

**A CRIMINOLOGICAL PERSPECTIVE ON CORRUPTION IN THE PUBLIC SECTOR**

by

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I declare that A CRIMINOLOGICAL PERSPECTIVE ON CORRUPTION IN THE PUBLIC SECTOR is my own work and that all the sources that I have used or quoted have been indicated and acknowledged by means of complete references.

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SIGNATURE

(MS E GROBLER)

...*27/02/2003*...  
DATE

## QUOTATIONS

*“Like poverty, corruption has always been with us. Like prosperity for all, absolute integrity in public life is rhetorical or idealistic rather than practical and real. Eliminating corruption completely from public life is an impossible dream. But electorates and citizenry in both North and South seem increasingly intolerant of corruption and its associated costs and consequences.”*

Extract from *Explaining Corruption*. Edited by Robert Williams 2000.

*“Corruption is as old as government itself, and where there is a public rand there’ll always be a crooked hand.”*

Daryl Balia, Chief Director of Ethics in the Office of the Public Service Commission. Extract from *Fighting Corruption: South African Perspectives*. Edited by Stan Sangweni and Daryl Balia 1999.

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Degree: Master of Arts

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## **SUMMARY**

Corruption from a criminological perspective forms the basis of this dissertation. The crime component of corruption, the 'what', 'why' and 'how' is the dominant theme throughout the study and includes corruption in the South African public sector, highlighting police corruption in the Western Cape.

Although this study is exploratory, certain qualitative interviewing techniques, including an interview guide, were used to maximise the information obtained from knowledgeable interviewees. Corruption was further elucidated by the employment of criminological theories to explain pertinent findings in the research, by highlighting risk factors that lead to corruption, by giving examples of corruption and by discussing anti-corruption agencies and the effectiveness of existing legislation.

Corruption in the public sector has always been around and will be ad infinitum. The severity of the consequences of this phenomenon can be curtailed by the will of politicians, the involvement of civil society and an operational criminal justice system.

## **KEY TERMS:**

Criminological perspective; Public Sector corruption; Police corruption; Bribery; Abuse of power; Greed; Procurement; Deterrence; Criminological theories, Legislation, Anti-corruption agencies.

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1. Correspondence from Superintendent J Visagie, Commander of the Western Cape Anti-Corruption Unit, regarding interaction between the researcher and the Unit.
2. Interview guide used as an outline for questions on corruption put to knowledgeable individuals.

**CHAPTER ONE**

**ORIENTATION**

## 1.1 INTRODUCTION.

There has been extensive media coverage on both public sector and private sector corruption over the last few years. This coverage indicates the significance of corruption as a newsworthy topic, particularly public sector corruption in South Africa. Judging by the prevalence of corruption-related articles in the country's major news publications, it would appear that corruption is pervasive in South African society, perceived or real. It is essential for a developing country like South Africa to maintain a free press, as corruption is usually exposed initially through this medium.

Ramaite (Sangweni & Balia 1999: 158) mentions that "rampant crime, high levels of corruption in the private and public sectors, and the public's decreasing confidence in the criminal justice system's ability to confront and deal with these evils effectively and successfully continue to threaten South Africa's nascent, hard-won democracy." The author mentions that large-scale corruption is an obvious scourge witnessed by many ordinary citizens in government offices and in the corridors of power. Many citizens have experienced corruption at first hand and are concerned that their affairs will never be administered in a good and just manner.

As illustrated in chapter three of this study, greed is probably the most pertinent risk factor contributing to corruption. As one interviewee quipped: "I have never arrested a thin policeman on corruption charges!" Human beings tend to be greedy by nature. Some individuals can contain the urge for self-enrichment and instant gratification better than others. Those who constantly feel the need to accumulate wealth may take any opportunity open to them to do so. In the case of a corrupt public official, if an opportunity arises by virtue of his/her job, to commit a corrupt act, that opportunity will be taken, unless they are closely supervised, which appears to be lacking in many government departments. With the small risk of punishment for corruption in South Africa, there appears to be plenty of opportunity for committing corruption in the public sector. To a lesser extent, corruption is often committed to supplement inadequate incomes, especially amongst lower paid public servants. This results in a money-for-greed versus a money-for-need dichotomy.

Besides the motives of individuals for committing corrupt acts, or the scale of their self-enrichment, the damage done to the reputation of the government and to the quality of the administrative system is a



major cause for concern. Corrupt transactions between politicians/civil servants and citizens can be deemed corrupt when they have subverted a democratic process and subverted the values attached to these processes, such as openness, equality, equity and accountability (Williams 2000: 516).

Corruption and related corrupt acts are serious crimes with often devastating consequences. They negatively affect the ability of a country to develop its people, educationally, economically and socially. Public funds are diverted from social upliftment and development projects to the pockets of corrupt public officials. The incidence of corruption and corrupt acts perpetrated by civil servants and government officials are highlighted in chapter two, using many examples of corruption taken mainly from media reports. Corruption occurs at all levels of government, but it tends to be the most pervasive in provincial and local governments. This is even more disturbing because it is these levels of government that are responsible for delivery to the citizenry.

This introductory chapter serves to outline the main aims and objectives of the entire study, as well as the rationale behind the study. It is imperative that corruption as a crime is studied, if only to attempt to highlight the seriousness of this phenomenon. It is also important to illustrate how corrupt acts are committed and why they are committed, relating, in this instance, specifically to the public sector in South Africa. In addition, chapter one provides an interesting history of corruption, as well as numerous pertinent definitions of corruption. The section on methodology will describe the way data was collected and analysed for this study. This was done by a documentary study and an empirical study including the scrutiny of police dockets and interviews with knowledgeable people in the corruption field. Emphasis is placed throughout the study on corruption in the South Africa Police Service, particularly in the Western Cape.

## **1.2 HISTORICAL OVERVIEW OF CORRUPTION.**

Corruption is not a new phenomenon. It has been around since the dawn of time. Since the beginning of the 1990's however, the international interest in corruption has been unprecedented. As Tanzi (1998:4) explains: two thousand years ago, Kautilya, the prime minister of an Indian King, wrote a book entitled *Arthashastru*, in which he discussed corruption. Dante expressed the medieval antagonism towards corruption by placing bribers in the 'deepest parts of Hell.' Even Shakespeare

mentioned corruption in some of his plays. The American constitution names corruption as one of two definite crimes that can lead to the impeachment of the president.

Ladikos (1999: 28) also provides a brief historical background to the existence of corruption. In ancient Egyptian, Babylonian, Hebrew, Indian, Chinese, Greek and Roman history, the problem of corruption manifested itself. Ancient Greek scribes often wrote about corruption. This was probably as a result of the emergence of democracy and the practice of publicly discrediting political opponents. Plato stated in his book *The Laws*, that “public servants are to render their service without taking any presents while the disobedient shall, if convicted, die without ceremony.”

The Roman Empire was even more corrupt than Greece, because the former was bigger. As Ladikos (1999: 28) relates: “During the first three decades of the second century BC, Rome underwent a series of economical, political, social and agricultural changes. There was a rapid increase in wealth amongst generals and soldiers, and also the state, arising from the spoils of victory as numerous construction works were undertaken by the state and new social classes emerged. Consumption of luxury goods came into being and the previous habit of restraint and self-discipline weakened under the impact of urbanisation and the extension of Roman power. Greed, carnality, the abnormal desire for violent thrill, flagrant pomposity and fanfare, distinguished the newly rich as citizens and even magistrates were seen drunk in public assemblies.” The dominant class in Roman society were pervasively corrupt, and this corruption was directly related to the system of election to public office. Once an elected official took office, he would involve himself in corrupt practices in other areas. Ladikos adds: “it is thus generally accepted that the most important cause of corruption was the gradual accumulation of corrupt persons in positions of power.”

Williams (2000: ix) adds that throughout history there are recorded cases of bribery and nepotism, but the academic study of corruption is largely a late twentieth century phenomenon. Williams adds that the “supposition was that corruption, like adolescence, is a phase which countries go through before they reach maturity. Thus corruption was either linked to the demonisation of particular individuals or seen as a particular stage or point on the path to modernity.” This brings us to corruption today and why it is still an important subject to study.

### 1.3 AIM AND OBJECTIVES OF THE RESEARCH.

Corruption will be studied from a criminological perspective. It is important to define criminology before it is applied to the study of corruption. The general definition of criminology is that it is the study of crime and criminal behaviour. This study will focus on the crime of corruption in order to provide an adequate explanation for its occurrence. Dantzker (Hunter & Dantzker 2002: 24) defines criminology as follows:

“Criminology is the scientific approach to the study of crime as a social phenomenon, that is, the theoretical application involving the study of the nature and extent of criminal behaviour.” Brown, Esbensen and Geis (2001: 11) stress that it is not easy to construct a definitive concept of criminology. They mention that crime is a relative phenomenon, having different meanings for different people. Sutherland (Brown et al 2001: 11) briefly describes criminology as “the processes of making laws, breaking laws, and reacting towards the breaking of laws.” What is corruption? This question will be answered with pertinent definitions and examples.

Brown et al (2001: 11) mention that a science has two main components, theoretical and methodological. Criminological theory will explain crime and look at the ‘whys’ of crime and criminalisation. Risk factors and certain practices to be discussed, also assist in highlighting why corruption and corrupt acts occur. Techniques and methods used by criminologists to gather information to attempt to answer the ‘whys’ of crime, is referred to as methodology. Both theory and methodology will be employed in this study. How corruption and corrupt acts are committed will also be elucidated with examples.

The main objective of this research is to gather and impart with as much information as possible on corruption and corrupt acts as a crime. This information will be used to gain a clearer understanding of the serious impact of corruption, particularly as applied to the South African public sector. The way this objective will be achieved is by gathering the relevant information from interviews with knowledgeable people, assessing police dockets and from recent literature on the subject. Examples will also be given from Africa generally. Material used dates from 1995 to the present. The main emphasis will be on corruption in various governmental departments in the central and provincial levels

of government, with special focus on the Department of Safety and Security. Risk factors that contribute to corrupt activities will be scrutinised, as will the inevitable consequences of this crime.

The issue of anti-corruption agencies, their successes and failures, as well as legislation and adjudication will be discussed. Examples for the empirical study will be taken from South African Police Service dockets in possession of the Anti-Corruption Unit in the Western Cape. Interviews will be conducted with knowledgeable people in the field of corruption as part of the empirical study. Theoretical explanations will be used to explain corruption according to the pertinent findings of the study. The questions of what constitutes corruption, how it is committed and why it is a crime will be focused on throughout the study.

#### **1.4 RATIONALE.**

The seriousness of the crime of corruption needs to be researched. This is why it is imperative to do this research from a criminological perspective, making use of empirical examples as well as documentary information. Corruption is a problem in South Africa, perceived and real. In a recent survey done by *The Centre for International and Comparative Politics at the University of Stellenbosch*, published in *Security Focus February 2002*, South African opinion-formers from business, politics, government, media, NGO's, trade unions, church groups and agricultural leaders were asked their opinions on the entrenchment of democratic practices and social, political and economic issues facing South Africa. Respondents named crime, corruption and HIV/AIDS as the main stumbling blocks for business. The respondents (including ruling party supporters) mostly agreed that corruption was increasing and the performance of the government was decreasing.

#### **1.5 DEFINITION OF KEY CONCEPTS.**

Williams (2000: 518) suggests that whatever direction a study or social enquiry takes, it is important to remember that definitions are not true or false. Williams states that, "they (definitions) are not statements of fact, but more like conventions which apply only because of agreement or consensus that they are relevant to the phenomenon under consideration."

Corruption remains a complex concept to define. There can be common definitions but no uniform definition of corruption. In order to achieve a clearer understanding of corruption and corrupt acts, an array of key concepts and definitions will be presented.

#### 1.5.1 General Definitions of Corruption.

Van Maanen (Mavuso & Balia 1999: 141) stresses that corruption is not a new phenomenon, particularly referring to South Africa. The author questions whether corruption and corrupt acts are a part of human nature? This assumption could be problematic, as it does not apply to the many public servants and officials who do not engage in corrupt practices. Corruption must therefore be a “crime of the minority with power, a crime of those people who are in a privileged position to rule the wave and to waive the rules.” Van Maanen adds that “financial corruption consists of acts of people in power, whether in the public or in the private sector, to secretly enrich themselves (or their friends) beyond the income level agreed by them, by abusing the powers entrusted to them for their personal enrichment at the expense of those they are supposed to serve.”

On defining corruption, Tanzi (1998: 8) suggests it is “like an elephant, though it may be difficult to describe, it is generally not difficult to recognize when observed.” The definition of corruption used by the World Bank and quoted by Tanzi includes “the abuse of public power for private gain.” This is probably the most common and the most simplistic definition of corruption. Corrupt acts are often committed by public officials for organisational gain as well as personal gain. For example, those acts benefiting a particular political party, tribe, family, friends or government department.

Klitgaard, MacLean-Abaroa and Parris (1996: 1) define corruption in broad terms: “corruption means the misuse of office for personal gain. The office is a position of trust, where one receives authority in order to act on behalf of an institution, be it private, public, or non-profit. Corruption means charging an illicit price for a service, or using the power of office to further illicit aims. Corruption can entail acts of omission or commission. It can involve legal activities or illegal ones. It can be internal to the organization (for example, embezzlement) or external to it (for example, extortion). The effects of various kinds of corruption vary widely. Although corrupt acts sometimes may result in a net social benefit, corruption usually leads to inefficiency, injustice and inequality.”

Mbaku (1996: 2) has compiled many pertinent definitions of bureaucratic corruption, among them being that “corruption, while being tied particularly to the act of bribery, is a general term covering the misuse of authority as a result of considerations of personal gain, which need not be monetary.” Mbaku also defines corruption in Africa as being a practical problem involving the “outright theft, embezzlement of funds or other appropriation of state property, nepotism and the granting of favours to personal acquaintances, and the abuse of public authority and position to exact payments and privileges.”

### 1.5.2 Characteristics of Corruption.

Alatas (Ladikos 1999: 29) identifies the characteristics of corruption as being “a betrayal of trust, deception of a public body, private institution or society at large, deliberate subordination of common interests to specific interests, secrecy of execution except in situations which allow powerful individuals or those under their protection to dispense with it, involvement of more than one person or party, the presence of mutual obligations and benefits, in pecuniary or other forms; the focussing of action on those who want definite decisions and those who can influence them, the attempt to camouflage the corrupt act by some form of lawful justification, and the expression of a contradictory dual function by those committing the act.”

To explain the above-mentioned characteristics, corruption means taking from someone or something in order to enrich oneself. For example, if a civil servant or government official starts taking bribes from business in return for the awarding of lucrative government contracts, the official is turning the public interest (correct tender procedures, most cost-effective job) into private interest (his/her own self-enrichment). The officials do not always work alone, they are often threatened with losing their jobs by someone in a more senior position than they are, if they talk. In other corruption scenarios, there could be entire government departments involved or just one or two officials. Corrupt acts are often explained or justified by claiming ignorance of departmental procedures or other elaborate measures to try and hide the deed.

Nyaka (1998: 52) stresses that corruption means different things to different people. Nyaka suggests that the definition of corruption must include the following characteristics: “the lack of productivity or work ethics, nepotism, greediness and the failure to conduct proper accounting and auditing processes. Unauthorized expenditure and blatant theft should not be left unpunished. Diverting funds earmarked for special projects and using them for self-enrichment, is corruption. Add to that the non-payment of municipal rates and levies, buying stolen goods, the non-payment of traffic fines and even vandalism of state property, and you begin to understand how we contribute to corruption.”

### 1.5.3 Moral Definitions of Corruption.

Ladikos (1999: 29) draws mainly moral definitions from the *Shorter Oxford Dictionary* to describe the concept of corruption. Disintegration, decomposition, becoming morally corrupt, moral deterioration, depravity and the perversion of integrity by bribery or favour are all used to define corruption and corrupt activities. Ladikos adds that “the deterioration of moral or ethical standards in the public service, the perversion of the integrity of its officials and the inevitable results of this, namely, the destruction of an efficient state administration, could all be classified under the heading of corruption.”

As mentioned earlier, corruption has different interpretations for different people. Many corrupt acts are judged in terms of a society’s morals. Corrupt acts considered wrong by one person, may be regarded as harmless by another. Malan (Bauer 1999: 57) describes corruption as a “phenomenon which is complicated because values and norms differ from culture to culture. Behaviour regarded as deviant in terms of western democratic values and norms, for instance, may be regarded as acceptable behaviour in a developing African state.”

### 1.5.4 Petty and Grand Corruption.

Other important aspects of corruption that need to be mentioned are **petty corruption** and grand or systemic/structural corruption. Ladikos (1999: 29) defines petty corruption as specific acts of the abuse of power by individuals and/or groups for personal and sectional gain. According to Ladikos, most of the reports on corruption in the news focus on this aspect of corruption.

**Grand or systemic/structural corruption** is “that aspect of corruption where social systems such as political, organisational, economic, cultural and religious systems operate in such a way that power is allowed to be abused for personal or sectional gain at the expense of a variety of victims. These victims could include most of a country’s population, future generations and even the environment.

Robinson (1998: 3) categorises three main types of corruption: incidental (individual), institutional (for example, the police service) and systemic (societal). Robinson explains that in some instances, corruption occurs only among individual politicians or public officials and they are periodical rather than systemic. In other instances corruption is pervasive in particular spheres of government and institutions. Some government ministries may have wide-scale corruption while others have very little. The latter may be influenced by different opportunities and controls in the various ministries.

With systemic or entrenched corruption, the entire society is affected, to such an extent that this has become an acceptable way of conducting everyday transactions. This form of corruption “affects institutions and influences individual behaviour at all levels of a political and socio-economic system.”

#### 1.5.5 Public Office Definition.

Williams (2000: 512) mentions that the main definition of corruption used from the 1960’s to the 1980’s was the public office definition, which was considered to be a legally-derived approach. This approach clearly divided the public and private domains and came about by the gradual replacing of autocratic governments in Europe by more representatives, smaller and accountable forms of government. As a result of this transformation, emphasis was placed on ending the theft of public resources by officials responsible for administering them. Government officials started to receive salaries in place of the seemingly unlimited use of public resources. The public office concept also defined corruption as “theft from the state by state officials.”

Williams continues: “the public office and public interest definitions of corruption share the understanding that the common good is best served when officials adhere to ‘the formal duties of public roles’ and do not lapse into conduct designed to secure ‘private regarding gains.’ The problem remains of how to determine public and private roles and which view of the public interest to adopt.



While the politically powerful can manipulate the definition of public office and can seek to impose their view of what is in the public interest, one potentially countervailing force in shaping conceptions is public opinion.”

#### 1.5.6 Police Corruption.

Maguire and Radosh (1999: 278) mention that the two most significant and pervasive types of misconduct amongst the police are police corruption and police brutality. Goldstein (Maguire & Radosh 1999: 278) defines police corruption as “acts involving the misuse of authority by a police officer in a manner designed to produce personal gain for himself or for others.” The definitions and examples of police corruption given in this section refer to police in the United States of America, but they can be applied to police in South Africa as well. Various activities constitute police corruption. **Gratuities**, for example, are common in routine police work. This behaviour entails businesses that offer police members a free service or discounts on products in exchange for good relations with the police or other favours from the police. A more serious form of this practice is **extortion**, where a police officer demands payments or services from business, for whatever reason.

Police officials who participate in extortion are also more likely to accept **bribes** from offenders. The following categories of people are more prone to buying police silence: motorists, drug-dealers, contractors and bar/club/shebeen owners. Another form of police corruption is **theft**. A common form of theft committed by police officials, besides the theft of certain exhibits handed in to them (for example, drugs and cash), is when police arrive after a burglary has occurred to help themselves to expensive items not taken during the burglary. **Poor job performance** is also a form of police corruption. Police officers who neglect to do duties that are part of their job, and officers who do their duties in a careless and insufficient way, are guilty of corruption (Maguire & Radosh 1999: 278).

Maguire and Radosh (1999: 278) explain that researchers have suggested two alternative explanations of police corruption. They are the ‘rotten apple’ model and the theory that corruption is systemic. The ‘rotten apple’ model suggests that some individual officers are personally corrupt. The answer to this problem is to identify and fire these individuals. The second model suggests that corruption is driven by an organisational structure and by structural elements in the workplace. Police corruption, in this

instance, can be tackled successfully by instituting major changes in policing and society itself, for example, legalising drugs to avoid bribes paid to corrupt police officials.

#### 1.5.7 An Operational Definition of Corruption.

For the purposes of this study, the legal definition of corruption in South Africa will be used as a point of departure, not lessening the importance of all the definitions and characteristics mentioned above.

In South Africa, *the Corruption Act (94 of 1992)* offers a legal definition of corruption. This anti-corruption Act deems anyone guilty of corruption who “gives or offers to give any benefit of whatever nature which is not legally due to any person who has any power or who has been charged with any duty by virtue of any employment, to influence the person upon whom such power has been conferred to commit or omit to do any act in relation to such power or duty.” This section of the Act is applicable to the corruptor, for example, a businessman who pays a bribe to an official for a government contract, would be committing an offence.

The Act goes on to state that “any person upon whom any power has been conferred or who has been charged with any duty by virtue of any employment or the holding of any post or any relationship of agency or any law and who corruptly receives or obtains or agrees to receive or attempts to obtain any benefit of whatever nature which is not legally due with the intention, firstly, that he should commit or omit to do any act in relation to such power, whether the giver or offerer of the benefit has the intention to influence the person upon whom such power has been conferred, so to act or not. Secondly, to be rewarded for having committed or omitted to do any act constituting any excess of such power, whether the giver or offerer of the benefit has the intention to reward the person upon whom such power has been conferred, shall be guilty of an offence.” This section of the Act is applicable to the corruptee, for example, the government official who accepts a bribe from a businessman in exchange for giving him a government contract.

This study will not focus solely on corruption in terms of the act of bribery. Corruption, for the sake of this study, refers to any corrupt act committed by a civil servant or government official, for example, theft, receipt of gratuities and bribery with a view to benefit that person financially or otherwise.

## 1.6 METHODOLOGY.

### a) Exploration and Description.

This is primarily an exploratory study in the sense that corruption as a crime is studied from a criminological perspective as opposed to the more popular political, sociological or economic perspectives. The literature information to be presented in this study is descriptive and the empirical study is exploratory. According to Babbie (2001: 91) most social research is done to explore a topic. This happens either when a topic is fairly new, or when a researcher examines a new interest. The topic may even be a long established phenomenon, but with very little research done on it. In terms of this particular study, the emphasis will be on the crime component of corruption. The corruption research is also descriptive as valuable information is provided by both the documentary and empirical study. Researchers observe situations and then describe what they have observed. After describing what was observed, researchers tend to examine the reasons for the existence of observed patterns and what they imply (Babbie 2001: 93).

### b) Focus Interviewing.

Focus interviews are regarded as a variation of unstructured interviews (Hagan 1997: 166). However, due to the fact that an interview guide has been implemented to assist the researcher, the focus interviews conducted in this study are more of a semi-structured nature. Focus interviews provide for open-ended responses to questions, which allows for more freedom in the interviewing process and can be described as having a qualitative orientation. Babbie (2001: 291) explains that unlike a survey, "a qualitative interview is an interaction between an interviewer and a respondent in which the interviewer has a general plan of inquiry but not a specific set of questions that must be asked with particular words and in a particular order." A conversation takes place between the interviewer and the interviewee. The interviewer guides the conversation in a direction and pursues certain subjects raised by the interviewee. The latter action is referred to as probing and involves follow-up questions to focus, expand, clarify, or further explain the response given (Hagan 1997: 173). Probing is one of the positive features of interviewing. Not only can the interviewer seek clarification or amplification whenever

respondents give one-word answers or are somewhat vague, probing can also uncover areas of enquiry previously neglected by other researchers (Champion 2000: 287).

c) Purposive or Judgmental Sampling.

Purposive or judgmental sampling involves handpicking elements from some target population. The researcher's intent is to ensure that certain elements will be included in the resulting sample. Because some or more elements will be included in the sample deliberately, and others will be excluded deliberately, purposive sampling is a non-probability sampling form (Champion 2000: 196). It (purposive sampling) represents the selection of an appropriate sample based on the researcher's skill, judgement and needs. Purposive sampling refers to the selection of interviewees according to the purpose of the study. In this study, there is a deliberate selection of interviewees, drawn from different professions, but they all have a good knowledge and working experience of corruption. One particular interviewee, Advocate W Heath, is considered an expert in the field of corruption and mismanagement in both the private and public sector. This is an elite sample because of the interviewee's high public profile and his expertise on the subject of public sector corruption.

1.6.1 Data Collection.

(i) Documentary study.

The documentary study consists of information obtained from a selection of books and journals, internet and newspaper articles. Some of the main contributors will be mentioned below.

Valuable internet and journal articles by *Lodge* are used to get an idea of the extent of corruption in the South African public service. This author also provides pertinent examples of how corruption is committed in the different levels of government. Journal articles by *Prinsloo, Sayad and Bruce*, newspaper articles by *Kirk, Schronen, Merten, SAPA and Jurgens*, and a book by *Peron*, all contribute to identifying the extent of, and examples of corruption in the Department of Safety and Security (mainly) and in other departments, generally.

The chapter that deals with risk factors related to corruption and practices contributing to corruption have journal contributions by *Ladikos, Bauer and Van Wyk and Ghazanfar and May*. They also provide risk factors relevant to the developing world. Conditions favouring corruption in South Africa are highlighted in an internet monograph by *Camerer*. Concerning the consequences of corruption, journal articles by *Mbaku, Heath and Ladikos* are the main illustrators of the socio-economic consequences of corruption. Journal articles by *Mbaku, Prinsloo and Naude*, and a contribution by *Baai*, in a book, serve to highlight the political and criminological consequences of corruption.

In the chapter dealing with the key role-players and how corruption is addressed in South Africa, valuable contributions are made by *Sekhonyane and Camerer* in internet articles. *Melville, Sangweni, Pienaar, Baqwa, Ebrahim and Camerer* highlight the specific functions of some of these roleplayers (anti-corruption agencies). Various pieces of legislation will be scrutinised and *Prinsloo, Van Tonder and Goss* give examples in journals of the adjudication of some corruption cases.

(ii) Empirical study.

Concerning the empirical study, five case dockets from the South African Police Service Anti-Corruption Unit in the Western Cape will be studied. The process of assessing these dockets will be mentioned. Also to be discussed are the modus operandi of the corrupt police officials and the main shortcomings of the data in the dockets.

The interviews to be conducted with knowledgeable people in the field of corruption also form part of the empirical study. The individuals to be interviewed are from the legal, political, policing, media and NGO fields. They all have good experience in the field of public sector corruption, be it in investigating, reporting on or specialising in elements of corruption. The interviews will be conducted with the use of interview guides/schedules. The pertinent themes used in the interviews include general themes and specific themes. The general themes were applied to all interviewees and the specific themes applied to the interviewee's particular field of expertise.

General themes.

- Corruption in Africa

- Corruption in South Africa
- Corruption in the South African public sector
- Corruption causation.
- Consequences of corruption
- Anti-corruption agencies.
- Legislation/adjudication
- Recommendations.

#### Specific themes.

- Police corruption
- Causes of police corruption
- Consequences of police corruption
- South African Police Service Anti-Corruption Unit.
- Special Committee in Public Accounts in Parliament (SCOPA).
- Public Finance Management Act
- Greed as a risk factor
- Media-specific questions: for example, how instrumental is the media in exposing corruption?  
Quality of the relationship between government and the media? And, quality of investigative journalism in South Africa?

#### 1.6.2 Data Analysis.

Sarantakos (1998: 313) explains that the purpose of data analysis and interpretation is to identify and clarify information gathered through the previous stages of the research. Notes are converted into statements, suggestions or conclusions, which will eventually answer the research question.

In the documentary section of this study, information will be gathered from a wide variety of sources, including books, journals, newspapers and the internet. The information taken out of these sources will be applied to the relevant research questions, in an attempt to answer them. Data received from the empirical study, specifically the interviews, will be collated and placed in the relevant sections of the

report on the findings. This information will be placed under specific headings also used in the interview guides. The final chapter of this study will focus on all the findings, documentary and empirical, as well as make recommendations related to these findings.

### 1.6.3 Validity.

To determine the validity of a study the following question needs to be addressed: is it an accurate or true measure of the phenomenon (corruption) under study (Hagan 1997: 261)? The methods to be used in gaining as much information as possible on corruption as a crime can be considered valid. This is because the interviewees are truly knowledgeable about corruption, and contribute greatly to the research topic. The purpose of this study is not to generalize the findings but to provide a good foundation for further studies. Aspects that need further studying include the offender's motive for committing corruption and the impact these corrupt acts have on victims.

## 1.7 EXPOSITION OF CHAPTERS

### Chapter 1 – Orientation.

This chapter serves as an introduction to the entire study. It will give the reader an insight into the history of corruption. The main aim and objective of the research is identified, as is the rationale for the study. There is a comprehensive section defining key concepts and other definitions of corruption, including police corruption. Certain characteristics of corruption are mentioned. The way in which information is to be collected and analysed in this study is explained in the methodology section of this chapter.

## Chapter 2 – The Incidence of corruption.

The incidence of corruption includes the nature, extent and occurrence of corruption. This chapter takes a brief look at the nature and extent of corruption in Africa and South Africa. The focus then turns to corruption in the South African public sector, looking in detail at corruption in the four levels of government, namely Central Government, Provincial Government, Parliament and Local Government. Specific examples are presented to illustrate the nature of corruption and how it is committed in different government departments. The main focus of the latter will be on the Department of Safety and Security, as police corruption is a central feature of this study.

## Chapter 3 – Aetiology and consequences of corruption.

The aetiology of corruption focuses on risk factors that may lead to the committing of corruption and corrupt acts. These include factors such as greed and penalty systems, amongst others. Practices that could also contribute to corruption are discussed and these include practices such as patronage, nepotism, bribery, ghosting, bid-rigging, graft, kick-backs and conflict of interest. Risk factors relevant to the developing world and to South Africa are discussed. The consequences of corruption are looked at in detail and include socio-economic, political and criminological consequences.

## Chapter 4 – Reactionary measures to corruption in South Africa.

This chapter focuses on how corruption is dealt with in South Africa. It assesses what the government is doing correctly and incorrectly in the fight against corruption. The key role players in the field of corruption are analysed and discussed, both governmental and non-governmental bodies. There is also a performance evaluation of a selection of the key role players. Five pertinent pieces of anti-corruption legislation are looked at in detail. Adjudication of corruption cases are mentioned briefly.

## Chapter 5 – Empirical study: case dockets and interviews.

The empirical study consists of police case dockets and interviews with individuals from different professions, including the legal profession, politics, the media, police and the non-governmental



section, who are knowledgeable about the corruption phenomenon. This chapter focuses mainly on the findings of these interviews and how invaluable they contribute to the research topic. Each individual interviewee's input assisted in gaining a broader understanding of corruption as a crime, and they added to the researcher's belief that corruption is a very worthy issue to research.

#### Chapter 6 – Theoretical explanations of corruption.

A number of theories are used to explain corruption. The Public Choice Theory is used to explain corruption in Africa. Theories from the two most important schools of thought in criminology, the Classical School and the Positive School are also used to explain certain pertinent corruption findings. Theories used from Classicism include Rational Choice Theory and Becker's Economic Model of Crime. Theories from Positivism that contributed to explaining corruption are Institutional Anomie Theory, A General Theory of Crime and Neutralisation Theory.

#### Chapter 7 – Findings and Recommendations.

This final chapter focuses on the findings of the entire study, including the revisiting of the main aims and objectives of the study as laid-out in chapter one. Recommendations concerning corruption, how to increase the efficacy of the fight against corruption and corrupt public servants and officials, will be made according to the relevant findings in the study.

#### Bibliography.

### 1.8 CONCLUSION.

This chapter served as an orientation to the entire study. An interesting historical overview of corruption explains that the phenomenon of corruption has been around for more than two thousand years. It was around in medieval times and it was even mentioned in Shakespeare's plays. The advent of democratic states gave rise to the reporting of corruption probably because of the new practice of publicly discrediting political opponents. During the reign of the Roman Empire, specifically during

the second century BC, the dominant class in Roman society were pervasively corrupt, and this corruption was directly related to the system of election to public office.

The main aims and objectives of this study as well as the rationale for it were explained. The principle objective of this study is to address corruption from a criminological perspective. This will be achieved by studying documents. Case studies of police corruption, as well as interviewing knowledgeable people will constitute the empirical study. The rationale behind the research is to explore the seriousness of corruption as a crime.

There have been many definitions of corruption offered. The most common definition being 'the abuse of public office/power for personal gain.' The characteristics of corruption include taking from someone or something in order to enrich oneself, for example a public official or a civil servant taking bribes from business in return for the awarding of lucrative government contracts, the official is turning the public interest into private interest. The public loses and the official gains. The most corruption in all levels of government occurs in procurement.

The methodology used in the research includes a documentary study using information from journals, books, newspapers and internet articles. The empirical section of the research consists of case studies of police corruption and interviews with a variety of people considered to be knowledgeable in the field of corruption. Finally, a brief exposition is given of all the remaining chapters.

The following chapter highlights the incidence of corruption. This includes the scope, extent and occurrence of corruption and corrupt acts in the South African public sector. Corruption in Africa and South Africa will be briefly mentioned and corruption in the four levels of the public sector, namely, Central Government, Provincial Government, Parliament and Local Government, will be discussed in detail. Pertinent and specific examples of corruption and corrupt acts in certain government departments are presented as excellent examples to illustrate how corruption is committed.

**CHAPTER TWO**

**THE INCIDENCE OF CORRUPTION**

## 2.1 INTRODUCTION.

The question needs to be raised. Is corruption on the increase or is it in the public domain more than it has ever been? Tanzi (1998: 4) suggests that many arguments can be produced to show that corruption is attracting more attention today than ever before. The end of the Cold War resulted in leaders of certain countries no longer having to turn a blind eye to corruption in countries that shared their ideologies. For example, Zaire, where corruption was endemic, but ignored by the United States of America because Mobutu, their president, was anti-communist.

Corruption prevalent in centrally controlled economies was largely ignored, either because of the lack of information or fear of speaking out (amongst the general populace of these countries). The Soviet Union and other countries that followed the same regimented economic practices had a large degree of corruption. Countries would largely play down the problem, even though they were losing a lot of money through misuse and theft.

Corruption appears to be on the increase because more countries are adopting democracy, which includes a free and active media. Russia and South Africa are good examples of this phenomenon, exposing corruption at every opportunity. If it were not for the media in South Africa, very few corruption incidents would come to the fore, for example, corruption surrounding the multi-million rand arms deal.

This chapter will focus on the incidence of corruption, mentioning the extent of corruption in Africa and South Africa (briefly). The extent of corruption will be looked at in detail in the South African Public Sector including Central Government, Provincial Government, Parliament and Local Government. Examples of the occurrence of corruption in various governmental departments will also be discussed in depth with many examples to illuminate the pervasiveness of corruption and corrupt acts (perceived and otherwise) in the Public Sector.

## **2.2 CORRUPTION IN AFRICA.**

Mbaku (1996: 1) describes the nature and extent of corruption in Africa. In many African societies where the remuneration of civil servants is generally low, they may supplement their incomes with income from other activities, such as providing services to groups or individuals who require favours from the state, for a fee. This is largely the nature of corruption universally, but in Africa, control of enormous amounts of resources by bureaucrats has enabled these officials to manipulate public policies in order to gather immense personal wealth at the expense of the rest of the country. There have been cases where officials have created artificial shortages to be able to extract bribes from people seeking those particular goods. It is also generally accepted that the enforcement of any anti-corruption measures in Africa are ineffectual and often, non-existent. This state of affairs forces civilians and business people to pay bribes to civil servants in exchange for the most basic of requests and legitimate entitlements.

Other important perceptions of Africa as a continent is the sight of leaders of severely impoverished countries appearing extremely wealthy, these leaders have in many instances squirreled away fortunes in overseas accounts, which they have stolen from public funds at the expense of their poverty-stricken populace. An example of this would be Sani Abacha, the last military dictator in Nigeria. Nigeria is still trying to get this money back from certain European banks. It is also widely accepted that in post-independent Africa, most countries are using the state apparatus as a means of enriching the ruling elite and this is open to corruption on a grand scale. Another good example would be that of Zimbabwe, where years of mismanagement, bad economic policies and a political elite governing by kleptocracy, together with illegal land occupation, has resulted in the collapse of law and order, widespread unemployment and poverty.

## **2.3 CORRUPTION IN SOUTH AFRICA.**

Prinsloo and Naude (2001: 41) mention that in South Africa the Heath Special Investigation Unit investigated more than 220 000 cases of corruption concerning both private companies and the public sector. Examples of some of these cases include the 1994 drought relief scheme involving 32 corporations, 179 complaints against attorneys concerning false claims against the Road Accident

Fund, 900 car dealers involved in the alleged theft of government vehicles, 237 contractors involving fraudulent housing subsidy applications, overpayment of salaries, money laundering, payments made with false invoices, pension money theft, and overpayment of allowances. Many of these cases will be dealt with in more detail in the specific examples section of this chapter.

Camerer (<http://www.iss.co.za>) questioned experts about their perceptions of whether the current government, generally, is more, just as, or less corrupt than the apartheid government. Almost half of the respondents felt there was the same amount of, or more corruption than under the apartheid government. In research done by IDASA (Institute of Democracy in South Africa) in 1999, the situation had improved only slightly with 2 percent less saying the new government was more corrupt. Therefore, in both surveys, slightly more than a third of respondents said they either saw no change, or an increase in corruption from apartheid to democracy.

#### **2.4 CORRUPTION IN THE SOUTH AFRICAN PUBLIC SECTOR.**

The extent of corruption is difficult to measure as it can be an elusive crime, often difficult to detect. Corruption is also not recorded separately in crime statistics. Another problem is the lack of reporting of corruption. Del Frate (Prinsloo & Naude 2001: 40) mentions that in Africa only 2.4 percent of corruption cases on average were reported to the police, 3.5 percent in Asia, 3.4 percent in Latin America and 1.4 percent in countries in transition.

In South Africa there is not much reliable information or systems in place to indicate the exact extent of corruption. Most information available on the extent of corruption is on perceived corruption, not scientific evidence. Lodge (<http://www.und.ac.za>) states that 46 percent of South Africans believe the government to be substantially corrupt. A survey done by *Transparency International*, an international anti-corruption non-governmental organisation, found that there is an increasing perception among businessmen that South Africa has a corrupt government.

Corruption reached such alarming proportions in 1997 that President Mandela appointed a Special Investigating Unit to investigate corruption. By 1999, the unit were busy investigating in excess of 90 000 cases. The head of the unit, Judge Willem Heath claimed that these cases involved the sum of

approximately R7 billion, he also believes that corruption and mismanagement amounting to nearly R200 billion is still waiting to be uncovered. The unit had already recovered around R10 billion in stolen assets. These assets include 373 state-owned vehicles worth R33 billion, and 80 farms worth R20 million. Heath also recovered assets worth R4.5 billion from trustees of the Daily Bread Feeding Scheme. These ill-gotten gains included a R2 million house, a Mercedes Benz and an aeroplane (Peron 1999: 119).

#### 2.4.1 Central Government.

Some pertinent examples of the extent of corruption in the government of South Africa will be mentioned. Concerning the National Executive, the most significant example is probably that of Abe Williams, the former minister of Welfare in the government of national unity, he has recently been released after serving a sentence for fraud and theft. Amongst other charges, he was guilty of accepting a substantial bribe from a company tendering the handing out of pensions. Winnie Madikizela Mandela was also implicated in corruption when she was the ANC's (African National Congress) head of Welfare, she and some of her staff spent R400 000 on foreign travel and other unauthorised expenses. Madikizela Mandela was also accused of entertaining an American impresario with public money, who was on the verge of entering into a business deal with her daughter's public relations company (<http://www.und.ac.za>).

A strong suggestion of conflict of interest concerning the Executive, refers to the erstwhile Minister of Defence, Mr. Joe Modise. Stefaans Brummer and Paul Kirk reported in the *Mail & Guardian of March 15 to 21 2002* that the *Financial Mail* had revealed that Modise and four senior government officials held a controlling stake in a company called Log-Tek Holdings, which later became Conlog Holdings. The minister's stake in the company was acquired in 1997, three years into his five-year term in this portfolio. The irregularity occurred as a result of Log-Tek/Conlog's attempt to derive business from the arms deal, which Modise oversaw. The benefit to Modise and his co-owners would have been business received as a result of logistic contracts evolving from counter-trade agreements entered into by the South African National Defence Force with Italy and Germany for light utility helicopters, submarines and corvettes.

Another way Modise and his colleagues could have benefited from the arms deal had the industrial participation deal materialised, was through a deal with international defence companies Bae systems and Saab. These two companies are supplying South Africa with \$2.2 billion worth of Hawk trainer jets and Gripen fighter jets. Conlog would have benefited by going into a joint venture with ABB, a Saab sister company, to produce pre-payment electrical meters and solar power manufacturing. The government made a decision to purchase 12 Hawks at a cost of approximately \$1 billion even though the preferred jets, the Italian-made Aermacchi MB339FB were offered to South Africa at \$260 million.

Corruption at central government level and among the executive appears to be less prevalent compared to the lower tiers of government. Corruption at this level occurs more in specific government departments. Lodge (1997: 14) provides incidents that illustrate corruption at this level. These include the Home Affairs department where government officials were involved in a R13 million fake passport scam. They had also sold 270 blank passports in 1997. In the South African Revenue Service, officials were under investigation for fraud amounting to R800 000. A merger between Inland Revenue and Customs in 1996 assisted with the theft of PAYE cheques. Another aspect that helped importers evade duties and taxes on goods, through bribery, was the fact that out of 300 customs inspectors only 20 remain.

The department of Health acted improperly concerning the 'Sarafina' issue (a play meant to spread an AIDS awareness message to schools), by flouting regular tender procedures and by officials apparently not knowing that donor funds were subject to the same rules as any other public fund. The real harm done in this debacle was the way the department dealt with it by their heavy-handed attempts to prevent the public knowing the full extent of the wrongdoing. The Director-General of Health demanded her subordinates sign an oath of secrecy to prevent sensitive information from 'falling into the wrong hands' as this could cause the department and the state embarrassment. Also, in parliament, the ANC chief whip changed the order of debate to ensure the Health minister would not be 'in the house' at that time (Lodge 1997: 14).

The biggest corruption culprits and the champions of self-enrichment are to be found in the following government ministries; Social Welfare, Safety and Security and Justice. This might be as a result of these departments having more dealings with the public than other departments. The Welfare



department inherited 14 separate bureaucracies from the pre-1994 era. Many of these were very incompetent and deeply corrupt. It is estimated that 10 percent of the departments budget disappears as a result of fraud. Examples from these departments will be given in the next section of this chapter (Lodge 1997: 15).

#### 2.4.2 Provincial Government.

Lodge (1997: 11) suggests that the two least corrupt provincial governments are Gauteng and the Western Cape. The reason for this may be that they are the only two provinces that did not have to incorporate an apartheid 'homeland' administration after 1994. The latter having been notoriously corrupt. For example, Nelson Ramodike, the chief minister of Lebowa, was allegedly involved in running a number of state funded businesses through various brothers and cousins, as well as being in the possession of three top of the range Mercedes Benz's. The chief minister of Bophutatswana was also found to have issued irregular tenders, appropriated state-owned houses and farms, and he set up private businesses with public funds.

Gauteng has not, however, been without extensive corruption. Some of these corrupt acts include the widespread sale of matriculation examination papers. There has been large scale theft by officials in Johannesburg pension offices, sometimes up to R2 million a day, as well as frequently bribing pensioners to enable them to jump the pension queues. Other examples include fraud amounting to R1 million in the Housing and Land Affairs department. This serves to explain the discrepancy between the amount of subsidies paid out and the number of houses built. Lodge (1997: 11) refers to a report in *The Star of 12 March 1997* where a provincial Auditor's investigation revealed that R400 000 in subsidies had been paid, in 1995/6, to developers in Phola Park, but no houses were built in that period. A housing official was apprehended in 1997.

The extent of corruption in Mpumalanga Province appears to be pervasive. The MEC (member of executive committee) for Safety and Security, Steve Mabona, was accused (before his resignation in 1997) of authorising the irregular issuing of drivers licences, most notably to the deputy speaker of the House of Assembly. The MEC was also accused of appropriating R110 000 of the department's budget to settle travel and hotel bills and to charter an aircraft for his personal use. In 1995 a number

of MEC's were guilty of using R1.3 million from a budget earmarked for low-cost housing to renovate their homes. These renovations included putting in swimming pools. The same investigation revealed evidence of nepotism, favouritism and political privilege.

Some corrupt practices mentioned by the erstwhile premier of Mpumalanga, Mathews Phosa (Sangweni & Balia 1999: 49) include the abuse of the Primary School Nutrition programmes, especially funds being stolen by officials, the abuse of the government fleet management petrol cards, theft of creditors cheques and government officials investing in businesses serving the government. Other corrupt acts include the bribing of officials by the private sector to order substandard goods at inflated prices, ghost workers on the government payroll, fraud in capital projects such as in the construction industry where claims are put in for work not done, secret accounts, payments to non-existent entities and unauthorized international outreach (promissory notes).

Lodge (1997: 12) elaborates on the contents of some of these corrupt acts. The director of the Provincial Parks Board in Mpumalanga, Alan Gray, earning a monthly salary of R34 000 still deemed it necessary to hire out the services of two businesses he owns to the board. Alan Gray was also recently implicated in a promissory note scandal where loans to the value of millions of rands were secured using some national parks as collateral. A former chairman of the Mpumalanga Development Corporation left after receiving a large pay-out.

In 1997 the Mpumalanga Housing Department was involved in a huge financial scandal. This was as a result of the awarding of a R190 million contract without following regular tendering procedures. The extent of this corruption can be determined by the fact that a member of the provincial housing board, Job Mthombeni, was also a director of the successful bidding company, Motheo Construction. Motheo's chief executive, Thandi Ndlovu is a friend from exile, of the national minister of Housing. Also, the housing scheme had a provision of a 15 per cent profit margin, this is about three times the norm in the industry. The national director-general of housing was dismissed for requesting an inquiry into this scandal.

Lodge (1997: 12) points out that an audit into corruption related to feeding schemes, showed between R4.1 million and R30 million had disappeared from the primary schools feeding scheme. Nationally,

small contractors, school administrators and junior government officials enriched themselves through these schemes, but Mpumalanga suffered some of the greatest losses.

The extent of corruption in the provinces is further illustrated by the R4 million paid to 'ghost' workers in the Department of Nature Conservation in KwaZulu-Natal, and R1 million stolen from KwaZulu-Natal's Department of Finance by one official. In 1994/5 the auditor-general found that up to R400 million was overpaid to suppliers and to employees in the province. A more recent example of the dismissal of an MEC is the firing of the MEC for Education in the KwaZulu-Natal legislature, for nepotism. Ms Shantu hired her brother as deputy-director of education in the province despite his having achieved the weakest results in the screening process.

In the Free State Province, two MEC's lost their posts because of corruption. The MEC for Economics and Tourism was dismissed after he had authorized irregular loans from the Free State Development Corporation, and the MEC for Housing was dismissed after using his position to influence the outcome of a dispute between a petrol station and a taxi company with which his wife is involved (<http://www.und.ac.za>).

In the North West Province, officials in the Department of Public Works issued a cheque for R20 million to pay for electronic equipment invoiced at R126 000. Between 1995 and 1997 ten provincial MEC's had been involved in corrupt activities, this constitutes 10 percent of provincial 'ministers'. Some of the corrupt acts include the seeking of sexual favours in return for contracts, misuse of a government aeroplane, illegal transfers and loans to companies and the improper tendering for the purchase of government buildings. The Eastern Cape, a province that has experienced extensive corruption, had 8 000 'ghost' workers in 1997. A few other examples of corruption in the province include the theft of nearly the entire contents of the government garage in Umtata, with the exception of one spanner and a few spare parts. The Justice department in Lusikisiki was defrauded by R5.3 million and the Health department in Bisho was defrauded by R4.4 million. Also in the Eastern Cape, government cheques of over R31 million were stolen in 1996 (Lodge 1997: 13).

<http://www.worldonline.co.za> reports that a massive crime syndicate specializing in government fraud was exposed in the Eastern Cape, in 2001. The syndicate consisted of Eastern Cape government

employees and suppliers. By the time this syndicate was exposed, one of their members had already been murdered. Forensic audits and the police were able to link the syndicate to 315 fraudulent transactions worth R45.8 million, involving 29 officials and 41 suppliers. At the time of going to press, six government employees had already been arrested and charged. It is believed that once this scam has been fully investigated, fraudulent transactions will amount to approximately R450 million. Police had also either recovered or prevented the payment of R3.2 million.

The scam involved government employees charging suppliers for goods and services not delivered and then they either shared the money paid out for the bogus supplies or took a share for initiating the transaction. The fraud covered most departments including education, health, welfare, public works, finance and housing.

#### 2.4.3 Parliament.

Examples of the extent of corruption at provincial parliamentary level are that of Simon Ripinga who was under investigation by the then Heath Commission for the purchase of land well under market value from the KaNgwane government (previous 'homeland'). Two Mpumalanga MP's were also subjected to parliamentary enquiries, the speaker, Elias Ginindaza was investigated for overpaying from public funds, R208 000 for the building of a guardhouse at his home. The deputy speaker, Cynthia Maropeng was investigated for taking R75 000 worth of personal advances and claiming expenses, amongst others, for staying at the Mount Nelson Hotel in Cape Town (a five star establishment) with her child and nanny (<http://www.und.ac.za>).

<http://www.theherald.co.za> reported on the 12/03/2002 that a senior parliamentary official in National Government was found guilty of misconduct, in this instance nepotism, and fired. The official who was fired was Parliament's human resources manager. The latter was accused of "communicating with a candidate before and during the selection process on several occasions in an unethical and improper manner. Mr Tsabadi was also found guilty of failing to disclose this to the interviewing panel. The candidate was recommended for the post, but the wife of an unsuccessful candidate blew the whistle, resulting in the disciplinary inquiry."

#### 2.4.4. Local Government.

Corruption at local government level is deeply entrenched and prolific. The Heath Investigative Unit investigated irregularities in 17 Transitional Local Councils (Heath 1999: 10) and discovered that often there were not a lack of control measures but rather a lack of interest in implementing these measures. This will obviously lead to corruption as more and more unscrupulous people see opportunities to steal and take these opportunities. Typical problems identified by Judge Heath include the failure by the councils to implement adequate internal control and checking measures, as well as adequate financial and accounting records. The misappropriation of funds by councillors and missing funds are common and the council cannot account for them because there is no supporting documentation. The councillors were also guilty of awarding contracts that ignored legal procedures and public interests.

### **2.5 SPECIFIC EXAMPLES OF PUBLIC SECTOR CORRUPTION.**

This section will deal with explicit and excellent examples of corruption and corrupt acts that have occurred in some government departments in South Africa since 1995.

#### 2.5.1 Safety and Security.

Sayad and Bruce (1998: 16) point out a very important distinction that needs to be made concerning police corruption. "An act can be classified as an instance of police corruption only if the person who committed it used their 'occupational power'. Thus, an activity engaged in by a police officer in his/her private capacity cannot qualify as police corruption. This includes any criminal activity, whether for gain or not, that is engaged in by an officer as a private citizen without resorting to the legal or organisational powers of the police. Such activities ought to be viewed in the larger context of crime, not as examples of the abuse of police powers for gain. Even in those cases when an off-duty officer commits a crime, for example domestic abuse, and automatically receives favourable treatment by the police, the crime itself is not an instance of police corruption (even if it were for an identifiable gain). Rather, it is the act of giving (or soliciting) favourable treatment that is corrupt."

They continue. "It must be recognized that the distinction between an officer's public and private capacity can be quite difficult to make. For example, stealing car parts from a police compound even when off duty would still be a corrupt act. In addition, the use of the uniform, badge, or any other identifying apparatus which gives an off-duty officer the authority and credibility of the police, instantly changes her/his private status and makes any criminal act for gain committed by the officer an instance of police corruption."

The National Commissioner of the South African Police Services, Mr Jackie Selebi notes in Prinsloo (2000: 66) that the Service consists of 140 000 police officers of whom 80 000 are in active police service. Of these 80 000 officers, 20 000 or one quarter are functionally illiterate, they therefore cannot perform the most basic of police tasks. This phenomenon is largely unheard of in a National Police Service and clearly contributes to the committing of corrupt acts by police officers. Theoretically, it is much easier to take a bribe from a suspect recently arrested than trying to fill out a docket when the arresting officer cannot read or write adequately.

The minister of Safety and Security quoted 1995 figures in Prinsloo (2000: 67) concerning the categories of arrests of the SAPS during 1995. In these twelve months, 4 226 members of the SAPS were charged with a variety of crimes. These crimes ranged from assault (26 percent), reckless and/or negligent driving (21 percent), serious assault (6.8 percent), theft (5.2 percent), attempted murder (4.8 percent), murder (2.5 percent), culpable homicide (1.7 percent), armed robbery (1.5 percent), rape (0.8 percent) and corruption (0.7 percent).

In 1999, criminal charges were brought against 5 726 police members. In 1 014 (17.7 percent) of cases these charges were dropped because of a lack of evidence, or because vital witnesses could not be found at the time of going to trial. The charges against police officers in 1999 include common assault (15.4 percent), assault with intent to do grievous bodily harm (7.2 percent), reckless driving (9.5 percent), murder (2.8 percent), corruption (2.7 percent), crimen injuria (2.5 percent), malicious damage to property (2 percent), theft (1.8 percent), fraud (1.8 percent), defeating the course of justice (1.6 percent), handling a firearm while under the influence of alcohol (1.2 percent), rape (1.2 percent), pointing a firearm (1.1 percent) and blackmail (1.1 percent). R2 736 244 per month was paid out to police officers awaiting trial on these charges.

Concerning corruption particularly, Lodge (1997: 15) reveals that in Johannesburg, in 1996, four police officers were suspended from duty, per week, for corruption. Nationally, 1 076 were under investigation for corruption. In the same year, in Gauteng alone, R5 million worth of cars were stolen, mainly from police car pounds, by policemen. These were cars that had already been stolen and recovered by the police. They were effectively 're-stolen'. Since 1995 there has been a plethora of reports of police officers teaming up with professional criminals and car syndicates, with the former supplying registration papers for the stolen cars.

Police officers together with employees of the Justice Department, particularly magistrates and prosecutors, often collude in the theft and disappearance of dockets. In return they accept bribes from charged criminals. This practice exists all over the country but is particularly rife in Gauteng and the Western Cape. As a result of this practice, thousands of cases do not reach court, resulting in wastage and losses of millions of rands (Lodge 1997: 16).

Police have also been implicated in prostitution-rackets. A police officer was implicated in the running of a brothel in Potchefstroom. The police sergeant was accused of taking 20 percent of the earnings of under-aged girls he had hired out as prostitutes. The sergeant also used a police car to transport some of these girls between their homes and the brothel where they worked. Harassment, assault and the bribing of prostitutes by police is not uncommon throughout South Africa (Peron 1999: 123).

Grobler (Sangweni & Balia 1999: 36) gives typical examples of police-related corruption. These include the theft and sale of case dockets, the deletion or destruction of information in the files of criminals, the sale of confidential information on informers involved in police investigations and sharing official information with unauthorized people. Other examples include extortion, where money is taken from the public for services that are free. The public are often forced to pay for stolen vehicles to be 'returned' and for criminal cases to be 'settled'.

Police corruption is not confined to the lower ranks of the police service. Govender writes in the *Sunday Times* of 17 February 2002 that the suspended head of Durban's Organised Crime Unit, Senior Superintendent Piet Meyer is facing charges including bribery, theft, fraud and extortion. One of

Meyer's tasks as head of this unit was to clamp down on illegal casinos in Durban. Instead of doing this, he frequented these illegal casinos and it is alleged that they paid Meyer more than R600 000 between 1996 and 1998 to prevent any closures or charges being brought against them. Evidence was heard in court that Meyer paid cash for a luxury 4x4 vehicle, spent R100 000 on renovations to his home and went on expensive holidays to Botswana and Zimbabwe, all this on a police superintendent's monthly salary of approximately R9 619. Meyer had also allowed colleagues to help themselves to furniture from the police storeroom. Meyer, besides being accused of taking bribes from illegal casino operators, is also accused of protecting drug lords and members of biker gangs and of stealing from the police by falsely claiming reward money for informers who never existed.

Paul Kirk in the *Mail & Guardian of March 16 to 22 2001* reports that one of Durban's top policeman, Superintendent Christie Marimuthu resigned from his post after he was arrested and charged with extortion by members of the police anti-corruption unit. Marimuthu was caught attempting to extort R10 000 from a city doctor. Superintendent Marimuthu was responsible for investigating organised crime in Durban. The doctor was called to the policeman's office and the latter demanded cash in exchange for dropping an investigation into a suspicious insurance claim the doctor made after goods were stolen from his home. The doctor said he had to go and draw the cash and went directly to the SAPS anti-corruption unit. The latter set up a sting operation and observed the exchange of cash.

This particular police officer was already facing numerous disciplinary charges prior to his arrest, but managed to avoid being disciplined. Some of the charges against him include the discovery of two stolen motor vehicles on his property, he has also been identified by police informers as being involved in numerous crimes including the theft and hijacking of shipping containers from Durban harbour.

Staying in KwaZulu-Natal, Kirk reports in the *Mail & Guardian of August 17 to 23 2001* that from June 1 2000 to July 4 2001, 106 police members were dismissed from the South African Police Services in KwaZulu-Natal. Some of the offences include reckless and negligent driving, drunk driving while on duty and using narcotics. A policeman was fired for not reporting to work and another for 'desertion'. Other offences include armed robbery, unlawful possession of a machine gun and rape.



## Western Cape

Schronen reported in the *Cape Argus* of 4 April 1997 about the 'explosion' of crime amongst SAPS members in the Western Cape. The 'shocking' increase in crimes committed by both junior and senior police officers included three murders, three kidnappings, two rapes, an armed robbery, five counts of housebreaking, 11 thefts, indecent assault, fraud and corruption. At the same time, members of the Western Cape Anti-Corruption Unit were investigating two major internal complaints. They were a fingerprint scam and police medical aid (Polmed) fraud. Fingerprints were 'planted' by Western Cape police forensic staff to secure convictions. In the case of the medical aid fraud, the latter involved millions of rands and it involved a large number of police officials who were irregularly declared medically unfit and as a result, received huge severance packages from the state. The involvement of a network of insurance agents, doctors, attorneys and people in the pharmaceutical industry are still under investigation. This fraud first came to light in 1995.

Schronen gives a good example of a theft syndicate involving a policeman in the *Cape Argus* of 21 October 1998. A policeman, his father and an aunt were arrested when private undercover detectives cracked the syndicate in only three days. 'White goods' with a value of over R45 000, including eye-level and microwave ovens, fridges and stoves were allegedly stolen by staff from the OK Bazaars warehouse in Montague Gardens (an industrial area in Cape Town), over a period of several months. Items of stolen goods were found in the houses of the policeman, his father and his aunt. The policeman worked in radio control.

Sapa in *The Citizen* of 16 November 1998 gave a summary of the charges facing police officers in the Western Cape for 1998. Sixty Six Western Cape police officers, including eight Inspectors and a Senior Superintendent were suspended or fired for being involved in various crimes during 1998. Most of these criminal activities involve dishonesty, fraud, perjury, obstruction of justice, tampering with evidence, helping prisoners escape and corruption. The SAPS provincial disciplinary officer said that the most common offence amongst the province's police staffers was assault, with crimes involving dishonesty becoming a 'worrying' trend. The article also revealed that police officers were becoming increasingly involved in crimes such as vehicle theft, housebreaking, rape and stock theft.

In drug-related crimes, a police sergeant was arrested for corruption after he allegedly helped two gangsters recover seized drugs. The drugs, 2 000 mandrax tablets, with a street value of approximately R40 each, were seized from an 11-year old schoolboy. The policeman and the two gangsters went to the Lansdowne police station in Cape Town and offered police officers R15 000 to hand back the mandrax tablets.

Merten, writing in the *Mail & Guardian of June 8 to 14 2001* added that in battles to control drug turfs it is common practice to use minors to carry and distribute drugs and guns. It is also a common practice to use minors to approach police to request that dockets or evidence 'disappear'. An example of the latter occurred in 1999 when 28s gang boss and member of the drug cartel 'The Firm' Ernest 'Lastig' Solomons, walked free on charges of murder and kidnapping. The investigating officer of this case carried the docket, which had been tampered with, in his briefcase for eight years. The investigator was eventually suspended after the judge in the case described him as the least credible witness she had seen in her 30-year career.

Merten (ibid) mentions that the Independent Complaints Directorate, a police watchdog, received 12 complaints of police corruption in the Western Cape during the 2000/2001 financial year. In the previous financial year it investigated 17 cases. According to the ICD, corruption includes taking bribes and the theft of dockets. This is only a small amount of actual corruption cases because the ICD can only investigate complaints laid by the public. Ho reports in the *Mail & Guardian of August 31 to September 6 2001* that up to 45 percent of drug cases are being thrown out of court, clearly an unacceptable statistic that reflects the rot in the law enforcement system. The Directorate of Public Prosecutions blames police officers for withdrawing cases and not court officials. A reason for this may be that despite positive forensic findings, South Africa's drug law enforcement system may not be keeping pace with increased drug saturation in the country.

An area of great concern is the period of time before drugs get to the forensic laboratories. Policemen, mainly those in non-specialised units, have been known to take drugs off prostitutes (such as a few rocks of crack cocaine), and not turn them in. Another problem is that forensic laboratories are responsible for storing these drugs, and this is not a forensic laboratory function. Some drugs have been stored in these facilities since 1992, because of court backlogs. As a result of this, there is a

constant risk of thefts and break-ins. There have also been attempts to bribe laboratory staff, and low police salaries exacerbate the problem.

An example of the above occurred in 1999 as reported in the *Cape Argus* of 29 December 1999. A police sergeant in the gang unit, a reservist (the sergeant's nephew) and a police laboratory assistant were arrested in connection with a break-in at a forensics laboratory in Faure, Western Cape. It is believed that these policemen together with two other accomplices broke-in to steal drugs being stored on the premises. This particular forensics laboratory is used to test ballistic evidence collected at bomb scenes in the province and to analyse drugs. Investigators ruled out the reason for the break-in being related to the retrieval of ballistic evidence. The drugs that are stored at this facility are often worth up to R1 million.

Concerning police involvement in car theft syndicates, Geldenhuys reports in the *Cape Times* of 30 January 2001 that a Presidential Protection Unit (PPU) inspector appeared in court on three charges of vehicle theft, he was believed to be involved with a vehicle theft syndicate operating at the Pinelands Police barracks. This particular inspector is a former uMkhonto weSizwe (the armed wing of the ANC) soldier, who, together with 15 other members are responsible for the protection of the President and the Deputy President of the country. The Police Inspector was arrested by officers from the police vehicle theft unit while he was allegedly filing off the chassis number of one of six stolen vehicles found at the barracks. The policeman was also found in possession of a special set of stencils and punches used by the police vehicle unit to issue new chassis and engine numbers to cars that had been stolen or involved in accidents.

To make matters worse in this case, the suspect had a criminal record before he joined the service. His application for membership of the VIP protection unit was turned down in 1995 due to criminal charges against him, but he was later appointed despite his criminal record. The crimes he had been sentenced for included housebreaking, theft and arson.

#### 2.5.2 Home Affairs.

Ever since South Africa opened up to the outside world after 1994, when a new (democratic) political dispensation was established, there has been a continual stream of people flowing across our borders, some legitimately, many not. This situation has given rise to organised crime syndicates operating scams supplying false work permits, birth certificates, identity documents, residence permits and passports to these illegal immigrants. These syndicates are aided and abetted by officials from the Home Affairs department.

Mokoena (Sangweni & Balia 1999: 52) mentions that illegal activities occur in almost all departments of Home Affairs. These activities include obtaining false death certificates in order to claim life insurance benefits, the procurement of false identity documents for cashing stolen cheques, registering hijacked vehicles and illegally drawing pensions, amongst others.

During 2000 the director-general of Home Affairs Billy Masethla, the National Commissioner of Police together with the South African Revenue Services launched Project Molopo. This project was aimed at identifying, investigating and prosecuting corrupt Home Affairs officials, police officers and Customs and Excise officials. Fana Peete writes in *The Star of August 27 2001* that at the same time that this crime-fighting initiative was launched a Home Affairs official was found in possession of 19 blank passports. Three policemen were arrested on charges related to these corrupt practices.

Another scam that is prolific in South Africa is the marriage of convenience that occurs between South Africans and foreigners in order to obtain South African identity documentation, including passports. This project has also uncovered African and Asian syndicates, including Cameroonians, Ivory Coast Nationals and Senegalese who use false identity documents for criminal activities. The Asian syndicate consists of Chinese, Pakistani Nationals as well as Nigerians. Members of this syndicate have acquired South African citizenship from corrupt officials. Three hundred officials are under investigation as a result of this. A visa syndicate with connections in West Africa, Europe and Asia was exposed, working from the Civitas Building in Pretoria. Masethla also mentions in this particular newspaper article that 2 780 blank passports were seized from a house in Mmakau near Ga-Rankuwa. Also, an alleged hijacking of officials from Home Affairs on July 17 2001 was an inside job.

Themba wa Sepotokele reports in *The Star of February 26 2002* that an illegal immigration syndicate had been exposed. This followed the arrest of the senior communications officer of the Airports Company of South Africa, for allegedly obtaining a fraudulent South African identity document, he is a Zimbabwean citizen. The latter is facing deportation. Following this arrest, six Home Affairs officials and a private attorney had also been arrested and charged with 13 offences, these include fraud and aiding and abetting illegal immigration. These successes by the relevant ministries are a direct result of Project Molopo, mentioned earlier.

### 2.5.3 Housing.

Perhaps the most serious consequence of corruption in Housing occurred during the devastating earthquake in Turkey recently. According to Calland (Mavuso & Balia 1999: 161) tens of thousands of people were crushed to death under buildings that collapsed because they had not been properly built. The shattered 'concrete' was made up of seashells and sea sand. Also, basic structural components were missing. Government regulations were breached in favour of cheating builders, architects and property owners in return for cash. Officials turned blind eyes as design corners were cut. Amid the stench of rotting flesh, investigators are already revealing overwhelming and damning evidence that corruption was the harbinger of needless death.

The National Housing ministry and its provincial counterparts in South Africa have had their share of scandals, including the Motheo scandal mentioned in section 2.4.2.

Peron (1999: 121) gives examples of gross overpayment and conflict of interest. The Gauteng Housing Board awarded the country's biggest housing project to a contractor who in turn, hired the same Housing Board's chairman to help him win the tender. The chairman of the Board, Mr van Zyl, admitted to receiving a 'facilitation fee' for pushing the deal through. This indicates a definite conflict of interest and is highly unethical. The project's value is R412 million and it involves the building of 27 500 homes in the Hammanskraal and Vlakfontein areas. The Gauteng Housing Board paid the developer R14.4 million for land that the developer had bought three months earlier for R2.5 million.

The Heath Unit believes that out of 53 000 housing subsidies that were approved in KwaZulu-Natal, half are probably fraudulent. In two instances housing subsidies were approved for houses that were allegedly built. If they had actually been built, one would have been in the middle of a runway at Durban Airport and the other would be on a piece of land presently occupied by a hospital (Peron 1999: 122).

Sapa (<http://www.worldonline.co.za>) reported that R53 475 million belonging to the KwaZulu-Natal department of Housing was found in a trust account belonging to a firm of attorneys. The money had been unused since February 1998 and it had accrued interest of R26 624 million. The money was earmarked for a housing project that never got off the ground. The investigators would have to find out how much the provincial housing department knew about the fund and who would gain from it.

#### 2.5.4 Justice.

Heath and Rich (Sangweni & Balia 1999: 260) mentioned that there are numerous allegations that criminal courts' staff 'get rid' of dockets after a court case has been postponed. These dockets are usually sold for a fee. Corruption may occur amongst magistrates and prosecutors in the form of an inexplicable acquittal or the handing down of an inappropriately light sentence by a magistrate. Heath and Rich believe that another serious example of corruption in the Criminal Justice System consists of a lack of discipline and a lack of dedication to work. This is usually accompanied by a lack of a work ethic. Cases get postponed repeatedly, the only reason being to get rid of them. This is corruption of the Criminal Justice System, and the result of this action is not only the erosion of the system but it earns the contempt of the public who see the system as inadequate and ineffective. This in turn, leads to the underreporting of cases by the public.

De Bruin (<http://news24.co.za>) reports that in mid-2001 a report compiled by the Investigating Directorate for Serious Economic Offences revealed fraud and corruption amongst senior magistrates in a number of provinces in South Africa. This report became known as the 'magistrate's lapa scandal'. The report followed an intensive investigation that lasted more than two years. The investigation was initiated when, yet again, the media revealed that the magistrates concerned were involved in alleged fraud amounting to R50 million.

The corruption and fraud was committed under the guise of a special dispensation from the department of Justice to magistrates allowing them to have essential repairs done at magistrates' courts without permission from the department. The grants were used to do luxury improvements to the official residences of magistrates. These improvements included the installation of electric gates, wall-to-wall carpeting, swimming pools and 'lapas'. In one Free State town, a private contractor claimed that "only the church steeple is higher than the magistrate's lapa."

A magistrate from Fochville was found guilty of corruption, fraud and perjury in the Potchefstroom regional court. This particular magistrate, Amanda Roodt, telephoned other magistrates in the area and recommended the 'services' of a particular contractor, she received a car for this 'recommendation'. A private contractor from Pretoria was also arrested as an accomplice.

In a two-year period, 3 536 cheques were stolen from the Justice department. It is also believed that at least R6.9 million worth of cheques have been issued fraudulently from the Justice department alone. A cheque stolen from the Ekangala Magistrate's Court in Mpumalanga in November 1997 was used to pay someone for a building worth R4.3 million. The bank cleared the cheque, and only after the seller of the property had spent the money, was he told that the cheque was stolen. Despite a series of thefts, including the theft of a 34-page cheque book from this particular magistrates court, not one official had been arrested or suspended (Peron 1999: 120). Sapa mentions possible reasons for the large-scale corruption in this department in the *Cape Times of October 11 2001*. According to the Auditor-General of South Africa, a special audit of the Justice department's deposit account has revealed extensive short-comings which have exposed billions of rands of public funds to fraud. The deposit account holds payments such as bail, maintenance and estate payments, paid in by third parties. The account is a trust fund administered by the Justice department and it handles more than R2 billion in public funds annually.

The audit also revealed the lack of internal controls and that incompetent staff were not following procedures. In 92 percent of the sub-offices visited by the auditors, reconciliation of financial statements was not done and not checked by another official. Action was generally not taken against employees who did not follow procedures or did not do their job properly.

Sapa reports in the *Cape Times* of November 15 2001 that senior officials from the Department of Justice had to explain the unacceptable state of finances in their departments to the standing committee on public accounts (Scopa) in Parliament. The members of parliament in this committee were particularly concerned about the very weak internal control system in the department and the fact that someone earning R10 000 a month is controlling the department's annual account of R3.7 billion. The money is moved in and out of the account manually with handwritten receipts. This exposes it to various forms of abuse.

#### 2.5.5 Social Development.

Abrahams (Sangweni & Balia 1999: 82) explains that the social security payment system to beneficiaries is very complicated and is delivered by different institutions such as the Post Office, banks, private contractors and officials from the Social Development department. The nature of the payment process is therefore conducive to large-scale fraud and corruption. The individual managing the social security payments is not in charge of one single process, but a series of processes and this makes control difficult.

Corruption and fraud in the Social Development department is not only confined to certain provinces, but occurs in all the provinces. By November 1998, 42 officials had been dismissed and there were 920 ongoing cases against officials. According to Abrahams, one of the main problems relate to deceased beneficiaries and other ineligible beneficiaries. Another common illegal occurrence is the fraud and theft of pension money and other grant money, by Social Development officials. Bauer (Hope & Chikulo 2000: 228) gives an example of ghosting at a pension payment at the Cecilia Makiwane Hospital in the Eastern Cape. A woman was arrested after claiming a R2 300 cheque on behalf of someone who had died in May 1997. Another suspect was a general labourer at the Nkgubela chest hospital who received a social pension cheque while still being employed by the government.

Another example of official enrichment at the expense of the poor is that of Dr Fido Maforah, ex director of the Department of Social Development. Maforah's job was to ensure poverty relief funds got to the poor. This was not happening, instead she was guilty of running a successful Amway



distribution business from her office during office hours, and she recruited staff from other departments as distributors. There have been many allegations of financial irregularities and mismanagement in this department. One of Dr Maforah's assistant director's, Olga Mtheleni, is in jail for defrauding a poverty alleviation programme of R500 000. Maforah also gave large sums of money to an organisation called Reach and Teach, which has a farming project in the Northern Province, and Maforah's husband Meshack Maforah is the operations manager for this organisation (Heather Robertson in the *Sunday Times of March 26 2000*).

Sapa (<http://www.iol.co.za>) reported on the 24 January 2001 that ten pensions officials from the Eastern Cape were convicted on theft and fraud charges involving approximately R11 million. Their sentences ranged from incarceration of between five and thirteen years. The Special Investigating Unit, previously known as the Heath Unit had been investigating fraud in that particular department since 1998, together with the South African Police's Special Investigating Unit for government and commercial crime and the Eastern Cape department of Social Development. One month after the conviction of these officials a further twelve officials from the same department were arrested on charges of fraud and theft of pension cheques amounting to R1.3 million. Some of the officials were still in possession of suspected stolen cheques when they were arrested.

#### 2.5.6 Correctional Services

Jurgens reported in the *Sunday Times of March 5 2000* that when Khulekani Sitole took over as commissioner of Correctional Services in 1996, one of the first things he did was to set up a secret organisation controlled by himself, called Core. The members of this group consisted of staff members handpicked by Sitole. The function of this organisation was to provide 'jobs for pals', these included top jobs, such as directors, deputy-directors, national commissioners, provincial commissioners, senior human resources officials, management teams and Popcru (police and prison civil rights union) officials. The members of Core were also accused of running a racket where they were charging up to R3 000 for a position in the department. It is estimated that up to 80 percent of staff in this department had relatives working there. Sitole's sister, Thola Schoole was promoted to provincial head of education in the Free State prison service while still on probation, and she only has a primary school teaching diploma.

Core used disciplinary action, suspensions and transfers to silence honest staff members who tried to blow the whistle on the corrupt officials. An example of this is Thandi Kgosidintse, a former director of human resources, she was suspected of reporting to authorities that Sitole was running his own private soccer team from his office. She was transferred to KwaZulu-Natal as provincial commissioner where members of the prison's union ejected her from her office and Sitole subsequently fired her. Another frightening revelation that came to light was that two managers in the department were murdered after they dismissed staff for indiscipline.

Members of Core have also been accused of influencing the awarding of tenders for the department, worth millions of rands, for meat, chickens, prison uniforms, the building of prisons and computer contracts. Sitole has also been accused of awarding a R1 945 million tender to a company run by a close friend. The tender to act as a consultant on a cost-effective system to electronically 'tag', and monitor prisoners in South Africa was awarded to Paul Samuels, a close friend of Sitole, while there was an ongoing controversy over a tender that was awarded earlier to Samuels to the value of R820 000.

Sitole is also the trustee of a prisoner's fund that owns a 81-room seaside hotel and time-share resort on the KwaZulu-Natal South Coast. All members of the prison service can join the Correctional Services Facility Fund Trust for a fee of R18. For this fee they get special timeshare holiday discounts at the Karridene Protea Hotel. This hotel is owned by the Facilities Fund Trust and the principles of the trust include top Correctional Services managers from head office in Pretoria.

Sitole did not confine his corrupt activities to South Africa, he also set up a scholarship fund to enable staff from his department to study at his old Alma Mater, Jackson University in Mississippi, USA. This fund was known as the Khulakani Sitole Scholarship Fund. Sitole managed to convince Correctional Services minister Ben Skosana to put R1.2 million into the fund, and the latter was under the impression that private business would also donate to this fund, this never happened. It was found that R500 000 of this fund was paid to the Mississippi Consortium for International Development, a private agency run by Sitole's close friend Dr Ally Mack, who works at Jackson University. It was

also discovered that the consortium had purchased a house in Mississippi for more than R500 000. This is a clear case of funds being misused.

Omar (Sangweni & Balia 1999: 118) mentions examples of different corrupt acts that occur within correctional services. These include warders being 'bought off' by inmates to assist with the latter's escape. Other corrupt acts include the defrauding of bail money, warders who borrow money from prisoners despite this being against the rules and the blackmailing and intimidation of warders. Cellular phones are used by organised crime networks. Prisoners' rule warders, the latter allowing one gang to rule sections and set one against the other. Corrupt warders allow prison visits to include illegal communication and the handing over of drugs.

A Director in this particular department, Thuthu Bengu, was murdered recently while probing corruption in the department. As a result of this murder, President Mbeki has ordered a commission of enquiry to probe corruption in prisons, this is known as the Jali Commission and already some shocking revelations have emerged. An example of another thoroughly corrupt facility is Westville prison in Durban. According to Hosken (<http://www.iol.co.za>) hard cash and cheques buy prisoners almost everything. Prisoners allegedly had thousands of rands extorted from them for 'perks', which included being given light chores and intimate contact visits with spouses and partners.

One warder is accused of receiving nearly R6 000 from a prisoner, Rae Miller, who was awaiting trial for R3 million VAT fraud, to ensure that if the latter was convicted, her stay in jail would be as comfortable as possible. The allegations of corruption against the warder who extorted money from Miller were based on bank statements revealing deposits into the warder's account, which were handed to a local newspaper. While Miller was out on bail the warder called her in for a meeting and told her that if she was convicted he could make her incarceration 'comfortable or terrible.' The warder also asked Miller for R200 so that he could take his wife to lunch. A week later he phoned Miller again and told her she was going to be sentenced and would make her stay comfortable if she gave him R5 000 for his stepdaughter's technician fees. Miller eventually phoned him and told him she would not pay him bribes anymore and he threatened to have her killed. Miller then laid a charge of extortion against him. As it turned out, Miller had all charges against her withdrawn by the state after spending 13 months awaiting trial.

The head of the female section of the Westville Prison, Anita Govender, was also facing a disciplinary inquiry on corruption allegations. The latter allegedly took money from a convicted murderer in exchange for making her life in prison 'a breeze'. Govender is also accused of promising an early release for the murderer for a fee, this never happened.

Correctional Services has its own anti-corruption unit and as Botha reports in Nexus (1999: 8) they have had many successes. Since this unit was launched it has received 600 reports of corruption. As a result of these reports, 166 investigations have resulted in charges against officials and 14 criminal convictions. By November 1999, 22 cases were waiting for a prosecution decision from the Directorate of Public Prosecutions and 27 criminal trials were in progress. Some breakthroughs made by this anti-corruption unit include a case where an official received bribes to the value of R60 000 for organizing employment for outsiders in the department. The official was dismissed and fraud and theft charges were being investigated against the official by the SAPS.

Concerning the misuse of government vehicles, officials use government vehicles as private taxi's and for personal business and other use. Petrol cards are used personally. In one case, an official used a government vehicle to go gambling, but he was spotted by the local transport controller, who was at the same establishment in his private capacity and the incident was reported. In another case, members of the anti-corruption unit followed a government vehicle driven by a department official to a school where he dropped a child off.

A growing trend in the department is the falsification of transport and subsistence claims. Officials submit claims including false mileage figures, bigger engine capacities of vehicles and false registration numbers. Also popular is the claiming of more expensive accommodation and meals.

Medical Aid fraud involving the abuse of the department's medical aid fund, Medcor, is also common. In one case, an official got divorced and never informed the department. As a result, his ex-wife was still a dependent on the fund. The ex-wife underwent operations costing the medical aid about R40 000. The official was not dismissed but had to pay back the R40 000. In another case two officials submitted false claims to the value of R10 000. They were convicted and sentenced to 18 months

imprisonment suspended for 5 years, and they had to pay back the defrauded amount. One official declared his estranged wife dead while living with his common-law wife. The official had never notified the medical aid of his separation and it was his common-law wife that had died. The latter had used the medical benefits of the real wife for more than eight years. This amounted to fraud of R80 000. The official was disciplined and ordered to pay back the money and the case was handed to the SAPS for further investigation.

Another common illegal act is the submission of false matriculation certificates and tertiary qualifications. In one instance an official who had been employed by the department for two years already, was asked to produce authentic documentation, the same day the official gave 24 hour notice for termination of service. The official's pension money was withheld until an investigation had been completed. The investigation showed that the individual had been placed on a higher salary scale because of the false senior certificate. A case of fraud was opened and the difference in salary scales was deducted from the official's pension contribution.

Computer fraud and fraudulent warrants of committal were also investigated by the anti-corruption unit. The SAPS investigated a few cases relating to these illegalities. In one case a prisoner's sentence of 30 years imprisonment was changed to 3 years. In another case, a prisoner's warrant of committal disappeared and he was issued with a new 'approved' date of release. The anti-corruption unit found that an additional 16 years was not added to the prison term. Warders aiding prisoner escape are also not uncommon. An official was charged with aiding escape and harbouring an escaped prisoner after he provided two prisoners with clothes and smuggled them out of the prison reserve in the boot of a car. The official was sentenced to four years imprisonment (Botha in Nexus 1999: 1).

#### 2.5.7 Other Government Departments.

No department in government is without corruption, some worse than others. Examples from the departments of Health and Transport will be mentioned briefly.

Hospitals and clinics in South Africa over the last few years have been badly affected by theft, particularly of medicine and even bedding. Bauer (Hope & Chikulo 2000: 228) mentions that evidence

given before the Kwa Zulu-Natal Department of Health's Commission of Inquiry set up in 1994 to investigate fraud and corruption revealed that Edendale Hospital's nursing college was characterized by bribery and corruption on a massive scale. It also revealed that fraudulent examination results, leaked test papers, a high failure rate amongst student nurses and lack of discipline were common at this institution. The commission was presented with low semester marks that had been 'inflated' and tampered with on a large scale. Students whose matriculation results did not meet even the most basic requirements for entry were being enrolled at the college.

A security guard testified before the commission that he had to pay a bribe of R4 000 if he wanted his mother and wife to be employed at Edendale Hospital, as reported in the *Sunday Tribune of 22 June 1997*. Other cases of fraud revealed by the commission included the theft of cheques, irregular quotation procedures, overcharging of departments for services provided and the misuse of petrol cards and vehicles.

Deane reports in the *Mail & Guardian of April 6 to 12 2001* that in 1996 a senior accountant at the Transport Department in Bisho, Eastern Cape, was arrested and charged with fraud to the value of nearly R1 million. At the time this article was written the accountant was still employed at the department and no disciplinary action had been taken against her. In June 1996 the accountant, who was also deputy director of the accounts division, attempted to transfer R950 000 into the bank account of three non-existent companies. She did this by forging the head of the department's signature on letters authorising the transfer. The staff at First National Bank in Port Shepstone became suspicious and alerted the department before any of the funds were paid out. The Public Service Accountability Monitor (PSAM) responsible for probing corruption and maladministration in the Eastern Cape confirmed that the accountant was arrested and charged with fraud in June 1996 in Zwelitsha regional court. She was released on bail of R5 000 but the case was withdrawn in November 1996, as the docket had gone 'missing'.

A licensing scam was revealed at the Johannesburg licensing department. An article written by Mhlanga (<http://www.iol.co.za>) states that a complete overhaul of operations in this department was expected to assist in the rooting out of corrupt officials who are involved with criminal syndicates. Ordinary clients have to stand in long queues while corrupt officials receive up to R50 to process

documents on behalf of friends, family members and motor dealerships. During a search conducted in the licensing department, 30 documents were confiscated from staff despite the fact that they were warned about smuggling documents into work. Employees would receive R50 per document processed 'through the back door', from motor dealerships, agents or members of the public. As a result of the time spent by employees processing the documents of friends, family and motor dealerships, other members of the public were left standing in long queues, which led to the overcrowding of the offices. The corruption in the licensing department was so rife that even cleaners were working with the syndicates, the latter used their cleaning equipment to 'courier' documents to the cashiers. The municipal security guards were also found to have colluded with the syndicates for years. Compounding the fraud problem were police officials who were certifying fraudulent documents as originals. These documents were then used to register vehicles.

The steps taken to combat this abuse include the removal of people outside the offices who 'tout' for business by offering a 'fast service'. The security company has been replaced, undercover metro police officers watch staff and inspect suspicious transactions and staff have daily body searches on entering the building. Also, no vehicle dealership will get preferential treatment, 'agents' have been flushed out and loitering has been banned.

Another highly contentious agency under the auspices of the department of Transport is the Road Accident Fund (RAF). Over the last four years the fund has been systematically defrauded by an array of individuals, assisted by the fund's staff. An article published in the *Mail & Guardian of September 28 to October 4 2001* revealed that fraud is being committed against the RAF through the submission of fraudulent claims. These claims are passed with the assistance of some RAF staff who abuse their position and work with persons, groups or syndicates involved in this illegal activity.

The fund receives approximately R2.3 billion in fuel levies and by the end of 2000 it had an operating loss of R10.49 billion, today the fund is technically bankrupt. Auditors found the claims process and payment system was 'an archaic paper-based process subject to the almost unfettered discretion of the 385 key employees of the RAF.' Opportunities were created for claim handlers to make irregular payments, for example, through the disappearance of files and the replacement of these files by 'dummy' files. In the fund's Cape Town office 13 files, involving payments of R1.14 million were

missing. There was also evidence of a syndicate operating at the fund's Pretoria offices, and at the Randburg offices where 144 files involving payments of R16.6 million were missing. In seven claims, involving a total of R1.3 million made to an attorney, the identification numbers of the claimants and dead people were false.

## 2.6 CONCLUSION.

Is South Africa endemically corrupt? The actual extent of corruption in South Africa, both private and public, is difficult to measure because the reporting and the publication of corruption and corrupt activities is a relatively new occurrence. Society is becoming more open about corruption and it is more freely investigated and reported than it was under apartheid. It can be deduced that corruption is a significant problem in South Africa at the moment and more can certainly be done to try and contain it.

Camerer (<http://www.iss.co.za>) poses the questions, how corrupt is South Africa? How and where does it manifest itself? Camerer adds that "it is almost impossible to know the true nature and extent of corruption, since it is a nefarious secretive activity that in its most direct form, occurs between two consenting parties and is therefore often referred to as a victimless crime." It is however, possible to conclude from the contents of this chapter, and the examples provided that corruption is pervasive throughout the Public Sector in South Africa, with provincial and local levels of government affected more seriously than central government.

No occurrence of corruption in a particular governmental department is more or less disturbing than the occurrence of corruption in any other department. What is very concerning however is the high incidence of corruption in the Safety and Security sector of government. Does our police force need to be policed? Corruption and corrupt acts in the South African Police Service range from demanding R20 to assist with filling in a form for a child maintenance grant (<http://www.iol.co.za>) to police members being involved in a R2-million robbery of a busload of Taiwanese tourists (Green in the *Cape Times of Thursday, July 18, 2002*). Reports of the 'disappearance' of dockets are all too common in South Africa and this results in justice being denied to many crime victims annually. The corruption being exposed in Correctional Services by the Jali commission and by a video made by inmates of a



Bloemfontein prison has sent shock waves throughout the country. The level of degradation in the latter department and the perceived victimisation of whistleblowers intent on eradicating corruption are a clear indication of some public officials' refusal to deal with corruption and the reasons for this need to be investigated.

The following chapter deals with the aetiology of corruption and looks at possible contributing risk factors and practices amongst public office bearers and civil servants that could result in corruption. These include: conflict of interests, lack of public interest, the politicisation of the public service and excessive administrative secrecy, amongst others. Also to be discussed are the risk factors relevant to developing countries and to South Africa in particular. Finally, the next chapter will look at the consequences of corruption and corrupt acts. These include socio-economic, political and the criminological consequences of corruption.

**CHAPTER THREE**

**AETIOLOGY AND CONSEQUENCES OF CORRUPTION.**

### 3.1 INTRODUCTION.

What factors encourage public officials and political office-bearers to commit corrupt acts? What are the inevitable consequences of these acts? These questions and an attempt to answer them adequately will be the main focus of this chapter.

Perhaps the underlying motivational factor contributing to corruption is greed. Heath noted in a special report published in the *Local Government Digest, November 1998*, that: "Crimes involving fraud, corruption and theft do not usually rate as high on the scale as those crimes that involve violence and bloodshed. However, they have a tremendous impact on the socio-economic conditions in South Africa." Heath adds: "The harsh reality is that human beings are greedy by nature. They are prone to want more and more. In essence, humans are not satisfied with what they have and will seek until their needs and more have been satisfied or met. The temptation for abuse leads to exploitation of loopholes in the system, or the hatching of ingenious plans to use the system to the benefit of the individual or group of individuals".

In addition to greed, other risk factors related to corruption include administrative control, control of resources, the quality of the bureaucracy, public sector wages, penalty systems, excessive administrative secrecy, lack of public interest and the politicisation of the public service. Practices contributing to corruption that will be discussed in this chapter include patronage, nepotism, bribery, ghosting, bid-rigging, graft, kick-backs and conflict of interests. Risk factors relevant to developing countries and those factors relevant to South Africa specifically will also be discussed.

The consequences of corruption and corrupt acts will focus on the very real and damaging consequences corrupt behaviour has on the socio-economics of a country. It will look at political consequences as well as criminological consequences, with specific focus on police corruption. There is nothing positive about corruption and this is spelt out when the harmful consequences of this phenomenon are highlighted.

## **3.2 THE AETIOLOGY OF CORRUPTION.**

### **3.2.1 Risk Factors Related to Corruption.**

#### **3.2.1.1 Greed.**

Human beings are greedy by nature, some can control this affliction better than others. Temptation for material gain and self-enrichment is sometimes overwhelming. Greed also encourages a public official to sacrifice the public interest for personal gain. Hilliard (Bauer & Van Wyk 1999: 59) mentions impatient ambition, where the public servant wants instant promotion and other rewards immediately, and the abuse of status in the governmental hierarchy all contribute towards corrupt behaviour. Also, the absence of adequate supervision and controls gives the corrupt official plenty of opportunities to be devious. Greed can severely hamper efficient and effective public administration. Baai (Mavuso & Balia 1999: 188) states that "seemingly, the cause of corruption revolves around greed."

#### **3.2.1.2 Administrative control.**

Ladikos (1999: 30) suggests that if regulations and authorisations (issuing of documents, licences or permits) are controlled by one person or one department, and these authorisations are not transparent, too much power is vested in these officials and this may lead to opportunities for these officials to demand bribes in exchange for authorisations.

#### **3.2.1.3 Control of resources.**

Ladikos (1999: 31) mentions that in many countries, the governments supply goods, services and resources to the public at less than market-related prices. In all these categories there have been incidents of corruption. These goods, services and resources include water, electricity, public housing, some rationed goods, access to educational and health facilities and access to public land. In many instances these resources are scarce and public servants usually decide how these resources are to be distributed. This practice is conducive to corruption because someone wanting access to these resources badly enough will pay a bribe to achieve this.

#### 3.2.1.4 Quality of the bureaucracy.

The quality of the bureaucracy is largely determined by the recruitment criteria for its personnel, were they recruited on merit or not? As is the case generally, and South Africa is no exception, the higher the appointments based on political affiliation, nepotism, patronage and reward for loyalty as opposed to merit, capability and experience, the higher the incidence of corruption tends to be (Ladikos 1999: 31). Mbaku (1996: 6) mentions that one of the main determinants of bureaucratic corruption in Africa and other developing societies, is that individual rights are less important than the rights of the family group or ethnic group. "Individuals who become successful in the public sector or the exchange economy are expected to share the benefits with their extended family and their ethnic cleavage. Thus a civil servant may engage in corrupt activities in an effort to meet personal obligations to members of his family or ethnic group."

#### 3.2.1.5 Excessive administrative secrecy.

Excessive administrative secrecy and lack of transparency where governments keep pertinent information about political, military or foreign affairs away from the public, can lead to corruption. Corruption occurs because public officials and political office-bearers cannot be held accountable for their decisions. Secrecy enables officials to cover-up any corrupt acts committed (Bauer & Van Wyk 1999: 64).

#### 3.2.1.6 The politicisation of the public service.

Bauer and Van Wyk (1999: 63) suggests that the politicisation of the public service and political interference may lead to corruption. In many developing countries, with the transition from colonialism, the civil service has gone from serving the people by means of effective public administration, to serving the ruling political elite. The latter prefer a politically orientated public service and the public officials are expected to follow the orders of his/her political head of department, often at the expense of good service to the public. Corruption tends to increase where power is confined to one person or a small group of people.

### 3.2.1.7 Public sector wages.

There is a perception that in order to combat corruption, the wages of public servants need to be relatively high. This is a drain on the country's budget and it is not foolproof, as human beings are greedy by nature, and if they are prone to corruption they will continue with corrupt practices to further enrich themselves (Ladikos 1999: 31).

### 3.2.1.8 Penalty systems.

Effective and strict penalty systems should be in place to reduce corrupt practices. These systems are ineffectual if they are not implemented properly and adhered to. Generally, very few people globally are punished for corruption, even though these practices are extensive. There are often disparities between the punishment specified in laws and the actual punishment handed down. The procedures that have to be followed before a public official is sanctioned for a corrupt act are slow and cumbersome. Corruption is often very difficult to prove. Witnesses are often reluctant to come forward and are threatened with losing their jobs or worse, death. It is not unheard of to have high-ranking corrupt officials removed from their positions either with golden handshakes or an equal or better job somewhere else in the civil service. The matter is therefore never taken any further (author's own interpretation).

### 3.2.1.9 Lack of public interest.

A lack of public interest may lead to corruption if the public does not take enough interest in the activities of the public officials and office-bearers. The impression may be given that no one is interested in exposing corrupt deeds committed by these officials. This is why a free press is essential, as it acts as a watchdog, continually informing the public of corrupt acts occurring in government and the civil service (Bauer & Van Wyk 1999: 63).

## 3.2.2 Practices Contributing to Corruption.

Bauer and Van Wyk (1999: 59) mention a number of practices that contribute to the committing of corrupt acts. These practices include patronage, nepotism, bribery, ghosting, big-rigging, graft, kick-backs and conflict of interests. They will be discussed in detail below.

#### 3.2.2.1 Patronage.

Patronage is a system whereby government positions are given to individuals as a reward for party political support. It can also refer to the employment of friends and relatives without meritorious consideration. This behaviour generally results in the appointment of inferior quality administrators which, in turn, leads to an inferior quality of service rendered by public institutions to the general public. Patronage can also benefit both political and non-political players. The former benefit in terms of power and job security, especially if their party stays in power. The latter benefit by receiving lucrative contracts or a salary in return for their continued support for a particular political party. In order to provide a good service to the public, merit should be the only criteria used to recruit staff.

#### 3.2.2.2 Nepotism.

Nepotism refers to the preferential treatment given to a member of an official's family, again ignoring meritorious considerations. Although nepotism is not illegal, it is a corrupt act because it is unethical and irregular. According to Meister (Bauer & Van Wyk 1999: 60) nepotism in Africa is mainly tribally influenced. Cabinets and public offices are filled with members of the president's tribe to ensure the perpetuation of his power base, and to ensure loyalty. Power and loyalty are 'bought' with gifts, access to education, school buildings, land and other projects given to relatives and tribesmen. These 'gifts' cannot be paid for out of legitimate salaries and corrupt acts are committed to pay for them. The inevitable result of nepotism is the exodus of good, qualified public servants, because their chances of promotion are hampered as they are not tribally connected to officials nor are they relatives of these officials.

#### 3.2.2.3 Bribery.

Bribery is a criminal offence. Bribery often occurs together with nepotism, for example, when an official gives a relative or an associate a job in exchange for a bribe, either a gift or money. Bribery, according to Bauer and Van Wyk (1999: 56) refers to “the offering of money or other inducements to secure the desired action from a public official and even from a political office-bearer.” Bribes can be paid either before or after an official has done the deed or favour, or a portion of the bribe can be paid before and the balance after the deed is done. They also suggest that the levels of bribery and corruption in a country are determined by the strength of government and political institutions in that particular country. If these institutions are strong and respected, bribery will be uncommon. If they are weak and resented by the public, they will have high levels of bribery and corruption.

#### 3.2.2.4 Ghosting.

This is a common form of corruption, particularly in South Africa where there are plenty of these incidents. Ghosting refers to the payment for services never rendered and goods never supplied, but for which receipts and invoices were issued. It also refers to the payment of ‘ghost employees’, where the person either does not exist and someone else on the staff is receiving their salary, or, where a person has left their job and are still receiving a salary for that position.

#### 3.2.2.5 Bid-rigging.

Bid-rigging refers to officials who have already decided on a successful bidder for a government contract, as well as the price, before the contract is put out to tender. Bid-rigging can also refer to situations where a public official has ‘lent-out’ goods that belong to his department and then ‘hired’ the equipment back from the ‘lender’ for a fee.

#### 3.2.2.6 Graft.

According to Bauer and Van Wyk, (1999: 57) graft is defined as “the misappropriation of public resources – money, property or opportunities – for personal enrichment.” This definition is often used to define the concept of corruption. There is a similarity between graft and bribery. The latter can also be applied to an official who requests an additional fee for performing a function that is part of his job.



Examples of graft committed by both public officials and political office-bearers include manipulating a tender to such an extent that only a particular chosen company can be awarded the tender. This company usually belongs to a family member of the official, or the official is a director of the chosen company.

#### 3.2.2.7 Kick-backs.

Mikesell (Bauer & Van Wyk 1999: 62) sees the manifestations of corruption occurring as follows; "a public official who possesses the necessary authority to decide who will receive government contracts and which banks will benefit from receiving public deposits could arrange for artificially high contract awards or artificial wage payments, a portion of that payment being kicked back to the public official. The practice of getting cuts on government contracts constitutes the main example of illegal gains, with the customary cut usually being 10 percent."

#### 3.2.2.8 Conflict of interests.

Kernaghan (Bauer & Van Wyk 1999: 62) defines conflict of interest as "a situation in which a political office-bearer or a public official has a private or personal interest sufficient to affect, or appear to affect, the objective exercising of his or her official duties." An example of this would be where an official has a financial interest in a company and the company receives political favours, such as a contract to supply goods and services. In this instance, the official or office-bearer is benefiting in both his public and private capacity. This example would be relevant to the existing controversy surrounding the multi-billion rand arms deal happening in South Africa at the moment. In one instance it was found that a major player in the acquisition of these arms had a conflict of interest because his brother's company was affiliated to one of the major weapons suppliers.

#### 3.2.3 Risk Factors Relevant to the Developing World.

In developing countries corruption does appear to be out of control and certainly it appears to be far more entrenched and widespread than corruption in developed countries. There are, however, reasons

other than greed and venality that contribute to corruption in developing countries. These include social, cultural and economic reasons.

Ghazanfar and May (2000: 355) suggest that it is no surprise that many post-colonial regimes have turned out to be corrupt. The transfer of power to an independent state was not always smooth, often involving political coups and violent overthrows. Public institutions, as a result, were inadequate and unable to deliver resources and services to the public, such as jobs, schools and houses. There were, therefore, no mechanisms in place to ensure accountability and this made it easier to commit corrupt acts. Also, public employees tended to be poorly trained and unskilled adding to the likelihood of corruption.

Economic conditions in many developing countries contribute greatly to the levels of corruption. Poverty, unemployment, low living standards, are the order of the day. Many people who work in the public service, along with private citizens would partake in corrupt acts in order to financially uplift their situations.

As mentioned earlier, corruption seems to occur less in countries where public servants are decently remunerated and where their salaries are equivalent to some private sector salaries. High remuneration does not, however, guarantee that a potentially corrupt official will not partake in corrupt behaviour. In situations where public officials are poorly paid, they will often risk losing their jobs by committing corrupt acts and by accepting bribes, in order to improve their standard of living. Two pertinent reasons for committing corruption are firstly to receive government benefits, for example, housing and welfare. Secondly, to avoid costs, for example, buying dockets to avoid criminal charges or not paying licence fees. Corrupt behaviour is usually hidden by further corrupt behaviour, this type of corruption tends to snowball and eventually becomes systematic (Ghazanfar & May 2000: 356).

According to the authors, the main difference between developed and developing countries is that in the latter the chances of being caught are low, punishment is minimal or non-existent and the agencies who are supposed to control corruption and enforce the laws are often corrupt themselves. In situations where the risk of being caught is low, the benefits of the deeds outweigh the possible sanctions.

Many leaders and their senior officials in developing countries commit wide-scale corruption because they are dictators of a one-party state and there are no independent watchdog bodies, or democratic institutions that can hold them accountable for their actions. These leaders commit corruption by robbing the public exchequer, taking kick-backs from business for contracts or they steal from foreign aid money donated to their country.

Ghazanfar and May (2000: 357) also emphasise the contribution volumes of government rules and regulations in developing countries make to corruption. Many developing countries have public services that are large, they cannot function effectively, and this together with poor wages, poor training and cumbersome regulations result in bribery and rent-seeking behaviour. Frustrated citizens in these countries would generally be prepared to pay bribes to civil servants in order to speed up delivery of services legally due to them at no charge. Also, by restricting international competition and protecting domestic business, rent-seeking and other corrupt behaviour becomes common-place.

Ghazanfar and May (2000: 358) question why, if corruption is so big in so many countries, is the public not doing anything about it? Certain types of behaviour, norms and traditions may be acceptable in particular societies, but in others, these same norms and traditions would be considered corrupt forms of behaviour.

The factors mentioned above which contribute to corruption in developing countries are of a social, cultural and economic nature. Some of these factors correspond with contributing aspects and practices mentioned under the headings: *Risk Factors Related to Corruption and Practices Contributing to Corruption*.

#### 3.2.4 Conditions Favouring Corruption in South Africa.

Johnston in Camerer (<http://www.iss.co.za>) suggests that entrenched corruption is more common in societies with the following characteristics: low political competition, low and uneven economic growth, a weak civil society, and the absence of institutional mechanisms to deal with corruption.

Huntington in Camerer (<http://www.iss.co.za>) offers conditions that favour corruption. These conditions as well as the ones mentioned above are pertinent to the South African situation. Huntington mentions that corruption increases when a country experiences rapid growth and modernisation, due to values changing, new sources of wealth and power and the growth of government. In countries where political opportunities outweigh economic opportunities, people will enter politics to make money, increasing the probability of corrupt behaviour. Also, corruption is more prevalent in countries that have less developed political parties.

According to a survey done in Camerer (<http://www.iss.co.za>) on corruption in South Africa, corruption experts listed five main causes of corruption in South African society. They are listed in order, from the common to the least common. A moral and ethical decline is given as the most common cause of corruption in South Africa. This is also evident in the country's high crime rate, especially the violence against women and children. This is followed by greed and a desire for self-enrichment and socio-economic conditions such as poverty and unemployment, followed by institutional reasons such as weak control, and finally, corruption was blamed on the apartheid legacy and the process of transformation.

When the experts were asked about the causes of corruption in government specifically, similar reasons were given, but prioritised differently. The most common cause for government corruption was given as weak checks and balances together with mismanagement. Secondly, greed and self-enrichment, followed by the decline in morals and ethics, then the legacy of apartheid and finally, socio-economic conditions.

Experts were also asked how factors such as low salaries, bribery and bureaucracy, democracy and privatisation contribute towards corruption. The majority of experts believed that public servants in South Africa were not badly paid and therefore did not need to indulge in corrupt behaviour to supplement their incomes. A large percentage of experts agreed that paying bribes to government officials did speed up the bureaucratic process. Most experts felt that democratic systems of government such as elected legislatures, parliamentary committees and watchdog bodies did not increase the likelihood of corruption in a country. Most experts also disagreed that privatisation increases the potential for corruption. If there are no effective regulatory controls, privatisation can

generate high levels of economic rent as well as the illegal private appropriation of public assets (Camerer <http://www.iss.co.za>).

### **3.3 THE CONSEQUENCES OF CORRUPTION.**

“Corruption in Africa has reached cancerous proportions. In fact, so pervasive is this phenomenon in the region that it has been labeled the ‘Aids of democracy’ which is destroying the future of many societies in the region” (Hope in Prinsloo & Naude 2001: 44). Corruption is certainly not an Africa-only problem. The perception exists of Africa being the most corrupt continent because of the vast amount of bureaucratic irregularities surrounding international aid donations. These irregularities include bribery, extortion, expropriation, favouritism, nepotism, factionalism and patronage.

Mbaku (Prinsloo & Naude 2001: 45) states that African leaders and the ruling classes have amassed substantial wealth through corruption. Most of this illegitimate wealth has been diverted to foreign bank accounts and used to perpetuate corrupt activities and to sustain lavish lifestyles for a small amount of people at the expense of the greater population. This type of corruption by ruling elites is used to control politics and to severely curtail the participation of certain ethnic, social and racial groups in both politics and in the economy.

The consequences of corruption will be addressed under the headings of: socio-economic consequences, political consequences and criminological consequences with the main focus being on the consequences of police corruption.

#### **3.3.1 Socio-economic Consequences of Corruption.**

Corruption and corrupt acts have many consequences, among them being the damage they do to a country’s economy. Mbaku (1996: 3) describes the effect corruption has on the economy. Mbaku explains that corruption allows politicians and government officials to supplement their incomes by allowing private business people to ‘buy’ monopoly decisions in the economy. The people most adversely affected by corruption are the general public. Corruption results in inefficient producers and suppliers remaining in business because they have ‘bought’ their contracts to supply goods and services

to the government. This is detrimental to the economy because the producer/supplier is being overpaid for his services and this is robbing the public of money that could be used somewhere else.

Mbaku (1996: 3) also states that corruption encourages governments to create self-serving economic policies that give bureaucrats and politicians the opportunity to line their pockets by bribing those seeking favours from the government. This sort of behaviour not only disgusts the public at large, but also overseas companies who want to do business in Africa and more specifically, South Africa. This sort of corruption works both ways, because the business community who bribe these corrupt officials are themselves guilty of corruption. Corruption therefore, distorts economic incentives, discourages entrepreneurship, slows economic growth, encourages criminal elements and distorts trade.

Heath (1999: 9) mentions that corruption in South Africa has an enormous impact on socio-economic conditions in the country, it also negatively affects industries such as tourism and trade, which, in turn, damage the economy because of the perception that this is such a corrupt country that it might not be worth travelling here. From a trade perspective, corruption in customs by way of unpaid taxes and duties and the smuggling in of contraband and fake designer goods all effect the economy because the people who sell the legitimate goods are not generating as many sales as they should. This impacts on the contribution they make to the economy by way of taxation (their contribution will obviously be lower).

Heath (1999: 11) emphasises the corruption, fraud, misappropriation of funds and other resources and maladministration problems that exist in local governments in South Africa. The result of these practices is the loss of millions of rands of the taxpayer's money and the obvious lack of service delivery in the communities these local councils serve. This level of corruption impacts heavily on service delivery to the poor. Because so many local councils are staring bankruptcy in the face, communities are left without water and electricity, not always because they have not paid, but because their payments have been misappropriated and the municipalities cannot pay the suppliers. Corruption also impacts on the poor and the helpless when they get to the front of the pension payout queue just to be told there is no money left to pay them, or when the house they bought in a low-cost development starts falling down because second-rate builders and contractors paid an official a bribe for the contract to build these houses.

Poverty can be a result of corruption, and poverty can cause corruption, giving rise to a 'false economy' where bribes, fraud and theft are the income of many officials. It is this money that is being ploughed back into the economy in the form of purchases of luxury goods and services (authors own views). Mbaku (1996: 6) states that 'pervasive and chronic poverty, extremely high levels of material deprivation, and severe inequalities in the distribution of resources also have been advanced as major determinants of corruption in African countries.'

Ladikos (1999: 32) states that poverty in South Africa can be traced back to colonialism and neo-colonialism and apartheid, where the total control and ownership of the economy was in the hands of the white minority and where the black majority was forced to live in poverty and deprivation. Ladikos suggests that these political systems all experienced large-scale political, economic and cultural systems of corruption, for example, the abuse of power for personal or sectional profit. This is why there is an emphasis on development in the economic policies of South Africa. The aim of this is to attempt to uplift the previously economically marginalised members of South African society, and to give them greater access to the economy. Poverty is an affliction that drains the economy because of the dependence on state resources. It is therefore in the interests of any government to eradicate other scourges such as corruption, in order to reduce the levels of poverty and dependence.

*The Lima Declaration* states that "corruption erodes the moral fabric of every society; violates the social and economic rights of the poor and the vulnerable; undermines democracy; subverts the rule of law which is the basis of every civilized society; retards development; and denies societies, and particularly the poor, the benefits of free and open competition."

To try to get an idea of the cost of corruption, the Special Investigations Unit (Heath Unit) by 1999, was investigating 90 000 cases in South Africa linked to fraud, corruption and maladministration within the different levels of government, most of the cases are at the provincial and local level of government. The Unit is also investigating cases worth upwards of R7 billion, where they can either recover state assets or monies that have been misappropriated. Judge Heath warns that corruption and all its accompanying evils eats away at the local and provincial budget and at the entire economy of the country (Peron 1999: 119).

It was estimated in 1997 by an accounting firm Deloitte and Touche, that public sector fraud and mismanagement could exceed R10 billion. This revelation compares South Africa with countries perceived to be endemically corrupt. Corruption is systemic in certain provincial departments, at high and low levels of officialdom and it appears to be routine in police stations. The cost of corruption is estimated at 7 percent of public expenditure, but this could be much higher as only a small percentage of the government's budget is used in capital or development projects (Lodge 1997: 17).

### 3.3.2 Political Consequences of Corruption.

Other serious consequences of corrupt acts in the public sector are discussed by Mbaku (Prinsloo & Naude 2001: 45). These consequences are as pertinent in South Africa as they are in the rest of Africa.

- A) The integrity of civil servants is compromised to such an extent that they engage in their official duties only for payment from the public. Civil servants stop pretending to serve the public and serve their own interests blatantly.
- B) Public servants serving their own interests instead of the public's are responsible for inflating the price of public goods at the expense of the economically marginalised.
- C) The public sector becomes an increasing burden on the rest of the country, as the latter have to carry the costs of a bloated, inefficient, wasteful and parasitic public bureaucracy.
- D) The civil service becomes demoralised and distrustful. The state fails in its ability to develop and sustain a professional, competent and efficient civil service.
- E) Many skilled and qualified people are encouraged to lie about their training and experience to enable them to get a public sector job for which they are often overqualified but it gets them a job where corrupt self-enrichment is more easily



attainable. The consequence of this behaviour is the 'under-utilisation of the country's skilled and educational resources.'

- F) Corruption tends to distort global trade and investment. Corruption also encourages drug dealing, money laundering and other activities by international organised crime syndicates. Cross-border crime limits economic integration that is essential for trade relations. Domestic economics also suffer the consequences of international corrupt/criminal activities.
- G) Finally, corruption results in a country losing respect for the incumbent government and its institutions.

Baai (Mavuso & Balia 1999: 175) mentions that, "nothing is more destructive of democracy than a situation where people lack confidence in those administrators that stand in a position of public trust. If a liberal and democratic society is to flourish we need to ensure that the credibility of public institutions is restored and safe-guarded and that community confidence in the integrity of public administration is preserved and justified."

### 3.3.3 The Criminological Consequences of Corruption.

Prinsloo and Naude (2001: 42) quote United Nations experts who revealed that the proceeds of organised crime are worth US \$1000 billion per year, or 4 percent of the global international economy. Organised crime is also twice the size of the global oil industry. The most profitable organised criminal activities are the illegal trading of drugs and arms. These are followed by fraud, money laundering and extortion. The illegal drug trade, worth an estimated US \$500 billion per year, is rapidly expanding into Africa and more specifically, South Africa.

The consequences of these illegal activities are extensive. The stability as well as the economic development of the entire region is threatened. Police and other security forces have to redirect resources to fight this scourge and this results in the shortage of resources with political, socio-economic and security consequences.

There has been great concern expressed by developed countries' drug law enforcement and intelligence agencies concerning the extent of drug trafficking and domestic drug abuse in Africa. The most pertinent concerns include weak detection controls, underemployment, long and porous borders and pervasive corruption in the police and customs service. As a result of these weaknesses, Africa is being targeted by crime syndicates and used as a transit route to Europe and the USA.

Prinsloo and Naude (2001: 43) describe how the drug market is managed particularly in South Africa. Cocaine, heroin, LSD and ecstasy are brought into the country by Nigerian, Ghanaian and Zairean wholesalers and are then handed to distributors throughout the region. The arrest of drug dealers is hampered by 'safe houses' they have created for themselves. Houses where dealing and use occur are protected by private security guards and burglar bars. The guards warn the occupants of the house of any police presence. Added to this is the problem of corrupt policemen who take bribes from dealers to ignore drug-related incidents and to warn them of any impending police raids.

The major consequences of these corrupt activities are that 'narco-terrorists' can negatively influence a country's political, social and security agencies by infiltrating and destabilising the economy. There is even more of a risk in the case of scarce resources being redirected to fight this problem and the violence that accompanies it. The types of violence linked to the illegal drug trade include coercion, kidnapping, torture, murder and in some countries, massacres.

Baynham (Prinsloo & Naude 2001: 43) states that "organised crime traffickers have an enormous potential to corrupt legitimate business and institutions by threatening and/or resorting to more explicit violence and by their ability to bribe politicians, bureaucrats, law enforcement agencies, customs officials and members of the general public, a fact which undermines business confidence, sabotages foreign investment, contributes to domestic capital flight and adversely affects trade and tourism."

Money laundering is another international criminal activity that threatens the economic, political and social structures of economically vulnerable countries. The British National Criminal Intelligence Service in 1993 estimated that \$500 billion was laundered in the international economy. In Africa, the importing of illegitimate goods such as electronics, steel products, textiles, clothes and cars have

affected the local legitimate businesses very negatively. These goods are brought in with the help of corrupt customs and police officials and the importers avoid paying duties and taxes. These illegal imports are considered to be equal to 10 percent of South Africa's production turnover. Money laundering and the smuggling of illegal goods into the country undermines legitimate business because cash coming in from organized criminal activities give criminal businesses a competitive advantage as they have higher profit margins and do not pay any tax (Prinsloo & Naude 2001: 44).

Grobler (Sangweni & Balia 1999: 36) has this to say about the consequences of the behaviour of corrupt police officials, "they create such a negative perception in the public that this inevitably leads to a breakdown in trust. Obviously when this happens there is no interaction and the public resort to vigilante actions that in themselves are a form of terrorism. Private security companies mushroom, and through a possible improved level of service delivery, succeed in further eroding police authority. Higher salaries are offered and expertise is lost through resignations and early retirement."

Prinsloo & Naude (2001: 44) mention another area of organised crime that corrupt police officials, along with other government officials, are involved in. This refers to vehicle theft, hijacking and related crimes. Vehicles in Southern Africa and more specifically, South Africa, are hijacked very successfully by national and international organized crime syndicates. The latter's task is made easier by their recruiting of corrupt government officials, South African Police Service officials, police officers from neighbouring countries and customs officials. These officials are given money or goods to protect syndicate members from prosecution.

Police complicity in these vehicle-related crimes include destroying dockets, forging evidence and documents, and issuing clearance certificates for hijacked vehicles as well as for vehicles that have been constructed with stolen parts. Police officers also assist syndicates by leaking information on impending raids and road blockades. They tip-off chop-shops as well as friends who have stolen vehicles on their property. Police are also known to have sold recovered stolen vehicles instead of returning them to their rightful owner. Corruption by the SAPS and other government officials contributes to the high level of vehicle theft and hijacking in the country. The people most affected by these activities are the public in the form of potential violence against them and increased insurance premiums, not to mention a further erosion of trust and confidence in the police service.

Wood (Prinsloo 2000: 70) points out that by the police talking openly and admitting to their corruption problem, negative consequences have been created. For example, “the lowering of morale, exposure to litigation, the enforced failure of prosecutions, reduced public confidence in the police and significant investigative costs.” Wood also mentions the contribution ex-police officers make to the corruption network in the private security industry. These officers can freely associate with criminals as well as their ex-colleagues in the police service. They can therefore act as a middleman that protects corrupt serving police officers, ex-policemen and the criminal customers.

A good example of the dire consequences of police corruption appeared in the *Cape Argus* of 5 June 1997, written by Clive Sawyer. The Justice Department was going to review 19 sentences recently handed down because Western Cape police forensic staff had planted fingerprints to secure convictions. This was a gross miscarriage of Justice and the citizens’ right to a fair trial. Hopefully this situation will not occur again as the government has subsequently acquired a sophisticated Automated Fingerprint Identification System (AFIS).

### 3.4 CONCLUSION.

This chapter dealt with the essence of corruption, the heart and meaning of corruption. It discussed the various risk factors and practices that contribute to corruption causation and how these factors can entrench themselves in a society if they are left unchecked. This chapter also examined the risk factors relevant to corruption in the developing world, as well as conditions favouring corruption in South Africa.

The importance of institutional goals cannot be underestimated. These include the transparency of rules, laws and processes and the examples set by leaders. Institutions should have definite and clear rules on ethical behaviour. Supervisors, auditors and leaders in high positions should lead by example, they should be free of corruption in order to encourage their subordinates to do the same. It is important for governments with corruption problems to have anti-corruption commissions to follow up on corruption investigations and it is important for governments to provide the public with access to government-accounting practices, making the latter more transparent (Ladikos 1999: 31).

The devastating consequences of corruption include poverty, weak and ineffective public administration and pervasive organised criminal activities, amongst others. One of the most devastating consequences of corruption is its cost. As mentioned in this chapter, in 1999 the Special Investigations Unit (Heath Unit) was investigating cases worth in excess of R7 billion. In an audit done in 1997, an accounting firm estimated that public sector fraud and mismanagement could exceed R10 billion. These figures are almost beyond comprehension, particularly when one considers the relative lack of urgency the government portrays in dealing with this scourge.

Klitgaard (Mavuso & Balia 1999: 182) presents three theories on why corruption may actually be beneficial to communities. The first theory is economic and suggests "corruption may bring an element of competition into what is otherwise a comfortably monopolistic industry." This form of corruption results in goods being distributed according to ability and willingness by the community to pay. This theory would harm South Africa because it will negatively affect the economy as well as the political system. Also, one of the most obvious consequences of corruption in South Africa is the impact it has on economic development. Medium and small businesses would suffer because bribing and rent seeking add to the cost of running a business. Competition would result in an uncompetitive marketplace because the focus would be on the highest bribe paid for goods. The result of all this is that the poor would suffer the most as the ever-increasing gap between rich and poor widens even further.

Klitgaard's second theory is political and claims that "corrupt payments, appointments and policies may have political benefits. Politicians may use corruption to foster the political integration of various tribes or parties, which may in turn lead to political harmony in the face of fragmented political authority." This theory is problematic in that two ethical principles are undermined by corrupt appointments and promotions. Firstly, the appointment and promotion of officials on a merit basis is undermined because members of certain political parties may advertise false posts that have already been given to friends and relatives. The consequence of this behaviour is distrust and political instability in any country. Secondly, the principle of efficiency and effectiveness becomes redundant. This is a problem in South Africa, where under-qualified officials are appointed and promoted to high leadership positions with an inordinate amount of influence in public administration, but they have

inadequate credentials. Another related problem is the falsification of qualifications by applicants vying for lucrative government positions. This affects the quality of government and it creates a feeling of contempt for the public service.

Klitgaard's third theory is aimed at managers. In this theory he suggests that, "corruption may have uses within an organisation. If bureaucratic rules are constraining, the organisation may sometimes benefit by the employees corrupt circumventing of the rules." Baai (Mavuso & Balia 1999: 184) suggests that the logic of this theory fails to consider the issue of 'transformation in emerging black bureaucracies.' Baai recommends that corruption be assessed together with reform processes. The latter cannot be circumvented as this would result in the collapse of the bureaucratic order.

This brings us to the following chapter of the research, which is going to focus on the different reactionary measures towards corruption, and how this phenomenon is addressed in South Africa. It will take an in-depth look at the different role-players, formal and informal structures that are responsible for controlling corruption and it will also look at the victims of corrupt acts. Finally, the existing legislation, as well as amendments that have been made to ineffectual legislation will be discussed as will the adjudication of corrupt activities.

**CHAPTER FOUR**

**REACTIONARY MEASURES TO CORRUPTION IN SOUTH AFRICA**

## 4.1 INTRODUCTION.

According to Camerer (<http://www.iss.co.za>) corruption has always been a part of the South African public service, but there is definitely a perception that corruption has increased since 1994 which was the start of South Africa's political and economic transition. There are no signs of this scourge abating. During the last three years the government has launched a series of anti-corruption programmes and projects and an entirely new Anti-Corruption Bill is before Parliament, already having been approved by the Cabinet. The government has aimed at bringing the fight against corruption in line with international policies that focus mainly on:

- "promoting accountability, transparency and the rule of law;
- the practice of good governance;
- a free press to report forcefully to the public on corrupt practices; and
- the establishment of government watchdog agencies to identify corrupt practices and bring them to the public attention."

This chapter will focus on the reactionary measures to corruption in South Africa. This is based on a survey done by Camerer on a panel of corruption experts who were asked what the government was doing correctly and incorrectly in their fight against corruption. Most of the key role players in the fight against corruption will be looked at in detail, as will their mandates. These agencies include the SAPS Anti-Corruption Unit, The Independent Complaints Directorate (ICD), Public Service Commission, Public Protector, Auditor-General, National Prosecuting Authority and the Special Investigations Unit. Two non-governmental anti-corruption agencies, the Public Service Accountability Monitor and Transparency – South Africa will also be mentioned. The performance of some of these agencies, as found in the survey done by Camerer will also be discussed.

Sections of some of the more pertinent bills that contribute to the eradication of corruption in South Africa will be analysed. These Bills include *The Corruption Act, 94 of 1992*, *Prevention of Corruption Bill*, *Protected Disclosures Act, 26 of 2000*, *Executive Members' Ethics Act, 82 of 1998*, and *The Public Finance Management Act, 1999*. Finally, a few examples of corruption convictions will be looked at under the heading: adjudication.



## 4.2 ADDRESSING THE PROBLEM OF CORRUPTION IN SOUTH AFRICA.

“Government and civil society clearly recognise that the problem of corruption is serious. South Africa has an arsenal of legislation and many structures to police and punish corrupt practices. But the anti-corruption effort needs to move beyond forming new structures and convening public gatherings. Existing mechanisms must be evaluated if we are to turn good intentions into actions.” Makubetse Sekhonyane in *NEDBANK ISS Crime Index No. 6 2000*.

According to Sekhonyane there have been numerous gatherings, conferences and workshops to discuss the problem of corruption. Government, civil society and the private sector were all represented at a conference hosted by the Public Service Commission in Pretoria on 27 October 2000. Also in October of the same year, the Department of Public Works hosted an anti-corruption conference in Kempton Park, Gauteng, attended by 300 delegates. Earlier in the year a conference was held for civil society delegates in Kempton Park and the office of the National Director of Public Prosecutions hosted an international gathering on corruption in Pretoria in May 2000. The 9<sup>th</sup> International Anti-Corruption Conference was held in Durban on the 10 October 1999.

Camerer (<http://www.iss.co.za>) gives an extensive explanation of the South African governments' responses to corruption, including what government is doing correctly and incorrectly in the fight against corruption, according to a survey done on experts in the field of corruption. Camerer also looks at the effectiveness of measures taken by the government in combating corruption. Because there is a perception that corruption has increased significantly since 1994, various agencies and anti-corruption bodies have been put in place by the government. These role players will be looked at in more detail in the next section of this chapter. The government has put in place many projects and programmes to address corruption. More effective and widespread legislation has also been enacted. In his state of the nation address in June 1999, President Mbeki focused a lot of attention on corruption and stressed the importance of adhering to the Protected Disclosures Act, which protects whistleblowers, and the implementation of the Public Finance Management Act, which must ensure accountability and adequate controls when dealing with public finances. The survey respondents' perceptions on how well government is dealing with corruption is as follows:

Table 4.1

**Respondents' perceptions of how well the government is handling the fight against corruption, in general and by race.**

Response	Total	Percentage	
		Black	White
Very well	6	11	2
Fairly well	53	59	48
Not very well	34	26	41
Not well at all	6	4	7
No opinion	1	0	2
<b>Total</b>	<b>100</b>	<b>100</b>	<b>100</b>

Camerer adds that the majority of respondents who thought the government was doing well (67 percent) were employed in the public service. This was followed by the Non-Governmental sector or civil society. Those who thought the government was not doing well include 44 percent employed in the NGO or civil sector and 33 percent working in the private sector.

#### 4.2.1 What The Government Is Doing Correctly.

Camerer (<http://www.izz.co.za>) stresses that there were over 50 responses to this particular question. For the sake of easier analysis the responses are grouped into six main areas.

- 1) **Greater awareness and transparency:** The experts felt that the government was creating more awareness around corruption by exposing it (this is, however, most commonly done by the media) when it occurs. They also felt the government was changing peoples' negative opinions around corruption by being more transparent and accessible,

by hosting various conferences on corruption and by creating various bodies to deal with corruption as it comes to light.

- 2) **Strengthening anti-corruption bodies and the criminal justice system:** As mentioned above, experts believe the government was being proactive by establishing a number of anti-corruption organisations and watchdog bodies. Examples of these bodies include the Special Investigating Unit, the Scorpions and the Public Protector's Office. The experts also believed that the criminal justice system was being strengthened to deal with corruption more efficiently. Other positive actions by the government include the transformation of the police service and the tightening of anti-corruption legislation and the introduction of new legislation regarding corruption.
- 3) **Anti-corruption strategies:** The transformation of certain government policies and the introduction of anti-corruption strategies have been seen as positive steps in the anti-corruption fight. The experts have noted that more than conference resolutions are needed to fight corruption.
- 4) **Political commitment:** Stigmatising the problem of corruption in government departments, involving senior management in anti-corruption initiatives and the presidential involvement in the fight all send out signals that the government is committed to the eradication of the problem.
- 5) **Improving checks and controls:** Although far from being an ideal situation, some experts believe the government is tightening checks and controls in government departments. These improvements include 'decreasing incentives, more transparent tenders, improving governance systems, financial controls and procedures and putting codes of conduct in place and encouraging whistle-blowing through protective legislation and toll-free numbers.'

- 6) **Cross-sectoral participation:** The experts believe that the involvement by the government of different sectors of society in the fight against corruption has been positive. These sectors include NGO's, youth organisations, business and civil society.

#### 4.2.2 What The Government Is Doing Incorrectly.

Camerer (<http://www.izz.co.za>) has placed the experts' answers to this question in five main categories.

- 1) **Ineffective criminal justice responses:** The experts stressed that there was too much talking and not enough action on corruption. They also thought that the existing corruption tackling methods and sanctions are inadequate. They also believe there is no consistency in dealing with different corruption cases and their follow-up. Prevention is insufficient and this should include publishing prosecutions as widely as possible. They also felt the criminal justice response to corruption lacking. The latter refers to the inadequate monitoring of anti-corruption agencies by this department.
- 2) **Lack of political will:** Some experts felt that the government does not emphasise the seriousness of corruption enough. The government has also been accused of not supporting anti-corruption strategies enough. There have also been incidents where members of government have openly supported corrupt individuals, even rewarding them with other or better jobs. This sends out mixed messages to the public on the seriousness of government's commitment to fighting corruption.
- 3) **Lack of management expertise and skills:** The following were presented as major stumbling blocks in the eradication of corruption: poor management systems, lack of co-ordination and transformation, uneducated, unqualified staff, expertise lost to affirmative action and an inexperienced government. A lack of discipline and inadequate financial controls and training contribute to corruption. There is also a great need for ethics awareness and training in government departments.

- 4) **Lack of resources:** Shortcomings in the governments' anti-corruption plans include inadequate resource allocation and inadequate personnel to fight corruption. This refers particularly to the lack of assistance to the SAPS commercial branch that deals with all government corruption except the criminal justice cluster. No resources are assigned to addressing the root causes of corruption and existing policies are not implemented effectively.
- 5) **Lack of cross-sectoral and strategic co-ordination:** Experts mentioned that government does not interact with civil society enough. They were also not listening to the electorate and not bringing NGO's aboard. The experts also felt that corruption-fighting strategies were inadequate and that corruption was not a government priority.

### **4.3 KEY ROLE PLAYERS IN THE CORRUPTION FIELD.**

In the last few years many anti-corruption agencies have been created in South Africa. These agencies will be discussed in detail below.

#### **4.3.1 Key National Bodies.**

##### **4.3.1.1 The South African Police Service Anti-Corruption Unit.**

The main focus in this section will be on the SAPS anti-corruption unit as it is responsible for investigating corrupt activities in the South African Police Service. The mission statement of this unit consists of: "The prevention of corruption within the South African Police Service by investigating corruption related acts in order to bring the perpetrators to justice". According to Makubetse Sekhonyane in *Nedbank ISS Crime Index No. 2 2000* The SAPS Anti-corruption unit was set up to:

- Investigate allegations of corruption and related aspects in the South African Police Service.
- Initiate and implement an anti-corruption awareness programme among SAPS members.
- Identify and report on dysfunctions.

- Develop and maintain an effective and integrated information and management system to support corruption investigation within the SAPS.
- Co-ordinate all anti-corruption investigations in the SAPS.

Prinsloo (2000: 68) adds that “corruption in the SAPS has since 1996 been categorised as a national priority as corruption and related acts have serious financial implications, indicate gross abuse of power, seriously impede the administration of justice and could otherwise seriously discredit the SAPS.” These concerns led to the creation of the unit in 1996. The unit has its head office in Pretoria and it has offices in all nine provinces.

*The South African Police Service Anti-Corruption Unit Overview* booklet provides examples of some of the Anti-Corruption Units successes’, these successes highlight the units determination to eradicate corruption within its ranks:

a) Operating Pakistan.

This particular operation’s docket value is R5.74 million and the confiscated exhibits are valued at R1.6 million. The operation dealt with the theft of luxury motor vehicles, fraud, drug trafficking and the trafficking of illicit diamonds. Corrupt members of the South African Police Services on a national as well as an international level participated in these corrupt activities. The operation was phased in three investigation units in order to cope with the mass investigation. The head of the syndicate and six of his lieutenants were arrested on the 20 February 1998. At the time of these arrests, a second and third phase of the investigation was underway. Vehicles to the value of R800 000 had been recovered, 11 firearms and 970 rounds of ammunition (value R45 000) were seized and 13 persons arrested.

b) Operation Jacob.

This operation investigated the unlawful smuggling of drugs by corrupt members of the South African Police Services. The exhibits confiscated included 1 446 kg of drugs to the value of R1.5 million. The leader of the syndicate and 13 other members were arrested. The leader was sentenced to 20 years and the sentences of the other members ranged from 10 to 20 years.

c) Operation Clean Deal.

This operation dealt with an organised crime syndicate specialising in stolen vehicles in Gauteng province. This particular syndicate included corrupt police officers. The syndicate did not only steal and hijack cars, they were also guilty of corruption, fraud, defeating the ends of justice and receiving stolen property. During an 8 months period, R6 000 000 worth of exhibits were confiscated, 16 people were arrested and 85 dockets registered.

d) Operation Cruiser.

This operation targeted corrupt police officers in a specialised unit who were involved specifically in corruption. This syndicate was divided into 5 groups, these groups were assisted by other government departments. The following offences occurred; corruption, intimidation, blackmailing and defeating the ends of justice. 10 police officers and 1 civil servant were arrested.

e) Operation Dust.

This particular operation was authorised on 29 May 1998 for a twelve-month period. The investigation was of a very sensitive nature and dealt with organised corruption within a police component assisted by private individuals. The syndicate operated on a national level and included senior police officers within the syndicate.

Makubetse Sekhonyane reports in the *Nedbank ISS Crime Index No. 2 2000* that the anti-corruption unit faces an enormous task in trying to reduce police corruption. Data taken from research done by the unit reveals that between October 1999 and February 2000, in the entire country 64,6 cases were opened per 1 000 officers and very few of these officers were found guilty. Some examples include the Northern and Eastern Cape. For every 1000 police officers employed in the Northern Cape, 12.1 case dockets were opened and 7 officers found guilty. In the Eastern Cape only 1.2 dockets were opened per 1 000 officers and 3 officers found guilty. The amount of dockets opened can be influenced by the following:

- Reluctance to inform on colleagues involved in corruption.
- Reluctance to investigate colleagues or senior officers.
- Management of the ACU may vary between provinces.
- Skill levels may also vary between provinces.

Other factors which hamper the speedy processing of cases include the complicated nature of some cases, witnesses withdrawing, and the apparent police culture that tends to embrace a 'code of silence'.

Prinsloo (2000: 69) points out that between 1996 when the Unit was set up and 1999, the number of investigations, including enquiries and case dockets received, increased by more than 50 percent from 2 300 to 5 638. The number of police officers implicated in corruption during this period, doubled. Nearly 2 000 officers were arrested and charged during this time, an increase of nearly 71 percent from 246 in 1996 to 844 in 1999. Of the 1 153 police officers charged during the period 1996 to 1998, 20 percent were convicted while 47 percent were acquitted. The latter is an indication of the length of time it takes to finalise these types of court cases as 33 cases were still pending at that stage. The number of convictions increased by close to 80 percent from 30 percent in 1996 to 143 in 1999.

The author suggests that the seemingly high 'not-guilty' findings are not unlike the findings of the Independent Complaints Directorate (ICD). The latter is an independent statutory body that was set up to investigate complaints against members of the SAPS. Of the 2 240 cases against members of the SAPS investigated by the ICD during the 1998/99 financial year, approximately 30 percent were substantiated. About 9 percent of these complaints were dismissed outright without an investigation. The author adds that "many of these cases could be based on unethical conduct or conduct 'unbecoming to a member of the SAPS', but lacking the stringent legal requirements of actions constituting statutory corruption."

Makubetse Sekhonyane in *Nedbank ISS Crime Index No. 2 2000* mentions that in South Africa, on average, each investigating officer of the ACU had 2.6 new cases in the period October 1999 to February 2000. In some provinces, such as KwaZulu-Natal, Northern Province and Mpumalanga the case-loads are higher than in provinces such as the Eastern Cape, Free State and the head office. Conviction rates also vary greatly between provinces. For example, KwaZulu-Natal and Mpumalanga



have a conviction rate of less than 20 percent, while the Free State and the Northern Cape achieved a 100 percent conviction rate.

#### 4.3.1.2 Independent Complaints Directorate (ICD).

Camerer (<http://www.izz.co.za>) notes that the independence of the ICD is encouraged by it receiving a separate budget vote directly from parliament. The ICD's main function is to deal with police misconduct, with corruption cases involving SAPS members being referred to the SAPS Anti-Corruption Unit. Camerer adds that "it appears from the fact that six ICD officials were recently present at an international conference (1999) on corruption that the ICD may be preparing itself to handle corruption cases in the future."

As Melville (1999: 59) mentions, the ICD is not totally independent as the minister of Safety and Security nominates the executive director, and when the latter's term of office expires, the minister may nominate the same person or a different person to serve as ED for the following five years. This is the situation even though the part of the Police Act *Section 50 (1) (a) of the Police Act of 1965 (the 'Act')* states that the ICD 'shall function independently from the service'. The Act also makes interference with the ED or his/her staff members in the exercise of their powers and functions an offence punishable by a fine or up to two years imprisonment. The minister also has the power to remove the ED after consulting the relevant parliamentary committees. The ED may only appoint staff after consulting the minister, the terms and conditions of employment are determined by the minister in consultation with the ED and the Public Service Commission.

The executive director has to consult the minister on many instances including the operations of the ICD, for example, 'the receipt and processing of complaints, the disclosure of information and the making of findings and recommendations. The ED also reports to parliament through the minister of Safety and Security'. Mellville adds that there should be no reason why the ICD should be treated any differently from other human rights-oriented bodies who deal directly with the president or parliament, and these dealings are largely confined to staff appointments. This lack of total independence could result in the ICD bowing to political pressure and it will not be a credible body in the eyes of the

public. Munnik (Mellville 1999: 62) suggests that the ICD must be able to play a watchdog role and to criticize the minister.

a) Scope of ICD operations.

The Act does not provide the ICD with total jurisdiction concerning all complaints against the police, or over specific categories of complaints or types of offences. This means that any other human rights-oriented body can deal with complaints related to the police. Mellville (1999: 69) mentions that the Act “merely provides that the ICD shall achieve the object contemplated in s.222 of the Constitution Act of 1996 and that it may upon receipt of a complaint investigate any misconduct or offence or investigate any death in police custody or as a result of police action. The ICD’s power to itself investigate any misconduct ‘on its own motion’ makes it one of the more powerful models internationally.”

The national or provincial commissioner has to notify the ICD of all cases of death in police custody or as a result of police action. The SAPS do not have to refer complaints they have received concerning themselves to the ICD. Munnik (Mellville 1999: 69) suggests that it be made compulsory for all complaints received by the police to be reported to the ICD, he also suggests that complaints involving assault by police officers be referred immediately, and failure to do so should be a disciplinary offence. Complaints that could result in the loss of evidence must be referred to the ICD immediately.

b) Powers of the ICD.

The Act only provides empowering provisions. Details of the actual ICD operations are determined by the ED and the relevant minister. This is in sharp contrast with, for example, the Public Protector who determines on his own, procedures to be followed. Mellville (1999: 76) points out that the powers of the executive director are not clearly defined. The only powers that are clear are the “conferring of ordinary police powers upon specified members, authorising the commencement and referral of investigations and the making of recommendations.” This inadequate definition of the ED’s position creates confusion, to the extent that should the police and the ED interpret the Act differently, the ED would be compelled to approach the minister to intervene or approach a court to obtain a declaratory

order. This is not an ideal situation, as the courts would usually grant powers that would assist in achieving the objectives of the ICU and not necessarily giving the police the benefit of the doubt. It is essential that the powers of the ED and the ICD be stipulated specifically in the Act. Landa and Lewis (Mellville 1999: 76) mention that "should a government not give an oversight body the necessary powers, range of functions and budget to perform its task, it will merely be hoodwinking the public into believing that the police are being held accountable."

Because of the lack of powers of search and seizure, the ICD has to obtain search warrants. Mellville refers to an article in *The Citizen of 18 July 1997* where the ICD had to obtain a search warrant in order to search SAPS premises for torture equipment. This is an anomaly when compared with many other statutory bodies such as the Secretariat for Safety and Security, the Human Rights Commission and the Special Investigating Unit who may search premises and seize goods without obtaining search warrants.

c) Relationship between the SAPS and the ICD.

As mentioned earlier, a section of the Act prohibits interference with the work of the ED in the exercising of his/her powers and functions. This does not extend to the possible dragging of feet or the obstructing of investigations by police officers. Meadus in Mellville (1999: 81) adds, "co-operation between the police and a complaints body are necessary to ensure that complaints are handled expeditiously and with minimum disruption to policing." The support and contribution of every police official involved is essential if the mandate of the ICD is to succeed. It has been recommended that refusal to co-operate with an investigation by police officers must be a disciplinary offence.

Munnik (Mellville 1999: 82) mentions that there is an unwritten code of honour that exists amongst police officers where they do not report any misconduct or crimes perpetrated by colleagues. It is also very unusual for someone to tell the truth when requested to make a statement. Regulation 18 (10) issued in terms of *The SAPS Act of 1995*, makes it an offence to withhold or delay any complaint against another employee. This does not include reporting to the ICD. Two examples of 'retaliation' by the SAPS on whistleblowers in their ranks include Gregory Rockman, who reported the misconduct of the Riot Police in 1995, and for this he was subjected to an investigation for departmental

misconduct. The other example pertains to Dirk Coetzee who told the world about the nefarious activities of the South African Police Special Branch stationed at Vlakplaas during the apartheid era. There was an attempted assassination on Coetzee. It is therefore understandable that officers are often afraid to report their corrupt colleagues.

#### 4.3.1.3 Public Service Commission.

The Public Service Commission's website (<http://www.psc.gov.za>) states that the difference between the Department of Public Service and Administration and the Public Service Commission is that the former is responsible for policy formulation and the latter is responsible for monitoring and evaluation. The website also explains the Commissions' vision and mission.

##### Vision

The Public Service Commission is an independent and impartial body created by the Constitution to enhance excellence in governance within the Public Service by promoting a professional and ethical environment and adding value to a public administration that is accountable, equitable, efficient, effective, corrupt-free and responsive to the needs of the people of South Africa.

##### Mission

The Commission aims to promote the constitutionally enshrined democratic principles and values in the Public Service by investigating, monitoring, evaluating, communicating and reporting on the public administration; through research processes it will ensure the promoting of excellence in governance and the delivery of affordable and sustainable quality services.

Sangweni (Sangweni & Balia 1999: 120) explains that the Commission is an oversight body with an oversight role that operates within the context of the powers and functions assigned to it by the constitution (section 196). These powers and functions include:

- The promotion of values and principles of public administration set out in section 195 of the Constitution throughout the public service.
- The investigating, monitoring and evaluating of the organisation, administration and personnel practices of the public service, and in particular the adherence to the values and principles set out in section 195, as well as to public service procedures.
- The proposal of measures to ensure effective and efficient performance.
- The giving of directions aimed at ensuring that personnel procedures relating to recruitment, transfers, promotions and dismissals comply with the values and principles set out in section 195 of the Constitution.
- The advising of national and provincial organs of state on personnel practices.
- The reporting of its findings and recommendations at least once a year to the National Assembly or provincial legislatures as applicable.
- The reporting of issues of immediate operational concern to the relevant executive authority.
- The investigating of grievances of employees and recommending appropriate remedies.

The Public Service Commission has distributed a Code of Conduct for Public Servants throughout the civil service. This code provides guidelines for ethical behaviour by civil servants. Ultimately, this Code of Conduct is meant to “bring about an ethos of professionalism, protect democratic values and create a new culture in which the highest standards of probity, integrity and ethical behaviour are upheld in the workplace.” (Sangweni & Balia 1999: 125).

#### 4.3.1.4 The Public Protector.

In terms of section 182(1) of the Constitution, the Public Protector has the power to:

- “a) 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 result in any impropriety or prejudice;
- b) to report on that conduct; and

- c) to take appropriate remedial action.” (*Joint Investigation Report into the Strategic Defence Procurement Packages November 2001*).

In terms of section 6(4) of the *Public Protector Act, 1994 (Act No 23 of 1994)*, the Public Protector can, in his sole discretion, take the following action to resolve a dispute or to address any improper act or omission:

- a) mediation, conciliation or negotiation;
- b) advising the complainant of appropriate remedies, where necessary;
- c) making appropriate recommendations to the public body involved;
- d) referring the matter to the authority charged with prosecutions where the facts disclose the commission of an offence; or
- e) any other means that may be expedient under the circumstances.

Gary Pienaar (<http://www.worldonline.co.za>) describes the Public Protector as an “independent, high-ranking official appointed by Parliament for a non-renewable seven-year term of office. He is required to report to Parliament on his investigations into alleged or suspected impropriety, irregularity or maladministration, or other conduct causing prejudice, in any sphere of government or public affairs, ranging from state-owned companies and local government to the presidency.” In practical terms, the office of the Public Protector, including the investigators spend most of their time attempting to establish facts. As many people as possible have to be spoken to, to gather information about a particular complaint and to ascertain the most suitable way of resolving the issue.

The abuse of public office can come in many guises and administrative discretionary action impacts on many areas of our lives from permits to licences and tenders, the payment of pensions and arms procurement. The Public Protector’s function is not only to assist the complainant, but also to prevent the perpetuation of the misdemeanour. The latter may include the dismissal of the guilty official, changing official procedures to force the tightening of financial controls or to make official policy more sensitive to the personal circumstances of individuals. It is also the function of the Public

Prosecutor to defend an official who has been wrongly accused of misconduct by an ill-formed or malicious complainant (Gary Pienaar in <http://www.worldonline.co.za>).

“Accepting that governments are a necessary evil, it becomes non-debatable that control of public power is crucial to the survival of democracy. Experience locally and internationally tells us so.” (Baqwa in Sangweni & Balia 1999: 147). The Public Protector is an essential institution for the protection of human rights, mainly because he/she is more accessible to the public. The service is free and the Public Protector can be informally approached without an individual having to follow tedious bureaucratic procedures. The latter eases the feeling of helplessness many members of the public experience when their rights have been infringed on and they still have to face the enormity of administrative bureaucracy. The Public Protector has extensive powers to conduct his/her investigations formally or informally. He/she has wide-ranging powers to take formal evidence, issue subpoenas as well as extensive search and seizure powers. Maladministration can be investigated at any level of government by this institution (Baqwa in Sangweni & Balia 1999: 149).

#### 4.3.1.4 a) The Public Protector, Crime and Corruption.

As mentioned earlier, the Public Protector has the power to investigate any alleged misconduct in state affairs, public administration and any other sphere of government. Many complaints made to the Public Protector are of a criminal nature, or the Public Protector uncovers criminal activities. An example of this would be someone who experienced prejudice by the state because of corruption committed by the latter, in other words, a member of the public does not tender successfully for a government job because the government official took a bribe to give the tender to somebody else. An official who steals and defrauds public funds for self-enrichment would be guilty of criminal conduct. When a complaint is received by the Public Protector, the ‘accused’ is requested to respond to the complaint. Subpoenas may be issued, buildings may be entered to be searched and documents may be seized. If a crime is identified, the matter is handed over to the police and the relevant prosecuting authorities for further investigation (Baqwa in Sangweni & Balia 1999: 151).

Baqwa (Sangweni & Balia 1999: 152) poses the question, what exactly is the role of the Public Protector regarding crime? Baqwa (South Africa’s incumbent Public Protector) stresses that his office

is capable of more than just investigating complaints that can be prosecuted in a criminal court. It is often difficult to distinguish between criminal behaviour and unethical behaviour. A good example given by Baqwa is a scenario whereby someone gained unfair advantage by being granted a government tender purely because they have a family member working in the relevant government department. This may not be criminal, but it certainly is unethical behaviour. Nepotism is not a criminal offence in South Africa, but it is serious enough to warrant the attention of the Public Protector.

Corruption that occurs within the public sector is often indicative of systemic or structural defects. The function of the Public Protector is to identify these problems and to suggest remedies for them. An example of this would be where a certain government department has a problem with fraud, the guilty officials will be handed over to the prosecuting authorities and the Public Protector would continue with its investigation to identify the cause of the fraud and how to eradicate it. Another example is excise duty evasion. If it established that there is a problem with legislation around excise duties, or that the legislation promotes opportunities for the evasion of excise duty, the Public Protector would look into the legislation and make the necessary recommendations to the legislature to close the loopholes. Concerning crime, the Public Protector is not the main player, but it plays a supportive role as it does not only deal with crimes that end up in court, but with unethical and improper behaviour as well (Baqwa in Sangweni & Balia 1999: 152).

#### 4.3.1.5 The Auditor-General.

The Auditor-General does audits on state departments on behalf of the South African taxpayer. The A-G plays an essential part in ensuring that accounting principles are adhered to and that financial controls are in place. The A-G scrutinizes the annual reports of the departments to check if cost-effective accounting and the correct use of resources have been documented. It is imperative that the Auditor-General is free from any political interference and that it is adequately resourced in order to be efficient and to promote accountability and clean administration (Balia in Sangweni & Balia 1999: 9).

Ebrahim (Sangweni & Balia 1999: 68) adds that the Constitution awarded the Office of the Auditor-General independence and autonomy. This office is one of the most important when it comes to



ensuring that the systems, procedures and the administration of state funds are in line with generally accepted accounting practice. The A-G is capable of identifying any corrupt behaviour concerning state funds, it reports only to parliament (the legislature) and it is therefore, in a strong position to transform public administration. The A-G has proved to be an effective deterrent to unauthorised expenditure and the abuse of state funds.

Some of the powers awarded to the Auditor-General in terms of the *Auditor-General Act, 1995 (Act No 12 of 1995)*, section 3(5) include:

- “the A-G may, when exercising his powers, require any person in the employment of an institution whose accounts are being audited by him to appear before him and to produce all such records, books and other documents in the possession or under the control of such person as the A-G may deem necessary.
- the A-G has the power, in terms of the Act, to investigate and to make extracts from any record, book, document and other information of an institution whose accounts are being audited by him.
- Sections 3(5)(b)(ii) and (iii) of the Auditor-General Act provide that the A-G has the right to investigate whether any property, money, equipment and other assets of an institutions account being audited by him have been obtained in an economical manner and are being applied efficiently and effectively. The A-G can also investigate the efficiency and effectiveness of internal control and management measures relating to the expenditure and revenue of such an institution.
- The A-G may interrogate under oath or upon affirmation any person whom he thinks fit to interrogate in connection with any matter in so far as it may be necessary for the due performance and exercise of his powers and duties.” (*Joint Investigation Report into the Strategic Defence Procurement Packages*).

#### 4.3.1.6 National Prosecuting Authority.

“According to the *Joint Investigation Report into the Strategic Defence Procurement Packages*, The National Prosecuting Authority is grouped in chapter 8 of the Constitution under the heading *Courts and Administration of Justice* and is equally constitutionally bound to exercise its functions without fear, favour or prejudice.

- Section 179(2) of the Constitution empowers the national prosecuting authority to institute criminal proceedings on behalf of the State, and to carry out any necessary functions incidental to instituting criminal proceedings. The Preamble to the National Prosecuting Authority Act, 1998 (Act No 32 of 1998, as amended), further provides that in order to ensure that the prosecuting authority fulfils this constitutional mandate, provision has been made for the establishment of an Investigating Directorate, which is known as the Directorate of Special Operations (DSO). The directorate has been established in the Office of the National Director.
- The NPA Act regulates the powers and functions of the National Director, other members of the prosecuting authority and the DSO.
- The DSO is headed by a Deputy-National Director, who performs his powers, duties and functions subject to the control and the directions of the National Director. The Head of the DSO is, in turn, assisted by, *inter alia*, an Investigating Director, Deputy Directors and Special Investigators.
- Chapter 5 of the NPA Act sets out the powers, duties and functions relating to the DSO. Investigations are conducted in terms of section 28, which also endows the Investigating Director with discretion to determine the procedure to be followed as dictated by the circumstances of each case. This chapter also makes provision for, *inter alia*, the power of search, seizure and arrest.
- In terms of section 28(1), if the Investigating Director has reason to suspect that a specified offence (as identified in section 1) has been or is being committed or that an attempt has been or is being made to commit such an offence, he may conduct an

investigation into the matter in question. In terms of section 28 (13), if the Investigating Director considers it necessary to hear evidence in order to enable him to determine if there are reasonable grounds to conduct an investigation in terms of section 28(1), he may hold a preparatory investigation.

- The specified offences in respect of which the Investigating Director can conduct an investigation or preparatory investigation include, *inter alia*, any offence of fraud, theft, forgery and uttering, corruption in terms of the Corruption Act, 1992 (Act No 94 of 1992), or any other economic common law offence or economic offence in contravention of any statutory provision, which involves actual or potential patrimonial prejudice to the state, any body corporate, trust, institution or person, which is of a serious and complicated nature.”

Dyosi (Sangweni & Balia 1999: 89) mentions that the Prevention of Crime Act of 1999 grants the National Director of Public Prosecutions the power to seize any assets believed to be bought from the proceeds of crime. These assets are forfeited to the state. According to this Act, it is sufficient to prove on a balance of probabilities, that the assets were acquired by criminal means, or that they were part of a criminal activity. A legal conviction is not necessary for confiscation. Since the inception of the Prevention of Crime Act of 1999, an Asset Forfeiture Unit has been established. This unit is part of the NDPP. The main function of this unit is to identify and seize all assets that are the proceeds of crime or were an instrumentality of an offence. The Justice Ministry and the Office of the NDPP have established Commercial Crime Courts. These courts handle tax fraud, corruption and commercial crime cases.

#### 4.3.1.7 The Special Investigations Unit.

According to Camerer (Sangweni & Balia 1999: 206) during 1995, President Nelson Mandela noted the successful operation of the Eastern Cape-based Heath Commission. The Commission was responsible for recovering state assets through civil proceedings.

In 1996 Parliament passed The Special Investigating Unit and Tribunal Act 74 of 1996. In terms of section 2 of this Act, Judge Willem Heath, who headed the Unit, was responsible for dealing with clean administration and protecting public money and public property. During 2001, it was found to be unconstitutional for a judge to head a body of this nature, and Heath was replaced with a ruling party stalwart, Willie Hofmeyer.

The Heath Unit was a phenomenally successful corruption-fighting unit. Between April 1998 and 30 September 1998, 20 cases amounting to R501 261 000 were completed or had orders granted. The Unit investigates cases from a civil perspective as opposed to a criminal perspective. Crimes that are discovered by the Unit are referred to the relevant prosecuting authorities for further action. It does not investigate crimes, make arrests or go through the criminal courts but institutes civil action in a Special Tribunal. The Unit works closely with the Auditor-General, the Public Protector, the Attorney-General and the SAPS in the performing of its mandate. The Special Tribunal is a separate legal entity, presided over by judges who are appointed on the same basis as High Court judges and are not part of the Special Investigating Unit. If the civil action is successful, a judgement is given by the Tribunal and this judgement includes the execution and attachment of assets (Camerer in Sangweni & Balia 1999: 206).

The Special Investigating Unit consists of 71 members (during 1999), these include legal representatives who are specialists in civil litigation arising from anti-corruption, anti-maladministration and related investigations. There are multi-disciplinary teams of investigators, internal auditors and accountants. There is also an information technology team who are responsible for accessing relevant information. The Unit has been granted fairly wide powers, including powers to search and seize, with the permission of a magistrate or judge. Documents may be confiscated if there is a reasonable suspicion that it would help with an investigation. The Unit also has the power to summon anyone to appear before it and to answer questions. It can also demand the return of money or property to its rightful owner and it can issue an interdict to prevent the disappearance of this money or property. The terms of the Act that created the SIU, are restrictive in the sense that the Unit must refer allegations to the necessary authority and this is followed by a long wait before the Department of Justice submits a draft proclamation to the Office of the President. The latter then refers the matter back to the Unit for investigation. This long period of time taken to give permission to the Unit to

investigate a case severely jeopardises that particular investigation (Camerer in Sangweni & Balia 1999: 208).

According to Ebrahim (Sangweni & Balia 1999: 70) the Government created this Unit to fight corruption. There have been a few clashes between government and Judge Heath in the past, including a very public one between finance minister Trevor Manuel and Judge Heath in Parliament. These all served to create the impression that there was tension between the government and the Unit, which clearly undermined the governments' sincerity in fighting corruption. The government needs to give this Unit more resources to enable it to perform even more effectively.

Heath (1999: 13) adds that during 1999, the Unit was handling approximately 90 000 cases involving fraud, corruption and maladministration within the different levels of government. During 1999 the Unit was investigating cases worth in excess of R7 billion. The Unit was in a position where they could either recover state assets or public money that had been misappropriated or illegally obtained, in order to prevent the loss of these assets and money.

#### 4.3.2 Non-Governmental Anti-Corruption Bodies.

##### 4.3.2.1 Public Service Accountability Monitor.

According to its website (<http://www.psam.ru.ac.za>), the Public Service Accountability Monitor is "an innovative monitoring unit dedicated to following up cases of corruption and maladministration and to monitoring the performance of the public sector in the Eastern Cape Province. The PSAM conducts independent research, policy analysis and advocacy work. It aims to keep civil society and the provincial legislature informed about efficient levels of service delivery by government departments and to allow them to hold the provincial Executive accountable for departmental performance."

The mission of the PSAM is as follows: "to provide high quality information that will enable civil society, public services management and elected public representatives to promote the efficient and accountable management of public resources and to improve service delivery."

The PSAM aims to promote accountability and efficiency in the management of public resources by:

- Monitoring individual cases of public sector misconduct and corruption and disciplinary outcomes to these cases in terms of legislative provisions.
- Monitoring a range of key performance indicators for departments including over and under-expenditure, compliance with stated policy and strategic objectives, realisation of service delivery undertakings, compliance with financial management and control procedures and fulfillment of reporting requirements.
- Surveying public official's knowledge of regulations and codes of conduct and their attitudes towards transparency, accountability and corruption.
- Empowering civil society through the provision of accurate information on levels of accountability of public officials and elected representatives, and the extent of effective public service delivery.
- Evaluating the policy framework governing the accountability of public officials and the management of public resources."

The PSAM also follows up reported cases of misconduct and corruption with the relevant departments. The PSAM compiles a list of details concerning the corruption and misconduct after verifying the details of the case. This list is then faxed to the head of the department and copies are sent to the Premier's office and to the office of the Speaker of the Provincial Legislature. After one month the PSAM contacts the head of department to enquire about the disciplinary outcome of the case. The information is received through a telephonic interview, which is recorded and then made available in text and audio format on the PSAM website. If the head of department refuses to respond then the information is requested in terms of the Promotion of Access to Information Bill.

The PSAM is in the process of developing a database containing departmental performance information. The latter consists of strategic planning, financial and human resources information as well as external sources' evaluation of each department. The analysis of each department's performance concerning its levels of service delivery and its adherence to the Public Finance Management Act and other legislative requirements, will be published by the PSAM on its website.

#### 4.3.2.2 Transparency – South Africa.

Transparency – South Africa (T-SA) was launched in 1997. T-SA was launched as an autonomous Non-Governmental Organisation “solely committed to address the issues of corruption and governance, and it is developing extensive networks with different organisations in the public and private sector and in particular in civil society in South Africa. T-SA is one of 80 affiliates of the International Anti-Corruption organisation, Transparency International.”

The Mission and Strategy of Transparency – South Africa is as follows:

- “To further transparency, accountability and integrity in South Africa.
- To further good governance.
- To monitor corruption locally and elsewhere.
- To raise awareness about corruption in our society.
- To develop networks of integrity against corruption.”

T-SA is a South African NGO committed to addressing corruption, it is a non-profit, section 21 Company and it is politically non-partisan.” (<http://www.tisa.org.za>).

In an article by Sapa (<http://iol.co.za>), Transparency International’s Bribe Payers Index for 2002 showed very high levels of bribery in developing countries including South Africa. The US and Japanese multinationals were the most likely to pay bribes to foreign government officials, followed by France, Spain, Germany, Singapore and the UK. The countries with the lowest likelihood of bribing foreign officials include companies from Australia, Sweden, Switzerland, Austria, Canada, Belgium and the Netherlands. These bribes continue despite the fact that all the guilty countries have laws making the bribing of foreign officials illegal. Domestic companies in developing countries have also been guilty of ‘heavy’ bribe-paying. The sectors showing the most obvious corruption are public works and construction, followed by the arms and defence sectors. Transparency-UK conducted a study that found the bribery of some foreign officials directly related to tens of billions of dollars of defence deals.

The Bribe payers Index study was conducted in 15 emerging market countries including Argentina, Brazil, Colombia, Hungary, India, Indonesia, Mexico, Morocco, Nigeria, the Philippines, Poland, Russia, South Africa, South Korea and Thailand.

#### **4.4 PERFORMANCE EVALUATION OF KEY ROLE PLAYERS.**

According to an expert panel survey done by Camerer (<http://www.iss.co.za>), respondents were asked to rank the effectiveness of a few anti-corruption agencies. Four categories were used; very effective, effective, not very effective or not effective at all in fighting corruption. The main agencies ranked in the survey include the Special Investigating Unit, the Special Investigating Directorate on Corruption in the National Prosecuting Authority, the Office of the Public Protector, the office of the Auditor-General and the Public Service Commission.

##### **4.4.1 The Special Investigating Unit.**

Nearly half (47 percent) of the experts said the Unit was effective, and more than a third (38 percent) felt it was very effective. More white respondents felt the Unit was very effective compared with black respondents (43 percent compared to 32 percent). This Unit, according to the experts was the most effective of the anti-corruption agencies polled. This Unit has special powers to recover public money and to prevent the further loss of state assets. It also has a specific anti-corruption mandate, the sole purpose for its existence. After the constitutional court ruled in November 2000 that a judge could not head an investigative unit or receive executive directives, the future of the Unit was uncertain. Judge Heath resigned because of this ruling and for other reasons, in early 2001. At the same time the Henning report found that the ability of the Unit to rapidly recover assets was restricted by poor case management and the taking on of cases that did not fall within their main mandate. As mentioned earlier, the head of the Asset Forfeiture Unit of the National Prosecuting Authority, Willie Hofmeyer, was appointed head of the Special Investigating Unit in July 2001.



#### 4.4.2 Special Investigating Directorate on Corruption.

According to Camerer (<http://www.oss.co.za>) just over a third of the respondents (35 percent) considered the directorate as effective, and 12 percent saw it as very effective. A large number of experts (31 percent) could not give an answer on the effectiveness of this agency as it was never fully operational. The directorate struggled to define its mandate, and it had difficulty in acquiring the correct capacity to fill it. When the Scorpions were streamlined under the National Prosecuting Authority, all special directorates were integrated into the Directorate of Special Operations.

#### 4.4.3 Public Service Commission.

37 percent of respondents felt the Public Service Commission was not very effective. 26 percent considered it to be effective, and 8 percent very effective. Black respondents were more likely to see the Commission as being very effective while white respondents were more likely to indicate that they did not know. The expert panel considered this Commission to be the least effective in the fight against corruption. This is despite the fact that the Commission was tasked with being the flag-carrier of the government's anti-corruption initiative at the April 1999 summit. It has also been responsible for convening meetings of the cross-sectoral task team.

“Since April 2001, the Department of Public Service and Administration has been mandated by the cabinet to play a far more active role in defining government priorities around fighting corruption. It is likely that the Public Service Commission will revert back to its constitutional oversight function of promoting professional ethics and monitoring the public service.” (Camerer <http://www.iss.co.za>).

#### 4.4.4 Office of the Auditor-General.

A fairly large percentage of respondents (48 percent) considered the Office of the Auditor-general effective in fighting corruption. More than a quarter of respondents (26 percent) considered it to be very effective, 14 percent thought the Office was not very effective and 5 percent thought it was not effective at all. 7 percent of experts felt they were not familiar enough with the Office to give a ranking on its effectiveness against corruption.

#### 4.4.5 Office of the Public Protector.

This office was considered by nearly half (48 percent) the respondents as effective, and by 14 percent as very effective. 27 percent regarded this office as being not very effective. Whites were more likely to think this office is effective compared to other anti-corruption agencies. Whites (55 percent) considered this office to be effective compared to 39 percent of the black experts.

The head of the Public Protector's office, Advocate Selby Baqwa's term ends later this year (2002). An article by Stefaans Brummer in *The Mail & Guardian* of May 3 to 9 2002, criticises Baqwa severely for the perceived protection and white-washing of potentially corrupt deeds committed by politicians with the same political sympathies as himself. Firstly there was the *Sarafina II* Aids play debacle where a contract was irregularly awarded to a contact of the Health Minister at the time. The Public Protector's Office put the blame on a few departmental officials for the awarding of the R14 million contract and the minister was exonerated of all wrongdoing.

Another incident involves the Motheo housing scandal, where the Mpumalanga Housing Board irregularly awarded a R200 million contract to build houses to a friend of the incumbent Minister of Housing. The media started questioning the relationship between the minister and the beneficiary of the contract. This was followed by a recommendation by the Auditor-General that an inquiry should be held into "whether there were, in view of the allegations that were made in the public media, any family or other close relationships involved in the awarding of the project to Motheo Construction." The premier of Mpumalanga appointed a commission of inquiry into the matter, but as it was a provincial inquiry, it could not examine the actions of a national minister. The commission then said it could find no evidence against her. The Office of the Public Protector declared that since no evidence was found against the minister it would be an invasion of her privacy to look for evidence. The recommendation of the Auditor-General was never followed up.

One incident that possibly tainted the Public Protector's integrity is the findings of the Joint Investigation Report on the Arms Deal. This investigation was done by the Public Protector, the Auditor-General and the National Prosecuting Authority. It was widely considered that the report was a cover-up of any wrongdoing by the government because of the heads of the three agencies' political

affiliations. Also, a nonsensical statement made by the joint agencies when they presented their report did not show them up in a good light. The statement read: “No evidence was found of any improper or unlawful conduct by the government.” It was nonsensical because the actual report exposed numerous abuses and irregularities committed by government officials during the arms procurement process. The public was clearly confused about the difference between the government and government officials.

## 4.5 ANTI-CORRUPTION LEGISLATION.

### 4.5.1 The Corruption Act, No 94 of 1992.

*The Corruption Act, 1992*, replaces the common-law crime bribery. This Act identifies two key elements, they are *Active corruption* and *Passive corruption*. *Active corruption* is committed by the corruptor, the corruptor is the person who initiates the advance and makes the payment. *Passive corruption* is committed by the corruptee, the corruptee is the person who receives the payment and delivers the service. According to this Act, corruption occurs when an employee fails or agrees not to carry out his/her duty for the purpose of benefiting from this action, and corruption occurs when a person forces an employee to agree to not carry out his/her duty for benefit (Van Tonder & Goss [http://www.transparency.de/iacc/9...dlws1\\_pricewaterhouse.htm](http://www.transparency.de/iacc/9...dlws1_pricewaterhouse.htm)).

The Offence (corruption) is spelt out as follows in *The Corruption Act, 1992*:

- “Prohibition on offer or acceptance of benefit for commission of act in relation to certain powers or duties. – (1) any person –
  - (a) who corruptly gives or offers or agrees to give any benefit of whatever nature which is not legally due, to any person upon whom-
    - (i) any power has been conferred or who has been charged with any duty by virtue of any employment or the holding of any office or any relationship of agency or any law, or to anyone else, with the intention to influence the person upon whom such power has been

conferred or who has been charged with such duty to commit or omit to do any act in relation to such power or duty; or

- (ii) any power has been conferred or who has been charged with any duty by virtue of any employment or the holding of any office or any relationship of agency or any law and who committed or omitted to do any act constituting any excess of power or any neglect of such duty with the intention to reward the person upon whom such power has been conferred or who has been charged with such duty because he so acted (corruptor), or:
  - (b) upon whom any power has been conferred or who has been charged with any duty by virtue of any employment or the holding of any post or any relationship of agency or any law and who corruptly receives or obtains or agrees to receive or attempts to obtain any benefit of whatever nature which is not legally due, from any person, either for himself or for anyone else, with the intention –
    - (i) that he should commit or omit to do any act in relation to such power or duty, whether the giver or offeror of the benefit has the intention to influence the person upon whom such power has been conferred or who has been charged with such duty, so to act or not; or
    - (ii) to be rewarded for having committed or omitted to do any act constituting any excess of such power or any neglect of such duty, whether the giver or offeror of the benefit has the intention to reward the person upon whom such power has been conferred or who has been charged with such duty, so to act or not, shall be guilty of an offence.” (corruptee).

This Act has been largely ineffectual in bringing to justice corrupt officials. In fact, the prosecuting of corruption and corrupt practices since the common law act of bribery was replaced by the *Corruption Act of 1992* has been almost non-existent. This law is considered to be deeply flawed and in urgent need of a review. The fundamental problem with this piece of legislation is that it makes provision for prosecution of both the corruptor and corruptee. If the potential witness can be prosecuted, who is left

to testify? Some cases that have been successfully prosecuted through this legislation will be mentioned in the adjudication section of this chapter. There has recently been an extensive review of this Act, which has culminated in the formulation of an entirely new Act called the *Prevention of Corruption Bill*, which has yet to be passed into law.

#### 4.5.2 Prevention of Corruption Bill.

This bill is also known as the *Prevention of Corruption Act, 2002*. This new bill provides more specific definitions of corrupt acts and practices and it deals with corruption in all forms. Then common law crime of bribery, which was repealed by section 4 of the Corruption Act, 1992 (Act No. 94 of 1992) has been reinstated. The section in the new act dealing with bribery is spelt out as follows:

- (1) "A person is guilty of an offence if her or she gives or agrees to give to any public officer any gratification as an inducement to or as a reward for  
—
  - (a) voting or not voting at any meeting of a public body;
  - (b) performing or not performing any official function;
  - (c) expediting, delaying, hindering or preventing the performance of an official act, whether by that public officer or by any other public officer;
  - (d) aiding, assisting or favouring any person in the transaction of any business with a public body;
  - (e) aiding or assisting in procuring or preventing the passing of any vote or the granting of any contract or advantage in favour of any person in relation to the transaction of any business with a public body;  
or
  - (f) showing any favour or disfavour to any person in performing a function as a public officer, regardless of whether the public officer had the power, right or opportunity to act or not to act in a manner contemplated in paragraphs (a) to (f).

- (2) A public officer is guilty of an offence if he or she accepts or agrees to accept any gratification as an inducement to, or as a reward for, performing or not performing any act or omission referred to in subsection (1)(a) to (f), regardless of whether the public officer had the power, right or opportunity so to act or so not to act.
- (3) Any person convicted of an offence referred to in subsection (1) or (2) is liable to a fine or to imprisonment for a period not exceeding 15 years, or to both a fine and such imprisonment.”

The bill also deals extensively with the following aspects of corruption;

- Offence of corruptly accepting gratification,
- Offence of corruptly giving gratification,
- Offence of corruptly accepting gratification by or giving gratification to agent,
- Offence of fraudulent acquisition of private interest,
- Offences in respect of tenders,
- Corruption of witnesses,
- Bribery of foreign officials,
- Bribery in relation to auctions,
- Bribery for giving assistance in regards to contracts,
- Offence of corruptly using office or position for gratification,
- Corruption in relation to sporting events,
- Offence of dealing with, using, holding, receiving or concealing gratification in relation to any offence,
- Offences relating to corrupt accepting and giving of gratification,
- International obstruction of investigation of offence,
- Possession or control of property corruptly acquired by public officer,
- Duty to report corrupt transactions, and
- Extraterritorial application of Act and jurisdiction.

The Parliamentary editor of the *Business Day* (<http://www.bday.co.za>) adds that the Bill's explanatory memorandum says: "The provisions of the Bill follow modern international trends, namely the unbundling of corruption, in terms of which various specific actions are defined and prohibited." The first section of the Bill deals with corruption by, or of, public servants. This includes Members of Parliament, members of provincial legislatures, municipal councillors, members of national, provincial and local government, the judiciary and prosecuting authority. The term gratification includes a range of benefits, advantages, rights and privileges and valuable items.

Importantly, the Bill makes it an offence for officials to use their positions in public bodies, "directly" or "indirectly", for any "gratification" for themselves or for any relative or associate. This deals with some of the allegations surrounding the government's arms deal where discounts on luxury motor vehicles were accepted for influence and where conflicts of interest while serving on a public body were not disclosed. Using influence in the awarding of tenders and contracts is also highlighted and prohibited. It will become compulsory to report corrupt practices. Also importantly, any public officers who maintain standards of living obviously not commensurate with their salary will be guilty of an offence (<http://www.bday.co.za>).

Although this Bill is far reaching and covers broader aspects of corruption including bribery, the fact that both the corruptor and the corruptee are liable for prosecution raises the question again of who will be the witness?

Other bills related to corruption will be briefly discussed.

#### 4.5.3 Protected Disclosures Act, No 26 of 2000.

This Act is relevant to the fight against corruption because it encourages employees to report corrupt or criminal behaviour by their employers or fellow employees. This Act serves to protect these whistle-blowers from any form of victimisation. The preamble of the Act states the purpose of this piece of legislation: "To make provision for procedures in terms of which employees in both the private and the public sector may disclose information regarding unlawful or irregular conduct by their employers or other employees in the employ of their employers; to provide for the protection of employees who

make a disclosure which is protected in terms of this Act; and to provide for matters connected therewith.”

The preamble also states that “recognising that criminal and other irregular conduct in organs of state and private bodies are detrimental to good, effective, accountable and transparent governance in organs of state and open and good corporate governance in private bodies and can endanger the economic stability of the Republic and have the potential to cause social damage. And bearing in mind that neither the South African common law nor statutory law makes provision for mechanisms or procedures in terms of which employees may, without fear or reprisals, disclose information relating to suspected or alleged criminal or other irregular conduct by their employers, whether in the private or the public sector.”

The Act aims to “create a culture which will facilitate the disclosure of information by employees relating to criminal and other irregular conduct in the workplace in a responsible manner by providing comprehensive statutory guidelines for the disclosure of such information and protection against any reprisals as a result of such disclosures; and to promote the eradication of criminal and other irregular conduct in organs of state and private bodies.”

#### 4.5.4 Executive Members’ Ethics Act, No. 82 of 1998.

This Act provides for a code of ethics to govern the conduct of members of the Cabinet, Deputy Ministers and members of provincial Executive Councils. The main aim of this code of ethics is to “prescribe standards and rules aimed at promoting open, democratic and accountable government and with which Cabinet members, Deputy Ministers and MECs must comply in performing their official responsibilities.”

The code of ethics prohibits the above-mentioned category of politicians from “undertaking any other paid work, acting in a way that is inconsistent with their office, exposing themselves to any situation involving the risk of a conflict between their official responsibilities and their private interests, and using their position or any information entrusted to them to enrich themselves or improperly benefit



any other person.” They are also discouraged from acting in any manner that will compromise the integrity or credibility of their office.

This Act requires the Cabinet members, Deputy Ministers and the MECs to declare their financial interests before they take office and while they are in office. This information must be available to the public. A pertinent part of this Act deals with the reporting of any misconduct committed by this group of politicians. In terms of this Act, the Public Protector must investigate on receipt of the complaint, any breach of the code of ethics. The Public Protector must submit a report on the allegations within 30 days of the receipt of the complaint to the President, if the complaint is against a Cabinet member, Premier or Deputy Minister or to the Premier of the province concerned, if the complaint is against an MEC. The President must not later than 14 days after receiving the report hand a copy of the report with his comments and actions taken, to the National Assembly and the National Council of Provinces. The Premier must also not later than 14 days after receiving the report, submit a copy of the report with his/her comments and actions taken, to the provincial legislature.

#### 4.5.5 Public Finance Management Act, 1999.

This Act is relevant to the ongoing fight against corruption in that it aims to ensure the accountability of financial managers in government departments. The main purpose of this Act is “to regulate financial management in the national government; to ensure that all revenue, expenditure, assets and liabilities of that government are managed efficiently and effectively; to provide for the responsibilities of persons entrusted with financial management in that government; and to provide for matters connected therewith.”

Financial misconduct in departments and constitutional institutions refers to the accounting officer who makes or allows an unauthorised, irregular or fruitless and wasteful expenditure. It also refers to “an official of a department, a trading entity or a constitutional institution to whom a power or duty is assigned in terms of section 44 commits an act of financial misconduct if that official willfully or negligently fails to exercise that power or perform that duty.”

An accounting officer is guilty of a criminal offence if he/she fails to carry out the general responsibilities of an accounting officer, including budgetary control and reporting responsibilities as provided for in sections 38, 39 or 40 of the Act. An accounting officer is also guilty of an offence if he/she willfully fails to comply with section 50, 51 or 55 of the Act which involves the fiduciary duties of the accounting officer, general responsibility of accounting authorities and the submitting of annual reports and financial statements. Finally, any person, except those mentioned in section 66(2) or (3) of the Act "who purports to borrow money or to issue a guarantee, indemnity or security for or on behalf of a department, public entity, or constitutional institution, or who enters into any contract which purports to bind a department, public entity or constitutional institution to any future financial commitment is guilty of an offence."

This is also a clear and decisive Act, but the effectiveness of its implementation has to be queried when media reports appear identifying the appalling state of finances and financial controls in certain government departments. For example, an article appearing in the *Cape Times of November 15 2001* refers to the chief financial officer declaring the Justice department's finances 'a national disaster', when he appeared before Parliament's public accounts committee (SCOPA). Members of parliament were particularly concerned about the lack of control in the administering of the department's deposit account of moneys in trust with an annual turnover of R3.7 billion. This deposit account was being controlled by someone earning only R10 000 per month. Also, money was still being moved from one account to another manually, with hand-written receipts being issued. Generally, it was found that the department had a 'very weak internal control system.'

#### **4.6 ADJUDICATION.**

Corruption is an extremely difficult crime to prosecute successfully. It is made more difficult by the fact that it usually involves two people acting secretly and in collaboration. As a result of this, there is no real complainant. It is also very difficult to prove 'corrupt intent', be it giving or receiving payment in an alleged transaction. Money handed over during these transactions is often paid into companies registered overseas or into banks overseas with strict secrecy policies. Foreign witnesses are extremely loath to come to South Africa to testify, with the result that the prosecution fails (Prinsloo 2000: 69).

Prinsloo (2000: 70) adds that corruption does not occur in a vacuum, it is usually linked to other crimes. Prinsloo emphasises a link between corruption and organised crime, for example, the link between organised crime and corrupt officials like police officers and officials of the Department of Internal Affairs. Racketeers eradicate competition by 'buying' protection from corrupt enforcement officials. Wood (Prinsloo 2000: 70) stresses that the infiltration of law enforcement agencies by organised crime is the reason for the latter's existence, corruption eases the conducting of their crimes.

Van Tonder and Goss ([http://www.transparency.de/iacc/9.../dlws1\\_pricewaterhouse.htm](http://www.transparency.de/iacc/9.../dlws1_pricewaterhouse.htm)) also acknowledge that corruption is a very difficult crime to prove and therefore, to prosecute. They give three examples of successful corruption prosecutions, even if they are relatively minor. Firstly, *State v Mtsi 1995*, a bank teller who was convicted for contravention of section 1 (b)(i) of the *Corruption Act of 1992* after accepting an amount of R3 500 for supplying account numbers of two customers to an outsider. The latter proceeded to withdraw R36 000 from these two accounts. The teller's punishment was four years imprisonment replaced by a suspended sentence after an appeal. Secondly, *State vs Davids 1998*, a prison warder, was convicted of corruption in terms of s 1(1)(b) of the *Corruption Act of 1992* for agreeing to accept a bribe from a prisoner in return for helping him to escape. The warder received punishment of four years imprisonment.

Thirdly, in *State v Mogotsi 1999*, a traffic officer was found guilty of corruption for accepting a bribe of R100 from a motorist for cancelling a traffic summons. The officer's punishment was a four-year prison sentence wholly suspended for five years. More recently, December 2001, a Senior Superintendent in the SAPS, of 17 charges out of 38 charges of fraud against him, R227 000 was proved. This policeman received a five-year suspended sentence and applied for a discharge from the SAPS. At the same time, a court interpreter working in Simonstown who was caught with a docket received a four-year prison term (SAPS Anti-Corruption Unit). It would appear that there are large discrepancies in the sentencing of corruption cases, even though the court argues that it looks at the merits of each case.

#### 4.7 CONCLUSION.

It has been argued that South Africa has too many corruption fighting agencies for any one of them to be completely effective. As Sekhonyane reports in *NEDBANK ISS Crime Index No. 6 2000*, there is a problem with the duplication of functions and the lack of co-operation between agencies with similar mandates. Sekhonyane uses the ICD as an example when it comes to lack of co-operation between agencies. In terms of the legislation governing the ICD (Independent Complaints Directorate), they can ask the police for dockets relevant to their investigations. This has often proved difficult and sometimes impossible because of the obvious animosity between the two agencies, the police and those investigating them. The existing legislation only requests the police to co-operate with an investigation not to forcefully hand over information. This immediately puts the ICD at a disadvantage concerning the investigation.

Another problem highlighted by Sekhonyane is that the budget for fighting corruption has to be spread amongst many agencies, so they each get a smaller allocation than if there were less agencies. This, together with the lack of personnel and a lack of investigation and prosecuting capacity undermines the corruption fighting effort. It is important for government to look at creating new mechanisms to fight corruption. Existing agencies need to be strengthened and better financed. There is also a need to create agencies that will not succumb to political interference when investigating any corruption cases.

This chapter dealt in detail with anti-corruption role players, both national and independent, as well as looking at the effectiveness of government and these agencies' fight against corruption. Relevant legislation used to combat corruption was also analysed. Finally, a few examples of successful corruption convictions were given.

The next chapter is the empirical section of this dissertation and it includes interviews with key individuals, knowledgeable people in the corruption field, specifically public sector corruption. It will also analyse police dockets detailing incidents of corruption and corrupt acts involving members of the South African Police Service.

**CHAPTER FIVE**

**EMPIRICAL STUDY: CASE DOCKETS AND INTERVIEWS**

## 5.1 INTRODUCTION.

As mentioned at the outset of this study, the main aim of this research is to elucidate and explain corruption as a crime. The main objective of the study is to gather and impart with as much information on corruption as possible. In order to gain such relevant information, three data gathering sources have been explored. These sources are the literature study and electronic information on corruption as discussed in chapters two, three, four and six essentially. The literature study alone was not sufficient in answering the research question. Practical information was used to supplement the literature study and this was garnered from the assessment of police dockets and interviews with knowledgeable people on corruption. This chapter will focus on the latter two sources of information on corruption.

The empirical study delivers some pertinent findings and opinions on corruption in the public sector. A number of knowledgeable people were interviewed on corruption. These individuals were drawn from the following sectors: the police, legal profession, media, politics and the non-governmental sector (research). The interviewees were considered knowledgeable because each one has or had extensive dealings with corruption in their specific fields. For this reason the interviews can be described as focus interviews and were conducted with the aid of an interview guide. The interviewees' responses to questions were mainly factual, but opinions and perceptions were also offered.

As mentioned above, the interviews were conducted with the assistance of interview guides. These guides were constructed similarly to guidelines expressed by Berg (1995: 36). These guidelines suggest that the researcher first determine the nature of the specific investigation to be conducted and to identify the objectives of the research. After this has been done, the researcher constructs an outline of all the categories he/she feels is relevant to the study. Researchers should then develop questions pertinent to each of the outlined categories. For the purposes of this particular study, an interview guide was drawn up with general questions for all interviewees and specific questions concerning the field of expertise of each interviewee.

The interviews were of a semi-structured or semi-standardised nature. According to Berg (1995: 33), "this type of interview involves the implementation of a number of predetermined questions and/or

special topics. These questions are typically asked of each interviewee in a systematic and consistent order, but the interviewers are allowed freedom to digress; that is, the interviewers are permitted (in fact expected) to probe far beyond the answers to their prepared and standardised questions.”

Data is analysed after reading the information given by the interviewees and then placing the pertinent information in themes. These themes all contribute towards answering the research question and will be presented under the heading: Interview Findings.

In addition to the interviews, six case studies on serious incidents of police corruption in the Western Cape were recorded. This empirical study highlighted the problem of police corruption in South Africa and more specifically, the Western Cape because all the examples given occurred in the Western Cape. The police dockets are highly effective from the point of view of explaining the *modus operandi* of police corruption, and understanding what police corruption entails. The dockets fall short in that they do not explain why police officials commit corruption and corrupt acts. The interview findings will assist in highlighting this latter phenomenon.

## 5.2 CASE STUDIES.

### 5.2.1 Data Collection and Interpretation.

#### 5.2.1.1 Why Police Dockets?

“Some understanding of the nature and original purpose of any set of records is important not only with reference to the quality, consistency and completeness of the data they provide, but also for the interpretations that can be placed on the results.” (Hakim in Brookman Noaks & Wincup 1999: 53).

The above quote can be suitably applied to the choice of police dockets for this study. The purpose of a police docket will be explained, as will the data collection process. The quality of the data will be discussed, as well as the shortcomings of the data contained in the dockets. Examples of the contents of the dockets will be presented in detail.

Brookman et al (1999: 52) mentions that documents can be used in one of two ways; either as a source *for* social research or as an element *of* social research. For the purpose of this study, police dockets will be used as a source for social research. The research in this instance is the crime of corruption. Police dockets will be assessed to elucidate the seriousness of police corruption by way of examples of corrupt acts committed by police officials in the Western Cape. Because police dockets are used to highlight police corruption it does not insinuate, by any means, that corruption is a pervasive trend in the police service. The reason police dockets featuring police corruption were chosen, was because throughout the study on public sector corruption, the police service is highlighted as the main example.

The purpose of the existence of a police docket is for an investigating officer/s to provide the necessary evidence and information to a public prosecutor in order for the latter to successfully prosecute a corruption suspect.

In order to understand the usefulness of a police docket, it is important to understand the layout of a docket. Dockets used by the South African Police Service consist of three sections. Section A contains all the evidence a prosecutor needs in order to prosecute the case. Section B is where all correspondence and requests relating to the case are filed. All this information has to be on record. Section C consists of a detailed report of all investigations that were done by the investigating officer/s. These investigations include visits to the crime scene, leads followed up, informers used, amongst others.

### 5.2.2 The Data Collection Process.

Once it was decided that police dockets, as part of the empirical study, would be a good source on police corruption, the South African Police Anti-Corruption Unit in the Western Cape was approached for permission to access some of these dockets. The Commander of this Unit obtained the necessary permission for the researcher to fulfil this request. Six dockets were made available for perusal by the researcher. Considering the difficult conditions the SAPS members work under, co-operation from the Commander of this Unit particularly and members of his staff generally, was exemplary. The dockets were studied on the premises with assistance from the Commander and the relevant investigating officers where necessary.



A police docket is usually an extremely weighty and cumbersome item. For the purpose of this study a summary of the contents of each docket was studied. These are summaries that the Anti-Corruption Unit sends to the Attorney-General's office for a decision on whether to prosecute the case or not. It must be mentioned that all the cases studied by the researcher were completed cases or cases that had been before the courts for lengthy periods of time. In other words, all the cases were in the public domain.

### 5.2.3 Data Interpretation.

#### 5.2.3.1 Data Shortcomings.

The main shortcoming of the summaries of police dockets to practically illustrate police corruption was that they focus mainly on the *modus operandi* of corrupt activities, and on the crime itself. The dockets do not highlight why police officers committed corruption and corrupt acts. The only exception is docket one, where the police member's motivation for committing corruption was to procure drugs to satisfy his addiction. There is no indication in the other dockets as to why the police officials committed the corrupt acts. For the dockets to be effective in explaining the crime of corruption in its entirety, the 'whys' also have to be elucidated. The illustrations of police corruption contained in these dockets will now be highlighted.

#### 5.2.3.2 Focus of Dockets.

##### a) State versus Constable Ashley George Adams.

Charge: Corruption.

Constable Adams was a drug addict at the time of his offence. On the 20 July 1999, the accused sold his service firearm and 30 rounds of ammunition to a drug dealer for 7 rocks (crack cocaine) and R100. The day after this incident, Constable Adams tried to recover his firearm but was unsuccessful. The accused underwent inspection on the 10 May 1999 and he had his official weapon on him. On the 11 May 1999 he was declared unfit for service and on the 23 August 1999 reported for service again but without his official firearm. The accused had in the meantime been admitted for treatment at a drug rehabilitation centre.

### Adjudication.

Constable Adams was sentenced on a count of theft to 3 years correctional supervision. On a second count of offences committed under the Firearms Act (Article 38/39 of Act 75/1969), he received the option of a fine of R2000 or 6 months incarceration suspended for 5 years. Adams has been readmitted into the Police Force.

The Investigating Officer commented on the docket that the sale of an official firearm in exchange for drugs was a very serious offence because if the weapon ended up in the wrong hands, innocent people's lives could be in danger.

### b) State versus Captain Burlin Vos and 2 others.

#### Charge: Housebreaking.

This particular case is one of many against the accused, and it consists of the statement to police by a fourth accomplice (witness). The accused, Captain Vos always had three accomplices with him when he went breaking into houses. One of his accomplices was a Sergeant in his Police Unit. This particular docket outlines four cases of housebreaking involving all the accused. The modus operandi for all the housebreakings was the same. The houses were staked out first, to ascertain whether they were occupied or not. Two cars were used to drive to the scene, and to leave the scene. All the accused were armed with weapons supplied by Vos, when they robbed and burgled. All the houses that were broken into were situated in the Northern Suburbs of Cape Town.

During the first burglary, Vos cut the house's alarm wires. Amongst the items stolen during this burglary were a 'bakkie', a gunsafe, a television set and radios. The stolen goods were loaded onto the stolen bakkie and driven to a caravan that was parked in the grounds of an old hospital in Bellville, north of Cape Town. The goods were then sold. In a second and third burglary, similar items were stolen, including a lounge suite, a carpet, liquor, a television set, a video machine and a radio. These goods were stored at Vos's house. In the latter housebreaking, entry was gained when Vos forced the lock on the back door.

During a subsequent burglary, Vos shot a policeman who came to investigate the burglary. During this burglary, in Kuils River, also a suburb north of Cape Town, only the witness and Vos were in the house. They gained entry through a window after Vos had cut the telephone and alarm wires. The other two accomplices were waiting in a separate car a short distance away from the house. Vos's bakkie was parked outside the house. Vos had given his wife instructions to tell anyone who phoned to question the location of the bakkie, that it had broken down. The two burglars put all the stolen goods in suitcases and bags in the passage ready to load onto Vos's bakkie, when they heard loud noises coming from outside. They realised it was the police and they attempted to get away. They opened the garage door and encountered a policeman. Vos shot at the policeman who dived for cover. This gave them the opportunity to run away. They ran through an open piece of land to where their accomplices were waiting. Vos's vehicle was left on the scene and someone did phone his wife to enquire about its position. A few days after this burglary Vos and two of his accomplices were arrested while they were busy selling a stolen bakkie. The third accomplice (the witness giving this statement) ran away, but was later arrested. These housebreakings occurred between 1995 and 1996. Vos was arrested on 6 February 1996, but was later released on bail.

c) State versus Captain Burlin Vos.

Charges: Housebreaking and attempted murder.

This is another police docket on Captain Burlin Vos. It consists of two statements, one made to the police by Vos's intended victim, Louis Coetzee, who was investigating many cases against Vos, which were before the court. The second statement in this docket is made by Vos's wife, Marike Vos. In the first statement, Coetzee explains how on the night of February 22 1998, he was woken up by a noise on the porch. When he looked up he saw a figure in the doorway and immediately identified the figure as that of Burlin Vos. Coetzee indicated out loud that he knew who Vos was and then dived for cover. Coetzee had however been shot in his leg. After notifying the local police of the incident, Coetzee discovered an oil spot on his sheet, which indicated that the attacker had a silencer on his weapon. There was also a .45 calibre shell lying on the floor.

The statement by Marike Vos corroborates much of the information provided in the last two statements. Mrs Vos cooperated fully with the police and she mentioned that she was aware of the fact that her husband and three accomplices committed various housebreaking offences, as many of the stolen goods were stored at their house. She also mentioned that they watched the targeted house during the day and broke in at night. She was also aware of the fact that her husband had shot a policeman during one of these burglaries. Mrs Vos also testified to the fact that her husband used his visits to his lawyer in Cape Town to follow policemen investigating his case. This is how he managed to find out where Coetzee lived. By recording Coetzee's vehicle licence number he identified the street in which Coetzee lived. Vos would make a note of the house where Coetzee's vehicle was parked and he eventually got a telephone number for that particular house. It turned out to be the neighbours' house and the neighbour revealed that Coetzee lived across the road. She also testified that her husband had previously tried to attack Coetzee (the same week-end) but was unsuccessful. After the second attempt he returned home and declared that he had just shot Coetzee.

Mrs Vos stated that her husband had wanted to steal explosives because they would make the termination of witnesses and evidence easier. Vos managed to find explosives at a mine and he and his wife had to make two trips to collect everything. The explosives were hidden in a trunk in their garage. The police eventually found the explosives along with other evidence Vos had asked his wife to bury in the garden, such as gas bottles, firearms and fuses. Vos was arrested.

Adjudication: Case is still before the courts.

d) State versus Inspector Welmar O'Reilly.

Charges: Fraud, theft and defeating the ends of justice.

O'Reilly's fraud charges relate to informers fees claimed for fictitious operations. O'Reilly always kept a significant portion of these fees for himself. The defeating the ends of justice charges, relate to false statements made by O'Reilly concerning these non-existent operations.

An informer alleged that O'Reilly came to his house in August 1995 and gave him one AK47 rifle, eight AK47 magazines, one Makarov pistol and a plastic bag containing a number of bullets. O'Reilly instructed the informer to claim that he had bought the weapons in Namibia during an Intelligence operation to expose a weapon smuggling syndicate. O'Reilly claimed R4 000 for the fictitious operation, which the informer signed for. The latter only received R1 000. Later, an amount of R10 000 was claimed for this 'operation', the informer had to sign a receipt for this money. The informer received R4 000 and O'Reilly stole R2 000. These financial claims were all falsely motivated claims. The informer added that on the 11 September 1995, an amount of R15 000 was paid to him for information he provided in a case of illegal uranium handling. The informant signed the receipt in the presence of O'Reilly's colleagues and his commanding officer. Later the same day, O'Reilly went and claimed R5 000 back from the informant. O'Reilly's passport was scrutinised by the court and showed no evidence of travel to Namibia. During 1995, O'Reilly claimed a total of R44 479 for informer fees, travel and accommodation expenses. During 1996, he claimed a total of R66 768 for the same expenses.

O'Reilly's theft charge stems from the theft of two AK47 rifles, 5 AK47 magazines and 137 x 7.62 rounds stolen in Pretoria instead of being handed in to National Security, Pretoria. O'Reilly took the weapons from confiscated weapons in Pretoria and falsified documents of acceptance of weapons and handed these documents to his commanding officer, who accepted them. When these weapons were found at the informer's house, a docket of 'theft of weapons' was opened.

e) State versus Inspector Welmar O'Reilly.

Charge: Fraud

On the 18 July 1997 an amount of R210 000 was deposited into O'Reilly's Trust Bank cheque account. The amount was paid into the account in Johannesburg with a fabricated cheque. On the 22 July 1997, R180 000 was paid into the same account in Cape Town, with a stolen cheque. On the 21 July 1997, O'Reilly made a withdrawal of R9 000. O'Reilly's balance in his cheque account was R450 before these deposits were made. After the withdrawal was made, the bank queried the large deposits with O'Reilly. The latter explained that unknown individuals approached him and requested to use his

account, to which he agreed. O'Reilly added that he had reported the matter to his commanding officer and to an Inspector from the Syndicate Fraud Unit. The docket was transferred from the Syndicate Fraud Unit to the Anti-Corruption unit.

During August 1997, an informer stated that O'Reilly and her husband (an ex-informer of O'Reilly's) conspired to deposit large amounts of money into the husbands account. The husband issued a statement declaring that O'Reilly visited him at home on the 16 July 1997 and proceeded to explain the money-laundering scheme to him. O'Reilly asked the ex-informer to try and recruit people to partake in this illicit scheme. The ex-informer mentioned his father. O'Reilly went to visit the latter, explained the scheme to him and took down his bank account details. O'Reilly returned to the ex-informers house on the 22 July 1997, and showed him a bank statement reflecting the large sums deposited. O'Reilly initially wanted to deposit the two large cheques into the ex-informer's father and father-in-law's account but they both refused. O'Reilly then deposited the cheques into his own account.

Adjudication: Case is still before the courts.

f) State versus Sergeant Leon Dars.

Charges: Various.

The investigation into Sergeant Dars started when he became a suspect in a case where a stolen Golf GTS motor vehicle was removed illegally from police computers. When cars are cancelled on the computer, it denotes that they have been found after being reported stolen. In the case of the stolen Golf GTS, the car was not returned to the owner and the insurance claim had already been paid out to the owner. It was found that a Citi Golf was also cancelled on the computer. Both cars were cancelled on the 18 October 1997. During 1998, various sources informed the investigating officer that Dars drove around in many different vehicles, including a wine red Toyota Corolla. The investigating officer drove to Dars's house where he saw this particular vehicle. A check was done on the vehicle and it was discovered that it was actually a 1991 white Toyota Corolla belonging to a Johannesburg woman.

A search warrant was produced and the Toyota Corolla was taken to the Vehicle Unit to have the engine number tested. It was found that the existing owner of the car was a Mr Knott from Somerset West. Mr and Mrs Knott were hijacked and murdered in January 1998. Dars was arrested and told the police that he had bought the Toyota from a man next to the R300 (road) for R10 000, he could give no description of this man. Dars also claimed that the Citi Golf was his own vehicle. It turned out that the Citi Golf was reported stolen on 13 June 1996.

In another instance, Dars received an 'order' for a vehicle from a Mr Davids. Dars and an accomplice arrived at Mr David's house with two stolen vehicles, both 'bakkies'. Davids bought a 1.8 Toyota bakkie for R20 000. Dars and his accomplice provided duplicate and false registration plates and engine and chassis numbers to a vehicle registered in the accomplices name even though the vehicle had not existed for years. Dars received many orders for specific vehicles, he would have them stolen and would then do alterations on the computer system. Dars received the 'orders' through connections he had in the motor vehicle trade.

Kolevshon and Mokwena reported in an article in the *Cape Times* of 26 February 1999, that a witness testified in court during the trial of the two men who stole the cars, that the registration and licence papers for the Toyota were organised months before the Knott hijacking and murder. This was done by using the engine and chassis number of a similar, wrecked car bought from a used car dealer. The witness also incriminated corrupt traffic officials at a vehicle testing station who had apparently issued Dars with a roadworthy certificate for the stolen car he was driving.

a) Adjudication: Case is still before the courts.

These dockets highlight the fact that if an officer cannot be charged with corruption *per se*, they are charged with corrupt acts. In the examples given above, corrupt acts consist of: housebreaking, attempted murder, fraud, theft and defeating the ends of justice.

Finally, because police dockets cannot be considered a totally adequate source of information on corruption, because of pertinent components of corruption omitted, interviews with specialists will provide more relevant information on corruption in its entirety.

### **5.3 INTERVIEW PROCESS.**

As mentioned in the introductory remarks to this chapter, the literature study is not adequate enough on its own, in answering the research question. Practical information is required to assist in elucidating the various components of the crime of corruption. This practical information is garnered by means of assessing police dockets and conducting interviews with knowledgeable people in the field of corruption.

For the purpose of interviews, seven respondents were chosen from the following fields:

- South African Police Service: Superintendent J Visagie, Commander of SAPS Western Cape Anti-Corruption Unit.
- Legal field: Advocate Willem Heath
- Politics: Dr Gavin Woods
- Media: Tony Weaver: Cape Times.
- Media: Marianne Merten: Mail & Guardian.
- NGO: Lala Camerer.
- NGO: Hennie Van Vuuren, Institute for Security Studies.

These interviewees were purposely chosen because of their knowledge of and dealings with corruption in the public sector. All the interviewees were selected and approached telephonically or electronically by the researcher. The respondents were interviewed either at their place of work or at a venue near their place of work, in the Cape Town area. These interviews all took place during August and September 2002. The only exception was the SAPS Anti-Corruption Unit, with whom the researcher dealt with periodically throughout the entire study. The interviews varied in length from over three hours to just under one hour, depending on the amount of time the interviewee had at his/her disposal.



## **5.4 INTERVIEW FINDINGS.**

### **5.4.1 Corruption in Africa.**

One interviewee expressed the opinion that corruption in Africa exists at high levels of government. The reason for this is that in most African countries civil society is non-existent and ignorant, and the media is suppressed. Corruption in Africa occurs across the board, on all levels of government. Patronage buys loyalty, leaders steal money from the citizenry to place in overseas bank accounts and officials take bribes for their normal job functions.

The interviewee mentioned that in Kenya, an anti-corruption agency was declared unconstitutional after it was found that two of the three judges that head the agency, were bribed by the government. In Zambia, anti-corruption agencies are not paid by the government. Botswana was held up as a leading light in the fight against corruption. Their anti-corruption agencies are highly effective and supported well financially and every other way. They have the political will to fight corruption. Children are taught about corruption in schools. On arrival in Botswana, a visitor is presented with a map of the country, and on the map is the logo of a big anti-corruption agency.

Another interviewee who has traveled extensively through Africa (by road) shared his experiences. In only one country was he asked for bribes. The offenders were three officials from different low-level government departments in Kenya. More recently he was confronted by a traffic official in Mozambique who tried to solicit a bribe for a traffic offence. When the interviewee requested to be taken to the officials superior, the official disappeared.

### **5.4.2 Corruption and the South African Public Sector.**

#### **5.4.2.1 Attempting to measure the extent.**

Most of the interviewees agreed that corruption was extremely difficult to measure. It is not presented as a separate crime category in crime statistics. When asked to measure corruption on a scale of 1 to 10, numbers such as 4,5 and 7 were given. Other interviewees who did not wish to give a number suggested that the value of corruption was massive and that there was a possibility of the incidence of

corruption being high. It was also agreed largely that perceptions of a high incidence of corruption were probably far greater than the actual occurrence of this phenomenon. Corruption is a quiet offence and as a result, is not readily reported.

One interviewee mentioned that corruption in South Africa today is not as extensive as it was during Apartheid. During the latter there was a small, closed group of people controlling power. Today there is far more media freedom and the *Protection of Information Act* has become the *Access to Information Act*. It was conceded that corruption was widespread but more on a petty scale, for example, 'backhanders'.

Another interviewee suggested that the perception on the extent of corruption depends largely on whose opinion is asked. In other words, which side of the political spectrum they are on. In a survey done by one of the interviewees, citizens were asked to list their concerns in the order of importance to them. The results were as follows: job creation, poverty, crime/security and then corruption. It was also established in this survey that 2 to 10 percent of the population and 5 to 15 percent of business is affected by corruption.

#### 5.4.2.2 Government levels and departments.

It was generally agreed that public sector corruption was more prevalent in the provincial and local level of government. One interviewee expressed the opinion that all levels of government were equally corrupt, national, provincial and local. Most interviewees agreed that local government was probably the most corrupt and definitely had the most scope for corruption. Provincial government is considered to be more corrupt than national government. There was a perception that some provinces are more corrupt than others. Mpumalanga, Eastern Cape and KwaZulu-Natal were mentioned as being the most corrupt provinces.

One interviewee gave an example of a corruption case that occurred recently in the Northern Cape. A small government department ordered 248 photocopiers for its office. A junior official had an arrangement with a private company. If the junior official did not have the authority for deals with this company, he would go to higher officials until he got the necessary authority. All the officials involved

got cuts from the deal. This transaction was investigated by an anti-corruption agency who found the transaction invalid because the tender board was not involved. The supplier had to take back the machines and pay back to the government any monies owed.

It was also agreed that the most corruption occurs during the procurement processes of government, from buying office furniture to multi-billion rand arms deals. Procurement is also used to enrich an officials' family. For example if an official has advance knowledge of a tender because he has access to the relevant documents, and the tender has a value of R250 000, the family member bidding for the tender can come in at R10 000 less because of the advance knowledge passed to him by the official. This practice is common in Mpumalanga and the Eastern Cape. The Western Cape does not suffer to the same extent as it has more sophisticated systems in place.

It was also largely agreed that of all government departments, the police were probably the most corrupt. A separate section later in the findings will deal exclusively with police corruption.

a) Provincial Departments.

Department of Transport.

In this department in the Eastern Cape, there was a scam operating whereby the government was persuaded to pay a vehicle subsidy to the occupants of particular positions in provincial government. The occupants of these positions would go and buy a smaller car, with much less value than their allowance and in collusion with the dealer. The dealer would then send a fictitious invoice for the full value of the car. The employee would keep the difference and give a kick-back to the dealer.

In KwaZulu Natal, government employees sent departmental vehicles to dealers for 'repairs', the dealers sent them fictitious invoices for repairs that were not carried out and the employees received kick-backs from these garages. The anti-corruption agency that investigated this managed to save the government about R15 million per month by putting a stop to this corrupt practice.

### Department of Housing.

A common corrupt practice connected to the provincial and local housing departments is to pay contractors who win tenders to build houses and the contractors do not build any houses. Another practice is to build houses, but of such poor quality that structural damage occurs and often there are health ramifications. A contractor in the Free State received R60 million to build low-cost houses. Instead of building the houses, he used the money as a guarantee for personal overseas loans.

Another example provided by an interviewee concerns attorneys who buy identity documents from people in the streets and use them to prepare deeds of sale and false deeds of transfer. The attorneys then claim R15 000 from the government plus fees. One attorney in KwaZulu-Natal pocketed R5 million this way. He was not charged with any offence.

### Department of Justice.

Fairly recently 49 magistrates all over the country were involved in a scam whereby they entered into an agreement with contractors to do repairs at court buildings, and also at their own homes. There was no budget for the latter. The contractors quoted an amount of between R300 000 and R5 million for the jobs. Magistrates are authorised to write out vouchers to the maximum value of R3 000 only for emergencies. They covered the contractors' costs by paying them with R3 000 vouchers. Again, no action was taken against these officials.

### Department of Social Development.

The most common corrupt acts that occur in this department are theft and fraud. An example given by an interviewee includes incidents that occurred in the Eastern Cape. Many paymasters would pocket cheques and cash earmarked for pensioners. In Mdantsane outside East London, paymasters pocketed R57 million using thumbprints for identification. The anti-corruption agency that investigated this, proved that 3 000 thumbprints came from the same person. Also, once the paymasters had the stolen cheques in their possession they had to find a way of cashing them. They would go to shopkeepers in nearby Kingwilliamstown who would cash the cheque for them and retain part of the money. The

shopkeeper would then deposit the cheque into his bank account. This is also a form of money-laundering.

Other departments also have their share of corrupt activities. A common corrupt practice in the Department of Public Works is for employees to establish companies outside of government, owned by them. These companies then tender for a job, get the job, do not do the job, send in an invoice and get paid by the government. The Department of Health has enormous problems with the sale of medicines from state hospitals. Also common is the sale of uniforms, hospital beds, cabinets, sheets and food, amongst other items, from these institutions. Provincial Departments of Environmental Affairs have also been involved in approving controversial golf estates and housing developments because of handsome kick-backs received from developers. Marine and Coastal management in Cape Town lost most of its inspectors to corruption. The latter were in the habit of turning a blind-eye to obvious over-fishing and the violating of fishing quotas, for a fee. These inspectors are in the process of plea-bargaining.

#### b) Local Government.

Some interviewees mention that petty corruption is the most common on this level. For example, the soliciting of bribes by traffic officials to have fines quashed. Council workers soliciting bribes for doing work that is part of their job function. Many local property deals contain some form of corruption. Privatisation also has scope for corruption, especially concerning the sale of council land.

Other common practices in local government are fraud, corruption and theft. Council members often increase their allowances and claim fringe benefits, even if their municipalities are nearly bankrupt.

#### 5.4.3 The Arms Deal.

Interviewees reaction to the arms deal and the handling of the investigation into possible corrupted processes in South Africa's controversial multi-billion rand arms deal, are varied. One interviewee believes that there was not a cover-up but rather that the investigators had a restricted mandate for investigation. Another interviewee believes that the investigation was handled fairly well with many

questions left unasked as opposed to unanswered. It was also suggested that there was a large amount of naivety on behalf of officials negotiating offsets. Other interviewees believe the investigation into irregularities was handled very badly, and that the investigators had a very broad mandate for investigation but chose what to investigate selectively. They also mentioned that 100 allegations of wrongdoing were handed to the National Prosecuting Authority, with very little or no follow-up, others were declared unsubstantiated.

One interviewee felt that there were some good elements of the report released by the Joint Investigating Team, but questioned the timing of the release of this document. It was released just before the Parliamentary Christmas break. The agencies did themselves and the public a disservice. There were too many questions left open and more should have been done to ensure participation by independent agencies. The interviewee is of the opinion that certain individuals' interests were being protected by the agencies doing the investigation. This does not necessarily mean the interests of senior executives. The very nature of arms deals, internationally are controversial and murky. It has been suggested that 10% of the value of arms deals are paid in transaction fees (bribes). Defence deals amount to about \$40 billion annually, which means bribes related to these deals equal \$4 billion annually. This costs economies heavily.

It was widely agreed that the exclusion of the Special Investigations Unit from the investigation into the arms deal was a bad decision that threatened the validity of the investigation. This was because only the SIU had certain powers that could determine whether a contract could be terminated or not. The crucial issues that could have been investigated by the SIU include the validity of the procurement process, only the SIU could have investigated this. If it was found that the process was irregular, it would have invalidated the procurement process. If the procurement processes were invalid it would have invalidated the contracts. If the process was in order, contracts could have been invalidated because they are not in the public interest. No other agency can investigate these aspects and no one else could invalidate the processes and contracts.

#### 5.4.4 Risk Factors and Practices that Contribute to Corruption.

Most interviewees believe that greed is a major contributor to corrupt behaviour. The pursuit of self-enrichment and wealth is all-consuming. The accumulation of wealth is very much a part of society, for example this is evident in children who insist on possessing branded goods. The market drives greed and greed drives corruption. Lack of control measures have also been blamed for the perpetuation of corrupt activities in the public sector. One interviewee mentions that generally, even if control measures are in place, the relevant people are not interested in implementing them, or they do not know how to implement them. Inexperience is given as a major contributor by a few interviewees. One interviewee expressed the opinion that many public officials are ignorant not incompetent. There was also very little budgetary/output accountability in departments.

Some pertinent contributing factors to corruption mentioned by a few interviewees include:

- lack of training.
- lack of productivity.
- lack of dedication.
- lack of supervision.
- lack of adherence to departmental procedures.
- lack of best practices.
- lack of disciplinary procedure.
- lack of effective criminal prosecution.

The public service was accused of being too unwieldy and bureaucratic. Many interviewees mentioned the distinct lack of ethics amongst public servants. One interviewee explained that this was a common phenomenon in societies in transition. In South Africa there is no commonality. The public service is still trying to bring together various homeland administrations and there are inevitably racial and political issues in the public sector. Another interviewee mentioned that apathy was apparent amongst public servants and that they took from their environment, they copy those around them. It was suggested that if public servants in Cape Town do 2 hours of work in an 8 hour working day, they are doing well.

Only one interviewee suggested that the level of wages were definitely a contributing factor, especially amongst the badly paid lower ranks of the police service. Included amongst these poorly paid officials are teachers and nurses. Another interviewee conceded that nurses, teachers and police officials were poorly paid and that this might lead to corruption. In the case of corrupt police officials, it is very tempting to take money from a criminal in exchange for looking the other way. In the case of corrupt politicians, greed is the most likely motivator.

There does appear to be a lack of public interest in politics in South Africa and this can also contribute to complacency and possible corruption amongst some public servants and politicians. There is also the perception that the government does not take care of the public interest. For example, there is no communication between professionals in government departments and bureaucrats. Often a decision is taken where, for example, people are retrenched and hospitals are closed without consulting the experts, the people affected.

Excessive administrative secrecy has also been mentioned as a contributing factor. One interviewee felt that transparency in the public sector has been disappearing since 1996. Finally, an interviewee suggested that corruption was committed because the perpetrators know there is a very good chance of not getting caught and punished. This is probably a reflection of crime in South African society generally where only about 8 percent of criminals get sanctioned for their activities.

#### 5.4.5 The Impact of Public Sector Corruption.

Corruption in the public sector promotes poverty because the government is unable to deliver and this negatively affects development. Corruption results in waste and inefficiency. Resources are misallocated. One interviewee mentioned that South Africa is a poor country, but it should be a rich country. Money that South Africa loses through corruption is flowing out of the country. It was estimated a few years ago by the Auditor-General after an audit done on the Special Investigations Unit that approximately R7 billion had already been lost to the country through corruption. This Unit was, at the time, investigating 90 000 cases of corruption. The figure is very high but one case could include 60 people. That is already 60 of the 90 000.



In Bisho in the Eastern Cape, the entire provincial Auditor-Generals office promoted themselves, there were no junior staff left. They said they were entitled to do this in terms of the Constitution. After an investigation the entire office was demoted and they all had to pay back the difference in their wages. This is a small example of how something like this can cost the country a lot if they got away with it. Corruption has the ability to stunt economic growth, it has a knock-on effect on the economy because businesses have to rely on paying bribes to officials in order to get anything done. A further consequence of corruption is that the more corruption occurs, the larger the decrease in domestic investor confidence. The public and taxpayers are also victims of corrupt activities, as they are getting nothing for their money and perceive the state to be a 'bottomless pit'.

#### 5.4.6 Reactionary Structures.

##### 5.4.6.1 Agencies.

Most interviewees felt that the anti-corruption agencies have the potential to be effective, that they have people of integrity in them, and that they were trying their best with limited resources. Some interviewees felt that the agencies were ineffective because they did not have enough powers and they are under the control of politicians. The agencies have to do too much political pleasing. The anti-corruption agencies in South Africa have a fair amount of autonomy, but they are not independent. One interviewee disagrees with this and believes they should be independent. The agencies also need more specialisations.

The Auditor-General is largely considered to be on a par with Auditor-Generals around the world. The only complaint was that audits of government departments are not always very thorough. South African agencies are comparable with most countries in the way they are administered. The perception of one interviewee was that some agencies were doing a better job than others. Agencies were starting to recognise areas where they need more resources. There will not be a single anti-corruption agency in the near future so the agencies realise they must be as effective as possible as single entities.

### The Special Investigations Unit.

This unit has powers to investigate matters from a civil law perspective, which is wider than criminal law. It has the power to attach documents and it can give notice to people to appear before it and answer all questions. In a civil case this is admissible evidence.

### Special Committee on Public Accounts (SCOPA).

Scopa was initially reliant on the Auditor-General. The latter would write out questions for government departments, which SCOPA would ask. The Auditor-General started running SCOPA. As the committee started gaining experience, individuals in the committee began asking questions themselves. A decision was made that the committee must become more empowered and less reliant on the Auditor-General. The latter had to start convincing the committee that it had done good audits. It was also decided that SCOPA must do its own investigations. It did the investigation into the corrupt antics of the erstwhile National Commissioner of Correctional Services, Khulekani Sitole. During 1999 and 2000 SCOPA was becoming effective, director-generals of departments respected SCOPA. During 2001/2002 the committee started falling to pieces because of political partisanship over the arms deal investigation. The interviewee believes that SCOPA is back relying on the Auditor-General, but that it still has value.

The interviewee has a theory that if there is a strong public accounts committee, people responsible for spending public money will spend it better. A strong committee will inspire positives such as delivery. A weak committee provides the opportunities in departments for corruption and theft. Good oversight equals good effect. Today, Parliament is weak as an oversight body.

### Civil Society.

There are 90 000 Non-Governmental and Community Based Organisations in South Africa. One interviewee felt that these organisations could be far more effective in the fight against corruption. There are only a few of these organisations involved in some way with corruption. For example, the Institute for Security Studies, which does research on aspects of corruption and anti-corruption

strategies. The Public Service Accountability Monitor (PSAM) is doing a good job of monitoring, reporting and following up on corruption incidents in the Eastern Cape government. The interviewee felt that unions were also not doing enough to try and root out corruption in the civil service.

The question of why there was not more anti-corruption activity by civil society was raised. Answers given to this question include the fact that these organisations do not hear about corruption enough. Everyone thinks it is someone else's problem. Business is not committed enough to fighting the problem and they need to realize that they are part of the solution. During 2001 an Anti-Corruption Forum was established, bringing together all role-players in the fight against corruption from the public sector, civil society and business. The board of this Forum has only met once. Needs greater commitment from everyone involved.

#### 5.4.6.2 Legislation.

The existing *Corruption Act 92/94* is largely considered to be ineffective in prosecuting corruption. Corruption is very difficult to prove in court. It is usually one person's word against the other. Witnesses often divert from their testimony because they are afraid to testify in the first place. The new *Prevention of Corruption Bill* is considered to be a big improvement but one interviewee felt that there were still gaps in the Bill because the drafters of the Bill did not consult many corruption experts. This bill should become an Act of Parliament by the 15 November 2002.

Another interviewee made some suggestions as to how the new anti-corruption legislation can be improved further. Private funding for political parties needs to be regulated. Companies found guilty of corruption in public tender processes should be blacklisted. There should be civil remedies included in the Bill, allowing the state or the public to seek remedy through a civil court and there should be immunity from prosecution for a person implicated in corrupt activities but who made full disclosure before the investigation begins.

### Public Finance Management Act.

This Act is still in the process of being implemented. One interviewee felt that the important aspects of this Act were not being implemented, and that it needed the right people to drive this process. Also, consensus was needed on costing (budgets). Too many departments were spending money without doing the costing first. To exacerbate this problem, officials are often protected by some Director-Generals of departments instead of being reprimanded. When this Act is fully implemented, there will be more effective sanctions against erring officials. The PFMA has gained recognition internationally but has not been particularly well received in South Africa.

### Criminal Justice System.

Many interviewees feel that the criminal justice system is in a poor state and is not serving the country effectively. By not doing the country justice it is promoting a culture of being free to commit crime and corruption. One interviewee explained why the criminal justice system was in a mess. Many police officials are untrained, dishonest and lazy. They do not investigate cases properly. When these cases get to court and are handed to a prosecutor, it is discovered that the case was not properly prepared and usually gets thrown out of court. The victim is denied justice. Often dockets 'go missing'. Also, inexperienced prosecutors have to face slick, experienced lawyers. The former usually get annihilated.

#### 5.4.7 The Media.

When asked by members of the media how instrumental the media was in exposing public sector corruption, there were differing reactions. One interviewee felt that the media was not instrumental enough in exposing corruption because of the deskilling of newspapers and the 'juniorisation' of newsrooms in South Africa. It was stated that the media was seldom the original 'exposer' of corruption. Documents of allegations and other material are handed to the media because the individual does not have the capacity to take the matter up personally. For example, 60 files relating to allegations of an improper financial relationship between the mayor of Cape Town and a German

fugitive were handed to the media. It requires the skills of a forensic expert to sift through all the information.

Another interviewee felt the media was very instrumental in exposing corruption. It was a combination of media investigation and tip-offs from the public. It was generally felt that the media was doing the best it could with limited capacity and resources. The quality of investigative journalism was described as mediocre to bad to terrible. Investigative journalism needs funding and time. The *Sunday Times* and the *Mail & Guardian* are considered to have some good investigative journalists.

The relationship between the media and government was described as being antagonistic and not always forthcoming (government). It was stated though that this is the way it should be. Government officials are much more accessible than they were in the apartheid years. One interviewee said that the relationship between the government and the media depended on which newspapers one was writing for. For example, if any newspapers in the Independent group or the *Sunday Times* broke a big story like the corrupt forestry deal or the starving children in the Eastern Cape, it is okay. If the *Mail & Guardian* break the same story, they are labeled anti-government.

#### 5.4.8 Corruption and the South African Police Service.

##### 5.4.8.1 Examples of police corruption in the Western Cape.

The most common example of police corruption is 'tipping'. This refers to corrupt police officials based at certain police stations who earn extra money by tipping the community off about impending police raids, for a fee. A Captain at the Paarl police station was recently charged with corruption for tipping-off a shebeen owner about an impending raid. The Captain warned the shebeen owner to 'hide his stuff' as the police were going to raid his premises the following day. This police member was caught when another shebeen owner, who was always getting caught in these raids, spilled the beans.

A good example of policemen abusing their power for personal gain occurred very recently when members from the Elsie's River police station obtained fake search warrants and used them to gain entry into houses. Once inside the house they would steal anything of value. Another example of corrupt actions by police officials occurred when members of the Steenberg police station confiscated an illegal

pinball machine from a local shopkeeper, for a fee, in exchange for not reporting the owner. Two years later the same policemen approached the shopkeeper and offered to sell him four pinball machines. The complainant went to the Anti-Corruption Unit and they set up a sting operation. They taped the transaction and filmed the police doing the transaction in police uniform. They were arrested as they were opening the machines.

The interviewee mentioned that the Western Cape SAPS consisted of mostly good policemen and women, only a small percentage in the Western Cape were bad. Corruption occurred across the ranks in the police service, but the most members charged with corruption come from the middle ranks, Inspectors and Captains.

The interviewee also stressed that the theft of dockets was more of a problem amongst court orderlies and court translators than police officials. An example occurred during a hijacking case. A translator was arrested for stealing the docket as well as the recordings of the court proceedings, which were given to an intermediary. The translator split the fee with the intermediary. Both were arrested. It is very difficult to find the culprit behind a stolen docket because of the volume of people who handle dockets. Most arrests are done after a tip-off from the public. The interviewee felt that the disappearance of dockets was not a chronic problem in the Western Cape.

Police members build relationships with informers, they pay them according to the quality of information supplied and for expenses the informant might have incurred. For example, if the informant has made many phone calls or has traveled long distances to collect witnesses, amongst others. Some police members exaggerate expenses or the quality of the information and take a share of the money paid to the informer. This behaviour often continues until the informer realises he could be earning more by not sharing the money and then spills the beans.

Another good example of corrupt acts committed by police officials involved 4 policemen: 3 Sergeants and 1 Inspector in a fingerprint scam. These police officials exceeded their authority by lifting fingerprints from accused individuals and placing them on the scene of crime, in order to secure convictions. When the accused returned to the scene of crime, his fingerprints would be on something at the scene. The four officers were considered 'top cops' and used in the Murder and robbery Unit and

other specialised units, because of their 'successes'. These were obviously irregular policing methods and they tried to justify them by saying they never implicated an innocent person. The Inspector was dissatisfied with his management team and reported the other policemen to the Anti-corruption Unit.

A common 'defeating the ends of justice' example is the disappearance of exhibits, for example, blood samples from a drunken driver. Assault is a common disciplinary offence in the police service. The interviewee says this is common in the line of duty, for example, when arresting a drunk or violent suspect.

#### 5.4.8.2 Why do police officials go bad?

One interviewee suggests that corruption occurs amongst police members because of the lack of supervision by superiors. Untrained management does not know what to look for so they cannot rectify problems. They cannot direct their staff adequately. The interviewee also felt that the current promotion system in the SAPS, together with affirmative action discriminates against Indian, Coloured and White Officers. This, in turn, may affect sentiment and honesty. Illiteracy amongst some police members is often blamed for contributing towards corruption, but it is felt that these police members know exactly what they are doing and that it is wrong. The problem of illiteracy is being addressed through the Service Delivery Improvement Programme. Commanders must assess the needs of their staff, if they cannot read or write, they must be sent to a place that will teach them these skills. If they cannot drive, they must go to a driving school.

An interviewee gave some very poignant reasons of why, in his opinion, some policemen turned bad. In all the examples, the policemen had at some stage experienced some form of trauma in their personal lives. In all the cases, the policemen involved appeared to be loyal, clever and good workers. In one case a good, prominent policeman turned after his father died in his lap. He was very close to his father. In another case a member's marriage was falling apart, he was involved with someone else, spent a fortune on her, the situation became more and more unstable, he saw the corruption gap and took it. In another instance, a policeman shot and killed his own child by accident. The trauma as a result of this incident manifested in the following way: the policeman tipped-off a defence lawyer about a witness who had volunteered to testify against a PAGAD (People Against Gangsterism and

Drugs) accused. In another case, a policeman's wife had died and he was left to bring up a three-year old child. Another policeman arrested recently for corruption has a wife who has cancer, a child with a chronic illness and depleted medical aid cover.

#### 5.4.8.3 Justifications for corrupt behaviour.

Often Station Commanders will defend their staff members arrested for corrupt behaviour. For example, the Commander will see his Captain as a good policeman who made a mistake. The Station Commander is prepared to accept the Captain back anytime, and justifies why he did it, for example, he had monetary problems and needed to get his hands on money urgently. A few other justifications for corrupt behaviour include settling gambling debts and repaying loan sharks.

#### 5.4.8.4 Consequences of police corruption.

A consequence of corruption by a traffic official selling driving licences and public drivers' permits, is the inevitable loss of life if the driver is involved in a major accident, which happens frequently. Another serious consequence of police corruption is the indiscriminate issuing of gun licences, particularly to those members of society who are wholly unfit to possess a weapon. An erstwhile gang-boss on the Cape Flats, Jackie Lontie (who has been assassinated) was, at one stage, in possession of some 42 gun licences. The gangster's family and friends would buy a licence from a particular policeman at the Athlone police station and hand it over to him. Everyone knew this particular police officer and if you wanted a gun licence, he was the one to get it from. The consequences of this type of behaviour can be devastating. The people who 'buy' licences from corrupt policemen will use them in the commission of crimes with often fatal results.

#### 5.4.8.5 The South African Police Service and Gangs.

The Western Cape has an enormous gang problem. It is estimated that up to 70% of violent crime in the province is gang-related. It is difficult to measure gang-related murder because crime intelligence puts these murders together with other murder statistics. So why the perceived inertia by the SAPS concerning gangs and gangsterism? One interviewee believes that gangs are not a priority for the



SAPS. They are not a priority because if they were, the police would have to start taking the people at grassroots seriously and this would mean admitting that the SAPS are inefficient. The SAPS members blame the community for the gang problems because they do not come forward to report the activities of gangsters. If members of the community had to do this, they would be killed. This interviewee also believes that the lack of action by the SAPS is a direct result of the incompetence of the Western Cape Police Commissioner.

One interviewee explains that communities and individuals often turn to gangsters for financial support because the council and civil servants are not interested in helping the public, for example, to give them houses to live in, food to eat, basic services and clothes and fees for their children's schooling. Corruption in the allocation of council housing is prevalent. In return for this help, the gangsters would expect some measure of loyalty from those they help. The interviewee also mentions that it is common knowledge that one particular policeman in the Mitchells Plain police station is on the gangs payroll. This same policeman has recently been promoted. The police are never visible on the Cape Flats, when they are, it is usually for a raid and this provides more than enough time to warn the 'guilty'. It is not difficult in these areas to spot a police 'ratel' from a distance. The police cannot compete because information networks in these areas are very tight.

#### 5.4.8.6 Some general facts.

An interviewee mentioned that the police to resident ratio varied widely from area to area. In Kirstenhof, which is a low-crime, fairly affluent area, there is one police officer for every 560 residents, and they deal mainly with property crimes. In Mitchells Plain, which is a high crime area, there is one police officer for every 1 000 residents. In Mannenberg, an area notorious for crime and gangs, there are 80 police members, from the Commander to the cleaner, who cover an area of 3 square kilometres housing 350 000 people. The Claremont police station has over 100 members for about 280 000 people, and it is a relatively low crime area. In Athlone 12 detectives carry a caseload of between 80 to 90 serious crimes' dockets between them. Since 1995 training initiatives have gone to management, not people in the field who need them, such as Captains, Superintendents and Senior Superintendents.

There also appear to be problems in the Western Cape Police Service between 'old guard' police members, those who served in the Apartheid police force, and 'new guard' police members who were integrated into the SAPS from ANC intelligence structures. There are racial dynamics because the 'old guard' does not want to do things ANC-style and vice-versa.

#### 5.4.8.7 Adjudication.

One interviewee believes that the criminal justice system is not effective in punishing corruption. There are also disparities in the sentencing of corruption accused. For example, in one case, a first offender received 2 years in jail for receiving R30 from a drunken driver to let him go. In another case, a Senior Superintendent faced 33 charges of fraud, was convicted on 19 counts and received a suspended sentence. A Khayalitsha woman was convicted on 50 counts of corruption concerning firearm licences and received a suspended sentence. An Anti-Corruption Unit Agent 'bought' a docket from a Simonstown Clerk of the Court. The latter was a first offender and received 4 years in jail. There does not appear to be enough experience in the justice ranks to prosecute corruption.

#### 5.4.8.8 Recommendations on reducing police corruption.

It was stressed by one interviewee that the current interim promotions policy and senior appointments policy must be urgently reviewed. The salary package of the lower ranks must also be reviewed. Inspectors, Captains and Superintendents who are affected by the promotions policy, just want to get on with their jobs. They should be promoted monetarily. This way they will feel more developed and appreciated. Because there are limited ranks these officers can go to, they must be developed in their existing ranks.

Training needs to be stepped up. Inexperienced superiors cannot identify problems and therefore, cannot deal with them.

## 5.5 CONCLUSION.

This chapter highlighted the seriousness of corruption in the South African public sector. The most important findings resulting from the empirical study will be discussed below.

An interesting comment made by one of the interviewees was that perceptions of the extent and seriousness of corruption in the South African public service depended largely on who one was speaking to. In other words, the political leanings of the respondent. Race was not an issue in these interviews, as white interviewees had amongst themselves, differing perceptions and opinions of aspects of corruption in the public sector, government's response to corruption and other issues.

It is clear that corruption is extremely difficult to measure, by the very nature of the crime. It can be deduced however, that corruption is widespread in South Africa. The perception that corruption is a big problem appears to be stronger than the reality. This is significant because of the lack of corruption statistics that could shed light on the reality of this phenomenon. Provincial and Local government appear to be the most corrupt levels of government, with Local Government perceived to be the most corrupt of the two. Many examples of corruption in the public sector involve entire offices, not just corrupt individuals.

It also appears as though corrupt individuals are oblivious to the suffering of their victims and do not experience guilt as a result of their actions. For example, contractors that have been paid to build houses and abscond with the money, leaving many people homeless, and thieving paymasters who deprive the poor and elderly of their meagre state pensions.

Greed and self-enrichment are basic motivators for the committing of corrupt acts. There appears to be a distinction between money for need, and money for greed. Money for need is usually accumulated by low wage-earners to supplement their official incomes. Money for greed is usually accumulated by higher wage-earners driven by avarice. Corruption is a rational act, committed by adults fully aware of what they are doing. As corrupt acts are usually a process, unlike opportunistic theft, the individual has plenty of time to think about what they are about to do. The lack of self-control would also be a contributing factor. The individual is therefore making a conscious choice. It appears that in South

Africa, the consequences of these corrupt acts do not seem to be a deterrent because the chances of receiving any sanction for them are remote.

Other factors that come out strongly as contributors to corruption in the public sector include the lack of supervision, the lack of productivity, the lack of control measures, the inability or unwillingness to follow procedures, the lack of training, the lack of ethics and the lack of appropriate sanction. A good example of the latter would be the reaction of the Minister of Justice to the scandal involving the 49 magistrates. It was suggested to him by the anti-corruption agency that investigated the incident that he follows disciplinary procedures against the culprits. The minister's response was that he could not do that because the courts would suffer.

Corruption promotes poverty because of resources being diverted from the poor. Also, development is stunted. There appears to be an element of entitlement in many of these corruption cases. Many civil servants feel they were deprived of much during the Apartheid days and are now entitled to benefits *ultra vires*. An example of this is the entire staff of the Office of the Auditor-General in Bisho that gave themselves a promotion and a hike in salary. When asked why they did this, they replied that they were entitled to do it.

Some interviewees felt there was no political will to fight corruption and what the government was doing was purely window-dressing. They also felt the government was arrogant and refused to accept the extent of corruption in the public sector. Another interviewee felt that there was a lack of understanding of the situation by government, and the political will to fight corruption needs to come from the same family of officials who are in a position to be corrupt. One interviewee felt that there definitely was political will, that the government was recognizing the problems and responding to them. Another response was that political will crumbles when the political ramifications of this cut too close to the bone. Still another interviewee felt that there was political will to deal with the problem, but there is very little evidence of this. The co-ordination of the fight against corruption needs to be improved and there needs to be more high profile cases prosecuted.

## Police corruption.

Police corruption is largely perceived to be an extensive and pervasive problem in South Africa. Corrupt acts committed by police officials range from petty acts such as taking small bribes to ignore a traffic offence, to serious corrupt acts that often include murder. There appear to be pertinent psychological factors that contribute to police members crossing the line between 'good cop' and 'bad cop'. It is of serious concern that in the Western Cape the South African Police Service appears to be soft on the gang problem. Even more of a concern is the suggestion of police complicity in gangsterism. There is something inherently abhorrent about a crooked policeman or policewoman. This career is supposedly chosen because the individual wishes to uphold the law and be instrumental in punishing those who do not. With corrupt police members, who is guarding the guardians?

## Recommendations.

Recommendations were made by the interviewees as to how the corruption situation in South Africa could be improved. It is essential that the government establishes and promotes independent investigations into corruption incidents. Civil society and the media have been accused of being 'gutless' and not being involved enough in the fight against corruption. The public needs to get involved by staging more protests against public scourges like this. Elected officials do not have enough experience to understand the nature of big deals, such as the arms deal. Members of Parliament are elected because of their 'struggle credentials', not because of political experience. There is therefore, a big skills gap and a need for ongoing skills training.

Other suggestions were that Anti-Corruption Agencies needed more powers and resources to function as effectively as possible. They also needed to be independent and free of political interference. Parliaments oversight function needs to be reinstated as a matter of urgency after the devastating blow to oversight it received after the arms deal debacle, and obvious partisanship.

Pending anti-corruption legislation must be passed by Parliament as a matter of urgency. The *Public Finance Management Act* must be fully implemented so that there can be more financial accountability in government departments. The media needs more funding and more experienced journalists to

improve the quality of investigative journalism in South Africa. This would assist in the exposure of corruption to the public.

The entire Criminal Justice System needs to be overhauled and turned into an effective crime-fighting unit. The disparities in the sentencing of corruption cases are also a cause for concern. This is a matter that needs further scrutiny. Another very disconcerting matter that came out of the study and needs further scrutiny is the fact that a very reputable anti-corruption agency handed numerous corruption cases to the National Prosecuting Authority for prosecution and many of these cases were never acted on.

The following chapter deals in depth with the theoretical explanation of corruption. Theories from the two most influential schools of thought in Criminology: the Classical School (including neo-classicism) and the Positive (positivist) School will be analysed and their assumptions will be highlighted and used to explain the findings on corruption from this study.

**CHAPTER SIX**

**THEORETICAL EXPLANATIONS OF CORRUPTION**

## 6.1 INTRODUCTION.

It is important to stress once again that the focus of this study is on the crime component of corruption. For this purpose, theories that explain the crime per se will be emphasised and not necessarily theories that explain the offender's behaviour.

Most theoretical explanations for criminal behaviour have their foundations in two criminological schools of thought, namely, the Classical and the Positive (Positivist) Schools. The classical and neo-classical school focus particularly on the crime act (corruption) and less on the actor (offender). The positivist school, however, places greater emphasis on the offender, in particular individual positivism, which focuses on biological and psychological factors. Within the positivist framework, however, social positivism emphasises the influence of the environment on crime. For this reason social or sociological positivism and particularly one of its main branches, structural theories will be scrutinised.

The actual theories to be used to explain corruption in the South African Public Sector include: Cornish and Clarke's *Rational Choice Theory*, Becker's *Economic Model of Crime*, Gottfredson and Hirschi's *General Theory of Crime*, Messner and Rosenfeld's *Institutional Anomie Theory* and Sykes and Matza's *Neutralisation Theory*.

## 6.2 EXPLAINING CORRUPTION.

### 6.2.1 Classical School.

The majority of theoretical explanations for criminal behaviour are rooted in two main theoretical schools of thought: the Classical and the Positive (Positivist) School. The theoretical arguments of both schools, including their contemporary developments, are taken into account to provide a suitable explanation for corruption.



### 6.2.1.1 Classical assumptions.

#### Historical Overview.

The two main contributors to the classical school of thought were Cesare Beccaria (1738-1794) and Jeremy Bentham (1748-1832). Reid (1994: 91) explains that classicism arose at a time when theorists were rebelling against some of the unacceptable social and legal trends of the time. Judges had absolute power and applied punishment arbitrarily, torture was rife and the death penalty was used for an array of offences. Corruption was also widespread at this time. As a result, classical theories were developed with a strong emphasis on the legal aspects of crime, and that the punishment should fit the crime.

#### Assumptions.

Schmallegger (1996: 129) succinctly identifies the basic assumptions of classical theories. They are as follows:

- Human beings are basically **rational**, most human behaviour is the result of **free will** coupled with **rational choice**.
- **Pain and pleasure** are the two main determinants of human behaviour.
- **Punishment** is necessary to sanction offenders and to **deter** potential offenders.
- The principles of **right and wrong** cannot be denied.
- Individuals receive **benefits** from society, not in isolation.
- When individuals choose to accept protection from society, they relinquish benefits received from living in isolation.
- Individuals have certain **rights**, and governments that ignore those rights should be disbanded.
- Crime is an immoral form of behaviour because it demeans the bond that exists between individuals and society.

Shoemaker (2000: 13) broadens on the classical theory's concept of free will. The author suggests that: "free will represents individual responsibility for behaviour." This statement refers to society holding an individual accountable for his/her behaviour because the behaviour is the result of a conscious decision, as opposed to the individual taking responsibility for his/her actions. An individual will choose a certain course of action in order to achieve gratification. The author also broadens on the concept of rational choice. Rational choice refers to: "the method of reaching a decision to commit specific behaviour. It refers to the idea that people act according to a reasoned, logical set of planned calculations." The choice of behaviour made by the individual will include the awareness of the consequences of this behaviour, positive or negative.

Moyer (2001: 14) adds that because individuals are considered to be rational beings, they make certain choices in their lives and they create **opportunities** to realise these choices. The author adds that many classical theorists made use of micro and macro units of analysis. On a micro level, Beccaria concentrated on an individuals' ability to control their own destiny. On a macro level, Beccaria was determined to see changes in the unfair and arbitrary system of justice and in society at the time. Classical theories include both objective overt phenomena, such as criminal codes, punishments and judicial decisions, and subjective covert phenomena. The latter refers to the classicists' view of individuals having free will, being rational and seeking pleasure while trying to avoid the pain of punishment.

According to classical theory, the individual is **self-interested**, the individual is **rational**, **behaviour is freely chosen** and **seeking pleasure often results in crime** (Maguire & Radosh 1999: 68).

In terms of self-interest, society is perceived to have evolved through the pursuit of pleasure and the avoidance of pain. Pleasure and pain are abstract concepts', every individual defines their own meaning for these concepts. Individuals will always strive for maximum pleasure and minimum pain.

The individual is rational because he/she is able to understand the negative consequences of crime. An individual is seen as rationally determining what is in his/her best interest and then acting accordingly. Beccaria agreed with the tenets of the **social contract theory**, which maintains that humans originally organized themselves into a collective (society) in order to escape the danger and unpredictability of

living in the wild. "Just as ancient individuals were rational enough to see that forming a central government was to their benefit, contemporary humans are able to calculate the negative consequences of crime." To Bentham, behaviour was the result of rational thought.

Behaviour is freely chosen because individuals have the ability to direct their own behaviour. People choose how to behave. Classicists did concede that almost anything in an individual's physical or social environment has the potential to influence behaviour, because individuals do react to environmental stimuli. Although behaviour is freely chosen, choices are not made in a vacuum.

Finally, seeking pleasure often results in crime because as people pursue gratification, other people can be harmed in the process. Bentham elaborates: individuals aspire to achieve *instrumental* goals, such as a loaf of bread or a luxury vehicle. Individuals also aspire to achieve *expressive* goals, such as status or romance. In the process of achieving these goals, other people may get hurt.

The classicists' version of **criminal justice** emphasises two main aspects: firstly: laws shape behaviour, and secondly, punishment should be a deterrent. Maguire and Radosh (1999: 170) mention that classicists believe laws too are there to encourage good behaviour and to hold society together. Lawmakers must be guided by the **greatest happiness principle**. Bentham explains that the duty of any government is to ensure the happiness of society. This is achieved through lawmaking. Laws should never be made on a whim. Legislators must identify which social relations would instill the most happiness in society and create laws around this. Beccaria believed that laws would only be effective in determining behaviour if they were understood by and accessible to the public.

Punishment is only justified if it acts as a deterrent. Punishment should only be inflicted if it is to exclude a greater evil. Classicists add that if sanction is to be an effective deterrent, it must be fair and certain. The principle of **proportionate punishment** must be applied. The latter refers to the punishment fitting the crime, for example, not applying extended incarceration to an offender guilty of a minor offence (Maguire & Radosh 1999: 171).

Vold, Bernard and Snipes (1998: 7) explain that the classical school is of the opinion that intelligence and rationality are basic human characteristics and that these characteristics can explain human

behaviour. Every individual is the master of his/her own destiny and they have a free will to make the decisions they make along the way. Classicism defines crime from a **legal point of view**, for example, "crime may be defined as the commission of any act prohibited by criminal law, or the omission of any act required by it, and a criminal is defined as any person who commits a crime. Crime is seen as a product of the free choice of the individual, who first assesses the potential benefits of committing the crime against its potential costs."

#### 6.2.1.2 Neo-classicism.

The neo-classical school emerged during the nineteenth century and had the same basic premises as the classical school, especially the belief in free will. The neo-classical theorists considered the classical approach to offenders to be too harsh and unjust and stressed the need for individualised reactions to offenders (Reid 1994: 94). Jeremy Bentham, known as a classicist because of his belief that individuals freely choose their course of action, and his philosophy that human behaviour is determined by the pleasure/pain principle, is also considered to be an instrumental contributor to neo-classical thinking. Bentham was a proponent of **utilitarianism**. The latter refers to the premise that the purpose of legislation was to achieve the greatest degree of happiness for a community and society generally (Shoemaker 2000: 15). Maguire and Radosh (1999: 68) define the utilitarianism principle as follows: "individuals are always and everywhere motivated to seek pleasure and avoid pain. For Bentham this was the most fundamental tendency of human behaviour."

According to Empey, Stafford and Hay (1999: 234) utilitarians assume that it is individuals who are corrupt, not society's institutions. Utilitarians stress that if people were naturally moralistic and did not commit crimes, legislation would not be necessary. Just deserts theorists question the utilitarian view of punishment as an effective deterrent and suggest that punishment is only good because offenders get what they deserve.

#### Assumptions.

The neo-classical school, according to Moyer (2001: 27) modified the original classicists' doctrine of free will by adding that the concept of an individual's free will to choose his/her behaviour could be

negatively affected by age or insanity. Neo-classicists also introduced the concepts of premeditation and mitigating circumstances, which are evident in many judicial systems today.

Schmallegger (1996: 143) mentions that two neo-classical schools of thought are still in existence today. The first neoclassical school emphasises the importance of a **social contract**. The latter is based on the premise that most individuals will commit a crime if the opportunity presents itself, and as a result, society is held together by a social contract based on the threat of punishment for offences committed. The second school is based on three ideas, namely:

- a) Criminal behaviour occurs as a result of an individual's free choice.
- b) Crime is attractive and holds many rewards, from sensuality, to monetary gain to fame (notoriety?).
- c) Punishment for crime is an essential mechanism for deterrence.

The second school of thought is closely related to the **just deserts model** of sentencing, with the focus on both deterrence and retribution. Neo-classicists argue that if an individual consciously chooses to commit a crime, then he/she **deserves** to be punished for that crime, as they were aware of the consequences before they committed the offence. These theorists also stress that it is imperative for the offender to be punished, so that the punishment handed down serves as a deterrent for future crimes and criminals.

#### 6.2.1.3 Rational choice theory.

Rational choice theory is considered to be an integrated classical theory that concentrates mainly on situational aspects. Some criminologists have placed this theory solely in a neo-classical context because of its emphasis on **rationality and choice**. Hunter and Dantzker (2002: 136) mention that because rational choice theory also has elements of positive theory in it, such as the focus on empirical techniques to reduce the vulnerability to crime as opposed to concentrating mainly on punishment, it can be classified as an integrated theory. The two main proponents of this theory are Derek Cornish and Ronald Clarke (1986).

### Assumptions.

The situational factors mentioned above refer to various aspects that influence the committing of certain crimes. Rational choice theory argues that criminals do not choose their victims randomly. They rationally choose both the crime and the victim. This theory also focuses more on **opportunity** than on social control (Hunter & Dantzker 2002: 136).

Maguire and Radosh (1999: 176) explain that rational choice theory identifies a choice structuring process involving both the criminal and his crimes. This concept refers to: **risks, rewards and requisites**. "What are the perceived risks involved in committing a particular offence? What are the rewards likely to be realized? And, what skills or resources are required to perform the criminal act successfully?" Risks and rewards will differ and vary between offenders and between offences. This theory emphasises both risks (chance of being caught and punished), and rewards (financial gain, status and pleasure). Rational choice theory acknowledges the expected returns from criminal behaviour as well as the potential risks and costs of this behaviour.

Unlike the views of early classicists, the more contemporary rational choice theorists emphasised the importance of empirical studies done on the **motives** for types of behaviour and the influence of rationality on individual's actions. Shoemaker (2000: 17) reports on the findings done on a sample of adult offenders. It was found that the offenders were more affected by perceptions of opportunities for committing offences than by the possibility of being caught and sanctioned for their offence.

Conklin (2001: 289) adds that the rational choice perspective "emphasises offenders' **strategic thinking**, or the way they process information and **evaluate opportunities and alternatives**. It stresses **calculated decision making**, arguing that offenders choose how to act after **determining the likely pay-off from a particular kind of behaviour**." Rational choice theory looks at specific crimes because, as mentioned earlier, different crimes have differing risks, rewards and needs. Shover (Conklin 2001: 289) mentions that this theory emphasises the processes individuals' follow when they decide to commit an offence or when they decide to lead a life of crime. Offenders calculate their risks and rewards in different ways. Some of the factors that influence the choices people make include:

age, marital status, group ties, social class background, opportunities for mainstream careers, attitude towards work, willingness to use violence, preferred lifestyle, identity and values.

*Tenets of Rational Choice Theory applied to Corruption Findings.*

**Rational Act.**

The study of corruption in the previous chapters highlighted important findings. Amongst them is the fact that corruption is a rational act. It is rational because it is a planned act and a conscious choice of behaviour. Corruption is a process, with some thought put into the deed. For example, if a senior government official decided to solicit a bribe from an arms company in exchange for the company receiving a large order, the official has to decide on a bribe amount. The official and the businessman have to come to an agreement on this amount. This is a process, not an impulsive act. Even a policeman who solicits a small 'fee' for overlooking a minor misdemeanour does so consciously, with enough time to think about it before he verbalises his demand. The individual's choice to indulge in corrupt activities is usually motivated by self-interest, self-enrichment and benefit (reward).

**Opportunity.**

Opportunity abounds for the committing of corrupt acts in the South African Public Sector. Corrupt public servants and officials have the opportunity to commit corrupt acts because of the fairly widespread problem of inexperience on the management level of the public service. Many senior management positions have been filled with candidates rewarded for their loyalty to the ruling party and good 'struggle credentials'. This does not mean they are bad administrators, but inexperienced ones. These inexperienced managers do not know how to identify problem areas and can, therefore, overlook possible corrupt acts that have been committed by their staff.

Other problem areas that provide opportunities for corruption include the lack of supervision by managers and in police ranks. The lack of controls, especially financial controls in some government departments, encourages corruption. The reluctance and inability of some managers to implement these controls exacerbates the corruption problem. In one instance, an entire traffic department was

guilty of corrupt practices, this meant that even the management of that department was committing corruption and this makes it extremely difficult to uncover, unless someone spills the beans. This is a good example of the lack of ethics that appears to be pervasive throughout the public sector.

Excessive administrative secrecy can also encourage corruption. If transparency in government is weak, officials can get away with corrupt activities because of the prohibitive lack of scrutiny into their activities. This can be applied to South Africa's controversial arms deal where, because of the secretive nature of the arms industry, and the restricted mandate given to the investigation, many corrupt processes will not come to light.

#### Risk, Reward and Requisites.

The only skill needed by a potentially corrupt government official is to acquire a job in the civil service or politics. The risk of being caught committing a corrupt act in the civil service is not big, due largely to the factors mentioned in the previous section. Even if perpetrators do get caught, they are very seldom disciplined by their superiors, and even more disconcerting, the chances of them facing prosecution is practically non-existent. Overall, the adjudication for corruption has been abysmally inadequate. This makes the rewards gained from corrupt activities worthwhile. If there are no deterrents, why not take the risk? The rewards gained for individuals include monetary rewards that can buy status and status symbols. For poorly paid officials, such as lower rank police officers, the extra money can buy a few household items that would otherwise be unaffordable. This highlights the money-for-greed versus the money-for-need phenomenon again.

#### Cost.

The rational choice model also takes into consideration the cost of crime. In this instance, the cost of corruption is evident in the dire consequences it has on the country. For example, corrupt activities arrest development through the misallocation of resources. These resources are diverted from the poor to corrupt officials. Also, monetarily, corruption costs South Africa billions of rands that should go to social upliftment and development projects, but go to corrupt public entities instead. Much of this 'lost' money finds its way to the overseas bank accounts of corrupt officials and corrupt contractors.



#### 6.2.1.4 Becker's economic model of crime.

Becker's economic model of crime is a good example of rationality. Gary Becker is the main proponent of this theory (1974). This economic model of crime has similarities with rational choice theory, in that one of its main arguments is that an offender is a rational being, capable of making rational choices and decisions. In this model, criminal behaviour is analysed from an economic perspective. Crime is studied in an economic framework. Another similar tenet of this model is that human beings will always weigh up the cost and the benefit of any actions performed by them, including criminal behaviour. They will not let social factors around them influence their decision. Individuals will pursue those activities that result in the greatest satisfaction with the least penalty (Maguire & Radosh 1999: 174).

#### *Tenets of Becker's Economic Model of Crime applied to Corruption Findings.*

Government officials and civil servants who indulge in corrupt behaviour, as mentioned earlier, take conscious, well thought-out decisions to commit corrupt acts, such as fraud, theft or bribery. They all have time to think about the possible consequences and costs of their actions before doing the deed. Guilt about the possible consequences of their actions is justified by the absence of a tangible victim. For example, how can the state be a victim? How can the tax-paying public be a victim? These are intangible entities, ignored by the offender. This, coupled with the unlikely advent of sanction for their actions, greatly encourages corruption. Corrupt acts are usually committed because of a combination of greed and economics. A bribe would not be solicited if it did not benefit the taker financially, regardless of the amount involved.

#### 6.2.1.5 A general theory of crime.

The two main proponents of this theory are Michael Gottfredson and Travis Hirschi (1990). A general theory of crime is an integrated theory with many of its assumptions similar to those evident in classical theory. This theory also takes positivist assumptions into consideration. It has also been labeled a control theory. Brown, Esbensen and Geis (2001: 355) mention that the proponents attempted to develop a theory that closes the gap between classical or deterrence ideas and positivism.

It includes the classical hedonistic view of human nature and the positivist view that the motivation for crime varies and the only motivation needed to commit a crime is **low self-control** together with **opportunity**.

Assumptions.

A general theory of crime is an extension of Hirschi's original concept of **social control and social bonds**. This theory suggests that an important aspect of control is the **self-discipline** individuals develop early in their lives. The quality of this self-discipline will determine an individual's behaviour throughout their life. In order to understand the nature of criminal behaviour, a **distinction must be drawn between the crime and the criminal**. The crime is an illegal deed committed by individuals for their own advantage or benefit and for **short-term gratification**. Criminals, on the other hand, "maintain a status that maximises the possibility that they will engage in crimes." (Siegel & Senna 2000: 182).

The theorists explain that individuals with a propensity to commit crime are more likely to have limited **self-control**. These individuals also have **impulsive personalities**. They are described as being insensitive, physical (rather than intellectual), risk-takers, short-sighted and nonverbal. They refuse to work for distant goals, **lack diligence**, tenacity and persistence in any course of action undertaken by them. Criminal behaviour appeals to these individuals because this provides easy and immediate gratification. Crime is exciting to them, with little skill or planning required, and with minimal long-term gain (Siegel & Senna 2000: 182).

Siegel and Senna (2000: 184) add that if the **opportunity** to commit a crime is overwhelming, individuals with strong bonds to social institutions and people with good self-control may indulge in criminal behaviour. The **rewards may neutralize self-control**. According to this theory, life experiences do not influence the committing of crime by an individual. The tendency to commit crimes will always be present within an individual. Opportunities to commit crimes will, however, vary significantly throughout an individual's life. Individual crime rates are determined by criminal opportunities.

Brown et al (2001: 355) mention that self-control is taught in early childhood. Parents who fail to recognize and punish misbehaviour will be unable to entrench self-control in their children. General theorists believe that the **cause of all crime is low self-control**. The authors add that not all individuals who have low self-control will commit crimes, even if they do have a tendency to pursue instant gratification. It is only when the opportunity arises for the achievement of a self-gratifying goal, that individuals will commit a crime. The proponents of this theory add that: "individual differences in self-control cause people to differ in the extent to which they are vulnerable to the temptations of the moment."

Gottfredson and Hirschi (Moyer 2001: 151) include classical principles in their theory, such as rationality. Criminal behaviour is the result of choice. Crime and other behaviour is a result of the human desire to maximise pleasure and avoid pain. Crimes have been defined by the proponents of general theory as "acts of force or fraud undertaken in pursuit of self-interest." General theory also views the majority of **crimes as being poorly planned and mundane, with little pecuniary advantage** for the offender and a small loss for the victim. Most crimes are committed on the **spur of the moment**, with few long-term benefits. The planning of crimes usually requires little skill. **Career criminals are rare.**

#### *Tenets of A General Theory of Crime applied to Corruption Findings.*

##### **Low Self-Control and Opportunity.**

General theorists suggest that low self-control together with opportunity will result in the committing of a crime. This is very relevant to the crime of corruption. Many public servants and politicians have strong bonds with society but may succumb to temptation if it is overwhelming and the opportunity exists to commit the deed. The lack of sanction prevalent in the public sector for corruption, makes the giving-in to temptation that much easier. The rewards for this behaviour will outweigh the risk of being caught or punished. The personal value of self-control will be sacrificed for short-term gain.

An example of low self-control and opportunity in the public sector would be administrative control: in a situation where one official or one department has all the power over an administrative function,

such as issuing licences or permits, they may be tempted to solicit bribes from applicants. This practice is made easier by the lack of transparency, particularly concerning finances, in many government departments. Another example would be the control of a department's cheque book by one or two officials only. Millions of rand goes missing through fraud in this way.

#### Distinguishing between the Crime and the Criminal.

Making a distinction between the crime and the criminal is also relevant to corruption cases in the public sector. As this theory states, there are no career criminals. A corrupt official may make committing corruption a part of his/her career due to the lack of detection and sanction, but generally it is an occasional occurrence by a corrupt official for whatever justification, or until he/she is caught. Petty corruption tends to be more frequently committed, for example, traffic officials or police members who take bribes from individuals 'on the spot'. These bribes usually involve small amounts of money. Petty corruption is also a good example of instant gratification, in this case pecuniary gratification for corrupt officials.

Public servants and officials who commit corruption are not habitual criminals with a propensity towards criminal behaviour. A corrupt official may decide to commit a corrupt act purely for self-interest and short-term gain. A good example of this is the corruption that occurred in a R335 million state forestry deal. Wa Afrika and Bezuidenhout reported in the *Sunday Times of July 28 2002*, that the chief state negotiator in this deal accepted a R55 000 'donation' from the successful bidder to finance his wedding.

#### Other Characteristics.

The theory mentions that individuals who have a lack of self-discipline, who refuse to work for long-term goals, and who lack diligence are more likely to commit criminal acts. These characteristics are relevant to the committing of corruption as well. These characteristics can be considered to be risk factors that may lead to corruption by public servants and officials. There is a general feeling amongst the South African public, and amongst some knowledgeable people interviewed, that many civil servants lack discipline and diligence and are generally apathetic. The result of this is that the goal of

serving the public effectively and efficiently will never be realized by these individuals, and the committing of corrupt acts will be a strong possibility.

#### Shortcomings of A General Theory of Crime.

A few tenets of a general theory of crime fall short of an adequate explanation for corruption. The theory mentions that people who commit crime usually have impulsive personalities, or that crime is an impulsive act. This study has shown that corruption is not an impulsive act. The decision to commit a corrupt act is rationally thought out by the offender and the individual makes a conscious choice to indulge in this behaviour.

The precept that crime is committed for short-term satisfaction, not long-term gain, is also debatable when referring to corruption. Petty corruption results in short-term gain but grand corruption where public officials receive very large sums of money or other expensive gratuities in return for favours, can significantly contribute to their long-term plans. The latter may include investing the money overseas, or using the money for numerous long-term projects and not just for the immediate acquisition of status symbols.

This theory also mentions that most crimes are committed 'with little loss to the victim'. This is totally inappropriate when discussing the consequences of corruption. Corruption does not have a tangible victim. The victims are the state or the taxpayer, the public generally, and most significantly, the poor. The latter lose out on development and social upliftment projects because money and resources are redirected to corrupt civil servants and officials. This is a devastating loss to the victims.

#### 6.2.2 Positivist School.

The second most significant school of criminological thought is the Positivist School. This section will look at the assumptions of this school as well as differentiate between individual and social positivism. The differentiation between the main branches of social positivism, structure and process theories, will also be highlighted. Two theories from this school, namely anomie and neutralisation will be used to further explain corruption.

### 6.2.2.1 Positivist assumptions.

#### Historical Background.

The main proponent of the positive school was Cesare Lombroso (1835-1909). Moyer (2001: 29) mentions that classicism dominated the study of crime until the late 19<sup>th</sup> century. During this time, society was undergoing a radical transformation, from an agriculture-based society to an industrialised society. A scientific approach to the study of factors that explain the causes of crime replaced the classicists' emphasis on rationality.

#### Assumptions.

Reid (1994: 95) mentions that Lombroso was referred to as 'the father of modern criminology.' Lombroso rejected the classical school's doctrine of free will and was influenced greatly by the positivist writings of early sociologists. Lombroso is probably best known for his biological theory of crime. The author adds that the positive school significantly contributed to the study of criminal behaviour and to criminal law reforms. The positivists placed great emphasis on empirical research. They differed from the classicists in that they believed the **punishment must fit the criminal not the crime**. The positivists also introduced the concept of **environment** to crime studies.

According to Vold et al (1998: 7) positivism has opposing tenets to classicism. Positivism believes that **human behaviour is determined by factors outside an individuals' control**. Human beings therefore, **do not have the free will or the rational choice** to do as they please. They do not freely and intelligently choose their actions, but rather use thinking and reasoning as a process of **rationalisation to justify their actions**. Positivists maintain that humans have developed through a slow process of evolution and not because "intelligence has led to increasing rational choices."

Positivists use **biological, psychological and social/sociological factors to try and determine the causes of criminal behaviour**. Positivists **do not focus as much on working within a legal definition of crime**, preferring to use **'natural' definitions of crime**. Once criminologists have identified the 'nature' of criminal behaviour, only then can they analyse the causes of this behaviour. The natural

definitions of crime focus on the nature of the criminal behaviour rather than on the legal definition of the crime. Gottfredson and Hirschi (Vold et al 1998: 8) describe the nature of crime as: acts that produce immediate gratification, are exciting and risky, with no long-term benefit, no skill or planning. These acts usually come with great cost to the victim.

Williams and McShane (1994: 38) explain that positivism was the first school of thought that was interested in studying the **behaviour of the criminal**. They disagreed with the classical schools argument that humans were rational beings with free will. **Positivists argue that if criminal behaviour is not a rational act, and it is beyond the control of the individual, how can it be punished?** The causes of this behaviour have to be identified and treated, preferably before a crime takes place.

Positivist theory argued that: “crime was not rationally reasoned behaviour that could be deterred and controlled by punishment.” (Moyer 2001: 29). The 19<sup>th</sup> century positivists **attempted to prove scientifically that crime was caused by factors within the individual**. The positivist school also adopted a **deterministic** (action is determined by forces other than will) **approach** to the study of criminal behaviour, and to the prevention of crime through the rehabilitation and treatment of criminals. Early theorists emphasised the importance of studying the **individual differences among criminals**. As opposed to classicists who maintained that individuals acted according to free will, the positivists’ emphasis on deterministic causes of crime assumes that **individuals are passive and controlled**. Finally, positivists also suggested that individuals are pressurised into committing crime as a result of **biological and environmental factors**.

#### 6.2.2.2 Individual and sociological positivism.

##### *Individual Positivism.*

The two main subsections of the positivist school are individual and social (sociological) positivism. Central to individual positivism is the attempt to identify differences between criminals and non-criminals. Individual positivists have looked to biological and psychological factors for answers. They maintain that the cause of criminal behaviour lies **within** the individual, highlighting individual

pathology and abnormality (Muncie 1999: 86). Individual positivist theorists assume that criminal behaviour has a peculiar set of characteristics. Individual positivist also assumes that all human behaviour, criminal or otherwise, is determined by **biological, psychological or environmental factors, or a combination of these.**

Muncie (1999: 85) explains that Lombroso attempted to prove that criminals were physically different from non-offenders. Lombroso conducted studies on executed criminals and made the following observations:

- serious criminals were **born to be criminal**, they had **inherent physical characteristics** such as large jaws and strong canine teeth. This showed they were criminogenic;
- individuals had **no control over whether they would become criminals**, this was **biologically determined**;
- biological pathology and atavism determined criminal behaviour;
- physically, criminals were throwbacks to primitive man.

### *Sociological Positivism.*

Sociological positivists stress that factors that cause crime in the social context are **external** to the individual. Crime, in this context, is more of a social pathology (Muncie 1999: 86). Sociological approaches to crime focus on **social factors** as causes of crime. Quetelet (Muncie 1999: 99) found that the factors most likely to cause criminal behaviour include: **gender, occupation, religion and age.** Also, the possible reasons behind the fluctuations in crime rate in particular areas include: **changes in the social, political and economic institutions** of that society. For the social positivists, crime is considered to be an integral part of **social organization.** To these theorists, it is the social milieu that prepares the crimes and the offender is the instrument that carries out these crimes.

Durkheim (Muncie 1999: 100) mentioned that **crime is not an abnormal phenomenon.** Crime occurs in all societies. Crime and punishment are useful because they strengthen the shared beliefs and values of a community. Crime and punishment also help maintain social solidarity through the establishment



of moral boundaries. Crime is however, regarded as a form of pathology: either through the **abnormality of individuals or the dysfunction in social systems.**

**Table 6.1 Comparison of individual and sociological positivism.**

In order to achieve a better understanding of the premises of individual and social positivism, Muncie (1999: 101) drew up a visual comparison of the two theories. This is presented below.

<i>Individual positivism.</i>	<i>Sociological positivism.</i>
- Crime caused by individual abnormality or pathology.	Crime caused by social pathology.
- Crime viewed as biological, psychiatric, personality or learning deficiency.	Crime viewed as a product of dysfunctions in social and economic conditions.
- Behaviour determined by constitutional, genetic or personality factors.	Behaviour determined by social conditions and structures.
- Crime as a violation of the moral consensus surrounding legal codes.	Crime as a violation of a collective conscience.
- Crime varies with temperament, personality and degree of 'adequate' socialisation.	Crime varies from region to region depending on economic and political milieux.
- Crime as an abnormal individual condition.	Crime as normal: a social fact, but certain rates of crime are dysfunctional.
- Criminals can be treated via medicine, therapy and resocialisation.	Crime can be treated via programmes of social reform.

Sociological positivism is the most relevant strain of the positive school for the purposes of this study. The two main branches of social positivism are structure and process theories. Both will be mentioned below. Structural theories are the most pertinent of the two branches of theories when applied to corruption.

### 6.2.2.3 Structure and process theories.

Contemporary sociological positivists approach the study of the causes of crime from two perspectives, namely, structure and process. Structure asks how crime is connected to the **social system**, and it views crime in relation to the **structure or social organisation of society**. The questions these theorists ask include: what is the **social structure** in which crime takes place? Do crime rates vary as these structures change? The second approach looks at the **process** by which criminals are created. This is however, not an individualistic approach. Theorists look for **patterns of variables and relationships** that might explain how people become criminals (Reid 1994: 177).

#### *Structure Theories.*

According to Brown et al (2001: 284) social structure theories provided the dominant explanation of crime in the 1950's and 1960's. By the 1970's, these theories were replaced by control and deterrence theories. Social structure theorists typically fit the **traditional liberal image**. These theorists tend to be individuals looking for methods of **reform without drastically altering the basic social structure**. They agree on the legitimacy of laws and only wish to change them to achieve greater **fairness**. These theorists do not question the foundation of social structures, but aim to **identify and rectify deficiencies in these structures**.

Social structure theories provide the **purest sociological explanation of crime and delinquency**. Individual's problems are connected to the social structural origins of these problems. Typical social structural theories depict **crime as a result, or characteristic of society**. These theories assume that crime is mainly a lower-class problem, and they highlight **weaknesses within the social structure** that increases the chances of an individual within this group committing an offence. Structural factors such as poverty, unemployment, bad education and racism are considered to be some of the causes of high crime rates in these social groups. These theories do not intend to imply that all people living in poverty will commit crimes (Brown et al 2001: 283).

There are two major variations of social structure theories. Strain theories most frequently suggest that crime is a result of weaknesses in the social structure. The social ecology tradition analyses the social and economic conditions of communities.

Brown et al (2001: 314) mention that social structural theories have **three common characteristics**:

- they portray crime as a product of deficiencies in the social structure such as poverty and lack of educational opportunity,
- they focus on the lower-class milieu as the source of crime, (some criminologists have applied strain theories to white-collar offences, which is often a crime committed by the affluent or the middle-class),
- it is a macro-theory tradition. The theories are designed to account for variations in rates of crime among groups (social disorganisation), not to explain individual-level criminality.

#### *Process Theories.*

As opposed to social theories, process theories attempt to explain how some individuals become criminals. According to Reid (1994: 232) social process theories developed as a result of sociologists analysing the fact that **not all individuals exposed to the same social-structural conditions respond in the same way**. Only a relatively small percentage of these people turn to criminality. Sociologists suggest that **human behaviour is learned** and that criminal behaviour may be learned the same way non-criminal behaviour is learned. The latter statement was significant to sociologists because they observed that not all criminals behave criminally all the time and non-offenders do not always obey laws.

Reid (1994: 232) mentions that it is not possible to divide all sociological positivist theories into social structure and social process categories. **Some theories may include elements of both categories**, for example, the techniques of **neutralization theory** of Sykes and Matza. This theory belongs to both social process and social structure theories because of its focus on **motivation**. Neutralisation theory (which is going to be used to explain corruption), explains the **process** by which an individual

neutralises any inhibitions he or she might have against breaking the law. This theory is also related to **subcultures**, which is an element of social structure.

Brown et al (2001: 321) add that process theories mainly attempt to explain how individuals become offenders. The focus of process theories is on **social interactions or processes between individuals**, as opposed to structural factors. This represents a shift from **macro-theory (society) to micro-theory (individual)**. Process theories differ from structure theories in that they do not highlight crime and delinquency as mainly a lower-class problem. The strength of process theories is that they **cut across social classes and economic strata**. Higher rates of deviance apparent in a lower social class, could be the result of elements of the social structure that have unevenly exposed members of this class to negative social processes. **Interactions between individuals and their immediate social groups**, such as family and peers, **could push individuals away from, or towards offending**. According to social process theorists, these are instrumental to explaining behaviour. Each individual will learn **values of either conformity or deviance through these social processes**.

#### 6.2.2.4 Anomie theory.

##### Historical Background.

The main contributor, and the theorist who first used the term anomie, was a French sociologist, Emile Durkheim (1858-1917). Robert K Merton (1938), also a sociologist, borrowed Durkheim's concept of anomie to explain deviance in the United States. The main contributors to institutional anomie theory were Steven Messner and Richard Rosenfeld (1994). Anomie is considered to be a strain theory, where the focus will be on societal strain rather than individual strain.

##### *Emile Durkheim.*

According to Moyer (2001: 133), Durkheim believed anomie arose from a **lack of regulation**. Society had changed to such an extent with the advent of the industrial revolution that some individuals became isolated from society and **social controls**. Anomie occurs when **social cohesion dissipates** and **individuals are free from bonds of social control**. This creates a **higher possibility for deviant**

**behaviour.** Durkheim suggested that an individual consisted of two 'selves', the **social self and the egoistic self.** The social self was a result of socialisation by parents, the community, school and religion. The egoistic self consisted of 'animal' urges and these were controlled by society's rules. The egoistic self can become integrated with the social self through adequate **socialisation.** If this integration does not occur, deviance, in many forms, will result.

In another of Durkheim's works: *Suicide* (1897), he used the term **anomie** to describe a **morally deregulated condition** where individuals **lack the morality to control deviant behaviour.** Durkheim adds that "a society may be anomic if people do not know when to quite striving for success, or how to treat other people along the way." (Williams & McShane 1994: 87). Anomie relates to the **collapse** of either **society's rules (norms)** or its **morals** and it alludes to a disruption of normal societal conditions. In the book: *The Division of labour in Society* (1893), Durkheim maintains that societies have evolved from a simple, non-specialised form (mechanical), to a complex, highly specialised form (organic). Durkheim was referring to both the way people react to each other and the division of labour. Relationships between individuals in an organic society are seen as impersonal contractual bonds, where people no longer experienced kinship and friendship bonds as experienced in a mechanical society. As a result of this, bonds are constantly being broken, rules guiding interaction between individuals are disrupted and anomie occurs.

To summarise Durkheim's theory of anomie; **anomie refers to the breakdown of social norms and a condition in which those norms no longer control the activity of societal members. Without clear rules to guide them, individuals cannot find their place in society and have difficulty adjusting to the changing conditions of life. This in turn leads to dissatisfaction, frustration, conflict and deviance."**

(Williams & McShane 1994: 88).

*Robert K Merton.*

As mentioned earlier, in 1938, Merton used Durkheim's concept of anomie to attempt to explain deviance in the United States. Merton's theory of anomie differed from Durkheim's in that the former divided **social norms and values** into two categories, namely: **societal goals and acceptable means**

for achieving these goals. Merton described anomie as being a separation between those goals and means because of the way society is structured. The latter can also refer to class distinction. Deviance, therefore, is a product of anomie. (Williams & McShane 1994: 88).

Livingston (1996: 343) mentions that Merton rejected biological and psychological theories because he believed they could not elucidate why different social groups constantly experienced different levels of crime. Merton explained that his position is **sociological**, and that he focuses on differences in the rates of deviant behaviour. Merton attempted to highlight the link between social class and crime (assuming then that in America, poorer people committed most of the crime). Merton also attempted to **explain the differing crime rates of different social groups** rather than explaining individual differences between offenders and non-offenders. Merton adds that particularly in American society, people of all social classes **place a high value on individual and financial success**. Not everyone has the same **opportunity** to achieve these goals and those with little opportunity will feel **strain** between **culturally prescribed goals and socially structured means** available to assist in achieving these goals.

The key to Merton's theory according to Hunter & Dantzker (2002: 92) is the **adaptation to cultural norms through acceptable means**. Merton presented a typology of five **modes for adaptation**. For each mode there is an acceptance or a denial of the cultural goals and institutional means of achieving those goals. These modes of adaptation include:

- a) **Conformist mode:** leads to a more stable society, accepts both cultural goals and institutional means.
- b) **Innovation:** criminal behaviour occurs when the cultural goals are accepted but the institutional means of achieving them is denied.
- c) **Ritualism:** the cultural goal is denied but the institutional means needed to achieve the goal is accepted.
- d) **Retreatism:** the cultural goals and the institutional means are denied.

- e) **Rebellion:** the cultural goals and institutional means are rejected and individuals try and change these, often violently.

#### 6.2.2.5 Institutional anomie theory.

Institutional anomie theory belongs to the positive school of thought and it is a strain theory. The two main institutional anomie theorists are Steven Messner and Richard Rosenfeld (1994). Cullen (Vold et al 1998: 173) explains that the term '**strain**' can be used in two different ways. On an **individual level**, it refers to feelings and emotions that individuals' experience, such as stress, frustration, anxiety, depression or anger. On a **societal level**, it refers to characteristics of society, for example, where the social structure fails to provide a legitimate way of achieving cultural values. Cullen adds that individuals in 'social structural strain', who cannot achieve these cultural goals legally through the social structure, may experience 'strain'. For example, they may feel stressed, frustrated, anxious, depressed and angry. These feelings are considered to contribute to the higher crime rate among certain individuals.

Messner and Rosenfeld (Vold et al 1998: 175) direct their institutional anomie theory (with similar tenets to Merton's theory) at American society. The theorists attempt to explain the high levels of crime in America by highlighting the "**American dream**" phenomenon. The latter can be described as" "**a broad cultural ethos that entails a commitment to the goal of material success, to be pursued by everyone in society, under conditions of open, individual competition.**" Like Merton, these theorists stress that the cultural ethos mentioned above, causes enormous pressure to achieve monetary success. They also highlight the **overemphasis in American society, on monetary success**. In order to try and counteract this all-consuming drive for pecuniary reward, the theorists suggest that there be an "**increased emphasis on mutual support and collective obligations and a decreased emphasis on individual rights, interests and privileges.**" (Vold et al 1998: 177).

Brown et al (2001: 303) adds that the emphasis on individual success lessens society's sense of community. Goals and aspirations are restricted to **economic success**. Messner and Rosenfeld believe that the American dream has created an anomic society. They summarize this view as follows: "**Our thesis is that the American dream itself exerts pressures toward crime by encouraging an anomic**

**cultural environment, an environment in which people are encouraged to adopt an ‘anything goes’ mentality in the pursuit of personal goals.”** The theorists add that societies with high levels of anomie usually also experience weak **social controls**.

Hunter and Dantzker (2002: 93) explain that this theory is based on the American Capitalist society where individuals are conditioned to accumulate **material goods and wealth**. **Norms and standards based on economics, dominate society**, even in traditionally non-economic areas such as the family, religion, sports and the community generally. The dominance of **economics weakens the informal social controls** traditionally practiced by non-economic institutions. The theorists explain that when success is measured by financial status, and when social controls are weakened, crime is common. They also explain that **criminal behaviour** can occur among those individuals perpetually searching for wealth, **even in good economic circumstances**. Criminality can result from frustration experienced by those who are still unable to accumulate wealth.

*Tenets of Institutional Anomie Theory applied to Corruption Findings.*

Greed.

South African society does not differ substantially from American society in the sense that it is also a capitalist society with the same temptations. South African society differs vastly in terms of many individuals having to concentrate on survival as opposed to wealth accumulation. One of the corruption findings in this study is the fact that greed is a major contributor to the committing of corrupt acts. There is a constant striving in all sectors of South African society for material gain, wealth and self-enrichment. This is as significant in the public sector as in society at large. The only difference is that corrupt civil servants and politicians use public money to achieve these goals.

What should be a service to the public often turns into an exercise of self-enrichment for the public official. Examples of how public servants and officials have enriched themselves in the South African public service, through corruption, include: the illegitimate appropriation of state-owned farms and state-owned vehicles. Items that have been bought by officials with misappropriated funds include: a R2 million house, luxury vehicles, an aeroplane and extensive upgrading and purchasing of luxury



goods for the private homes of some state officials. One Senior Superintendent in the South African Police Service's Organised Crime Unit facing charges of theft, fraud, bribery and extortion, bought a luxury 4x4 vehicle, did R100 000 worth of renovations to his home and went on expensive holidays to other parts of Africa, all on an estimated salary of R9 619 per month.

Another finding suggested that the drive to accumulate wealth in society is perpetuated because of the constant demand for status symbols and designer or branded goods. If someone cannot legally acquire these goods, they will steal them, or steal the money to acquire them. As one contributor mentioned, the market drives greed and greed drives corruption. This can be a motivating factor for potentially corrupt lower-rank civil servants because of their frustration at not earning enough money to buy luxury goods. In South Africa, many people do not have the necessary skills to enter into the job market, and many individuals have no desire to enter the job market because it is a lot easier to obtain goods and money by forcefully relieving citizens of their possessions. This problem is increasing and exacerbated by the almost total lack of sanction for these criminal activities.

#### Moral Regeneration.

The family, church and community strength and influence in South Africa has been eroded to such an extent and for many reasons, that society is experiencing a moral and an ethical crisis. For corrupt officials in the public sector, corruption obviously has more value to them than adhering to social values such as altruism and conscience. Social control of these actions, in the form of effective punishment, has also been totally eroded. There has been a public call by government and civil society in South Africa for moral regeneration. Messner and Rosenfield (Vold et al 1998: 175) recommend that in American society there should be increased emphasis on collective obligations and mutual support, and a decreased emphasis on individual rights, interests and privileges. This is applicable to South Africa as well.

#### 6.2.2.6 Neutralisation theory.

As mentioned earlier, neutralisation theory belongs to the positive school and it contains elements of both social structure and social process theories. It has also been described as a social bonding theory.

David Matza and Gresham Sykes (1957) are the two original proponents of this theory. According to Siegel and Senna (2000: 173), Sykes and Matza believe that **offenders have attitudes and values similar to law-abiding citizens**. These offenders **learn techniques**, through interaction with others, that **weaken the social values and bonds the individual has with society**. These **neutralised** values and attitudes allow the offender to temporarily **drift** between criminal and legitimate behaviour. Offenders then develop **justifications that violate social norms**. These justifications **relieve any guilt feelings** accompanying their actions.

Brown et al (2001: 345) expands on this synopsis. The point of departure for **techniques of neutralisation** is based on Sutherland's statement that learning criminal behaviour includes **values and rationalisations**, as well as **techniques used in the committing of offences**. Sykes and Matza suggest that offenders use excuses that allow them to ignore their value system in order to offend. The theorists support this statement by mentioning that these offenders do **experience guilt and shame**. Offenders also chose their victims selectively, for example, homosexuals and 'drunks' are considered to be 'fair' targets for assault or robbery, but not so, nuns and priests. This may be because the latter are closer to the **mainstream values of society**.

Moyer (2001: 142) adds that offenders are able to commit their offences because they have largely rejected the **norms and values of the larger, law-abiding society**. The offenders have replaced these norms and values with a set of their own which are the opposite of mainstream norms and values. Adhering to these alternate set of norms allows offenders to commit crimes **without guilt** because they are following their own rules, which are acceptable to them.

**Neutralisation must precede the offence. Rationalisations** are excuses that **follow** the committing of an offence, or the violating of a norm. The latter therefore, does not justify the offence. Conklin (2001: 217) adds that offenders use the techniques of neutralisation to **nullify the morality of the law in order to break it**. Rationalisations are sometimes used after the offence has been committed, but, as the author stresses, "there is less need to justify a crime that has already been committed than to neutralise the law that would have kept the individual from committing the crime in the first place." Conklin (2001: 217) discusses Sykes and Matza's five techniques of neutralisation below.

*Techniques of Neutralisation.*

- a) **Denial of Responsibility:** Offenders refuse to be held accountable for their actions. They deny responsibility, and they maintain that the offensive behaviour is a result of factors beyond their control (for example, a broken home). Offenders who use this neutralisation are often not in control of their own lives, and are influenced greatly by their social environment and by other individuals. Denial of responsibility has also been used to justify white-collar crime and political corruption. Concerning white-collar crime, denial of responsibility usually takes the form of rationalisations used after the offence has been committed.
- b) **Denial of Injury:** Offenders claim that no one will be hurt by their crimes. Offenders tend to regard their victims as objects, and they are not sensitive to the effect the consequences of their actions can have on victims. Offenders sometimes believe that victims that lose money or suffer damage to their property can afford the loss. Many employees who steal from their companies experience no guilt because work norms may tolerate theft. Offenders may also justify their actions by claiming that their offence was socially useful because, for example, the money they stole was used to help someone else in dire need.
- c) **Denial of Victim:** Offenders justify their crimes by believing that their actions were in retaliation against a deserving victim. These offenders therefore, see the victim as the wrongdoer, not themselves. It appears to these offenders to be acceptable to victimise certain types of targets, such as prostitutes and shopkeepers who sell bad quality merchandise. Attacking or robbing children or the elderly is less of an option for them.
- d) **Condemnation of the Condemners:** Offenders believe the motives and behaviour of the individuals condemning the offender should be condemned, rather than condemning the behaviour of the offender. Many different types of offenders justify their actions by condemning the condemners, for example, a Fence who pointed out that what he was doing was justified because some of his best clients were judges and police officers (Conklin 2001: 222).

e) **Appeal to Higher Loyalties:** Offenders attempt to justify their offences by suggesting that another individual, or a company or an organisation encouraged him/her to commit the crime. The values of the larger society are ignored by the offender and replaced with the norms and values of a smaller group with more influence over the offender.

*Tenets of Neutralisation Theory applied to Corruption Findings.*

**Denial of Responsibility.**

The official guilty of taking a bribe, or guilty of the mismanagement of public funds, justify their actions by blaming forces beyond their control, for example, misappropriating funds in order to pay the hospital bills of a sick relative. Civil servants and officials in the South African public sector do not take responsibility for committing corruption. They often justify this behaviour by maintaining that they are entitled to steal from the state because many of them were marginalised from mainstream economic activity for decades. Corrupt officials who are caught and exposed in the media, often lash out at the media and 'other forces' for exposing the corruption and tarnishing the officials image, instead of openly taking responsibility for their actions.

**Denial of Injury.**

The offender justifies the corrupt act by convincing him/herself that nobody was harmed and that the victim can easily afford the loss. This sort of neutralization is very apt for explaining corruption in the civil service where the victim is not tangible, the state or the taxpayer are not physical entities. This makes it easier for corrupt civil servants and government officials to justify their actions. Also, the government is seen by many 'gravy-trainers' as an endless source of resources, so it is fine to steal from them. It is also fine to accept bribes because both parties are benefiting from this, even if it is at the expense of the citizenry, especially the poor. In many government departments, corruption starts with a culture of pilfering small items, such as stationary. In some cases this eventually leads to large-scale corruption, involving millions of rand. Corrupt officials in certain African countries can justify gaining monetarily from corruption because of their allegiance to certain tribes. This money might get used to help members of their tribe financially.

### Denial of Victim.

An example of this might be an official who brings his department into disrepute by fraud or misappropriation of funds because he/she has a personal grudge against a boss or a colleague. In this case, the offender justifies his actions by asking how the department can be victim if the target of the deed 'had it coming'? The state is also an acceptable target because it is not a tangible victim, so it cannot get hurt.

### Condemning the Condemners.

Civil servants and officials who are soliciting bribes, for whatever reason, often cannot understand how anyone can frown on this activity because there might be a culture of wrongdoing in a certain department, and also, officials may not even realise that what they are doing is wrong. This also applies to the statement that what is considered to be corrupt behaviour in one society, may be totally acceptable behaviour in a different society. In South Africa it is not uncommon for certain official's corrupt behaviour to be exposed in the media. Once this is done, the errant official goes on the attack, labeling anyone who is condemning his/her behaviour as 'racists' or as having a personal vendetta against the official, or it is a 'smear' campaign against the guilty individual.

### Appeal to Higher Loyalties.

Very often, in corruption cases, the offender is acting on the instructions of someone else, for example, they are being threatened with dismissal by a senior member of their department if they do not go along with what this person says. In one instance, in a licensing section of a traffic department, a group of corrupt personnel were involved in a scam together and protected each other because they knew that by protecting each other, everyone benefited from the corrupt activities. Police officials often justify committing corrupt acts by mentioning that they are being loyal to fellow officers who also behave corruptly.

### 6.3 CONCLUSION.

The reason the specific theories used in this chapter were chosen for explanation, is because of their relevance in explaining the crime of corruption and its various components. The classical school (including neo-classicism) is relevant because it focuses on the crime and not so much on the individual offender. Although the positivist school focuses more on the offender, aspects of this theoretical school are relevant to the explanation of corruption. These aspects include social (sociological) positivism, which emphasises the influence of the environment on crime, and a branch of social positivism; structural theories, which are relevant to corruption explanation. Reactionary theories were not used because they focus mainly on power, and power was not emphasised during this study. Other theories such as labeling theory and Marxist (conflict) theories were also irrelevant to this particular study.

**Table 6.2 . Main assumptions of theories applied to corruption in the South African Public Sector.**

The following table provides a summary of the assumptions of the theories addressed in this chapter, and their relevance to the explanation of corruption.

***Rational Choice Theory including Becker's Economic Model of Crime.***

<i>Assumptions.</i>	<i>Application.</i>
Rationality	Corruption is a rational act, it is planned and it is a process.
Free will/choice	Individuals consciously choose to commit corrupt acts of their own volition.
Opportunity	Opportunities for the commission of corrupt acts are vast due to inexperienced management and lack of ethics and controls.

Risk and reward	Corruption will occur if the rewards outweigh the risks. Rewards are large because of the lack of detection and sanction.
Cost	Consequences of corruption include arrested social development and a monetary loss of billions of rands.

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*A General Theory of Crime.*

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Low self-control/opportunity	Many civil servants and politicians have strong bonds with society, but will break them if there is a strong opportunity for committing a corrupt act.
Self-discipline	Quality of self-discipline will influence an individual's behaviour throughout their life.
Distinction between the crime and the criminal.	Public servants and politicians are not habitual criminals, but may decide to commit corruption for self-interest and short-term gain.
Career criminals are rare	Some corrupt officials may make corruption their career if not caught and sanctioned.
Rewards neutralise self-control	If self-control is weak, corrupt acts will occur if the rewards are substantial.

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*Institutional Anomie Theory.*

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Strain	Strain can occur when a corrupt official does not earn enough to satisfy his material needs adequately. May commit corruption to fulfil these needs.
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'American dream'	Capitalist societies' primary focus is on achieving material and specifically monetary success, sometimes at all costs, including committing corrupt acts.
Individual interests	Individual interests need to be replaced with collective obligations and mutual support – more community orientation.
Good economic circumstances	Corrupt officials commit corrupt acts even when their economic circumstances are good. This is because of greed.
Greed	One of the main contributors to be commission of corrupt acts is greed. Corrupt civil servants and officials use public money illicitly to acquire status goods and wealth.
Moral regeneration	South Africa is experiencing a moral and ethical crisis, as a society. This is in the country's high crime rate generally, and in the unacceptable levels of public sector corruption specifically. Moral regeneration is imperative.

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*Neutralisation Theory.*

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Denial of responsibility	Corrupt officials do not take responsibility for their actions, often blaming them on 'entitlement', the media, or 'other forces' who are attempting to undermine them.
Denial of injury	Corrupt officials deny that they hurt anyone by their actions. The state or the taxpayer are not tangible entities, although the poor certainly are.



Denial of victim	Corruption may be committed in a department because the offender has a grudge against a superior. This is justified by saying "the department had it coming so how can it be a victim?"
Condemning the condemners	What is considered to be acceptable behaviour in one society is considered corrupt behaviour in another. In South Africa, many corrupt officials exposed in the media label their adversaries as 'racists' or as conducting a 'smear' campaign against them instead of acknowledging the error of their ways.
Appeal to higher loyalties	Corruption offenders often act on the instructions of their superiors for fear of being fired. Police officers may join corrupt colleagues out of 'loyalty'.

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The following chapter is the last chapter of the study and it will have two main sections: findings and recommendations. The findings will be a summary of the findings of the entire study, literature and empirical. The recommendations will be recommendations gleaned from the literature study and recommendations made by the research and by knowledgeable people in the field of corruption, during interviews. This chapter begins with a thorough analysis of the aims and objectives of the study.

**CHAPTER SEVEN**

**FINDINGS AND RECOMMENDATIONS.**

## 7.1 INTRODUCTION.

The main aims and objectives of the entire study will be revisited in detail in this chapter. These include conducting the research from a criminological perspective, focusing specifically on the crime component, in this case, corruption. The research must provide an adequate explanation for the occurrence of corruption. This is done by means of relevant theories from the Classical Neo-Classical and Positive Schools of thought. The three most pertinent adjectives applicable to this study of corruption in the South African public sector are: what, how and why? In other words, what constitutes corruption and corrupt acts? How are corrupt acts committed? And, why are these acts committed? The nature and extent of corruption is identified (what?), as well as excellent examples of corruption and corrupt acts committed by public servants and government officials in South Africa (how?). Risk factors and practices that lead to the committing of corrupt acts are also identified (why?).

The South African Police Service, particularly in the Western Cape, will be focused on more intently than other government departments. Objectives pertaining to the research include the gathering and imparting with as much information as possible on the crime of corruption and the committing of corrupt acts. The study will also assist with gaining a clearer understanding of the seriousness of corruption. The latter concept is highlighted through the examples of corruption provided in the study. This study seeks to highlight the very adverse consequences of corruption in the public sector. The main categories of consequences include socio-economic consequences, political consequences and criminological consequences.

Data collection for the study was done by means of a documentary/literature study, the assessing of police dockets and by interviews with individuals considered knowledgeable in the field of corruption. These interviewees work in the following fields: police, legal profession, media, politics and the non-governmental sector (research). Another important aim achieved during the research is the extensive and varying attempt to define the corruption phenomenon.

This final chapter highlights the aims and objectives of the study and looks in detail at these two aspects and how they were achieved. The remainder of the chapter will analyse the findings of the

entire study. These include the pertinent findings from both the literature and the empirical studies. Finally, recommendations will be presented. These include relevant recommendations for the corruption problem made by the interviewees, and relevant recommendations extracted from the literature on corruption, as well as recommendations made by the researcher.

## **7.2 AIMS AND OBJECTIVES.**

### **7.2.1 A Criminological Perspective on Corruption.**

This entire study was done from a criminological perspective, as laid-out in chapter one. Corruption studies are not unique, but studies that focus on corruption as a crime and elucidate the crime from a criminological perspective, are relatively uncommon. Corruption studies are usually done from either a political, social, economic or legal perspective. The researcher feels that corruption, as a component of crime deserves to be studied exhaustively. The seriousness of this crime, including its consequences, deserves attention. To gain a greater understanding of corruption, it is essential to study how corruption is committed, why it is committed and to define what is meant by the term: corruption.

Studying corruption from a criminological perspective includes studying the different aspects of the crime itself, the 'what', 'why' and the 'how'. This was achieved in the study. According to Dantzker (Hunter & Dantzker 2002: 24) criminology: "is the scientific approach to the study of crime as a social phenomenon, that is, the theoretical application involving the study of the nature and extent of criminal behaviour." The general definition of criminology is that it is the study of crime and criminals/criminal behaviour.

### **7.2.2 What is Corruption?**

The nature of corruption can best be described using a variety of definitions. This study covers the following categories of definitions: general definitions of corruption, the characteristics of corruption, moral definitions of corruption, petty and grand corruption, public office definition and a definition of police corruption.

The most commonly quoted definition of corruption is 'the abuse of public office for private gain.' This phenomenon was highlighted extensively during the study, particularly by the numerous examples given on the committing of corruption and corrupt acts. The nature of corruption can be understood best by highlighting the characteristics of corruption. Alatas (Ladikos 1999: 29) identifies the characteristics of corruption as being:

- a betrayal of trust,
- deception of a public body, private institution or society at large
- deliberate subordination of common interests to specific interests,
- secrecy of execution except in situations which allow powerful individuals or those under their protection to dispense with it,
- involvement of more than one person or party,
- the presence of mutual obligations or benefits, in pecuniary or other forms,
- the focussing of action on those who want definite decisions and those who can influence them,
- the attempt to camouflage the corrupt act by some form of lawful justification, and
- the expression of a contradictory dual function by those committing the act.

Nyaka (1998: 52) suggests that the definition of corruption must include the following characteristics:

- the lack of productivity or work ethics,
- nepotism,
- greediness,
- the failure to conduct proper accounting and auditing processes,
- unauthorised expenditure and blatant theft,
- diverting funds earmarked for special projects and using them for self-enrichment,
- non-payment of municipal rates and levies,
- buying stolen goods,
- non-payment of traffic fines,
- vandalism of state property.

All the above-mentioned characteristics contribute to corruption. These characteristics as well as various elements in the definitions of corruption were all identified during the course of the study.

### 7.2.3 How is Corruption Committed?

The identification of the *modus operandi* of corruption and corrupt acts is an integral part of the study of corruption as a crime. This particular aim was largely achieved in both chapter two (the incidence of corruption) and chapter five (the empirical study of corruption). The latter chapter provides excellent examples of the *modus operandi* of police corruption as contained in police dockets.

The extent of corruption in the South African public sector is extremely difficult to measure, as there are no separate statistics for this occurrence. Also, corruption is difficult to identify because it is a secretive and elusive crime, usually occurring between two parties. The perceptions of the seriousness of corruption in the South African public sector appear to be much higher than the actual occurrence of this phenomenon.

Chapter two and chapter five provide examples of corrupt acts committed in Africa, and South Africa. The latter gives an example of the extent of corruption in South Africa. According to Prinsloo and Naude (2001: 41), the Heath Special Investigating Unit was investigating more than 220 000 cases of corruption concerning both private companies and the public sector. Chapter three also provides examples of corruption committed in the four tiers of government, namely: Central government, Provincial government, Parliament and Local government. Corruption appears to be more serious in Provincial government, compared to National government and Parliament, and it appears to be endemic in Local government. Special pertinent examples of corruption were highlighted to illustrate how corruption is committed in certain departments within the public sector, with greater emphasis on the Department of Safety and Security.

### 7.2.4 Why Commit Corruption?

Why do public officials and public servants commit corruption and corrupt acts? This question was answered in chapters three and five. Chapter three spelled out risk factors that certainly heighten the

chance of corrupt acts being committed. The most pertinent of these risk factors is greed. This phenomenon comes through strongly throughout the entire study. Human beings are greedy by nature, and as long as this human condition persists, corruption will occur. To further attempt to understand why public officials commit corrupt acts, practices that contribute to corruption were highlighted. These include practices commonly associated with corruption such as patronage (common in Africa), nepotism and bribery, amongst others.

Pertinent risk factors relevant to the developing world and to South Africa are discussed in detail. These risk factors do not only focus on greed and venality, but include social, cultural and economic reasons for corruption as well. The interviews conducted with knowledgeable people as part of the empirical study, also highlight risk factors and practices that contribute to corruption causation.

#### 7.2.5 Theoretical Explanation of Corruption.

To gain a clearer understanding of corruption as a crime, various pertinent aspects from criminological theories were used to explain aspects of corruption. The aspects of corruption that were explained by means of theories were taken from the literature and empirical findings on corruption. These findings will be discussed in more detail in the next section of this chapter.

Criminological theories used to explain corruption were taken from the Classical and Positive Schools of Thought. Pertinent aspects from these schools explained some of the findings from the study. These findings include the fact that corruption is a rational act, a conscious choice of behaviour where the rewards and risks are weighed up and the primary motive for corruption is self-enrichment (Rational Choice Theory). The latter theory is very similar to Becker's Economic Model of Crime, which also highlights rationality and opportunity, but from an economic perspective.

The Positivist theories emphasise that criminal behaviour is not an individual choice, but determined by other factors. Individuals are conditioned to accumulate material goods and wealth, and if they cannot achieve this legitimately, they may turn to crime (Institutional Anomie Theory). A General Theory of Crime suggests individuals commit crime because they have little self-control. This theory differentiates between the crime and the criminal. Individuals who commit corruption, for example,

are not necessarily criminally inclined, but take the opportunity given to them to do so. Neutralisation theory suggests that some offenders hold the same values and social attitudes than non-offenders. The offenders learn techniques to neutralise these values so that they can commit crime/corruption.

#### 7.2.6 The Impact of Corruption.

After discussing risk factors and practices that contribute to the committing of corruption and corrupt acts, it was essential to identify the inevitable consequences of these acts.

Three pertinent categories of consequences were identified. These are socio-economic, political and criminological consequences. The socio-economic consequences of corrupt activity include the potential damage these actions can do to a country's economy, and indeed, an entire region's economy. Corruption negatively affects government's service delivery to the poor. Instead of money going into development projects and social security, it goes into the pockets of corrupt officials. In this way, corruption also contributes to poverty.

The political consequences of corruption include public servants blatantly serving their own interests, or the interests of their political masters, instead of the public interest. If corruption is rife in a public service, the public will eventually lose respect for the incumbent government and its institutions. When the public sector is bloated, inefficient, wasteful and parasitic, it becomes a tremendous burden on the rest of the country (Mbaku in Prinsloo & Naude 2001: 45).

The cost and consequences of organised crime are far-reaching. Scarce police resources, particularly in Africa and South Africa have to be diverted to fight this scourge across borders. Organised crime threatens to destabilise economies through their criminal activities. These activities include vehicle-hijacking, drug-trafficking and money laundering. The criminological consequences of corruption also deal with the consequences of police corruption. Very often corrupt police members aid and abet these syndicates with their illegal activities by failing to arrest criminals, by not demanding customs duties and by issuing false registration papers for stolen vehicles. Generally, if police members are seen to be corrupt, a breakdown of trust occurs between them and the community. This may result in the community resorting to vigilante actions, as they do not trust the police to do their job properly.



### 7.2.7 Anti-Corruption Agencies and Legislation.

This section of the study identifies the key role players in the corruption field in South Africa. Key national anti-corruption bodies are identified and discussed, as are two non-governmental anti-corruption agencies. The performance of these key role players are analysed to attempt to get a sense of where South Africa stands in the fight against public sector corruption.

It is evident from the study that the Heath Special Investigating Unit was the most successful corruption fighting entity in the country. All the major anti-corruption entities such as the Special Investigations Unit, Public Protector, the Auditor-General and the National Prosecuting Authority, are headed by erstwhile ruling party stalwarts, which creates the impression that their independence may be compromised by political interference.

Five pertinent pieces of anti-corruption legislation are scrutinized to identify their efficacy in the fight against corruption. The existing *Corruption Act, 1992 (Act 94 of 1992)* is about to be replaced with the *Prevention of Corruption Bill (Act)*, this act is seen as being potentially far more effective in securing convictions for corruption than its predecessor is. The *Public Finance Management Act of 1999*, when it is fully implemented will ensure that financial managers in government departments take full responsibility for any irregularities and shortcomings occurring in the management of public finances. A few examples of adjudication for corruption are also mentioned.

### 7.2.8 Suitability of Methodology.

The methodology used in this study, for data collection and data analysis, was effective in that it provided the researcher with valuable information on corruption in the South African public sector. The chosen methodology also assisted in adequately answering the research question, which consists of explaining and analysing corruption as a crime.

The methods of data collection employed included an extensive documentary/literature study, an empirical study consisting of the assessing of police dockets and interviews with knowledgeable individuals in the field of corruption. A number of criminological theories were studied and applied to

assist with the explanation of the crime of corruption. A literature study alone would not have been adequate in completely answering the research question. It was important to collect practical information as well. This was done through studying police dockets and conducting interviews with knowledgeable people. A data collecting technique such as a survey or a questionnaire would have been inadequate for a study of this nature. A questionnaire is too rigid and limited, which severely hampers the ability to extract as much information from interviewees as possible.

This specific corruption research is also descriptive as valuable information was provided by both the empirical and documentary study. This study has many elements of an exploratory study as well as elements of a qualitative study. The focus interview technique used in the empirical study was of a qualitative nature. Focus interviews are highly effective because they allow for semi-structured questions. These questions did not have to be rigidly adhered to, or asked in a strict order. They allowed more freedom for the interviewer to modify questions or to probe when necessary. A qualitative oriented interview represents more of a conversation between interviewer and interviewee.

Purposive sampling also proved effective as interviewees were chosen according to the purpose of the study. These interviewees were chosen specifically from different professions because of their knowledge of corruption, and they were in a position to contribute greatly to the answering of the research question. The police dockets chosen for scrutiny were effective in highlighting the *modus operandi* of police corruption. The latter could not, however, explain why police officials commit corruption.

The literature study consisted of information gleaned from books, journals, newspaper articles and the electronic media. The criminological theory study was adequate in explaining the findings on corruption that resulted from this study. Theories from the Classical School and the Positivist School were the most suited to this purpose. Data collected from the study was analysed and collated in an attempt to adequately answer the research question. The information gathered for the entire study is considered to be valid and reliable.

### 7.3 RESEARCH FINDINGS.

This section dealing with the research findings includes all the pertinent findings from both the literature and the empirical study. The findings will be addressed according to similar themes used throughout the study.

#### 7.3.1 Definitions of Corruption.

##### General Definitions.

The most common and simplistic definition of corruption is **'the abuse of power for private gain.'** Other definitions that are applicable to this study include: "financial corruption consists of acts of people in power, whether in the public or private sector, to secretly enrich themselves (or their friends) beyond the income level agreed by them, by abusing the powers entrusted to them for their personal enrichment at the expense of those they are supposed to serve." (Van Maanen in Mavuso & Balia 1999: 141).

"Corruption means the misuse of office for personal gain. The office is a position of trust where one receives authority in order to act on behalf of an institution. Corruption means charging an illicit price for a service, or using the power of office to further illicit aims. Corruption can entail acts of omission or commission. It can involve legal activities or illegal ones. It can be internal to an organisation (for example, embezzlement) or external to it (for example, extortion). The effects of various kinds of corruption vary widely. Although corrupt acts may result in net social benefit, corruption usually leads to inefficiency, injustice and inequality." (Klitgaard 1996: 1).

Mbaku (1996: 2) adds that: "corruption is a general term covering the misuse of authority as a result of considerations of personal gain, which need not be monetary." Mbaku adds that corruption in Africa is a practical problem involving the "outright theft, embezzlement of funds or other appropriation of state property, nepotism and the granting of favours to personal acquaintances, and the abuse of public authority and position to exact payments and privileges."

These definitions of corruption contain many pertinent findings resulting from the study. For example, corruption in the public sector is committed by individuals who have a certain amount of power and who use and abuse this power for their own **self-enrichment and financial gain**. The abuse of power for whatever reason, is always done at the expense of the general public and particularly the poor. Corruption in Africa is epitomised by the aspects mentioned above, including theft, embezzlement of funds, stealing state property and nepotism. Other factors highlighted in the study, that apply to Africa and the developing world will be discussed under section 7.3.2 of this chapter.

#### Moral Definitions.

Ladikos (1999: 29) adds that “the deterioration of moral or ethical standards in the public service, the perversion of the integrity of its officials and the inevitable result of this, namely, the destruction of an efficient state administration, could all be classified under the heading of corruption.”

The **deterioration of morals and ethics** in the public service, as well as moral corruption, came through very strongly in the study. Public officials’ integrity has generally been negatively affected by the perceived high incidence of corruption in the public service. The controversial Arms Deal did nothing to change the publics’ perception of the existence of corruption in the public service and in politics. The lack of ethical behaviour in government departments was also a recurring theme, particularly when referring to the **lack of financial accountability** in many departments.

#### Petty and Grand Corruption.

Robinson (1998: 3) categorizes three main types of corruption: incidental (individual), institutional (for example, the police service) and systemic (societal). In some instances, corruption occurs only among individual politicians or public officials and they are periodical rather than systemic. In other instances corruption is pervasive in particular spheres of government and institutions. Some government ministries may have wide-scale corruption while others have very little. The latter may be influenced by different opportunities and controls in the various ministries.

This contribution by Robinson is very pertinent to the situation in South Africa. Individuals in the public service and political officials do commit corruption individually, for example a traffic official accepting a bribe from an errant motorist, or a politician accepting a discount on a luxury motor vehicle in exchange for using his influence in a certain matter. In certain government departments' corruption is (real or perceived) pervasive, for example, the police service and certainly, the department of Correctional Services. The latter department appears to be corrupt from top to bottom, with the National Commissioner seemingly protecting a Provincial Commissioner who is wanted on fraud charges but is still in his job, not to mention the systemic corruption in South African penal institutions.

The phrases: **opportunity and control**, feature significantly in the study. Concerning opportunity, it would appear that public servants and officials have plenty of opportunities to commit corruption because of the general lack of controls in government departments, especially financial controls. The **lack of supervision**, accompanied by the **lack of training** of supervisors exacerbates this problem. These findings will be discussed in section 7.3.4 of this chapter.

#### Police Corruption.

As police corruption is the main exemplary focus of this study, a brief, applicable definition of police corruption will be included. Goldstein (Maguire & Radosh 1999: 278) defines police corruption as "acts involving the misuse of authority by a police officer in a manner designed to produce personal gain for himself or for others."

Police corruption and abuse of authority occurs in a variety of ways, these range from corruption, for example, accepting bribes or other gratuities in exchange for no arrest, to murder. Other findings related to police corruption will be discussed in the sections below.

#### 7.3.2 Corruption in the Developing World.

Corruption appears to be more pervasive in developing countries than in developed countries. There are many reasons for this phenomenon, including the fact that remuneration of civil servants is usually low and they supplement this by charging citizens for access to state resources. Corrupt civil servants

also charge a fee for performing a task which is part of their job function and which carries no charge. Many developing countries have **large, ineffectual public services**. The latter factor together with **poor wages, inadequate training and cumbersome regulations** results in bribery. Citizens often opt to pay bribes to civil servants to speed up delivery of services.

In developing countries, particularly in Africa, **the enforcement of anti-corruption measures** (if they do exist) is **usually ineffectual and non-existent**. According to the study, the one exception to this rule is Botswana. The latter country has highly effective anti-corruption legislation and agencies. Children are taught about corruption in schools, so there is an extremely high level of awareness and **political will** to fight this particular crime. The main difference between the developed and the developing world is that in the latter, the chances of getting caught are low, punishment for corruption is minimal, if it happens at all, and many agencies responsible for controlling corruption and enforcing the anti-corruption legislation, are corrupt themselves. A good example of the latter is in Kenya where it was found that two of the three judges heading the main anti-corruption agency were being bribed by the government. The anti-corruption agency was subsequently declared unconstitutional.

In many African countries, corruption is a way of life for despotic leaders who **pillage the public purse for their own benefit, take bribes from business for lucrative contracts and steal foreign aid monetary donations**. They transfer this loot to bank accounts overseas, all at the expense of **social delivery to their largely impoverished citizenry**. Many developing countries are plagued by corruption, from the leaders to the lowliest civil servant because it is a **one-party state with no independent watchdog bodies or democratic institutions** that can hold these people accountable for their actions. These countries also tend to have a **non-existent civil society and a suppressed media**.

One finding mentioned earlier is the fact that in developing nations the chances of getting caught for corruption are low and punishment is minimal. This is equally relevant in South Africa. **There is no real deterrent for corruption in South Africa. Adjudication of corruption is very low** and there appears to be too much **political tolerance of errant colleagues**. The lack of adjudication is a reflection on the adjudication of crime in general, where less than 10 percent of criminals in South Africa are incarcerated for their crimes.

### 7.3.3 Corruption in the South African Public Sector.

#### Extent.

The study clearly indicates that the extent of corruption in the South African Public Sector is **extremely difficult to measure**. There are no separate corruption statistics under the crime statistics umbrella. The very nature of corruption makes it difficult to measure. It is usually an elusive, secretive crime involving two people, and it is difficult to detect. Most information available on the incidence of corruption refers to the perception of the levels of corruption as opposed to actual scientific evidence of its occurrence. There appears to be far more information available on the extent of perceived corruption than actual scientific evidence.

Perceptions of the extent of corruption given by interviewees suggested that the **value of corruption was massive** and that there was a possibility of the **incidence of corruption being high**. One interviewee suggested that corruption in South Africa today is not as extensive as it was during apartheid. During Apartheid there was a small closed group of people controlling power. Today there is far more media freedom and the *Protection of Information Act* has become the *Access to Information Act*. It was also suggested that the perception of the extent of corruption depended very much on the political leanings of the person questioned.

#### 7.3.3.1 Levels of government.

Pertinent examples of corruption and corrupt acts in the South African public sector were given throughout the study in an attempt to highlight the extent and seriousness of this problem. It was found that the **most corruption occurs at the provincial and local levels of government**. During 1997 corruption reached such alarming proportions that President Mandela appointed a **Special Investigating Unit** to investigate corruption. By 1999, the unit was investigating in excess of 90 000 cases of corruption.

One contributor to the literature study mentioned that the biggest culprits and the champions of self-enrichment are to be found in the following government ministries: **Social Welfare, Safety and**

**Security and Justice.** This may be as a result of these departments having more dealings with the public than other departments. The Welfare department (now called Social Development) inherited 14 separate bureaucracies from the Apartheid era. Many of these bureaucracies were incompetent and already deeply corrupt. It is estimated that **10 percent of the departments budget disappears as a result of fraud.** Add to these departments, the **Correctional Services** department, which appears to be pervasively corrupt.

One interviewee expressed the opinion that all levels of government were equally corrupt, national, provincial and local. Most interviewees agreed however, that local government was the most corrupt or had the most scope for corruption. **Petty corruption** was identified as being the most common type of corruption occurring in local government. A basic example of this would be the quashing of traffic fines in return for some sort of gratuity, or Council workers soliciting bribes for doing work that is part of their job function. Privatisation also has scope for corruption, especially with the sale of council land.

There was also a perception that some provinces were more corrupt than others. Mpumalanga, The Eastern Cape and KwaZulu-Natal were considered to be the most corrupt provinces. **Typical examples of corruption** that has occurred in the various provinces include: the irregular issuing of drivers licences, using public funds for settling personal travel and hotel bills, using large sums of money earmarked for low-cost housing to renovate the homes of government officials. Other serious examples include: funds that are stolen by officials that should be going to the Primary School Nutrition programmes, the abuse of the government fleet management petrol cards and government officials investing in businesses serving the government. A common corrupt practice in many provinces is the appearance of ghost workers on the government pay roll and fraud in capital projects such as in the construction industry where claims are submitted for work not done. Irregular tendering procedures for lucrative government contracts is common-place in all provinces.

Examples to highlight the statement made by an interviewee that the value of corruption in the Public Sector in South Africa is massive include: the awarding of a R190 million housing contract, in Mpumalanga, without following regular tendering procedures. The latter came to be known as the Motheo scandal. Perhaps the most disconcerting aspect of this saga was that the national director-



general of housing was dismissed after requesting an inquiry into this scandal. In the North West Province, officials from the Department of Public works issued a cheque for R20 million to pay for electronic equipment invoiced at R126 000. In the Eastern Cape, a large crime syndicate specialising in government fraud was exposed in 2001. The syndicate consisted of Eastern Cape government employees and suppliers. At the time of detection, one of the syndicate members had already been murdered, and 315 fraudulent transactions worth R45.8 million were positively linked to 29 officials and 41 suppliers. This fraud involved a number of government departments.

The study revealed that **most corruption occurs during the procurement processes of government**, from buying office furniture to multi-billion rand arms deals. Procurement is also used to enrich an official's family or friends. This is done when an official has advance knowledge of an upcoming tender. The official passes this information on to the relevant family member or friend who puts in a bid for substantially less than a bidder who has no prior knowledge of the tender. The latter form of corruption is common practice in Mpumalanga and the Eastern Cape.

#### 7.3.3.2 Government Departments.

##### *Safety and Security.*

Corruption in the South African Police Services is generally considered to be widespread. Corruption and corrupt activities range from petty corruption, such as receiving gratuities for 'favours', to serious acts such as hijackings and murder. The extent of police corruption in South Africa can be highlighted by quoting some figures. In 1999, criminal charges were brought against 5726 police members (out of a total police force of approximately 140 000 members). The most common charges brought against the police, in the order of most common to least common include:

- common assault
- assault with intent to do grievous bodily harm,
- reckless driving,
- murder,
- corruption,

- crimen injuria,
- malicious damage to property,
- theft,
- fraud,
- defeating the course of justice,
- handling a firearm while under the influence of alcohol,
- rape,
- pointing a firearm,
- blackmail.

R2 736 244 was paid out per month to police officers awaiting trial on these charges. In Johannesburg in 1996, four police officers were suspended from duty, for corruption, per week.

**Examples of police corruption** that occurs throughout the country includes the collusion of police members and justice department officials in the theft and sale of police dockets. In return these officials accept bribes from the suspects implicated in the dockets. A result of this practice is the **subversion of justice** because the case gets thrown out of court. Other common forms of police corruption include the deletion or destruction of information in the files of criminals, the sale of confidential information on informers involved in police investigations and sharing official information with unauthorised people. Extortion also occurs where money is taken from the public in exchange for services that are free. Individuals are sometimes forced to pay for stolen vehicles to be 'returned' and for criminal cases to be 'settled.'

Police corruption is not restricted to the lower ranks of the SAPS. Two high-ranking police officers in Durban, a Senior Superintendent and a Superintendent are facing serious charges in court, including bribery, theft, fraud and extortion. Recently, the head of the National Organised Crime Unit received a suspended sentence on corruption charges.

### Police Corruption in the Western Cape.

During 1997, it was reported that there was an 'explosion' of crime amongst SAPS members in the Western Cape. The crimes that were being committed by both junior and senior officials included three murders, three kidnappings, two rapes, an armed robbery, five counts of housebreaking, 11 thefts, indecent assault, fraud and corruption. Other very disconcerting incidents occurred involving members of SAPS in the Western Cape including a fingerprint scam where fingerprints were 'planted' by police officials in order to secure convictions. Another was a medical aid fraud scam involving the police medical aid, Polmed and costing millions of rands. A large number of police officials were irregularly declared medically unfit and as a result, received huge severance packages from the state. The involvement of a network of insurance agents, doctors, attorneys and people in the pharmaceutical industry are still under investigation.

During 1998, 66 Western Cape police officers, including eight Inspectors and a Senior Superintendent were suspended or fired for being involved in various crimes. The corrupt acts they committed included dishonesty, fraud, perjury, obstruction of justice, tampering with evidence, assisting prisoners to escape and corruption. It was also revealed at this time that police officers were becoming increasingly involved in crimes such as vehicle theft, housebreaking, rape and stock theft. In 2001, concern was expressed at the involvement of police officials in car theft syndicates.

An interviewee mentioned that the **most common form of police corruption is 'tipping'**. This refers to police officials based at certain police stations who make it their duty to tip-off members of the community about an impending raid, for a fee. Another example of policemen **abusing their power for personal gain** occurred recently when members from the Elsie River police station obtained fake search warrants and used these to gain entry into houses where they would then proceed to steal anything of value. Corruption occurs across all ranks in the Western Cape police service, but the most members charged with corruption come from the middle ranks, Inspectors and Captains.

Concerning the relationship between police officers and informers, and the possibility for corruption, police officers build up relationships with informers. The informers get paid according to the quality of information supplied and for expenses the informant might have incurred, for example, if the informant

made many phone calls or has traveled long distances to collect witnesses, amongst others. Some members of the police greatly exaggerate expenses or the quality of information received from the informer, and then take a share of the money paid to the informer.

*Other Government Departments.*

Corruption occurs in all government departments. Findings from a selection of departments will be elucidated.

*Home Affairs.*

Since the advent of democracy in South Africa, people from all over Africa continue to stream across the border. Few gain refugee status, most live in the country illegally. Enter the corrupt Home Affairs officials. The latter assist organised crime syndicates by supplying false work permits, birth certificates, identity documents, residence permits and passports to the illegal immigrants. Other illegal activities corrupt officials assist in include: obtaining false death certificates in order to claim life insurance benefits, the procurement of false identity documents for cashing stolen cheques, registering hijacked vehicles and illegally drawing pensions.

In 2000, **Project Molopo** was initiated by the director-general of Home Affairs, for the purpose of identifying, investigating and prosecuting corrupt Home Affairs officials, police officers and Customs and Excise officials. At the same time that this project was launched, a Home Affairs official was found in possession of 19 blank passports. During February 2002, an illegal immigration syndicate had been exposed. This exposition was facilitated by the arrest of the senior communications officer of the Airports Company of South Africa. The latter, a Zimbabwean citizen, had bought a fraudulent South Africa identity document from this syndicate. Six Home Affairs officials and a private attorney had been arrested and charged with 13 offences.

### *Housing.*

The most common corrupt activities that occur in this department, particularly at provincial and local government level, is the awarding of tenders and the financing of these tenders, only to have the successful bidder abscond without building a house, or having built inferior quality houses. In one case, the Gauteng Housing Board awarded the country's biggest housing project to a contractor who in turn, hired the same Board's chairman to help him win the tender. The errant chairman admitted to receiving a 'facilitation fee' for pushing the deal through. This is definitely a **conflict of interest**, and it is highly **unethical**. The Gauteng Housing Board paid the developer R14.4 million for land that the developer had bought three months earlier for R2.5 million.

In Kwa-Zulu-Natal it was found that out of 53 000 approved housing subsidies, about half were fraudulent. In two examples, housing subsidies were approved for houses that were built, but if they were actually built, one would be in the middle of the runway at Durban Airport and the other would be on a piece of land occupied by a hospital. A contractor in the Free State received R60 million to build low-cost houses. Instead of doing this, he used the money as a guarantee for personal overseas loans. In another example, attorneys would buy identity documents from people in the street, use them to prepare deeds of sale and false deeds of transfer. The attorneys would then claim R15 000 from the government plus fees. One attorney in Kwa-Zulu-Natal pocketed R5 million this way. He was never punished for this. The latter is another example of the **lack of sanction for corrupt activities**.

### *Justice.*

The Justice department, much like Safety and Security and Correctional Services, has a seemingly pervasive corruption problem.

Common corrupt occurrences in this department include the theft and sale of dockets, usually after a court case has been postponed. Corruption may occur amongst magistrates and prosecutors in the form of an inexplicable acquittal or the handing down of an inappropriately light sentence by a magistrate. Another serious example of corruption in the Criminal Justice System consists of a **lack of discipline and dedication to work**. This is usually accompanied by the **lack of a work ethic**.

During mid 2001 a report by the Investigating Directorate for Serious Economic Offences revealed fraud and corruption amongst senior magistrates in a number of provinces in South Africa. The fraud amounted to R50 million. The corruption and fraud was committed under the guise of a special dispensation from the department, allowing repairs to be done at magistrates building. The magistrates then used this opportunity to have extensive repairs done to their own homes, and paid the contractors with emergency vouchers worth R3 000 each. Forty nine magistrates were involved in this scam. **Again no action was taken against these magistrates.** The previous Justice Minister opted not to take disciplinary measures against these magistrates because he believed the courts would suffer as a result.

In a two-year period, 3 536 cheques were stolen from the Justice department. At the same time, R6.9 million worth of cheques were fraudulently issued from the Justice Department alone. A possible cause for the high levels of corruption in this department is the ongoing **unacceptable state of finances** in this department. An audit revealed the **lack of internal controls and that incompetent staff were not following procedures.** In 92 percent of the sub-offices visited by the auditors, reconciliation of financial statements was not done and not checked by another official. **Action was generally not taken against the errant officials.**

#### *Social Development.*

The most common recorded types of corrupt acts committed in this department include fraud and the wholesale theft of pension cheques and other grant money.

Corruption occurs in this department in all nine provinces. By November 1998, 42 officials had been dismissed and there were 920 ongoing cases against officials. In January 2001, 10 officials from the department in the Eastern Cape were convicted on theft and fraud charges involving nearly R11 million. **Sentences ranged from incarceration of between five and thirteen years.** One month after the conviction of these officials, a further twelve officials from the same department were arrested on charges of fraud and theft of pension cheques amounting to R1.3 million. Some officials were still in possession of stolen cheques when they were arrested.

Another example featuring the Eastern Cape involves pension paymaster who steal cheques and cash destined for pensioners. In Mdantsane, paymasters pocketed R57 million using thumbprints for identification. The investigators proved that 3 000 thumbprints emanated from the same individual. Once the paymasters had taken possession of these cheques, they had to find a way of cashing them. They did this with the assistance of shopkeepers in nearby Kingwilliamstown. The latter would cash the cheques for them and retain part of the money. The shopkeeper would then deposit the cheque into his bank account. This can be considered to be **money-laundering**.

### *Correctional Services.*

Correctional Services, a misnomer to start off with, is a blight on any anti-corruption efforts attempted by government. With almost daily revelations of widespread corruption in prisons and prison management, by the Jali commission, it is reasonable to assume that this particular government department is systemically corrupt. The rot started with the erstwhile National Commissioner, Khulekani Sitole. When the latter took over as commissioner in 1996, the first thing he did was to set up a secret organisation controlled by himself, named Core. This group consisted of members of staff handpicked by Sitole. The main function of this group was to provide 'jobs for pals', particularly top jobs such as directors, deputy-directors, provincial commissioners, senior human resources officials, management teams and Popcru (police and prison civil rights union) officials. The members of Core were charging up to R3 000 for a position in the department. Eventually up to 80 percent of staff in this department had relatives working there.

Core used disciplinary action, suspensions and transfers to silence honest members of staff who attempted to blow the whistle on corrupt officials. During this time, two managers were murdered after they dismissed staff for indiscipline. Members of Core were also influencing the awarding of tenders for the department, worth millions of rands. Sitole was accused of awarding a tender worth R1 945 million to a company run by a close friend. The questions need to be asked: **Where was the Minister of Correctional Services? Why was a National Commissioner of a government department allowed to act unilaterally and with absolute impunity?** To add insult to injury, Mr Sithole is presently safely ensconced at his Alma Mater, Jackson University in Mississippi. Any other citizen would probably be ensconced in a less comfortable facility.

Other corrupt acts common to Correctional Services include warders who are 'paid' to assist in an escape, defrauding of bail money, warders who borrow money from prisoners, blackmailing and intimidation of warders and cellular phones used by organised crime networks. Corrupt warders allow prison visits to include illegal communication and the handing over of drugs. Hard cash and cheques buy prisoners almost everything. Prisoners have thousands of rands extorted from them for 'perks', which include being given light chores and intimate contact visits with spouses and partners.

Although there certainly are investigations into corruption in government departments, and there are arrests and convictions for these activities, the researcher is of the opinion, after doing this study and speaking to knowledgeable people, that these constitute only a very small percentage of corruption cases. The study shows that in most cases, officials act with impunity, with very little chance of getting caught and punished. The next section will highlight certain practices that contribute to this behaviour.

#### 7.3.4 Factors and Practices that Contribute to Corruption.

##### Risk Factors.

Perhaps the strongest contributing factor to corruption that came up during the study is **greed**. The pursuit of **wealth and material gain can become all-consuming**. The temptation for material gain is sometimes overwhelming. The **accumulation of wealth** is largely driven by society. This is evident from the high value given to the ownership of branded and designer goods. One interviewee remarked that the market drives greed and greed drives corruption. The latter occurs when a civil servant or a government official cannot afford to buy everything he/she or their family desires, and turns to theft, fraud, bribery or embezzlement to purchase these status goods. Although it was found in the study that the level of wages of public officials in South Africa did not really contribute to corruption, there was a feeling that wages could influence corruption amongst lower paid officials such as the lower ranks of the police service. The latter would **commit corrupt acts as extra income, while the main motivator for a politician would be greed**. **This highlights the corruption for greed versus corruption for need dichotomy.**



Other important risk factors that pertain to the study include the quality of the bureaucracy. Generally, and South Africa is no exception, the more frequent the **appointments based on political affiliation, nepotism, patronage and reward for loyalty as opposed to merit, capability and experience, the higher the incidence of corruption tends to be.**

The politicisation of the public service can encourage corruption. When public servants change from serving the public to serving the political elite and taking instructions from political heads of departments, political interference occurs and this may lead to corruption because power is then confined to one person or a small group of people. Excessive administration secrecy and a **lack of transparency** can also encourage corruption because public officials and political office-bearers cannot be held accountable for their decisions and actions. Secrecy assists officials in covering up corrupt acts. One interviewee mentioned that transparency in the public sector has been disappearing rapidly since 1996. Lack of public interest encourages corruption because the impression will be given that no one is interested in exposing the corrupt activities of these officials.

Risk factors that came through strongly during the study include: **lack of control measures**, which have been blamed for the perpetuation of corrupt activities in the public sector. It was suggested by an interviewee that even in cases where control measures are in place, managers are not interested in implementing them, or they do not know how to implement them. This could be the result of a **lack of training or inexperience**. The interviewee mentioned that many public officials are ignorant, as opposed to incompetent. **The lack of productivity** is another problem in the public sector, as is **apathy**. Another interviewee suggested that apathy occurred because public servants took from their environment, they imitate those around them.

The **lack of disciplinary procedures and the lack of effective criminal prosecution** is a big advantage for corrupt civil servants and officials. Penalty systems are ineffectual if they are not implemented properly and not adhered to. It is not uncommon in the South African public sector for disgraced civil servants or public officials to be given a golden handshake or to be given another similar or better job somewhere else. The previous director-general of Home Affairs resigned under a cloud of impropriety, including running his own soccer club from his office. This same individual now runs soccer in the country. The appalling lack of disciplinary procedure and criminal prosecution has

been highlighted numerous times throughout this section of the chapter. The latter results in **public officials running their departments as their own little fiefdoms, doing as they please with absolute impunity.**

#### Contributing Practices.

Certain practices mentioned in the study contribute greatly to the committing of corruption and corrupt acts in the public service. Some of these practices include **patronage**. Patronage is extremely common in Africa, and it entails the giving of government positions to individuals as a reward for party loyalty. This practice is also very common in South Africa. All the top government positions are filled with individuals with impeccable 'struggle' credentials. Patronage often results in the appointment of inferior quality administrators, which can lead to an inferior quality of service rendered by public institutions to the general public. **Nepotism** is another common practice in government. Nepotism refers to the preferential treatment given to family and friends by officials when recruiting staff. Although nepotism is not illegal, it is a corrupt act because it is unethical and irregular.

**Bribery** is an extremely common corrupt activity and occurs regularly amongst the lower ranks of civil servants and government officials. Common examples of this phenomenon include the traffic official who bribes a motorist in exchange for not issuing a traffic fine, or a police member who bribes a civilian in exchange for assisting with the filling out of forms or 'turning away' from a crime etcetera. Bribes occur in many forms, either pecuniary or other forms of gratuity. The levels of bribery and corruption in any country are determined by the strength of government and political institutions in that country. If they are weak and resented by the public, they will have high levels of bribery and corruption.

**Ghosting** is another common corrupt act committed in the South African public sector. Ghosting refers to the payment of services never rendered and goods never supplied, but for which receipts and invoices were issued. Common in South Africa is the registration and payment of 'ghost employees'. The cheques for these non-existent employees are collected and used by corrupt civil servants. The latter also applies to the continued payment of civil servants or officials who have long since left government employ.

**Graft and kick-backs** are also common corrupt practices. The definition of graft is very similar to that of corruption. Bauer and Van Wyk (1999: 61) define graft as “**the misappropriation of public resources – money, property or opportunities – for personal enrichment.**” An example of this would be when a public official manipulates a government tender to such an extent that only the company he/she has selected can win that tender. The chosen company usually belongs to a member of the official’s family, or the official is somehow involved with the company. A good example of kick-backs occurred during South Africa’s controversial arms deal where certain government officials were rewarded with discounts on luxury vehicles for influencing a purchasing decision. The practice of getting cuts on government contracts constitutes the main example of illegal gains, with the customary cut awarded to the public official being 10 percent.

**Conflict of interest** also occurs regularly amongst government officials. This refers to a public official who holds other interests outside of government that might compromise the official’s integrity. A typical example would be where an official has a financial interest in a company that has been chosen as a supplier of goods and services to government. Another recent example refers to a key figure in the arms deal. The latter’s brother’s company was affiliated to one of the major weapons suppliers.

#### Additional Factors Relevant to South Africa.

Corruption occurs more readily in societies with the following features: low political competition, low and uneven economic growth, a weak civil society and the absence of institutional mechanisms to deal with corruption. Corruption increases when a country undergoes rapid growth and modernisation. This results in values changing, new sources of wealth and power and the growth of government. These factors are all relevant to South Africa.

An expert survey done by Camerer (<http://iss.co.za>) listed five main causes of corruption in the government of South Africa. These are listed from the most common to the least common: **weak checks and balances, weak management, greed and self-enrichment, the decline in morals and ethics, the legacy of apartheid and socio-economic conditions.**

It is evident from the study that civil servants and public officials engage in corruption and corrupt activities mainly for personal gain and self-enrichment. It is a rational and conscious decision, not a wild, impulsive one. This is because committing corruption is a process, it requires thought before the request is verbalised or before the corrupt deed is committed. Corrupt individuals act purely out of self-interest or the interest of those closest to them (secondary interest). The officials may weigh the risks and rewards, but in South Africa it appears as if the rewards far outweigh the risks. The chances of detection and sanction are low.

### 7.3.5 The Impact of Corruption.

Perhaps the most devastating consequence of corruption is the effect it has on those living in poverty. One only has to cast an eye around Africa to see how corruption has enriched a few at the expense of so many. It must be stressed that corruption is not an Africa-only problem. African leaders and the ruling classes, however, have amassed substantial wealth through corruption. This stolen wealth gets diverted to private bank accounts overseas and it gets used to perpetuate a lavish lifestyle at the expense of the general populace.

**Corruption promotes poverty** because funds and resources earmarked for social uplifting projects and the delivery of services to the poor are diverted to corrupt officials. The government is therefore unable to deliver and this negatively affects development. This has enormous socio-economic consequences for any country. Poverty is an affliction that drains the economy because of the dependence on state resources. **It would appear to be in the interest of any government to eradicate other scourges such as corruption, in order to reduce the levels of poverty and dependence.**

The cost of corruption is huge. One interviewee mentioned that South Africa is a poor country, but it should be wealthy. Money lost through corruption is flowing out of the country. After an audit done on the Special Investigating Unit, by the Auditor-General a few years ago, it was estimated that **R7 billion had already been lost to the country through corruption.** In 1997 a large accounting firm estimated that **public sector fraud and mismanagement could exceed R10 billion.** **The cost of corruption is estimated at 7 percent of public expenditure.**

**Corruption damages a country's economy.** This happens when inefficient producers and suppliers remain in business because they have 'bought' their contracts to supply goods and services to the government. This practice is detrimental to an economy as money wasted on these practices can be used elsewhere. When the business community regularly bribes officials for favours from the government, economic incentives are distorted, entrepreneurship is discouraged, economic growth is slowed down, and it encourages criminal elements and distorts trade. Valuable revenue is also lost through corruption in customs and excise, by way of unpaid taxes and duties and the smuggling in to the country of contraband and fake designer goods. These practices affect the economy negatively because the legitimate traders are not generating as many sales as they could, and this impacts on their contribution to the treasury through taxation.

**The political consequences of corruption** that are pertinent to Africa generally, and to South Africa include the fact that because of the regular occurrence of corruption, civil servants' integrity is compromised to such an extent that they stop pretending to serve the public and serve their own interests instead. Public officials that serve their own interests by inflating the price of public goods, do so at the expense of the poor. Corruption encourages civil servants to become demoralised, and the state therefore, becomes unable to develop and sustain a professional, competent and efficient civil service. The public service eventually becomes an increasing burden on the rest of the country. This is because the country has to carry the costs of a bloated, inefficient, wasteful and parasitic public bureaucracy.

Also, corruption results in a country losing respect for the incumbent government and its institutions. If democracy is to succeed anywhere, the integrity and credibility of public institutions has to be installed and protected.

**The criminological consequences of corruption** include a proliferation of organised crime syndicates and criminal activities. The most profitable organised criminal activities are the illegal trading of drugs and arms. These are followed by fraud, money laundering and extortion. The consequences of these illegal activities are extensive. The economy and the stability of a region are threatened. Also, valuable, scarce police resources have to be diverted to fight cross-border organised criminal activity.

South Africa has experienced a meteoric rise in organised criminal activity since it became more open after 1994. Syndicates from all over the world ply their trade in this country. This problem is exacerbated by weak detection controls, underemployment, long and porous borders and pervasive corruption in the police and customs service.

Another cause for concern is the organised crime syndicate's ability to bribe politicians, bureaucrats, law enforcement agencies, customs officials and ordinary members of the public. The results of this are the undermining of business confidence, the jeopardising of foreign investment, the adverse affect on trade and tourism and domestic capital flight.

#### Police Corruption.

Grobler (Sangweni & Balia 1999: 36) sums up the consequences of corrupt police behaviour in South Africa succinctly: "they create such a negative perception in the public that this inevitably leads to a **breakdown in trust**. Obviously when this happens there is no interaction and the **public resort to vigilante actions** that in themselves are a form of terrorism. Private security companies mushroom, and through a possible improved level of service delivery, succeed in further eroding police authority. Higher salaries are offered and expertise is lost through resignations and early retirement."

Corrupt police officers team up with organised crime syndicates and corrupt civil servants. These corrupt public servants are getting increasingly involved in vehicle theft, hijacking and related crimes. Vehicles in South Africa are hijacked very successfully by national and international crime syndicates. The syndicates' task is made easier by the corrupt police officials and civil servants. These officials are given money or goods in exchange for ensuring the protection from prosecution of the syndicate members. Police complicity includes the destroying of dockets, forging evidence and documents, and issuing clearance certificates for hijacked vehicles. Corrupt police officials also tip-off syndicates about impending raids.

#### 7.3.6 Reactionary Structures.

As the debate continues as to whether there is more or less corruption now than there was pre-1994, the government has created a number of semi-autonomous anti-corruption agencies to try and deal with this scourge. There have also been a number of new Acts passed dealing with aspects of corruption and unethical behaviour in the public sector. Findings from some of the more pertinent agencies and legislation will be highlighted below.

The South African Police Anti-Corruption Unit is largely responsible for rooting out corruption in the police service. This Unit was set up to investigate corruption in the SAPS, initiate and implement an anti-corruption awareness programme amongst SAPS members, identify and report on dysfunctions, develop and maintain an effective and integrated information and management system to support corruption investigation within the SAPS and co-ordinate all anti-corruption investigations in the SAPS. This Unit is about to be disbanded nationally and incorporated into the Organised Crime Unit, further adding to the uncertainty and low morale experienced by members of specialised units.

Generally, most interviewees felt that the existing anti-corruption agencies had the potential to be effective given more resources. Others expressed the opinion that the agencies were largely ineffective because they did not have enough powers and they are under the control of politicians. The agencies have to do too much political pleasing. The Auditor-General was considered to be on a par with other Auditor-Generals around the world. It was felt that the audits of government departments were not always very thorough. The Public Protector is responsible for receiving complaints concerning the conduct of public officials. This office conducts investigations into alleged or suspected impropriety, irregularity or maladministration in any sphere of government or public affairs. The Public Protector has, however, been criticised publicly for exonerating high profile politicians implicated in wrongdoing.

The Special Investigations Unit, headed by Judge Willem Heath was widely considered to be the most effective anti-corruption agency. This agency had numerous successes with recovering state money and assets through civil proceedings, where civil action is instituted in a Special Tribunal. Crimes uncovered by this Unit are referred to the relevant prosecuting authorities for further action. A matter of great concern is the fact that a number of cases handed to the National Prosecuting Authority were never acted upon.

SCOPA (Special committee on Public Accounts), a parliamentary special committee, used to be extremely effective as a watchdog body. Directors-general of government departments had to give thorough explanations of their expenses and any errant behaviour was severely reprimanded. Today this committee is barely effective as an oversight body. This is as a result of the politicisation of the committee, largely as a result of the arms deal debacle. Parliament as a whole has lost effectiveness as an oversight body.

#### Civil Society.

There are 90 000 Non-Governmental and Community Based Organizations in South Africa, but very few of these concentrate on corruption. The Institute for Security Studies does research on aspects of corruption and anti-corruption legislation. The Public Service Accountability Monitor (PSAM) does an excellent job monitoring, reporting and following up on corruption in the Eastern Cape Government.

#### Legislation.

Some good legislation has been passed by Parliament over the last few years to assist in reducing public sector corruption. The *Prevention of Corruption Bill* was drafted to replace the existing *Corruption Act 92 of 1994*, which is highly ineffectual in achieving prosecutions for corruption. The new Bill brings back the common law crime of bribery, with very broad definitions. The *Protected Disclosures Act 26 of 2000*, focuses mainly on the protection of whistleblowers. Those who wish to report corrupt activities in their midst without being victimised or fired from their job. The *Public Finance Management Act of 1999* is an excellent piece of legislation basically ensuring that financial managers in government departments are held accountable for the financial control of their departments. This Act aims to ensure that all revenue, expenditure, assets and liabilities of that particular department are effectively accounted for and managed. This Act is still in the process of being implemented, and when it is fully implemented, there will be more effective punishment taken against errant officials.



### 7.3.7 Additional Findings.

#### The SAPS and Gangs in the Western Cape.

Gangsterism is a huge problem in the Western Cape. Periodically stories appear in the media concerning police complicity in gangsterism. This factor deepens scepticism amongst the communities living with gangs about the police service's desire or ability to solve the gang problem. It would appear to an outsider that the police have no interest in solving this problem. One interviewee explained that if the SAPS were to start taking the affected communities seriously, it would mean admitting that they (the SAPS) are inefficient.

Some corrupt police members have been 'bought' by the gangsters. These members tip gangsters off about impending raids. They 'lose' police dockets relating to gangsters, or they let evidence 'disappear'. In one case in 1999 a gang boss walked free after being charged with murder and kidnapping. The investigating officer in this case carried the docket, which had been tampered with, in his briefcase for eight years. The investigating officer was eventually suspended after the judge in the case described him as the least credible witness she had seen in her 30-year career.

Some of these corrupt police officials act with impunity. In another example, a gang boss from the Cape Flats (who has since been assassinated) had 42 gun licences. The law states that any person with a criminal record may not possess a firearm. The gang boss's family and friends would 'buy' a firearm licence from one particular policeman at the Athlone police station, and hand it over to the gang boss. Everyone in the community was aware of the fact that if someone wanted a firearm licence, they could get it from that particular police officer. It was also common knowledge in the Mitchell's Plain community that a member of their local police station was on the gangs' payroll. This policeman was recently due for a promotion.

#### The Arms Deal.

Findings pertaining to the multi-agency investigation into South Africa's controversial arms deal were particularly interesting. Reactions from interviewees to the investigation varied from definite cover-up,

to it being handled fairly well. There was also a belief that the investigators had a restricted mandate for investigation. This was disputed by another interviewee who believed the investigators had a very broad mandate for investigation but chose to investigate selectively. The disconcerting part of this entire investigation is that 100 allegations of wrongdoing in the arms deal were handed to the National Prosecuting Authority, some of these allegations were dismissed at the start of the multi-agency investigations. The remaining allegations seem to have disappeared and there is a very real fear amongst certain interested parties that these allegations will never be followed up.

It was widely agreed that the exclusion of the Special Investigating Unit from the investigation had a detrimental effect on the integrity of the investigation. The perception was that because the principles of the three agencies involved in the investigation were ruling party supporters, they could have succumbed to political interference. The SIU was the only agency that had the necessary powers to terminate contracts. Only the SIU could have investigated the validity of the procurement process. If it found that the process was irregular, the SIU would have invalidated the contracts. If the process was in order, contracts could have been invalidated because they were deemed to not be in the public interest. No other agency had the powers to investigate these aspects, and none of them could invalidate the processes and contracts.

#### Political Will.

The study has revealed that there is no **political will** to fight corruption. This is evident from examples of senior government officials who have been accused of wrongdoing, being moved to another good position in the civil service or receiving a golden handshake or even just a dismissal after committing serious corrupt acts. Images of government ministers' publicly embracing convicted 'comrades' does nothing to ease public doubts about governments commitment to fighting this scourge.

Some interviewees felt the government was arrogant and refused to accept the extent of corruption in the public sector, and what they were doing was purely window-dressing. Other interviewees felt that there definitely was the political will to tackle corruption and that the government recognised the problems and was reacting to them. Another point of view was that there was political will, but little

evidence of it. The co-ordination of the fight against corruption needs to be improved and there needs to be more high profile cases prosecuted.

## 7.4 RECOMMENDATIONS.

### 7.4.1 Literature Recommendations.

Ladikos (1999: 33) suggests eight pertinent points that can be used for the control and prevention of corruption, as proposed by the *Organisation for Economic Cooperation and Development (OECD)*. The first aspect needed to fight corruption is **political commitment**. This refers to leaders showing the **political will to fight corruption**. Leaders must be **free of corruption themselves and serve as role models to their staff**.

Secondly, an effective legal framework in the form of **rules, laws and regulations** should be in place to explain **standards of behaviour and ethics** to staff. More importantly, these rules must be **enforceable through investigation and prosecution**. Added to this is the importance of **effective controls** in all government departments. These controls must include **strict accounting practices and management accountability for the actions of staff**.

The third aspect necessary to fight corruption is **efficient accountability mechanisms**. These mechanisms suggest guidelines to follow for government activity, and they also follow up to see if the desired results have been achieved. These guidelines include administrative guidelines such as **audits and evaluations of a governmental department's performance**. **Parliamentary committees** are also important in checking up on the government, as are facilities which enable civil servants to "blow the whistle" on corrupt superiors or colleagues. The latter two suggestions are in place in South Africa but they both need strengthening. These accountability mechanisms should encourage **ethical procedures and make unethical ones easier to detect**.

Fourthly, there should be a **workable code of conduct** in place for civil servants. Different ministries will require different codes of conduct. South Africa does have a code of conduct in place for civil servants. It is also one of the few countries in the world that has included a code of conduct in place

for civil servants. It is also one of the few countries in the world that has included a code of conduct for its Executive and State President. Codes of conduct have been widely criticised because they are perceived as being unworkable, unused or unknown, also, they are not considered to be the ideal way of helping civil servants deal with ethical dilemmas. Fifthly, **professional socialisation mechanisms** should be put in place to teach civil servants about **ethics, proper conduct and public service values**.

**Supportive public service conditions** is the sixth contributing factor. Civil servants need to earn **fair wages, be motivated to do their jobs and to feel appreciated**. If this is not the case, they could find it very difficult to adopt initiatives aimed at instilling ethical behaviour. The seventh factor necessary in the fight against corruption is the necessity of an **ethics co-ordinating body**. These bodies take the form of parliamentary committees, central agencies and specially created bodies. Managers in the civil service are also responsible for instilling ethical behaviour in their subordinates.

Finally, Ladikos mentions the **importance of an active civil society** in the fight against corruption. Besides a **vigilant and informed populace**, it is also essential to have a **free and investigative media** that constantly monitors the activities of public officials. The media and the general public should have as much access to information as possible in order to empower themselves against corruption. Corruption-free civil service behaviour is only as effective as the **standard of implementation of ethical behaviour, laws and controls**. This is particularly essential in developing countries, where the correct ethical conduct will eventually result in good governance. It is also important to have **good management systems that prevent corruption, rather than trying to find those responsible after corruption has occurred**.

Mbaku (1996: 5) makes some pertinent suggestions to assist with the controlling of corruption. These include the fact that when a decision is made to hire a civil servant, the decision should be based solely on **merit and qualification**. Also, senior positions in the civil service and government should be given only to those candidates who have proved that they have the ability and the expertise to effectively do their duty. Civil service positions must never be used as **rewards for political support or exchanged for bribes**. The author adds that **"incompetent, unqualified and unprofessional civil servants contribute significantly to failures in development and force the country to remain essentially underdeveloped."**

Grobler (Sangweni & Balia 1999: 40) stresses the importance of **careful staff selection**. The author mentions that budgetary constraints should never influence the **quality of personnel hired**. **Full background checks must be conducted on potential employees, especially when hiring financial staff**. **References other than those supplied by the candidate should be contacted**. It must be ascertained if the applicant has any previous **criminal convictions**. The author even suggests visiting employees' homes to ascertain whether they are living within or beyond their means.

Malgetla (Sangweni & Balia 1999: 161) proposed an action plan to be used in combating corruption. These proposals include the following:

- Government must ensure all state employees are trained on the **nature of control measures and the need to implement them**.
- **Public sector agencies must streamline discipline and internal controls**.
- **Anti-corruption agencies must have guidelines in place to:**
  - assist employees and the public to **recognise corruption**,
  - help the public and civil servants to **report corruption** more easily,
  - **protect whistleblowers**,
  - highlight action to be taken after corruption has been reported,
  - specify the **nature and extent of assistance** available from each agency,
  - highlight the benefit of anti-corruption measures to the state and the public.
- **Anti-corruption agencies should improve their coordination**, particularly concerning the exchange of information.
- Anti-corruption agencies must assist with **speeding up criminal prosecutions**.
- Agencies must encourage **greater international cooperation**.
- **The public sector and civil society must work together to fight corruption**.

Moodie (Williams 2000: 186) suggests that not only is a more **open government, organised opposition and a free press** necessary in the fight against corruption, but that a **permanent investigating body INDEPENDENT OF BOTH GOVERNMENT AND POLICE**, be put into place in any country experiencing a significant corruption problem.

Ebrahim (Sangweni & Balia 1999: 79) emphasises the importance of corruption prevention. This can be achieved by making sure the public service is transparent. It must be held accountable for its actions and be open to public scrutiny. The public must be allowed to participate in policy development. Also, sufficient resources must be allocated to the autonomous anti-corruption agencies. The effective enforcement and implementation of anti-corruption legislation must be ensured.

Grobler (Sangweni & Balia 1999: 43) adds that the prevention of corruption is more readily achieved by basic management skills such as supervision and control. By training staff well and instilling loyalty in them, a sense of pride can be created which may reduce the temptations to succumb to corrupt offers made by members of the public. The way to achieve this almost idyllic situation is through active anti-corruption campaigns within the public sector that are publicly supported by public sector management. If there is a strict code of conduct and a policy of zero tolerance for corruption, a reward system should be put in place. The latter would encourage the exposing of corruption within government departments.

### **Police Corruption.**

Miller in *African Security Review Volume 8 (3) 1999* mentions four pertinent areas that need to be focused on in order to reduce police corruption. These areas include: recruitment, reducing opportunities for corruption, detection and deterrence of corruption, and reinforcing the motivation to do what is morally correct.

#### **Recruitment.**

Only individuals that display the highest moral character relating to their duties should be employed in a police service. Potential police members must be able to resist temptations to abuse their powers for financial gain. Their loyalty towards fellow police members should not interfere with their moral duty to expose corruption amongst their colleagues.

### Reducing corruption opportunities.

Certain **opportunities** for corruption by police members have been largely removed through **tighter legislation**. Another method of reducing opportunity includes the **regular rotation of police personnel in high crime areas**. South Africa, like many other countries, has high levels of corruption in economic and public institutions. This situation usually mirrors an equally high level of opportunity for police corruption. In order to reduce the opportunity for police corruption, **strategies and policies** must be put in place to reduce the **opportunities for corruption in South Africa's main economic and public institutions as well**.

### Detection and deterrence.

The detection and deterrence of police corruption is more readily achieved through **institutional mechanisms of accountability, and through policing techniques such as the investigation of complaints, the use of informants, auditing, surveillance and testing**.

Accountability mechanisms include **internal mechanisms**, for example, police members who are **accountable to their superiors**, and **external mechanisms** where police members are **accountable to government and the public**. Mechanisms of accountability should also include **joint community and police institutional structures**. These structures will assist in establishing **cooperation between the police and the community**. The latter is essential for successful policing, and includes a forum for the community to express their opinion and grievances concerning their local police service. A community that is hostile towards the police will more likely protect criminals, thereby contributing to an 'us-them' mentality. The latter results in an increasingly secretive police service in which corruption is more likely to occur.

Other techniques of detection and deterrence that need to be applied to reduce police corruption include not only routine actions such as **the investigation of complaints against police members, but also, the granting of indemnity against prosecution of officers who implicate corrupt colleagues, and an elaborate testing system for corruption**, (testing may include the controversial practice of entrapment).

Moral correctness.

The author stresses that **“the only force strong enough to resist corruption is the moral sense – the desire to do what is right and avoid doing what is wrong.”** In order to encourage police members to behave more morally, a fair and balanced system of **rewards and sanctions** should be in operation. A balance must be achieved between severe sanction for genuinely corrupt officers and lighter sanction or forgiveness for those who make honest mistakes. The author adds that **“only by developing such a mix will the honest and decent majority of police officers be won over; the majority who must be relied upon to combat, contain and reduce police corruption.”**

It is essential that ‘the desire to do what is right’ be constantly reinforced through **ethics training** for police members.

Van der Westhuizen (2001: 36) adds that police officers are obliged to adhere to the **ethical guidelines** prescribed by the broader public administration field. Police members can maintain ethical conduct by adhering to **ethical principles and values** as prescribed in the Constitution, or by following a designated **code of conduct**. **Legislative aspects such as the *Public Service Act 103 of 1994* can also assist in encouraging ethical conduct.** It is essential that all police members understand the purpose of **ethical codes and disciplinary measures as instruments to encourage ethical behaviour.**

#### 7.4.2 The Respondents’ and Researchers’ Recommendations.

There are many overlaps with the recommendations made by interviewees and the recommendations suggested by the researcher. As a result, these will be presented together, with the relevant recommendations made by the interviewees attributed to them.

The deterioration of morals and ethics in the public service, mirrors behaviour in South African society generally. The work ethic in the public sector is often non-existent. There is a **code of ethics** specifically designed for civil servants and public officials. This ethics charter needs to be thoroughly work-shopped throughout the country, to assist staff with gaining a clearer understanding of what is expected of a public servant, as well as explaining the consequences of unethical and corrupt



behaviour. Political leaders and senior government officials must **lead by example**. If they are involved in corrupt activities, their subordinates will see nothing wrong with emulating these same practices.

Lack of financial accountability, reluctance or refusal to follow procedures and refusal to implement controls are common factors that contribute to corruption. It is essential that the *Public Finance Management Act* is fully implemented as a matter of urgency and that if financial managers in government departments or their staff do not follow procedures or implement controls they get punished accordingly. **Better supervision** by managers and supervisors in government departments is needed. A department that, for whatever reason, has ineffective management will experience corruption. Very often these managers are untrained, ignorant or inexperienced and do not know how to recognize corrupt activity by their staff. **Training for public sector management and skills training for public servants and officials** needs to be ongoing. One interviewee added that the Public Service Commission is working on developing management capacity in the public sector. Tighter supervision and control will assist in **reducing the opportunities** for staff to commit corrupt acts.

In situations where it will make a positive difference, **wages need to be increased**. This applies mainly to the lower ranks of the civil service. Public Officials in South Africa are considered to be well-paid, but more poorly paid nurses, teachers and the lower-ranks of the police service may be discouraged from committing corrupt acts by earning a decent wage. Concerning corruption being more rife in bloated, ineffective bureaucracies, the latter needs to be **streamlined, with dead wood rooted out**. This will contribute to the reduction of bribery, as citizens would not have to pay to speed up bureaucratic processes. In South Africa, laying-off ineffectual, apathetic staff could be more easily achieved by **relaxing some of the more inflexible employment labour laws**. Also, the appointment of staff in government and the civil service should be guided entirely by **merit, experience and capability**. One interviewee recommended that businesses found guilty of bribing government officials in order to win a lucrative tender, should be placed on a blacklist. Any business appearing on this blacklist will then in future not be eligible for any business from government.

Another interviewee felt that both civil society and the media in South Africa were 'gutless'. They are not involved enough in the fight against corruption. The same interviewee felt that there should be a

**lot more public involvement in the highlighting and fighting of corruption, especially through protest actions. The media must remain free to follow up and report on the activities of public officials and expose any corruption perpetrated by these officials and politicians.**

Because most corruption occurs during government's procurement processes, it is essential for these processes as well as the awarding of tenders to be **transparent and open to scrutiny by interested parties**. This includes major procurement such as buying armaments. To avoid the kind of regular and unacceptable corruption committed by individuals who win tenders to build low-cost houses, **an independent team of inspectors should regularly visit the project, from inception to finish.**

Concerning the police service, one interviewee expressed the opinion that the police's Interim Promotions Policy and Senior Appointments Policy must be reviewed as a matter of urgency. The latter has the potential to contribute to many police member's feelings of job insecurity, and low morale. It was also suggested that those members who do not qualify for promotion mainly because of affirmative action, be **promoted monetarily within their ranks**. As there are limited ranks they can go to, many Inspectors, Captains and Superintendents do not necessarily want a promotion but should receive a monetary promotion for good work done. This will make them feel more developed and appreciated.

Other ways of attempting to curb police corruption is by **thorough training of new recruits, including literacy training**. Thorough screening of candidates should be done before they join the police force. A minimum requirement for joining should be that the candidate has no previous criminal conviction. Also, when an officer is suspected of committing corruption or corrupt acts, **he/she must be suspended immediately**. Concerning the latter, too many corrupt police officials remain in their positions until their disciplinary procedures or criminal cases have been completed. It would appear that the only time a police official is immediately suspended is when they talk to the media (certainly in the Western Cape).

Concerning the department of Correctional Services, **a total purge of the entire department seems to be the only solution to the pervasive corruption in this department**. Popcru should also be

**disbanded because of their involvement in much of the corruption exposed by the Jali Commission.**

Other contributing factors to corruption such as the accumulation of wealth, the pursuit of status and status symbols and the endless quest for material gain are societal issues. The only way to try and minimise these factors are for communities to go back to basics. They need to instil values such as **community spirit, importance of family or even religious values** in their children to detract from the dominance of economics.

Corruption promotes poverty. Poverty drains the economy because of the dependence on state resources. It is therefore in any governments' interest to **eradicate scourges such as corruption, in order to reduce poverty and dependence.** Because of the vast amount of organised criminal activity in South Africa, it is essential that the South African border patrols are stepped up. **The South African National Defence Force should be used for this purpose.**

**Anti-corruption agencies in South Africa must be totally independent to be highly effective in reducing the incidence of corruption in the public sector. Independent investigations into corruption must be established and promoted. The existing agencies need more resources, less political interference and more powers. They should ideally not be financed by the state at all. Parliament must reclaim its good oversight role from party political pettiness and partisanship.**

Instead of churning out copious amounts of legislation and amendments to existing legislation, Parliament should first ensure that existing legislation is **implemented properly and that this is adequately resourced, otherwise the legislation is ineffectual.** Despite legislation protecting whistleblowers, it is apparent that some whistleblowers in the police and the public service are still being victimised. The *Access to Information Act* has also not been a practical success. This Act needs to be fully implemented as a matter of urgency. One interviewee suggested that if someone accused of being involved in corruption makes a full disclosure, they should be granted immunity from prosecution.

The lack of deterrent, lack of disciplinary measures and the lack of judicial measures against corruption is a great cause for concern. This study has pointed out that there is too much political tolerance of corrupt colleagues. There have also been many examples given of serious corruption incidents that were never followed up or sanctioned by senior officials or the National Prosecuting Authority. **This unacceptable situation needs to be turned around immediately.** One interviewee suggested that **high profile corruption cases need to be prosecuted. Some of the 'big fish' need to be punished.** It is therefore essential that the government shows the **political will to deal with this scourge decisively.**

Finally, South Africa desperately needs a **separate set of statistics for the crime of corruption, in order to measure its extent. This will assist in the attempts at trying to separate reality from perception.**

#### **7.5 CONCLUDING REMARKS: SUGGESTIONS FOR FURTHER RESEARCH.**

A qualitative study needs to be done on offenders, those who commit corruption and corrupt acts, in order to obtain first hand knowledge of their motives and crime experiences. Also, the victims of corruption need to be studied in order to ascertain the impact corruption has on them. These in-depth studies are necessary to extend the Criminologist's knowledge on corruption.

Other significant aspects touched on in the study that need further scrutiny, include the issue of 'entitlement' often used to justify the committing of corruption and corrupt acts. The reaction by the National Prosecuting Authority to corruption cases handed to them, and the processes they follow to decide which cases to prosecute and which cases to throw out, also needs to be scrutinised. The adjudication of corruption cases is another area that needs close scrutiny. The disparities in sentencing of corruption cases need closer, more thorough analysis.

From this study it is evident that corruption is embedded in the public sector of South Africa. It is therefore imperative to conduct research on corruption on an ongoing basis. Champion (2000: 68) emphasises the fact that research advances our knowledge, raising our level of certainty about why

events that are of interest to us occur in the ways that they do. Criminologists can play a constructive role in policy recommendations for effective control.

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2002-10-22

TO WHOM IT MAY CONCERN

**STUDIES - CRIMINOLOGY : ELIZABETH GROBLER NO. 5242916**

Ms. Grobler has honoured this office several visits since May 2001. During these extended sessions the following information from the work that is being done by the Anti Corruption Unit was required by Ms. Grobler, namely :

1. Studies of completed case dockets [corruption cases];
2. The modus operandi of corruption as it manifests focussing on the department of SAPS and the Criminal Justice System;
3. Statistics;
4. Approaches to the investigation of corruption;
5. Obstacles encountered within the investigation of corruption;
6. The outcome of court cases [convictions];
7. Legal aspects

I have recorded several of Ms. Grobler's visits on 2001-05-18, 2002-09-06, 2001-09-10, 2001-09-11, 2001-09-12, 2001-09-14, 2002-08-20 and finally on 2002-10-22.

Should you require any more information you are welcome to contact my office at number 021 948 7388.

..... SUPERINTENDENT  
acting/PROVINCIAL COMMANDER-ANTI-CORRUPTION UNIT  
WESTERN CAPE

J. VISAGIE

## **INTERVIEW GUIDE.**

### **GENERAL QUESTIONS.**

#### **1) Corruption in Africa.**

- The nature of corruption in Africa.
- The extent of corruption in Africa.

#### **2) Corruption in South Africa.**

- How extensive is corruption in South Africa, both private and public sector?
- How extensive is corruption in the public sector alone?
- Rate the seriousness of corruption on a scale of 1 to 10 (low to high).
- Why is corruption such a problem in SA? Perceived or real.

#### **3) Corruption in the Public Sector.**

- How is corruption committed in the public sector/ give examples.
- Which levels of government are the most corrupt, central, provincial, parliament, local?
- Which departments/ministries are perceived (or otherwise) to be the most corrupt/
- How is the committing of corrupt acts perceived by perpetrators? For example, can the state really be a victim? Is it a fair form of redistribution?
- Why are some provinces more corrupt than others? (perception or fact). For example, Eastern Cape, Mpumalanga and others. Western Cape and Gauteng considered less corrupt. Inclusion of Homelands?

Why is there such a poor record of reporting corruption? In Africa only 2.4% of cases on average are reported to the police, 3.5% in Asia, 3.4% in Latin America and 1.4% in countries in transition (Del Frate).

- How measurable is corruption?

#### **4) Corruption Causation.**

- Generally, mention possible causes of corruption in Africa
- Generally, mention possible causes of corruption amongst South African public servants
- Generally, mention possible causes of corruption amongst South African politicians.

#### **5) Consequences of Corruption.**

- Generally, what are the consequences of corruption for Africa.
- Generally, what are the consequences of public sector corruption for South Africa?

#### 6) Agencies.

- How effectively is corruption being addressed in South Africa?
- How effective are the multitude of agencies dealing with corruption?
- How independent are these agencies from government interference?
- The Arms Deal investigation was a good test for three agencies, how do you think it was handled?
- How effective are non-governmental anti-corruption agencies?

#### 7) Legislation.

- How effective is the existing anti-corruption legislation in combating corruption?
- Are you familiar with the Prevention of Corruption Bill?
- If so, is it going to make any difference in the fight against corruption?
- How safe are whistleblowers, despite legislation protecting them.

#### 8) Recommendations.

- What can the government do to improve the efficacy of the fight against corruption in the public service?