created to ensure that the research objectives are met. An interview schedule is a questionnaire created by the researcher to aid in the conduct of the interview.

This interview schedule further provides the interviewer with a list of predetermined questions, which can be used as an appropriate tool to interview and make the interview flow in a particular direction (Holstein & Gubrium 1995 and Monette et al., 2005, as cited in De Vos et al., 2011:352).

The interviews were recorded on the interview schedule. The answers from the participants were consolidated when addressing the research questions in the chapters below. The researcher did add *in vivo* quotes from certain participants to underscore what was said in the feedback.

The interview schedule was pilot tested by the researcher, as indicated by De Vos et al. (2011:195). The pilot test was conducted with a few participants who shared the same characteristics as those in the main study, as recommended by De Vos et al. (2011:394). According to De Vos et al. (2011:395), it is critical to guarantee that the established interview schedule or questionnaire is rigorously tested prior to being used during the actual research.

Leedy and Ormrod (2014:205) suggest running tests of the interview schedule on friends or colleagues. The researcher has pilot tested the interview schedule on colleagues who, as pointed out by De Vos et al. (2011:394), possess the same characteristics as those of the main investigation. De Vos et al. (2011:195), state that pilot testing has done the following:

- Assured that any errors, no matter how minor, could be corrected quickly and at a low cost.
- The instrument's face and content validity have been improved.
- Calculated how long it would take to finish the interview schedule.

The researcher employed the following guidelines as stipulated in Leedy and Ormrod (2014:156-159), to ensure a productive interview:

- **Identify some questions**. The researcher drafted the research questions, and further questions were formulated from the research questions.
- **Consider how participants' cultural background might influence their responses**. The researcher was sensitive to the fact that culture may play a significant role in the way participants interpret and respond to questions.
- **Find a suitable location**. The researcher arranged with the participants prior to the interview for a quiet interview location, which could be their office, home or other suitable location where the participant is not distracted or interrupted.
- **Get written permission**. Written permission was sought from each of the respective heads of the anti-corruption agencies being researched, for the interviews to be conducted – except for the PP. The researcher also obtained permission from the individual participants through an informed consent form and a copy of the abstract which the researcher has provided to them.

- **Establish and maintain rapport**. The researcher “broke the ice” with small talk and was always courteous and respectful. Compassion and interest were shown to the participants.
- **Focus on the actual rather than on the abstract or hypothetical**. The researcher focused on the actual literature and data, and not on the abstract and hypothetical literature and data generally available.
- **Put no words in other people's mouths.** The researcher listened to the participants and gave them the opportunity to speak and express themselves in their own words.
- **Keep your reactions to yourself**. The researcher achieved this by not showing surprise at, or agreement with, or disapproval of, participants' reactions; however, the researcher did not sit motionless during the interview, but prompted the participants for deeper and fuller data sharing. All the interviews were conducted personally by the researcher and recorded in writing.

1.9.2 Document study

The study of modern records and literature is referred to as documentary analysis. The goal of the analysis is to uncover a deeper connotation shown by their style and coverage (Ritchie & Lewis (2003), as cited in De Vos et al., 2011:377). Wagner et al. (2012:140-141), divide documents into three categories:

- *Primary, secondary and tertiary documents*
    - Primary documents: These constitute material written by, or collected from, those who witnessed events – such as autobiographies.
    - Secondary documents: These are written after an event, and may be incomplete, such as Shakespeare’s portrayal of the life of Julius Caesar.
    - Tertiary documents: These enable researchers to locate other references, such as indexes, abstracts and other bibliographies. Libraries and Internet search engines can both be used.
    - *Public and private documents*
        - Public documents: These are divided into four categories according to their ease of access:
            - *Closed* – such as secret police files
            - *Restricted* – such as medical and confidential reports

    - *Open-archival* – such as census reports
    - *Open-published* – such as government policies and statistics
  - Private documents: These belong to a specific person or organisation and are not for public viewing.
- *Solicited and unsolicited documents*
  - Solicited: They have been produced with research in mind.
  - Unsolicited: These are produced for personal use; however, they are addressed to an audience.

The researcher has used tertiary, public and solicited documents as data collection and the gathering of information, to assist in answering the research question.

1.10 DATA ANALYSIS

Leedy and Ormrod (2014:99) explain that, in qualitative data analysis, the researcher will make significant use of inductive reasoning; they make precise observations which cause them to form conclusions about larger and more general phenomena. They add that qualitative researchers identify a theme in the data, using an inductive process, and then move into a more deductive mode to modify it with additional data. In this research, the researcher identified the theme/phenomenon of the overlapping mandates of anti-corruption investigating agencies in South Africa.

The researcher has used Microsoft Office database software programs to facilitate data organisation and interpretation (Leedy & Ormrod, 2014:161). These authors further mention some other software programs that are especially suited to complex qualitative research: ATLAS Ti, Ethnograph, SuperHyperQual, HyperRESEARCH, Kwalitan MAXQDA and NVivo. They state that the benefits of such software programs are the following:

- They provide a ready means of storing, segmenting and organising lengthy field notes.
- They are designed to help find patterns in the researcher's notes.
- The researcher can transfer-in computer language.
- The researcher can import word processing files into the programs.

- The programs save the researcher time, in the long run.

Data analysis in qualitative research, according to Creswell (2014:197), goes hand in hand with other aspects of the qualitative research study, such as data gathering and writing up the findings. He explains the six processes of data analysis and interpretation that the researcher took when doing data analysis, as follows:

- Step 1: Organise and prepare the data for analysis. This stage entails transcribing the conducted interviews, scanning research material strategically and optically, typing up field notes, and classifying and assuring the filing of the data into distinct types based on the information sources.
- Step 2: Read all the data. This step gives one a general impression of the data and allows one to consider its overall meaning.
- Step 3: Start coding all the data. The method of coding includes bracketing portions and writing a word that represents a category.
- Step 4: Use coding. Process and generate a description of settings or people, as well as categories or themes.
- Step 5: Advance how the description and themes have been represented. The most popular way is to use a narrative passage to convey the findings and analysis.
- Step 6: Making an interpretation in qualitative research of the findings or results, asking what lessons were learned. Analyse the research data and make a conclusion thereof to find best practices.

The researcher employed the suggestions of Wagner et al. (2012:228), to make data analysis easier:

- Keep track of what is collected. The data was collected and labelled according to the type of data, the date collected and the source of the data.
- Maintain the data in the original form. They add that the originals must be copied and stored in a safe location.
- Leave audio tapes, transcripts and documents unaltered. They further suggest that the researcher use the copies to conduct the analysis, that all observations have been written in field notes, and that interviews must be transcribed.

- Secure them in a safe place. This enables the researcher to revert to the original documents, and other sources, to verify accuracy, and it provides an audit trail if asked to substantiate the researcher's findings.

1.11 TRUSTWORTHINESS

According to Wagner et al. (2012:137), it is critical to improve the trustworthiness and integrity of one's study; qualitative research can never be value free. Cope (2014:89) defines trustworthiness as a qualitative way for a researcher to persuade his audience to believe in his findings. Credibility, transferability, reliability, confirmability and authenticity, according to Cope (2014:89), are qualitative characteristics to evaluate when determining whether the research results are worth consideration by other researchers. Wagner et al. (2012:137-138), highlight the following common trustworthiness and credibility strategies:

- **Unobtrusive measures**. Collect your data from the natural environment where the phenomenon takes place. Collect data from the participants without influencing or changing the scene. Ensure that the situation within which the data is being collected is safe and non-threatening.
- **Use multiple methods of data collection**. By employing various styles of data gathering, it is usually accepted that this increases the trustworthiness and credibility of the research.
- **Participants' valuation**. While recording observations or analysing interview transcripts, one must constantly ask, "How do I know that what I observed or recorded was in fact what happened?" This can be done by member checking: verify your understanding with those observed.
- **Triangulation**. This is only possible if different data collection methods and instruments are being used to measure the same thing. It is important that when the researcher starts to draft the findings, they relay empirical data from other methods, sources or investigations to each other.
- **Transferability**. An important aspect that must be addressed under trustworthiness, is the transferability of the data, with an explicit indication that generalisability is impossible.

According to Wagner et al. (2012:94), qualitative research focuses less on drawing conclusions from a sample, and more on a person's understanding and meaning, in which one tries to see whether humans interpret and experience things in the same manner. As a result, the focus in qualitative investigations is on transferability. The extent to which one set of findings can be applied to another setting is referred to as transferability (Wagner et al., 2012:94). The data has been classified by the researcher such that if the data is used by another researcher, they will arrive at the same conclusions.

The researcher has described how the data was collected and analysed, as well as how the samples were determined and the results of the analysis. Wagner et al. (2012:243), further states that whichever technique the researcher uses, it is important to explain the exact steps taken in the research, as this helps the reader determine the degree to which the findings may be transferable to another setting and to be assured that they have attained validity. Wagner et al. (2012:243), state that there are four criteria that may be used to ensure trustworthiness of data:

- **Transferability**. It serves as the foundation for making similarity assessments. This, the authors claim, is accomplished by preserving all versions of data in their original form and presenting information in a dense manner.
- **Credibility**. Credibility is a phrase used to describe focus activities that increase the trustworthiness of the findings derived from the data.
- **Dependability**. This examination trail attests to the accuracy of the translation of information from diverse data sources and gives the means for guaranteeing the confirmability of the findings, allowing for the reconstruction of events and processes that lead to the research deductions.
- **Confirmability**. Confirmability is about ensuring that the deductions are steadfast in the data, and gauging the degree of prejudices present, to demonstrate that the data and findings were derived from events, rather than solely from researcher edifice.

Setting aside one's views, feelings and perceptions, in order to be open or true to the phenomena, is referred to as ‘bracketing’ by Creswell (2013:331). By revealing personal encounters with the phenomenon, the researcher has bracketed himself

out of the study (Creswell, 2013:79). The researcher is not fully removed from the study as a result of this; nevertheless, it does help to recognise the researcher's personal experiences with the phenomenon, and to set them aside to allow the researcher to focus on the experiences of the study participants. In this sense, the researcher attempted to follow Creswell's guidance.

1.12 ETHICAL CONSIDERATIONS

Denscombe (2012:122) affirms that applying ethics during research is about setting standards for the conducting of research, that have decreased the prospect of doing harm rather than good. Research ethics is a moral stance that is taken by the researcher to ensure that, for good reasons, there are beneficial outcomes, which implies that participants are not harmed, that the study has yielded high-quality findings, and that the findings are used for the greater benefit, rather than selfish or malicious ends (Denscombe, 2012:122). The principles of ethics, according to Denscombe (2012:128), are: no harm, voluntary consent and scientific integrity. According to Wagner et al. (2012:62), ethics must be considered at every stage of the research design and implementation process.

The researcher has maintained ethical considerations and has abided by UNISA's policy on research ethics. It is stipulated in UNISA (2007:9-10) that the basic principles for research are the following:

- *Moral principles*
    - *Autonomy.* Research has respect for the autonomy, rights and dignity of research participants.
        - *Beneficence.* Research has made a positive contribution towards the welfare of people.
        - *No maleficence.* Research has not caused harm to the research participant(s) in particular or to people in general.
        - *Justice.* The benefits and risks of research have been fairly distributed among people.
- *General ethics principles*

- *Essentiality and relevance.* Before beginning the investigation, enough thought was given to current literature on the subject or issue under study, as well as alternatives available.
- *Maximisation of public interest and of social justice.* This study was conducted for the benefit and improvement of society, as well as to increase public awareness and social fairness.
- *Competence, ability and commitment to research.* The researcher demonstrated professional and personal capability, as well as dedication to research in general and the relevant subject in particular – all of which are required for a good and ethical study.
- *Respect for and protection of participants' rights.* During this research, the researcher valued and protected the dignity, privacy and confidentiality of all those who participated in the research and has never exposed the participants to procedures or dangers not directly attached to the research project or its methodology.
- *Informed and non-coerced consent.* Individual participation must be freely provided and based on informed consent, in order to be considered autonomous. Coercion, whether direct or indirect, has been avoided, as has undue inducement of persons in the name of study.
- *Respect for cultural differences.* As part of the research, and during the interviews, the researcher treated the research participants as exclusive human beings within the context of their communal systems and respected what is sacred and secret by tradition.
- *Justice, fairness and objectivity.* The criteria used to pick participants for this study were not only fair, but also scientific. People or groups who are easily available have not been overburdened by study conducted on them on a regular basis.
- *Integrity, transparency and accountability.* This study was done in an open, honest, and transparent manner. The researcher has been forthright about his own limitations, abilities, belief systems, values and requirements. Other researchers' and team members' contributions have been duly acknowledged. Researchers were not used for personal gain or power, nor were their positions or knowledge exploited.

- *Risk minimisation.* The researcher has guaranteed that the genuine benefits of the research to the participants, or society, clearly outweigh any potential hazards, and that the participants were only exposed to those risks necessary for the research to be conducted. The researcher has ensured that the risks were assessed, and that adequate procedures were taken to reduce and mitigate those risks.
- *Non-exploitation.* No research participants, researchers (including students and junior members), communities, institutions or vulnerable people have been exploited.

This research has been identifying international best practices. For this purpose, the *Singapore Statement on Research Integrity* (2010:1) was consulted, which lists 14 responsibilities of research which are to be adhered to. The researcher has adhered to these responsibilities in so far as they related to this study. The researcher has ensured that ethical considerations were maintained throughout this research. This included maintaining objectivity and integrity. The researcher maintained ethical considerations and has abided by the ethical issues stipulated by the above authors.

1.13 CHAPTER LAYOUT

The researcher has laid out the study chapters in which the research questions are dissected, researched and discussed, as follows:

- **Chapter Two: The phenomenon of corruption in South Africa**

In this chapter, the researcher investigates the phenomenon of corruption in South Africa and determines the key factors that are causing public sector corruption levels to increase.

- **Chapter Three: Impact of overlapping mandates of public sector anti-corruption agencies on the anti-corruption framework in South Africa**

The focus in this chapter has been on determining the impact of overlapping mandates of anti-corruption agencies in South Africa.

- **Chapter Four: South African anti-corruption agencies in comparison to international anti-corruption agencies**

In this chapter, the researcher examines the similarities, differences and conflicts that exist between the South African agencies and some international agencies, and their success rates.

- **Chapter Five: Best practices, approaches and strategies for public sector anti-corruption agencies to operate under**

In this section, the best practices for anti-corruption investigating agencies to operate under, which have caused corruption investigations to improve, are unveiled. This is done through the incorporation of both national and international best practice.

- **Chapter Six: Revision of South African anti-corruption agencies' mandates**

The following aspects of the revision of the mandates of SAACAs are discussed in this chapter: whether the mandates have been revised, what revisions have been made, who is responsible for making the revisions, and whether the proposed revisions have a positive or negative impact on the agencies.

- **Chapter Seven: Findings, recommendations and conclusion**

In this chapter, the findings and conclusions of the study are discussed, and recommendations proposed for the future.

CHAPTER 2: THE PHENOMENON OF CORRUPTION IN SOUTH AFRICA

2.1 INTRODUCTION

In this chapter, the researcher addresses South Africa's place on the African continent, apartheid-era corruption, perceived corruption, the South African anti-corruption framework, and the causes of corruption in this country. The content is drawn from prominent authors, pertinent South African legislation, and relevant articles. Despite all-inclusive legislation and the existence of numerous anti-corruption organisations, corruption appears to be “waxing and not waning”, according to CASAC (2011:1), and many public figures and government officials have recently expressed concern about the rising levels of corruption in South Africa.

Apart from agencies and legislation, South Africa has various resources available to prevent corruption in the public sector, such as whistle-blowing and anti-corruption hotlines, which have become a standard and recognised element of government agencies in South Africa's fight against corruption (Department of the Presidency ..., 2011:25). South Africa's legislation and regulations are world class (NACF, 2009:12). According to Business Unity South Africa (BUSA) (2014:12), South Africa also has corporate governance and law enforcement agencies that are well equipped to address corruption. NACF (2009:14), however, states that work remains to be done in terms of implementation of the prevailing legislation and regulations.

In this chapter, the researcher provides the empirical feedback from Section B of the interview schedule, covering questions 7, 8, 11 and 12. The feedback from questions 9 and 10 are discussed in Chapter 3.

2.2 SOUTH AFRICA WITHIN THE AFRICAN CONTINENT

Newham (2002:2) argued almost two decades ago that the phenomenon of corruption, being clandestine in nature, makes it widely accepted that debates about the extent of this phenomenon, and its levels of increase or decrease, are mostly inconclusive (Newham, 2002:2). He further adds that studying corruption in a direct, empirical and quantitative manner is extremely difficult, because incidents of corruption are mostly never reported or recorded, and official data on corruption is

at best the measure of anti-corruption activities, and not the actual level of corruption.

Musila and Sigué (2010:130) have suggested that although corruption is pervasive and significant around the world, casual empiricism suggests that corruption is not only widespread, but appears to be on the rise in third-world countries, and particularly in Africa. In support of this, Asongu (2013:57) gives reasons which many scholars (Callaghy (1986), Nukunya (1992), Groenendijk (1997), Waligo (1999), Osei (1999) & Roussouw (1999), as cited in Asongu, 2013:57) trace the root causes of corruption in Africa to the following:

- Prevalence of authoritarian rulers.
- Monetised economics and bad economies.
- Citizens' educational empowerment.
- “Belly politics.”
- Emphasis on the public sector as the “primary driver” of economic development
- Absence of national and moral principles in the country.
- Decline of true patriotism.

Table 2.1, below, contains direct quotations from the literature, and has not been paraphrased by the researcher, in the interests of accurate reporting. The phenomenon of corruption in Africa has been categorised into three frameworks.

Table 2.1: Frameworks of corruption

FRAMEWORK	MAIN FACTORS	MODE
Incidental	Petty officials, interested officials and opportunistic individuals	Small-size embezzlement and misappropriation, bribes, favouritism and discrimination
Systematic	Public officials, politicians, representatives of donors and recipient countries, bureaucratic elites, businessmen and middlemen.	Bribery and kickbacks, collusion to defraud the public, large-scale embezzlement and misappropriation through public tender and disposal of public property, economic privileges accorded to special interests, large political donations and bribes.
Systemic	Bureaucratic elites, politicians, businessmen and white-collar workers.	Large-scale embezzlements through “ghost workers” on government's payroll, embezzling government funds through false procurement payment for non-

FRAMEWORK	MAIN FACTORS	MODE
		existent goods, large-scale disbursement of public property to specialised and privileged interest under the pretext of "national interest", favouritism and discrimination exercised in favour of ruling parties in exchange for political contributions.

(Source: Kpundeh, 1998:95).

Asongu (2013:55) warns that the focus on corruption has been on whatever sort of corruption has the most destructive effect on socio-economic stability, rather than on whether corruption is beneficial or harmful. It is necessary to move beyond the subjective and qualitative analysis that portrays corruption as a moral failing of politicians, bureaucrats, and businesses to form the role of political leadership, and it is beneficial to analyse corruption as a politico-economic reality.

A study was conducted by Musila and Sigué (2010:139-141) with 47 African countries. The countries were measured in respect of their CPI, as well as their projected import and export growths. Using data for the period 1998 to 2007, they found that corruption did the following:

- In both the African country and their trading partners it adversely affected the flow of exports and imports.
- It increased transaction costs.
- It led to imperfect contract attributions.
- It created inefficiencies that were detrimental to international trade.

They concluded that if African countries and their trading partners both become highly clean, their export and import trade would expand. Prior to the 1999 elections, Nelson Mandela acknowledged that his party had received tens of millions of dollars in donations from foreign governments such as Saudi Arabia, Indonesia, the United Arab Emirates and Malaysia, as Spector (2005:31) attested. As a result, even if elections and party systems are new in transitional nations, Spector claimed that the potential for party corruption that exists in industrialised nations can also be found in developing countries — and perhaps more so in the first elections.

The final decade of apartheid administration in South Africa was marked by various commissions of inquiry, according to Blundo, de-Sardan, Arifari and Alou (2006:48). According to these authors, popular opinion in South Africa believed that corruption had worsened since democratisation in 1994. According to a national survey conducted in 1998, 55% of those polled stated that most public workers take bribes, but, before the apartheid era, corruption was limited to the Post Office, police personnel, and the legal system, where it was documented (Blundo et al., 2006:48).

Blundo et al. (2006:55-56), stated that corruption would have been uncommon, rather than commonplace, for the white population of South Africa, and that it would have been concentrated in local rather than national governmental organisations. Towards the end of apartheid, however, the proliferation of independent governments in the homelands increased the opportunities for illicit administrative transactions, which were promoted by a local administration influenced by values extolling solidarity and the exchange of gifts. Between 1994 and 1999, when the homeland administrations were absorbed into regional governments, these tactics became more pervasive, and eleven members of the regional council were involved in corrupt activities.

Political changes also gave rise to other opportunities: incompetent and ignorant ministers and managers failed to implement the rules for the awarding of public contracts, non-meritocratic procedures were adopted for administrative recruitment, and nepotism was associated with the forms of political solidarity (militant reign era during apartheid) (Blundo et al., 2006:56).

In terms of its diplomatic commitments and dedication to combating corruption, South Africa has made tremendous strides. These include the adoption of the Anti-Corruption Public Service Strategy as the blueprint for public sector anti-corruption campaigns, the promotion of an anti-corruption system, the creation of investigative and prosecution capacities, and attempts to establish business and civil society partnerships (Majila, Taylor & Raga, 2014:220).

According to Majila et al. (2014:220), the other significant international agreements and developments to which South Africa has acceded are the following:

- SADCPC.
- SADCPCLD.
- AUCPCC.
- UNCC.
- UNCTOC.
- OECDCCBFPOIBT.

An explanation follows of some of the initiatives embarked on by the South African government. Manacorda, Centonze and Forti (2014:119) confirm some of the initiatives that South Africa has embarked on. South Africa implemented and ratified several protocols and international standards. In 2001, South Africa, together with 13 member states, formed the South African Development Community (SADC). The protocol provides for both preventive and enforcement mechanisms when dealing with corruption.

The preventive measures included the development of a code of conduct for public officials, transparency, and the establishment of anti-corruption agencies. These preventive measures were carried out through the Organisation for Economic Co-operation and Development (OECD) Convention which came into force in 1999. The OECD has been implemented in 40 countries, including South Africa. It criminalised the bribing of public foreign officials by focusing exclusively on the supply side of bribery. It also addressed the issue of money laundering, by allowing for seizure of the illicit gains of crime (Manacorda et al., 2014:119).

According to Manacorda et al. (2014:119), South Africa was one of 53 African countries that accepted the African Union Convention on Preventing and Combating Corruption in 2003 (AUCPCC). Bribery (domestic or foreign), diversion of public officials' property, trading in influence, illegal enrichment, money laundering and property concealment are all covered under the AUCPCC, which applies to both the public and commercial sectors. The convention includes measures on private-to-private corruption, as well as prevention, criminalisation, regional cooperation and mutual legal help, as well as asset recovery.

Manacorda et al. (2014:120), further state that in 2003 South Africa was a signatory, among 167 parties, to the United Nations Convention against Corruption (UNCAC), which includes the following:

- Preventive initiatives, including model preventive strategies, targeted at the public and private sectors.
- It covers a wide variety of crimes, including corruption, domestic and international embezzlement, trafficking in power, and the concealment and laundering of corruption proceeds.
- A provision on the liability of legal persons.
- Asset recovery, which is stated explicitly as a fundamental principle of the convention.
- It combines the mandatory and discretionary provisions.

A crucial initiative by the South African government was the formation of the Anti-Corruption Task Team (ACTT) in October 2010. The ACTT is a multi-agency initiative which has been mandated to fast-track the investigation and prosecution of cases of corruption. The ACTT is made up of the AFU, NPA, SAPS and SIU, all fulfilling their separate mandates in a collective to fight corruption. This initiative is supported by good legislation such as the following (Manacorda et al., 2014:120):

- Case law and the following Acts are dominant in prosecuting and resolving corruption:
  - Criminal Procedure Act 51 of 1977
  - Prevention of Organised Crime Act 121 of 1998
  - Financial Intelligence Act 38 of 2001
  - Public Finance Management Act 1 of 1999
  - Prevention and Combating of Corrupt Activities Act 12 of 2004
  - Tax Administration Act 28 of 2011
  - Customs and Excise Act 91 of 1964

Majila et al. (2014:219), reaffirm the above when they note that South Africa has developed and adopted legislation that is considered an international model of good practice and has set up agencies to fight corruption. In addition, these writers note

that South Africa has specific legislation that empowers the public to require public sector information and to challenge administrative choices.

2.3 CORRUPTION DURING THE APARTHEID ERA

A revelation during the apartheid era, according to Ellis (1996:171), was that the South African government agency known as the Department of Information, performed a task which included the smuggling of government funds — in other words, bribery to buy power at home and abroad. During Sir James Mancham's presidency, the Seychelles was one of the countries implicated in this secret distribution. To protect South African interests, South African secret agents carried (bags full of) bribe money.

Ellis (1996:171) explained the 'Muldergate' or 'Infogate' incident, which began in 1971. It was revealed not only that the Department of Information had bribed journalists and secretly purchased newspapers at home and abroad to improve public relations, but also that senior civil servants and politicians in South Africa had taken advantage of the Department's lack of parliamentary accountability for personal gain, also known as corruption.

Rubin (2011:483) states that corruption is deeply rooted in the history of South Africa. An example of this is the delivery of housing in South Africa. There are historical accounts of corruption in pre- and post-apartheid South Africa. The current form of corruption in South Africa is a continuation of systemic corruption in the apartheid regime, and since 1994, corruption has taken on a new variety of forms. The above clarification of Ellis is further demonstrated by Rubin (2011:483), who notes that “though old habits and predispositions may well sustain much of the existing administrative corruption, its apparent expansion is also the consequence of change”, and thus one of severe, predatory interactions has been the basis of most South Africans' experience of the state.

Minnaar (1999:1) stated that the authorities had never taken the problem of corruption seriously or faced it in a systemic and coherent way before the first ever democratic election in South Africa in 1994. This statement by Minnaar is valid, under the perceptions of corruption, and has previously been addressed. When Ellis (1996:192) discussed the “Cold War and global corruption,” he pointed out that

South African secret agents, Italian businessmen, and others, were able to exert pressure on the government of Seychelles, and that the influence that these individuals had in their home countries has been considered in the context of the Cold War. The perception of a total onslaught against the Pretoria government pushed South African politicians and the secret service to employ increasingly merciless methods throughout the region, resulting in a rapid escalation of corruption in the country, as has been observed by South Africans.

The protracted effort to protect apartheid, according to Ellis (1996:196), was the reason for the emergence of political corruption in South Africa. As a result, former secret agents have maintained their careers in and out of the public sector, and South Africa may experience the impact of the methods used for years to come. Corruption on this scale is difficult to eradicate, once it has become entrenched (Ellis, 1996:196).

Ellis (1996:193) provided examples of the scale of corruption: a maze of companies and organisations were set up or acquired by South African intelligence and security officers in the fight to defend apartheid. These companies could transform themselves, if necessary, by acquiring a new name, but continued doing the same business, “as a snake sheds its skin”. The arrangements of these companies in the 1970s and 1980s have produced a long-lasting infrastructure of personal connections and institutions designed to evade national laws, and to perform illicit transactions.

Newham (2002:3), in reference to the preceding discussion, writes that while there is little information on the extent of police corruption prior to 1994, there is no doubt that it existed throughout the police force (now known as the South African Police Service), and that abuse of power for personal gain was relatively widespread, and occurred at the highest levels during apartheid. The prosecution of kill squad commander Colonel Eugene de Kock, for example, was one of the most important sources of information about the level of police corruption.

During his trial, there was a great deal of proof of fraudulent acts in his unit, as well as how readily they might be repeated. Further evidence presented at the trial indicated that police officers were also involved in the smuggling and sale of illegal

substances, gems and guns, from all of which they profited handsomely. Gambling, prostitution and the illicit sale of liquor all encouraged corruption in the apartheid police force (Newham, 2002:3).

When the participants were asked, how far back, do you think, the acts of corruption in the South African public sector go? All three categories of participants, namely manager/commanders, lawyers and investigators, gave a wide array of responses, as follows:

- Since the dawn of democracy within South Africa.
- As far back as 1652 and 1950.
- Since the inception and establishment of the public sector in South Africa.
- Corruption has always been entrenched in the South African landscape; however, corruption is more prevalent now than in the past.
- Corruption stems from as far back to when the first settlers arrived in South Africa.

Participants agree that corruption goes back many decades, and that it is prevalent mostly in the public sector of the country. Some of the participants say that although it goes back many years, corruption became more prevalent after the first democratic elections which took place in April 1994.

> *"Corruption existed in the Apartheid era, way before South Africa' 1994 democracy. This was the perpetuated of the day which favoured the Afrikaners over the non-Afrikaners. In the run-up to the transition from Apartheid to democracy, corruption was rife. It has evolved within government and within the ranks of the ruling party and remains a scourge in the country to the current day." (P M: 5:2018).*

The empirical data does confirm that corruption in South Africa goes back decades prior to democracy in 1994, and corruption is more prevalent now than decades ago. The literature also states that corruption in South Africa has decades-old roots, and it discusses certain aspects of the incidents.

Corruption, being more prevalent nowadays, could turn out to be a good thing, as it will make ACAs and the country understand the enormity of the crisis and take

decisive and assertive action to address the overlaps in mandates of ACAs in South Africa. These are discussed in the next chapter:

2.4 THE CONCEPT OF CORRUPTION

Under this section, the researcher has decided to further explain and define the concept of corruption, as it sets the background to better understand the concept of perceived corruption, or the perception of corruption, in South Africa. Both these concepts and related aspects are dissected below.

2.4.1 Defining corruption

Minnaar (1999:4) describes corruption as an act of wrongdoing, typically involving dishonest behaviour and illegality, and unusually accruing benefits to any party involved. The definition of corruption specified in PRECCA (2004), is simplified by Goss (2016:21), who states that the following elements are encompassed by corruption:

- Someone giving (or offering to give) an item.
- Someone receiving (or agreeing to receive) an item.
- To give an item to someone in a position of power, for a favour.
- Someone in power, who uses that power illegally or unfairly and is given an item being referred to as gratification.

Gifts, entertainment, property, employment, contract awarding, discounts, and even a loan, are all examples of gratification, according to Goss (2016:21). Corruption is a crime committed by both the provider and the receiver. Even if the request is not met, the mere request for a bribe constitutes a violation of PRECCA.

Goss (2016:21) simplifies the definition of corruption that is stated in PRECCA (2004), as follows:

- Accepting gratification to influence the outcome of the awarding of a contract.
- Offering or accepting gratification to influence the awarding of a tender.
- Offering a bribe to a public official in exchange for some sort of benefit.
- Offering gratuity to a member of a legislative authority to act in an illegal or biased manner.

- Giving or receiving any unauthorised gratification by any party in an employment relationship for the purpose of engaging in an act within the ambit of the employment relationship.
- Offering a bribe in order to unduly influence an official of a foreign country.
- Offering a magistrate or judge any gratification to irregularly rule on a case.
- A judicial officer accepting a gratification to breach any duty or abuse their position of authority.

Goss (2016:21) agrees with Minnaar (1999:4) who noting that several other practices, including bribery, fraud, embezzlement, wrongfully manipulating decisions in one's own favour or profit, nepotism, and other similar acts of wrongdoing, dishonesty, or breaking the law, can be added under the definition spelled out. Newham (2002:2) stated that the phenomenon of corruption is clandestine in nature. Minnaar (1999:4) elaborated on this aspect and stated that, more often, the compensations are concealed in many clever and innovative ways, such as the following:

- All-expenses-paid holidays.
- The giving of free liquor and meals.
- Taking officials in government on free hunting/fishing trips.
- Offering free invitations to sporting events.
- Granting persons in power sexual favours.
- Granting persons in power excessive discounts or free services.
- Offering unearned benefits for family and friends.

The participants were asked how they would define the term ‘corruption’. They have the following understanding of the term:

- *Managers:* have a common understanding that corruption is the promise or offering or giving of any undue advantage or benefit to improperly influence an action or decision of the recipient beneficiary or government official when performing such function.

- *Legals:* understand it as an act between two parties, where one party offers something to another party which is not normally due, to induce that party to act dishonestly or legally. Both parties are guilty of corruption.
- *Investigators:* have the conception that corruption is the abuse of public power for private gain in which the person performs undue influence.

> *"For the purpose of work, I rely on the definitions of various forms of corruption in the Prevention and Combating of Corrupt Activities Act. In less formal settings, I would use the wide definition meaning the abuse of public power for private gain" (P I: 1:2018).*

The participants have a thorough understanding of what corruption is, and how it is defined. They are aware that their actions are unethical and illegal because they are abusing power for personal benefit. They largely highlight how corruption and misuse of authority in the public sector can be either intentional or unintentional. The participants are highly qualified individuals with extensive experience who have a thorough understanding of the various components of corruption. So, from the preceding discussion, it would seem that the manifestation of corruption did not change very much over the past 2 decades.

Simply explained in Hatchard (2014:13), and according to the Commonwealth Principles on Promoting Good Governance and Combating Corruption, corruption is generally defined as the "abuse of public office for private gain", while the Transparency Index (TI) refers to corruption as "the misuse of entrusted power for private gain".

Similarly, Spector (2005:5), opines that corruption is the misuse of public office for personal gain, and it is seen as the extra-legal and often humiliating transaction required to facilitate the delivery of government services in a wide range of sectors, such as education, housing, and judicial administration. Fletcher and Herrmann (2012:3) summarise the definition of corruption from certain continents, academia and the international understanding of a comprehensive definition of corruption, in Table 2.2, below.

The table contains direct quotations from the literature about the definition of corruption, and has not been paraphrased by the researcher, in the interests of accurate reporting:

Table 2.2: Summary definitions of corruption

NO	JURISDICTION	DEFINITION
1	**International**	"The misuse of public powers, office and authority for private gain through bribery, extortion, influence, peddling, fraud, speed money or embezzlement".
2	**Europe**	"Requesting, the offering, giving or accepting, directly or indirectly, a bribe or any undue advantage or prospect thereof, which distorts the proper performance of any duty of behaviour required of the recipient of the bribe, the undue advantage or prospect thereof".
3	**Africa**	"The soliciting, accepting, obtaining, giving, promising or offering of gratification by way of a bribe or personal temptation of inducement or the misuse or abuse of public office for private advantage or benefit".
4	**Asia**	"Corruption is asking, receiving or agreeing to receive, giving, promising or offering any gratification as an inducement or reward to a person to do or not to do any act, with a corrupt intention".
5	**Middle East**	"Corruption is the behaviour of private or public officials who deviate from set responsibilities and use their position of power in order to serve private ends and secure private gains".
6	**North America**	"The misuse of public office for private gain".
7	**Academic**	"The use of public office for private advantage, the latter term understood not only in the pecuniary sense, but also in terms of status and influence".

(Source: Fletcher & Hermann, 2012:3).

Fletcher and Herrmann (2012:7) further state that the definition of corruption might be debated for hours, without providing the reader with anything useful. There are several researchers who continue to work in this field. They are forced to engage in time-consuming debate and are adamant about their preference for one strategy over another. However, such debates tend to consume a great deal of energy that may be better spent elsewhere. Recognising this, some colleagues have begun to avoid using definitions of corruption, stating that most observers can detect most situations of corruption without hesitation.

According to Majila et al. (2014:219-220), corruption has a disproportionate impact on the disadvantaged, in terms of economic disparity and access to key services and resources. It jeopardises the creation of chances for healthy livelihoods and

economic empowerment. The poorest people bear the brunt of corruption's expenses, which diminish the efficiency and accessibility of public services, and these services have been unable to thrive due to a lack of openness.

The literature offers a wide range of definitions, explanations and aspects of corruption, both from a national and international perspective. These perspectives make one understand the term ‘corruption’ in a simplified manner. The feedback from the participants also captures the essence of the term ‘corruption’. Understanding the terminology of corruption enables commanders/managers, lawyers and investigators to separate the different types of corruption and investigate them to the full extent of their duties.

2.4.2 Perceived corruption

Countries are measured by the CPI which is conducted by TI. According to Blundo et al. (2006:10), it was a German economist, Johann Graf Lambsdorff, who compiled the CPI on behalf of the organisation, Transparency International. Blundo et al. (2006:10-11), further critically dissect the CPI, and find it to have flaws in the following:

- Countries with under-the-counter activities are perceived to be evaluated as the least corrupt.
- The TI index presents itself as the ‘survey of surveys’ and is compiled from sixteen different sources.
- The TI focuses on the perspective of businesses and community. The TI has not incorporated the views of international experts over the years.
- Lambsdorff is also convinced that the sources he consulted qualify the same phenomenon, in that the survey does not ask the same question from the same definition of corruption.
- There is nothing to indicate that such different informants quantify corruption using the same ethical and moral yardstick.
- The question arises as to whether it is possible to compare surveys carried out among elites with those carried out among the general public, or the perceptions of expatriates with those of economics operators and national civil servants.

While they acknowledge the relevance of these problems, the authors of the TI index deem them of little significance and based on high levels of corruption between the different surveys, insist that they do not impair the validity of the index. The TI index is used on account of the false precision of its figures, is primarily an instrument of political pressure, has been evaluated as such, and at best it provides an initial instrument in the context of an extended comparative approach based on traditional methods of political science (Blundo et al., 2006:10-11). However, the authors do state that under no circumstances can the TI index satisfy the anthropologist who prefers research on local and contextualised *representations* of corrupt practices to comparisons of decontextualized *perceptions* at global level.

Rose-Ackerman (2006:3) agrees with Blundo et al. (2006:10-11), that the TI index data on corruption is based on subjective perception and expertise, and that empirical use of these indices assumes they relate to real-world corruption levels. Perception data are the only statistics on corruption levels accessible, and efforts to use objective data such as convictions or abuse of office, suffer from inherent bias, undermining their validity, and are not available across a wide range of countries.

Even the World Bank has computed a composite index, according to Rose-Ackerman (2006:3-4), and its approach and results are like the TI CPI. Political Risks Services (PRS) and the International Country Risk Guide are two resources used by some scholars (ICRG). Rose-Ackerman (2006:3-4), also cautions that this source does not depict corruption itself, but rather the political instability that often follows corruption, and that even if corruption levels remain unchanged, the indicator may give a country a lower score simply because the public becomes intolerant of the incumbent government's corruption.

Rubin (2011:497) reports that evidence from recent studies indicates that South Africa's perception of corruption is widespread, and that although this consensus on increased corruption exists, it is difficult to reliably quantify its scale, especially because it is not officially assessed. Rubin (2011:486) claims that an individual's level of education appears to play a factor in determining their perceptions of corruption. People with a university degree, or at least a secondary education, have proven to have a lower perception of corruption than their less educated counterparts. One explanation is that people have a persistent perception of

corruption, or are convinced that the government is crooked, and there is a broad lack of understanding of why services (housing) are slow and sloppy (Rubin, 2011:483).

According to Nxumalo (1999) (as cited in Rubin, 2011:487), corruption practice by the state may induce “future general disorder, instability and total anarchy in society”. However, in contrast to the notion that perceptions of corruption have contributed to the ultimate social, economic and moral collapse of the state, Rubin (2011:487) suggests a revisionist approach that offers a more dynamic, nuanced view of corruption. She explains:

- Revisionist scholars take a less normative approach, and are thus more able to unpack, rather than refute, the analysis of corruption as a social evil.
- Corruption, such as the willingness of non-elites to access resources that would otherwise be inaccessible to them, has a rational and sometimes highly pragmatic explanation for its existence.
- Corruption will provide the state with a human face and a means of appealing to someone who can function in the system.
- It offers a means of circumventing red tape and devastating bureaucracy in situations of state inefficiency.
- Corruption, as it encourages foreign investment hindered by national protectionism, will improve economic well-being at several levels.
- Corruption encourages people to participate in public relations and promotes national integration.
- Corruption may give citizens the impression that the government is accessible on some level.
- Perceptions of corruption may be advantageous in the setting of an opaque, remote, capricious and inefficient state, it is proposed.

According to Minnaar (1999:1), the media in the post-1994 era tended to report incidents of corruption to a larger extent than previously, especially at the highest levels of the new administration, because of the democratic changes that transpired. This gave the mistaken impression that the new government had ushered in a period of unprecedented increase in corruption, bribery, malfeasance, fraud,

nepotism and favouritism among its ranks and in the public sector. Minnaar (1999:1) also points out that this apparent growth in corruption must be viewed in the light of the following:

- The activities of a variety of autonomous policy organisations focused on good governance aspects.
- The vociferous independent press and several anti-corruption bodies.
- The PP, the National Director of Public Prosecutions (NDPP), the Health Investigative Commission (HIC) (later known as the SIU), the ICD, the SAPS, the Office for Serious Economic Offences (OSEO) and the Investigative Directorate for Organised Crime (IDOC), among others.
- A slew of new laws aimed at combating crime has shifted the focus to arresting corrupt officials.
- Campaigns that operate as toll-free hotlines for reporting public-sector corruption.
- Campaigns to raise public awareness about whistle-blowing.
- The emphasis on service delivery transparency.
- The implementation of witness protection programmes.
- The establishment of a code of conduct for all public officials, by institutions.

Both approaches have greatly enhanced public awareness of corruption, allowing for a better understanding of South Africa's rapid rise in corruption. According to Minnaar (1999:5), South Africa's lower echelons have been penetrated by corruption-related, organised crime operations, but the upper echelons have remained relatively clear of corruption. He adds that when the state gets weaker and more corrupt over time, criminal organisations are more likely to create parallel and competing centres of power that are difficult to replace.

The perceived impact of correcting externalities is explained by Olken and Pande (2011:18), who claim that if the government's ability to repair externalities is harmed by corruption, it will result in inefficiency. They give the following example: If someone can bribe a police officer or judge instead of paying an official fine, the marginal cost of breaking the law is reduced from the official fine to the amount of the bribe, and it is even worse if the police officer extracts the same bribe whether

or not the person has broken the law. The marginal cost of breaching the law decreases to zero, and the law no longer serves as a deterrent.

Corruption is widely seen as a major hindrance to the establishment of an effective government, since it is recognised as “a symptom of something going wrong in the state's management” (Asongu, 2013:54). According to this author, there is a lack of consensus on how to measure corrupt behaviour, and it is also difficult to quantify the influence of institutions on anti-corruption efforts. Pillay (2004:586) agrees with Asongu, stating that South Africa is rapidly learning that corruption is one of the major obstacles to successful development. Pillay also notes that, for the following reasons, corruption essentially runs counter to transparency and the rule of law:

- It undermines governance.
- It erodes public confidence in the state's trustworthiness.
- It jeopardises the government's and society's ethics.

The more systemic corruption exists, the more difficult it is to detect, address and punish it (Pillay, 2004:586). Because corruption is regarded as a multifaceted issue, Majila et al (2014:221) make the key point that creating and applying these control mechanisms does not mean that corruption has been controlled.

2.5 ANTI-CORRUPTION FRAMEWORK

Under this heading, the researcher discusses the legislative framework in South Africa, the concept of political will, the rise and fall of the Directorate of Special Operations and a key political figure, the former South African President Jacob Zuma.

2.5.1 Legislative framework

As previously discussed in Chapter 1 of this thesis, South Africa has ‘world class’ legislation which was listed and cited. Chapter 1 also listed the SAACAs and the mandates governing them. The anti-corruption agencies’ constitutional obligations were also discussed. Pillay (2004:590) stated that one of the most elaborate democracies in the world was implemented by the South African Constitution, which revolves around the executive responsible for the legislature, an autonomous judiciary, and a decentralised government within a unitary state.

Pillay (2004:590) states further that the Constitution also provides for an anti-corruption agency (institutional mechanism), such as the PP and the AG. This Constitutional accountability is in line with a more global perception that anti-corruption is inextricably related to greater openness and accountability based on a democratic transition.

When the participants were asked what they understand by the concept 'anti-corruption framework in South Africa', only a few participants clearly understood the concept of 'anti-corruption framework'. The participants discussed aspects such as a strategic document or a set of rules to fight corruption. The participants who did understand the concept of anti-corruption framework discussed it as legislation, regulations, policies and guides developed to assist anti-corruption agencies in carrying out their mandate:

> *"… implementation of practical legislative, regulatory and governance initiatives aimed at or intended to combat corruption" (P I: 3:2018).*

> *"It is the legal requirements as far as investigation of corruption" (P I: 10:2019).*

When reviewing the feedback from the participants, only a few participants understood the concept of 'anti-corruption framework'. This will create problems for the ACAs in fulfilling their mandates. If participants are unclear of the anti-corruption framework in South Africa, then they will not know the following key aspects to fighting corruption:

- The aims and objectives in dealing with corruption.
- The legislation that is available for corruption cases.
- The resources available to assist in fighting corruption.
- Government programmes and initiatives that are launched as part of national and international anti-corruption obligations.
- The country's NDP 2030.
- Amendments and updates to legislation, directives and guidelines.

Having knowledge of the above points is crucial towards gaining a holistic view, and it gives the participants 'ammunition' in the fight against corruption in South Africa.

2.5.2 Political history

Pillay (2004:598) defines 'political will' as the resolve of political leaders to act on a specific policy goal. This author mentions fighting corruption and ensuring that the necessary factors are in place to make such a programme successful. The establishment of an anti-corruption agency necessitates high-level support, as well as the essential political conditions for its successful operation. Even when there is a strong intention to fight corruption, it fades as the reality of governance, vested interests in the status quo, and the weight of more pressing duties weigh on government actions.

Pillay (2004:598) argues that such an agency would not exist if it did not have the essential political support to supply the necessary money, powers, independence, and departmental mechanisms. Pillay ends by stating that the government's commitment to fighting corruption in South Africa has yet to be clearly proved by decisive steps.

According to De Sousa (2009:19), one of the things that has not been there to ensure that anti-corruption authorities overcome adversity, is political will. The professional code of ethics has required legislators to commit to any anti-corruption programme, including support for sanctions, summary suspensions, and dismissals if found guilty of corrupt conduct, as well as severe punishments (Minnaar, 1999:9). When Asongu (2013:55) believes that political leadership has a critical role in supporting or discouraging corrupt practices, he agrees with the previous authors.

2.5.3 Directorate of Special Operations

Berning and Montesh (2012:3) state that in June 1999, former president Thabo Mbeki announced that a special investigative unit would be established to deal with priority crimes. Then, in September 1999, the DSO, also known as the 'Scorpions', was set up. According to Berning and Montesh (2012:3-5), the DSO had many successes. By February 2004, the DSO had completed 653 cases, comprising 273 investigations and 380 prosecutions – of which 349 prosecutions resulted in convictions, giving them a 93.1% conviction rate. While the DSO was examining an

arms sale that began in 2001, they discovered flaws in the Department of Defence's tendering process, which led to its disbandment. Schabir Shaik, then deputy president Jacob Zuma's financial adviser and confidant for many years, benefitted from the armament's transaction. Shaik was accused and convicted of corruption and fraud in relation to bribes involving Zuma, because of the DSO investigations (Berning & Montesh, 2012:6).

Hatchard (2014:187) also informs that the DSO prosecuted the former Commissioner of the SAPS, Jackie Selebi. After the Khampepe Commission of Inquiry at the December 2007 African National Congress (ANC) 52nd National Policy Congress, it was resolved that the DSO be incorporated in the SAPS. Then, in 2008, the National Assembly approved the dissolution of the DSO, and incorporated it into the SAPS as the DPCI.

2.5.4 Former South African President Jacob Zuma

Adding to the above, Hatchard (2014:157) gives a detailed synopsis of the charges relating to Zuma:

- Shaik was convicted of corruption and fraud, and the evidence at the trial implicated Zuma.
- The National Director of Public Prosecution (NDPP), Vuzi Pikoli, sought to indict Zuma, and when he sought a postponement of the trial, the court rejected the request and struck the matter off the roll.
- Pikoli was suspended by the then President Thabo Mbeki on reportedly unrelated matters; the decision to indict Zuma was left to Acting NDPP Mpshe.
- Zuma sought a court order to overturn the decision on procedural grounds, to indict him.
- Significantly, the court noted the judgement of the Shaik trial that a generally corrupt relationship existed between Shaik and Zuma.
- The Supreme Court judgement was handed down in January 2009, with Zuma's trial to begin in August 2009.
- This decision raised major political issues, as the ruling party, the ANC, needed to decide whether Zuma was its presidential candidate in the forthcoming presidential elections.

- Then, a convenient way around Zuma's problems was found in the recordings of a telephone interception between the then NDDP, Mr Ngcuka, and the head of the DSO concerning Zuma's case.
- Legal battles have been ongoing, Zuma was elected president of South Africa, and to date has not yet been prosecuted.

According to The Guardian (2020:1), a South African court has issued an arrest order for former South African president Jacob Zuma after he failed to appear in court to answer corruption allegations, due to medical reasons. Jacob Zuma was last seen in court in October 2019.

As claimed by Bruce (2014:49), Zuma was involved in corruption while president of South Africa, which is a barrier to eradicating corruption in the country. It is also worth noting that the charges against him haven't stymied his ascension to, and retention of, the position of ANC leader, nor have they had a significant impact on the party's popularity. In fact, in the May 2014 national election, overall support for the ANC and Zuma as its leader fell only marginally.

In 2014, the ANC received 62,15 percent of the vote in South Africa, down from 65,9 percent in 2009, with decreases particularly evident in metropolitan regions such as Johannesburg, Tshwane and Ekhurhuleni. Despite this, the ANC has remained the most powerful party in all provinces and metropolitan regions outside of Cape Town, except for the Western Cape. Though some have suggested that this should be interpreted as support for the ANC, rather than for Zuma in particular, it is apparent that Zuma continues to have strong personal support. Zuma and other ANC officials accused of wrongdoing have maintained considerable public support in South Africa (Bruce, 2014:49).

2.6 CORRUPTION IN GOVERNMENT DEPARTMENTS

South Africa, when compared to other countries, also has many departments that are crucial in ensuring the running of the country and catering to the needs of its citizens. In this thesis, the researcher has focused on a few departments:

2.6.1 Department of Housing

According to Rubin (2011:481), the first set of charges in the Department of Housing included allegations of nepotism and racism, favouring comrades and companions who fought alongside one another in the anti-apartheid struggle, as individuals in positions of power allegedly used their position to enrich themselves and obtain official appointments from their comrades, for which they may not have been qualified.

In addition, stories abound of families receiving housing only if they had a clear connection with the political party, and these accounts expose the broad spectrum of corruption that respondents consider existing within the housing programme (Rubin, 2011:482). The author states further that housing provisions and allocations seem to have been opaque and inefficient to some degree, so far.

2.6.2 Department of Immigration (currently named Foreign Affairs)

Cross-border criminal operations would not have been at such a high level if there were no corrupt officials at the grassroots level (Minnaar, 1999:4). Grassroots authorities are open to bribery all over the world, or they help criminals and organised crime syndicates obtain counterfeit or fraudulent documents or accept falsified paperwork for a variety of items and services. In September 1998, more than half of the 24-member Alien Investigation Unit (AIU) were suspended on suspicions of corruption, including engaging in sexual relations with foreign prostitutes as payment for sheltering them from deportation as unauthorised guests, according to Minnaar (1999:4).

Minnaar (1999:6) mentioned a case of fraud and corruption within the Department of Home Affairs, where one government official used to provide illegal migrants with false documents, while he himself was an illegal migrant who had worked for the Department for seven years under false credentials.

2.6.3 Department of Police Service (currently named Safety and Security)

During the apartheid era, corruption within the police force was considered under the heading of corruption. According to Minnaar (1999:5), organised crime syndicates often exist only with the help of state criminal justice officials, and officials

responsible for monitoring or managing the basic goal of lawful morality. According to Minnaar (1999:5), corruption extends to traffic police and bureaucrats who issue roadworthy certificates and registration paperwork for stolen vehicles being transported out of the country.

2.7 CAUSES OF CORRUPTION

When Pillay (2004:589-592) wrote that the roots of corruption in South Africa are contextually embedded in the country's bureaucratic traditions, political evolution and social history, she presents a thorough breakdown and explanation of the causes of corruption in South Africa. Corruption has thrived as a result of systemic flaws. Many factors have reduced public sector workers' inherent drive to work productively, including:

- Declining salaries of civil servants.
- Unfair promotion which was unconnected to performance.
- Dysfunctional government budgets.
- Inadequate supplies and equipment.
- Continuous delays in the release of budget funds.
- Loss of organisational purpose within the public sector.
- Politicians and senior officials abusing their positions in government for personal benefit.

South Africa's pervasive corruption in the public sector has contributed to its citizens' inequality, inefficiency, distrust of the government, abuse of public resources, business discouragement, political uncertainty, oppressive measures and government restrictions. Spector (2005:80) elaborated on the above, and argued that the integrity of civil servants, the degree of public salaries, the institutional regulation of the accountability of regulations, laws, procedures, and the severity of penalty systems, should be counted among the indirect causes of corruption, if they are caught.

According to Rose-Ackerman (2006:4), corruption research is problematic, since many of the causes of corruption also appear to be the results of corruption. This author shares the researcher’s viewpoint on the following causes of corruption:

- The size of the public sector.
- The country's regulatory quality.
- The level of economic competition.
- The government's structure.
- The degree of decentralisation.
- The impact of culture on corruption.
- Values and gender factors.
- The function of invariant aspects such as geography and history.
- The lack of accountability on the part of government departments.

The participants were asked what they believe are the causes of corruption in the public sector in South Africa. They attribute the causes to mainly greed and a lack of accountability. A participant further elaborated on the aspect of greed:

> *"Politicians being in office for a short period of time (five to ten years), need to take what they can before their term ends. The chances of being caught and/or convicted are very slim because of lack of controls, people lose their morals, examples set by government are of not being against corruption and there is a lack of resources at corruption fighting agencies" (P M: 7:2018).*

There was a participant who discussed the fraud triangle, which can be also attributed to be causes of corruption:

> *"The fraud triangle is made up of three aspects:*
> - *Opportunity (weak systems and controls)*
> - *Need (greed and financial hardship)*
> - *Rationale (everyone does it so why not me, and the state owes me)" (P L: 3:2018).*

In terms of the causes of lack of accountability in service delivery programmes that breed corruption, Rose-Ackerman (2006:441) believed that enhancing service providers' responsibility to both beneficiaries and government officials is a critical policy issue. In addition, Rose-Ackerman (2006:441) claimed that systematic reviews of service delivery innovations, which can be intended to promote accountability, are one method to learn more.

Shah (2007:1) raised an interesting point: the dysfunctionality of public sector governance is at the foundation of corruption. This, according to Shah, is one of the main reasons of corruption, inefficiency and waste in developing countries, and it is ascribed to a lack of public empowerment to hold government accountable. There are several misconceptions about the underlying problem of corruption, according to Spector (2005:5 & 80):

- **Misunderstanding of what 'public service' implies**

The elected or appointed officials and administrative personnel in government often fail to appreciate the special provisions of their employment: they are servants of the public and are entrusted with carrying out their functions and expending public funds with the public's interest in mind. They have no ordinary job.

- **Public servants sometimes lack understanding of what constitutes conflict of interest**

In some societies, the distinction between public and private can be hazy; laws and regulations do not always clearly define or enforce the distinction. Corruption thrives when the wealth and potential of the public sector are used without permission by those who happen to work in government. In fact, many public opinion surveys find that people generally associate corruption with illicit monetary transactions such as bribes, kickbacks, money and extortion, but not with illicit influence transactions such as nepotism, favouritism and misuse of public property. The confrontation between public and private interests is typified by this lack of understanding, which also represents corruption.

- **Respect for rule of law**

This is frequently rejected, and inventive ways to get around the system to get what one wants are substituted. Corruption is accepted, not because it is admired, but because people are unable to see a way out of their predicament. They believe that living in a corrupt environment is their destiny, and that there is nothing they can do about it. This attitude can easily translate into a chaotic Darwinian world where the rule of law that is meant to give order to society is ignored in favour of personal incentives and motives.

Majila et al. (2014:222), note that legislation has been enacted, and agencies for the fight against corruption have been developed, in South Africa; however, corruption still seems to be concentrated among certain people in the region. In the table below, they illustrate the kinds, causes and effects of corruption.

Table 2.3 below illustrates the kinds, causes and effects of corruption.

Table 2.3: Causes of corruption

TYPES OF CORRUPTION	CAUSES	FORMS	CONSEQUENCES
Political Corruption	"Weak electoral commission, law-enforcement mechanism, judiciary and one-party dominated state".	"Inflation of voters, rigging of elections and deprivation of winners from weak political parties".	"Civil unrest, bad governance, incompetent rulers, bad international image and electoral influenced violence".
Economic Corruption	"Weak state, poverty and wider income gap between the rich and the poor".	"Bribing to win contracts, influenced service delivery, contract cutbacks, inflation of government contracts and non-payment of taxes by highly-placed businessmen".	"Escalating costs of governance, poor or non-implementation of public contracts, poor public service delivery, closure of public parastatals and loss of public revenue through tax evasion and avoidance".
Bureaucratic Corruption	"Lack of national commitment, weak state and complex bureaucratic processes".	"Bribery of public officials and distortion of due process/normal procedure in the public sector".	"Bad policies, non-pursuance of policy objectives, policy failures, employment of incompetent public officials and poor service delivery".
Judicial Corruption	"Poor salary scale, greed and weak law enforcement mechanism".	"Free bail, distortion of judgments, acceptance of bribes by judges and delays in handing down judgment".	"Persistent corruption, private cost of corruption lowered or reduced to zero, civil unrest and lawlessness, and decadence of rule of law".
Moral Corruption	"Non-taxation of property, higher levels of poverty and	"Demonstration of individual materialistic possession and	"Desperation to acquire wealth, armed robbery, civil disorder and

TYPES OF CORRUPTION	CAUSES	FORMS	CONSEQUENCES
	wider income distribution".	exploitation of masses by few individuals who are powerful and rich in society".	eventually revolution for change".

(Source: Yaru, 2010:146).

The empirical data outlines the general causes of corruption which are greed, lack of accountability and controls, concepts of the fraud triangle, government's indecisive actions and lack of resources. The literature dissects these causes to a finer understanding. By knowing the causes of corruption, it assists ACAs and the government to adopt preventative plans of action to curb corruption, educate the citizens and fight corruption. Given that people who write on corruption first and foremost seek to characterise the notion before studying it, it may be argued that corruption is a diverse phenomenon.

2.8 SUMMARY

This chapter has indicated that corruption is clandestine in nature and measuring it has been difficult. Corruption has existed in South Africa for decades and will continue to do so, Corruption has a political history and needs strong political will to help reduce the effects of its past. The political changes also gave rise to other opportunities: incompetent and ignorant ministers and managers failed to implement the rules for the awarding of public contracts, non-meritocratic procedures were adopted for administrative recruitment, and nepotism was associated with the forms of political solidarity. This is despite South Africa having made huge leaps in terms of its international obligations and commitment to fighting corruption.

Corruption has a clear and easy-to-understand definition: this being it is the offering or accepting gratification as a benefit to act unlawfully or omitting to act. The benefit can be for the person giving the favour, or for any other person who may directly or indirectly benefit. There are many causes of corruption. Many of the South African politicians, such as the former president, Jacob Zuma, have been embroiled in corruption allegations which are ongoing. There are many reports and cases of corruption in almost all the country's departments of government. It can be

concluded that it is the poor citizens in the country who suffer the most from corruption, as they do not receive the benefits and services due to them.

CHAPTER 3: IMPACT OF OVERLAPPING MANDATES OF PUBLIC SECTOR ANTI- CORRUPTION AGENCIES ON THE ANTI-CORRUPTION FRAMEWORK IN SOUTH AFRICA

3.1 INTRODUCTION

In this chapter, the researcher has conducted an overview of anti-corruption agencies specified them in relation to the South African context, explained the concept of an ACA, described the mandates of ACAs, confirmed the overlaps that exist between the ACAs and, importantly, discussed the impact of the proven overlaps on the anti-corruption framework in South Africa. The impact of the overlapping mandates of ACAs has also highlighted the deficiencies within the South African government to properly mandate, control, review and evaluate the effectiveness of the ACAs within the anti-corruption framework of South Africa. The impact of the overlaps has far-reaching consequences which impact directly on the citizens of the country and create a worsened perception of corruption.

During the discussion, the researcher will provide the empirical data from Section C of the interview schedule as well as Question 9 from Section B of the interview schedule. These discussions will be interjected with *in vivo* quotes from the participants to underscore the narrative.

3.2 CONCEPTUALISING ANTI-CORRUPTION AGENCIES

According to De Sousa (2009:5), ACAs have their roots in parliamentary commissions, inquiry committees, special police branches and anti-corruption leagues. They played a crucial role and set the foundation for the forthcoming ACAs – their mandates, functions, responsibilities, due diligence and positive effect, made by the government for the perceived reduction and eradication of corruption.

In the aftermath of World War II, the first ACAs date from the post-colonial period; diminishing European powers produced these early agencies. The ACAs were created as an attempt to clean up their colonial administrations' not-so-clean image, or as part of their efforts, in the sense of self-determination, to establish a new administration free of old habits and corrupt practices inherited by newly independent governments from the colonial powers (De Sousa, 2009:5). The World Bank characterises the ideal ACA, according to Meagher (2002:3), as an organisation that analyses and verifies official asset declarations, conducts

investigations into possible corruption, and pursues administrative and criminal punishments against corrupt individuals in appropriate forums. The World Bank's description is a good example for several ACAs around the world. Importantly, according to De Sousa (2009:5), ACAs are permanent public bodies with a strong mission to combat corruption and remove the incentive structures that encourage its occurrence in society through preventative and/or coercive measures.

According to Meagher (2007:70), every society has certain organisations and procedures in place to prevent, identify and punish corruption, from prosecutors to civil service commissions. Governments instead rely on autonomous permanent agencies whose principal responsibility is to provide centralised leadership in major anti-corruption operations (Meagher, 2007:70). This author added that the latter includes policy research, prevention, technical assistance, public outreach and information, surveillance, investigation and prosecution.

Majila et al. (2014:227), outline the role of ACAs in monitoring public ethics and achieving accountability standards, particularly regarding decision-making in the public sector. They continue to describe ACAs as legal bodies, permanent organisations with full-time employees and executive duties, and not just advisory ones, with three main functions:

- Prevention
- Awareness
- Law enforcement

ACAs are never given a well-defined mission, as they may be created to update the ethics and infrastructure of a country, respond to corruption scandals, and meet the requirements of international treaties. Meagher (2007:87) warned that ACAs need careful measures of preparation and efficiency, lest they become simply reactive and thus vulnerable to political pressure to concentrate on the wrong fields. Political leaders are accountable for initiating ACAs, and unintentionally giving more control and freedom to these ACAs than they must tolerate. When the ACAs concentrate on political leaders who are tainted by corruption, this becomes clear, and the same political leaders seek to weaken those attempts and curb the powers of the

investigators. The downfall of the DSO under the leadership of former President Zuma will be a prime instance of this.

The expectations of ACAs are clearly stipulated by Majila et al. (2014:228), as the following:

- Fighting corruption by building an autonomous, knowledge-based, specialised, repressive, preventive and instructional capacity.
- Overcoming the shortcomings of traditional law enforcement systems and methods and taking the lead in the implementation of national anti-corruption policies.
- Assuring the public that the administration is committed to eliminating corruption.

As with any formal structures, it must have a clearly defined mandate to guide and focus the activities of the staff. In the next section the researcher will discuss the mandates of the ACAs.

3.3 MANDATES OF ACAS

According to Hatchard (2014:180-190), the mandate of ACAs has been the following:

- **Corruption prevention/integrity function**. Initiating prevention, awareness and ethical conduct programmes within an institution which has been able to detect the occurrence of a corrupt act or related crime.
- **An investigation functions**. Conducting in-depth investigations into alleged corruption and related crime offences, with a view to proving corruption and placing the complete investigation before the court.
- **A prosecutorial function**. Ensuring that the investigated offences are court ready and applying relevant legislation to ensure that the perpetrator is convicted of corruption or related crimes.
- **Asset recovery**. Having investigated the alleged corruption or related crimes, and proving the elements of corruption, and being able to trace and track down the proceeds of corruption. Through a legal process, being able to recover the assets purchased with the proceeds of the corruption or related crime.

The participants were asked how they would define the concept ‘mandate’. They responded as follows:

- *Managers:* believe that a mandate is a legal authority to conduct one’s duties, or it is a defined task delegated to a person, usually accompanied by powers or duties.
- *Legals:* understand/describe a mandate as the authority to do something which is given by an instruction.
- *Investigators:* state that a mandate is the authority to act, or the permission to attend to, a specific action.

> *“A mandate is an official order from a person in authority to act in a certain way. An example, the SIU receives a mandate from the President to conduct various investigations in government. The mandate document is the Proclamation which the SIU uses to conduct its investigations” (P I: 4:2018).*

South Africa has several agencies that provide the necessary checks and balances in the context of the South African National Development Plan (NDP) (South Africa, 2013:448). Tamukamoyo (2013:12) and the DPSA (2008:20) both indicate that there are at least thirteen separate state agencies in South Africa that have a legislated duty to play in combating corruption.

South Africa has chosen gradual improvement for existing agencies, according to TI (2012:7), and the anti-corruption mandate has been distributed among numerous institutions, including the SAPS, NPA, AG, SARS, SIU, PP and PSC. All these entities have cross-functional tasks aimed at improving personnel integrity, financial management and administrative quality in the public sector.

According to Pereira, Lehmann, Roth, and Attisso (2012:17), South Africa does not have a single anti-corruption authority responsible for anti-corruption policy implementation, supervision, corruption prevention, and enforcement. Rather, most countries have several distinct institutions that are supposed to work together to accomplish a variety of anti-corruption responsibilities, but their mandates often overlap and are duplicated in practice. According to Bruce (2014:51), the SAPS,

DPCI, SIU, PP, AFU, IPID, and SARS are all charged with investigating charges of corruption.

In contrast, Mosselini (2013:44) states that effective governance requires a singular mandate for the eradication of corruption, which identifies the following:

- How a particular ill can be cured.
- How the ill came into existence.
- The factors which inform the ill's resilience, despite various efforts towards eradication.
- The provision of means to address every facet of this ill.

This is to guarantee that the suggested remedy addresses the problem in its entirety. The ACTT has been chastised by parliament for its ineffectiveness in investigating and prosecuting public sector corruption. This failure may have weakened the state even more by allowing the corrupt to continue operating in the public sector while an inquiry is being conducted.

The Special Anti-Corruption Unit (SACU), which is part of the Department of Public Service and Administration (DPSA), the ACTT and the SIU all had similar, if not identical, mandates; thus, the formation of these units would be nothing more than a bureaucratic way for a government agency to re-define its responsibilities in the fight against corruption by delegating some of its functions to another body.

Pillay (2004:595) has stated that agencies vary according to their specific mandate, and the ACAs express dissatisfaction with their present arrangements of resource constraints. Public perception is that the ACAs in South Africa are not fulfilling their mandate of preventing and controlling corruption. This impression stems from the perceived lack of visible justice in corruption-related prosecutions and a lack of high-profile convictions. The author further states that the referral of cases by the ACAs in fulfilling their mandate is apparently not tracked in an official, comprehensive fashion.

According to Majila et al. (2014:223), the inefficiencies in ACAs' mandates are due to:

- A lack of effective follow-up on complaints of corruption.
- The inefficient application of disciplinary systems.
- Lack of development of management capacity.
- Unstable societal attitudes.

Majila et al. (2014:223), warn that the above listed points caused the inefficiencies within the ACAs. The inefficiencies had a negative snowball effect which caused the ACAs' mandates to be unfulfilled and shows the weakness in the government to implement effective anti-corruption measures. Bruce (2014:54) states that the existing mandates of ACAs do not promote a holistic approach to fighting corruption. There is no lead agency to coordinate efforts; neither is there an agency with a specific corruption prevention mandate, or one that is responsible for promoting anti-corruption education.

Hatchard (2014:179) has a different view, stating that linking anti-corruption work with a wide mandate of addressing maladministration within the public service, is potentially useful. When the Ombudsman's office is tied to an ACA, the Ombudsman's job is to promote administrative fairness, which also wins bureaucratic trust, whereas the ACA's job is to investigate and prosecute public officials. The ACA is, therefore, more likely to be feared than trusted. This, he notes, is also contingent on the ACA's mandate.

When the comparison was done of the empirical data to that of the literature study, the literature drilled deeper in the mandates of the ACAs than the empirical data. The literature discusses the various components and functions of a mandate, such as investigation, prosecution, asset recovery and education. The participants discuss the general concept of 'mandate'. However, participants having the general understanding are still able to carry out their duties and fulfil the mandates of their ACAs.

3.4 OVERLAPPING MANDATES OF ANTI-CORRUPTION AGENCIES (ACAS)

ACAs may be able to carry out their mandate without waiting for legislative revisions to their competencies, or the implementation of more desired legal frameworks. Interstitial changes begin with pragmatic innovations of alternative practices among

informal networks of participants in overlapping organisational sectors (mandates) when they react to real or perceived institutional failure (De Sousa, 2009:18).

Insightfully, Pillay (2004:593) states that the following categories of ACAs are in existence in South Africa:

- Constitutional and oversight bodies: AG, PP, PSC and IPID.
- Criminal justice agencies: SAPS Commercial Crime Unit, SAPS Anti-Corruption Unit, NPA, the Directorate of Serious Operations, AFU and SIU.
- Other players: DPSA and NIA, SARS and the National Anti-Corruption Forum.

All the participants from the different categories – that is, managers/commanders, investigators and lawyers interviewed, clearly understood the concept of overlapping mandates of ACAs in South Africa, which they state as different ACAs investigating the same allegations. There was one participant, a commander, who provided a clear explanation of the overlapping of mandates of public sector ACAs, when stating the following:

> *"Different government departments have their own forensic investigative capacity to conduct an investigation in the department, where after the private sector is appointed to conduct the same investigation, where after or simultaneously the Public Protector is appointed to conduct the same investigation, where after the South African Police is requested to conduct the same investigation in appointing the private sector's firm to assist in their investigation, where after and/or simultaneously the SIU obtain a proclamation to conduct the same investigation. Sometimes the /Government department and/or Municipality appoints another private sector firm to conduct the same investigation, because they were not satisfied with the first private sector firm's findings. In my experience, some investigations have done five times more in terms of costs compared to the State millions and sometimes more than the amount that can be seized via Asset Forfeiture" (P M: 7:2019).*

Pillay (2004:593) further noted that, as spelt out in its enabling legislation or regulations, each of these has a particular purpose. Combating corruption, except for the SIU and the SAPS Anti-Corruption Unit, is not the primary role of any of the

agencies. With respect to cases of criminal wrongdoing, which may involve corruption, some of the ACA can exercise discretion. Each agency considers its anti-corruption position to be distinctive. It is important to note that, even though some overlap of roles has arisen, the original reasons for the formation of each of the agencies still exist (Pillay, 2004:595).

Pillay (2004:596-597) revealed the following overlaps in the mandates between the agencies:

- The AG maintained that there was an overlap between its office's function, the PSC, the SIU, and even the Autonomous Directorate of Severe Economic Offences (IDSEO).
- "The PP thought that there was overlap, particularly about itself and the SIU (where the SIU Act contains “mal-administration”). It is complicated law.
- As with the PP and the SIU, the PSC deals with maladministration.
- The ICD (currently known as IPID) roles overlap with those of the SAPS Anti-Corruption Unit, but the Anti-Corruption Unit performs much of the ICD-related case investigation work.
- The SAPS’ (Commercial Branch) inquiries into corruption overlap with those of the DSO (currently known as the SAPS Act DPCI), which can "cherry-pick" the sort of cases it has dealt with.
- The work of the SAPS Anti-Corruption Unit overlaps with the ICD, and the SAPS is in near contact.
- In investigating corruption offences, the DSO overlap with the SAPS. These are yet to be finalised by the Ministerial Committee, which needs to formulate guidelines as to how the different criminal justice departments collaborate.
- The AFU has some overlap with SAPS and significant overlap with SIU.
- The SIU overlaps, to some extent, with the AFU and the PP.

The above overlaps pointed out by Pillay (2004:596-597) have not been finalised nor attended to. This is evident according to the South African National Anti-Corruption Strategy (South Africa, 2020:84) which proposes a review of mandates and functioning of all existing institutions with anti-corruption mandates to ensure

rationalising or streamlining of the work of, and elimination of overlaps between agencies e.g., between DPCI, SIU and PP.

OSISA (2017:230) notes that the inquiry into the issue of Nkandla (former President Zuma's birth and family place), involving public funding expenditure at the private home of former President Jacob Zuma, is a case in point. The case of Nkandla demonstrates how numerous probes by various institutions have resulted in conflicting findings on the same issue. It has been argued that the institutions seem to be working against one another. The investigation was carried out by the PP, SIU and Department of Public Works. Each investigation emerged with different findings and recommendations on aspects of criminal liability, as well as disciplinary and civil action to recover funds.

Majila et al. (2014:227), note that the South African legislative structure is stable; however, there are significant flaws and weaknesses in the ability of public sector bodies to implement and comply with legislation, and conflicting mandates of public sector bodies affecting law enforcement agencies and constitutionally defined bodies.

From studies carried out, TI (2012:1) states that several countries have chosen to improve the anti-corruption capacities of a variety of established organizations and of many specialist bodies with complementary and often overlapping mandates. It is known that South Africa has a multiplicity of ACAs as stated in the NDP (South Africa, 2013:448), and as such, the above is applicable.

TI (2012:6) further elaborates on effective coordination and institutional clarity as part of the broader national integrity system. ACAs are not created in a vacuum, yet experience indicates that law enforcement agencies are often poorly integrated, and face challenges of institutional confusion, overlapping mandates, competing agendas, lack of coordination and fierce competition over scarce resources. TI (2012:6) also warns that it is necessary to recognise possible jurisdictional conflicts with other anti-corruption agencies, provide institutional clarification, and ensure that existing frameworks are not weakened by the creation of a specialised agency, particularly when many specialised ACAs are established to deal with specific crimes of corruption.

Because certain law enforcement and other agencies' mandates overlap, the courts are overburdened and struggle to retain qualified prosecutors, and the public sector's capacity to enforce and comply with legislation, is uneven. As a result, the laws do not work as well as they should and are not followed as strictly as they should be. South Africa is still listed among the highest in terms of levels of corruption and perceptions of corruption for these and other reasons (TI, 2012:6-7):

- There are inefficiencies within and between institutions with anti-corruption mandates. These are the following:
    - A lack of effective follow-up on complaints of corruption.
    - The inefficient application of disciplinary systems.
    - Lack of development of management capacity.
    - Unstable societal attitudes.

All the above weaken the anti-corruption efforts made by governments in their attempt to reduce corruption (Majila et al, 2014:227). Muntingh (2006:3) asks these crucial questions:

- Who investigates corruption?
- What is investigated?
- Who makes these decisions, which are important considerations in the fight against corruption?

The quote from the Daily Nation of Kenya (Parliamentary Reporter, 1997:1) stated below clearly illustrates Muntingh's quandary:

> *"The Government had this morning formed an anti-corruption squad to look into the conduct of the anti-corruption commission, which has been overseeing the anti-corruption task-force, which was earlier set [up] to investigate the affairs of a government ad hoc committee appointed earlier this year to look into the issue of high-level corruption among corrupt Government Officials".*

This comment exemplifies how anti-corruption initiatives can go wrong, leading to a tangle of investigative mandates. This quotation is further informing anti-corruption

communities that it cannot be taken for granted that an anti-corruption attempt by government has succeeded in carrying out its mandate, as even an anti-corruption commission needs to be investigated for its conduct.

Muntingh (2006:51) highlights an overlap between investigation agencies investigating misconduct within the Department of Correctional Services (DCS) when he says that by centralising compliance and transforming prevention and institution building into its anti-corruption policy, the DCS has attempted to maintain a dual strategy. While other departments, such as the SIU, perform more specialised investigations, these investigations are managed at the headquarters level. To a certain degree, this fragmented approach to the overall anti-corruption policy of government structuring anti-corruption capabilities has different mandates in various ways, if not overlapping them.

Some of the DCS investigations are fact-finding missions with large and transparent mandates, while others can be more precise to prosecute and recover state properties. Several agencies, such as the PP and the PSC, have permanent Statutory mandates to investigate corruption within the DCS, whose position and purpose is to investigate corruption in jail. The above clearly shows that multi-anti-corruption agencies, including the SIU, PP, PSC, SAPS and the DPCI, investigate corruption within the DCS.

South Africa has implemented a multi-agency technique in its battle against corruption, according to Pereira et al. (2012:28). As a result, in the South African system, a variety of organisations, multi-agency fora, and commissions have been given some responsibility for the prevention, combating, and coordination of the fight against corruption. Pereira et al. (2012:28), caution that while the area of focus of each of these institutions and procedures is not the same, there is a need for the following:

- A coordinated effort in the fight against corruption, among them, to guarantee a comprehensive approach.
- This would also improve public sector service performance.
- Utilise government resources as effectively as possible.
- Avoid overlapping institutional duties and responsibilities.

Pereira et al. (2012:9), state the overlaps, below:

- The requirement for an independent anti-corruption organisation with structural and operational autonomy has been declared by the Constitutional Court.
- South Africa has a sophisticated anti-corruption architecture that includes several key entities that confront corruption from various perspectives.
- However, due to a lack of transparency, and overlaps between the functions of the organisations that make up the anti-corruption architecture, duplication of efforts occurs, reducing the system's overall efficacy.
- The anti-corruption architecture's institutions and coordinating parts were built without a government-wide strategy plan. As a result, the mandates of numerous organisations overlap with those of others, decreasing the overall efficacy of the anti-corruption effort.
- Although numerous procedures for coordination between participating institutions exist, their efficiency appears to be restricted because not all-important institutions are included. The functions of these several coordination mechanisms appear to overlap, making the operation of some of the essential stakeholders unclear.
- The recent creation of the ACTT is a positive step towards greater integration and coordination among the enforcement bodies of the anti-corruption architecture of South Africa. This has been achieved through a multi-institutional approach with set targets, and reports indicated a potential high degree of success in the activities undertaken by institutions through the ACTT.
- South Africa established the Minimum Anti-Corruption Capacity (MACC) at all levels of government in 2002 as a preventative measure. Despite its widespread adoption, levels of compliance remain low, owing to the accountable units' passive implementation.
- Due to jurisdictional concerns, compliance with the MACC remains low, as disbursing institutions do not necessarily have an inquiry mandate in the event of mismanagement and corruption. South Africa is attempting to remedy these flaws with the Special Anti-Corruption Unit (SACU), which has been tasked with aiding government entities in implementing the MACC and developing sanctions criteria.

- The laws and regulations are sometimes ambiguous and opaque. This reduces the efficiency of South Africa's anti-corruption infrastructure and impedes anti-corruption institutions' independence.

Both the literature and the feedback from the participants indicate that there is overlapping of mandates of ACAs in South Africa. These overlaps are also widely published. The participants have experienced and worked on corruption cases where their ACA and another ACA investigated the same allegation. These overlapping mandates have many negative impacts, as will be discussed in the next section. South Africa needs to urgently deal with these in the overlapping of mandates of ACAs. If not, then success rates in conviction of corruption cases will decrease, which will have a snowball effect and cause staff members to become frustrated and demotivated.

3.5 IMPACT OF OVERLAPPING MANDATES

According to De Sousa (2009:5), ACAs face numerous limitations to their mandate, regardless of their forces, which explains the meagre outcomes some of them have obtained. At the operational level, there are various overlaps in functions and duplication of efforts by South Africa's institutions, and, as previously stated, the lack of a unified anti-corruption policy at the system-wide level allows for these duplications and overlaps at the policy level.

Pillay (2004:593, 596 & 601), highlighted some of the impacts of overlapping mandates of ACAs in South Africa as the following:

- There are often complainants which approach a variety of agencies to deal with a specific matter.
- There is a lack of information sharing at the entry stage of an investigation.
- There is a waste of investigative resources on the same case.
- There are no clear lines of accountability for the various agencies, especially about who has a contract for specific corruption cases.
- There is no educated decision-making at an early stage, to determine if criminal charges, civil penalties or internal disciplinary steps have been levied, as

different procedures require different rules, evidence standards and speed of response under different mandates.

- There are weak relationships in the public sector between ACAs that apply employer-employee relationship laws, as opposed to international law enforcement agencies.
- Other organisations that fall under the anti-corruption system do not readily grasp the legislative mechanisms of ACAs.
- There is an increase in jurisdictional conflicts and "turf wars" due to the conflicting mandates of the ACAs.

Each of the institutions that make up South Africa's anti-corruption architecture develops its own policies in response to specific operational pressures, and some coordination mechanisms are developed to encompass specific institutions in order to relieve those pressures when they involve multiple institutions. As a result, and because these institutions may be represented in these distinct fora, there is considerable uncertainty among the constituent institutions about the purpose of the multiple coordination mechanisms (Pereira et al., 2012:12).

As mentioned above, Pereira et al. (2012:13), further confirm that it is possible to decide the coordination structures in South Africa's anti-corruption architecture overlap or replicate, by means of an effective framework mapping of existing coordination structures. As a result of this system mapping, corrective action can be taken to merge duplicated structures, eliminate overlaps and remove excesses, allowing for a more effective use of available resources in these improved coordination structures. This improves the coordination capacity of the institutions that make up the anti-corruption architecture, and by defining the targeted results and deliverables, the coordination capacity and overall efficacy of the system can be measured.

In the sense of addressing the integrity system, according to Bruce (2014:58), there is a need and justification among the elite in South Africa that certain types of corruption can be tolerated, causing the ACAs to seem to have lost control of corruption in the region. The mandates of the ACAs form a crucial part of the integrity framework; as such it can be concluded that the overlaps in the ACAs'

mandates can cause this effect on the country. The research agency (TI, 2012:6-7) which countries around the world have relied on for the CPI as an indicator of corruption levels in their countries, state that because of overlapping in ACAs mandates, the effects are the following:

- There is a redundancy of investigations carried out by different ACAs.
- There is a duplication of efforts by the ACAs.
- Large amounts of resources are wasted.
- It leads to less mature political systems.
- There is a rise of powerful patronage networks.
- There is creation of institutional confusion over each ACA's role.
- Inexistent or weak coordination.
- Inter-agencies' competition for resources.

When interviewed, the participants were asked what, according to their viewpoint, was the impact of overlapping mandates of public sector anti-corruption agencies on the anti-corruption framework in South Africa? Their viewpoints highlighted mostly the negative consequences and negative impacts of the overlapping of mandates of ACAs. When summarised, they are broken down into the following themes:

- There is a duplication of investigations.
- Crucial evidence is lost.
- Large amounts of resources are wasted.
- There are delays in fully investigating a matter.
- Lack of evidence, as other ACAs may have the necessary evidence and not share it.
- Ineffective investigations, as ACAs would not want to share information, since they would want successes for their ACA.
- A break in the chain of evidence, resulting in court cases being lost.

Both the literature and empirical data indicate that there are impacts on the overlapping mandates of ACAs in South Africa. The impacts are mostly negative. Both sources have highlighted details of the negative impacts. These negative

impacts drastically impede all processes of a corruption investigation, from investigation to prosecution and asset recovery. These negative impacts demoralise all personnel of ACAs. The impediments also become known to the citizens of the country, who lose faith in the ACAs, which further adds to the burden of investigating corruption cases.

As a follow-up question, the participants were asked whether, in their anti-corruption investigation experience, they came across any other South Africa anti-corruption agency that investigates the same allegation as their agency. They were asked to explain the outcome. There was an overwhelming response: ninety percent of the participants experienced doing an investigation into a corruption allegation while another agency was doing the same investigation. The other ten percent of the participants simply answered 'no', that they did not investigate a corruption allegation which was being investigated by another ACA.

> *"The overlapping of mandates and investigation experienced was that both the PP and the SIU investigated the Nkandla matter, where Former President of South Africa Jacob Zuma benefitted from security upgrades to his Nkandla residence. The PP found that Jacob Zuma did unduly benefit from the security upgrades to his Nkandla residence, and that Jacob Zuma pay back to the State an amount of R 7.8 million rands. The SIU found that the architect liable for certain upgrades to the Nkandla residence. The SIU is currently involved in civil litigation against the architect for R 155 million rands. The SIU further absolved Jacob Zuma from any wrongdoing" (P L6:2018).*

TI (2012:7) informs that the situation in South Africa is not unique in respect of the impact of overlapping mandates. It confirms that, in Zambia, the oversupply of institutions with conflicting or overlapping mandates can create jurisdictional confusion and uncertainty, ultimately undermining their effectiveness, and sometimes leading to serious implementation gaps; for example, the Zambian Police, the Anti-Corruption Commission (ACC) and the Electoral Commission all deny that they are responsible for the implementation of the electoral law.

Muntingh (2006:51) noted that the centralisation of the functions of investigation and code enforcement creates the risk that managers can neglect this role and refer

complaints and suspicions to the internal investigative unit, resulting in a fragmentation of the management function. Another problem is that the fight against corruption, particularly the law enforcement component of the anti-corruption programme, is disjointed and isolated from the day-to-day operations of jails, particularly from the guards, who are most vulnerable to petty corruption. To date, anti-corruption efforts appear to have failed to involve warders to the same degree (Muntingh, 2006:51).

A summary of the anti-corruption investigation by ACAs at the DSC is as follows:

- There are many ACAs that investigate the crime of corruption within the DCS.
- Each ACA has its own mandate.
- There is no collaboration between the ACAs on the corruption investigation being carried out.
- The ACAs do not focus on purported “petty” corruption that occurs with the DSC, which involves the wardens and prisons.
- Petty corruption continues and worsens.
- Petty corruption, when calculated, amounts to a large amount lost by the DSC and, ultimately, the South African government.

The key planning initiative (South Africa, 2013:448) maintains the overlaps in the ACAs’ mandates, which leads to the following consequences:

- There is infiltration of political pressures.
- Clearly poor coordination between agencies.
- A definite duplication of investigations between the agencies.
- There is no clear demarcation of functions of the ACAs.
- This affects the ability to investigate and prosecute offenders.
- The public loses faith in the ACAs to carry out their functions without fear or favour.
- There is a lack of political will and support for the ACAs.

3.6 SUMMARY

South Africa has a multi-agency approach to fight corruption, with agencies sharing partial responsibility for the investigation and prosecution of corruption. Anti-

corruption agencies exist, such as the SAPS, DPCI, SSA, NPA, SIU, SARS, PP, PSC, DPSA and IPID. There are also oversight bodies such as Corruption Watch (CW) and government department hotlines, as well as the resources of the UNDOC, to fight corruption. South Africa has an all-inclusive and practical anti-corruption framework, as well as world-class anti-corruption legislation. There are some 'negatives' that South Africa faces, including an increase in corruption, according to public perception and TI, and there are no official statistics on corruption cases in the country.

The main cause of the above listed effects is the overlapping of mandates of many of the anti-corruption agencies within the public sector. South Africa has many bodies that facilitate the working of anti-corruption models and strategies, such as the NACF and Inter-Ministerial Committees, yet the country seems to still be failing in reducing public perception and its TI ratings. This research aimed to find concrete solutions to help curb corruption in South Africa.

During the post-colonial period, anti-corruption agencies were founded. ACAs were established after World War II, and the first ones were constructed by failing European governments. The ACAs were established to clean up the not-so-clean image of their colonial administrations, or by newly independent governments as part of their efforts to create a new administration, free of old habits and corrupt practices inherited from colonial powers, or, by newly independent governments as part of their efforts to create a new administration free of old habits and corrupt practices inherited from colonial powers, within the context of self-determination.

From the previous chapters, it is known that the mandates of ACAs do overlap. The overlap of the mandates of ACAs has an adverse effect on the anti-corruption framework in South Africa, as these ACAs have multifaceted mandates such as the following:

- Having a corruption prevention and integrity function.
- Having an investigation function.
- Having a prosecutorial function.
- Having an asset recovery function.

There are vast impacts of the overlapping of the mandates of ACAs. Some of these negative impacts are the following:

- There are often complainants, which approach a variety of agencies to deal with a specific matter.
- There is a lack of information sharing at the entry stage of an investigation.
- There is a waste of investigative resources on the same case.
- There are no clear lines of responsibility for the different agencies, particularly in relation to who has a contract with cases of corruption.
- There is no informed decision-taking at an early stage, to determine whether criminal sanctions, civil sanctions or internal disciplinary measures have been applied, because different procedures of different mandates involve different rules, standards of evidence and speed of reaction.
- Poor relationships exist among ACAs within the public sector, that apply regulations regarding employer-employee relationships, as distinct from external agencies that apply the law.
- The regulatory frameworks of ACAs are not easily understood by other agencies that fall within the anti-corruption framework.
- Due to the overlapping mandates of the ACAs, there is a rise of jurisdictional issues and “turf wars”.

This chapter has shown that there are vast overlaps between the mandates of the ACAs in South Africa, and these overlaps are hampering investigations negatively. Instead of pooling resources and fighting the scourge together, ACAs are fighting “turf wars”, and the criminal elements are benefitting. In the next chapter, the research will draw a comparison between the South African ACAs and their international counterparts.

CHAPTER 4: SOUTH AFRICAN ANTI-CORRUPTION AGENCIES IN COMPARISON TO INTERNATIONAL ANTI-CORRUPTION AGENCIES

4.1 INTRODUCTION

Meagher (2007:10) described an anti-corruption authority or anti-corruption agency (ACA) as a permanent agency, unit or department constituted by government, that has the mandate of providing centralised leadership in one or more of the ranges of anti-corruption prevention, public outreach and awareness raising, policy coordination, investigation and prosecution. De Sousa (2009:5) agreed with Meagher, that through preventive and repressive steps, ACAs are public bodies of a permanent nature with a clear mandate to eradicate corruption and reduce the opportunities favourable to its occurrence in society. Furthermore, De Sousa (2009:5) warned that ACAs face several limitations to their mandate independently of their format and forces, which explains the meagre outcomes obtained by some of them.

Hundreds of millions of dollars have been spent on research into the causes of corruption, as well as major reform efforts aimed at reducing and eliminating corruption. More than 30 countries have established some type of anti-corruption authority as a crucial component of their anti-corruption efforts as a result of these reforms. Some ACAs have been successful in combating corruption and have made progress while others have not.

Meagher (2007:10) in addition stated that the World Bank, the UNODC, the United States Department of Homeland Security and the European Commission approved the creation of a platform for ACAs to share their experiences. The platform offers the opportunity to ACA staff, practitioners and international donors to connect and learn about one another's experiences. The aims of the ACAs are the following:

- To gather systematic knowledge on the structure and experiences of ACAs internationally.
- To increase awareness of the challenges faced by different anti-corruption bodies.

- To identify strategies that can assist in overcoming these obstacles, as well as to establish preliminary criteria by which efficacy can be measured on a global scale.

There is a consensus on the World Bank between Meagher (2007:10) and the Public Affairs Research Institute (PARI) (2012:81), as PARI informs that the World Bank has moved from overseeing corruption alone inside its organisation and offering policy guidance on combating corruption, to using corruption eradication "... as a carrot for countries that have required additional funding". In 2006, the then president of the World Bank, Paul Wolfowitz, outlined three policies for eliminating corruption (PARI, 2012:81):

- Expanding country-level anti-corruption work.
- Minimising the likelihood of corruption in projects sponsored by the Bank.
- Growing collaboration with other organisations for anti-corruption.

In the remainder of this chapter, the researcher intends to critically analyse the following aspects:

- **History behind ACAs globally**. A detailed review of how ACAs started up, the key role players, and the approaches and reasons for the establishment of the ACAs.
- **South African ACA model and approach**. This section has a focus on the model and approach that the South African government employs in the country. It speaks to the different ACAs in South Africa, and their functions.
- **South African ACA model compared to international ACA models**. In this sub-section, the research has reviewed the models, strategies, approaches and legislative frameworks of Brazil, Russia, India, China, New South Wales, Tunisia, United Kingdom, Botswana, Malawi, Nigeria and Hong Kong, and compared them to those of South Africa.
- **Single ACA compared to multiple ACAs**. This section has reviewed the advantages and disadvantages of both single and multiple ACAs.

The researcher will present and discuss the empirical feedback from the participants as it related to Section D of the Interview schedule, questions 17 to 20.

4.2 HISTORY BEHIND ANTI-CORRUPTION AGENCIES (ACAS)

De Sousa (2009:6-7) broke down the aspects of the ACAs, their history, their formation, and other key aspects. The first ACA dates to the post-colonial era in the aftermath of World War II, and the weakening European powers developed these early agencies as an effort to clean up their colonial administrations' not-so-clean reputation. As part of their plan to establish a new administration free of old traditions and corrupt practices, the ACAs were also established by the newly independent governments. Due to controversies and crises, ACAs have been formed out of a large political consensus, which explains the short lifespan of some of these bodies. ACAs were founded in response to regular law enforcement authorities' alleged failures. In the sense of institutional corruption, many ACAs have been set up, and a substantial number have fallen short of the standards posed for them. The oldest ACA dates back 56 years, and they have been studied for the following reasons:

- The ACAs' numbers have been growing steadily over the years.
- Implementation of these programmes is also central to larger national anti-corruption programmes and policies.
- The composition is single-issue oriented, as their sole mandate is to combat corruption.
- The ACAs represent an effort by governments to resolve traditional law enforcement agencies' insufficiency and inadequacy in coping with corruption processes and transactions, and to recognise and prepare complicated cases of corruption for the courts.

The format of the ACAs varies from country to country, and each ACA is unique, as some countries have mandated their ACA with investigative and prosecution powers, while others have a more preventive, educational and informative role.

There is a correlation between what De Sousa (2009:6-7) mentioned about studying international ACAs for the reasons stated, and what is being said by Fletcher and Herrmann (2012:15) about measuring corruption internationally. They are both referring to the international aspect of corruption. To understand and learn from the international ACAs, governments and researchers need to also learn and

understand the international concept of corruption, the nature of international corruption, the causes of international corruption, and the political aspect of international corruption. In understanding those aspects, governments had better learn from international ACAs.

Fletcher and Herrmann (2012:15) further elaborate on the importance of measuring international corruption, as follows:

- Drawing attention to the extent of the issue of corruption.
- Promoting the need of a country to take decisive action.
- Helping governments identify how and where to focus practical interventions when fighting corruption.
- It is difficult to know where to focus anti-corruption efforts if it is unknown what sorts of corruption most prevalent systems, industries or countries are, or where corruption is most likely to occur.
- Policy-makers and anti-corruption activists are better equipped to assess the relative effectiveness of their anti-corruption efforts.

ACAs were created many years ago with the aim of putting right the wrongs of the past. This creation was meant to instil confidence in the new governments, showing their citizens, as well as other countries, how serious they were about fighting corruption. The above discussion also highlighted the importance for reviewing international ACAs. In the next section, the research will consider the ACA model and approach used in South Africa.

4.3 SOUTH AFRICAN ACAS MODEL AND APPROACH

Habtemichael (2009:186-187) informed that South Africa has numerous anti-corruption bodies in its anti-corruption framework. The anti-corruption bodies are the following:

- Asset Forfeiture Unit.
- Commissions of Inquiry.
- Department of Public Service and Administration.
- Directorate of Special Operations.
- Independent Complaints Directorate.

- National Anti-Corruption Forum.
- National Intelligence Agency.
- National Prosecuting Agency.
- Office for Serious Economic Offences.
- Office of the Auditor-General.
- Office of the Public Protector.
- Office of the Public Service Commission.
- South African Police Service.
- South African Police Service Anti-Corruption Unit.
- South African Police Service Commercial Crime Unit.
- South African Revenue Services.
- Special Investigations Units and Tribunals.

From the above list, this research has focused on only the SIU, AFU, DPCI, IPID, PP and the SAPS, for reasons discussed in Chapter 1. These six ACAs were identified by Hofmeyr (2005:71-75), the former Head of both the SIU and the AFU, and current National Deputy Director of the NPA, when he addressed the NACF at its second anti-corruption summit in 2005. In Corruption Watch (2015WALES:20-21) it is stated that South Africa has adopted a multi-pronged approach to fighting corruption, and they summarise five of the six (excluding the SAPS) ACAs. The table below contains direct quotations from the literature, and has not been paraphrased by the researcher, in the interests of accurate reporting. For the purposes of this research, these six ACAs are tabled for ease, as follows:

Table 4.1: Six ACAs of South Africa and their institutional breakdown

NO	ACA/ INSTITUTION	INSTITUTIONAL BREAKDOWN
1	**Special Investigating Unit**	"The Special Investigating Unit (SIU) is a state body that fights corruption through quality investigations and litigation. The SIU is an independent statutory body that was established by the State President. The SIU conducts investigations and reports the outcomes of its investigations to the President".
2	**Asset Forfeiture Unit**	"The Asset Forfeiture Unit (AFU) is a unit within the Office of the National Director of Public Prosecutions. It was established in order to implement chapters 5 and 6 of the Prevention of

NO	ACA/ INSTITUTION	INSTITUTIONAL BREAKDOWN
		Organised Crime Act (POCA), which allow for the seizure of assets used in criminal activities".
3	**Directorate for Priority Crime Investigation**	"The Directorate for Priority Crime Investigation (DPCI) is a division within the SAPS that focuses on serious organised crime, serious corruption and serious commercial crime. The DPCI manages, prevents, investigates and combats serious offences".
4	**Public Protector**	"The Public Protector (PP) is mandated to investigate any conduct in state affairs, or in the public administration of any sphere of government where there is suspected impropriety. The PP reports on such conduct and is empowered to take appropriate remedial action".
5	**South African Police Service**	"The South African Police Service (SAPS) investigates all crimes in South Africa. The new SAPS was formed under the South African Police Service Act 68 of 1995. The SAPS reports to the Minister of Police who reports to the President".
6	**Independent Police Investigative Directorate**	"The Independent Police Investigative Directorate (IPID) (formerly the Independent Complaints Directorate) aims to ensure independent oversight of SAPS. It conducts independent investigations of criminal offences allegedly committed by SAPS members. This includes investigations of individual acts of corruption, as well as systemic corruption involving the police. IPID was established in terms of the IPID Act. Its vision is to ensure proper police conduct in line with the Constitution".

(Source: SIU Act 74 of 1996; NPA Act 32 of 1998; SAPS Act 68 of 1995; PP Act 23 of 1994; IPID Act 1 of 2011).

Table 4.1 clearly underlines the ACAs in South Africa, the functions they carry out, and some of the legislation that empowers them. From the description of these ACAs, South Africa has sufficient ACAs to deal with the corruption in the country. It is important to note that none of the ACAs have an educational awareness in their mandates. Habtemichael (2009:184) listed all the legislation within the South African legal framework by which the above ACAs operate and are mandated, as follows:

- South African Corruption Act 94 of 1992.

- Drugs and Drug Trafficking Act 140 of 1992.
- Interception and Monitoring Prohibition Act 127 of 1992.
- Public Service Act 103 of 1994.
- Public Protector Act 23 of 1994.
- Special Investigation Units and Special Tribunals Act 74 of 1996.
- International Cooperation in Criminal Matters Act 75 of 1996.
- Criminal Law Amendment Act 105 of 1997.
- National Prosecuting Authority Act 32 of 1998.
- Employment Equity Act 55 of 1998.
- Prevention of Organised Crime Act 121 of 1998.
- Public Finance Management Act 1 of 1999.
- Promotion of Access to Information Act 2 of 2000.
- Promotion of Administrative Justice Act 3 of 2000.
- Protected Disclosures Act (Whistle-blowing Act) 26 of 2000.
- Financial Intelligence Centre Act 38 of 2001.
- Electronic Communications and Transactions Act 25 of 2002.
- Local Government: Municipal Finance Management Act 56 of 2003.
- Prevention and Combating of Corrupt Activities Act 12 of 2004.

Since the publication of the above author's work, there has been an upgrade of the South African legislation in respect of anti-corruption controls, such as a comprehensive framework for money-laundering control. It is evident that the ACAs in South Africa have numerous pieces of legislation through which they can perform anti-corruption activities and bring perpetrators to book. Clearly, South Africa has the capacity, in terms of their ACAs and legislation, to reduce corruption in the country. The conundrum remains: Why are they not being effective?

4.4 SOUTH AFRICAN ACAS COMPARED TO INTERNATIONAL ACAS

Pereira et al. (2012:17), confirm that South Africa has ratified the following international instruments relevant to anti-corruption:

- Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of the Organisation of Economic Co-operation and Development (OECD Anti-Bribery Convention).

- African Union Convention on Preventing and Combating Corruption (AU Convention).
- United Nations Convention against Corruption (UNCAC).
- Southern African Development Community (SADC) Protocol against Corruption.

The NACF (2005:135-137) noted that South Africa has dedicated itself to ensuring that, with respect to corruption, the South African legal system completely complies with the international UN, AU and SADC. The NACF did commend efforts and progress made in implementing the resolutions at the first NACF. They have resolved to implement the following resolutions:

- Ethics, Awareness and Prevention.
- Combating Corruption.
- Oversight, Transparency and Accountability.
- Commit support to the NACF.

It is clear from the above, and from previous chapters, that South Africa has met its international obligations and commitments in the fight against corruption. Since the advent of democracy in the country, there has been restructuring of the legislative framework to upgrade its capacity in respect of corruption and the modern methods by which corruption is now perpetrated. South Africa has also created anti-corruption mechanisms such as the AFU, the SIU and multidisciplinary task teams such as the ACTT. Despite these efforts, South Africa is still perceived to be a highly corrupt country. It is for this reason that the researcher wishes to review South Africa with international ACAs, and understand international trends, methodologies and strategies in place to fight corruption.

The participants were asked if they know of any ACAs that operate in any other country besides South Africa. Most of the participants interviewed are not aware of many of the international ACAs, as they know only the South African ACAs. They are aware that most countries have ACAs.

> *"Federal Bureau of Investigations (FBI) in the United States of America and Independent Commission against Corruption in Hong Kong (ICAC)" (P I: 4:2018).*

The empirical data indicates that participants are aware that there are ACAs in other countries; however, they are not familiar with the names of the ACAs. This lack of knowledge on the part of the participants could be a disadvantage in the fight against corruption, as they would not have a reference on how to use different methods and techniques to investigate the vast array of cases.

Some of the international ACAs were listed from the literature as the following:

- The United States of America's Federal Bureau of Investigation (FBI).
- Hong Kong's Independent Commission against Corruption (HKICAC).
- The United Kingdom's Scotland Yard.
- Interpol.
- Directorate of Economic Crimes in Botswana (DCEC).
- European Anti-Fraud Office.
- Serious Fraud Office in the United Kingdom.

There is another reason why South African and international ACAs have been studied and compared. In PARI (2012:82), which conducted an in-depth literature review of international anti-corruption literature, the explanation is contained. PARI summarises that, despite the growing body of corruption literature, "... there is limited knowledge of which policies and programs have been most successful and which are, therefore the best strategies to be adopted by countries." Firstly, since it is a clandestine operation, corruption is difficult to define; and secondly, there is no single metric used across studies to assess corruption reduction.

Majila et al. (2014:228), give hope to readers by saying that countries have embarked on various anti-corruption programmes internationally. Corruption-fighting initiatives are also led by autonomous anti-corruption organisations explicitly formed to spearhead the fight against corruption. Being specialised and independent gives the ACAs an advantage, because they are exclusively devoted to the fight against corruption.

PARI (2012:83) explains that there are very few achievements, despite the vast resources available at a national level to address corruption. There are also no specific models (at the broad level of national anti-corruption strategies or at the

micro level of localised anti-corruption projects) to replicate or draw from. There is a great deal of literature that offers accounts of explanations for the investigative-based failures. Although this tends to be a somewhat negative view, it provides insight into broad guidelines for the implementation of practical anti-corruption policies that might avoid the pitfalls of several of the interventions over the past twenty years in developed countries.

The National Treasury (2012:87) expresses the failure of some countries when it states that in all but a few situations, anti-corruption agencies set up in developed countries have been unsuccessful. They believe the reason why ACAs usually fail is that there are clearly clear entrenched advantages that combat the effectiveness of these agencies. It appears that several ACAs have been produced to signal loyalty to foreign investors and donors, while avoiding stricter governance reforms. National Treasury (2012:87) adds that anti-corruption agencies have done more harm than good in some cases, eroding public trust, if ACAs are seen as a token gesture by politicians, or being used as "instruments to oppress political competitors and members of the opposition."

A proposal for the country to adopt a public record of beneficiaries of trusts and other legal structures, has been made to further eliminate corruption in South Africa. This concept has recently become a focal point of anti-corruption activities in Europe, as trusts and other shell firms are utilised to hide corruption proceeds and illicit funds (Bruce, 2014:53). Attempting to quantify international corruption is far from simple. The lack of unanimity on the concept of corruption, the hidden nature of corruption, and disagreement over which forms of data may be utilised reliably as indicators, are the most mentioned measurement challenges (Fletcher & Herrmann, 2012:16). Meagher (2007:82) indicated that even full interventions on ACAs ultimately need to be balanced with data on intermediate results that are often unavailable. Therefore, given these limitations, the alternative for researchers was to look at performance data in the sense of case studies by agencies.

Quantifying transnational corruption is a difficult task. The most typically noted measurement issues are a lack of agreement on the definition of corruption, the hidden nature of corruption, and disagreement over which types of data may be used reliably as indicators (Fletcher & Herrmann, 2012:16).

Henning (2002:805) implies that one of the reasons the international communities started taking corruption seriously, was the prominent bribery and corruption cases involving leaders of numerous nations, including South Korea, Italy, Brazil and Peru. These cases caused the international organisations to address corruption. The United States of America (USA) has long been the only nation to adopt criminal sanctions for bribery of foreign officials in international business transactions, according to Henning (2002:805-806), but the rest of the international community has resisted the USA's efforts to have countries implement their criminal law to prohibit bribery of officials outside their borders, by domestic enterprises. The Foreign Corrupt Practices Act (FCPA) was ratified in 1977 by the United States Congress. Other anti-corruption conventions were based on this Act's basis.

Manacorda et al. (2014:119), claim that compliance with anti-corruption goes well beyond any single country's existing rules and is not limited to the provisions of legally binding international conventions. It is defined by a larger body of international recommendations, guidelines and principles designed to establish the accepted global norm in the corruption setting.

The participants were asked whether they had worked with any international anti-corruption agencies in any of their investigations. They were asked to state who, and to explain how the investigations proceeded. From the participants interviewed, only the participants from the DPCI and the AFU work with international ACAs, as they investigate matters which often lead them to cross-border jurisdictions.

> *"Worked in conjunction with other international agencies through an MLA such as Homeland Security of the USA and the serious and economic crimes from the UK and Botswana" (P I: 10:2019).*

The empirical data indicates that there is a lack of corporation between South Africa and international ACAs to investigate matters that fall outside their jurisdiction or countries' legislative mandate. This is a gap which requires intervention from government which will make tracking and tracing of illicit gains easier.

The above section reviewed the international relationship South Africa has with the international community. The reasons for reviewing the models of the international

countries were discussed. The research also looked at motives for measuring models of other countries in terms of their strategies, models and approach to addressing corruption.

When comparing the impact of overlapping mandates of public sector anti-corruption agencies on the Anti-Corruption Framework in South Africa, the researcher considered recent alliances and affiliations which South Africa has formed over the years. In doing so, the researcher decided to research the relationship South Africa has with Brazil, Russia, India and China, the so-called BRICS countries.

4.4.1 Background to BRICS

Morazán, Knoke, Knoblauch and Schäfer (2012:7), European Parliament specialist authors, point out that the abbreviation "BRIC" was first developed in 2001 to underline the extraordinary importance of key developing economies, and only included Brazil, Russia, India, and China (BRIC). In 2006, the four countries began meeting as a group for the first time.

According to Morazán et al. (2012:7), Jim O'Neill, then Chief Economist of Goldman Sachs, developed the name BRIC to promote change, which is confronting traditional Western donors in general, and the EU. South Africa's role among the five countries is rather unique, as its economy is significantly smaller than that of the other four, and the country does not strictly adhere to all the qualities used to differentiate the country group:

- The outstanding size of the BRIC economies.
- The BRIC economies are of exceptional size; they have strong growth rates, resulting in growing importance in the international economy.
- They have a demand for a bigger political role in international governance frameworks, which is commensurate with their economic status.

Considering the above affiliation wherein South Africa requested to be part of, and was invited to join, the researcher has drawn the following comparisons with its counterparts. The table below concentrates on the following key aspects of any ACA internationally:

- **Snapshot of the Country**. Under this heading, the researcher reviews the country at an overview, concentrating on the country with a global perspective.
- **Anti-Corruption Strategy**. This column reviews the master plan and/or blueprint that the country has in place to deal with the scourge of corruption.
- **Anti-corruption Laws**. Anti-corruption laws focus on the legislation the country has implemented in its fight against corruption. When the laws are reviewed, the contravention of such laws, and the imposed sanctions, are highlighted.
- **Co-ordinating Agency**. This section tells which agency in that country sets out the guidelines and the reporting mechanism of the country. The agency that co-ordinates is the one that must report to the relevant authority.
- **Appointments and removal of the Head of the ACA**. This aspect of appointment and removal of the head of the ACA, is critical. The authority appointing or removing can and may sway the conduct of the ACA to the benefit or detriment of persons, organisations or political affiliations, as previously discussed.

The following table contains direct quotations from the literature, and has not been paraphrased by the researcher, in the interests of accurate reporting:

Table 4.2: Strategies, comparisons and appointments of the BRICS ACAs

NO	COUNTRY	SNAPSHOT OF COUNTRY	ANTI-CORRUPTION STRATEGY	ANTI-CORRUPTION LAWS	CO-ORDINATING AGENCY	APPOINTMENT & REMOVAL OF ACA HEAD
1	**Brazil**	"The Office of the Comptroller General (CGU) is an agency of the federal government in charge of assisting the President of the Republic in matters within the executive branch that are related to defending public assets and enhancing management transparency through internal control activities, public audits, corrective and disciplinary measures, corruption prevention and combat, and coordinating ombudsman's activities. CGU is also in charge of technically supervising all the departments making up the internal control system, the disciplinary system, and the ombudsman's units of the	"Yes, there is a National Strategy Against Corruption and Money Laundering (Estratégia Nacional de Combate à Corrupção e à Lavagem de Dinheiro - ENCCLA)".	"Federal Constitution of 1988 Penal Code (Decree-Law n. 2.848, of December 7th, 1940) Responsibility crimes procedural law (Law 1,079/1950) Public Procurement Law (8.666/93) Violations against the economic order (Law 8.884/94) Fiscal Responsibility Law (Complementary Law 101/2000) Crimes against Public Finances (Law 10,028/2000) Fund Transfers Regulation (Decree n. 6170/2007) Full Transparency Law (Complementary Law n. 131/2010) and Access to Information Law (Law n. 12,527 of November 18th, 2011)".	"The Office of the Comptroller General works as the public body responsible for overseeing the implementation of the International Conventions against Corruption ratified by Brazil (OAS, OECD and UNCAC), as well as the central body for Brazilian internal control, disciplinary, transparency and ombudsman systems".	"The head of the Brazilian Office of the Comptroller General is a Minister of State, appointed by the President of the Republic who also removes the head of the ACA".

NO	COUNTRY	SNAPSHOT OF COUNTRY	ANTI-CORRUPTION STRATEGY	ANTI-CORRUPTION LAWS	CO-ORDINATING AGENCY	APPOINTMENT & REMOVAL OF ACA HEAD
		federal executive branch, providing normative guidance as required".				
2	**Russia**	"Corruption significantly impedes businesses operating or planning to invest in Russia. High-level and petty corruption are common, especially in the judicial system and public procurement. The business environment suffers from inconsistent application of laws and a lack of transparency and accountability in the public administration. Russia's regulatory inefficiency substantially increases the cost of doing business and has a negative effect on market competition".	"The campaign is an ongoing effort by the Russian government to curb corruption. Central documents in the campaign include the National Anti-Corruption Plan, introduced by Medvedev in 2009, and the National Anti-Corruption Strategy, introduced in 2010. The central organ in the campaign is the Anti-Corruption Council, established in 2008".	"The Russian Federal Anti-Corruption Law. The Russian Federal Anti-Corruption Law No. 273: • Designate responsibility for the prevention of bribery offences • Adopt procedures for cooperating with authorities • Implement procedures to ensure ethical business conduct • Adopt a code of conduct for all employees • Create policies for conflicts of interest • Prevent the use of false documents".	"The Russian Police is the only law enforcement dealing investigating corruption; however Russia has The Anti-Corruption Foundation which is a Russian non-profit organisation based in Moscow established in 2011 by activist and politician Alexei Navalny. Its main goal is to investigate and to expose corruption cases among high-ranking Russian government officials".	"The president appoints and removes the Head of Police".

NO	COUNTRY	SNAPSHOT OF COUNTRY	ANTI-CORRUPTION STRATEGY	ANTI-CORRUPTION LAWS	CO-ORDINATING AGENCY	APPOINTMENT & REMOVAL OF ACA HEAD
3	**India**	"Companies operating in or planning to invest in India face high corruption risks. Despite that the government has stepped up its efforts to counter corruption, red tape and bribery continue to be widespread. Corruption is especially prevalent in the judiciary, police, public service and public procurement sectors. Due to varying levels of corruption and quality of government operations across India, local investment conditions vary between and within states. There is a high risk of corruption when dealing with India's judiciary, especially at the lower court levels. Bribes and irregular payments are often exchanged in return	"India has a range of reforms, the 2005 Right to Information 'Right to Public Services' Acts 'Social audit', holding officials accountable. India has a paper to the 12th Five Year Plan, which India's Planning Commission sets".	"The Prevention of Corruption Act is the principal legal framework that focuses on corruption in the public sector. Both active and passive bribery are covered by legislation, and public officials are only allowed to accept gifts of nominal value. The Prevention of Corruption Act addresses public sector corruption, and criminalises attempted corruption, active and passive, bribery, extortion, abuse of office and laundering. Private sector corruption is addressed by the Companies Act. Public sector whistle-blowing is protected under the Whistle-blowers Protection Act".	"The Central Bureau of Investigation, India's smaller, more centralised version of the Federal Bureau of Investigations. Government is now intent on setting the agency free, by granting it greater autonomy".	"The head of the CBI is appointed by a committee made up of: • Prime Minister – chairperson • Leader of Opposition – member • Chief Justice of India or a Supreme Court Judge recommended by the Chief Justice – member".

NO	COUNTRY	SNAPSHOT OF COUNTRY	ANTI-CORRUPTION STRATEGY	ANTI-CORRUPTION LAWS	CO-ORDINATING AGENCY	APPOINTMENT & REMOVAL OF ACA HEAD
		for favourable court decisions".				
4	**China**	"Corruption in China presents business operating or planning to invest in the country with high risks. The Chinese government, led by President Xi Jinping, is in the midst of a sweeping anti-corruption campaign that has led to thousands of arrests; nonetheless, corruption continues to negatively influence the business environment".	"China has a campaign against corruption begun in China following the conclusion of the 18th National Congress of the Communist Party of China in 2012. As of 2016, the campaign has 'netted' over 120 high-ranking officials, including about a dozen high-ranking military officers, several senior executives of state-owned companies, and five national leaders".	"China's anti-corruption provisions are largely contained in the Anti-Unfair Competition Law of the PRC and the Criminal Law of the PRC. China offers a comprehensive legal framework in both the public and private sectors to criminalise several corrupt practices such as facilitation payments, money laundering, active and passive bribery, and gifts in the public and the private sector, with the Anti-Unfair Competition Law focusing on commercial bribery. Anti-corruption laws are inconsistently and selectively enforced. Whistle-blowers are protected by the Provision on the Reporting of Crimes to the Supreme People's Procuratorate".	"The National Bureau of Corruption Pre-vention (NBCP) was an agency of the People's Republic of China under the direct administration of the State Council. It was established in 2007".	"The Chinese president appoints and removes the head of the NBCP".
5	**South Africa**	"In South Africa there has been billions of rands lost to corruption. The SIU is	"The DPSA has a 2002 National Anti-Corruption	• "Public Finance Management Act 1 of 1999	"Government established the Anti-	"The President of the Country appoints and

NO	COUNTRY	SNAPSHOT OF COUNTRY	ANTI-CORRUPTION STRATEGY	ANTI-CORRUPTION LAWS	CO-ORDINATING AGENCY	APPOINTMENT & REMOVAL OF ACA HEAD
		an independent statutory body that is accountable to Parliament and the President. Its primary mandate is to recover and prevent financial losses to the state caused by acts of corruption, fraud and maladministration. The SIU also assists departments with systemic improvements that improve service delivery. The SIU was established by the President in terms of the Special Investigating Units and Special Tribunal Act, Act No 74 of 1996 (SIU Act)".	Strategy. The NACF was also established. However, different agencies have different strategies. They are updated regularly as when required".	• Prevention of Organized Crime Act 121 of 1998 • Constitution of the Republic of South Africa, 1996 • Municipal Financial Management Act 56 of 2003 • Financial Intelligence Centre Act 38 of 2001 • Prevention and Combating of Corrupt Activities Act 12 of 2004 • Prevention of Corruption Act 1988 • Others".	Corruption Task Team".	removes the Head ACA".

(Source: Anti-Corruption Authorities [Brazil], 2012a; Business Anti-Corruption Portal [South Africa], 2014; Bhutan Anti-Corruption Commission (2018); Department for International Development [India], 2013).

The following summary can be drawn from Table 4.2, above:

- Brazil has numerous pieces of legislation. There is also a national strategy which looks good on paper; however, the CGU reports to the President of the country, which, by many, may be seen as a flaw within the reporting structure, as the President may influence investigations.
- Russia is unlike the other BRICS countries, as the Russian police are the only law enforcement agency that deal with and investigate corruption. Russia has an anti-corruption plan, but they do not have a comprehensive legislative framework.
- India has the Right to Information and Right to Public Service Acts. The country also has social audits and holds its officials accountable. India has in place the 12th Five Year Plan and established both the Prevention of Corruption Act and the Whistle-blower Protection Act. The coordinating agency is the Central Bureau of Investigation. An impressive aspect of the appointment and removal of the Head of the CBI is done by the combination of the Prime Minister, the Leader of the Opposition Party and the Chief Justice or another Judge.
- China has performed well after the 18th National Congress of the Communist Party of the People's Republic of China 2012A of 2016, where they "netted" over 120 senior ranked officials. China has a comprehensive legislative network, and their coordinating agency is the National Bureau of Corruption Prevention. However, there may be a flaw in that the appointment of the head of the NBCP is done solely by the President.
- From the South African analysis, there is an anti-corruption strategy that was formed by the DPSA (2002). South Africa has also created the NACF, which works with the ACTT to drive the strategy of anti-corruption. Although there is a strategy, it is also noted that each ACA has its own anti-corruption strategy. A possible flaw in the South African strategy is the lack of coordination

A review follows of BRICS in respect of the TI ranking and scoring for the years 2018 and 2019. The reason for this comparison is that the TI is well researched, respected, and publishes internationally.

Table 4.3: BRICS Transparency index comparison

No	Country	CPI Score 2019	CPI Score 2018	Change in Score 2018/2019	CPI Rank 2019	CPI Rank 2018	Change in Rank 2018/2019
1	**Brazil**	35	35	0	106	105	1
2	**Russia**	28	28	0	137	138	1
3	**India**	41	41	0	80	78	2
4	**China**	41	39	2	80	87	7
5	**South Africa**	44	43	1	70	73	3

(Source: Transparency International, 2018, 2019).

In conclusion, the researcher returns to the TI (2018, 2019), which states that the CPI for 2018 and 2019 shows that most countries are making little or no progress in combating corruption, while further analysis shows that journalists and activists in corrupt countries risk their lives every day in order to speak out. The index employed a scale of zero (0) to 100, with zero (0) being severely corrupt and 100 being very clean, to score 180 nations and regions based on their perceived levels of public sector corruption, according to experts and businesses. In 2019, more than two-thirds of countries scored below 50 on the index, with an average score of 43. Unfortunately, this dismal result is nothing new when compared to former years.

When analysing Table 4.3, one notes that Brazil has remained the same in the CPI score and dropped CPI rank. Russia has not changed in the CPI scores, yet they decreased by one in the CPI rank. India has also not changed in respect of the CPI score; however, they rose two points in the CPI ranks. In China, they rose two points in the CPI score from 39 to 41, and they dropped significantly by seven in the CPI ranking from 87 to 80. The South African results indicate that they dropped from 43 to 44 in the CPI score and dropped by three points in the CPI ranks. The results reflect as such:

- China is the most improved for the financial years 2018/2019.

- Brazil, Russia and India have performed the same, without any change to their 2018/2019 CPI scores. However, Russia performed better in the CPI ranking, dropping by one point from 138 to 137. India rose by two CPI ranking points from 78 to 80, and Brazil rose by one point from 105 to 106.
- South Africa has also performed well, rising by one point on the CPI score from 43 to 44, and dropping by three in the CPI ranking from 73 to 70.
- China is the best forming country in BRICS, as they rose by two points in the CPI score and dropped by seven points in the CPI ranks.
- This highlights that although many ACAs have a strong legislative framework, they are not performing to effectively reduce corruption in the country.

The participants were asked if they are aware of the investigative methodology of international ACAs? The majority were not aware of the methodology of investigations of international ACAs. It is the participants from the DPCI and the AFU who are familiar with the investigative methodology of the international ACAs, which summarise as a project or multi-disciplinary approach or method. They also stated that international ACAs have larger teams, compared to South Africa. The participants from the DPCI and AFU knew the methodology, as they had worked with international ACAs on cases.

One participant, a manager, stated that they are not aware of the methodology of international ACAs; however, the participant said the following:

> *"African countries have a high percentage of corrupt activities, and countries doing business with an African country budget for gratification (bribe money). The law enforcement agencies are just as corrupt as the public, which is not an effective enforcement of legislation.*
>
> *China was, in the past, the most corrupt, and ever since proper legislation was put in place, corrupt activities have scaled down. The law enforcement agencies and legislation have had an impact on the control and investigation of corruption.*
>
> *South Africa has a strategic framework, legislation and ACAs in place to investigate corruption, but some of the officials in the ACAs are corrupt,*

and the most important factor crippling the enforcement of legislation is the lack of political will" (P M: 02:2018).

The researcher will now present a brief discussion from literature that considers ACAs from a selection of other countries.

4.4.2 Review of ACAs of Brazil, Kenya, New South Wales (NSW), Tunisia and UK

Pereira et al. (2012:59-80), conducted a standalone comparative model analysis of Brazil, Kenya, New South Wales (NSW) and the United Kingdom (UK) from different jurisdictions, namely South America, Africa, Australia and UK/Europe. The comparative analysis was conducted according to international standards. The researcher has reviewed the study and drawn the following in analysis:

4.4.2.1 Brazilian ACAs and Legislative Framework

The country's civil law is based on European law. It is a Federal State divided into a Federal Government, States and Municipalities. Pereira et al. (2012:59-80), explain that they only reviewed federal government structures. Brazil is like South Africa, wherein they do not have a single ACA; they have a multi-institutional approach, although some of the institutions overlap and have duplications. The table below is a summary of the ACAs, the institutional breakdown and their mandate. The table contains direct quotations from the literature, and has not been paraphrased by the researcher, in the interests of accurate reporting:

Table 4.4: Brazilian anti-corruption agencies

NO	ACA/ INSTITUTION	INSTITUTION BREAKDOWN	MANDATE
1	**The Controladoria-Geral da União (CGU – Office of the Comptroller General**	"The CGU was established in 2001, with a view to combating, at the federal level, corruption and fraud, and defending public assets. The CGU is directly linked to the Presidency and is, therefore not politically independent".	• "Evaluation of the execution of governmental programmes & forensic auditing. • Monitoring of expenditure at federal public administration. • Annual auditing accounts and special expenses. • Auditing external resource expenditures.

NO	ACA/ INSTITUTION	INSTITUTION BREAKDOWN	MANDATE
			• External requests (in accordance with powers given to the CGU under Law No. 10.683/2003)".
2	**The Ministério da Justiça (MJ – Ministry of Justice)**	"The MJ, has 2 departments of special importance to the present study: the DPF and the Departamento de Recuperação de Ativos e Cooperação Jurídica Internacional (DRCI – Department of Assets Recovery and International Legal Cooperation".	• Defending the legal order of the Federal Government. • Defending the political rights and the constitutional guarantees. • Protecting the assets of the Federal Government. • Defending the entities comprising the indirect Federal Public Administration".
3	**The Departamento de Polícia Federal (DPF – Department of the Federal Police)**	"The DPF retains exclusivity as the investigative police of the Federal Government (article 144, §1st, IV 1988 Constitution)".	• "Responsible for investigating criminal offences against political and social order. • Ensure non-detriment of goods, services and interests of the Union or government entities and companies. • The MJ is accountable for actions carried out by the DPF. • DRCI is responsible for combating money laundering, transnational organised crime, asset recovery, legal assistance, and promoting dissemination of information on asset recovery and mutual legal assistance, • DRCI is also the secretariat for the Estratégia Nacional de Combate à".
4	**The Ministério Público da União (MPU – Office of the Prosecutor-General)**	"The MPU is essential for the jurisdictional function of the State and is responsible upholding the rule of law and the democratic regime (article 127, §1st 1988 Constitution). It has both functional and administrative autonomy (article 127, §2nd, 1st figure 1988 Constitution), & has power to propose to the Legislative the creation or the	• "Promotes criminal prosecution. • Promote civil investigation and public civil action to protect the public and the social patrimony, and collective interests. • Issue notifications in administrative proceedings, requesting information and documents. • Exercise external control over police activities, in the form of Supplemental law.

NO	ACA/ INSTITUTION	INSTITUTION BREAKDOWN	MANDATE
		extinction of offices & ancillary services, as well as its remuneration policy and career plans (article 127, §2nd, in fine 1988 Constitution)".	• Request investigation and pro-secution of police investigations. • Perform functions conferred upon with the prohibition of judicial representation and legal consultancy for public entities".
5	**The Conselho Nacional do Ministério Público (CNMP – National Council for the Prosecution)**	"The CNMP was introduced through the Constitutional Amendment No. 45/2004. It is responsible for providing checks & balances for the actions undertaken by the MPU as well as the State Prosecutor's Offices. The CNMP is comprised of 14 members (article 130-A 1988 Constitution): The Prosecutor General, four prosecutors from the MPU; 3 prosecutors from the State Prosecutor's Offices; 2 lawyers; 2 judges and 2 citizens".	• Assess legality of administrative acts from the MPU, State Prosecutor's Offices and its staff. • Receive and hear complaints against the MPU, State Prosecutor's Offices, its staff and prosecutors, order the removal, the retirement with full or proportional subsidies and to apply other administrative sanctions, ensuring due process. • Review disciplinary procedures of prosecutors of the MPU".
6	**The Conselho Nacional de Justiça (CNJ – National Council of Justice)**	"The CNJ was introduced via the Constitutional Amendment No. 45/2004 and the Constitutional Amendment No. 61/2009. It comprises 15 representatives from the legal fraternity and 2 citizens".	• "The CNJ is responsible for the control of the administrative & the financial activities of the Judiciary Branch of power and the functional performance of judges. • It is competent to assess the legality of administrative acts from Judiciary Branch of Power at the Federal and State levels and its staff. • The CNJ is also responsible for presenting facts to the MPU if a crime against the public administration is uncovered".
7	**The Advocacia-Geral da União (AGU – Office of the Attorney-General)**	"The AGU is responsible for representing the Union judicially and extrajudicial, as well as undertaking the activities of legal consultancy and assistance to the executive branch of power	• "The AGU is responsible for initiating action in which the Union has suffered any loss. • MPU has often initiated a criminal proceeding or administrative improbity of the corrupt public official.

NO	ACA/ INSTITUTION	INSTITUTION BREAKDOWN	MANDATE
		(article 131 1988 Constitution). The AGU reports directly to the Presidency of the Republic".	• Initiate parallel civil proceedings to ensure punitive damages in favour of the Government for the damages incurred. • Participate in the prosecution conducted by the MPU as an assistant to the prosecution".
8	**The Tribunal de Contas da União (TCU – Court of Accounts of the Union)**	"The TCU is the Supreme Audit Institution of Brazil. Unlike the RSA, however, it is not an independent body – it is constitutionally part of the Legislative Branch".	• "Examine accounts rendered annually by the President. • Evaluate accounts of administrators maintained by the federal government, and the accounts of those who have caused the loss of public funds. • Assess registration purposes, legality of acts of admission of personnel in any capacity, maintained by the Government, as well as the grants of pensions. • Conduct inspections and audits of an accounting, financial, budgetary, operational and patrimonial nature, in administrative units of the Legislative including foundations and companies maintained by the federal government. • Control national accounts of supranational companies in which capital from the Union is held. • Monitor application of funds transferred by the Union. • Provide information to Congress. • Apply sanctions provided by law, and to establish, among other penalties, a fine proportional to the damage caused to the exchequer. • Define a period for the agency or entity to take the action necessary for the proper enforcement.

NO	ACA/ INSTITUTION	INSTITUTION BREAKDOWN	MANDATE
			• Suspend the execution of the contested act, advising the decision to both houses of the National Congress".
9	**The Comissões Parlamentares de Inquérito (CPI – Congressional Commissions of Enquiry)**	"The CPIs play an important role in the combating of corruption in Brazil since the return of civilian government. They are foreseen in article 58, §3rd 1988 of the Constitution. Either house can initiate the CPIs, although they can also be done with representatives of both houses".	• "The CPIs have same powers of investigation as judges, as well as others which may be foreseen in the internal regulation of the National Congress. • Once the Parliamentary investi-gation is concluded, the final report is taken to vote for action (e.g., DPF for further investigation of criminal acts, and the MPU for criminal prosecution)".

(Source: Anti-Corruption Authorities, 2012a:1-5).

According to TI (2018, 2019), for the years 2018/2019, Brazil's CPI score did not change; it remained at number 35 for both years. Brazil did rise by one point when comparing the CPI ranking for 2018 to 2019 from position 105 to 106. The increase in the ranking reflects negatively on its anti-corruption framework.

In summary, Brazil has nine ACAs within the country. These nine ACAs have covered all aspects of an anti-corruption strategy from investigations, monitoring, auditing, prosecution, and defending the legal order of the government and education, and they cover federal and state jurisdictions. These ACAs have been referred to coordinate efforts. The country has a comprehensive legislative framework.

4.4.2.2 Kenya ACAs and Legislative Framework

Kenya's anti-corruption efforts began in 1956 with the Prevention of Corruption Act (Cap. 65), which lasted until 2003, according to Pereira et al. (2012:70-71). Cap 65 was revised in 1997 to permit for the establishment of the Kenyan Anti-Corruption Authority (KACA), which was abolished in 2000 due to political resistance. The Kenya Anti-Corruption Commission was established in May 2003 under the Anti-Corruption and Economic Crimes Act (ACECA) and the Public Officers Ethics Act

(KACC). The KACC did not have a constitutional mandate to prosecute, and, therefore found itself unable to provide success stories. To follow is the review of the KACC, its mandate, limitations, and a table covering the institution's breakdown and its mandate.

In 2010, the KACA was replaced by the Ethics and Anti-Corruption Commission (EACC). In addition to the enactment of the ACECA in 2010, the following took place:

- Kenya ratified the UNCAC and signed the African Union Anti-Corruption Convention, as well as the African Convention on Preventing and Combating Corruption.
- The ACECA mandated the KACC to investigate corruption and economic crimes, as well as undertake public corruption education, which also applies to the new organisation EACC.
- Other agencies were in place, including the Steering Committee against Corruption, the Ministry of Justice and Constitutional Affairs, the Auditor General's Office, and the Permanent Secretary for Governance and Ethics.
- The ACECA also established the KACC Advisory Board, which was later disbanded in 2010 as part of the reconstitution.
- The Director of Public Prosecutions oversees criminal prosecutions, and the DPP has a State Counsel and several specialist prosecutors to pursue corruption charges.
- The public awareness campaign against corruption is led by the National Anti-Corruption Steering Committee, which is part of the Ministry of Justice's National Cohesion and Constitutional Affairs.

The following table contains direct quotations from the literature, and has not been paraphrased by the researcher, in the interests of accurate reporting:

Table 4.5: Kenyan Anti-corruption agencies

NO	ACA/ INSTITUTION	INSTITUTION BREAKDOWN	MANDATE
1	**KACC**	"The structure of the KACC followed a three-pronged approach, based on Investigation, public education/ advisory and civil recovery/restitution. Kenya borrowed heavily from the Malaysian model. Both the Malaysian and the KACC have no powers of prosecution. The former Kenyan Anti-Corruption Commission, KACA, was equipped with power to prosecute; however, that agency existed for two years only. The KACC and its Director was only accountable to Parliament".	• "Investigative function • Advisory function • Education function • Restitutionary function To fill these functions, the KACC has the following Directorates: • Directorate of Investigation and Asset Tracing. • Directorate of Legal Services and Asset Recovery. • Directorate of Research, Education, Policy and Preventive Services. • Directorate of Finance and Administration".

(Source: Business Anti-Corruption Portal, 2017a:1-10).

The functions of the KACC are further explained below, as follows (Pereira et al., 69-70):

- **Investigative function**. The KACC will investigate any matter involving corruption or economic crime, as well as the behaviour of anyone who promotes corruption or economic crime.
- **Advisory function**. The KACC shall advise and assist any person or public entity, upon request, regarding ways to remove corrupt practices.
- **Educative function**. The KACC is required by the rules to educate the public about the dangers of corruption and economic crimes, as well as to enlist their cooperation in the fight against corruption in the country.
- **Restitutionary function**. The KACC's mandate is to investigate the extent of liability for the loss or damage to any public property, to bring civil proceedings against any individuals for the recovery of such property or compensation, and to return such property to the public, even if it is located outside of Kenya. The restitutionary function is also included in the ACECA Act 2010 (article 7).

Pereira et al. (2012:69-70), state that the KACC has the following limitations and shortcomings:

- It lacks the constitutional mandate to prosecute criminal and corruption cases. Even though they had the ability to investigate, and had specialised forensic experts, its inability to prosecute weakened its anti-corruption efforts. Only the Attorney-General has the mandate to prosecute criminal and corruption cases. The Attorney-General returned several cases to the KACC based on evidence presented.
- Many courts have questioned the KACC's authority to carry out its investigation mandate and have halted the KACC's work in several high-profile instances, such as the Anglo Leasing contracts.
- Without autonomy and cooperation from the judicial branch and the Attorney-General, the KACC proved ineffective, even going so far as to hinder the KACC's efforts. As a result of these steps, the KACC's role was reduced to responding to complaints and conducting investigations, with no hope of prosecuting its cases.
- In its own annual reports, the KACC has acknowledged challenges it had with the judiciary and the inability to carry out lifestyle audits and had no guaranteed protection to investigate.

From the above review, it can be said Kenya has only one ACA: the KACC. This ACA has the necessary mandate covering an Investigative function, an advisory education function and a restitutionary function. Because it has a Directorate of Investigation and Asset Tracing, a Directorate of Legal Services and Asset Recovery, a Directorate of Research, Education, Policy and Preventive Services, and a Directorate of Finance and Administration, it may be assumed that this ACA is a large organisation.

It is the view of the researcher that although there are limitations and shortcomings, the KACC has a civil recovery like that of the SIU, which is an ACA in SA. This civil recovery mandate is crucial in fighting corruption, as they themselves can recover lost state funds and not wait for the prosecuting authorities. The KACC's presence and mandate outweigh the limitations.

According to TI (2018, 2019) Kenya dropped by seven points on the CPI ranking from 144 to 137 and rose by one point in its CPI score from 27 to 28. This drop in

the CPI ranking is a good indication that its anti-corruption framework is performing well, as this is a significate drop.

4.4.2.3 New South Wales (NSW) ACAs and Legislative Framework

In 1989, the NSW Government established the NSWICAC, to ensure the dignity of public administration in NSW. At the time of the formation of the NSWICAC, corruption existed among ministers of government, within the judiciary, and at the highest levels of the police force. The Police Integrity Commission (PIC) was established in June 1997, with its legal basis being the Police Integrity Commission Act 1996. The PIC is separate from the NSW Police Force. The following table is a summary of the ACAs, the institutional breakdown and their mandate. The table contains direct quotations from the literature, and has not been paraphrased by the researcher, in the interests of accurate reporting:

Table 4.6: New South Wales Anti-corruption agencies

NO	ACA/ INSTITUTION	INSTITUTION BREAKDOWN	MANDATE
1	**NSWICAC**	"The NSWICAC was created with the idea of installing an institution with powers similar to those of a Royal Commission. Its legal basis is the Independent Commission Against Corruption Act 1988. The NSWICAC has jurisdiction over all NSW public sector agencies. The Parliamentary Committee, The Inspector and Internal Committee monitors the NSWICAC. The head of the NSWICAC is a former or potential Judge of the Federal or High Court".	• "Investigate and expose corrupt conduct in the NSW public sector. • Actively prevent corruption through advice and assistance. • Educate the NSW community and public sector about corruption and its effects. • Commissions studies into risk with public sector. • The NSWICAC receives, analyses and assesses complaints and reports of alleged corruption, and conducts investigations, compulsory examinations" and public inquiries into serious and systemic corruption. • The complaints must relate to the NSW public sector and if there is no public sector involvement then the NSWICAC does not become active.

NO	ACA/ INSTITUTION	INSTITUTION BREAKDOWN	MANDATE
			• It only recommends prosecution to the DPP".
2	**PIC**	"The PIC was created as a result of the Royal Commission into NSW Police Service corruption and became permanent in 1997. The NSWICAC at one point had oversight of the NSW Police Force, and it was removed, as the Wood Royal Commission uncovered corruption within the Police Force that the NSWICAC did not uncover".	• "The PIC is responsible for preventing, detecting or investigating serious police misconduct. • Managing or overseeing other agencies in the detection and investigation of serious police misconduct and other police misconduct. • Managing matters not completed by the Royal Commission into the New South Wales Police Service".

(Source: New South Wales, 1988; New South Wales, 1996).

New South Wales has two well-equipped ACAs: the NSWICAC and the PIC, that are both active in the fight against corruption investigation, prevention, education and risk management. New South Wales also has a quality legislative framework that supports the efforts of the ACAs in dealing with corruption within the public sector.

There was no data available for NSW on TI. However, since NSW forms part of Australia the researcher has listed the CPI score and CPI ranking for Australia. According to TI (2018, 2019), Australia's CPI score for 2018 and 2019 was 77 and its CPI ranking dropped from 13 to 12 from 2018 to 2019. Australia is high performing on TI.

4.4.2.4 Tunisia ACAs and Legislative Framework

It is stated in BACP (2017b:1-8) that Tunisia has a comprehensive anti-corruption law to combat corruption. In respect of the anti-corruption institutional framework, there was no central and independent anti-corruption agency under the former regime, but a series of mandated departments embedded in other government agencies or in the court system. The National Court of Accounts (La Cour des Comptes) and the Court of Suppression of Fraud (La Cour de Discipline Financière) have been centrally involved in the execution of anti-corruption policies. Articles 1

and 2 of Act No. 74 of 1985, Tunisia's Constitution, cover any management offences, or multiple offences, committed by any civil servant, administrative public institution, or municipal government employee, as well as any manager, executive or staff of public corporations.

The table below is a summary of the ACAs, the institutional breakdown and their mandate. The table contains direct quotations from the literature, and has not been paraphrased by the researcher, in the interests of accurate reporting:

Table 4.7: Tunisian Anti-corruption agencies

NO	ACA/ INSTITUTION	INSTITUTION BREAKDOWN	MANDATE
1	**Court of Accounts (CA)**	"The CA was created by virtue of the Tunisian Constitution which dated to 1959. It operated under the Council of State headed by the President &was free to identify its work, scope and results thereof. The CA has become ineffective over time".	• "The CA conducts external audit in accordance procedures and generally accepted audit standards. • It sees to proper management of public monies in ensuring accountability and good governance. • Audits accounts of public accountants, public entities &companies. • The CA reports annually to the President and the Legislature".
2	**The Court of Suppression of Fraud (CSF)**	"The CSF started its activities in 1987 when it took up the first cases referred to it and delivered its first decision in January 1988. Though the CSF is related to the CA, it nevertheless constitutes a separate financial jurisdiction and Independent. Although it does not belong to the criminal courts, the criminal civil or disciplinary liability of public servants, financial legislation has stipulated a dedicated liability system".	• "The CSF is entrusted with ensuring budgetary regulations and proper use of public monies. • The CSF has, by law, both the power to investigate and discretionary power in setting the amount of the fine. • Conviction and fining decisions delivered by the CSF court are enforceable and not liable to review or appeal".
3	**The National Fact-Finding Committee on Corruption &**	"The National Fact-Finding Committee on Corruption and Embezzlement (Commission chargée des affaires de corruption et de malversations) was	• "The NFFCCE is tasked to ensure the application of existing anti-corruption legis-lation.

NO	ACA/ INSTITUTION	INSTITUTION BREAKDOWN	MANDATE
	Embezzlement (NFFCCE)	established in 2011 (by the Décret-Loi No 7 of 2011). The Committee is non-governmental, independent, apolitical and non-profit and has as a main objective to investigate the alleged cases of corruption and malfeasance".	• Ensuring that the State takes necessary measures to counter corruption acts both nationally and internationally. • Combat and take action or prevent corruption and mal-feasance. • Analyse complaints and forward to relevant judicial authority".
4	**Institute of Security Forces &Customs (ISFC)**	"There are no reports, no website and literature on this Institute".	"The ISFC is tasked with a number of duties including the reduction of corruption".

(Source: Business Anti-Corruption Portal, 2017b:1-10).

Tunisia's administration took steps in April 2012 to focus more on transparency, good governance, and anti-corruption efforts. The government decided to do the following by a circular (BACP, 2017:1-2):

- Within public structures, establish a good governance unit. This section has served as the only point of contact for problems relating to governance and anti-corruption.
- All corruption case files, progress reports, and decisions made and not yet in effect, are turned over to the Ministry of Governance and Anti-Corruption.
- Allow direct access to information, data, statistics, decisions, expenses, programmes and annual reports of the concerned public entity via a public website. All of this was done in accordance with current legislation.
- Encourage government institutions which do not yet have a website to do so in compliance with the rules.

It is summarised that the CA was created many years ago. This indicates the country's haste to fight corruption as early as the creation of its Constitution back in 1959. The CA has mostly an auditing and accountability mandate. The CSF has the mandate to investigate and set fines. The NFFCCE was established without adequate consultation with the relevant role players. The NFFCCE also lacks

effective enforcement and investigative measures, such as the ability to issue subpoenas. The ISFC has been searched, but no information about the ACA in Tunisia has been discovered.

Tunisia's CPI score was 43 for both 2018 and 2019, and it ranked 73 in 2018 and 74 in 2019 (TI, 2018, 2019). This scoring and ranking are like that of South Africa. It indicates that the anti-corruption framework in Tunisia needs to be effectively utilised.

4.4.2.5 United Kingdom ACAs and Legislative Framework

The United Kingdom's anti-corruption mechanism is also multi-agency. At least 12 agencies or government departments with some responsibility for corruption, as well as an additional 40 police forces, including the Independent Police Complaints Commission, make up the UK's anti-corruption infrastructure (IPCC). Due to the large number of agencies in the UK, attention has been focused on the agencies and departments listed below, which have functions that are like those found in SA. The ACAs, their institutional composition, and their mandate are summarised in the table below. For the sake of factual reporting, the table comprises straight quotations from the literature, that have not been interpreted by the researcher:

Table 4.8: United Kingdom Anti-corruption agencies

NO	ACA/ INSTITUTION	INSTITUTION BREAKDOWN	MANDATE
1	**Crown Prosecution Service (CPS)**	"The CPS is a government department responsible for prosecuting criminal cases investigated by the police in England and Wales, and was created by the Prosecution of Offences Act, 1985 (POA). The head of the CPS is the DPP who is, as stated earlier, accountable to the AGO: who in turn is accountable to Parliament for actions of the CPS. The CPS is an independent Service".	• "Advising the police on cases for possible prosecution. • Reviewing cases submitted by the police. • Preparing for and presenting cases in court. • The CPS does majority of prosecutions in the UK".

NO	ACA/ INSTITUTION	INSTITUTION BREAKDOWN	MANDATE
2	**The Serious Fraud Office (SFO)**	"The SFO was created through the Criminal Justice Act 1987 (CJA). The SFO does not prosecute every single case of fraud and corruption. Prior to taking a case (whether for investigation or prosecution), the SFO considers. With regards to the UK Bribery Act 2010, the Director of the SFO (or of the CPS, if the bribery does not have an element of serious or complex fraud) must personally give his or her consent for the initiation for proceedings under said Act (Section 10(1)(b) UK Bribery Act 2010)".	• "Responsible for investigating and prosecuting serious and complex fraud (Sections 1(3) and (4) and 2(1) CJA). • The SFO may initiate proceedings which appear to relate to fraud (Section 1(5)(a) CJA). • The SFO may conduct any investigation in conjunction either with the police or with any other person (Section 1(4) CJA). • The powers of investigation may be exercised by the SFO in any case in which it appears that there is good reason to do so for the purpose of investigating the affairs of any person (Section 2(1) CJA)".
3	**Overseas Anti-Corruption Unit of the City of London Police (OACU)**	"The OACU is primarily responsible for investigating allegations of corruption and bribery by UK companies or nationals engaged overseas".	• "The OACU Investigates allegations of corruption and bribery by UK companies or nationals engaged overseas businesses. • Assess allegations and allocate the case to the agency that is beat equipped to investigate it".
4	**Serious Organised Crime Agency (SOCA)**	"SOCA is an independent executive body under the Home Office established under the Serious Organised Crime Agency Act 2005 (SOCA Act)".	• "The SOCA has the responsibility of preventing and detecting serious organised crime • Responsible for gathering, storing, analysing and disseminating information relevant to the prevention, detection, investigation or prosecution of offences. • Investigate serious and complex fraud cases if the SFO has agreed to it. • It enters into arrangements of co-operation with bodies or persons whom it considers appropriate".

NO	ACA/ INSTITUTION	INSTITUTION BREAKDOWN	MANDATE
5	**Independent Police Complaints Commission (IPCC)**	"The IPCC was created by the Police Reform Act 2002 (PRA). The IPCC is overseen by a Chair (appointed by the Crown on the recommendation of the Home Secretary), 10 operational Commissioners and two non-executive Commissioners (which are appointed by the Home Secretary), which must not have a police background (Section 9 PRA)".	• "The handling of complaints made about the conduct of persons serving with the police. • The recording of matters from which it appears that there may have been conduct by such persons which constitutes or involves the commission of a criminal offence or behaviour justifying disciplinary proceedings (Section 10(2)(b) PRA). • The manner in which any such complaints or any such matters as are mentioned in Section 10(2)(b) PRA are investigated or otherwise handled and dealt with".

(Source: Business Anti-Corruption Portal, 2017c; Anti-Corruption Authorities, 2012b).

From the summary of the five UK ACAs, it is concluded, after in-depth research, that the UK ACAs are similar in mandate and function to that of the South African ACAs, as per the following:

- The CPS is like that of the NPA.
- The SFO is like that of the SIU.
- The SOCA is like that of the DPCI.
- The IPCC is like that of the IPID.

The UK has a comprehensive, foot printed legislative framework like that of the South African legislative framework. From the review, however, neither country has a coordinating agency to ensure proper, thoughtful, outcome-based results. This factor allows both the countries to feel the impact of overlapping mandates of ACAs.

According to TI (2018, 2019), the UK scored 80 and 77 respectively on the CPI scoring and ranked 11 for 2018 and 12 for 2019. In terms of the TI scoring scale, the UK is a good performing country. However, when comparing the TI scores of

the UK and South Africa, there is a high difference, bearing in mind that they have similar legislative frameworks.

4.4.3 Comparison of South Africa to the ACAs of Brazil, Kenya, NSW, Tunisia and UK

From this extensive comparison that Pereira et al. (2012:85-87), have conducted in respect of ACAs from the different jurisdictions, namely South America, Africa, Australia and UK/Europe, and focusing on Brazil, Kenya, NWS and the UK, the following is concluded:

- Most of the ACA models follow the multi-agency approach, except for the NSWICAC, in preventing and combating corruption. This approach requires understanding and co-operation between the ACA, stakeholders and government. This helps the ACA in preventing and combating corruption.
- South Africa has a dual set of ACAs: on the one hand, specialised institutions that prevent and combat specific kinds of corruption, and on the other, all-encompassing organisations that prevent and combat corruption in general.
- Non-state entities (NACF), involvement and cooperation are also encouraged under the SA anti-corruption framework. These entities have non-statutory relationships with one another. Because they are not subject to checks and balances, they may lose their overall impartiality, and raise questions about their mandates if they do not have a legal base.
- Through bylaws, Brazil also has several anti-corruption institutions (Decretos). These bylaws are subject to the President of the Republic's discretion. While the SPCI was established by Decree No. 5.683/2006, the said Decree is based on Article 1 of Law No. 10.683.2003, which established the CGU. In South Africa, however, most non-statutory organisations were established by Presidential proclamations or government policy decisions that may or may not have been founded on statutes.
- As a result of the foregoing, SA's many coordination structures grew over time without formally disbanding earlier ones (as is the case between the ACCC and the ICM). The integration and coordination of their actions, which needed to be carried out by policy and operational levels through legal mechanisms,

considerably strengthens the role of each of the existing institutions in SA in the prevention and combating of corruption.

- The anti-corruption framework of SA must ensure that the legal instruments that have created the bodies have checks and balances in place. This is to ensure that these bodies enjoy autonomy while discharging their duties, without the risk of having actual or perceived political interference and conducting their duties without fear or favour. This has ensured that an appropriate level of oversight and responsibility is to be retained, and to ensure that these do not overstep their authority in any manner. The NSWICAC exhibits accountability procedures by having three independent bodies oversee its actions: the NSW Parliamentary Committee, the Inspector, and the NSWICAC's internal committee. As a result, the NSWICAC is still accountable to parliament, and it has internal measures in place to preserve its independence and integrity.
- Tunisia outperformed South Africa in the TI CPI. Tunisia had an anti-corruption mechanism in existence, but it was riddled with loopholes and allowed patronage networks to undermine it, rendering it ineffective. Tunisia has taught SA that it must safeguard its anti-corruption infrastructure from methods that could render the entire process obsolete. All of this can be observed in Kenya, where the KACC has preserved its independence in probing corruption but is reliant on the Attorney-General for prosecution. The effectiveness of Kenya's anti-corruption system was harmed by this interdependence, which allowed political intervention through the Attorney-General.
- In the current anti-corruption framework in South Africa, several institutions have been changed, created or eliminated in the previous few years. Prior to modifying the anti-corruption framework, the government must first recognise the shortfalls and gaps that exist. One of these is the Anti-Corruption Inter-Ministerial Committee (IMC), whose position is unknown to the South African government. Overlapping and duplication are a result of this feature.
- In Brazil, the ENCCLA is an example of a lack of coordinated policy and operational efforts. The Ministries and State Institutions formed the ENCCLA. While the ENCCLA faces the possibility of dissolution because it was not established by by-law or statute, it has also given convening members additional accountability.

- South Africa has a variety of institutions that work to prevent and combat corruption both directly and indirectly. The SIU and the AFU are examples of this, as they are two separate institutions that duplicate and overlap.
- When setting up ACAs, there needs to be effective impartiality in investigations and prosecutions. This was seen in the UK with the BAE arms deal case, where a cabinet minister closed the case investigated by the AGO due to national interest. A protocol was signed between the relevant parties, establishing the criteria and rules to ensure the necessary elements for a proper prosecution. South Africa has done the same as the institution, and although independent, is accountable to a cabinet minister, as with the SIU, wherein the President gives them the power to investigate, and has not interfered with their carrying out those powers in any way.

A critical point revealed from the research, when conducting a comparative analysis of South African ACAs and the international ACAs, is that South Africa lacks the educational mandate within its anti-corruption framework. This essential component is reinforced by Spector (2005:59), who claimed that most of the corruption discovered in emerging countries' health sectors reflects broader governance and public sector accountability issues. As a result, a strategy for avoiding corruption in the health sector must involve training for health workers on the general government anti-corruption measures in place, as well as informing wrongdoers about the consequences of their actions.

Bruce (2014:54) goes on to discuss the role of education in an ACA's mandate in South Africa. He claims that none of the existing ACA mandates in South Africa support an all-inclusive approach to fighting corruption, and that there is no operative lead agency, no agency with an explicit anti-corruption mandate, and no agency responsible for promoting anti-corruption education within the public sector or among citizens.

4.4.4 Comparative analysis of ACAs of Botswana, Malawi, Nigeria and Hong Kong

Montesh (2007:159-191) conducted an in-depth comparative analysis of the ACAs, their legislative framework and other key aspects, for four countries, namely Botswana, Malawi, Nigeria and Hong Kong. For the purposes of this study, the

research has evaluated the same countries under their institution, institutional breakdown and mandate.

The following table contains direct quotations from the literature, and has not been paraphrased by the researcher, in the interests of accurate reporting:

Table 4.9: Comparative analysis of Botswana, Malawi, Nigeria and Hong Kong

NO	ACA/ INSTITUTION	INSTITUTION BREAKDOWN	MANDATE
1	**Botswana: Directorate on Corruption and Economic Crime (DCEC)**	"In September 1994 the Botswana National Assembly enacted the Corruption and Economic Crime Act to establish the Directorate on Corruption and Economic Crimes (DCEC). This Act created new offences of corruption, including being in control of disproportionate assets or maintaining an unexplained high standard of living. The DCEC investigates public and private corruption, including bribery and related activities, as well as other economic crimes".	• "To investigate, prevent and educate the public on all issues relating to economic crimes and corruption. • The DCEC has, however, no role in the prosecution of corruption cases. • The mandate to investigate corruption is found in section 11 of the Corruption and Economic Crime Act, read with section 339 (5) of the Criminal Procedure and Evidence Act, which states. that: "the DCEC officers have the same powers and authority as the Botswana Police Force members".
2	**Malawi : Anti-Corruption Bureau (ACB)**	"The ACB commenced full operations on 9 February 1998. The Bureau is a government department headed by a director, assisted by a deputy director, who is both appointed by the President, but whose appointment is subject to ratification by the Public Appointments Committee of Parliament. The Corrupt Practices Act of 1995 is the legislation under which the Bureau operates. The ACB is managed by a director, assisted by a deputy director. These two members are accountable to the	• "In terms of the Corrupt Practices Act, only corruption cases are investigated by the ACB. • The ACB is not permitted to investigate any other offence other than corruption**.** • The ACB is permitted under Section 10 (1) (b) of the Corrupt` Practices Act to receive and investigate complaints of alleged or suspected corrupt practices and, subject to the directions of the Director of Public. Prosecutions, to prosecute offences under the Act".

NO	ACA/ INSTITUTION	INSTITUTION BREAKDOWN	MANDATE
		Minister of Justice who is in turn is accountable to the President".	
3	**Nigeria: Economic and Financial Crimes Commission (EFCC)**	"The EFCC was established in 2003 this was due the preponderance of economic and financial crimes such as Advance Fee Fraud (419), money laundering which was having a negative impact on the country. The EFCC (Establishment) Act gives powers to the EFCC. A Chairperson is the Head of the EFCC".	• "The EFCC investigates all suspicious financial and economic transactions, illegal bunkering, vandalisation and damage to oil, gas and power lines and installations, all acts of economic sabotage, including financial malpractices of all types • EFCC also investigates all acts or suspected acts of terrorism, or movement of money, assets or property for terrorist organisations. Cyber-crime includes computer crime, which includes Internet fraud, Internet pornography, used of computers for theft, destruction, or harassment, and failure of a cybercafé to comply with EFCC regulations and other economic crimes".
4	**Hong Kong: Independent Commission Against Corruption (HKICAC)**	"The HKICAC was set up in 1974. With the support of the Government and the community, Hong Kong has now become one of the least corrupt places in the world. The HKICAC in October 1974, the Independent Commission Against Corruption Act of 1974".	• "The HKICAC has a three-pronged approach, prevention, prevention and education. • The Act stipulate that the HKICAC is responsible for corruption including private and public corruption including blackmail and misuse of public office".

(Source: Montesh, 2007:159-191).

From the above comparative analysis, it can be ascertained that these countries have a single anti-corruption agency approach and strategy. South Africa has a complicated anti-corruption structure; however, according to Mosselini (2013:49), the DPSA stated on 5 June 2013, that the Anti-Corruption Bureau would be established as a single anti-corruption body inside the Republic. According to Chapter 6 of the Public Administration Management (PAM) Bill of 2013, the Bureau would be constituted.

When comparing Botswana, Malawi, Nigeria and Hong Kong in respect of their TI scoring and ranking, the following was revealed (TI, 2018, 2019):

- For both years 2018 and 2019, Botswana scored 61 and ranked 34.
- Malawi rose by one point from 32 in 2018 to 31 in 2019 and gained three points from 120 in 2018 to 123 in 2019. This reflects negatively for Malawi.
- Nigeria was the worst performing of the compared countries, by dropping by one point on the CPI score from 27 in 2018 to 26 in 2019 and rising by two points on the CPI ranking from 144 in 2018 to 146 in 2019.
- The score and ranking of Hong Kong are impressive from the compared countries. Hong Kong scored 76 for 2018 and 2019 and ranked 14 in 2018 and rose by two to 16 in 2019.

4.5 SOUTH AFRICA AND A SINGLE AGENCY APPROACH

The PAM Bill noted that the Anti-Corruption Bureau would investigate corruption within the public service, protect whistle-blowers, capacitate internal disciplinary proceedings, and co-operate with other institutions and organs of state, to fulfil its functions. The Bureau would cooperate with government bodies such as the ACTT, NPA, SIU, FIC and DPCI in carrying out its functions as well. While the PAM Bill noted that the Bureau would perform the function of investigating corruption, the independence of such investigation remained in question, owing to the notion in the Bill that the Bureau would be accountable to the Minister and not to Parliament.

Regardless of the different circumstances that contributed to the desire to establish the Anti-Corruption Bureau, it should be highlighted that the Bureau was not included in the second draft of the PAM Bill 48 of 2013. The department appears to have abandoned its aim to create a single, all-encompassing anti-corruption body, according to Mosselini (2013:49). Although the DPSA had noble intentions, there was no assurance that the Bureau would be successful.

Pillay (2004:597) noted that it is sometimes suggested that South Africa follow the example of other jurisdictions, such as Hong Kong, NSW, Botswana and Tanzania (as stated above), by establishing a single anti-corruption agency. Strategic cooperation between the existing anti-corruption bodies is the alternative approach. In addition, Pillay (2004:597) emphasized that corruption literature has shown that

reasons for the creation of an autonomous anti-corruption agency reflect the failure of established government institutions to effectively address corruption. The main reasons for an independent anti-corruption agency are the following:

- The very low efficiency of the existing State agencies.
- The lack of public trust in the anti-corruption agencies.

South Africa has several anti-corruption authorities, according to the NDP 2030 (South Africa, 2013:448). Many have claimed that the proliferation of anti-corruption authorities hinders the fight against corruption by dividing resources and resulting in an uncoordinated strategy, according to the report. The NDP states that there has been a great deal of discussion about whether South Africa should have a single anti-corruption agency like Hong Kong's ICAC. Hong Kong has unique characteristics, such as well-organised administrative culture and well-resourced police, who operate within a political and legal framework that encourages anti-corruption efforts. There are concerns that such a device could be brought to South Africa. The NDP believes that while attempts to increase administrative competence and the criminal justice system are occurring in South Africa, the country lacks the institutional underpinning to make the HKICAC a realistic alternative.

Although the Hong Kong ICAC does not have statutory independence, it strives to retain a degree of independence through its relationships with the public and sister agencies (Mosselini, 2013:49). Anti-corruption agencies, according to Pillay (2004:597), can be effective in combating corruption in a limited number of situations, since the elements that influence their performance are complicated and unique to each country. Pillay (2004:597) agreed with the NDP (South Africa, 2013:447-448) that the HKICAC model comes to mind, and that the HKICAC model's transition to SA is uncertain, because the Hong Kong model is very much a product of its own particular social climate and politics. This author sums-up by stating that projects which do not consider the historical context as well as the current fiscal circumstances, are guaranteed to fail.

Chêne (2012:5) elaborates on one country adopting another's model, stating that ACAs, despite their potential, have been shown in several studies to be ineffective in combating corruption. The United Nations Development Programme (UNDP), for

example, believes that there are just a few examples of successful independent ACAs (UNDP, 2005). A TI U4 report on the performance of ACAs in five African nations contributes to these findings. There is also widespread agreement in the literature (Pillay, 2004:597; Chêne, 2012:5; Mosselini, 2013:49; South Africa, 2013:447-448) that successful experiences like those in Hong Kong and Singapore are not necessarily replicable, as they benefited from a unique convergence of favourable conditions that few developing countries enjoy, including:

- Sufficient resources and capacity, both in terms of funding and human resources.
- A strong mandate that goes beyond law enforcement and integrates prevention and educative functions.
- Adequate powers for the ACAs and law enforcement institutions.
- Strong political will and support from government.
- Enforcement approach supported by pre-existing bodies of law.
- An independence with appropriate checks and balances.
- An effective court/judicial system.
- An enabling environment.
- Effective coordination and institutional clarity.

According to Blundo et al. (2006:54), even Botswana, which has taken its model from Hong Kong, and a country reputed to have been relatively free of the phenomenon of corruption, was shaken by a series of scandals concerning the awarding of public contracts, illegal property transactions and client list allocation of housing.

Bruce (2014:54) reiterates what is discussed by Pillay (2004:597), by stating that according to the South African NDP, despite Hong Kong's reputation as the world's premier anti-corruption agency, South Africa lacks the institutional underpinning to make the HKICAC model a feasible choice. While independence requires protecting institutions from political pressure and intervention, Bruce (2014:54) adds that a single-agency approach is less resilient in this regard, because if the lone anti-corruption body is compromised, the entire system's independence is jeopardised.

The NDP (South Africa, 2013:448) recommends several different ways to reinforce the multi-agency system, instead of a stronger, centralised anti-corruption body:

- Include a review of all agencies' mandates and functions, with the goal of streamlining them.
- Encourage an increase in funding, so that agencies may hire experienced employees and use cutting-edge investigative techniques.

A statutory review of Singapore's Prevention of Corruption Act (PCA), enacted in 1960, was undertaken by Majila et al. (2014:223). In terms of different ways of "gratification," the legislation specifically outlines corruption and combines comprehensive preventive mechanisms with strict punishments and penalties. Secondly, Hong Kong's Prohibition of Bribery Ordinance 1970 (POBO) is a comprehensive piece of legislation that prohibits all forms of bribery in both the public and private sectors. Finally, Majila et al. (2014:223), point out that the 1997 Malaysian Anti-Corruption Act establishes offences and punishments for both private and public sector corruption, including active and passive bribery, attempted corruption and abuse of office, corruption by mediators and intermediaries, public procurement corruption, and electoral corruption. When compared to the other 18 countries studied, they found that Singapore, Hong Kong, and, to a lesser extent, Malaysia, have well-implemented anti-corruption legislation.

Muntingh (2006:7-9) introduced a strategic component to the South African anti-corruption framework: The National Integrity System (NIS). The NIS is described as an analytical tool created by the TI. The NIS and a national anti-corruption strategy are described to benefit South Africa in the following ways (Muntingh, 2006:7-9):

- It was intended to assess the larger institutions and programmes that contribute to governance in a country.
- The NIS investigates and describes the functioning of institutions that would allow the State to perform its purpose in a responsible and transparent manner.
- The legislative, the executive, the judiciary, the ultimate audit institution, the ombudsman, oversight agencies, public services, the media, civil society, the private sector, and international players are all part of the NIS.

- Because corruption is not an individual problem, but rather an organisational one, the NIS must be all-encompassing, rather than focused on a single area.
- Investigations are often warned, as part of an anti-corruption policy, that over-reliance on reforms in legislation and law enforcement are unpredictable ways of influencing actions, and can lead to repression, misuse of powers of enforcement and, eventually, corruption.
- Study must be sufficiently proportional to the other strategic fields, namely: prevention, public awareness and institution building.

At a strategic level there must be four pillars in the anti-corruption strategy: prevention, public awareness, investigation and institution building. Muntingh (2006:9), however, confirmed that the DPSA in 2002 listed nine strategic considerations, of which the first three focused on investigations, thus making the strategic consideration mostly focused on investigation, and unproportioned. This unproportioned sphere could lead to the above repressions.

Meagher (2007:82) highlighted that many countries report their performance figures in their annual reports. These reports, he said, are based on furnished activities and on backlogs, not whether judgments were enforced or that there was an impact. Some ACAs report figures that are more revealing and less typical agencies' reports, such as the ICAC's published benchmark against which their performance can be measured.

4.6 SINGLE ACA COMPARED TO MULTIPLE ACAS

Chêne (2012:1) warns that there is no clear indication as to which model is the most effective for fighting corruption, and there is no blueprint for an effective anti-corruption infrastructure. Experience suggests that the level of centralisation/decentralisation of ACAs may not be the primary factor of their effectiveness. Factors such as the institution(s)' independence, specialisation, integrity, capacity and political support seem to influence their effectiveness to a greater extent. A supportive legal and institutional environment is also required, with a strong legislative framework facilitating effective investigation and punishment of corruption-related crimes. ACAs, regardless of how centralised they are, all rely on the cooperation of many other supplementary agencies, and their impact is heavily

influenced by their capacity to interact and collaborate with other anti-corruption organisations.

The distinction between single and multiple agency approaches is explained by Meagher (2007:72). The distinction has been used before, but no effort has been made to describe it. The policy of the single agency would not transfer all anti-corruption functions into a single bureau; under any legislative procedure that purports to be democratic, this would be unlikely. Rather, it positions, under one roof, a range of main skills, obligations and capital. Through doing this, a strong centralised organisation is developed, capable of leading a wide-ranging campaign against corruption. This also includes the ACA's contact in this area with other agencies and stakeholders having jurisdiction. In particular, the other bodies are judges, prosecutors and line ministries in areas likely to be impacted by corruption, including the tax and public works sectors.

The multiple-agency strategy, by comparison, is less ambitious. Having a multiple-agency approach avoids setting up a powerful anti-corruption lead agency, thereby posing a lower risk of disrupting the balance and separation of government powers than the single agency approach. Meagher (2007:72) noted that the same response is provided by the experiences of Hong Kong and Singapore having a single-agency approach. In both cases, the legitimacy problem jeopardised investor confidence and government stability. The solution was something new and different: an organisation free of ties to corrupt elements, and with enough strength to make progress against long-standing corruption. Importantly, this model frequently aids in the centralisation of corruption knowledge and intelligence, as well as reducing the complexity of collaboration that can arise in multi-agency systems.

According to Chêne (2012:6), not all countries have a specialised ACA, and some countries, such as Mongolia, Nicaragua and Colombia, have what this author calls ‘decentralised institutional arrangements. Countries such as SA, Bulgaria and Germany have opted for strengthening existing institutions, rather than establishing a separate body. In this type of set-up, the author maintains, the prosecutor needs to have the capacity and legitimacy to undertake activities such as prevention, coordination and interaction with the media and education system. This is often the

approach recommended for countries where law enforcement institutions operate relatively effectively.

In SA, the NPA, under which the prosecuting services are mandated, does not necessarily fulfil the above recommendations by Chêne (2012:7). Criminal prosecution is referred to the NPA for prosecution, there is interaction with the media (as a reporting mechanism for the prosecution), and there is interaction between the law enforcement agencies and the ACA; however, there are no activities that the prosecution performs, such as prevention, coordination and an education system. This has then confirmed that the SA law enforcement institutions do not operate effectively. Chêne (2012:7) suggests that if this is the case, then, in such countries, coordination appears to be one of the major challenges, and may require special institutional solutions.

Meagher (2007:73) warned that although the ICAC and the CPIB are similar in design and origin, and both get favourable reviews, they take different approaches to the implementation of the single agency strategy. The CPIB is more discreet than the ICAC and does not include budgets or organisational information to support public oversight decisions. Critically, Meagher (2007:73) pointed out that there are significant drawbacks to the CPIB:

- It is comparatively secretive.
- It promises to meet stringent public criteria, yet it does not publish any performance data.
- Its reviews are only done internally.
- The CIPB officers are accused of overzealousness, assault, abuse and torture.
- They are biased in the selection of targets.

Following the success of the ICAC single agency approach, there are perhaps as many as 30 to 40 countries, at national level, that fit the ICAC profile of a strong, centralised agency, some of which are the following:

- Argentina: The Anti-Corruption Office (*Oficina Anti-Corrupcion* (ACO).
- Australia: The Independent Commission Against Corruption (ICAC) of New South Wales.

- Botswana: The Directorate on Corruption and Economic Crime (DCEC).
- Ecuador: The Commission on Civic Control of Corruption (*Comision de Control Civico de la Corrupcion* (CCCC).
- Korea Independent Commission against Corruption (KICAC).
- Malaysia: The Anti-Corruption Agency (*Badan Pencegah Rasuah Malaysia*, ACA).
- The Philippines: The Ombudsman.
- Tanzania: The Prevention of Corruption Bureau (*Taasisi ya Kuzuia Rushwa*, (PCB)).
- Thailand: National Counter-Corruption Commission (NCCC).
- Uganda: The Inspectorate of Government (IG).

De Sousa (2009:6) agreed with Meagher (2007:73) on the success aspect of a single ACA such as that of the KICAC and the CPIB. He argued that many newly independent governments, as part of their endeavour to fight corruption, used the KICAC and CIPB models, as their models were seen as the most effective ACA role models for many other countries in the Anglo-Saxon world, and wider.

When one reviews the Ugandan IG, which was established as a single ACA, through the Hong Kong model, in 1988, and promulgated in Chapter 13 of the Ugandan Constitution of 1995, one finds many a great success story. This story is covered by Rose-Ackerman (2006:442) who relayed it as Uganda's attempt to combat corruption in the primary education sector. The case is interesting for the following reasons:

- In the mid-1990s, Uganda developed an innovative survey tool to assess the diversion of public funding intended for primary schools. Primary schools received barely 13% of government funding, on average. Most schools did not receive anything.
- The central government attempted many adjustments to the system in response to the high level of local capture of public education expenditures. It made the monthly grant transfers to the district’s public.
- The newspaper campaign was a supplement to the regular anti-corruption programme, because it started with the users of government services. The goal

was to involve residents by providing them with quick access to information, allowing them to monitor service quality and challenge official misconduct.

- Because corruption in education programmes has been significantly reduced, if not completely abolished, the Ugandan case can be used to demonstrate the benefits of eliminating corruption.

From the above example, it can be deduced that educating the public is vital in the fight against corruption. This further adds to the fact that in South Africa there is no ACA with education or awareness programmes as part of its mandate. While centralised anti-corruption bodies cannot be called a “silver bullet,” they are widely seen as having the potential to promote more efficient coordination of domestic anti-corruption activities by concentrating powers in a single entity, as well as to add expertise, independence, and autonomy to the fight against corruption. However, Chêne (2012:4) also notes that the centralisation of anti-corruption functions within a single organisation also includes the risk of marginalisation of anti-corruption activities, resource dilution, duplication of efforts, and the development of unproductive rivalries and rivalry between the various institutions involved in anti-corruption activities. The advantages and disadvantages of centralised ACAs are listed by Chêne (2012:4) as follows:

- **Enhanced public profile**
    - *Positive:* The establishment of a centralised anti-corruption organisation has significant symbolic importance, as it sends a strong signal of high-level government commitment to fight corruption. ACAs are often born out of emerging corruption-related scandals, or precipitating crises, that trigger a broad-based demand for reform, and help build domestic consensus around anti-corruption reforms. In this sense, they represent an attractive institutional response to corruption challenges, as they focus the attention of both the political elite and the public and enjoy both constitutional and popular legitimacy.
    - *Negative:* The high profile given to anti-corruption through the creation of a specialised body can also backfire by putting the agency under great pressure to demonstrate results in the short term, while operating in the broader context of an underperforming/dysfunctional governance system.

As the focus of public attention for corruption-related matters, they can easily be blamed for setbacks or lack of apparent success, and act as scapegoats for perceived failure. The negative assessments of their performance tend to overlook that they need to act as an institutional interface between various stakeholders in several domains and processes over which they do not have full control.

- **Specialised concentration of anti-corruption expertise**
  - *Positive:* Because of the complexities of corruption, standard law enforcement organisations do not necessarily have the specialised skills and resources necessary to find, investigate and prosecute complicated corruption cases. One of the main arguments for the creation of specialist anti-corruption bodies is that the growing scope of corruption and related financial transactions necessitates a high level of knowledge and expertise which can best be achieved by recruiting, training and concentrating expertise in a single-issue entity.
  - *Negative:* To the detriment of the ideal multi-disciplinary approach to combating corruption that regulates the function of the department, it can be difficult for a single agency to accept all fields of expertise, and particular consideration has been provided to avoid compartmentalising specialisation areas. In countries where resources are limited (including trained human resources). ACAs are also at risk of skimming from other main departments, such as the prosecutor, the "best and brightest," and recruiting professional workers with higher wages and prestige, thus marginalising other offices that need to be improved.
- **Independence and integrity**
  - *Positive:* One of the greatest added values of creating an independent anti-corruption body is its necessary high degree of autonomy which ensures that it is both protected from political interference and other undue influence and separated from the departments and institutions it has the mandate to investigate. The features that guarantee the independence of the institution may vary from country to country.

- *Negative:* The establishment of such groups in nations where law enforcement authorities are widely seen as severely corrupt and lack the confidence and legitimacy to properly address anti-corruption reforms. Existing institutions cannot adapt to develop and implement reforms in such countries, and a dedicated independent institution may be the only body with sufficient independence to bring cases to court and ensure successful prosecution.

When the participants were asked how South African ACAs compare to international ACAs when investigating corruption, they held contrasting views. Some participants believe that South Africa is advanced when compared to other countries, while others believe South Africa is behind when compared to other countries.

> *"South Africa is fairly advanced in dealing with corruption, however there is evidence of duplication and discoordination between agencies as well as in some instances, reluctance to investigate certain prominent officials" (P M: 05:2018).*

> *"They are lacking in that they are not keeping abreast with current trends of investigating corruption, e.g., cyber forensics" (P I: 06:2018).*

When comparing South Africa to the international ACAs, the literature indicates that South Africa has a comprehensive, legislative anti-corruption framework. The empirical data does not reflect that the participants are fully aware of the comprehensive anti-corruption framework within South Africa.

4.7 SUMMARY

Many countries reviewed above operate under a single-agency approach, and many operate under a multi-agency approach. Both these approaches have suffered success and failure. There are different views held by renowned authors and researchers, some suggesting the single-agency approach, and others the multi-agency approach. South Africa has a unique historical background and a unique political environment. As such, the strategy and anti-corruption approach in SA must be considered with the ACAs and legislative framework currently in place.

It must be noted, however, that the coordination of the ACAs is flawed, and must be critically reviewed.

There are many models of anti-corruption agencies internationally. The very prominent ones are the single-agency concept of Hong Kong's ICAC, Botswana's DCEC and Singapore's PAC; however, South Africa has many ACAs, and considering its diverse history and political climate, the country must work with the current ACAs for their best outcomes. The following should be borne in mind:

- Each country in the world is unique.
- Countries have many similarities, and as such, best practices used by a successful country can be duplicated in another, remembering, however, that each country's political, socio-economic and cultural landscape is different, and the strategies being employed must be reviewed, discussed and modified to fit that country.
- When a blanket approach is applied, it could be to suppress the pressure from the international role players and international donors, and as such, may cause more harm than good in the fight against corruption.

In the next chapter, the researcher will present an argument for recommending some best practice approaches and strategies for the public sector anti-corruption agencies under which to operate.

CHAPTER 5: BEST PRACTICE APPROACHES AND STRATEGIES FOR PUBLIC SECTOR ANTI-CORRUPTION AGENCIES TO OPERATE UNDER

5.1 INTRODUCTION

Corruption undermines, among others, good governance, which comprises sound organisations and the effective operation of government in South Africa. The country needs an anti-corruption system and strategy that make public servants answerable, that give protection to whistle-blowers, and closely monitor procurement procedures within government. The private sector and individuals need to be involved in these efforts to eradicate corruption by growing public knowledge and enhancing access to information. To improve the independence of the judiciary by improving the quality of judges and increasing judicial preparation, a policy is required (South Africa, 2013:445).

The Transparency Index has first-hand experience operating in over 100 countries around the world, showing that the fight against corruption is crucial for activists and the media. As such, Transparency International encourages international groups to take the following steps to combat corruption (TI, 2017:3-4):

- Governments and corporations must do a lot more to promote free speech, independent media, political dissent, and a vibrant civil society.
- Governments have reduced the number of restrictions governing the media, both old and new media, and have assured that journalists can operate without fear of persecution or violence. International funders have also assessed press freedom in relation to assistance development and access to international organisations.
- Governments and civil society have pushed for laws that prioritise information availability. This access improves transparency and accountability while also lowering the risk of corruption. Governments must not only invest in an appropriate legislative framework for such laws, but also commit to putting them into effect.
- Activists and governments have used the momentum generated by the United Nations Sustainable Development Goals (SDGs) to push for national and international reforms. Governments must provide access to information and the

safeguarding of fundamental freedoms, and they must do it in accordance with international agreements and best practices.

- Governments and private companies have proactively shared relevant public-interest data in open data formats. Journalists, civic society and impacted communities can more effectively discover patterns of corrupt activity if relevant data, such as government budgets, firm ownership, public procurement procedures and political party funds, is made available ahead of time.

This chapter also addresses and considers the feedback from Section E of the interview schedule covering questions 21 to 25.

5.2 BEST PRACTICE FOR PUBLIC SECTOR ACAS TO OPERATE UNDER

Manacorda et al. (2014:120-121), discuss in detail the international agreements and best practices that TI recommends. They are the following:

- **The OECD Guidelines for Multinational Enterprises**. The OECD was formed in 1976, and its fifth update was implemented in 2011. They give voluntary principles and guidelines for accountable business activity in areas such as jobs, human rights, the environment, record transparency, bribery prevention, consumer interests, research and technology, competitiveness, and taxation.
- **The OECD Recommendations for Further Combating Bribery**. In December 2009 it was released. Good practice guidelines on corporate controls, ethics and enforcement provides recommendations.
- **International Criminal Court (ICC) Rules for Combating Corruption**. The 2011 version of the ICC Rules for Combating Corruption contains three parts: Part I sets out the rules; Part II deals with measures to be implemented by organisations to encourage compliance with the rules; and Part III lists the prescribed elements of an effective programme for corporate compliance.
- **ICC Handbook: Fighting Corruption**. The 2008 edition describes the international legal framework needed for self-regulation and management innovation, including whistle-blowing and compliance by small- to medium-sized companies.

- **ICC Guidelines on Agents, Intermediaries and other third parties**. These November 2010 guidelines give businesses advice on how to choose and respect third parties, as well as the advantages of a due diligence exercise.
- **ICC Guidelines on Whistle-blowing**. The goal of these guidelines, which were adopted in June 2008, is to assist companies and governments in the establishment and implementation of internal whistle-blowing systems by providing practical guidelines that can be used as a reference point, while also addressing, to the extent possible, the objections raised in some countries about certain aspects of the system.
- **ICC Anti-corruption clause**. In October 2011, this requirement was provided for undertakings to be included in their agreements by undertaking to comply with the anti-corruption rules of the ICC, or by undertaking to introduce and maintain an anti-corruption compliance policy.
- **Transparency International Business Principles for Countering Partnering against Corruption Initiatives.** These principles provide the basis for the adoption by corporations of anti-bribery initiatives. The concepts were published in 2003. In anti-bribery activities, they report on trends internationally.
- **The World Bank Institute Guide for Business on Collective Action**. The guide describes collective action as an ongoing collaborative process of stakeholder collaboration that reinforces the sense of the integrity of individual actions.
- **The Tenth Principle of UN Global Compact.** This is a tactical policy for corporations and governments committed to integrating their practices and goals with the ten widely acknowledged principles of human rights, labour, environment and anti-corruption.
- **The PACI Principles on Countering Bribery**. This is a key task force of stakeholders which supports the fight against corruption. This task force also provides a framework for good business practices and risk control strategies for combating bribery.

Although the above international best practices are aligned to business, they can be adopted by ACAs, which ultimately provide a service to the state and its citizens by way of curbing corruption and limiting the loss of state funds, which in turn can be used for other socio-economic programmes. As stated by Fletcher and

Herrmann (2012:70), other examples of best practice provide an indicator of compliance with international regulations. They conclude that there is evidence that states and other parties are in accordance with international legislation, but there are also examples of non-compliance. Because of this, commentators have sought to theorise this phenomenon, and have conclude that there are three levels of incentives that affect whether a country has complied with international laws and regulations:

- Domestic legal incentives: This is seeing how other national organisations have enforced the regulations and laws in question.
- Transnational legal incentives: This is seeing how other international bodies and state parties have enforced the regulations and laws in question.
- Non-legal incentives: This is seeing the reactions of the other national and international bodies having applied the regulations and laws.

One way in which South Africa complies with international legislation and laws is by joining the Financial Action Task Force (Money Laundering) in its jurisdiction (FATF). The FATF was set up to eliminate money laundering, according to Fletcher and Herrmann (2012:176-177), so they developed 40 recommendations, and later another nine, which is now known as 'FATF 40+9'. FATF criminalises money laundering and terror financing, and banks are now required to keep records of all transactions for five years. As part of the recommendations, SA has established the Financial Intelligence Centre (FIC). The FIC tracks suspicious transactions, creates customer-business ties, and recognises recipients of illegal funds.

In the feedback from the participants respecting the most effective ways of fighting corruption in South Africa, they responded that the most effective ways would be the following:

- **Lawyers**
    - Involving the community and teaching them the effects of corruption.
    - Separate anti-corruption NGOs from political parties. This gives the political parties the advantage that it will not face the might of the law.
    - Courts must be tougher on corruption charges, and political will must be greater.

- The country needs to be committed to the fight against corruption.
- All status of persons must be treated equally before the courts. If this does not happen, then it gives the perception that all persons of a certain stature are treated fairly by the courts, thus evoking anger in others.

- **Managers/commanders**
  - That the different ACAs, namely SAPS, DPCI, SIU, AFU, NPA, SARS and IPID must work together and share information.
  - There should be a merging of the ACAs in South Africa, and private sector experts should be brought in as consultants.
  - There must be a push from the ACAs to motivate for political will, which will give the ACAs the 'teeth they need'.
  - Hand over all evidence of corruption to the SAPS, and they will present it to the courts, as they are the only ACA that can present evidence in court. This will have a positive impact in the fight against corruption.
  - A good practice would be that all ACAs sit together and decide which ACA is best suited, equipped and resourced to investigate a matter and achieve the best outcome.
  - Inter-agency collaboration will have a positive outcome in both civil remedies, criminal prosecution and seizure of assets gained from proceeds of crime.
  - Ensure that all persons, irrespective of political or financial standing, be treated in the same way.
  - Educate the citizens on corruption, the reporting of alleged corruption, and the Whistle-blower Protection Act.
  - There should be skills development for ACA personnel in methodologies of investigation of different types of corruption.

- **Investigators**
  - The ACA must implement the existing legal framework properly. Each ACA must have incorporated auditors, information technology forensics, lawyers and support staff.
  - The implementation of a project-based investigation system, which some ACAs have, and some do not. That system must be properly commanded.

- South Africa should follow the USA methodology, and only place wealthy person in positions of power, as there will be no need for the wealthy to want more.
- There should be consultation and coordination between ACAs, as 'too many cooks spoil the broth'.

> *"Proper vetting and continuous screening of public servants. Establish a powerful investigative body that can investigate civil matters, criminal matters, powers of arrest, powers to prosecute, powers to seize assets and have access to tax records" (P L: 03:2018).*

The data from the participants is wide and discusses effective ways of fighting corruption in South Africa. All groups of participants have in-depth knowledge. The literature reflects the empirical data, as its exposes effective ways of fighting corruption. It is this knowledge base that needs to be incorporated into the best practices of fighting corruption.

5.3 BEST APPROACHES FOR PUBLIC SECTOR ACAS TO OPERATE UNDER

"*People without the knowledge of their past history, origin and culture is like a tree without roots*" (Biography.com, 2018). To implement successful present approaches, a review of the past approaches is vital. Habtemichael (2009:100-101) makes one aware of the four stages of history in terms of an anti-corruption approach, and explained them as follows:

5.3.1 The Anti-Patronage Vision of Corruption (1870-1900)

Bribery, cronyism and graft, according to the government's civil service reformers, had corroded the moral fibre of the nation, and that if public officials were noble and motivated by public interest, the situation could be reversed.

5.3.2 The Progressive Vision of Corruption Control (1900-1933)

Supporters of that progressive vision went even further, claiming that the only way to eliminate corruption was for the political system to be completely reformed. Corruption must be eradicated as a necessity for governments to be efficient,

effective and accountable. This vision's mandate also included a systematic distinction between public administration and party politics.

5.3.3 The Scientific Administration Vision (1933-1970)

As the next to supplant the above-mentioned visions, scientific administration developed, which proved incapable of addressing corruption, as needed. Corruption was seen by the scientific administration as an issue in the institutional nature of institutions, and not as a disease of politics and ethics. As a result, it advised that the government be improved by enforcing economic and performance requirements, and monitoring officials' actions. This viewpoint emphasises bureaucratic control over democratic changes, viewing waste and inefficiency as characteristics of corruption that can be addressed by hierarchy, standard operating procedures and proper supervision.

5.3.4 The Panoptic Vision (1970-present)

Panoptic vision advocates emphasising systemic observation, monitoring and tracking, including oversight layers of accounting, auditing and corruption prevention. They claim that constant scrutiny deters officials from engaging in misbehaviour. According to Foucault (as cited in Anechiarico & Jacobs, 1998:24), these measures of regulation were emblematic of a 19th century 'disciplinary culture' worldview that could easily detect deviation.

Pope (2000:101-102), for example, believed that regular monitoring of the assets, income, liabilities and lifestyles of public decision-makers and public service authority helps to prevent corruption. Public officials are obligated by law to disclose their assets and income, and to be available to verifications to promote accountability. This is in stark contrast to the anti-bureaucratic idea of “panoptic corruption control centred on people, investigations, numerous layers of monitoring, and a plethora of laws and regulations.”

Habtemichael (2009:101-102) mentioned another perspective in terms of social, legal, market, political and economic studies, perspectives and structural views of mass public opinion or civic culture, which he defined as follows:

- In order to build high moral values and be concerned about corrupt behaviour, social tactics concentrate on informing society.
- Legal approaches to investigation and punishment continue.
- Business-related views support, under current laws, freer market buildings. This is not a successful policy, and market reforms per se do not reduce corruption without improvements in a country's socio-economic-political life.
- The deconcentrating of public authority, the facilitation of greater access to institutions, and public involvement in government are advocated by political approaches.
- Economic analysis: This approach, which reflects the view of Klitgaard (1998:3), which builds its anti-corruption policies on the premise that the 'principal-agent' relationship with economic issues indicates corruption.
- Big public opinion or civic culture viewpoints: This viewpoint examines corruption as a socio-economic-cultural product and advocates public awareness initiatives to prevent it. Social reforms are a key component in stimulating reform appetite and combating corruption. Anti-corruption measures are unlikely to be adopted by the government and corporate sector until the public need them.
- The institutional perspective: This approach promotes the establishment and empowerment of institutions such as auditors-general and anti-corruption groups, as well as the development of administrative initiatives to reduce corruption. The Attorney-General's Office and the Office of the Ombudsman, both of which play critical roles in ensuring administrative transparency and efficiency, must be autonomous and professionally strengthened.

The Nugent Commission had the mandate to investigate the fitness of Mr Moyane to hold office, and the alleged corruption by him. There were many other high-profile corruption investigations, such as the corruption allegation against Mr Zuma, the corruption case and conviction of former SAPS Commissioner Mr Jackie Selebi, and others. It would be amiss if the following approaches to anti-corruption fighting stated by Habtemichael (2009:102-103) are not discussed:

- **The criminal and administrative control approach**. The underlying principle of this approach is that the maximisation of utilities motivates people in authority and has the greatest control over the structure of law and public administration.

- **The small government approaches**. This approach offers an identification point of view on the conduct of officials from the point of view of criminal and administrative supervision, and states that corruption arises from the lack of management agents' values. Moreover, since this tactic is seen by the government itself as corrupt, it implies a reduced state role, with less regulations.
- **The political economy perspective**. The lack of leaders to manage agents also affects this approach as a situation leading to increased corruption, but this point of view focuses on public sector reform and the development of a more transparent and accountable government to limit the problems of principal agents. It is not concerned with the size of the nation.
- **The Multi-Pronged Strategy/National Integrity System perspective**. Wider anti-corruption initiatives, aimed at strengthening institutional relations, have been reinvigorated by the failure of the above approaches. This includes restricting lobbying to tolerable limits to the extent that it is transparent and official, promoting transparency for more politicians, increasing government capacity, and ensuring participation by civil society.
- **Public integrity-based approaches**. In comparison to the four approaches available above, which emphasise making the price of corruption greater than the profit to be received, public integrity approaches are focused on the premise that officials will behave ethically, not only out of fear of retaliation, but rather in response to positive incentives. That is, it is a stronger deterrent to corruption to emphasise the motive to behave with dignity, based on education.

These approaches focus on government, public officials, and the political environment. All these aspects are key when considering the extent of corruption by senior public officials in SA. Then, it is a 'given' that a combination of the above approaches has been considered. SA is currently employing the multi-prong approach, as SA has many public sector ACAs, and effective collaboration between the ACAs is required. The NIS is the platform which has been considered.

5.4 PUBLIC SERVICE REFORMS

The ACAs that investigate corruption within the government must have expertise, laws, policies and directives relevant to the public sector, when it comes to public service and public officials. This is stated by Bruce (2014:52-53), as it covers the

latest public service reforms introduced by the NDP in February 2013. There were the following reforms:

- The DPSA has developed an Ethics, Integrity, and Disciplinary Advice Unit, which has offered technical assistance to all levels of government.
- The Office of Standards and Conformity was created to encourage and oversee compliance with minimal norms and standards, among others.
- All state employees have been barred from doing business with the government.
- All government personnel at national, provincial and local levels are now required to disclose their financial information.
- The Minister of Public Service and Administration has the authority to set minimum educational or other requirements for posts in the government.
- A national School of Government has been formed to support the progressive realisation of public administration's objectives and principles, as well as the development of human resource capability.

5.5 ACA CLASSIFICATION

What an ACA must look like is not a standardised model. Few have been created by a special legislative Act from scratch. Some are made up of ombudsmen's offices, special police divisions or prosecution offices.

There are a variety of criteria that De Sousa (2009:12) listed that must be in order, to be accredited as an ACA by an organisation. These are as follows:

- Differentiation from other compliance agencies with competencies in this area. ACAs are mainly or exclusively required to fight corruption with respect to other law enforcers.
- Creation of control dimensions that are preventative and/or oppressive.
- Durability: an intermittent or perennial life is not possible.
- Powers (collection, storage, retrieval, diffusion, knowledge hub) to centralise information.
- Articulation of other control actors' (interface) initiatives.
- Development and transfer of knowledge (research position, membership and participation in international forums and networks).

- The rule of law (checks and balances and sovereign authority accountability).
- Discussions, recognised by, and open to, the general public.

In fact, very few ACAs in the South African context have met these requirements. In addition, De Sousa (2009:12) stated that ACAs can only assume a limited number of tasks by comparing the tasks currently allocated to anti-corruption agencies with the wider spectrum of public goods and resources required to address corruption, and that the same tasks are often performed by other agencies. Thus, the importance of an ACA may not merely be its collection of duties, powers, and activities. Rather, the policy reasoning appears to be that, unlike current restraint agencies, an ACA can rarely do it all.

5.5.1 Generic activities of an ACA

From the preceding discussions in chapters 3 and 4, ACAs across the globe are tasked to carry out a variety of activities. De Sousa (2009:12) highlighted the primary or central tasks of an ACA as the following:

- All required information and intelligence about corruption should be centralised.
- Vertical integration can be used to alleviate coordination issues across several agencies.

Meagher (2007:78 & 80) noted that this will allow an ACA to claim leadership and resolve barriers that stymied previous efforts: capital, sanctions and coercive power, individuality and public accountability. In other words, teamwork, cohesion and focused power are the essential inputs of the department, as the most desired outcome of an ACA is a total improvement in the performance of anti-corruption functions.

According to Meagher (2007:86), the key elements that make an ACA valuable are the following:

- Preventive activities, as well as a role in monitoring the government's overall anti-corruption policy execution.
- To avoid overburdening the agency with casework and political wrangling, either a tactical or a jurisdictional cap (that is, no or selective retroactivity) concerning

past crimes, as an anti-corruption agency is particularly vulnerable to being used as a political weapon and, indeed, as a tool for corruption.

- The ACA has been kept to a bare minimum, consisting primarily of minor investigations and monitoring units.
- Being subjected to a mix of public regulations, legal obligations and judicial reviews.
- The ACA authority's structure includes an investigation and prosecution function, an educational and awareness-raising function, a preventive function, and a legislative role in the introduction of reform proposals to the country's parliament.
- The ACA requires affirmative powers in order to be effective. In order to do this, the ACA must have the following:
    - Strength and strong research capabilities.
    - Rights to access witnesses and documents.
    - Powers to freeze assets and seize travel documents from all those they investigate.
    - The ability to protect informants, the legislation, and keep the informants' identities safe.
    - Authority to monitor assets, income and expenditure, and tax returns.
- Having the power and authority to control the resources of those they are investigating. Where the laws allow for an 'illicit breach of enrichment,' which transfers the burden onto officials to show that there is a legitimate source of any unusual wealth, this can be greatly reinforced.

In the set-up of an ACA within the anti-corruption system, which is its cross-agency ties, Meagher (2007:86) stipulated another main feature of strong political and public support to be effective. To a large extent, anti-corruption agencies depend on cooperation from sister agencies. Securing this cooperation requires either putting the ACA at a point of optimum effect or supplying it with other resources to facilitate or extract assistance. Hong Kong and Singapore put specific legal duties to comply with on the government and the public. The ACA in Malaysia follows a similar trend, benefiting from government and civic cooperation. Around 16 Deputy Public Prosecutors, for instance, are appointed by the Attorney-General's office to work on ACA cases. In addition, the ACA and Police have recently set up a Joint

Committee to Combat Corruption, which helps expedite investigations, disciplinary proceedings and intelligence sourcing (Meagher, 2007:87).

De Sousa (2009:9), in addition, spoke about collaboration from a different perspective – that is, to bring together governmental and non-governmental stakeholders (agencies) for the common mission: corruption control. As corruption is perceived as systemic, it is important that all stakeholders work together, as they are all indispensable as ‘pieces of a puzzle’. De Sousa (2009:9) further added that public anti-corruption is not about public policies only; it is also about the private companies who have been forced to react to several scandals which have damaged their reputation and image, and negatively impacted in the stock market. De Sousa (2009:9) suggested that companies need to do the following:

- Adopt their internal anti-corruption policies.
- Set up new ethics standards and ethics bodies.
- Strengthen their internal audit procedures.
- Create a capacity of forensic investigations.
- Sign 'integrity pacts’ that they need to adhere to.
- Become members and supporters of a series of anti-corruption networks, workshops and seminars, such as TI.

5.5.2 Professional bodies and toolkits for ACAs

When it comes to a professional body, Shah (2007:353) gave an example of an ethical body which is for auditors. The South African Institute of Internal Auditors (SAIIA) is the professional organisation. SAIIA provides services to a wide range of public, commercial, and government auditing experts. Public sector auditors have become more involved since the establishment of the SAIIA. More capacity development help is being requested by the SAIIA. There is a 'wave' sweeping the auditing profession, as seen in the East and the SADC, where government auditors are gathering to discuss their issues and establish strategies for the future.

Another crucial point highlighted by Shah (2007:353) is that governments both individually and regionally must develop toolkits which are the instruments (not only physical) that assist the driver to achieve their goal. In this topic, it would be to

reduce corruption in the public sector. In other cases, it is apparent that well-positioned agencies with the anti-corruption framework suffer from a lack of coordination across government (Meagher, 2007:88-89).

The protection, or as Meagher (2007:90-92) referred to as an ACA safeguard, is an aspect that allows an ACA to conduct its mandate in a manner ensuring integrity. The two key aspects ensuring a safeguard are agency accountability and agency independence.

5.5.3 Agency accountability

Agency transparency requires the enforcement of procedural requirements, the provision of judicial review, public complaint and oversight mechanisms, the obligation for the agency to respond to all levels of government and the public, and the accountability of spending. Some analysts also recommend limiting the agency's scale. The Hong Kong ICAC sets the tone here with respect to agency transparency. The accountability of the HKICAC and senior officers to the Chief Executive (formerly the Governor), and of the staff to the HKICAC Commissioner, starts with a tighter duty. The Commissioner, in fact, is writing the Executive Officer's annual report.

Finally, as part of the anti-corruption procedure, the research is presented to the legislature, which also approves the department's budget as part of the general revenue. A 1996 revision to the HKICAC Ordinance strengthened the judiciary's role in authorising search warrants, bringing the HKICAC in line with Hong Kong's 1991 Bill of Rights (Camerer, 1999:10). The most well-known of HKICAC’s accountability systems are citizen review boards, also known as Advisory Committees. The Executive appoints these, and they must be chaired by private people. There are four such committees: The Advisory Committee on Corruption, which oversees HKICAC's general strategy and direction; the Operations Review Committee, dedicated to monitoring each of HKICAC's departments; the Advisory Committee on Corruption Prevention, and the Community Relations Advisory Committee for Residents.

The Operations Review Committee is perhaps the most strategic, as it supervises the largest and most powerful agency. The Committee does not have formal

authority to compel the development of documents and records, but there is a clear line of accountability between the Commissioner and the Executive. A separate HKICAC Complaints Committee is also in place, which investigates any complaints directed towards the department. An internal review and monitoring staff follow up on complaints.

Shah (2007:1) spoke about transparency, as he stated that performance-based accountability and oversight are the main mechanisms for maintaining both democracy and effectiveness in the public sector. Performance-based accountability and tracking should, in this case, be copied to the ACA within the public sector. He warned that the political processes that have tended to concentrate on exceptional event, especially exceptional failures, are highly dependent on these aspects.

5.5.4 Agency independence

There is a lack of agency independence within certain ACAs both nationally and internationally. The problems that arise are simply that there are no clear lines of accountability. ACAs do not follow established rules and standards; there are no procedures in place for the removal of senior executives, and they lack financial independence. Both the ICAC and the CPIB ACAs in Hong Kong and Singapore lack formal and agency independence. These ACAs report to their respective state chiefs of staff. The Governor appoints the Commissioner who heads the HKICAC, as well as any Deputy Commissioners. The President (the nominal head of state but not the political leader of Singapore) appoints the Director of CPIB, along with the agency's upper-level employees, and the agency operates within the Prime Minister's Office. The structural autonomy of the newer ACAs that have been studied varies greatly.

A few of them have reasonable guarantees of independence in terms of nominations, reporting duties, and financial autonomy. In Uganda, for example, the constitution guarantees the IG's official independence. The President shall appoint the Inspector General and the Deputy Inspector General for a four-year term (renewable once) with the agreement of parliament, and they may be fired only for specific grounds with the assent of the President and the Parliamentary Tribunal.

Furthermore, the constitution says that the IG is solely responsible to parliament and submits semi-annual reports to it (Sedigh & Ruzindana, 1999:7).

The assurances of freedom are also greater in the case of Australia's NSWICAC. It is a government corporation with the powers of an upright committee in formal terms; this distinguishes it from cabinet ministries and connects it with parliament. The NSWICAC Commissioner, with the approval of the Parliamentary Joint Committee on NSWICAC, is appointed by the NSW Governor (on a five-year, non-renewable term). Deputies are often named by the Governor. From the NSW statutory appropriation, the NSWICAC has its own financial line and is accountable to the Joint Committee. The majority of ACAs in the NSW sample either have no institutional independence or have limited autonomy. The DCEC of Botswana is an ACA example of the former. Under the Corruption and Economic Crime Act of 1994, the President, at his absolute discretion and on the terms of his preference, appoints the DCEC Director. DCEC is a 'public office'; it is thus under the chain of command and the civil service structure of the executive chain and has little fiscal freedom. The DCEC does not have the ICAC model's citizen monitoring and accountability systems, but it does perform outreach. Essentially, the Tanzanian PCB is in the same condition.

The Hong Kong ICAC was discussed a great deal in chapter 4 *supra*, and the UNODCCP (2000:21) reiterates the reasons for its success, which can be regarded as best practice. The reasons for success are the following:

- Independence from the rest of the government's administrative sectors: Hong Kong's anti-corruption agency is the ICAC. The police were the primary target at first, accounting for half of all complainants.
- The HKICAC has adequate funding: There are 1 300 employees, including 950 detectives, 60 preventive specialists, 200 community relations specialists, and support workers.
- The ACA has a legal structure that works.
- Within its framework, there is a proper system of checks and balances.
- The HKICAC has a very strong commitment to fighting corruption, and it has the backing of the politicians or strong political will (UNODCCP, 2000:21).

There are several strategies that ACAs can implement, so that they are positioned as an ACA to be reputable and successful. This will be discussed in the following section.

5.6 STRATEGIES FOR SUCCESSFUL ANTI-CORRUPTION INITIATIVES

There are a variety of factors that enhance the credibility and ultimately the success of an ACA. They include tasks such as the establishment of terms of service, standing orders, operating procedures, the financial control system, allowing regulations that are prerequisites for successful functions such as education, a broad budget, freedom, enhanced public perception, power reporting, line checks, internal organisational structure, relationships with other agencies, and appointments (National Treasury, 2012:88-92).

These activities are an affirmation of the discussion by Meagher (2007:90-92) and Shah (2007:1):

5.6.1 Independence and accountability

A reasonable degree of isolation from politics has been created by successful agencies, provided in part by the establishment of independent oversight of the work of the ACA. The organisational structures are intended to ensure transparency, which is required differently in each country, and to take account of the relative independence of supervisory bodies. The institutional structure and oversight of the ACA by carefully written rules, must also create transparency.

5.6.2 Co-operation and institutional coordination

It is vital to get the institutional and structural arrangements right for a successful agency, which in turn can make an impact. One way to achieve this is to create incentives to enable co-operation and institutional coordination, and it must be carefully thought through from the relationship of the ACA to the judiciary. This has helped facilitate cooperation among the range of departments tasked with fighting corruption.

5.6.3 Organisational capacity

Ample resources, experienced and well-compensated employees, and strong watertight methods of operation are used by successful ACAs to build capacity. Rather than making quick arrests to appease the public, the ACA has concentrated on creating and enforcing defined standards and operational processes, as well as growing their human capital.

5.6.4 Coalition of support

ACAs are often met with strong push-back from those they investigate; thus, the ACA must build strong public support. This can be achieved through courting the public and organised society directly.

5.6.5 Fundamental reforms

The key successes lie not so much in the number of successful arrests and convictions, but rather in the way in which these achievements have been used to press for more systemic changes to eliminate corruption at strategic points. This could include changes in legislation, the composition of key accountability bodies, judicial reforms to speed prosecutions, the protection of whistle-blowers and the removal of parliamentary privilege for administrative justice.

The most significant accomplishments are not so much the number of successful arrests and prosecutions, but rather the way in which these wins were leveraged at key moments to push for more basic reforms to reduce corruption. Changes in legislation, the composition of important accountability institutions, judicial reforms to speed trials, whistle-blower protection, and the lifting of parliamentary immunity for administrative justice, are all possibilities.

5.6.6 Components of anti-corruption reforms

When discussing the international literature produced by non-governmental organisations (NGOs) such as Transparency International (TI) and the United Nations Global Programme against Corruption (GOPAC), Camerer (2008:3) drew attention to fundamental reforms, indicating that effective anti-corruption reforms include the following components:

- Continuous monitoring of high-risk areas for corruption, such as deregulation and privatisation, as well as the public-private interface.
- A multi-dimensional, “home-grown” national plan that incorporates a long-term, sequential approach to enshrine improvements in public integrity; that is, changes which encourage accountability in citizens' interactions with the government.
- Complete enforcement of law that limits conflicts of interest and criminalises supply-and-demand aspects of public bribery.
- Anti-corruption agencies and institutions must have sufficient resources, skills, independence and authority.
- Political commitment to combating corruption in all its forms.
- All parties are involved in a collaborative approach.
- Monitoring and incentive programmes are both available.

Tracking and reward schemes aim to minimise corruption by (a) increasing the consequences or costs associated with the decision of an agent to engage in illegal activity, (b) increasing the possibility of being detected by behaviour monitoring, and (c) increasing the penalty imposed if caught engaging in corrupt activities.

5.6.7 Institutional design and mode of operation

According to CASAC (2011b:19-24), the most important aspect of an institution is the institutional design and mode of operation. This, they say, sets the stage for the successful fight against corruption. CASAC is elaborating on what was discussed by National Treasury (2012:88-92).

5.6.7.1 Institutional design

For the institutional design to be successful, effective, and to meet the best practice models, it must comply with a variety of aspects. The institution must be independent, both individually and institutionally, and accountable. It should be headed by a director or other governing body, and adequately resourced with both physical and human resources.

5.6.7.2 Mode of operation of agency

The operation of the agency is the way in which they conduct their business. This is best accomplished when the agency has a clear strategic plan addressing very specific matters. The plan must address all the following aspects: the investigation of all complaints, the prosecution, prevention of corruption, and the education of the public. In addition, there must be clear guidelines pertaining to the coordinating investigations with existing institutions, as well as international cooperation and partnership with civil society.

The participants were asked whether the South African ACA should change the way they investigate corruption. They responded as follows:

- They should have their functions streamlined and different agencies should work together where each has its own function.
- They should be more visible to the general public.
- The ACAs should have greater involvement with international ACAs and adopt their best practices.
- They should be bold in implementing outcomes and do away with covering up.
- The ACAs should work like project-based investigations. This is where people with different skills work in a team, and the stakeholders must be involved in the investigations.
- There must be improvement in the coordination and collaboration across all ACAs. They must undertake detailed profiling all individuals implicated in corruption.
- ACAs must use modern technologies and methods during their investigations.
- The private sector in the country should be brought on board and they can provide certain expertise.
- The ACAs should create a cohesive policy at short-, medium- and long-term achievement in South Africa.
- The ACAs need to be more independent, with supporting legislation that will contribute to better results.

The literature discusses aspects of institutional design and mode of operation of ACAs in broader terms when compared to the empirical data. The data highlights

on-the-ground aspects of change for the ACAs. The participants have a wide knowledge base of what should be done to change the way corruption investigations are carried out. This is vital in understanding the constraints faced by the ACAs, so that improvements can be made which will make the ACAs better anti-corruption mechanisms.

> *"Although there are different ACAs, there should be a central office that controls of the information and the agencies must learn to work together. The investigation process must be managed well, and all persons charged should be treated same" (P I: 02:2017).*

When the participants were asked whether the conviction rate would increase or decrease if their suggestions were made to the way ACAS investigate corruption, the results were as follows:

- Managers/Commanders
  - Five stated that the rate would increase.
  - Three did not address the question.
- Lawyers
  - All six stated that the rate would increase.
- Investigators
  - 11 said that the rate would increase.
  - One did not address the question.

> *"The changes would increase the success rate of the investigations and prosecutions" (P I: 11:2019).*

The responses from the empirical data clearly indicate that the three categories of participants strongly believe that the suggestions they made because corruption is investigated will increase the conviction rate of the cases. The participants are at the forefront of corruption investigations; thus, having this strong belief is a motivation towards striving for success.

5.6.8 ACA's: common principles

Despite the diverse bodies which are labelled as ACAs, there are common features and principles, shown below, which they must have in place (De Sousa, 2009:13-17). These institutional principles are discussed below.

5.6.8.1 Independence

In the design of most ACAs, freedom is a core problem and an unremitting concern throughout their lifetime. Most legislative discussions revolve around this topic. Independence does not imply free will or lack of reporting or external influence; it rather refers to the right to carry out its role without political intervention, that is, organisational autonomy. As bodies trusted in enforcing anti-corruption policies and strategies, ACAs cannot be entirely autonomous in their results. They are supposed to turn policy into motion, and thus share with the political class the onus of success or failure.

5.6.8.2 Inter-institutional cooperation and networking

Another common characteristic of most organisations is inter-institutional collaboration and partnership within international networks, which is essential to the institutionalisation and effectiveness of the organisation. In an institutional void, ACAs are not developed and do not exist. They are part of a management structure and share some of their competencies with many other public bodies. They are a part of the national 'ethical infrastructure' – or 'national integrity mechanism', in defined words, and often the most significant one, given the responsibility for organising the implementation of the national anti-corruption strategy.

The participants responded in the following ways when asked how they would proceed with an investigation, knowing that another agency was also investigating the same matter:

- It is important to contact the other agency to find out the scope, to avoid duplications. Then it can be discussed as to how they can assist each other so that they both have the best results.
- We would contact the other agency and convince them to work together; however, it is not always possible as each agency operates differently.

- The two agencies can sign a service level agreement which can define scope and methodology of the investigation.
- Before approaching the other agency, it is important to get authority to do so to avoid problems later.
- Pause the investigation and coordinate with the other agency to understand their mandate and scope.
- Certain agency has limitations on sharing of information, however coordinate with them to determine how each agency can be successful.

> *"Identify what is the mandate of the other agency. Check the terms of reference for both the investigations then request other agency to meet and discuss each other's mandate and avoid duplication" (P I:06: 2018).*

The feedback from the participants is focused on the different agencies working together, so that the best results can be achievement through coordination. The literature is stating that ACAs do not work in a vacuum. They are part of a control system with other ACAs. There should be a coordinating agency. As discussed in chapters 1 and 3 *supra,* mandates of ACAs do overlap, which causes disadvantages; therefore, ACAs should coordinate with each for best results. The collaboration between ACAs will be an advantage for the country in the fight against corruption.

The participants were asked if there would be advantages or disadvantages when more than one ACA investigated a corruption case. Their responses were as follows:

- There will be disadvantages if there is no coordination of the investigation between the agencies, as reliance on certain aspects can cause delays.
- The one disadvantage is that certain ACAs report to the President, some report to parliament and some to the ministers. This becomes disjoined and there is power play.
- There can be advantages if the agencies work together.
- Both advantages and disadvantages can come out of a joint investigation. This depends on the dynamics of the coordination.

- There will be more skilled personnel and resources available to the teams, therefore investigation will be more successful.
- The citizens of the country will acknowledge and support the efforts of the agencies if they work together and get successful results.
- The advantage will be that evidence is shared so reduce delays. The disadvantage could be the duplication of work which has a negative financial impact on the agency.
- The advantage is that there will be oversight by each agency on the other, therefore cover-up will be prevented.
- The disadvantages are there can be different recommendations made by each agency, and evidence can become tainted.
- The disadvantage can be that different agencies have different outcomes, which will give the implicated person the right to challenge them.

> *"Depends on the proposed outcome, sometimes a single agency cannot achieve all positives outcomes such as criminal, civil, asset recovery and prosecution. A multi-agency has more successes; however, this sometimes frustrates investigators." (P L:03: 2018).*

> *"There will be both advantages and disadvantages. The disadvantage will occur if valuable evidence is lost between the agencies due to the agencies failing to coordinate. The advantage can be that the time frame of the investigation will be shortened if the agencies pull in their resources and work together" (P I: 07:2018).*

If more than one ACA investigates a corruption case, there are both benefits and drawbacks, according to empirical data. With the participants knowing both the advantages and disadvantages, it will give then better insight when working with another agency on the same corruption case.

5.6.8.3 Recruitment and specialisation

For today's battle against corruption, an integrated, multidisciplinary and educated strategy is required. There are no longer any small-scale, dyadic, unlawful transactions involved. The expanding complexity of the phenomenon can be seen in the type of players involved, the modalities of contact, the environments in which

they occur, and the sophistication of transaction structures. For all these reasons, specialised understanding of corruption is critical to the function and success of ACAs.

5.6.8.4 Wide competencies and special powers

In general, the scope of operation of these specialist entities is wider than that of traditional bodies (police, public prosecutors and judges), in terms of both their expertise and of their field of action. In the criminal code, the operational concept of corruption has not been limited to one or two forms of crime. The mission of the ACA needs the battle against corruption to go beyond the relevant legal and criminal provisions. The department also has unique policies and behaviour that are ethically reprehensible, though not necessarily against the law.

5.6.8.5 Role of research

The need to approach corruption in a knowledge-based way – in other words, to perform important analytical research on the causes, processes, behaviours, contexts and effects of corruption, in order to strengthen its regulation, is one of the key reasons for creating an ACA.

5.6.8.6 Durability

The creation of an ACA might provide considerable symbolic benefits to the mandate, especially during a political downturn. The choice to form an organisation is always the most straightforward part of its institutionalisation process. It is necessary to ensure its production and long-term viability. To generate measurable benefits, the ACAs require consistent funding and political support throughout their lifespan. The incumbent government is directly responsible for an organisation's success or failure regarding these two factors.

5.6.9 National Treasury and the Anti-Corruption Task Team (ACTT)

National Treasury (2012:3) informs that in addition to individual efforts of government departments and entities, government's counter-corruption includes ACTT, a multi-agency working group (MAWG) and the Special Anti-Corruption Unit within the DPSA (WASP) initiatives. The ACTT must remain focused and deliver on its primary mandate which specifies the identification and successful conclusion of

corruption cases. The following three key activities are required by ACTT (National Treasury, 2012:3):

- Identify perpetrators of corruption.
- Initiate investigation, as well as gathering and analysing evidence of corruption-related charges.
- Create a criminal justice system (CJS) capacity to direct investigations, as well as compile and produce court-ready dockets.

The first two activities are directly operational in nature, and the third activity is the supporting capacity for the operational activity. The ACTT has adopted the multidisciplinary approach to identify core cases to be taken forward, to speed up the investigation, and to make decisions on the resources of each case.

There has been an international initiative to strengthen the CJS in South Africa. This is confirmed by UNODC (2015:2), which states that it conducted an extensive study of the South African justice system and found the development of its present initiative on increasing the integrity and capacity of low-level courts, in three pilot provinces. It envisaged that this initiative would be expanded to low-level courts across South Africa, and, in turn, the lessons learnt would be shared among other countries in the region.

The ACTT has embarked on several steps, to achieve their mandate successfully. These are the following to be taken, according to National Treasury (2012:5-8):

- Improve reporting to principals and use of the reports by the principal, in order to assist in facilitating resolution of unresolved blockages that are holding up cases from conclusion.
- Focus has been on progression of each individual case in the best possible way, then concentrating on overall caseload.
- Decisions need to be made urgently regarding the nature and form of external reporting that has been done to the Cluster, Cabinet Legotla and the Department of Monitoring and Evaluation.
- The role of ACTT Head Office's responsibilities for case review, case progress, monitoring and case quality control, has been strengthened.

- Case assessment, rationale and criteria must be clarified and finalised by the principles.
- A focused process must be launched to identify potential incidents and cases for consideration from SAPS, SIU, AFU, MAWG, SARS, WASP, etc.
- Case review teams have been energised to review potential cases for the ACTT.
- There must be urgent consideration for the security and risk management, in aspects such as document handling, transportation, filing and archiving, particularly in the inter-agency operation.
- There must be a review of the urgent challenges regarding adequate and appropriate human resourcing of the case teams. These include the secondment of investigators from the inter-agencies and secondment of prosecutors from the NPA.
- Criminal assets recovery account (CARA) funding use. There must be agreements of priority for which CARA funds have to be used, and to create administrative mechanisms to access and spend the money.
- There must be new team training and skills development. Training and team building have been afforded to new members to transition them to a new way of working.
- Understand the corruption risk and threat assessment. This is crucial, as the ACTT would be understanding the following:

    - The corruption threats.
    - Remedial necessities.
    - A framework for performance outcome reporting.
    - Need to guide case selection.

When it comes to corruption risk, Newham (2002:8) supports the National Treasury by stating that the preventative control technique must reduce corruption risk. The preventive strategy, according to Newham (2002:8), is an endeavour to improve the quality of the applicants who are trained by, and eventually admitted into, the police force. According to research conducted in the USA, critical elements such as recruitment policies and procedures, as well as the form of basic training, can have a substantial impact on the number of 'problem officers' with whom a police organisation must later deal.

5.6.10 ACA and staff accountability

Newham (2002:8) further states that initiatives are made on a regular basis to improve the accountability of police managers, increase the supervision of front-line officers, and eliminate policies that are known to encourage corruption. The deterrence theory states that increasing the detection and punishment of corrupt activities will dissuade all officers in each department from engaging in corrupt acts. Strengthening internal investigative divisions, conducting random or targeted integrity tests and implementing early-warning systems are all examples of such programmes.

National Treasury (2012:10) recommends that the principles can achieve the above actions through the following:

- Agree on the short-term priorities that are focused on the core business of showing operational progress.
- Assign responsibilities and hold teams to account and manage through reporting.
- Report progress to stakeholders.
- Take a heads-up view of progress, and bigger strategic issues in six months, when progress is more tangible and the ‘engine room’ is running at a higher level of efficiency.

5.6.11 ACA: shortcomings identified in the South African context

Gaps and shortcomings, as well as best practices arising from the architecture itself, have been identified in the current anti-corruption architecture of South Africa (Pereira et al., 2012:93). These are explained as follows (Pereira et al., 2012:93):

5.6.11.1 The establishment of a cohesive policy in the short, medium and long term for the anti-corruption architecture of SA

South Africa now lacks a well-coordinated policy that encompasses short-, medium- and long-term objectives. As a result, the development and elimination of institutions that make up SA's anti-corruption strategy are disconnected, hampering the structure's overall organisation. Furthermore, the lack of a consistent policy makes it impossible to integrate and coordinate institutions on an operational level, and it

allows for duplication of roles and duties at both the coordination and operational levels (Pereira et al., 2012:93).

5.6.11.2 The importance of a clear and unambiguous set of rules, regulations and laws

In many ways, the regulatory aspect of SA's anti-corruption architecture is not apparent, according to the report. In this regard, and in order to maintain the system's efficiency and effectiveness, clear and explicit guidelines for the actions to be carried out by each of the anti-corruption organisations, are required. To preserve the independence and autonomy of anti-corruption agencies linked to Cabinet ministers, parliament, the President, or other political actors, clear and explicit norms are required. As a result, where the legislation is imprecise or confusing about the purpose of specific institutions, legislative modifications have been sought.

5.6.11.3 The resolution of jurisdictional issues which reduce the effectiveness and efficiency of the anti-corruption system in SA

Because the present legislation and regulations do not fully embrace all the institutions, the efficiency of the anti-corruption system in South Africa may be further limited. As stated in this study, the National Treasury disburses funds through the Department of Co-operative Governance and Traditional Affairs under the Municipal Infrastructure Grant (MIG) (COGTA). However, neither COGTA nor the National Treasury have much control over how the funds are spent by the municipalities.

5.6.11.4 Revision of the information management policies, as well as its sharing and retention, at a system-wide level

The study emphasises the importance of system-wide application of information management and sharing policies. The audit of the Minimum Anti-Corruption Capacity Criteria (MACC) found that, while the requirements had been implemented, their efficacy was still poor. Poor information management, which holds negative effects for the whole anti-corruption system, is one of the reasons for this, according to the MACC assessment.

Without adequate risk and trend studies, identifying corruption risks and trends at both institution and system level becomes increasingly challenging. As a result, without identifying these risks and patterns, intelligence agencies will struggle to construct a risk-based matrix that will allow them to more thoroughly analyse the material provided to them and quickly identify potential corruption-related acts against the system. Another instance in which a lack of information management and sharing of policies impedes the whole system's efficacy, is the AG's external auditing of accounts. The AG's audit reports are of poor quality, which is one of its flaws.

5.6.11.5 Increasing the active sharing of information between the relevant anti-corruption authorities

In order to detect and combat corruption, the system's efficacy is also dependent on information sharing between institutions. Because of the intricacies of corruption-related crime, as well as the fact that it frequently intersects with other types of serious and organised crime (drugs, arms, and people trafficking, for example), it is critical that information created by institutions at all levels, be shared. To that end, an institutional mapping is required, particularly when it comes to intelligence-sharing policies.

5.6.11.6 Ensuring the independence and impartiality of the institutions comprising the anti-corruption framework in South Africa

It is critical that the anti-corruption architecture of South Africa preserves the impartiality and independence of the various institutions that make up the anti-corruption architecture. The Constitutional Court ruled in the Glenister case 2 that South Africa lacked an independent ACA. As a result, the DPCI has suggested changes to its enabling legislation, in order to comply with the Constitutional Court's decision. While certain components have been addressed in terms of the independence of various anti-corruption institutions, there are still gaps in which possible political reliance remains, hurting overall anti-corruption efforts in South Africa.

5.6.11.7 Revision of the functions and responsibilities of the coordination bodies currently available, in order to eliminate duplications in the system and allow for a more comprehensive approach

At operational level, the anti-corruption architecture of SA has significant overlaps in functions and duplication of efforts by various organisations. Furthermore, as previously stated, the lack of a unified anti-corruption policy at the system level allows for policy duplications and overlaps. Each of the institutions that make up SA's anti-corruption architecture develops its own policies in response to specific operational pressures, and some coordination mechanisms are developed to encompass specific institutions in order to alleviate those pressures when they involve multiple institutions' actions. Clearer guidelines have been established by the secretariat of the existing coordination structures:

5.6.11.8 Increasing the coordination capacity of the institutions comprising the anti-corruption architecture of SA, at both the preventive and enforcement levels

As previously stated, a suitable system mapping of the current coordination structures can be used to assess which coordination structures in SA's anti-corruption architecture are overlapping or duplicated. As a result of this system mapping, remedial action can be taken to merge duplicated structures, eliminate overlaps, and eliminate excesses, allowing for a more effective use of available resources in these redesigned coordination structures. As a result, the entities that make up the anti-corruption architecture's coordination capacity improves.

5.6.12 The DPCI formerly the Directorate for Special Operations

Berning and Montesh (2012:3) mention some of the successes of the DPCI, formerly the DSO, when they were mandated under the NPA. They claim that the DSO's enormous success in high-profile cases has strengthened public faith in its ability to combat organised crime. Money laundering and racketeering were added to the DSO's priorities in 2004, and the DSO was successful in getting the first ever racketeering convictions in South Africa under the appropriate legislation. The DSO had finished investigating 653 cases by February 2004, including 273 investigations and 380 prosecutions; 349 of the 380 prosecutions resulted in accused persons' convictions, with a conviction percentage of 93.1% on average.

For an ACA such as the DSO to attain the success rate they did, would indicate that the ACA manner of operation was a form of best practice. The question then arises as to why the DPCI, which was formed after the fall of the DSO, has the success rate of the DSO. According to Clark (2012:1), while the DSO had a conviction rate of between 82 percent and 94 percent, the DPCI are only managing a detection rate of around 50 percent, and the court-ready percentages are lower. Although the DSO had operated under a different mandate to that of the DPIC, it still indicates the DPCI did not employ the best practices of the DSO.

According to Berning and Montesh (2012:3), the DSO (Scorpions) had a good strategy in place in investigating corruption; they had short-, medium- and long-term goals, combined with a cohesive anti-corruption architecture policy. These approaches and strategies caused the DSO to have a high conviction and success rate.

5.7 OTHER GLOBAL INITIATIVES

Henning (2002:838) highlights the important aspect of incorporating gratitude into an anti-corruption statute. He states that none of the international conventions specifically addresses the issue of unlawful gratification. However, SA has adopted and covered unlawful gratification in its legislative framework. It is adequately dealt with in the Prevention and Combating of Corrupt Activities Act 12 of 2004.

Meagher (2007:78) warns that a comprehensive survey of ACAs internationally would predominantly show a picture of failure. In countries such as Argentina, Tanzania, Pakistan, Bangladesh, Nigeria, Sierra Leone, or a dozen other countries, it is difficult to see unilaterally turning the tables in the fight against corruption, unless they acquire new power and legitimacy in the event of a change of regime. The author adds that for ACAs to succeed in the fight against corruption, they would need resources, sanctions and coercive power, individuality, and public accountability. Additional questions need to be raised about the nature of the system, by the ACA, such as making it a powerful deterrent to the potentially corrupt, offering insurance against investigation for chosen elites, or creating credibility-enhancing features targeted at voters such as foreign aid donors and local non-governmental organisations (NGOs).

5.7.1 UK Department for International Development

The UK Department for Foreign Development is an excellent example of international donor activities and support (DFID). For donor money in India, the DFID has implemented an anti-corruption strategy. According to DFID, there are several conventional controls and mechanisms in place to ensure the security of UK aid (2013). Guidelines, controls and measurements include thorough risk evaluations and reporting criteria for all programmes. Routine internal and external audits provide an additional level of assurance that money is spent for the intended reasons.

DFID is a new institution that is actively reinforcing its risk management policies, and has recently taken further initiatives, such as more complete programme risk assessments for fraud and corruption, greater pre-funding of “due diligence” reviews on partners, and advanced staff training. DFID has always followed up on suspicions of corruption and fraud, and where fraud or corruption is discovered, DFID has always acted and attempted to recover money from UK taxpayers.

The DFID (2013:2) has committed itself to ensuring integrity and value for money through the following:

- Introducing the latest corruption risk assessment and management tools of DFID India in private sector programmes.
- Strengthening oversight of tender-allocated contracts for fraud and corruption risk, including a quarterly outreach meeting with all contractors.
- Proactively evaluating the risks of corruption and bribery in the states and sectors in which the Department of International Development works and how UK funds are transferred and accounted for, and commissioning further review of new investment fields, such as the risks of corruption in small- and medium-sized enterprises.
- Further expansion of processes that enable beneficiaries to track and report on DFID-funded programmes.

5.7.2 The Bhutan Anti-Corruption Commission (BACA)

According to a report by the Bhutan Anti-Corruption Commission Agency (BACA) (2016:1-2), Bhutan has made remarkable progress in preventing and combating corruption in the country. It has maintained its position: 27th out of 176 countries, and 6th in ranking in the Asia Pacific region in the 2016 Transparency International Corruption Perception Index (TI CPI). For BACA, 2016 was also a "year of significant achievement" in the international efforts against corruption.

The 21st Steering Group Meeting, the 14th Regional Seminar, and the 2nd Law Enforcement Network Meeting of the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific were hosted by the Anti-Corruption Commission in collaboration with the Asian Development Bank (ADB) and the Organization for Economic Cooperation and Development (OECD), according to (BACA, 2016:1-2). It was a proud moment for Bhutan to host such a major international event, which saw the gathering of more than 150 delegates from around the globe consisting of anti-corruption practitioners, development experts, and representatives from governments and businesses.

The best practices of the BACA (2016:1-2) are reviewed below, under the appropriate headings:

- **Human Capital**. Investment in development of human capital is a necessity for the ACC in carrying out its core mandates. In the reporting period, 68 ACC staff attended HRD Programmes: 19 staff in 13 short-term ex-country training and regional/international seminars/workshops, and 49 in 19 in-country training programmes. Three staff returned after completing master's programmes, while another three are still undergoing their long-term studies in Australia and India.
- **Integrity in the ACC**. Following the principle of "Lead by Example", ACC has always focused on building itself to be an incorruptible institution with a robust system of transparency, accountability, professionalism and proper checks and balances. As required of other agencies, numerous anti-corruption and integrity promotion measures have been implemented in the ACC.
- **Auditing of the ACC**. The Royal Audit Authority (RAA) audited the accounts and operations of the ACC. They were issued with an unmodified (clean) report,

and the RAA states that the ACC had maintained proper books of accounts, and the financial statements agreed with the accounting records.

- **The Civil Service Awards and Foundation Day**. The ACC initiated the awards in 2013, which motivates staff, and the Foundation Day of the ACC was celebrated, making the public aware of corruption.
- **Public education**. As enshrined in the Constitution, citizens have the fundamental duty to uphold justice and act against corruption. For them to be able to fulfil these fundamental duties, they need to be empowered with information, knowledge and skills in fighting corruption. Creating an informed and awakened citizenry to empower them to act against corruption, is one of the strategies pursued by the ACC to prevent and combat corruption in the country. The ACC has introduced many successful programmes such as –
    - Gewog Awareness and Advocacy Programmes.
    - Interactive Sessions.
    - Behavioural Change Programme.
    - Commemorating International Anti-Corruption Day.
    - Information, Education and Communication Materials.
- Prevention. It is very important that systemic changes are brought about, in order to decrease opportunities for corruption. This can be attained through robust prevention programmes that identify the weak links in governance systems and strengthen systems to minimise or eliminate corruption opportunities. Prevention programmes include research and systemic studies, implementation of anti-corruption measures such as assets declaration, judicial integrity, and private sector integrity programmes. The ACA have also introduced other prevention programmes such as the following:
    - Implementation of the National Integrity and Anti-Corruption Strategy.
    - Strengthening judicial integrity.
    - Facilitating clean and ethical business transactions.
    - Enhancing transparency and accountability in community-based organisations and local governments.
    - Strengthening accountability culture.
    - Systemic studies.
    - Follow-up on the systemic recommendations.

- **Complaints and Investigations**. Complaints about alleged or suspected corruption offences form one of the main bases for the anti-corruption efforts of the ACC – be it investigation, public education or prevention measures. Over the years, complaint management in ACC has been strengthened with more staff, new technologies being deployed, and putting in place proper policies and procedures. The Compliant Management Division in ACC receives, registers and processes all complaints including referrals from agencies. In the reporting period, ACC has received 352 complaints, with an average of 29 complaints per month, which has decreased when compared to the previous year with an average of 31 complaints per month. This division is broken down into the following teams:
    - Complaints and Referrals Management.
    - Investigation of Cases.
    - Discreet Inquiries.
- **International standing**. The TI CPI is affiliated with the BACA. Despite an increase in the number of nations and territories participating in CPI 2016, compared to CPI 2015, Bhutan's TI position and score have remained unchanged. Bhutan has been included in the TI CPI for the eleventh year in a row, and Bhutan's rank and score have improved dramatically over the years.

Table 5.1: Bhutan's TI ranking and score in the last five years

Year	Global Ranking	No of countries	Score	Asian Pacific Ranking	No. of Surveys Used	Confidence Range
2012	33	176	63	6	3	57-69
2013	32	177	63	6	4	59-67
2014	30	175	65	6	4	62-68
2016	27	168	65	6	4	61-69
2016	27	176	65	6	5	62-69

(Source: Bhutan Anti-Corruption Commission, 2016).

The above table indicates the outstanding achievements made by the Bhutan Kingdom in setting up the BACA. The table is also an indication that the practices of the BACA are effective in reducing corruption, and that their practices have sustained the BACA as a strong and long-lasting anti-corruption fighting commission. Just the BACA has an international standing through the TI which supports and advice the BACA on their efforts in the fight against corruption. The DFID supports India in their efforts to reduce corruption in the country.

As of June 2020, Bhutan did not publish an Anti-Corruption Commission annual report for 2019. According to the BACA (2018:73), Bhutan has improved its TI CPI ranking to 25th out of 180 countries/territories, with the score of 68 in 2018. Bhutan stepped up by a rank and a score, compared to the 2017 TI CPI. In the Asia Pacific region, Bhutan retained the sixth position and as the cleanest country in the South Asian Association for Regional Cooperation AARC region, which consists of eight countries.

5.7.3 The Department for International Development (DFID) and India

The DFID (2013:3) states that it has committed itself for three years to support India in various initiatives. It has also pledged support to government partners, NGOs and the World Bank, to develop, introduce and reinvent public service delivery technologies that both strengthen services and squeeze out corruption and bribery opportunities, such as 'Right to Public Service' Acts, and the use of information technology to enhance public distribution systems. The DFID is also committed to working with national and state governments to further strengthen budgeting,

accounting and auditing in the sectors funded by the DFID (such as health, nutrition, education and urban) and through structures of state government.

This assistance will be strengthened by commissioned research into the dangers of corruption in largely unexplored areas, and by new research and evaluation of anti-corruption developments in India. The goals are twofold: firstly, to provide public goods that can be used by Indian partners to counter corruption in India; and secondly, to share Indian knowledge and help fill the global evidence gap on what works "in fighting corruption. The DFID will continue to promote creativity and the introduction of transparency systems such as social audit and citizen scorecards, so that by recognising their rights, keeping service providers to account, and standing up against corruption, more Indian people will take direct action. The DFID has a track record of working with Indian states, stakeholders and government departments of the United Kingdom. They also plan to continue to incorporate anti-corruption initiatives in the ongoing programmes, and to explore new opportunities for involvement, including the sharing of practical knowledge by UK and Indian experts.

5.7.4 The Global Integrity Index (GII)

Camerer (2008:4-5) informs about the Global Integrity Index (GII). This author claims that the GII is an expert valuation tool that employs local researchers and analysts to capture the institutional framework in countries throughout the world, as well as the institutional safeguards required to prevent power abuse. The index's six (6) core categories and 23 subcategories reflect the various anti-corruption institutions, strategies and practices that have emerged as important during the last decade. It is based on the work of various international organisations, with a particular focus on anti-corruption reforms. The sub-category VI-2 examines anti-corruption agencies, attempting to capture their critical components in law and practice through a variety of indicators.

The following table contains direct quotations from the literature, and has not been paraphrased by the researcher, in the interests of accurate reporting.

Table 5.2: Global Integrity Index (VI-2) ACA indicators in law and practice

No	Sub-category	Crucial Law and Practice
1	71	"In law, is there an agency (or group of agencies) with a legal mandate to address corruption?"
2	72	"Is the anti-corruption agency effective?"
3	72a	"In law, the anti-corruption agency (or agencies) is protected from political interference".
4	72b	"In practice, the anti-corruption agency (or agencies) is protected from political interference".
5	72c	"In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification".
6	72d	"In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria".
7	72e	"In practice, the anti-corruption agency (or agencies) has a professional, full-time staff".
8	72f	"In practice, the anti-corruption agency (or agencies) receives regular funding".
9	72g	"In practice, the anti-corruption agency (or agencies) makes regular public reports".
10	72h	"In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate".
11	72i	"In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations".
12	73	"Can citizens access the anti-corruption agency?"
13	73a	"In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period".
14	73b	"In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination".

(Source: Global Integrity Index, 2018).

Table 5.2, above, set out the indicators in respect of corruption on a global scale. Rule of law, accountability, elections, public management integrity, civil service integrity and access to information are just a few of the markers. These indicators can help citizens, scholars and countries better identify aspects of corruption, and answer questions about it.

5.7.5 UNODCCP and ACA recommendations

The UNODCCP (2000:29-38) made suggestions to the SA environment and the ACA that operate therein. They advised on the practice for a successful agency through main and sub-headings:

- **Mandate and objective**. The organisation must address corruption through intelligence, investigation and prosecution, understanding, and using their mandate. The organisation must investigate with a view to prosecute. There also must be collaboration with other units in law enforcement. The mandate of the organisation has also focused on prevention and education aspects.
- **Structure and resources**. The units must firstly employ the right people and obtain a proper building and supporting resources. This is crucial in the strategic plan.
- **Integrity**. There must be mechanisms in place to ensure that the standard of integrity remains high. Integrity goes beyond the anti-corruption unit; it also deals with how the unit conducts its investigations.
- **Protocols-Manuals**. Investigators and prosecutors need specific training. Technical guidelines need to be developed for investigators and persecutors. These guides have been part of the strategic plan of the unit.
- **Secrecy vs. transparency**. There is a need to balance the interests of secrecy and transparency, and between privacy and the integrity of the organisation. No names need to be disclosed, unless revealing the name of a bad case has increased the integrity of the unit.
- **Whistle-blowing**. The units need to know and understand the laws protecting whistle-blowers and has encouraged both anonymous and non-anonymous complaints.
- **Evidence**. Evidence is a crucial component of a successful case. It is critical for investigators to learn how to prevent evidence from being corrupted. Evidence gathering, securing and preservation must all follow standard operating procedures or protocol.
- **Performance Indicators**. There is a need to look beyond standard performance measures that focus solely on operational elements such as complaints or convictions. In addition, the indicators have focused on concerns of integrity and measures to improve unit integrity.
- **Training**. There must be training from successful agencies such as the FBI and Scotland Yard.

5.7.5.1 UNODCCP and the DPSA

The DPSA (2003:7-8) elaborates on what is discussed by the United Nations Office on Drugs Control and Crime Prevention (2000) in respect of a prevention and education aspect. The DPSA states further that without widespread, yet focused, anti-corruption prevention and public education programmes, neither the legislation nor the enforcement framework can effectively combat corruption. In the field of anti-corruption, the three-pronged approach of prevention, public education, and investigation and punishment is now recognised as best practice. South Africa has embraced a more decentralised, yet coordinated framework for the time being, although this does not rule out the possibility of pursuing the "three-pronged strategy" within such an organisational structure.

In this sense, South Africa has carried over strategic concerns and expanded law enforcement capabilities, but the same cannot be said for preventive and public education. The DPSA continues to argue that failing to do so is a key flaw in SA's anti-corruption strategy. To make educational programmes more accessible, a larger budget is required. The importance of collaboration with business and civil society in the domain of public education is particularly significant.

The Public Service Commission (PSC, 2005:3) breaks down the aspects discussed by the DPSA (2000:7-8) into sub-points. These, they say, are vital to a successful ACA:

- Combating corruption
    - Legislation is being reviewed and amended.
    - Creating a system for reporting wrongdoing.
    - The Open Democracy Bill should be passed sooner rather than later.
    - Establishment of special tribunals to hear cases involving corruption.
    - Sectoral Coordinating Structures Establishment (broadly classified as Public Sector, Civil Society and Business).
    - The National Anti-Corruption Programme will be led, coordinated, monitored and managed by a National Coordinating Structure.
- Preventing corruption

    - Blacklisting of individuals, businesses and organisations which are proven to be involved in corruption.
    - Establishing the anti-corruption hotline.
    - Establishment of sectoral (and another) hotline.
    - Disciplinary action against corrupt persons.
    - Constant monitoring and reporting of corruption.
    - Promotion and implementation of sound ethical, financial and related management.
- Integrity and awareness
    - Promotion and implementation of social research and policy advocacy to investigate the causes, effects and spread of corruption.
    - Enforcing the conduct code and maintaining discipline.
    - Every industry has its own code of conduct.
    - To instil a sense of intolerance for corruption among young workers, and employees, as well as to promote training and ethics education.
    - Long-term media campaigns to draw attention to specific components of the strategies.

The necessity of integrity and awareness programmes is explained by Van Vuuren (2004:1). According to this author, some victims of corruption may be aware of their cooperation as a bribe payer for a variety of reasons, including ‘on demand’ or with the threat of withholding a service. Some victims may be unaware that being asked for a bribe in exchange for services is illegal. Requests for favours and gifts, on the other hand, may be overlooked as a kind of corruption. It is for these reasons why public awareness campaigns are so crucial.

The fruits of the relationship that South Africa has with the international community do pay off, as the UN, the UNODC, gives guides and advice to the ACA so that they can be successful in the fight against corruption. This is evident when the UNODC (2008:13-15) gives the following advice:

- Leadership must start at the top and by example. Leaders must give support to programmes and policies.

- A detailed code of conduct and code of ethics must be developed, and ensure members adhere to these codes. There must also be an annual asset declaration by members.
- An ACA's integrity is crucial. For integrity to be effective, it must have strong backing from the top, and wrongdoers must be punished quickly and fairly.
- Research in the field of corruption is vital, as it is imperative to identify the motivations for corruption, as this has aided in the prevention techniques used.
- Corruption is a pedagogic task; thus, training in corruption and ways to fight it are of great value.
- Formulating modern methods of communication to ensure speed and effective transfer of information.
- Cultivate a culture of probity and accountability.
- Whistle-blower protection is key, and the legislation protecting them has been clearly understood and used. There can also be incentives for the whistle-blowers, to encourage people to report corruption incidents.

According to the NACF (2005:28-29 & 102), the following recommendations are key to the success of an ACA:

- Under the tri-partite industries, data exchange and analysis have been broadened. Cooperation across a broad range of sectors would be important, especially on anti-corruption issues. To tap into unique tools, these links need to be reinforced.
- In terms of conceptualising the idea of corruption, there is a strong need for a paradigm change. This suggests that there is an apparent need to describe corruption, and people interpret corruption in various ways.
- The implementation of a code of ethics and conduct for professional bodies is compulsory.
- Concerted media efforts are required to control attitudes related to the realities of fighting corruption.
- Commercial crime teams should be well resourced and available to the general public. They are also required to report on their conviction rates. People must be aware of their success rates.

- There is a need to create a centralised database for blacklisting across all industries.
- It is necessary to improve the NACF Secretariat. The authority to meet at least once every quarter to request reports from all sectors and participate in organized and collaborative sectoral programs must be sufficiently resourced and given.
- It is critical to standardise documents by divisions and enable for computerized document verification in order to prevent the introduction of fake documents, particularly during tendering procedures.
- The legal system must be simplified. To supplement the legislative summary, some little guidance is required. Instead of being revised, present legislation must be applied in its entirety.
- Prosecution in cases of corruption must be notified.
- In terms of investigations, prosecutions, and awards, all relevant agencies must improve, and their mandates must be properly defined.
- As tools, best practices from regional and international organizations were utilised.
- It is necessary to transfer appropriate capabilities to anti-corruption agencies.
- Departments and the public have been made aware of the numerous investigative and anti-corruption units. They have been briefed on the varied mandates of such units in order to increase clarity on where to report corruption incidents.
- Whistle-blowers should be given more and better protection.
- Examining and consolidating the statutory structure resulting from previous NACF resolutions.
- Institutional capacity has been increased.
- Protection of whistle-blowers and witnesses, as well as improved methods for exposing wrongdoing.
- Individuals and corporations who are corrupt are prohibited.
- Management policies and processes have been improved.
- Professional ethics are managed.
- Collaboration with stakeholders. This is a significant outcome, which resulted in the formation of the NACF.

- Policy lobbying, social analysis, and research.
- Education, training and awareness.

5.8 BEST STRATEGIES FOR PUBLIC SECTOR ACAS TO OPERATE UNDER

According to the NDP 2030 (South Africa, 2013), the country has achieved its vision of eradicating corruption, come 2030, through the following strategies:

- Building a resilient anti-corruption system. Anti-corruption initiatives have resulted in a system that is free of political meddling and has the support of both government officials and civilians. Citizens resist the temptation to pay bribes because they recognise that their individual actions contribute to larger issues in a resilient system, designated agencies have the capability and properties to investigate cases of corruption, leaders act when problems are brought to their attention, the private sector does not become involved in corrupt practices, and citizens speak out again.
- Strengthen judicial governance and the rule of law. Ensure the judiciary's independence and accountability. To improve the quality of judges, provide clear standards for their appointment and increase judicial training. Extension of community service to law graduates has been discussed, in order to expand legal representation for the poor and speed up the administration of justice.
- Strengthen accountability and responsibility of public servants. Public officials in South Africa have been rendered legally responsible for their conduct as people, particularly in issues involving public resources.
- Establish a public service that is transparent, responsive, and responsible. Citizens must have access to government information, including procurement facts. In addition, an information regulator has been established to hear appeals when access to seek information is denied.

In line with the above from the NDP 2030 (South Africa, 2013), a means to create a strong anti-corruption system is proposed, which is suited to SA through the following:

- Strengthen the anti-corruption multi-agency structure.
- To combat corruption, take a social approach.

- Whistle-blower protection should be strengthened.
- Improve procurement process oversight for more accountability.
- Invest in the tender compliance monitoring office, so that it may investigate corruption and tender value for money.
- Strengthen public servant accountability and responsibility.
- Create a public service that is open, responsive and responsible.
- Enhance judicial administration and the rule of law.

The Southern Africa Open Society Initiative (OSISA) (2017:260-261) makes distinct recommendations for the situation in SA. They note that the anti-corruption machinery is multifaceted, and to ensure the success of the larger effort, all components need to be aligned. It is possible to consider the anti-corruption campaign as containing two categories: the legal or institutional structure and society's demand. They simplify the recommendations as follows:

- **Institutional reform**
    - The government could consider leveraging the Open Government Partnership's (OGP) initiative to commit to fighting corruption. Corruption is well established to be a threat to democracy. The OGP is a useful tool for setting targets to assure the success of anti-corruption programmes in the public sector, and it should be used to enforce systems like the Public Service Integrity Management Plan.
    - In the Justice and Crime Reduction Cluster, political leadership needs to be stable. Among their other duties, the high turnover of senior management and leadership within these organisations raises questions about their readiness to counter corruption.
    - The selection procedure for key roles needs to be reconsidered. Instead of the current procedure where parliament merely advises without review, these appointments need to be subject to some sort of successful approval by parliament. Within the government, the power to select staff is highly concentrated; this brings the executive under tremendous political pressure whenever problems are met by these institutions.

- Although there is a decentralised anti-corruption apparatus in South Africa, synergy needs to be established between the collective institutions within it. The solution is too scattered around the ACAs.

- **Societal agency**
  - The effects of corruption on people's daily life must be made more visible. The current degree of understanding is inadequate, resulting in public ambivalence. Civil society organisations must approve individuals' participation in anti-corruption forums.
  - As a result, communities' appetite for anti-corruption efforts must be stimulated. It is critical to re-emphasise citizen participation, particularly at local government level, for accountability to occur.

Line staff operate on behalf of managers, just as executives act on behalf of elected leaders and, eventually, the electorate, according to Meagher (2007:77). Principals must choose, monitor and encourage their agents to act in the principal's best interests. Effective public policy and services are two examples. In order to encourage agents' desired activities, anti-corruption reform entails re-aligning incentives, updating information systems, and restoring the correct balance of reward and punishment. The application of agency theory yields persuasive and actionable results, yet its emphasis on human choice and simple preferences is based on assumptions that only apply in specific situations.

Meagher (2007:77) continued to share an example in which elected officials can owe allegiance, and allocate benefits accordingly, to narrow business or ethnic interests. In short, official and informal roles might differ significantly. Networks and alliances rely on trades to fulfil their aims, and they might use parts of the state and political system to mediate these exchanges. Many exchanges are shady; they violate rules against the use of public power for private gain. This happens regularly in wealthy countries.

Minnaar (1999:8-9) discussed initiatives that can be taken by government in combating corruption. These are the following:

- Anti-corruption legislation (criminalisation of the acts, setting sanctions and punishments).
- Creating a Code of Conduct/Ethics that all employees must sign and adhere to.
- Personnel selection (thorough background examination, looking for a criminal record, credentials and skills testing). Employee selection frequently necessitates a detailed job description that outlines responsibilities and accountability expectations.
- Implement early warning systems, such as detecting regions or situations that may be conducive to corruption and issuing a warning before the situation worsens when signals show a 'red light'. Employees who never take sick or vacation time, a high proportion of consumer or client complaints, and misuse of business/department assets are all possible sources of worry.
- The establishment of an internal, departmental, anti-corruption unit with specialised adjudicative and investigative capabilities, equipped with cutting-edge technology and open access to all databases and procedures, and reporting preferably directly to the department's head.
- The establishment of an anti-corruption hotline, where information can be given anonymously, if necessary.

The above-mentioned guidelines stated by Minnaar (1999:8-9) are some of the most important for managers dealing with corrupt activities in their divisions. The following are typical objectives of a professional code of ethics:

- Ethics in the workplace must be emphasised, in order to instil and establish a culture of honesty in public officials as a matter of course.
- Politicians must commit to anti-corruption programmes and have the political will to sustain them (including support for sanctions, summary suspension and dismissal if proven guilty of corrupt acts, and severe punishments).
- Each accountable authority at their point of execution in the line function must implement and accept transparency and accountability.
- Rules and procedures must be clearly established and communicated, and all officials must be aware of them.
- Whistle-blowing has been both institutionalised and de-stigmatised.

- Whistle-blowers should have enough protection (anonymity and protection of the witnesses).
- Establishment of appropriate rewards for information.
- It has also been rewarded for exemplary behaviour and conduct.
- Managers have always demonstrated ethical leadership.
- Misconduct has always been a source of disciplinary action.
- The importance of integrity training and ethics education has been prioritised.

When it comes to technology, Olken and Pande (2011:34) claim that procurement is an area where it offers potential. Governments around the world, including in developing countries, are reportedly migrating to online procurement methods. By boosting access to information (undermining bidding rings) and making the procurement system more transparent, online procurement methods have the potential to eliminate corruption. Research in India found that staggered road rollouts using online procurement resulted in greater road quality, as judged by independent central government audits, but not reduced costs. The research implies that the improvement in quality is due to higher-quality contractors having a greater chance of winning contracts.

This type of technology can be coupled with prevention, education and awareness programmes of an ACA. An online procurement system most leaves a clear and distinct audit trail which can be investigated, and it deters officials in government who are fond of corrupt activities from doing such. If properly initiated, this technology has installed trust in government, as the public has become aware that government is putting measures in place to reduce corrupt activities.

According to Muntingh (2006:9-10), priorities have been assigned to the four pillars of the anti-corruption strategy: prevention, public awareness, investigations, and institution construction. The DPSA published the Public Service Anti-Corruption Strategy in 2002, which includes nine “strategic considerations” (Muntingh, 2006:9-10):

- Review and amalgamations of the legislative framework.
- Increased institutional capacity.
- Improved access and protection of whistle-blowers and witnesses.

- Prohibition of corrupt individuals and businesses.
- Amended management policies and practices.
- Managing professional standards.
- Partnerships with key stakeholders.
- Societal analysis, research and advocacy.
- Awareness raising and education.

Muntingh (2006:10) further advocated breaking the principles underpinning the strategy for prevention, public awareness, investigation and institution building, as follows:

- A complete and integrated approach to fighting corruption is required, with a balanced combination of prevention, investigation, prosecution and public participation serving as the strategy's foundation.
- The criminal justice system and government management are subject to constitutional requirements.
- The need for tailored public service plans that function independently but complement national policies, notably in the areas of detection, investigation, prosecution, and adjudication of acts of corruption, as well as the recovery of corrupt profits.
- Corruption is considered a criminal offence that can be prosecuted in either the administrative or criminal justice systems, or both, if necessary.
- Good practice and conventions exist on a national, regional and worldwide level.
- Aspects of the strategy should be:
    - Inclusive education, training and awareness are all beneficial.
    - Within the government, everything is in sync.
    - Risk assessment is performed on a continuous basis.
    - In terms of quantifiable and time-bound implementation goals.

Pillay (2004:599-601) warned of challenges that need to be addressed, in terms of corruption and the agencies that fight it. This author stated that the SA National Anti-Corruption Programme and the PSC (2002) revealed the following challenges:

- **Competition for scarce resources**. If anti-corruption agencies are to be effective, they will need a significant amount of money to set up and investigate (as well as prevent) corruption. Corruption cannot be effectively combated without the expenditure of national resources, and political will is essential to keep this national crisis on the table and translate it into voted public cash.
- **Effective powers undermine accountability**. Corruption frequently involves unspoken agreements that are shielded by a culture of silence and allegiance. Furthermore, such relationships frequently entail complex financial transactions. These arrangements can be more sophisticated than conventional investigative officers' expertise and training. Special powers, such as the ability to inspect and question suspects, confiscate evidence, and undertake cross-border investigations, may be required.
- **Independence and institutional priority**. A single agency, such as the entities defined in Chapter 9 of the Constitution, must be operationally independent and operate without fear or favour. Political, economic and personal influences must be kept at bay for all authorities charged with fighting corruption. An agency's operational independence within its defined limitations must be ensured.
- **Oversight, accountability and reporting arrangements**. In the absence of competent oversight, establishing an anti-corruption body with broad legislative powers is a hazardous undertaking. The rule of law, and the existence of a competent legal system to supervise the agency's extraordinary powers and challenge its actions in the courts, are the key pillars of oversight.
- **Public interaction as an essential component**. To use citizen reports as a fundamental part of their strategy and to create public support, anti-corruption authorities need strong ties with civil society. If little is done to include the community in the agency's work, public distrust and a failure to deliver information are unavoidable outcomes.
- **Whether a single agency is the most effective strategy**. Anti-corruption agencies can be successful, but they can also have drawbacks in the worst-case scenario. The following are some of them:
    - Adding another (ineffective) layer of administration to law enforcement.
    - Taking resources away from anti-corruption organisations that already exist.
    - Ineffectiveness, if it is unable to address serious or high-level corruption.

    - Acting as a "shield" to appease contributors and the public (as codes of conduct have often done, relative to private-sector companies, public-sector organisations and government departments).
    - Postponing reform in other sectors.
    - Acting as a party-political police force.
- **Strategic coordination agreed but not implemented**. Another option is to focus on making better use of existing agencies through increased collaboration and coordination. There are now serious issues with the coordination of existing anti-corruption organisations.

According to the Institute of Security Studies (ISS) (1997:9), Judge Hasem Heath (former Head of the SIU) identified several key challenges in respect of coordination between ACAs, including the following:

- Identifying clear lines of responsibility for various authorities, particularly in terms of who is responsible for dealing with specific incidents of corruption.
- Ensure early and informed decision-making to assess whether criminal sanctions, civil sanctions or internal disciplinary measures have been implemented, because different systems have varying rules, evidence standards and response times.
- Improving ties between internal public sector agencies that apply internal regulations in the context of the employer-employee relationship, and external agencies that apply the law.
- To avoid any overlap, a simple regulatory framework must be developed.
- Improving the speed and effectiveness of anti-corruption measures.

The above challenges identified by Pillay (2004:599-501) and Judge Heath must be addressed by the strategic plan for ACA. It would be amiss to say that these are the only challenges, as there are the NACF, CW, ISS and other organisations tasked to monitor corruption in South Africa. If these and other challenges were not dissuasively addressed, then operation of the ACA would not be successful in fighting corruption. In fact, the challenges would increase and eventually render the ACAs ineffective.

To confirm the duties or major function of the NACF, which is alluded to above, the NACF (2005:13) stated their functions as follows:

- Contributing to the formation of a national consensus through the coordination of sectoral anti-corruption measures.
- Providing advice to the government on national initiatives involving the use of anti-corruption measures.
- Sharing knowledge and best practices on anti-corruption efforts in specific industries.
- Providing advice to sectors on how to enhance their anti-corruption strategies.

According to the ISS (1997:9), Judge Heath and the Commission, which sat for the session, made recommendations which they defined as immediate, short-term and medium-term strategies to improve coordination between the ACAs. The recommendation was to address the challenges identified by Judge Heath. These recommendations were as follows:

- Establishing a method of communication between the many organisations engaging in anti-corruption initiatives would be an immediate strategic move, with the goal of finding common ground, common facilities, and the exchange of experience.
- It would be foolish to try to make changes in the present fields of activity of relevant agencies in the short term. Rather, the most practical strategy would be to provide competent employees and greater resources to current organisations which rely heavily on government funding, to enable them to accomplish their jobs as efficiently as possible.
- The tightening of legislation is one of the medium-term, strategic, coordinating tactics. Rather than developing new legislation, it was decided that existing legislation should be examined to make it more practical.

De Sousa (2009:8) discussed the concept of corruption control, stating that those who are more familiar with corruption studies are surely aware of how the corruption control doctrine has grown over the past two decades. Concerning corruption, there are two points of view:

- On the one hand, there is the language of moralists, populists and ‘do-gooders’ who regard corruption as a sin, a disease, a cancer that must be eradicated from the face of the planet, which usually fades out in a resounding, sterile condemnation of corruption.
- On the other hand, functionalists and relativists believe (without empirical evidence) that corruption can appear as a social, economic and institutional purpose in societal change, lubricating the system's gears, integrating the masses in political life, and raising levels of development.

Corruption control, on the other hand, is a set of policies aimed at reducing corruption's opportunity structures and punishing deviant and unlawful behaviour through the execution of a comprehensive set of policies. The following are some of them (De Sousa, 2009:8):

- Using a variety of natural elements (preventive, repressive, educational, legislative, institutional, procedural, etc.).
- Instilling a global or gradual perspective.
- Measures having a wide range of implications (on individual ethics, organisational cultures or value systems).
- Measure that manages to control the trends in, and repercussions of, the phenomenon by displaying a multidimensional, not always steady, mixture of incentives and sanctions.

De Sousa (2009:7) presents a crucial strategy which capacitates an ACA with experts who have knowledge on corruption prevention, and who have a large knowledge-based approach in investigating corruption. He states further that other monitoring and regulating groups can also provide information and experience. An ACA must have a clear mandate, investigative powers, statutory authority, and appropriate funds, in addition to experience, to ensure an effective battle against corruption.

Camerer also addresses the concept of experts, for the ISS (1999:2-3), by stating that the criteria for a successful and effective ACA require the following:

- **Experts**. Corruption must be combated on multiple levels, using specialised knowledge and talents from a range of professions (law, finance, economics, accounting, etc.). As a result, experts in the fight against corruption have been assigned to each state. They were in a sufficient number and were provided with adequate material resources.
- **Power**. The rights granted to specialised organisations or persons should be rather broad, including the right of access to all information and files that could be useful in the fight against corruption. Furthermore, it is critical that the organisations/institutions in charge of investigating corruption cases have legal mechanisms in place that allow them to take the proceeds of wrongdoing as well as pertinent evidence.
- **Coordination**. Successful agencies require quick access to data maintained by a wide range of national authorities (customs, tax departments, police, courts, and so on), and as a result, good coordination mechanisms are required.
- **Independence**. All officers charged with combating corruption must be free of political, economic and personal influences. Specifically, an agency's operational independence within its defined limitations must be ensured.

5.9 WHISTLE-BLOWING AND PROTECTION

According to the Business Anti-Corruption Portal (BACP) (2014:4), South Africa has many mechanisms when it comes to whistle-blowing of corruption within the public sector, including, among others, the following:

- Information on how to report corruption in South Africa may be found in the Guide to the Prevention and Combating of Corruption Act.
- Corruption, fraud and abuse of authority can be reported anonymously to the NPA's service delivery hotline.
- The PSC operates the National Anti-Corruption Hotline. According to the PSC, there has been a significant response from the general population.
- Individuals can report alleged corruption or misconduct to the Department of Trade and Industry by making a free phone call or sending an email.
- Companies can report fraud and corruption related to tax administration to the SARS's 24-hour fraud and corruption hotline. On their website or through eFiling,

citizens can also fill out an online form to report tax and customs offences, according to them.

According to Mathekga (2014:20), the National Anti-Corruption Hotline was established in December 2004, in order to increase public integrity and initiate accountability, technology and innovation. However, when civil society stakeholders were interviewed, they were concerned about the effectiveness of these initiatives, as there was a perception that an institution can be thwarted by lack of political will.

The concerns that the BACP (2014:4) raises are the following:

- Most government departments have failed to respond to concerns made through these and other channels.
- Even though the Protected Disclosures Act 26 of 2000 protects whistle-blowers in the corporate and governmental sectors, from retaliation; these persons are rarely protected from job loss, demotion, termination, or other negative consequences.
- Internal whistle-blower methods are neither effective nor transparent, and they are inconsistent among provinces and municipalities.
- Although the legislation protects whistle-blowers, implementation is poor, as research has shown that whistle-blowing-blowers in high-profile situations suffer from unfavourable effects.

According to the ISS National Victims of Crime Survey conducted in June 2004, a considerable proportion of South African residents are unaware of how to report corruption, and many are terrified of the consequences of blowing the whistle on corrupt actions that they uncover. Citizens in South Africa believe that even denouncing corruption has had little effect, implying that public officials' corrupt practices will persist. According to Van Vuuren (2004:1), these are some of the significant obstacles for the national anti-corruption ‘push’ that came from the ISS research when it comes to whistle-blowing.

A crucial point that the BACP raises is that the SA government had the Protection of State Information Act 41 of 2013 passed in parliament in 2013. This Act provides

a breeding ground for the prosecution of whistle-blowers, and the Act stipulates a five-year prison sentence for the disclosure of classified documents.

- Hatchard (2014:55) gives clarity to the above when he states that, in South Africa, when a whistle-blower reports to a law enforcement agency or Constitutional oversight body, such as the office of an ombudsman or anti-corruption commission, the secrecy legislation does not come into effect. Hatchard (2014:55) suggests, however, that it is important that this position is made clear in the appropriate legislation. It would also stand to reason that an awareness campaign on this be carried out, so that citizens who want to blow the whistle on corrupt activities become aware that they are protected and will not be prosecuted in terms of the Protection of Personal Information Act 4 of 2013.
- Hatchard (2014:55) discusses Section 34 of the Prevention and Combating of Corrupt Activities Act (PRECCA), which executes a duty on any person who holds a position of authority, and who knows, or ought reasonably to have known or suspected, that any other individual has committed a corruption offence involving a sum in excess of R 100 000, to report the fact to any police official. Failure to report the offence, and if convicted, can result in a fine or an imprisonment of up to ten years. This is another mechanism of whistle-blowing by persons in authority.
- Section 34 of the PRECCA is like that of section 39 (1) of the Tanzanian Prevention and Combating of Corruption Act of 2007, which states that every person who is aware, or develops awareness, of the commission of, or the intention by another person to commit, an offence under this Act, shall be required to give information to the Prevention and Combating Bureau. Tanzania, unlike SA, however, does not set out the penalty for the contravention of section 39 (1).
- According to Ndaba (2018:1), who reported from the Nugent Commission, there is a lack of protection for whistle-blowers in the face of unethical leadership and rampant procurement irregularities in public institutions has been highlighted at the commission of inquiry.
- Ndaba (2018:1) states that one of the major witnesses in the SARS fraud and corruption inquiry after the appointment of suspended Commissioner Tom

Moyane, raised concern about the lack of whistle-blower protection. They said that Solly Tshitangano, the head of procurement at the National Treasury, was appearing before the commission for the second time concerning pervasive procurement irregularities since Moyane took office. Tshitangano first testified regarding the R200 million tender that was fraudulently awarded to Bain Consulting Agency (BCA) to pursue a failed turnaround strategy at SARS.

- Ndaba (2018:2-4) makes the following observation on whistle-blower protection as a result of the Nugent Commission:
    - According to the commission, there has been a rise in the unlawful movement of money, as well as cigarette syndicates and organised crime. According to a report on the independent Internet site, an alleged "pro-corruption group", and people said to be close to Moyane, have started a criminal case against him at Sunnyside police station since his original testimony. According to him, his accusers told the SAPS that he "had millions in his bank accounts". Tshitangano made the remarks in December 2014, three months after his appointment, when he accused Moyane of giving a multimillion-rand Information Technology tender to Gartner South Africa, without following a competitive bidding process. Tshitangano expressed his thoughts as follows: "Where had all the whistle-blowers gone? The reason for this is that whistle-blowers and anti-corruption activists are not adequately protected".
    - In view of the foregoing, the NDP asserts that whistle-blower protection is critical, in order to foster a culture of exposure of crimes. The Protected Disclosures Act of 2000 provides some protection for whistle-blowers, but it is insufficient. This could be due to the Protection of Personal Information Act 4 of 2013, which plays a role. According to the NDP, the number of people who say they are willing to blow the whistle has decreased by ten percent in the last four years. The NDP has identified several flaws that need to be addressed:
        - The legal definition of defence is far too limited. Citizens' whistle-blowers are not covered by the Protected Disclosures Act because they are not in a formal permanent job connection. It excludes anyone who has a business tie with the organisation in question. This limits the scope of protection to the job relationship unnecessarily. If an employee

informs their employer about a client and the employer transfers the employee rather than retaliating against the customer, the employee is not protected.

- The number of people to whom a protected disclosure can be made is far too limited.
- There is no public body entrusted with offering guidance and public awareness, and there is no public body dedicated to monitoring whistle-blowers.
- The potential of conditional pardon for whistle-blowers who have been accused of wrongdoing is unclear.
- Whistle-blowers have not been provided with adequate protection. In some circumstances, whistle-blowers may require physical and financial protection. Different people have different ideas about what constitutes proper protection.
- In response to these flaws, the NDP made the following recommendation:
    - To broaden the scope of whistle-blower protection under the Protected Disclosures Act to cover persons who are not employed by a company.
    - Allowing disclosure to authorities other than the PP and AGSA, as well as strengthening security measures for whistle-blowers.

5.10 THE CONCEPT OF 'ONE APPROACH FITS ALL'

Former Ghanaian President, the Honourable John Mahama, attended the Anti-Corruption Summit in London and indicated that Ghana is committed to fighting corruption, and that while the summit is goals "generally coincide" with Ghana's anti-corruption strategy, there is no "one size fits all" approach (Parliamentary Development Portal, 2016:1).

Habtemichael (2009:157) clearly stated that the interactions between corruption and anti-corruption agents produce unexpected cooperative behaviour, exhibiting emergent characteristics (a society with minimal corruption). However, stability is only temporary; depending on the balance of forces, the dynamics of corruption and anti-corruption agencies might create a new state of disequilibrium. The processes

are influenced so dynamically by contexts of "best practice", that they can be replicated. There is no one-size-fits-all approach to fighting corruption, just as there is no one-size-fits-all approach to complicated adaptive systems. A variety of instances can be used to demonstrate the anti-corruption system's complexity.:

- Privatisation was sought as one of the anti-corruption tactics to prevent governmental monopolies; however, corruption is known to be rampant in the private sector, as well as on the supply and demand sides. Corruption is prevalent during the liberalisation of the economy's development process.
- Anti-corruption legislation and established agencies, as well as politically committed management, are all required for institutional reform. In a dynamic societal arena, finding all of these and other anti-corruption elements fulfilled, is difficult.
- Corruption is widespread in a civil society framework that serves as a watchdog.
- There is no definitive disagreement concerning the relationship between democratic procedures and corruption, and corruption case studies in both rich and developing nations show that corruption coexists with democratic politics.
- Raising the minimum wage may simply serve to create additional incentives and kinds of corruption. The ethical approach to fighting corruption is also not a panacea, as evidenced by the fact that several religious organisations that preach ethics are themselves accused of corruption.
- Although freedom of expression and monitoring through the media and legislature are seen as anti-corruption instruments, these institutions are not immune to corruption. 'Who oversees the guardians? Who is the investigator's investigator?' This illustrates the problem's continuous, unsolved complexity.
- With all its promises to make government procedures transparent, eGovernment (electronic systems for the South African government) has a limited advantage in the battle against corruption. This is mainly due to the self-organisation of corrupt agents who respond in non-linear ways. Technology does not determine society; rather, the outcome of its application is determined by the complex pattern of human relationships.
- Despite global coalitions' huge efforts to combat corruption, transnational corruption is on the rise, even among coalition signatories.

- Apart from their incapacity to become "universal models," the various anti-corruption copies have intrinsic limitations.

All of these are evidence of the complexity of anti-corruption measures, and the presence of a myriad of variables that interact and influence one another, with nonlinear impact, according to Habtemichael (2009:158). The corruption system is aware of unusual behaviour and reacts to changes in its surroundings in a variety of ways.

The sentiments of Habtemichael (2009:158) are echoed by Chêne (2012:1-2), in terms of whether countries have followed a centralised or decentralised model, when Chêne states that there is no clear indication as to which model (centralised or decentralised) is the most effect for combating corruption. Chêne (2012:1-2) adds that there is no blueprint for an effective anti-corruption infrastructure. Chêne is a researcher at TI, and she observes, from experience, that the level of centralisation/decentralisation of ACAs may not be the primary determinant for the effectiveness of these ACAs. There are other factors such as the institutions, independence, specialisation, integrity, capacity and political will, which seem to influence the effectiveness of an ACA.

Majila et al. (2014:228), agree with Chêne (2012:1-2) that there is no clear model which is most effective, but they do highlight what they call features of an effective ACA. These features are the following:

- The ACA has not been run by handpicked supporters of politicians.
- There must be durability with the ACA.
- They cannot have occasional or perennial existence.
- The ACA must have powers to centralised information, including collection, storage, processing and diffusion.
- The ACA has allowed for articulation of initiatives undertaken by other actors.
- They must have a role of research, and membership and participation in international forums and networks, which is significant.
- There must be checks and balances in place.
- The ACA must be accountable to the sovereign authority.

- Their existence must be known and accessible to the public at large.

De Sousa (2009:10-11) made an essential point: foreign actors have played a critical role in the adoption of ACAs. According to De Sousa (2009:11), the OECD was a pioneer in advocating for the establishment of these types of independent and specialised units as an integral part of member states' "ethical infrastructures." At the regional and international levels, further initiatives followed. These were the initiatives mentioned by De Sousa (2009:10-11):

- This concept was created in Europe by the Committee of Ministers of the Council of Europe, which adopted Resolution (97) on the Twenty Guiding Principles for the Fight Against Corruption: Principle Three emphasises the importance of “ensuring that those in charge of the prevention, investigation, prosecution, and adjudication of corruption crimes have the independence and autonomy appropriate to their functions”; and Principle Seven emphasises the importance of “promoting the specialisation of persons or bodies in charge of fighting corruption and providing them with the appropriate means.” Later, on 4 November 1998, Article 20 of the Council of Europe Criminal Law Convention on Corruption emphasised the importance of having specific and independent institutions active in the fight against corruption, while leaving the choice of which sort of entities to be established, to nations. Later, on 4 November 1998, Article 20 of the Council of Europe Criminal Law Convention on Corruption emphasised the importance of having specific and independent institutions active in the fight against corruption, while leaving the choice of which sort of entities to be established, to nations.
- Article III.9 of the Inter-American Convention Against Corruption (IACAC), which was established on 29 March 1996, urges the creation of a specialised oversight body in the United States. In Africa, the SADC enacted Article 4 of the Protocol Against Corruption.
- Article 20.5 of the African Union Convention on Preventing and Combating Corruption, enacted on 11 July 2003 (but not yet in force), and the Southern African Development Community (SADC) on 14 August 2001, both advocate specialised entities for the fight against corruption.

- The United Nations Convention Against Corruption (the "Merida Convention"), which was ratified on 31 October 2003, placed a strong emphasis on corruption prevention, particularly in Articles 6 and 36. While these intergovernmental accords were creating the legal groundwork for the universalisation of ACAs as a model institutional response, other international actors were encouraging states to modernise their domestic instruments, contributing to their consolidation as a norm.
- The European Union, Bretton Woods financial institutions, international aid agencies, and non-governmental organisations such as Transparency International, had expected transitional and developing countries to take a harsher stance against corruption. ACAs seemed to offer that reaction, considering the ‘successful' Asian experience. To ensure compliance, a small industry of training and technical support has sprung up, and they, too, propagated the concept that putting in place an anti-corruption agency would drastically increase the country's ability to combat corruption. The interaction of these multiple global actors subsequently contributed local players' tactics, goals and interests, strengthening the idea of anti-corruption agencies as critical components of national integrity systems.

Habtemichael (2009:113) cited the proverb, “No one understands where the shoe pinches like the person who wears it,” and recommended that anti-corruption activists enlist civilians in the struggle. Citizens are aware of the pain and can pinpoint the source of corruption. As a result, for successful results, anti-corruption efforts must be guided by local requirements and considerations, and “one size does not fit all.” Each circumstance has its own set of characteristics - and, perhaps more crucially, each situation has its own set of challenges: “unique possibilities”. Furthermore, a government's internal control measures are insufficient for transparency and accountability. External control structures, such as public and media participation, must be added to them. Media exposure, especially among higher-ranking officials, is a greater deterrent to corruption than the institutional system for detecting and punishing it, as it is among lower-ranking bureaucrats (Habtemichael, 2009:113).

According to Chêne (2009:4), there are many expected benefits to the creation of a centralised ACA, and while they are widely perceived as having the potential to promote more effective coordination of domestic anti-corruption activities by concentrating powers in a single agency, and to bring specialisation, independence and autonomy to the fight against corruption, they do not.

Asongu (2013:66-67) asserts that the fight against corruption is still a top concern for policy-makers on the African continent. According to the findings of the African Governance and Development Institute (AGDI), Ordinary Least Squares (OLS) estimates correspond (*stricto-sensu*) to only a certain quantile of the conditional distribution, at times. This disparity suggests that some OLS-based approaches should be reassessed, particularly among the best and worst anti-corruption fighters. As a result, the ADGI findings show that in the battle against corruption, blanket corruption control (CC) policies are unlikely to succeed equally in nations with varying wealth levels and political conditions.

De Sousa (2009:8) defined corruption control (CC) as public policy aimed at reducing corruption's opportunity structures, and punishing deviant and unlawful behaviour through the adoption of an integrated set of measures, such as:

- Nature is diverse (preventive, repressive, educational, legislative, institutional, procedural, etc.).
- Having a big picture or a step-by-step approach.
- A wide-ranging impact (on individual ethics, organisational cultures or value system).
- It manages to influence the trends in, and repercussions of, the phenomenon by displaying a complicated, not always balanced, mixture of incentives and sanctions.

De Sousa (2009:8), stated that the success of corruption control (CC) programmes is dependent on the current levels of CC and income bracket, as outlined above. Corruption control programmes have been customised differently in the best and worst corruption-fighting countries, especially in terms of democracy and population growth, in order to be effective. Many African countries already have well-established anti-corruption measures in place, but their implementation and

enforcement remain a question of “political will.” The following are aspects that need to be subscribed to, if the reform and policies proposed are to yield fruit:

- The fight against corruption cannot be a "one-man show” or confined to political leaders alone. Anti-corruption efforts are most effective when they are all-inclusive, systematic, and structured – that is, when all institutions and policies are integrated (investigation, prosecution, research and prevention). As a result of this institutionalisation, a forum of mutually reinforcing “horizontal accountability” emerges, preventing reforms from being viewed as partisan concerns or “witch hunts.”
- Regular updates in press conferences that detail progress toward minimising misbehaviour and promoting accountability and transparency, could help administrations build public trust.
- The independence of the authorities' anti-corruption body is also critical to the effectiveness of reform measures. The effectiveness and success of anti-corruption institutions such as Hong Kong and Singapore, for example, are strongly related to their degree of autonomy. Independent entities may be more effective if they are accountable to parliament rather than to the head of state.

Asongu's study (2013:1-74) is a research article that aims to figure out how current levels of corruption control (CC) affect several factors in the fight against corruption. The ADGI can use this method to see if the link between corruption control (CC) and exogenous variables varies across the dependent variable's distribution. Previous research on the causes of corruption has relied on OLS estimation, which reports parameter estimates as the corruption conditional mean. While mean effects are essential, this work uses quantile regression to expand on those findings.

Each country in the world is unique. Countries have many similarities, and as such, best practices used by a successful country can be duplicated in another; however, in remembering that, in each country, the political, socio-economic and cultural landscape is different, the strategies being employed must be reviewed, discussed, and modified to fit that country. When a blank approach is applied, it could be to suppress the pressure from the international role-players and international donors,

and, as such, may cause more harm than good in the fight against corruption. National Treasury (2012:87) also shares the same sentiments.

5.11 SUMMARY

This chapter reviewed and analysed the best practices, approaches and strategies for South African ACAs to operate under. Although each country is unique through its political, socio-economic and anti-corruption frameworks, it will be beneficial if South Africa can review other countries' best practices, best approaches and best strategies. Upon review, the appropriate practices, strategies and approaches may be implemented.

It would be apt to review the practices, strategies and approaches of international organisations such as the ICC, World Bank, UNODC and Interpol, as these organisations would consider the global environment. Some of the best practices are found in the following:

- ICC rules for combating corruption.
- ICC handbook for fighting corruption.
- TI business principles for countering and collaborating against corruption initiatives.
- World Bank Institute guide for business on collective action.

Some of the best approaches that can be implemented, are the following:

- All required information and intelligence about corruption should be centralised.
- Vertical integration can be used to alleviate coordination issues across several agencies.
- Prevention activities and a role in monitoring the government's overall anti-corruption policy execution.
- Be exposed to a combination of public scrutiny, legal requirements and judicial review.
- Employ agency independence and accountability.

Some of the best strategies to implement within the South African ACAs would be the following:

- Develop a robust anti-corruption system.
- Reinforce judicial governance and the rule of law.
- Strengthen public servant accountability and responsibility.
- Create a public service that is transparent, responsive and responsible.
- Create a Code of Conduct/Ethics that all employees must sign and adhere to.
- Staff selection (in-depth background investigation, including a check for a criminal record, qualifications and ability testing). A comprehensive job description with needed responsibilities and accountability is also part of the hiring process.

South Africa has the Protected Disclosures Act 26 of 2000, which protects whistle-blowers should they require protection. This Act is not very well known to the individuals who wish to report corruption without fear. There is also a unit within the NPA, called the Witness Protection Unit; however, individuals are still afraid of intimidation and threats when they come to report corruption.

CHAPTER 6: REVISION OF SOUTH AFRICAN ANTI-CORRUPTION AGENCIES' MANDATES

6.1 INTRODUCTION

The next chapter will look at how laws are made in South Africa, the current mandates of public sector ACAs, their legislative framework, and potential adjustments to both the mandate and the legal framework. From the previous chapters, there is a clear indication that mandates of South African ACAs overlap. During the discussion, the researcher will provide the empirical data from Section F of the interview schedule addressing questions 26 to 29. These discussions will be interjected with *in vivo* quotes from the participants, in order to underscore the narrative. The empirical data is presented both as a collective and separately as per participant group. This was done as a collective, because their responses were short and similar. The participants' responses were also reflected separately, because their responses were more detailed and different.

6.2 HOW LAWS ARE PROMULGATED IN SOUTH AFRICA

The mandate of an ACA is achieved by laws passed in parliament. Parliament is the law-making institution in South Africa (Parliament.... 2018), so one of the key tasks of parliament is to enact new legislation, change current laws, and revoke or remove (cancel) old laws. The South African Constitution, which governs and refers to all legislation and conduct in South Africa, governs and refers to this job. The Houses of Parliament, the National Assembly (NA) and the National Council of Provinces (NCOP), each play a part in the legislative process. A Bill or draft law can only be introduced in parliament by a Minister, Deputy Minister, Parliamentary Committee, or an individual Member of Parliament (MP). Around 90% of Bills in South Africa are initiated by the National Executive Council.

According to Parliament ... (2018), the process of enacting a law may begin with a discussion document known as a Green Paper, which is written in the Ministry or department responsible for a specific subject (Parliament …, 2018). This discussion paper gives an overview of the general thinking behind a particular policy. It is then made public for discussion, criticism and opinions. As a result, a more thorough

discussion document, a White Paper, is produced, which is a succinct government policy statement.

It is drafted by the appropriate agency or may be approved by the task team and the relevant legislative committees for modifications or other proposals. After this, for further discussion, feedback and final decision, it is sent back to the Ministry. The following are the simplified steps of how laws are made in South Africa (Parliament..., 2018):

- In the National Assembly (NA) or the National Council of Provinces, a Bill is introduced (NCOP).
- It is then referred to the appropriate Committee and made public in the Government Gazette.
- The Bill is next debated in Committee and, if required, revised.
- Before a vote, the Bill is presented to a House sitting for further discussion.
- The Bill is then sent to the other House for approval (sent for agreement or not).
- After that, the Bill is sent to the President for assent (when the President signs a bill to make it an Act of Parliament – the Law of the Land).

The participants were asked who is responsible for the revision of mandates of South African ACAs. The participants responded by saying that the bodies and persons mentioned below are responsible for the revision of the mandates of South African ACAs:

- The parliament of the country and political heads.
- Ministers of departments, parliament and the President and civil society who give their input during public debates.
- The legislature is responsible for the revision of laws in South Africa.
- National Assembly are responsible for legislative changes.
- Parliament, National Legislature and the South African Law Society Commission.
- Policy-makers and parliament.
- Justice Cluster (DOJ, police, ACAs, NPA), parliament and the President.
- Heads of ACAs, DOJ and parliament.

"Parliament, and especially the Judicial and National Executive bodies" (P I:11: 2019).

"The Justice Cluster in consultation with the Department of Constitutional Development" (P L: 05:2018).

The mandates of ACAs are statutory pieces of legislation and Acts of Parliament. The empirical data and the literature address the same bodies in South Africa who were responsible for revising mandates of ACAs. Statutory legislation goes through a detailed process and is finally signed by the President of the country to make it the Law of the Land. The participants know who is responsible for revisions of mandates of ACAs and, this knowledge is important when wanting to address issues of the mandates for review.

The South African Constitution does not provide for the establishment of anti-corruption laws or organisations, either officially or implicitly. The Constitution, on the other hand, states that South Africa will be bound by foreign accords if they are ratified by resolutions passed by both the National Assembly and the NCOP. As a result, South Africa's need to implement effective anti-corruption structures and regulations at national level stems directly from the country's acceptance of international anti-corruption treaties, rather than from the Constitution. The United Nations Convention Against Corruption, which South Africa ratified on 22 November 2004, is one of the international accords that provides for anti-corruption bodies. South Africa is a signatory to the SADC Anti-Corruption Protocol, which was approved in 2003.

While Parliament and the country's executive pass the laws mandating the ACAs, De Sousa (2009:9) suggests the broader public should feel confident about corruption. He says that new ideas and ways of acting are coming into play with foreign NGOs like TI.

Individuals cannot be arrested by TI or its National Chapters, but they can be made aware of the situation. They will not pass legislation, but they can put pressure on decision-makers to enact and implement anti-corruption policies. The growing role of these individuals in civil society has demonstrated that fighting corruption is no longer primarily a government function. Their manipulation does not always result

in positive externalities. Increased popular mobilisation breeds scepticism and disillusionment in the absence of a comparable, sufficient response from the justice system.

The participants were asked how those responsible for the revision of mandates of ACAs in South Africa, would go about making revisions? Their responses were as follows:

- Managers/Commanders
    - Where the law has potential interference in the institution, a Minister of Cabinet should be appointed to address such interference.
    - There should be interaction with the Public Service Anti-Corruption Agency to review and consolidate legislative framework.
    - Suggested revisions should be submitted to parliament.
    - The revisions need to be tabled in the National Assembly, where all parties can comment.
- Lawyers
    - Make a revision that loses the inadequacies of past investigations and re-align the legislation.
    - Amend the mandates of ACAs to investigate without fear or favour.
    - Through the mechanism of consultation with the different stakeholders.
    - Identify strengths and weaknesses of ACAs and create one ACA with all the strengths with a new Act.
    - There should be a call for proposals for amendments to legislation, go through the process of amendments and enact new legislation.
- Investigators
    - All the mandates of ACAs should be reviewed for overlapping, then go through the process of amendments.
    - There should be a revision of various legislation.
    - Compare the ACAs to the international ACA as well as the public and private sectors.
    - Review agency relevance and mandate to streamline, to avoid duplications.
    - There should be public sessions to input from citizens.

- There should be conferences and meetings where statistics, legislations and frameworks are presented. Once consensus is reached changes can be made.
- A survey should be conducted on the agencies and the final revision should be tested against best practices.

> *"The agency would make a submission to the DOJ. The submission is sent to the Parliament where the National Assembly will vote" (P M: 05:2018).*

> *"Look at the current situation, less impact is made due to political interference" (P I:11:2019).*

The empirical data indicates that the group of managers/commanders and lawyers understand how the revisions of mandates should be done. However, the investigators are not clear of this concept, and did highlight the process of how revision of mandates should take place. This lack of knowledge on the part of the investigators is a disadvantage in the holistic anti-corruption framework.

6.3 MANDATES OF PUBLIC SECTOR ACAS

According to OSISA (2017:229), the country already had anti-corruption institutions in existence before ratifying international anti-corruption accords (in 2003 and 2004, respectively). These institutions, on the other hand, were not specifically mandated to combat corruption; rather, they were generic entities tasked with fighting crime and promoting transparency. As a result, there are two ways to effectively combat corruption in South Africa: using generic institutions whose effective role also exposes and combats corruption-related activities, and/or using specialised anti-corruption institutions established in accordance with international anti-corruption agreements.

De Sousa (2009:7) pointed out that ACAs face different limitations to their mandate, regardless of their set-up and powers, which he says explains the meagre results of some of the ACAs. This author states some of the reasons as follows:

- They have challenges in uncovering corruption through the complaints they receive (technical, legislative or cultural).

- Other governmental bodies and/or agencies have difficulty providing information concerning corruption and its opportunity structure to the ACAs.
- They are having difficulty forming positive working relationships with the country's political sectors.
- The state ACAs face a problem in that the disparity between expected and attained achievements will not be overlooked (De Sousa, 2009:7).

In view of De Sousa's (2009:7) comment, OSISA (2017:229-230) suggests to SA that it is important to consider whether a specialised, anti-corruption programme with targeted institutions and laws will strengthen the country's battle against corruption. The objective is for SA to investigate a decentralised strategy to anti-corruption, in which anti-corruption authorities are concerned not only with corruption, but also with illegality, dishonesty, fraud and other forms of misconduct. South Africa uses both centralised and decentralised measures to address corruption. The functioning of institutions such as the courts, the Office of the Public Protector, the DPCI and the SIU all demonstrate a decentralised approach.

The most intended outcome of an ACA is an overall increase in the presentation of anti-corruption roles, Meagher (2007:80) reported. The key underlying belief, however, is that the ACA itself will prevent corruption, or political interference from being corrupted. It is important to distinguish between –

- The level of corruption in each country or district.
- How well certain core anti-corruption functions perform?

Although the two are theoretically related, the latter is primarily an output measure. This can be linked to measures of proximate or intermediate impacts with just a few sensible assumptions. Such accomplishments will be contingent on an ACA's ability to provide its outputs (Meagher, 2007:80). Pillay (2004:601-602) confirmed that the SA government decided in 1999 to hold monthly meetings of a co-ordinating committee of representatives from anti-corruption bodies, in accordance with the DPSA's anti-corruption strategy, which deliberates the establishment of an anti-corruption agency as its primary strategic consideration, followed by a review and consolidation of the legislative framework, and a review and consolidation of the

regulatory framework. However, there is value in performing these procedures in a different order.

The improvement in the effectiveness of existing entities whose mandate includes corruption management, has been given top priority. This is more important than building a new, independent, anti-corruption organisation currently. The present revision of anti-corruption law is focused on establishing criminal offences for corruption and ensuring that South Africa complies with regional and international standards in this regard. Currently, there hasn't been much effort put into enacting anti-corruption legislation. The anti-corruption plan for the public sector recognises that optimising the current arrangements is part of the process of establishing an independent anti-corruption agency. A practical mandate overview protocol, and a partnership agreement, are very necessary and realistic measures towards greater productivity.

De Sousa (2009:7), argues that the ACAs are long-term public organisations with a special aim to combat corruption and diminish the opportunity structures that enable it to arise in society through preventative and/or exploitative actions. As previously stated, South Africa takes a multi-pronged strategy to combating corruption, and multi-disciplinary teams have been developed as a result. Among those multi-disciplinary task teams is the ACTT. The ACTT, including the partnership with SARS, consists of the NPA, AFU, DPCI and SIU. The ACTT also has a mandate under which it works. There have been frustrations within the ACTT membership, according to the National Treasury (2012:3-4), that progress on current cases is not visible or swift enough:

- Visibility on progress is not clear to all role-players.
- The role of the principals in jointly understanding, reviewing and unblocking challenges is not clear, as the operational decisions are taken in the operational weekly meetings.
- Consensus needs to be developed as to what needs to be reported to the principals and further into the departments, coordinating structure, and, ultimately, the Presidency.

- There are frustrations that there is not a functioning process to gather new cases for the ACTT, despite there being many cases within the SAPS, SARS, SIU and MAWG and elsewhere, that are likely to qualify as ACTT cases.
- Despite the value of the strategic thinking that has taken place within the ACTT, not enough practical progress can be shown for an initiative that is almost a year old.
- There is pressure on the ACTT, both to make substantial progress on delivery and to generate a report on that progress, which also needs to respond to the key activities of the ACTT.

South Africa has several ACAs. The Institute of Accountability Southern Africa (IASA) (2012) states that South Africa wanted to establish another ACA within the PP Office. They summarise the ACA in the following way:

- The ACA would need another ACA called the Office of the Director of National Integrity (DNI).
- There was to be a Directorate of National Integrity Bill, which would have created the DNI.
- The vision was to eradicate corruption and promote a system of national integrity in order to achieve a corruption-free South Africa.
- The purpose of the mission was to prevent and combat corruption while also promoting national integrity.
- The DNI's mandate is as follows: To ensure the DNI's efficiency and effectiveness, it needed a clear and defined mandate. To avoid unnecessary interference, this mandate was enacted into law rather than defined by policy guidelines. Section 8.1 of the Bill was supposed to describe the mandate.
- As part of the structure of the DNI, there are other sections, including –
    - Administration.
    - Investigations.
    - Education and Public Awareness.
    - Coordination, Monitoring and Evaluation.
    - Advisory Board.
- The head of the DNI was to be a director at the same level as the PP who was to be appointed by the President.

The DNI was not established. The establishment of such an agency would have caused more confusion and non-collaboration between the ACAs in the country. Other issues affect the mandate of an ACA, including the lack of communication between organisations and ACAs. Mathekga (2014:22) provides an example of this in the 2011-2013 SA Progress Report, which was not communicated to the appropriate bodies when the DPSA approved the Guidance on Penalties for Corruption-Related Cases. It has not been revealed to the appropriate bodies. Both the PP KwaZulu-Natal Office and stakeholders in Cape Town claimed that they were unaware of the DPSA's approval of the penalty for corruption-related crimes because no consultation meetings were held.

The definition of intelligence-led policing is explored in Budhram (2015:50-53). He notes that policing led by intelligence is a strategic outline for performing the police sector. It is designed on the measurement of risk and risk control. Intelligence-led policing is an information-organized mechanism that helps law enforcement officers to better understand their crime concerns, enabling them to make educated choices about how best to handle problems. Under section 252(a) of the Criminal Procedure Act 51 of 1977, intelligence-led policing does not mean clandestine and undercover operations carried out by police officers.

Intelligence-led policing, according to Budhram (2015:52), is a business process model that determines where resources are required, promotes information organization, organizes an activity, and allows that action to learn lessons. The SAPS model is made up of eleven phases that focus on the gathering, reviewing, coordinating, and disseminating of crime data for tactical, organizational, and strategic purposes. Budhram (2015:53) concludes by suggesting that law enforcement agencies need to operate harder, and by embracing intelligence-led policing, this can be accomplished. It will be a huge advantage to fight corruption. Intelligence will require intelligence to be gathered and analysed by a legally constituted centre such as the FIC and shared with the appropriate ACA in SA.

De Sousa (2009:18-19) suggests various constraints to solutions to change the situation in SA. These are:

- Organisations can empower themselves to carry out their mandate without waiting for legislative modifications of their competencies or the establishment of more favourable legal frameworks. In a more flexible and informal manner, incremental and less visible changes in the performance of organizations might occur. The need of such interstitial transformation in dealing with institutional failure is significant. As a response to real or perceived institutional failure, interstitial change begins with pragmatic creation of alternative practices within informal networks of participants in overlapping organizational fields.
- ACAs can fight institutionalisation by being creative, maximising their talents and resources to the fullest, and discovering alternate ways to carry out their mandate. However, this pragmatic response to institutional disaster necessitates a combination of factors that are not always in place, such as a successful recruitment strategy and professionalization (which increase the organisation ‘s critical mass and lead to significant productivity gains and innovation), as well as a flexible statutory framework that allows the organisation's leadership to see things differently.

Meagher (2007:80) notes that when contrasting the tasks currently assigned to its mandate by anti-corruption agencies with the broader collection of public goods and resources needed to address corruption, ACAs can only assume a restricted set of tasks, and that other agencies still frequently perform the same tasks. These are, the value added by an ACA may certainly not simply be its collection of tasks, powers and activities. Rather, the policy reasoning appears to be that, unlike current retention agencies, an ACA should do the following:

- All required information, data, and intelligence about corruption should be centralised.
- Vertical integration can be used to alleviate coordination issues across several agencies.

6.4 REVISION OF MANDATES OF SOUTH AFRICAN ACAS

The study reviewed six ACAs in South Africa, as per Chapter One. The DPCI, IPID, AFU, PP, SAPS, and the SIU are these. The analysis has shown the similarities in the mandates of these ACAs. The emphasis of this chapter was on updating the

mandates of these ACAs and exploring potential changes, considering the previous chapters.

The participants were asked if the mandates of the South African ACAs should be revised. Most of the participants agree that there should be some type of review or revision of the mandates of the South African ACAs. They stipulate the following reasons for the review or revision:

- Managers/commanders
    - It should be adjusted so that the ACAs must be able to share information and work with ACAs in a multidisciplinary environment in combating corruption.
    - The revision of mandates must seek to clarify sections that are ambiguous for all ACAs.
    - To deal with the overlap that the ACAs have in mandates when compared to other ACAs.
    - Most mandates are sound and sufficient; there should only be revision where there are overlaps or where clarity is sought.
    - There are many ACAs in South Africa, all their mandates should be revised to form one ACA, the powers and functions associated with investigation and prosecution must be bestowed upon them.
- Lawyers
    - The mandates of all ACAs should be revised to establish one ACA to investigate, educate, prevent, prosecute and recover funds.
    - There should be a revision of all mandates to clear overlaps; however, politicians should not be involved.
    - There should be a streamlining of the mandates with limited political involvement.
    - The revision should be to create one ACA, and that ACA should have all the powers to carry out functions like the FBI in the United States of America.
    - The revision must have sought to ensure that the ACAs are independent, and more authority to conduct its function without fear or favour.
- Investigators
    - The revision of the mandates must cover the overlaps that currently exist, so that they can work in different environments.

- It must have revised so that all citizens are treated equally especially when corruption is committed.
- The revision of mandates should be guided by research studies conducted and reports published. Then the revisions must be proposed to the justice cluster.
- The revisions should be made such that one ACA is created by merging the current ACAs and all resources, where all corruption is reported to that one ACA.
- The institutions listed under Chapter Nine of the Constitution of Republic of South Africa must have their mandates broadened and their reporting line must be reviewed.

> *"The revision must ensure that all ACAs cooperate and share information with one another. There should be no 'red tape' to accessing information, and all ACAs must have the same goals" (P I: 07:2018).*

The data from the participants clearly indicates that they have thoughts and ideas of the revisions that should take place within the mandates of the ACAs. The revisions cover many aspects, such as education, citizens, formation of a single agency, and more. The participants, being personnel from South African ACAs, are aware of shortcoming within ACAs, and see their revisions as remedies.

6.4.1 Mandate of the DPCI

According to the Department of Justice ... (1995b:27-28), the DPCI gets its mandate from section 17K (4) of SAPS Act 68 of 1995:

- *"WHEREAS the Directorate had been established to prevent, combat and investigate national priority offences, serious organised crime, serious commercial crime and serious corruption.*
- *WHEREAS section 17D (1) of the SAPS Act, 1995, as amended, provides that the functions of the Directorate are to prevent, combat and investigate- (a) national priority offences, which in the opinion of the National Head of the Directorate need to be addressed by the Directorate, subject to any policy guidelines issued by the Minister in concurrence with Parliament. (b) selected offences not limited to offences referred to in Chapter 2 and section 34 of the Prevention and*

Combating of Corrupt Activities Act, 2004 (Act No. 2 of 2004); and (c) Any other offence or category of offences referred to it from time to time by the National Commissioner, subject to any policy guidelines issued by the Minister and approved by Parliament.

- *WHEREAS section 17K (4)(a)(i) and (ii) provides that the Minister, with concurrence of Parliament, shall determine policy guidelines for the selection of national priority offences by the National Head of the Directorate or policy guidelines for the referral to the Directorate by the National Commissioner of any offence or category of offences for investigation by the Directorate.*
- *The investigation of the following national priority offences, irrespective of the extent, impact, nature or perpetrators thereof, is the exclusive responsibility of the Directorate:*
  - *High treason.*
  - *Sedition.*
  - *Any offence referred to in paragraph (a) of the definition of "specified offence" in the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004 (Act No. 33 of 2004);*
  - *Any offence referred to in Schedule 1 to the Implementation of the Rome Statute of the International Criminal Court Act, 2002 (Act No. 27 of 2002);*
  - *Any offence referred to in the Non-Proliferation of Weapons of Mass Destruction Act, 1993 (Act No. 87 of 1993); or*
  - *Any offence referred to in the Regulation of Foreign Military Assistance Act, 1998 (Act No. 15 of 1998), or the Prohibition of Mercenary Activities and the Regulation of Certain Activities in Country of Armed Conflict Act, 2006 (Act No. 27 of 2006)".*

Table 6.1: Possible revisions to the mandate of the DPCI

No	Possible revisions to Mandate	Benefit to DPCI	Benefit to Society
1	"Serious corruption must be further defined, and a value amount must be set to the term serious corruption".	"The DPCI will know which corruption matters that they have to investigate".	"The public has known where to report the serious corruption. They have not had frustration in running around to

No	Possible revisions to Mandate	Benefit to DPCI	Benefit to Society
			report serious corruption".
2	"Education and awareness have been added to their mandate".	"This has strengthened the research division of the DPCI. The education and awareness programmes have given the members additional know-ledge".	"Society has gained knowledge on the work of the DPCI, and also gained knowledge on different crimes".
3	"Appointment of the Head of the DPCI must be made by the Minister and the appointment must be approved by the Portfolio Committee on Justice".	"The members of the DPCI have confidence in their Head is carrying out the mandate of the unit".	"The public will have faith that Head of the DPCI will not choose investigations but rather carry out its mandate without fear or favour".
4	"Add the protection of whistle-blowers to the mandate".	"The DPCI will be able to grow their network of informers thereby making them successful in their investi-gations".	"This has given confidence to the public that they have be protected has they provide information on priority crimes".

(Source: Adapted from the SAPS Act 68 of 1995. (Compiled by researcher))

6.4.2 Mandate of the IPID

According to the Department of Justice ... (2011:5), the objects of this Investigative Police Directorate Act 1 of 2011 are the following:

> *"2 (a) to give effect to the provision of section 206(6) of the Constitution establishing and assigning functions to the Directorate on national and provincial level;*
> *(b) to ensure independent oversight of the South African Police Service and 15 Municipal Police Services;*
> *(c) to align provincial strategic objectives with that of the national office to enhance the functioning of the Directorate;*
> *(d) to provide for independent and impartial investigation of identified criminal offences allegedly committed by members of the South African Police Service and Municipal Police Services;*
> *(e) to make disciplinary recommendations in respect of members of the South African Police Service and Municipal Police Services resulting from investigations conducted by the Directorate;*

(f) to provide for close co-operation between the Directorate and the Secretariat; and

(g) to enhance accountability and transparency by the South African Police Service and Municipal Police Services in accordance with the principles of the Constitution.

4 (I) The Directorate functions independently from the South African Police Service.

(2) Each organ of state must assist the Directorate to maintain its impartiality and to perform its functions effectively".

Table 6.2: Possible revisions to the mandate of the IPID

No	Possible revisions to Mandate	Benefit to IPID	Benefit to Society
1	"IPID has to have an Integrity Division with the agency. The division has to sit at the National Office".	"This will help improve the image of IPID".	"Society will feel confident that the investigation carried on by the police is done without fear or favour".
2	"Prevention has been added to the mandate of IPID".	"As the saying goes, "prevention is better than cure" The IPID must understand why the police commit offences, why persons die in police custody, and what motivates negative attitudes by police members. It has also reduced the workload of IPID".	"This will help reduce the number of offences that are perpetrated".
3	"Education and awareness have been added to the mandate".	"This has also increased the knowledge of IPID members".	"This has made the public aware of types of investigations that are conducted by IPID. They have known to whom to report criminal acts by the police too".
4	"Allow the member of IPID to be armed".	"This has made the members feel safe when conducting investigations against the police who are armed".	"This has made the public and family members of the IPID feel safe, knowing they can protect themselves".

(Source: Adapted from the IPID Act 1 of 2011. (Compiled by researcher))

6.4.3 Mandate of the AFU

According to the Department of Justice (1998:13 & 31), the AFU was set up to give effect to chapters 5 and 6 of the Prevention of Organised Crime (POCA) Act 121 of 1998, allowing for the criminal or civil confiscation (and eventual confiscation to the State) of properties belonging to criminals. A breakdown of the sub-sections of chapters 5 and 6 is given below:

- Chapter 5 of the POCA, 1998: Proceeds of unlawful activities:
  - Sections 12-17: Application of Chapter.
  - Sections 18-24: Confiscation orders.
  - Sections 24A-29A: Restraint orders.
  - Sections 30-36: Realisation of property.
- Chapter 6 of the POCA, 1998: Civil Recovery of Property:
  - Section 37: Introduction.
  - Sections 38-47: Preservation of property.
  - Sections 48-57: Forfeiture of property.
  - Sections 58-62: General provisions relating to preservation and forfeiture of property".

From the contents of chapters 5 and 6, it is noted that it is vast and exhaustive. As such, the AFU has many aspects to cover in terms of mandate.

Table 6.3: Possible revisions to the mandate of the AFU

No	Possible revisions to Mandate	Benefit to AFU	Benefit to Society
1	"The AFU has be re-created under new legislation".	"This has given the AFU independence from the NPA".	"Society sees the AFU and NPA as one institution and being influenced by the decision of the NPA in perusing investigations".
2	"The mandate has created more powers to search and seizure and subpoena documents".	"This has prevented delays in the investigations, as currently they have to go through the SAPS or DPCI to subpoena records".	"The public has seen that the AFU has a faster turnaround time in investigating proceeds of crime".
3	"Add prevention to the mandate".	"This has lessened the workload of the AFU and reduced the number of illicit transactions in SA".	"Prevention methods will help the public implement the methods in their business and in government".
4	"Cover international proceeds of crime, money laundering and terror financing in more detail in the mandate".	"This will increase the investigation reach of the AFU. As such, they have been able to swiftly investigate and trace international illicit transactions".	"The public has had confidence in the AFU to not be restricted by international and cross-border restrictions".

(Source: Adapted from the NPA Act 32 of 1998. (Compiled by researcher))

6.4.4 Mandate of the PP

The PP was created under Chapter 9, section 193 of the Constitution of the Republic of South Africa, 1996, and the Public Protector Act 23 of 1994, according to the Department of Justice (1994a:103). Section 4 of the Public Protector Act, with respect to Chapter 6, states:

> *"(4) The Public Protector shall be competent –*
> *(a) to investigate on his/her own initiative or on receipt of a complaint any alleged-*
> *(i) maladministration in connection with the affairs of government at any level;*
> *(ii) abused or unjustifiable exercise of power or unfair, capricious, discourteous or other improper conduct or undue delay by a person performing a public function;*
> *(iii) improper or dishonest act, or omission or offence referred to in Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the offences) of*

Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004 with respect to public money;

(iv) improper or unlawful enrichment, or receipt of any improper advantage, or promise of such enrichment or advantage, by a person as a result of an act or omission in the public administration or in connection with the affairs of government at any level or of a person performing a public function; or

(v) act or omission by a person in the employ of the government at any level, or a person performing a public function, which results in unlawful or improper prejudice to any other person".

Table 6.4: Possible revisions to the mandate of the PP

No	Possible revisions to Mandate	Benefit to the PP	Benefit to Society
1	"Create awareness programmes and a Division within the PP that deals with dissemination of information to the public and government".	"This adds to the knowledge of the members and will help reduce the workload to an extent".	"The public would gain knowledge of the mandate of the PP and what matters to report to them".
2	"Add a referral aspect to the mandate. Referral to the relevant law enforcement or prosecuting authority".	"This gives the PP a sense of greater achievement in knowing that besides recommendations made, criminal and civil liability are referred".	"Society has seen the PP as a much more effective ACA".
3	"Appointment of the PP should have approval by the leading opposition party of the country".	"This has given the PP greater stability, and they have received additional support from political parties".	"The public has had greater confidence that the PP has investigated without fear or favour".

(Source: Adapted from the PP Act 23 of 1994 and the Constitution of the Republic of South Africa, 1996. (Compiled by the researcher))

6.4.5 Mandate of the SAPS

The SAPS was created in compliance with Section 205 of the Constitution, according to the Department of Justice (1995a:119), and SAPS was the merger of the Ciskei Police, Venda Police, Transkei Police and Railway Police to become the new SAPS under the South African Police Service Act 68 of 1995. According to the Preamble of the SAPS Act, 1995:

"WHEREAS there is a need to provide a police service throughout the national territory to-

(a) ensure the safety and security of all the persons and property in the national territory;

(b) uphold and safeguard the fundamental rights of every person as guaranteed by Chapter 3 of the Constitution;

(c) ensure co-operation between the Service and the communities it serves in the combating of crime;

(d) reflect respect for victims of crime and understanding of their needs; and

(e) ensure effective civilian supervision over the Service".

Table 6.5: Possible revisions to the mandate of the SAPS

No	Possible revisions to Mandate	Benefit to SAPS	Benefit to Society
1	"The President, a Judge, Leading Opposition Party and Civil Society has made appointment of the Commissioner of SAPS. Similar to how it is done in India".	"The appointment of the Commissioner has been unquestionable".	"Society will feel safe and confident that Commissioner was thoroughly vetted and has acted without fear or favour".
2	"Create a coordinating Division with the SAPS when investigating matters also investigated by another ACA".	"Coordination will help the SAPS investigate matters swiftly through sharing of information".	"Society has been able to see coordinated efforts between ACAs which make crime fighting a stronger effort".
3	"Whistle-blowers' protection has been added to the mandate".	"This causes the flow of information and intelli-gence to the SAPS easy".	"The public will feel confident to supply information to the SAPS".

(Source: Adapted from the Constitution of the Republic of South Africa, 1996, and SAPS Act 68 of 1995. (Compiled by researcher))

6.4.6 Mandate of the SIU

The SIU is mandated in compliance with the Special Investigative Units and Special Tribunals Act 74 of 1996, according to the Department of Justice (1996:2-3). In terms of Section 2:

"(2) The President may exercise the powers under sub-section (1) on the grounds of any alleged-

(a) serious maladministration in connection with the affairs of any State institution;

(b) improper or unlawful conduct by employees of any State institution;
(c) unlawful appropriation or expenditure of public money or property;
(d) unlawful, irregular or unapproved acquisitive act, transaction, measure or practice having a bearing upon State property;
(e) intentional or negligent loss of public money or damage to public property;
(f) offence referred to in Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, and which offences was [sic] committed in connection with the affairs of any State institution; or
(g) unlawful or improper conduct by any person which has caused or may cause serious harm to the interests of the public or any category thereof".

Table 6.6: Possible revisions of the mandate of the SIU

No	Possible revisions to Mandate	Benefit to the SIU	Benefit to Society
1	"Prevention has been added to the mandate".	"This will decrease the workload of the SIU and its members".	"Society has learned mechanisms on how to prevent fraud, corruption and maladministration".
2	"The SIU should report to Parliament only and not the President. Currently the SIU reports to both".	"This ensures that recommendations and referrals are carried out by the relevant authorities".	"This will improve the image of the SIU and make their work beneficial to the public in reducing and investigating corruption".
3	"Awareness and training programmes have to be added to the mandate".	"This makes the government department better equipped both to report and prevent corruption and fraud".	"The public will know where to report corruption to".
4	"Add protection to whistle-blowers to the mandate and the enforcement of the Whistle-blower Protection Act".	"Information will flow more freely than it currently does".	"The public and officials from government will feel safe to report corruption offences".

(Source: Adapted from Department of Justice ..., 1996; SIU Act 74 of 1996. (Compiled by researcher))

The participants were asked what other interventions can be imposed on South African ACAs which will cause them to be successful. These are the collective responses of the participants:

- Management control of investigations, force collaboration between ACAs, ensure training, sharing of information and international benchmarking.
- The most successful ACA should be appointed to coordinate all corruption cases. Ethical and reporting obligation should be placed on ACAs.
- There should be inclusion of personal development and international exposure for personnel.
- The ACAs should be given additional powers to carry out duties fully.
- The ACAs need to be able to function without political interferences.
- An increase in funding, proper training for staff, and the Heads of the ACAs should be persons who are not compromised, like retired judges.
- More independence, minimise political interferences, develop a structured case management system and monitor mechanisms should be adopted.
- There should full disclosure between ACAs and develop a strict acknowledgement management system and database.
- Clear mandates, proper training and resources, and add additional powers such as powers of arrest.
- Incorporate a culture of zero tolerance within the mandate and encourage international collaboration.

> *"There should cohesive policies, unambiguous rules and regulations, revision of information management, increase sharing of information, ensuring independency and increase coordination between ACAs" (P M:01:2018).*

The empirical evidence represents several other methods that can be placed on the South African ACAs to make them effective in investigating corruption. The literature states that changes to mandates can be made by the Senate, the National Assembly and the Presidency, in consultation through a comprehensive procedure. These are, any suggested amendments or revisions to the mandates of South African ACAs need to follow a process which starts with an initiative within the ACA or representative sponsor.

6.5 SUMMARY

In this chapter, the researcher has addressed how laws are enforced, and possible revision of the mandates of six ACAs in South Africa. Laws are passed by a phase that is intense and strategic. It became apparent from the studied literature that the South African ACAs face different constraints, and their results are meagre because of these constraints. The reasons given for the meagre results are the following:

- They have challenges in uncovering corruption through the complaints they receive (technical, legislative or cultural).
- Other governmental bodies and/or agencies have difficulty providing information to the ACAs concerning corruption and its opportunity structure.
- They are having difficulty forming positive working relationships with the country's political sectors.
- The state ACAs have a problem, which is the disparity between expected and attainable achievements, which they have not overlooked.

After a revision of the mandates of the six ACAs in South Africa, it can be concluded that certain amendments to the mandates should take place. Certain of the amendments could be achieved with little effort and can be done through a strategy change of the ACAs. There are certain amendments or revisions that will require greater political will and high-level discussions. The revisions will most definitely have a positive effect on the outcomes of the ACAs. This concludes Chapter 6. In the next chapter, the researcher will present and discuss the findings and recommendations.

CHAPTER 7: FINDINGS AND RECOMMENDATIONS

7.1 INTRODUCTION

‘Findings’ are defined by the Association for Qualitative Research (AQR) (2018:1) as the main outputs of a research project: what the project suggested, disclosed or indicated. This usually refers to the entire set of results, rather than the conclusions or suggestions derived from them.

According to Leedy and Ormrod (2014:329-330), any research report should end by bringing closure to the interpretation of the data presented. In this section of a thesis or dissertation, all those loose threads should be brought together. It is the place for looking backward and reflecting on what has been accomplished in each phase of the research. Here, the researcher should clearly summarise the findings and conclusions pertaining to the problem and sub-problem.

Leedy and Ormrod (2014:330) break down the conclusion of a research report into the following keys aspects:

- Stating whether the research question has been supported.
- Identifying flaws and limits in the study's design and implementation.
- Identifying the results' potential practical consequences.
- Making recommendations based on the findings of the research.

According to the AQR (2018:2), recommendations are the researcher's judgments of the relevance of a research project's findings. Recommendations will be based on the research, as well as any other relevant information the researcher has access to, such as their own personal experiences.

7.2 RESEARCH AIM

The aim of this research was to determine the impact of the overlapping of mandates of public sector anti-corruption agencies on the anti-corruption framework in South Africa. The sub-aims of this research were the following:

- To compare the mandates of the SAACAs with international public sector anti-corruption agencies.

- To investigate whether the revision of the mandates of SAACAs, with the best practices, could make investigating corruption more successful.

7.3 RESEARCH OBJECTIVES

The research objectives were the following:

- To explore the impact of overlapping mandates of SAACAs on the anti-corruption framework in South Africa.
- To compare the SAACAs to international anti-corruption agencies.
- To explore whether the revision of SAACAs could improve their investigation success rate.

7.4 RESEARCH QUESTIONS

During this research, the researcher asked three specific research questions, as follows:

- What is the impact of the overlapping of mandates of public sector anti-corruption agencies on the anti-corruption framework in South Africa?
- How do South African public sector anti-corruption agencies compare to the international public sector anti-corruption agencies in terms of similarities, differences, conflicts that exist between them, and success rates?
- How could the mandates of the South African public sector anti-corruption agencies be revised, with the use of best practices as revision, to successfully investigate corruption in South Africa?

The research aims and objectives have been met in chapters 3, 4, 5 and 6 *supra.* This was achieved through questions 13 to 29 of the interview schedules which formed the empirical data. The results from the data analysis were sufficient to make clear findings and recommendations. Likewise, the research questions were answered in the same chapters.

7.5 FINDINGS

The researcher has discussed the different aspects, as follows:

- The problems faced through the overlaps of mandates of public sector ACAs.
- The phenomenon of corruption in South Africa.

- The impact of the overlaps uncovered in the mandates of ACAs.
- A comparison of the South African ACAs to the international ACAs.
- Best practices, best approaches and best strategies for South African ACAs to operate under.
- Possible revisions of the South African ACAs' mandates for increased success.

From the discussions in the chapters, the evaluation and criticism of literature, and empirical data obtained from the participants, the researcher can now present the following key findings:

7.6 CHAPTER 1

In the chapter orientation, the researcher discussed corruption in the public sector in South Africa and provided data pertaining to Research Question 2 – specifically, that part of the research question which addresses the success rates of the ACAs. Pertaining to Research Question 2, the following findings were made:

- There is a great deal of literature focused on the measurement of corruption, but corruption measurement results are based on perceptions instead of verifiable data. This is difficult and has led to reliance on perception-based indicators such as the TI. South Africa does not have statistics on the corruption cases that form part of the SAPS Annual Crime Statistics reporting. Instead, corruption is listed in a category of Economic Crimes.
- Over the last few years, there has been a considerable surge in corruption and service delivery complaints in the public sector. According to TI, South Africa's perceived corruption levels are rising.
- To combat corruption, the country employs a multi-agency approach. Many agencies and regulations have inconsistent execution and overlapping responsibilities, which has a negative impact on the ability of these programmes to operate, and the enforcement of the anti-corruption legislative framework. These overlaps have an adverse effect on the enforcement agencies and constitutionally formed entities, lowering the rate of corruption investigations.

7.7 CHAPTER 2

The researcher covered corruption in South Africa, corruption during the apartheid era, corruption causes, and the South African anti-corruption framework, in this chapter. The questions from Section B in the interview schedule are addressed in this chapter. The chapter does not speak to any specific research question, but rather, provides a historical understanding of corruption in South Africa. The following findings were concluded:

- Corruption in South Africa is deep rooted, and stems from decades ago, going back to the apartheid era, when the country used to conduct covert distribution of government monies – in other words, bribery to buy influence at home and abroad. Corruption is affecting most departments of government.
- The participants have the following understanding of corruption:
    - **Managers**: They have a common understanding that corruption is the promise or offering or giving of any undue advantage or benefit to improperly influence an action or decision of the recipient, beneficiary or government official, when performing such function.
    - **Lawyers**: They understand corruption as an act between two parties, where one party offers something to another party, which is not normally due, to induce that party to act dishonestly or illegally. Both parties are guilty of corruption.
    - **Investigators**: They have the perception that corruption is the abuse of public power for private gain, in which the person exerts undue influence.
- When the participants were asked, “How far does corruption go back in South Africa?”, all three categories of participants – managers/commanders, lawyers and investigators, gave a wide array of responses, as follows:
    - Since the dawn of democracy within South Africa.
    - As far back as the years 1950 and 1652.
    - Since the inception and establishment of the public sector in South Africa.
    - Corruption has always been present in South Africa; however, it was not as prominent as it is nowadays.
    - As far back as the first settlers’ arrival in South Africa.

While the participants gave broad, non-specific feedback, it was interesting to note that none discussed the bribery that took place during the apartheid era, or, specifically, covert operations that took place, so that the interests of South Africa were secured at home or abroad. It may be that they were not familiar with incidents, but with the amount of media coverage from the Truth and Reconciliation Commission (TRC), the researcher finds this possibility unlikely.

- A few participants do not clearly understand the concept of 'anti-corruption framework'. They discuss aspects such a strategic document or a set of rules to fight corruption. The participants who understand the concept of an anti-corruption framework discuss it as legislation, regulations, policies and guides developed to assist anti-corruption agencies in carrying out their mandate.
- The participants agree and know the causes of corruption in South Africa. They attribute the causes mainly to greed and lack of accountability. One manager further elaborates on the aspect of greed, and states that certain senior positions have a term period of five or ten years, and the officials who occupy these posts feel a need to secure themselves financially before their term ends, and they believe that the chances of getting caught or convicted are slim. There was only one participant who discussed the fraud triangle, which can also be attributed to be causes of corruption. The fraud triangle is made up of three aspects:
    - Opportunity (weak systems and controls).
    - Need (greed and financial hardship).
    - Rationale (everyone does it so why not the State, and the State owes me).
- The DSO had many successes between September 1999 and February 2004. They completed 653 cases, comprising 273 investigations and 380 prosecutions, of which 349 prosecutions resulted in convictions, giving them a 93.1% conviction rate.
- The notion that politics plays a key role in the battle against corruption is perhaps the most essential ‘takeaway’ from this chapter. ACAs will not function to their full potential without the requisite political support to provide the resources, authority, independence and accountability procedures essential to carry out their mandates.

7.8 CHAPTER 3

In Chapter 3 of this thesis, the mandates of ACAs and the impact of overlapping mandates of public sector ACAs on the anti-corruption framework in South Africa, were debated. The questions from Section C in the interview schedule are addressed in this chapter. In Chapter 3 the following findings were made:

- The overlapping of mandates of South African ACAs holds many adverse consequences for the anti-corruption framework, as follows:
  - Duplication of investigations.
  - Poor public perception.
  - Loss of evidence.
  - Waste of resources.
  - Delay in fully investigating a matter.
  - Lack of evidence, as other ACAs may have the necessary evidence and not share it.
- The responses from the participants in relation to the term ‘mandate’, were as follows:
  - **Managers***:* They believe that a mandate is a legal authority to conduct one's duties, or it is a defined task delegated to a person, usually accompanied by powers or duties.
  - **Lawyers***:* They understand and describe a mandate as the authority to do something which is given by an instruction.
  - **Investigators***:* They say that a mandate is the authority to act, or the permission to attend to a specific action.
- Another impact of the overlapping of mandates of South African ACAs is the negative, ineffective investigations, as ACAs would not want to share information, because they would want successes for their ACA. This negative impact may result in a break in the chain of evidence, ultimately resulting in court cases being lost.
- ACAs have their origins in the post-colonial period following World War II. These early agencies were established by declining European powers to clean up their colonial administrations’ soiled reputations. The ACAs were also established by newly independent governments as part of their strategy for establishing a fresh administration, free of old habits and corrupt practices.

- All the participants from the different categories interviewed, that is, managers/commanders, investigators and lawyers, clearly understand the concept of overlapping mandates of ACAs in South Africa, which they explain as different ACAs investigating the same allegations. There was one participant, a commander, who supplied a lengthy, but clear explanation of the overlapping of mandates of public sector ACAs, when stating the following:

  > *"Different Government departments have their own forensic investigative capacity to conduct an investigation in the department, where after the private sector is appointed to conduct the same investigation, where after or simultaneously the Public Protector is appointed to conduct the same investigation, where after the South African Police is requested to conduct the same investigation in appointing the private sector's firm to assist in their investigation, where after and/or simultaneously the SIU obtain a proclamation to conduct the same investigation. Sometimes the Government department and/or Municipality appoints another private sector firm to conduct the same investigation, because they were not satisfied with the first private sector firm's findings. In my experience some investigations are done 5 times that costs the State millions and sometimes more than the amount that can be seized via Asset Forfeiture" (P M: 7:2019).*

- From the participants interviewed, 90% have experienced some sort of overlapping of investigations by different ACAs. One participant, a lawyer, mentions the Nkandla investigation. The participant states the following: The overlapping of mandates and investigation experienced was that both the PP and the SIU investigated the Nkandla matters, where it was said that the former President of South Africa, Jacob Zuma, benefitted from security upgrades to his Nkandla residence: The participant states that different findings were pronounced. They were as follows:
  - The PP found that Jacob Zuma did unduly benefit from the security upgrades to his Nkandla residence, and that Jacob Zuma should personally pay back to the State an amount of R7.8 million. Jacob Zuma did pay back the full amount to the State.
  - The SIU found that the architect on the project was personally liable for certain upgrades to the Nkandla residence, which did not form part of the

security aspect. The SIU is currently involved in civil litigation against the architect for R155 million. The SIU further absolved Jacob Zuma from any wrongdoing.

- Below are some adverse findings on the impact of the overlapping mandates of South African ACAs:
  - Complainants frequently approach a multitude of agencies to address a single issue.
  - At the start of an investigation, there is a dearth of information exchange.
  - On the same case, there is a waste of investigative resources.
  - There are no clear lines of duty between the various agencies, especially in terms of who has a contract to deal with specific incidents of corruption.
  - Because diverse procedures of different mandates require different rules, standards of proof and speed of reaction, there is no informed decision-making at an early stage to decide whether criminal sanctions, civil sanctions or internal disciplinary actions have been imposed.
  - ACAs within the public sector, that apply regulations affecting employer-employee relationships, as opposed to external bodies that apply the law, have strained ties.
  - Other agencies that fall under the anti-corruption framework struggle to understand the regulatory frameworks created by ACAs.
  - Due to the ACAs' overlapping mandates, there is a rise of jurisdictional issues and “turf wars”.

7.9 CHAPTER 4

In this chapter, the researcher discussed the South African ACAs, and compared them to international ACAs. The questions from Section D in the interview schedule are addressed in this chapter. The following are reported on in Chapter 4:

- When comparing South Africa to international ACAs, South Africa comes closest in comparison to the United Kingdom’s ACAs in the following ways:
  - The CPS to that of the NPA.
  - The SFO to that of the SIU.
  - The SOCA to that of the DPCI.
  - The IPCC to that of the IPID.

- South Africa has ratified the following international instruments relevant to anti-corruption:
    - The Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of the Organisation of Economic Co-operation and Development (OECD Anti-Bribery Convention).
    - The African Union Convention on Preventing and Combating Corruption (AU Convention).
    - The United Nations Convention against Corruption (UNCAC).
    - The Southern African Development Community (SADC) Protocol against Corruption.
- Most of the participants interviewed are not aware of many of the international ACAs, however, they know the SAACAs. They are aware that most countries have ACAs, but they do not know their names. Some of the international ACAs were listed as the following:
    - The USA's Federal Bureau of Investigation (FBI).
    - Hong Kong's Independent Commission against Corruption (HKICAC).
    - The UK's Scotland Yard.
    - Interpol.
    - Directorate of Economic Crimes in Botswana (DCEC).
    - European Anti-Fraud Office.
    - Serious Fraud Office in the UK.
- Most of the participants are not aware of the methodology of investigations of international ACAs. It is only the participants from the DPCI and the AFU who are familiar with the investigative methodology of the international ACAs, which summarise as a project or multi-disciplinary approach or method. They also state that international ACAs have larger teams when compared to their South African counterpart.
- One participant, a manager, states that they are not aware of the methodology of international ACAs; however, the participant states the following:
        - *"African countries have a high percentage of corrupt activities, and countries doing business with an African country budget for gratification (bribe money). The law enforcement agencies are just as corrupt as the public.*

- *China was, in the past, the most corrupt, and ever since proper legislation was put in place, corrupt activities have scaled down. The law enforcement agencies and legislation have had an impact on the control and investigation of corruption.*
- *South Africa has a strategic framework, legislation and ACAs in place to investigate corruption, but some of the officials in the ACAs are corrupt, and the most important factor crippling the enforcement of legislation is the lack of political will" (P M: 02:2018).*

- Many countries have followed the single ACA approach of Hong Kong, which is said to be a leader in approaches to fighting corruption in that country. These countries have been successful in fighting to reduce corruption. However, even countries that adopted the single ACA approach, such as Botswana, have been shaken by a series of scandals concerning the awarding of public contracts, illegal property transactions, and client list allocation of housing. In addition, research has uncovered both positive and negative aspects of a single ACA, in respect of the following:
  - Enhanced public profile.
  - Specialised concentration of anti-corruption expertise.
  - Independence and integrity.

7.10 CHAPTER 5

The best practice approaches and strategies for public sector anti-corruption agencies to operate under were discussed in this chapter. The questions from Section E in the interview schedule are addressed in this chapter. In Chapter 5, the following findings were made:

- Experienced authors suggest that countries take best practices from the international guides listed below, which are aligned to business. They can be adopted by ACAs, which ultimately provide a service to the state and its citizens by way of curbing corruption and limiting the loss of state funds – which can be used for other socio-economic programmes. The best practices are found in the following publications:
  - OECD Guidelines for Multinational Enterprises.

- OECD Recommendations for Further Combating Bribery.
- International Criminal Court (ICC) Rules for Combating Corruption.
- ICC Handbook: Fighting Corruption.
- ICC Guidelines on Agents, Intermediaries and other Third Parties.
- ICC Guideline on Whistle-blowing.
- ICC Anti-corruption clause.
- Transparency International Business Principles for Countering Partnering against Corruption Initiatives.
- The World Bank Institute Guide for Business on Collective Action.
- The Tenth Principle of UN Global Compact.
- The PACI Principles on Countering Bribery.

- The feedback from the participants in respect of the best practices for public sector ACAs to operate under, are as follows:
  - Managers/commanders
    - The different ACAs, namely the SAPS, DPCI, SIU, AFU, NPA, SARS and IPID, must work together and share information.
    - There should be a merging of the ACAs in South Africa, and private sector experts should be brought in as consultants.
    - There must be a push from the ACAs to motivate for political will, which will give the ACAs the 'teeth they need'.
    - Hand over all evidence of corruption to the SAPS, and they will present it to the courts, as they are the only ACA that can present evidence in court. This will have a positive impact on the fight against corruption.
  - Lawyers
    - Proper vetting and continuous screening of public servants must be carried out.
    - A high percentage of lawyers agree with the managers/commanders that there should be one ACA in South Africa that will be able to investigate both civil and criminal matters. This ACA should do all that is necessary to carry out its functions similarly to the FBI.
    - Good practice would be that all ACAs sit together and decide which ACA is best suited, equipped and resourced to investigate a matter and achieve the best outcome.

    - Inter-agency collaboration will have a positive outcome in both civil remedies, criminal prosecution and seizure of assets gained from the proceeds of crime.
    - Ensure that all persons, irrespective of political or financial standing, be treated in the same way.
    - Educate the citizens on corruption, the reporting of alleged corruption, and the Whistle-blower Protection Act.
    - There should be skills development for ACA personnel in methodologies of investigating different types of corruption.
  - Investigators
    - The ACA must implement the existing legal framework properly. Each ACA must have corporate auditors, information technology, forensics, lawyers and support staff.
    - The implementation of a project-based investigation system, which some ACAs have, and some do not. That system must be properly commanded.
    - South Africa should follow the USA methodology, and only place wealthy persons in positions of power, as there will be no need for the wealthy to want more.
    - There should be consultation and coordination between ACAs, as ‘too many cooks spoil the broth’.
- The BACA has an affiliation with the TI CPI. Despite an increase in the number of countries/territories participating in CPI 2016 compared to CPI 2015, Bhutan's position and score have remained unchanged. Bhutan has been included in the TI CPI for the eleventh year in a row, and Bhutan's rank and score have improved dramatically over the years. The BACA is effective in reducing corruption, and its tactics have helped the BACA maintain its status as a strong, long-lasting, anti-corruption organisation.
- One participant stated that the ACAs in South Africa should be business orientated and have an outcomes-based approach to the interpretation of statutory mandates, rather than an approach that only protects the interests of the ACAs. An example of a stagnated approach is ACAs not sharing crucial

information with other ACAs, without the approval of the Head of the ACAs. This agrees with the international practices.

- A participant states that, as a strategy, the ACAs should set up management layers that effectively improve on the implementation of applicable legislation and the agency interface. The participant goes on to say that there should also be an investigative strategy with all ACAs to coordinate criminal and civil matters and be on a footing to share labour and resources.
- South Africa has the Protected Disclosures Act 26 of 2000, which officially protects whistle-blowers from both the private and public sectors from retribution. These individuals are rarely protected from job loss, demotion, discharge or other negative consequences. However, the public, as well as public servants, are not aware of the legislation which compels them to report corruption to the ACAs.
- There is one participant who states that it is vital to educate the citizens of South Africa on corruption, the reporting of alleged corruption, and the Whistle-blower Protection Act. Many citizens are afraid to report corruption, due to intimidation and threats to their lives. As such, they do not report corruption. If they thought about the Whistle-blower Protection Act, they would be more willing to report corruption.
- 'One approach fits all' does not work in all instances. Each country in the world is unique. Because countries share many similarities, best practices from one can be replicated in another; but, because each country's political, socioeconomic, and cultural context is unique, the techniques adopted must be examined, discussed, and adapted to match that country. When a blank approach is applied, it could be to suppress the pressure from the international role players and international donors, and as such may cause more harm than good in the fight against corruption.

7.11 CHAPTER 6

This chapter focused on the revision of the mandates of the South African ACAs. The questions from Section F in the interview schedule are addressed in this chapter. In Chapter 6 the following findings were made:

- The law-making body in South Africa is the National Legislature. The Constitution of South Africa, which rules and applies to all law and activity inside

the country, guides this function. Both Houses of Parliament, the NA and the NCOP, are involved in the legislative process. A Bill or draft law can only be introduced in Parliament by a Minister, Deputy Minister, Parliamentary Committee, or an individual MP. Approximately 90% of bills are initiated by the Executive. The Bill is subsequently sent to the President for his signature, which will turn it into an Act of Parliament — the Law of the Land.

- The participants know who are responsible for making revisions in mandates of ACAs in South Africa. They stated the following:
  - Political heads and parliament do them.
  - Ministers of departments, parliament and the President with input from civil society.
  - The legislature is responsible for the revision of laws.
  - National Assembly are responsible for legislation changes.
  - Parliament, National Legislature and the South African Law Society Commission.
  - Policy makers and parliament.
  - Justice cluster (DOJ, police, ACAs, NPA), parliament and the President.
  - Heads of ACAs, DOJ and Parliament.
- The revision of the mandates of the six ACAs in South Africa show that there are certain amendments to the mandates that should take place. Certain of the revisions could be achieved with little effort and can be done through a strategy change within the ACA. There are certain revisions that will require greater political will, debate and high-level discussions to confirm the revisions. Once the revisions are made, they will most definitely have a positive effect on the outcome of the mandates of the ACAs.
- Most of the participants agree that there should be some type of review or revision of the mandates of the South African ACAs. They stipulate the following reasons for the review or revision:
  - Managers/commanders
    - It should be adjusted so that the ACAs must be able to share information and work with ACAs in a multidisciplinary environment in combating corruption.

- The revision of mandates must seek to clarify sections that are ambiguous for all ACAs.
- To deal with the overlap that the ACAs have in mandates when compared to other ACAs.
- Most mandates are sound and sufficient; there should only be revision where there are overlaps or where clarity is sought.
- There are many ACAs in South Africa; all their mandates should be revised to form one ACA; the powers and functions associated with investigation and prosecution must be bestowed upon them.

- Lawyers
  - The mandates of all ACAs should be revised to establish one ACA to investigate, educate, prevent, prosecute and recover funds.
  - There should be a revision of all mandates to clear overlaps; however, politicians should not be involved.
  - There should be a streamlining of the mandates, with limited political involvement.
  - The revision should be to create one ACA, and that ACA should have all the powers to carry out functions like the FBI in the United States of America.
  - The revision must have sought to ensure that the ACAs are independent and have more authority to conduct their function without fear or favour.
- Investigators
  - The revision of the mandates must cover the overlaps that currently exist, so that they can work in different environments.
  - It must have revised so that all citizens are treated equally, especially when corruption is committed.
  - The revision of mandates should be guided by research studies conducted and reports published. Then the revisions must be proposed to the justice cluster.
  - The revisions should be made such that one ACA is created by merging the current ACAs and all resources, where all corruption is reported to that one ACA.

- The revision must ensure that all ACAs cooperate and share information with one another. There should be no ‘red tape’ to accessing information and all ACAs must have the same goals.
- The institutions listed under Chapter Nine, in the Constitution of the Republic of South Africa, 1996 must have their mandates broadened and their reporting line must be reviewed.

- One participant strongly believes that the mandates of ACAs should not be revised or amended in any way in South Africa, as there is too much ‘fiddling’ with the mandates. This participant states that the problem is not the mandates but the implementation of the mandates. The participant suggests that effort should be placed on processes, to ensure effective usage of the mandates, starting from the Heads of the ACAs to the end users.

7.12 RECOMMENDATIONS

After reviewing the data, literature, compiling the chapters and making findings, the researcher proposes the following recommendations:

- Implementation of a proper reporting system of corruption matters, to be set up. This must be done in conjunction with all relevant ACAs. The lead ACA should be the SAPS, as they are custodians of the crime statistics in South Africa. The case management system must be a National Integrated System. This case management system must cater for different values and offences with the crime of corruption. This integrated system must be centralised, and closely guarded against manipulation.
- Since South Africa has world-class legislation, the investigators, legal persons and managers of the ACA should be updated on a regular basis on new legislation that enters the anti-corruption framework. This will empower the ACA to obtain successes, as their knowledge on aspects of legislation will be advanced and effectively utilised. This increase in knowledge will also give the ACAs avenues to take corrupt individuals to court.
- The Department of Justice and Constitutional Development must create an awareness campaign on ‘whistle-blowers' protection’ for public sector employees, and then roll out to the public at large on the Protected Disclosures Act, as well as the avenues available to citizens to report corruption in both the

public and private sectors. This will enable especially public sector persons to feel less afraid of intimidation, and as such, report allegations of corruption. These programmes should further be expanded to secondary and tertiary institutions.

- Form a working group of the Heads of the ACAs who will report to the Minister of Justice and Constitutional Development on the development of high-profile matters being investigated and prosecuted. In addition, this working group can evaluate and allocate the high-profile matters to the best-suited, resourced and experienced ACA.
- Revise the mandates of ACAs to ensure that the appointing authority for the Executives or the Heads of the ACAs is changed. The appointment authority should have different categories of individuals who make up a panel of selection and review, such as the Minister of Justice and Constitutional Development, the Leader of the Opposition Party, a Judge of the Constitutional Court and individuals from civil society. This will ensure that the best qualified person for the position will be appointed. The appointing system will give greater confidence to the citizens, and cause the ACAs to act without fear, favour or prejudice. The establishment of such a panel will also rule out the possibility of nepotism.
- The working group that is recommended to be formed in section 7.11 must in addition identify further overlapping of the mandates of the ACAs. After they identify the overlaps, they must find alternatives and make application to the Minister of Justice and Constitutional Development for the revisions or amendments of such overlaps, so that negative effects of such overlaps do not continue to take place. This working group must be tasked to spread the word on the mandates of the different ACAs in the country, so that the public will have avenues to report corruption.
- Further research must be conducted on all the ACAs in South Africa and that of other countries, so that South Africa can review their best practices, best approaches and best strategies for implementation in the country's ACAs. All ACAs must add prevention and awareness campaigns to their strategic goals. These campaigns will add to the reduction of corrupt activities, and in addition make true the saying, ‘prevention is better than cure’.

- The successes, such as convictions for corruption, arrest of suspects wanted for corruption, and the civil recoveries by the State of the ACAs, must be broadcasted across all forms of media and publications, so that the public becomes aware of them. This will cause the perception of corruption, by the citizens, to improve. This should be the responsibility of the working group. The successes should also feed into the NIS stipulated in section 7.11.
- There needs to be an online platform where all ACAs can contribute. The platform should be accessed for viewing documents, data, and sharing of information. The platform should also contain the data of cases, investigation guides, legislation, directives and protocols to follow during a corruption investigation. This will help to reduce duplication of investigations and decrease the turnaround time of corruption investigations.

7.13 CONCLUSION

South Africa has many capable ACAs, a sophisticated anti-corruption framework, and support from international donors, to help it fight the scourge of corruption. The country needs the political backing and support of key stakeholders to help it on this journey to reduce corruption. The mandates of the ACAs are complex and widespread; however, certain overlapping does cause them to be less impactful and less successful. The ACAs in the country need some changes, after which they will be able to produce successful outcomes. The mandates of the ACAs do not need a total overhaul, but rather some revision and clarity, in order to be more effective than they are currently.

South Africa should not focus on the creation of a single agency approach. Instead, the country should utilise its strengths and improve on its weaknesses. From the research, it is evident that even a single ACA approach has negative consequences. South Africa is a unique country, with a different ‘landscape’ from that of other countries. Some best practices of international ACAs can be implemented, but they should be adapted to South Africa's own anti-corruption framework.

In concluding this research report, the researcher cannot help but see how corruption is taking away much needed food and financial support from the poorest of the poor during the COVID-19 pandemic in South Africa. According to Corruption Watch (2020:1), South Africa is a country of inequality, and the Covid-19

coronavirus-enforced lockdown has exacerbated the country's profound divisions. Corrupt politicians have benefited from the food parcel distribution scheme. Despite an increase in the number of claims, the administration has remained deafeningly silent. Mr. Cyril Ramaphosa, the President of South Africa, stressed that the distribution of food packs “should not be politicised”. Many investigations have been conducted, and the number of complaints continues to rise.

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South African Acts referred to in the text, will be found on a separate list at the end of this reference list

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Participant I7. 2018. Interview conducted with an investigator on 05 February 2018.

Participant I10. 2019. Interview conducted with an investigator on 26 April 2019.

Participant I11. 2017. Interview conducted with an investigator on 26 April 2019.

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Participant L5. 2018. Interview conducted with a lawyer on 03 May 2018.

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SOUTH AFRICAN ACTS

Auditor-General Act 12 of 1995

Constitution of the Republic of South Africa, 1996

Criminal Law Amendment Act 105 of 1977

Criminal Procedure Act 51 of 1977

Customs and Excise Act 91 of 1964

Drugs and Drug Trafficking Act 140 of 1992

Electronic Communications and Transactions Act 25 of 2002

Financial Intelligence Centre Act 38 of 2001

Independent Police Investigative Directorate Act 1 of 2011

Intelligence Services Act 65 of 2002

Interception and Monitoring Prohibition Act 127 of 1992

International Cooperation in Criminal Matters Act 75 of 1996

Local Government: Municipal Finance Management Act 56 of 2003

National Prosecuting Authority Act 32 of 1998

Prevention and Combating of Corrupt Activities Act 12 of 2004

Prevention of Organised Crime Act 121 of 1998

Promotion of Access to Information Act 2 of 2000

Promotion of Administrative Justice Act 3 of 2000

Protected Disclosures Act 26 of 2000

Protection of Personal Information Act 4 of 2013

Protection of State Information Act 41 of 2013

Public Finance Management Act 1 of 1999

Public Protector Act 23 of 1994

Public Service Act 103 of 1994

South African Corruption Act 94 of 1992

South African Police Service Act 68 of 1995 (as amended by Act 10 of 2012)

South African Revenue Service Act 34 of 1997

Special Investigating Units and Special Tribunals Act 74 of 1996

Tax Administration Act 28 of 2011

APPENDICES

9.1 APPENDIX A: INTERVIEW SCHEDULE

INTERVIEW SCHEDULE

PARTICIPANT IDENTIFICATION NUMBER [ ]

TOPIC: THE IMPACT OF OVERLAPPING MANDATES OF PUBLIC SECTOR ANTI-CORRUPTION AGENCIES ON THE ANTI-CORRUPTION FRAMEWORK IN SOUTH AFRICA

RESEARCH AIM

The aim of this research was to determine the impact of the overlapping of mandates of public sector anti-corruption agencies on the anti-corruption framework in South Africa. The sub-aims of this research are the following:

- To compare the mandates of South African Public Sector anti-corruption agencies with international Public Sector anti-corruption agencies.
- To investigate whether the revision of the mandates of SAACAs with the best practices could make investigating corruption more successful.

RESEARCH OBJECTIVES

The research objectives were:

- To explore the impact of overlapping mandates of SAACAs on the anti-corruption framework in South Africa.
- To compare the SAACAs to international anti-corruption agencies.
- To explore whether the revision of SAACAs could improve their investigation success rate.

RESEARCH QUESTIONS

During this research, the researcher asked seven specific research questions. The research questions for this research were as follows:

- What is the impact of the overlapping of mandates of public sector anti-corruption agencies on the anti-corruption framework in South Africa?

- How do South Africa public sector anti-corruption agencies compare to the international public sector anti-corruption agencies in terms of similarities, differences, conflicts that exist between them, and success rates?
- How could the mandates of the South African public sector anti-corruption agencies be revised with the use of best practices as revision to successfully investigate corruption in South Africa?

You are kindly requested to answer the following research questions in this interview schedule, for the researcher. The questions, responses and results will be revealed to you.

Privacy will be maintained throughout the study; the researcher will ensure that participants are treated equally, regardless of their socio-economic status. The information given will be treated with confidentiality, and no other person will have access to the interview data. The researcher will ensure that participants are treated equally, regardless of their socio-economic status, whether illiterate or learned, and privacy will be maintained throughout the study. Participants in this research will remain anonymous.

The information you provide will be used solely in a research dissertation for a Doctor of Philosophy in the subject of Criminal Justice at the University of South Africa (UNISA). The analysed and processed data obtained through this interview will be published in a research report (thesis).

Your answers will be noted by the interviewer (researcher) himself, on paper and by dictaphone. If you have any questions that are unclear, please ask the researcher for clarification. Only one answer per question is required. When answering the questions, it is important to give your own opinion. Written permission has been obtained from the organisation that you are employed by, for the interview to be conducted.

PARTICIPANT

I hereby give permission to be interviewed, and that the information provided by me can be used in this research.

YES	NO

SECTION A: BACKGROUND INFORMATION

1. In which organisation are you employed?
2. How long have you been in the employ of this organisation?
3. What qualifications do you possess?
4. Are you trained to investigate corruption in the public sector?
5. What investigation-related training did you undergo?
6. How many years of experience do you have as a corruption investigator?

SECTION B: THE PHENOMENON OF CORRUPTION IN SOUTH AFRICA

7. How would you define the term 'corruption'?
8. How far back, do you think, the acts of corruption in the South African public sector go?
9. How would you define the concept 'mandate'?
10. Who has the mandate to investigate corruption in South Africa?
11. What do you understand by the concept 'anti-corruption framework in South Africa'?
12. What do you believe are the causes for corruption within the public sector in South Africa?

SECTION C: THE IMPACT OF OVERLAPPING MANDATES OF THE PUBLIC SECTOR ANTI-CORRUPTION AGENCIES ON THE ANTI-CORRUPTION FRAMEWORK IN SOUTH AFRICA

13. What do you understand by the concept of 'overlapping of mandates' of the public sector anti-corruption agencies?
14. Do you believe that there is an overlapping of mandates of public sector anti-corruption agencies on the anti-corruption framework in South Africa? Motivate your answer.
15. What, according to your viewpoint, is the impact of the overlapping mandates of public sector anti-corruption on the anti-corruption framework in South Africa?

16. From your anti-corruption investigation experience, have you come across any other South Africa anti-corruption agency that investigates the same allegation as your agencies? Explain the outcome.

SECTION D: SOUTH AFRICAN ANTI-CORRUPTION AGENCIES IN COMPARISON TO INTERNATIONAL ANTI-CORRUPTION AGENCIES

17. Do you know of any anti-corruption agencies that operate in any other country besides South Africa? If yes, name them and say in which country they operate.
18. Have you worked with any international anti-corruption agencies on any of your investigations? If yes, who were they, and how did the investigation proceed?
19. Are you aware of the investigative methodology that these international agencies use? If yes, state the investigative methodology.
20. How, according to your viewpoint, do South African agencies compare to international agencies when investigating corruption?

SECTION E: THE BEST PRACTICES FOR PUBLIC SECTOR ANTI-CORRUPTION AGENCIES TO OPERATE UNDER

21. What do you think are the most effective ways of fighting corruption in South Africa?
22. Should the South Africa anti-corruption agencies change the manner in which they investigate corruption? If yes, what changes should be made?
23. How you would proceed with an investigation, knowing that another agency is investigating the same allegation?
24. In your view, would there be a positive or negative impact when more than one agency investigates an allegation of corruption? Motivate your answer.
25. Would the conviction rate of these agencies increase or decrease if you suggested best practices or if other changes are made?

SECTION F: THE REVISION OF THE MANDATE OF SA ANTI-CORRUPTION AGENCIES

26. In your opinion, should the mandates of SAACAs be revised? If yes, what revisions should be made to the mandates?
27. Who is responsible for the revision of mandates of SAACAs?

28. How would those responsible go about making revisions to the mandates of SAACAs?
29. What other interventions can be imposed on SAACAs to cause them to be successful in investigating corruption in South Africa?

9.2 APPENDIX B: ETHICAL CLEARANCE

UNISA college of law

COLLEGE OF LAW RESEARCH ETHICS REVIEW COMMITTEE

Date: 04/08/2016

Reference: ST55

Applicant: P. D. Pillay

Dear P. D. Pillay
(Supervisor: Dr B. Benson)

DECISION: ETHICS APPROVAL

Name	P. D. Pillay
Proposal	The impact of overlapping mandates of Public Sector Anti-Corruption Agencies of the Anti-Corruption Framework in South Africa
Qualification	D. Litt et Phil

Thank you for the application for research ethics clearance by the College of Law Research Ethics Review Committee for the above mentioned research. **Final approval is granted.**

The application was reviewed in compliance with the Unisa Policy on Research Ethics.

The proposed research may now commence with the proviso that:

1. *The researcher will ensure that the research project adheres to the values and principles expressed in the Unisa Policy on Research Ethics which can be found at the following website:*

   http://www.unisa.ac.za/cmsys/staff/contents/departments/res_policies/docs/Policy_Research%20Ethics_rev%20app%20Council_22.06.2012.pdf

2. *Any adverse circumstances arising in the undertaking of the research project that is relevant to the ethicality of the study, as well as changes in the methodology, should be communicated in writing to the College of Law Ethical Review Committee.*

University of South Africa
Preller Street, Muckleneuk Ridge, City of Tshwane
PO Box 392, Unisa, 0003, South Africa
www.unisa.ac.za/law

9.3 APPENDIX C: LETTER SEEKING PERMISSION TO CONDUCT RESEARCH WITHIN ASSET FORFEITURE

ANNEXURE A

LETTER SEEKING PERMISSION TO CONDUCT RESEARCH WITHIN ASSET FORFEITURE UNIT

Advocate Nomvula Mokhatla
Deputy National Director
Asset Forfeiture Unit (AFU)
Victoria & Griffiths Mxenge Building
123 Westlake Avenue, Weavind Park
Pretoria
0184

P Pillay
P O Box 12070
Vorna Valley
1686

06 June 2017

Dear Advocate Mokhatla

REQUEST FOR PERMISSION TO CONDUCT RESEARCH WITHIN AFU

I am currently studying towards my Doctorate of Literature and Philosophy (PhD) in the subject of Policing at the University of South Africa (UNISA). For the purpose of my study I am expected to conduct a research study as required for the degree.

My Topic is: **"THE IMPACT OF OVERLAPPING MANDATES OF PUBLIC SECTOR ANTI-CORRUPTION AGENCIES ON THE ANTI-CORRUPTION FRAMEWORK IN SOUTH AFRICA"**

I therefore, request permission to:

- Collect data from your HR Department in respect of the number of Managers, Lawyers and Investigators on staff at the National Office to finalise my sample of participants.
- Collect data from participants within your organisation regarding the above topic.

The target population will be Managers, Lawyers and Investigators. Kindly receive the following:

- My approved proposal.
- The interview schedule which will be used to collect data from participants.
- Ethical clearance received for proposal.

Page 1 of 2

My UNISA supervisors are:

- Dr Bernadine Benson: Email:bensobc@unisa.ac.za, Contact number: 012 4292164
- Dr Nick Olivier: Email: nic@lantic.net, Contact number: 0824650932

Should you have any questions please feel free to contact me or my supervisors.

Yours Sincerely

Povendran Pillay
Email: spillay7@gmail.com
Contact No.: 0822995559

Received by:
Full name: Lebo Skubane
Signature:
Date: 07 May 2017
June

NATIONAL PROSECUTING AUTHORITY
2017 -06- 07
SOUTH AFRICA

071 868 1124

9.4 APPENDIX D: LETTER SEEKING PERMISSION TO CONDUCT RESEARCH WITHIN DIRECTORATE OF PRIORITY CRIMES INVESTIGATION

ANNEXURE B

LETTER SEEKING PERMISSION TO CONDUCT RESEARCH WITHIN DIRECTORATE OF PRIORITY CRIMES INVESTIGATION

Lieutenant-General Yolisa Matakata
Head of the Directorate of Priority Crime Investigation (DPCI)
A5 Promat Building
1 Creswell Road
Silverton
Pretoria
0186

P Pillay
P O Box 12070
Vorna Valley
1686

06 June 2017

Dear Lieutenant-General Matakata

REQUEST FOR PERMISSION TO CONDUCT RESEARCH WITHIN DPCI

I am currently studying towards my Doctorate of Literature and Philosophy (PhD) in the subject of Policing at the University of South Africa (UNISA). For the purpose of my study I am expected to conduct a research study as required for the degree.

My Topic is: **"THE IMPACT OF OVERLAPPING MANDATES OF PUBLIC SECTOR ANTI-CORRUPTION AGENCIES ON THE ANTI-CORRUPTION FRAMEWORK IN SOUTH AFRICA"**

I therefore, request permission to:

- Collect data from your HR Department in respect of the number of Managers, Lawyers and Investigators on staff at the National Office to finalise my sample of participants.
- Collect data from participants within your organisation regarding the above topic.

The target population will be Managers, Lawyers and Investigators. Kindly receive the following:

- My approved proposal.
- The interview schedule which will be used to collect data from participants.
- Ethical clearance received for proposal.

Page 1 of 2

My UNISA supervisors are:

- Dr Bernadine Benson: Email:bensobc@unisa.ac.za, Contact number: 012 4292164
- Dr Nick Olivier: Email: nic@lantic.net, Contact number: 0824650932

Should you have any questions please feel free to contact me or my supervisors.

Yours Sincerely

Povendran Pillay

Email: spillay7@gmail.com

Contact No.: 0822995559

Received by:

Full name: Tardie Sonandzi

Signature: Sonandzi

Date: 2017/06/08

(Colonel Matthews - 012 846 4315)
MatthewsR@saps.gov.za

9.5 APPENDIX E: LETTER SEEKING PERMISSION TO CONDUCT RESEARCH WITHIN INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE

ANNEXURE C

LETTER SEEKING PERMISSION TO CONDUCT RESEARCH WITHIN INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE

Mr Robert McBribe
Executive Director
Independent Police Investigative Directorate (IPID)
City Forum Building
114 Madiba Street
Pretoria
0001

P Pillay
P O Box 12070
Vorna Valley
1686

06 June 2017

Dear Mr McBribe

REQUEST FOR PERMISSION TO CONDUCT RESEARCH WITHIN IPID

I am currently studying towards my Doctorate of Literature and Philosophy (PhD) in the subject of Policing at the University of South Africa (UNISA). For the purpose of my study I am expected to conduct a research study as required for the degree.

My Topic is: **"THE IMPACT OF OVERLAPPING MANDATES OF PUBLIC SECTOR ANTI-CORRUPTION AGENCIES ON THE ANTI-CORRUPTION FRAMEWORK IN SOUTH AFRICA"**

I therefore, request permission to:

- Collect data from your HR Department in respect of the number of Managers, Lawyers and Investigators on staff at the National Office to finalise my sample of participants.
- Collect data from participants within your organisation regarding the above topic.

The target population will be Managers, Lawyers and Investigators. Kindly receive the following:

- My approved proposal.
- The interview schedule which will be used to collect data from participants.
- Ethical clearance received for proposal.

My UNISA supervisors are:

- Dr Bernadine Benson: Email:bensobc@unisa.ac.za, Contact number: 012 4292164
- Dr Nick Olivier: Email: njc@lantic.net, Contact number: 0824650932

Should you have any questions please feel free to contact me or my supervisors.

Yours Sincerely

Povendran Pillay
Email: spillay7@gmail.com
Contact No.: 0822995559

Received by:
Full name: SEFARA ALPHEUS
Signature:
Date: 8/06/2017.

012 399 0027.
ADMIN: EXECUTIVE SUPPORT.

9.6 APPENDIX F: LETTER SEEKING PERMISSION TO CONDUCT RESEARCH WITHIN PUBLIC PROTECTOR

ANNEXURE D

LETTER SEEKING PERMISSION TO CONDUCT RESEARCH WITHIN PUBLIC PROTECTOR

Advocate Busisiwe Mkhwebane
Public Protector (PP)
Hillcrest Office Park
175 Lunnon Street
Pretoria
0083

P Pillay
P O Box 12070
Vorna Valley
1686

06 June 2017

Dear Advocate Mkhwebane

REQUEST FOR PERMISSION TO CONDUCT RESEARCH WITHIN PP

I am currently studying towards my Doctorate of Literature and Philosophy (PhD) in the subject of Policing at the University of South Africa (UNISA). For the purpose of my study I am expected to conduct a research study as required for the degree.

My Topic is: **"THE IMPACT OF OVERLAPPING MANDATES OF PUBLIC SECTOR ANTI-CORRUPTION AGENCIES ON THE ANTI-CORRUPTION FRAMEWORK IN SOUTH AFRICA"**

I therefore, request permission to:

- Collect data from your HR Department in respect of the number of Managers, Lawyers and Investigators on staff at the National Office to finalise my sample of participants.
- Collect data from participants within your organisation regarding the above topic.

The target population will be Managers, Lawyers and Investigators. Kindly receive the following:

- My approved proposal.
- The interview schedule which will be used to collect data from participants.
- Ethical clearance received for proposal.

Page 1 of 2

My UNISA supervisors are:

- Dr Bernadine Benson: Email:bensobc@unisa.ac.za, Contact number: 012 4292164
- Dr Nick Olivier: Email: njc@lantic.net, Contact number: 0824650932

Should you have any questions please feel free to contact me or my supervisors.

Yours Sincerely

Povendran Pillay

Email: spillay7@gmail.com

Contact No.: 0822995559

Received by:

Full name: Betty Mgobeni

Signature:

Date: 07/06/2017

PUBLIC PROTECTOR
RECEIVED
2017 -06- 07
PRETORIA
OPENBARE BESKERMER

Gumbit@pprotect.org

9.7 APPENDIX G: LETTER SEEKING PERMISSION TO CONDUCT RESEARCH WITHIN SOUTH AFRICA POLICE SERVICE

ANNEXURE E

LETTER SEEKING PERMISSION TO CONDUCT RESEARCH WITHIN SOUTH AFRICA POLICE SERVICE

Lieutenant-General Lesetja Mothiba
Acting National Police Commissioner
South African Police Service: (SAPS)
Wachthuis Building
231 Pretorius Street
Pretoria
0001

P Pillay
P O Box 12070
Vorna Valley
1686

06 June 2017

Dear Lieutenant-General Mothiba

REQUEST FOR PERMISSION TO CONDUCT RESEARCH WITHIN SAPS

I am currently studying towards my Doctorate of Literature and Philosophy (PhD) in the subject of Policing, School of Criminal Justice at the University of South Africa (UNISA). For the purpose of my study I am expected to conduct a research study as required for the degree.

My Topic is: **"THE IMPACT OF OVERLAPPING MANDATES OF PUBLIC SECTOR ANTI-CORRUPTION AGENCIES ON THE ANTI-CORRUPTION FRAMEWORK IN SOUTH AFRICA"**

I therefore, request permission to:

- Collect data from your HR Department in respect of the number of Managers, Lawyers and Investigators on staff at the National Office to finalise my sample of participants.
- Collect data from participants within your organisation regarding the above topic.

The target population will be Managers, Lawyers and Investigators. Kindly receive the following:

- My approved proposal.
- The interview schedule which will be used to collect data from participants.
- Ethical clearance received for proposal.

Page **1** of **2**

My UNISA supervisors are:

- Dr Bernadine Benson: Email:bensobc@unisa.ac.za, Contact number: 012 4292164
- Dr Nick Olivier: Email: njc@lantic.net, Contact number: 0824650932

Should you have any questions please feel free to contact me or my supervisors.

Yours Sincerely

Povendran Pillay

Email: spillay7@gmail.com

Contact No.: 0822995559

Received by:

Full name: KABELO MARTIN LEHAPANE

Signature: 2615043-3

Date: 2017/06/07

012 393 2630

063 057 2893

9.8 APPENDIX H: LETTER SEEKING PERMISSION TO CONDUCT RESEARCH WITHIN SPECIAL INVESTIGATIVE UNIT

ANNEXURE F

LETTER SEEKING PERMISSION TO CONDUCT RESEARCH WITHIN SPECIAL INVESTIGATING UNIT

Advocate Jan Lekhou Mothibi
Head of the Special Investigating Unit (SIU)
74 Watermeyer Street
Meyerspark
Pretoria
0184

P Pillay
P O Box 12070
Vorna Valley
1686

06 June 2017

Dear Advocate Mothibi

REQUEST FOR PERMISSION TO CONDUCT RESEARCH WITHIN SIU

I am currently studying towards my Doctorate of Literature and Philosophy (PhD) in the subject of Policing at the University of South Africa (UNISA). For the purpose of my study I am expected to conduct a research study as required for the degree.

My Topic is: **"THE IMPACT OF OVERLAPPING MANDATES OF PUBLIC SECTOR ANTI-CORRUPTION AGENCIES ON THE ANTI-CORRUPTION FRAMEWORK IN SOUTH AFRICA"**

I therefore, request permission to:

- Collect data from your HR Department in respect of the number of Managers, Lawyers and Investigators on staff at the National Office to finalise my sample of participants.
- Collect data from participants within your organisation regarding the above topic.

The target population will be Managers, Lawyers and Investigators. Kindly receive the following:

- My approved proposal.
- The interview schedule which will be used to collect data from participants.
- Ethical clearance received for proposal.

Page 1 of 2

My UNISA supervisors are:

- Dr Bernadine Benson: Email:bensobc@unisa.ac.za, Contact number: 012 4292164
- Dr Nick Olivier: Email: njc@lantic.net, Contact number: 0824650932

Should you have any questions please feel free to contact me or my supervisors.

Yours Sincerely

Povendran Pillay

Email: spillay7@gmail.com

Contact No.: 0822995559

Received by:

Full name: Enoch Qoma HR MANAGER : LEARNING & Development

Signature:

Date: 08/06/17

9.9 APPENDIX I: GRANTED PERMISSION FOR RESEARCH FROM THE SOUTH AFRICAN ANTI-CORRUPTION AGENCIES

Administration

NATIONAL PROSECUTING AUTHORITY
South Africa

Enquiry: Mr Marius Bester
Email: mjbester@npa.gov.za
Phone: 0128456274
Date: 07/02/2017

Tel: +27 12 845 6000

Victoria & Griffiths
Mxenge Building
123 Westlake Avenue
Weavind Park
Pretoria

P/Bag X752
Pretoria
0001

Corporate Service Centres

- Finance & Procurement
- Human Resources Development & Management
- Information Management
- Research & Policy Information
- Risk & Security

Mr Steven Povendran Pillay
P.O. Box 12070
Vorna Valley
1686

RE: APPROVAL OF A REQUEST TO CONDUCT ACADEMIC RESEARCH IN THE ASSET FORFEITURE UNIT IN PRETORIA

Dear Mr Pillay

Thank you for showing interest in conducting research in the AFU. The purpose of this memorandum is to inform you that your request to conduct research within the AFU (NPA Headquarters, Pretoria) has been approved.

The NPA appreciates that the topic has been approved by the UNISA College of Law, Research Ethics Review Committee. Please consider and/or adhere to (whichever is applicable) to the below-mentioned in support of your research:

1. The request is supported by the Asset Forfeiture Unit (AFU) of the National Prosecuting Authority and it should be noted and understood that information about the work can only be utilized with the NPA's explicit written approval and permission.
2. The research request focuses on "The impact of overlapping mandates of public sector anti-corruption agencies on the anti-corruption framework in South Africa" and therefore the policies and acts that govern them.

3. Permission to conduct research is only limited to interviewing AFU managers, prosecutors and investigators at NPA headquarters in Pretoria.
4. This research intends to address:
   4.1. The phenomenon of corruption in South Africa,
   4.2. The impact of overlapping mandates in anti-corruption agencies,
   4.3. South-African anti-corruption agencies in comparison to international anti-corruption agencies,
   4.4. Best practices for public sector anti-corruption agencies, and
   4.5. The possible revision of the mandates of South-African anti-corruption agencies.
5. Upon completion of the research project, a copy of the report is to be sent to the NPA for perusal and approval. This is specifically to prevent the inappropriate interpretation and publication of information.
6. In the event of the author publishing an article on research which contains NPA information, this should also be approved by the NPA.

In your case there will be no need to complete FORM A, which is the request for access to records of a Public Body, Section 18(1) of the Promotion of Access to Information Act, 2000, since your research study involves interviews with participants.

Kindly keep the NPA informed about further developments on this research and please send your response to the NPA Researcher on the following details:

Name: Mr. Marius Bester
Telephone number: 012 845 6274
E-mail address: mjbester@npa.gov.za

Dr. Silas Ramaite SC
Deputy National Director of Public Prosecutions: Administration and OWP
Date: 16/08/2017

APPROVAL OF A REQUEST TO CONDUCT ACADEMIC RESEARCH IN THE

HAWKS

1 CRESSWELL ROAD, SILVERTON, 0127
PRIVATE BAG X1500, SILVERTON, 0127
TEL: (012) 846-4315/4356
FAX: (012) 846-4442
E-MAIL: matthewsr@saps.gov.za
sehumeB@saps.gov.za

P Pillay
PO Box 12070
Voma Valley
1686

Dear Mr/Mrs Pillay

RE: FORMAL RESEARCH APPLICATION: THE IMPACT OF OVERLAPPING MANDATES OF PUBLIC SECTOR ANTI-CORRUPTION AGENCIES ON THE ANTI-CORRUPTION FRAMEWORK IN SOUTH AFRICA

1. Your application dated 06 September 2017 refers

2. Approval has been granted for you to conduct research in the Directorate for Priority Crime Investigation with the following conditions:
   a. The research will be limited to the information provided by yourself unless otherwise agreed with Brigadier Bokaba who will be your contact Senior Officer.
      - Email address: ZamaB@saps.gov.za
      - Telephone Number: 012 407 0517
   b. The final draft will be tested with the Acting National Head: DPCI Lt General Matakata to confirm that the research conditions have been adhered to.
3. A copy of your final research document should be submitted to this office for record purposes.

RMMatthews

BRIGADIER
SECTION HEAD: MANAGEMENT INFORMATION AND STRATEGIC PLANNING:
DIRECTORATE FOR PRIORITY CRIME INVESTIGATION
RM MATTHEWS

Date: 2017-11-06

INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE

Private Bag X941, PRETORIA, 0001. City Forum Building, 114 Madiba Street, PRETORIA
Tel. (012) 399 0000, Fax: (012) 326 0408, Enquiries,Mr. Aim Rikhotso Email: ARikhotso@ipid.gov.za

Mr. P.D Pillay
P.O Box 12070
Verna Valley
1636

RE: Request for permission to conduct research " The impact of overlapping mandates of public sector anti-corruption agencies on the anti-corruption framework in South Africa"

1. Your application refers.

2. You are hereby granted a permission to conduct research on the above mentioned topic within the Independent Police Investigative Directorate.

3. Kindly be informed that:

- Department will not be liable for any cost/remuneration relating to the study.
- No access to confidential IPID documents.
- During the course of your study there should be no action that disrupts the service delivery.
- After completion of the study, copy should be submitted to the department to serve as a resource.

4. Wishing you a successful academic year.

Your cooperation in this regard will be highly appreciated.

MR R. MCBRIDE
EXECUTIVE DIRECTOR: INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE

Povendran Pillay - RE: Permission to Conduct Research Re-submitted

From: Gumbi Tyelela <GumbiT@pprotect.org>
To: Povendran Pillay <ppillay@siu.org.za>
Date: 7/3/2018 11:55 AM
Subject: RE: Permission to Conduct Research Re-submitted

Dear Mr Pillay

Your request to conduct research at the PPSA, has not been approved. The only assistance that PPSA can provide is to respond to questions you may for your research.

Regards
Gumbi

From: Povendran Pillay [ppillay@siu.org.za]
Sent: Friday, 08 June 2018 13:42
To: Gumbi Tyelela
Subject: RE: Permission to Conduct Research Re-submitted

Dear Sir

Thank you, noted

Regards
Povendran

SPECIAL INVESTIGATING UNIT
- POISED TO STRIKE AGAINST CORRUPTION -

"Please visit our new and updated website www.siu.org.za"

>>> Gumbi Tyelela <GumbiT@pprotect.org> 6/8/2018 8:53 AM >>>
Dear Mr Pillay

I will have it on Monday, the CEO has been away, he will be back in office on Monday.

Regards
Gumbi

From: Povendran Pillay [mailto:ppillay@siu.org.za]
Sent: Friday, 08 June 2018 08:48
To: Gumbi Tyelela
Subject: RE: Permission to Conduct Research Re-submitted

Dear Mr Tyelela

Do you have any feedback on my request?

Regards,
Povendran

"Please visit our new and updated website www.siu.org.za"

>>> Gumbi Tyelela <GumbiT@pprotect.org> 5/29/2018 12:31 PM >>>
Dear Mr Pillay

Received, thank you, I will revert back to you by Friday latest.

Regards
Gumbi

From: Povendran Pillay [mailto:ppillay@siu.org.za]
Sent: Tuesday, 29 May 2018 11:35
To: Gumbi Tyelela
Subject: Permission to Conduct Research Re-submitted

Dear Mr Gumbi

Please assist me with processing my re-submission for permission for to conduct research at PP.
I submitted my application on 07 June 2017 and still wait a response.

I re-submit the following:

1. Letter requesting permission to PP & PP acknowledge of receipt 07 June 2017.
2. Approved Research Proposal
3. Interview Schedule
4. UNISA Ethical Clearance

Gmail

steven pillay <spillay7@gmail.com>

PPillay Request for permission for Research SAPS & DPCI

5 messages

steven pillay <spillay7@gmail.com> Mon, Jun 12, 2017 at 3:39 AM
To: JoubertG@saps.gov.za

Dear Colonel Joubert

As per telephonic conversation, please find attached the following:

1. Request for permission letter to SAPS
2. Request for permission letter to DPCI
3. UNISA Ethical Clearance received
4. Approved Proposal
5. Interview Schedule

Kind regards,
Povendran Pillay
0822995559

5 attachments

SAPS permission request.pdf
49K

DPCI permission request.pdf
47K

PPillay UNISA Ethical Clearance.pdf
50K

PPillay Approved Proposal.pdf
1784K

PPillay Interview Schedule.pdf
264K

Joubert Giep - Lieutenant Colonel <JoubertG@saps.gov.za> Mon, Jun 12, 2017 at 4:06 AM
To: steven pillay <spillay7@gmail.com>

Mr Pillay

Proposal received

Regards

Gideon Joubert

From: steven pillay [mailto:spillay7@gmail.com]
Sent: 12 June 2017 09:39 AM
To: Joubert Giep - Lieutenant Colonel
Subject: PPillay Request for permission for Research SAPS & DPCI

Dear Colonel Joubert

As per telephonic conversation, please find attached the following:

1. Request for permission letter to SAPS
2. Request for permission letter to DPCI
3. UNISA Ethical Clearance received
4. Approved Proposal
5. Interview Schedule

[Quoted text hidden]

---

steven pillay <spillay7@gmail.com> Tue, Oct 17, 2017 at 8:29 AM
To: JoubertG@saps.gov.za

Dear Colonel Joubert

I am following up on my request for permission to do research within the SAPS and DPCI.

Kind regards,
Povendran Pillay
0822995559
[Quoted text hidden]

Joubert Giep - Lieutenant Colonel <JoubertG@saps.gov.za> Tue, Oct 17, 2017 at 9:07 AM
To: steven pillay <spillay7@gmail.com>

Mr Pillay

I requested DPCI and Detective Service to provide feedback on your study that was recommended by Division Research.

Two other Divisions, Personnel Service and Crime Intelligence has already approved your study.

I hope to provide you with a final approval soon.

Regards

Gideon Joubert

From: steven pillay [mailto:spillay7@gmail.com]
Sent: 17 October 2017 02:30 PM
To: Joubert Giep - Lieutenant Colonel
Subject: Re: PPillay Request for permission for Research SAPS & DPCI

Dear Colonel Joubert

I am following up on my request for permission to do research within the SAPS and DPCI.

Kind regards,

Povendran Pillay

0822995559

On Mon, Jun 12, 2017 at 9:39 AM, steven pillay <spillay7@gmail.com> wrote:

> Dear Colonel Joubert
>
> As per telephonic conversation, please find attached the following:
>
> 1. Request for permission letter to SAPS
> 2. Request for permission letter to DPCI
> 3. UNISA Ethical Clearance received
> 4. Approved Proposal
> 5. Interview Schedule
>
> [Quoted text hidden]

---

steven pillay <spillay7@gmail.com> Tue, Oct 17, 2017 at 9:13 AM
To: Joubert Giep - Lieutenant Colonel <JoubertG@saps.gov.za>

Dear Colonel

Thank you and much appreciated.

Regards,
Povendran
[Quoted text hidden]

SPECIAL INVESTIGATING UNIT 74 Watermeyer Street, Rentmeester Building, Meyers Park, 0001
Tel +27 12 843 0000 Fax +27 12 843 0115 Website siu.org.za e-mail info@siu.org.za

POISED TO STRIKE
against corruption

08 June 2017

UNIVERSITY OF SOUTH AFRICA
COLLEGE OF LAW ETHICAL REVIEW COMMITTEE
PO BOX 392
CITY OF TSHWANE
0003

Dear Dr Benson

RE: REQUEST TO GRANT MR POVENDRAN PILLAY PERMISSION TO CONDUCT ACADEMIC RESEARCH TO FULFILL THE REQUIREMENTS TOWARDS DOCTORATE OF LITERATURE AND PHILOSOPHY STUDIES.

Research Topic: The impact of overlapping mandates of Public Sector Anti-Corruption Agencies of the Anti-Corruption Framework in South Africa.

The Special Investigating Unit herewith grants permission to Mr Povendran Pillay to conduct his academic research, within the SIU towards completion of his dissertation, subject to a copy of the final dissertation being made available to SIU.

Specific SIU related information, to be treated with the utmost confidentiality and not to be part of the research.

Yours faithfully,

Adv. JL Mothibi
HEAD OF THE UNIT