TENDERS AND CORRUPTION IN POST-APARTHEID SOUTH AFRICA: RETHINKING AFRICAN ETHICS AS A PANACEA FOR CORRUPTION

By

SAMSON NELSON THEMBINKOSI ZONDI
205501884

Submitted in Partial Fulfilment of the Academic Requirements for the Degree of

MASTER OF ARTS

in the Subject of

ETHICS

at the

SCHOOL OF RELIGION, PHILOSOPHY AND CLASSICS
IN THE COLLEGE OF HUMANITIES
UNIVERSITY OF KWAZULU-NATAL
(Pietermaritzburg Campus)

SUPERVISOR
DR. MUNYARADZI FELIX MUROVE

PIETERMARITZBURG
October 2012

DECLARATION

As required by University regulations, I hereby state unambiguously that this work has not been presented at any other University or any other institution of higher learning other than the University of KwaZulu-Natal, (Pietermaritzburg Campus) and that unless specifically indicated to the contrary within the text it is my original work.

TEMBINKOSI ZONDI

08 October 2012

As candidate supervisor I hereby approve this dissertation for submission

----

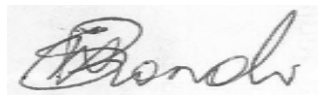## DR. MUNYARADZI FELIX MUROVE

08 October 2012

CERTIFICATION

We the undersigned declare that we have abided by the School of Religion, Philosophy and Classics in the College of Humanities, University of KwaZulu-Natal's policy on language editing. We also declare that earlier forms of this dissertation have been retained should they be required.

GARY STUART DAVID LEONARD

08 October 2012

THEMBINKOSI ZONDI

08 October 2012

ACKNOWLEDGEMENTS

Let me begin by acknowledging my father, Michel Mandlakayise Zondi who did not spare any quarter in doing his best to assist my late dear mother, Phyllis Philisiwe Mkhize Zondi, who passed away in 2007. Truly speaking, my dear mother gave me the strength to persevere whenever I felt like giving up.

My father, working hand-in-hand with my mother, did everything within his power to guide me on my long walk to adulthood. Thank you for raising me and looking after my welfare. Together, they made me into a leader and a responsible father. I am today a community activist and an academic in the making because of their commitment to my life and education.

Special thanks go to my supervisor, Dr. Munyaradzi Felix Murove, who did everything in his power to give me the financial, academic and fatherly support I needed. He encouraged me when I felt like giving up. By standing on his big and warm shoulders, I am today able to see far ahead. I shall be forever indebted to him.

I would be making a serious mistake by not acknowledging the mother of my twins Nombuso Mlambo. She gave me and my children the necessary emotional and otherwise support. I thank her for being there for my twins since I had to live many kilometres away from them due to circumstances that were beyond my control as a result of this research work.

I would also like to acknowledge the Mount Elias Community and the African National Congress and its KwaZulu-Natal and National Government which contributed in making me the responsible, educated, all-round community leader

that I am today.

Finally, I want to thank all those who made it possible for me to study for my Master of Arts degree. My gratitude goes to Rev. Gary S. D. Leonard who read my final draft and gave me very useful editorial assistance with academic referencing, structure and layout, language editing, and proof reading.

Thembinkosi Zondi

08 October 2012

ABSTRACT

The African National Congress inherited a country with high levels of unemployment, deepening poverty and inequalities. These socio-economic challenges were the result of the previous apartheid regime's reliance on racism to conduct its affairs such as the distribution of basic services and socio-economic wealth of the country. As such, the African National Congress (ANC) came up with different policies and programmes aimed at significantly transforming these skewed and racialised socio-economic conditions.

Socio-economic empowerment was identified as one of the key programmes to be championed by the new democratic government led by the ANC. To this end, tenders or public procurement formed a vital element of the economic strategies that were put in place as a means of empowering black entrepreneurs with a view that they will in turn empower others through the means of 'trickledown' economics. Tender guidelines were designed to advance this programme in a transparent, fair and cost-effective way.

Contrary to this noble idea, the practice of tenders has become synonymous with acts of bribery and financial kickbacks which are serious forms of corruption. In this regard, the electronic and print media report daily about government officials, public servants, politicians and business people who have found a way of manipulating tender rules and other economic empowerment policies to enrich themselves at the expense of the people of South Africa.

This study focuses on tenders and corruption in the post-apartheid era. It reviews key programmes such as the Reconstruction and Development Programme (RDP), *Batho Pele*, *Masakhane*, Affirmative Action (AA) and Black Economic Empowerment (BEE). The study claims that while these programmes were important, the lack of moral or ethical leadership at all levels of society ate into the moral fibre upon which these programmes were based. On the basis of the evidence presented, this study

concluded that the ANC-led government was correct in using public procurement as one of its methods to address the legacy of Apartheid. However, the research study also confirmed that corruption is essentially a moral or ethical problem and as such there should be an ethical solution to it. While there are many ethical perspectives, this study found that African ethics in general and *Ubuntu* in particular is the most relevant type of ethic that could be used as a panacea to corruption.

Key Terms: *Affirmative Action; African Ethics; Batho Pele ; Black Economic Empowerment; Broad-Based Black Economic Empowerment; Corruption, Government Officials Guidelines; Masakhane; Moral Problem; Municipal Finance Management; Practice of Tenders; Procurement Policies; Post-apartheid; Public Finance Management; Tenderpreneur; Service Delivery; Socio-economic Development; South African Constitution; Supply Chain Management; Reconstruction and Development Programme; State Organs.*

GLOSSARY OF ACRONYMSAND ABBREVIATIONS

AA	Affirmative Action
ANC	African National Congress
BBE	Black Economic Empowerment
BBBEE	Broad-Based Black Economic Empowerment
DPW	Department of Public Works
GDP	Gross Domestic Product
GEAR	Growth Employment and Redistribution
MEC	Member of the Executive Council
MFMA	Municipal Finance Management Act
NAIL	New Africa Investments Ltd.
PFMA	Public Finance Management Act
PPPFA	Preferential Procurement Policy Framework Act
PSA	Public Services Association
RDP	Reconstruction and Development Programme
RIMS	Rational Interaction for Moral Sensitivity Strategy
RPF	Roux Property Fund
SANLAM	Suid-Afrikaanse Nasionale Lewens Assuransie Maatskappy
SAPS	South African Police Services
SCM	Supply Chain Management

TABLE OF CONTENTS

CHAPTER ONE: GENERAL INTRODUCTION

CHAPTER TWO: TENDERS AND ECONOMIC EMPOWERMENT IN POST-APARTHIED SOUTH AFRICA

CHAPTER THREE: THE CONTRIBUTION OF TENDERS TO CORRUPTION

CHAPTER FOUR: RETHINKING AFRICAN ETHICS AS A
PANACEA FOR CORRUPTION

CHAPTER FIVE: CONCLUSIONS AND RECOMMENDATIONS

REFERENCES

CHAPTER ONE

GENERAL INTRODUCTION

1. Introduction

As an active member and branch leader of the African National Congress (ANC), the researcher supports its vision of creating a better life for all. The researcher also supports the use of public procurement as one of its key policy initiatives of creating business opportunities for black people who, ideally, should in turn empower others. However, the researcher has noted with sadness various print and electronic media reports about some senior politicians, who in collaboration with government officials and business people have manipulated the tender system so as to enrich themselves and their friends in crime. The misuse of the practice of tenders does not only stand in total opposition to one of the ANCs election promises of running a transparent and people-centred government but, it is gradually eroding the moral fibre upon which the democratic government is based. As a result, the researcher is interested in finding out if the practice of tenders has promoted corruption in post-Apartheid South Africa. Integrally linked to this research interest is the need to assess the extent to which empowerment policies have been abused and manipulated by some corrupt politicians, government officials and business people. Finally, while the researcher agrees that corruption is a moral problem, the former (i.e. the researcher) wanted to find out if African ethics could be used as a panacea to corruption.

2. Background to the Study

Corruption takes on many forms in post-Apartheid South Africa. However, it appears that the manipulation of the practice of tenders has become one of the main contributory factors in the scourge of corruption that faces South Africa currently. This is occurring despite the fact that the post-1994 South African democratic dispensation opened a space for people-centred socio-economic programmes,

accountable, transparent and corruption-free government in order to redress the economic imbalances that were caused by Apartheid. To this end, certain economic empowerment policies and the work ethic were adopted by the African National Congress-led post-Apartheid state. Some of these key policies are the Reconstruction and Development Programme (RDP) and Black Economic Empowerment (BBE); Affirmative Action.

These policies were supposedly intended to benefit the previously excluded population, especially Africans, with the hope that they will in turn benefit others, i.e., through the so-called instrument of "trickle-down economics" (Jack 2007:5-7). The 2008 Department of Environmental Affairs and Tourism report notes that "public procurement accounts for between 11% and 15% Gross Domestic Product (GDP)". It is for these reasons that the democratic state had to employ procurement policies to empower black people. This meant that the government would outsource most of its services to private firms in the form of tenders and contracts as a means of addressing the economic imbalances of the past.

A tender refers to a formal offer of money or service in payment for an obligation. *The Concise English Oxford dictionary* (2006) defines a tender or to tender as a written offer to contract for goods or services at a specified cost. The Preferential Procurement Policy Framework Act, No 5 of 2000 states that a tender is, "a written offer or bid in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of services or goods" (2001:4). This guideline outlines the criterion that must be followed when awarding tenders particularly through the application of a preference points system that favors firms which are owned by historically-disadvantaged individuals.

The Framework for Supply Chain Management Act (2003) provides a governance framework which guides the manner in which government contracts or tenders are to be awarded and how consultants are to be appointed. For example, the Act requires that bid committee members must declare their interests and that firms or companies that appear on the list of restricted suppliers must be automatically disqualified. Moreover, the guidelines state that after an identification of a certain service or job that must be done and the budget (which must not be exceeded) has been approved, an

advertisement with a closing date inviting bidders appearing on a given database must be released. Companies that qualify must subsequently be shortlisted and the company that offers to provide such a service at the lowest price must be awarded without necessarily compromising other important principles such as efficiency and quality when providing services or goods. However, there are lots of print and electronic media reports about politicians, government and public officials enriching themselves through the manipulation of the stipulated guidelines, thereby being disloyal to the confidence assigned to them by the people.

3. Identifying the Research Problem

As mentioned above, there are examples of allegations in which tender guidelines appear to have been deliberately undermined or violated by senior politicians working hand-in-hand with public officials and business people. The recently publicized arrest of the Northern Cape chairperson of the ANC on the allegation that he used his position to illegally award tenders is a classic example of how these guidelines are manipulated (*City Press*, 14 November 2010:1). Another example concerns the BOSASA Group (a facilities management company) for allegedly paying bribes to a former Correctional Services senior official so that the company receives an unfair advantage to obtain tenders from the Department of Correctional Services from 2004 to 2008 (*City Press,* 20 March 2011). These examples demonstrate the extent to which the process of awarding tenders in post-Apartheid South Africa has been corrupted by some public servants and politicians in collaboration with the private sector.

It is thus no wonder that corruption is now ranked as the third largest obstacle towards conducting business in South Africa. Concurrently, South Africa is ranked fifty-fifth out of 180 countries by the Transparency International 2009 Corruption Perception Index (*Mail and Guardian*, 07 January 2011:21). Corruption undermines the 1996 South African Constitution heralded as one of the most progressive in the world. For example, Section 195 (1) (a) of the Constitution of the Republic of South Africa Act 108 of 1996 which outlines the basic values and principles that govern public officials, provides that "…a high standard of professional ethics must be promoted

and maintained" (1996: 62). However, the practice of tenders has unduly benefited those elected and appointed to maintain a constitutionally-required high standard of professional ethics. This raises moral and ethical questions as to whether it is morally justifiable that government officials and politicians should continue to benefit from the practice of tenders.

Despite the fact that people have different views about what should be done to curb corruption, it nevertheless appears that corruption is a moral problem which is a contributory factor to the perpetuation of social ills which continue to engulf the democratically-governed South Africa. For this reason, corruption has become one of the most discussed topics by nearly all South Africans. Some have argued that the quest towards accumulating immense personal wealth by state officials, politicians and some "tenderpreneurs" is part of the reason for the continued manipulation of procurement procedures.

Corruption not only erodes the confidence of ordinary South Africans in public or government officials and politicians but the fight against corruption is also expensive and an unnecessary drain on state funds. As a result, large sums of money are being spent in fighting corruption instead of providing basic services such as free/low cost housing, basic health care, free education and infrastructural development among other things. For example, Pravin Gordhan (2010:2) and the Ernst and Young Eleventh Global Survey (2010) noted that corruption and fraud and the fight against it siphons scarce resources away from the intended people thus militating against development. It is estimated that an average global loss from fraud per each institution is ZAR 16.5 million (US$ 2.75 million) and conducting forensic audits, excluding prosecution and sentencing, costs at the very least ZAR 40 million (US$ 7 million) per year.

Corruption is cancerous and contagious given the fact that once tolerated, it can consume the entire moral fibre as well as the socio-economic existence of human beings. The toleration of corruption in the public sphere results in corruption being extended and entrenched in the private sector. For example, the *City Press* newspaper reported that Buhle and Ingwe Waste received an unfair advantage when they were awarded a ZAR 4.1 million a month tender to dispose of medical waste from

Limpopo's forty public hospitals (*City Press*, 21 November 2010:8). It was further reported that a shareholder from one of these companies was also contracted by the Limpopo government to develop a tool for evaluating tenders. This was a practice in which a conflict of interest should have been declared. Thus, people with no political connections or family relationship with any public office bearers get marginalized irrespective of their capabilities. From a moral point of view, corruption militates against morality because being a good person or citizen could make people to think that moral righteousness equals self-defeatism. Put simply, paying kickbacks could be viewed as an effective way to growing one's business as opposed to conducting business in an ethical and honest way. The unethical and corrupt way of bidding for government tenders, if not curbed, could further erode the moral foundation upon which public procurement was founded. The above media reports about corruption and tender fraud beg the moral question that: Is it morally correct for state officials, politicians and their families to be involved in tenders? A serious problem that has been observed is that tender practices have become another form of corruption in post-Apartheid South Africa where business people are unlikely to be awarded a tender without paying kickbacks or through political or other connections or insider information.

As a result, there is a public outcry that political affiliations or political connections are beginning to be seen as necessary elements in meeting one's personal interests such as the accumulation of wealth. This public outcry is validated by examples such as the ones where an increasing number of politicians and public servants that are elected and appointed into public office are accused of having abused the power that is vested in the positions of authority they occupy. The abuse of public office is in direct opposition to the oath or pledge that public servants and politicians make upon their respective appointments. The essence of the oath or pledge is that they will manage public affairs in a transparent and fair manner while conducting themselves in a way that is above reproach. They must also be able to account to the public or general population. However, most of these politicians and state officials end up dishonouring their oaths because of a corrupt and unethical desire to fulfill their personal gains. Consequently, it is no wonder that the 2011 Public Services Commission Report noted that between September 2004 and 31 June 2010, a total of 7, 766 cases of corruption have been reported to the National Anti-Corruption Hotline

(2011:1). The report further noted that the common forms of corruption are: "fraud and bribery (1511), mismanagement of Government funds (870), procurement irregularities (720) and appointment irregularities (627)" (2011:1). This report confirmed that the majority of cases of corruption by public officials and politicians are in the public procurement of goods and services. The reason for this could be based on the fact that the state usually outsources (or procures most) of its services and goods from private business people through tender processes. As such, public procurement, contrary to the noble idea of using it as one of the important economic empowerment tools for black people in general and Africans in particular, is now misconstrued as one of the 'get-rich-quick' schemes of some sort. The lack of commitment to a strong culture or ethic of *Ubuntu* upon which the democratic government (and subsequent empowerment programmes) has been founded is assumed to be another contributory factor of corrupt behavior. Accordingly, a research question that emanates from this is whether or not a relationship between corruption and the tender process exists? This is the one of the problems that this research will seek to investigate with an intention of assessing the possibility of rethinking African ethics as a panacea to corruption.

4. Literature Review

Corruption is a wide area of study which usually raises a number of ethical questions. My review of literature in this study will be limited to corruption and tenders. Other scholarly works will be consulted on the basis of their relevance to the study.

The Report of the Common Wealth Expert Group on Good Governance and the Elimination of Corruption that was released by the Commonwealth Secretariat (2000) defines corruption as the abuse of public office for private gain. However, it cautions that this definition has been extended to also include the abuse of both public and private offices and that a distinction must be equally made between corruption (informed by personal benefits) and political corruption (informed by political gain). Joseph Nye (1967) and the *Transparency International Book of 2000* defines corruption as conduct that diverges from the regular duties of a public role because of private-regarding (family, close confidential cabal), fiscal or status benefit, or breach

the rules against the exercise of private-regarding influence. Put simply, corruption is a misuse of a position of authority for personal gain. What runs across the above definitions is a general understanding that corruption refers to the abuse of an office of authority in general and public office in particular for the purposes of personal material gain. What can be deduced from these two definitions is that, despite the minor differences, corruption refers to the use of office for purposes other than the ones that are expected from that office.

It is for this reason (as well as other reasons which are beyond the scope of this present research) that Fanon (1963:149) has observed that:

> Inside the newly (independent) regime, there are varying degrees of enrichment and acquisitiveness. Some are able to cash in on all sides and prove to be brilliant opportunists. Favours abound, corruption triumphs, and morals decline.

A number of scholars have expanded Fanon's argument by re-emphasizing the fact that some of the developmental challenges confronting many post-colonial African governments emanate from the nature of the colonial state which rely on greed, corruption and the unethical manipulation of leadership positions for personal gain. Moeletsi Mbeki (2009) contends that most of these new pseudo-bourgeoisies rely on political networks in order to get first preference where procurement is made or bidding for public tenders. This situation has a potential of promoting a culture where corruption becomes acceptable as the normal way of conducting business.

David Masondo (2010) in an attempt to make us understand corruption identifies two approaches to corruption. The first approach is the individual approach which views corruption as an individual challenge and emphasizes that the main root cause of corruption is embedded in the trans-historical and universal human nature which is connected to human greed and self-centeredness. The second approach is called the institutionalist approach which contends that state institutions and its policies which impede on the economy result in corruption and further sink poor people into poverty. He went on to add that the foregoing arguments are not revealing the entire story in relation to corruption hence they should merely be viewed as ideological clarifications (2010). Masondo further states that, to understand the root causes of corruption and

also to be better equipped to deal with it, there should be recognition that corruption is a structural problem directly linked to the political economy and its values, hence addressing it requires a holistic approach.

Munyaradzi Felix Murove (2010) uses a public conversation that took place between two laypeople—about how quick Black Economic Empowerment (BEE) programmes seem to make an individual rich overnight—thereby exposing the serious ethical flaws with the policy of BEE. Murove further states that the indigenisation policy has inevitably produced a stratum of African capitalist who, consequently, become sympathetic to other capitalists (2010). It must also be noted that there are many African independent states that have faced more or less the same challenges that confront South Africa today.

Nzimande (2010:1-3) has argued that:

> …in this epoch of history, there is a huge ideological offensive, especially targeted at young people who are the future leaders, to push them towards the idolization and the glorification of wealth, obscene demonstration of consumption, and generally the endorsement of a 'get rich quick' mindset. This mentality is reaching out to many if not all the curves of the society, including academic institutions and some religious organizations—areas that ordinarily have been thought of as repositories of the highest standards of morality.

It is therefore not sufficient to wage a struggle against corruption outside deepening ideological work in the broader society since corruption is often a reflection of the growing influence of the corrupting capitalistic economic system. However, this line of reasoning does not tell us what practical things can be done to oppose this idolization and the glorification of wealth and the endorsement of a 'get rich quick' mindset. Polanyi (2001) tries to expose the fact that anti-African ethics and values are an inherent product of a historical development of bourgeois economics and values arising thereof. Under such condition, greed, corruption and other anti-African ethics and values become acceptable social norms which contribute to corruption, moral degeneration and the misuse of procurement policies.

Scholars such as Kennedy (1998:16:18) and Mbigi (1997:3-6) contend that under capitalism, economic relations produce and promote values that have a tendency to treat everything that exists, including human beings, as a commodity that must be bought and sold depending on the market's demand and supply. One of the understandings that could be deduced from the foregoing argument is that a capitalist economy produces and promotes values, such as individualism, that contradict African morality/philosophy (*Ubuntu*). It is also important to note the role of the private sector in perpetuating corruption. For example, for a public official to receive a bribe there must be someone who gives it. Judge Heath (2010:2) confirms this view by arguing that it is a fact that "the private sector is the chief mastermind of corruption since they easily manipulate anti-corruption legislation and those mandated to enforce it." These corrupt companies, his contention concluded, conduct their business in dark corners while benefitting from the spotlight of public prosperity.

The search to understand the contribution that tenders make towards fostering corruption in post-Apartheid South Africa and proposing the rethinking of Africa ethics as a solution, in summary requires a careful analysis of the democratic government empowerment policies, programmes and the moral foundations upon which they are built. To this end, as a matter of emphasis, this research will, for example, rely on theories advanced by Masondo, Mbigi, Murove and Kennedy. The research, among other things, aims to add to the already available literature on this subject matter by reaffirming that corruption is indeed inherent within capitalist economics and its procurement policies. In this, there are three theories that will guide this research namely: ethical leadership; economic empowerment, and finally, the ethic of *Ubuntu*.

This investigation supports the application of African ethics in response to the moral decay of the society in general and its political leadership in particular. It assumes that African ethics could go a long way in addressing corruption and moral decay. In other words, this study hypothesizes that the revival of basic values that compliment African ethics and appreciates Africa and its peoples are not simply means to some economic end, but as ends in themselves could address the misuse of tenders, procurement policies and the glaring reality of unethical leadership. However, the rethinking of basic African ethics or values (i.e., selflessness, humility, self-respect,

mutual respect, constructive criticism, self-criticism, human solidarity, respect for elders and the dead etc.) will require a very strong leadership that is above reproach and fully committed to democratic principles such as transparency and accountability.

5. Research Questions

This study will seek to answer the following key questions:

i. Is there any relationship between corruption and tenders?

ii. Is it morally justifiable for politicians and public servants to be involved in tenders?

iii. Could this not be possible that tenders are the cause of non-delivery of basic services?

6. Research Objectives

The following are the objectives of this study:

i. To investigate if it is ethically justifiable for public servants and officials to be involved in the issuing of tenders;

ii. To find out whether a link exists between the corruption and unethical leadership;

iii. To investigate if corruption and the manipulation of the practice of tenders are contributory factors to the non-delivery of services;

iv. To apply values of *Ubuntu* as a panacea to corruption practices that goes hand-in-glove with the issue of tenders in the public sector.

7. Theoretical Framework

The notion of moral regeneration is linked to the understanding that any prosperous and caring society must be premised on a strong moral foundation. Hence, the moral basis of the post-Apartheid South Africa was based on the ethic of *Ubuntu*. It is primarily for this reason that the *Ubuntu* Pledge (such as *Batho Pele* /People's First) was the central commitment that the ANC-led government used to build a strong moral foundation and ethical leadership. The raison d'être behind using *Ubuntu* and ethical leadership as a moral foundation was that it sensitizes human beings to have concern for the wellbeing of others since human beings exist in a perpetual state of interdependence.

There are at least three main theories that will be employed to navigate through this research. These theories are: post-colonial critical theory, a moderate form of partialism and *Ubuntu*. Franz Fanon (1961), in his book *The Wretched of the Earth,* has a chapter entitled "The Pitfalls of National Consciousness," where he provides a theory that critiques the role of the middle class and former national freedom fighters in the postcolonial era. He argues that some former freedom fighters and the middle class, in collaboration with former colonizers, do nothing. Instead, they continue where the former colonizer had left off. Put simply, Fanon contends that once political power is achieved, the former freedom fighters and the native elite continue to manipulate the masses through revolutionary rhetoric and coercion in order to loot the state resources for personal gain. He further contends that during independence former freedom fighters become unethical and unaccountable to their electorate and rely on populism and patronage. His theory is widely referred to as a postcolonial critical theory which refers to "a collection of theoretical and critical strategies used to examine the culture, history and politics etc of former colonies" (Childs and Williams 1999:3).

Metz (2009) outlines a moral theory that is full of African content which prevents both impartialism and a strong form of partialism that would sanction government officials from being biased towards their family members or political organization. In between the two (i.e., impartialism and a strong form of partialism), a moderate form

of partialism is recommended. He contends that moderate partialism will allow government agents/officials and politicians to infrequently favour those who were victims of the state injustice at the cost of tax-payer's money. However, this form of partialism will not allow other nepotic forms of partiality. This theory is exactly what this dissertation will be building on. There are some scholars who have argued that one of the best ways of addressing corruption is to introduce African ethics premised on the ethic of *Ubuntu*.

Ramose (2002) gives a philosophical approach in terms of understanding the theory of *Ubuntu*. His idea of *Ubuntu* is that it is in perpetual motion which means that human beings are constantly in a process of evolving either into being (i.e. umuntu) or "dehumanized being" (i.e., akasiye umuntu). Broodryk (2002) defines *Ubuntu* as "…a comprehensive ancient African worldview based on core values of intense humanness, caring, sharing, respect, compassion, values and ensuring a happy and qualitative human community life in a spirit of a family" (2002:26). However, this research will be more biased to the meaning of *Ubuntu* theory as captured by Samkange and Samkange (1980) where they argue that the theory of *Ubuntu* is all about the attention that one human being gives to another, "the kindness, courtesy, consideration and friendliness in the relationships between people, a code of behaviour, an attitude to others and other people and life, is embodied in unhu or *Ubuntu*" (1980:38). On the basis of these definitions, the two writers maintain that any economic relations grounded on the pursuit of self-interests would contradict the theory of *Ubuntu* because the pursuit of self-interests treats human beings as a means to an economic end (i.e. profit making).

African scholars such as Khoza (2005) and Nussbaum (2009:238-256) take a reformist position that argues that the free-market economic values could be transformed to accommodate African ethics, while others like Mthembu (1996:214-216) and Nyerere (1956) take a more radical approach that free-market based economies and ethics arising thereof fundamentally contradict African ethics. Finally, this investigation will add to the extant literature that the theory of an ethic of *Ubuntu* coupled with accountable and ethical leadership could be a solution to the post-Apartheid South African corruption.

8. Research Design and Methodology

This study will be critical, constructive, historical and evaluative. The critical method to this research means that more focus will be on a critical analysis of tenders and the role of corruption in the post-1994 democratic South Africa. Arguments for and against the role of politicians and state-officials to favor certain sections of the population will be raised. The theories of economic empowerment, ethical leadership and *Ubuntu* in particular will be used as critical tools throughout this study. Part of what this investigation will seek to do will be to determine in what ways African ethics could be employed as a cure to corruption in post-Apartheid South Africa. Put simply, out of a process of constructive criticism will emerge a proposal that African ethics could be a solution to corruption in post-Apartheid South Africa.

The historical approach that will be used in this study will briefly analyze books, journal articles, political speeches, and newspaper reports which cover political and economic discourses in South Africa during the Apartheid and post-Apartheid eras. This historical discourse would offer an understanding of the basis of the misuse of practice of tenders, procurement policies, corruption and unethical leadership. Furthermore, a brief historical discourse on South Africa could help us see if the two (i.e., corruption and unethical leadership) is a question of history repeating itself but with different players in the driver's seat. This historical method is evolutionary since it portrays the practice of tenders, manipulation of procurement policies and unethical leadership as part of the evolutionary process of the contemporary free market economy with its anti-human and un-African values.

The evaluative theory to this investigation means that this work will evaluate the role of politicians and state officials in the manipulation of procurement policies for the purposes or pursuit of self-interest/s. Additionally, the extent to which economic empowerment has actually benefited the *de facto* intended beneficiaries through the black economic empowerment will to some extent be evaluated.

Finally, this research will rely on the already available literature or information that has been published by different scholars as well as public and private institutions on

this subject matter. To this end, the literature that I will utilize will range from books, journals, print and electronic media, reports from public and private agencies (e.g., Ernst and Young) as well as policy speeches delivered on different platforms.

9. Structure and Outline of the Dissertation

The following is a brief outline of the structure of the dissertation:

Chapter One: This chapter will introduce the research topic, including a personal motivation for the study, as well as a description of the background, the research problem and key objectives, literature review, and finally, a methodological and theoretical framework.

Chapter Two: In this chapter I will examine the economic empowerment policies in general and the practice of tenders in particular as well as some of the South African democratic government's strategies aimed at addressing socio-economic challenges that emanated from the Apartheid and colonial periods of South Africa's history.

Chapter Three: In this chapter I will discuss the corruption of the public procurement policy by state officials, senior politicians and some business people in post-apartheid South Africa.

Chapter Four: Here I address the central question of the study in terms of rethinking African Ethics as a solution to corruption in the light of the fact that corruption is in the main, viewed as a moral problem.

Chapter Five: In this final chapter I will present a conclusion to this dissertation which will include some recommendations about future research that could be conducted through addressing issues that while identified were beyond the immediate scope of this present research.

CHAPTER TWO

TENDERS AND ECONOMIC EMPOWERMENT IN POST-APARTHEID SOUTH AFRICA

1. Introduction

> We must look after each other, because we are blood of each other's blood. We belong to each other—we, the small Boer nation, here in South Africa. This drives us to rush to the aid of those of our brothers and sisters who are in need; to help them to help themselves. We do this in the firm belief that we as a people should save ourselves (Kestell 1939 cited in De Klerk 1975:281-282).

The post-1994 ANC government saw public procurement or the tender system as an important tool to redress the economic inequalities of the previous Apartheid system. As a result of this, policies and principles to regulate the manner in which tenders should be awarded were accordingly adopted. On the one hand, the laws regulating tenders in the pre-1994 era were the means of maintaining economic power in the hands of white entrepreneurs; while on the other side, the laws established by the newly-elected democratic government post-1994 were designed to direct public procurement towards assisting the democratic state to close the glaring socio-economic disparities inherited from the previous Apartheid regime. For example, the legal guidelines sanctioned a situation where public procurement would be issued in a manner that was impartially biased towards those sections of South African society that were previously disadvantaged.

Key among these regulatory policies was that of Broad-Based Black Economic Empowerment (B-BBEE), *Batho Pele,* Preferential Procurement Policy Framework Act (PPPFA) 2000 (Act No.5 of 2000), the Broad-Based Black Economic Empowerment Act of 2003; Public Finance Management Act of 1999 and Municipal Finance Management (Supply Chain Management) Act of 2003. While these policies and guidelines were originally developed to ensure the broad-based economic development of black people, the opposite has unfortunately been true. Since 1994 therefore, South Africa has witnessed the emergence of a small minority of previously

disadvantaged South African Indian and Coloured and Black people, who being politically well-connected have become exceedingly rich through benefiting from State tenders and other adopted policy guidelines such as Affirmative Action etc. The appearance of this new group of so-called tenderpreneurs[1] somehow vindicates the ANC government strategic position to employ public procurement as one of the significant instruments for economic empowerment.

Public procurement has managed to play a major role in the creation and strengthening of the black capitalist class although only to a limited degree. The importance of consciously producing the black capitalist class is that their presence within the economy and society forms part of the process of the de-racialisation of the economy (Mbeki 1999). The emergence of the black capitalist class, inadequate as it is in terms of quantity, is a practical example that proves the relevance and correctness of the idea that tenders are part of the integral key instruments to attain economic empowerment.

The instrument of Broad-based Black Economic Empowerment (B-BBEE) through the awarding of tenders thus faces two main challenges. First, they are yet to considerably change the economic status of the majority of black people beyond benefiting the few who are politically connected. Second, it confirms the perception that public and private procurement is marred by a number of serious problems such as bribery, kickbacks and shoddy work, all of which militates against the advancement of people-centred economic empowerment and quality service delivery.

Flowing from the above, this chapter will therefore discuss the following:

i. Provide a brief overview of white economic empowerment in Apartheid-governed South Africa with the aim of exposing laws that legalised the looting of state resources prior to 1994;

---

[1] This term has been coined by Dr. Blade Nzimade, the General Secretary of the South African Communist Party (SACP) to describe business people who are not involved in production of any goods except to use their political connections and kickbacks to receive tenders from the State.

ii.   Discuss the redress of the injustices of the past through Affirmative Action (AA) and/or Black empowerment policies such as *Masakhane*, Reconstruction and Development Programme (RDP), *Batho Pele* and the Black Economic Empowerment (BEE) and later B-BBEE;

iii. Briefly discuss the practice of tenders in post-Apartheid South Africa;

iv.   Offer some contemporary critique of AA, Masakhane, the RDP and BEE;

v.   Summarise the entire chapter with a particular focus on the main points and then lay the basis for the chapter which follows.

2. A Brief Overview of White Economic Empowerment in Apartheid South Africa

In 2010, the Public Servants Association (PSA) report noted that the racialised past has bestowed upon contemporary South Africa a legacy of racialised development and underdevelopment. This economically uneven development emanates from the fact that Apartheid-defined rural and township settlements still mirror the racial master plan to maintain the black majority in settlements where the quality of life bears a similarity to that of sub-humans. The PSA further stated that although areas where well-off people reside also experience service delivery challenges, poor or shoddy service delivery mainly affects the historically disadvantaged black communities. The fact that the provision of service delivery continues to be in a racialised form indicates the deepness of the challenges that the post-1994 democratic government inherited from the exclusively white regime. It is this legacy that the government will continue to grapple with for the foreseeable future (see The Public Servants Association Report, 2010).

History confirms that the looting of South Africa's resources by the minority of whites while excluding the majority of black people began with the arrival of the white settlers in the Cape in the late seventeen century. The succeeding generations of white people only continued where their foremothers and forefathers had left off. It is

against this background that it becomes relevant to mention Kestell's 1939 quote, cited at the top of this chapter, who summed up the philosophy of, at least, the Afrikaners that fundamentally informed the white Nationalist government. To re-state, this philosophy was to stop at nothing to empower white people at the exclusion of black people through the means afforded, mainly, by the government. Hence, post-1994 South Africa is a product of a very long and bitter struggle against the Apartheid regime's philosophy of exclusively looking after the economic interests of the white minority. Put differently, the white government employed different tactics at their disposal to ensure their domination over black people and to continue to "accumulate (capital) by dispossession" (Harvey 2005:137). For example, the Colonial Government passed the Land Act in 1913 to dispossess black people of their land. This resulted in 87% of the land being controlled by the white minority while the majority of black people had to squeeze themselves into the remaining 13% (ANC Today 2010).

Immediately after the National Party came into power in 1948, it systematically endorsed laws that subjugated black people in general and Africans in particular to a point that was inhumane. For example, throughout the era of the National Party, the policy coined 'Apartheid' was adopted by the government to legalise an uninterrupted social engineering process to exclude black people from fully participating in the economy and political processes of the country. Reflecting on the formation of South African society in a lecture delivered in Canada in 1978, Thabo Mbeki summarised the manner in which white people in general accumulated wealth with the state's assistance. He correctly stated that to sustain racism required that the government needed to be in collaboration with big business and therefore must patronize white people in general and Afrikaners in particular to gain the support for their racist agenda. To this end, they needed laws and regulations to be enacted so that they could facilitate and advance their racist agenda (Mbeki 1978).

Accordingly, the history of South Africa before 1994 clearly shows that the whites stopped at nothing to enrich one another while relegating black people to being "hewers of wood and drawers of water" (Seme 1906:406). For example, the exclusively white government engineered laws which consequently culminated in the official adoption of the principle of separate development (Apartheid) to consolidate

the monopolization and/or control of political processes and the economic wealth of the country. This meant that black people were not only barred from determining their own socio-political destiny, but were equally deprived of the right to economic and intellectual growth through a variety of destabilizing means including state-legislated laws (see Jack 2007). Put differently, the majority of oppressed black South Africans were not merely prevented from benefiting from the wealth of the country, but were dispossessed.

Put differently, laws and legislations were enacted to formalise white people's appropriation of wealth by dispossessing black people. It is on these grounds that the racist South African regime managed to oppress blacks in general and Africans in particular for many decades. What is equally unambiguous is that the promulgation of racist laws concretised and consolidated the Afrikaners' philosophy of looking after one another. This race-based philosophy obviously excluded black people and while including white people in general, it was initially intended for Afrikaners only. For example, Afrikaners enjoyed a prosperous and privileged life between 1948 and the early 1970s.

By virtue of their control of the state, the material conditions of Afrikaners and their role in the economy dramatically improved. As a consequence, the income disparities between the English-speaking South Africans and that of Afrikaners contracted gradually. As Brits (2008) further argues, there was a general economic growth rate of 4.5% annually. The organised and brutal implementation of Apartheid policies guaranteed the flourishing lives of whites. This took place hand-in-hand with the deliberate and brutal frustration and smothering of any form of resistance against Apartheid. Through the National Party, which moved from strength to strength, the prime minister and architect of the ideology of Apartheid, H. F. Verwoerd pushed for Afrikaner hegemony beyond the issue of simply ensuring that whites were generally in charge (see Brits 2008). From this, it is clear that the Apartheid agenda needed to further relegate black people into the status of mere providers of cheap labour. Additionally, Brits argues that the philosophy of looking after "each other" was indeed targeted at economically empowering Afrikaners.

The Group Areas Act of 1950 was one of the notorious laws under Apartheid that designated residential areas according to race and "prohibited African, Coloured and Indian people from operating business outside their (respective) designated areas" (Jack 2007:5). This act meant that only white people enjoyed rights of trading and establishing businesses without any restrictions and in areas which were conducive for the prosperity of their respective businesses. This act literally meant that white people enjoyed an unfair advantage over other race groups who were involved in the same businesses. In other words, this act provided white people with an unfair opportunity to locate and operate their businesses in more economically lucrative areas of the country, such as the Central Business Districts (CBDs) of South Africa's major towns and cities. The implication was that white businesses neither had any competition nor did they procure services and goods from businesses owned by people who had a different skin colour. It should be noted however that even though some black people continued to buy from white owned businesses, it is safe to claim that the Group Areas contributed in laying the foundation for the Afrikaner's philosophy of supporting one another. W. A. De Klerk (1975) succinctly captured this phenomenon when he asserted that goods or items such as shares on the stock market were purchased irrespective of the sound investment they offered simply because it was the Afrikaner thing to do.

In addition to the above, there are many other implications which emanated from the Group Areas Act such as controlling places where Black people could and could not reside, work and operate their businesses. However, this appeared to be insufficient for the Apartheid regime hence they also wanted to ethnically divide black people with the intention of further manipulating and exploiting them into smaller ethnic units. To this end, the Promotion of Bantu Self-Government Act No. 26 of 1970 was enacted into law. According to this Act, Black people were classified into ethnic groups to be confined in the homelands for the sole purpose of serving as a reserve pool of cheap labour. There were more serious consequences of this Act which prevented black people from enjoying good quality in terms of government services. The issue of equally providing good quality services could have attracted more investment in the Bantustans thus creating job opportunities for black people. This could be one reason why most towns that fell under Bantu governments had poor infrastructure compared to those that were outside of its jurisdiction.

Moreover, the Bantu Homelands Citizenship Act or National States Citizenship Act No. 26 of 1970 complemented the Promotion of Bantu Self-Government Act No.26 of 1970. In terms of the Bantu Homelands Citizenship Act or National States Citizenship Act No. 26 of 1970, blacks were relegated to a position of foreigners in the land of their birth. It further stated that black people could live and work in urban areas provided that they had a special permission determining their duration and purpose of being in an urban area. This literally meant that failure to produce a permit would result in jail term, a spot fine, or being subjected to various forms of dehumanising treatment at the hands of white police officers, most of whom were young.

The above regulations denied black people better opportunities that were associated with staying in urban areas since the latter (urban areas) had advanced infrastructure and facilities compared to the Bantustans. Additionally, the Minimum Wages Act No. 27 of 1925 sanctioned the Minister of Labour to compel employers to give special preference to whites when it came to the filling of vacancies in the public and private sector as well as to "institutionalise job reservation for white citizens" (Zuma, 2011:1). Hence, an unskilled white person was better paid than a black person who had managed to rise above 'human made unfavourable' material conditions and acquire a certain skill or a professional certificate. This is one reason why the pigmentation of one's skin unabatedly persisted to determine the type of job and salary that one could get. The Apartheid regime understood that to complete their programme of looting the wealth of South Africa, they also needed to have different education systems. To this end, the Bantu Education Act No. 47 of 1953, which created a Black Department of Education located in the Department of Native Affairs, was legislated.

This Act was aimed at ensuring that black people were indoctrinated through being taught a racially biased curriculum that would ensure that they become better and more submissive servants of the white people. As a result, the majority of black people only aspired to enter into professions that did not meaningfully contribute in driving and sustaining the economy. For example, due to social engineering, there were very few so-called Black Universities that offered courses in the hard sciences, thus excluding and denying blacks an opportunity to acquire critical skills.

Conversely, whites were taught and assisted to have skills that would make them positively participate and compete in the domestic and global economy.

Furthermore, the Bantu Investment Corporation Act No. 34 of 1959 permitted the establishment of financial, commercial, and industrial schemes for black people, such as the controversial Ithala Bank in Natal, for as long as they were confined to areas that were designated by law for blacks. One of the consequences of this Act was to facilitate and 'formalise' the so-called second economy which was historically run by black business people in the historically black areas. This law reinforced the Bantu Education Act No. 47 of 1953 in that black people, beyond the fact that they were similarly excluded from trading wherever they saw a business opportunity, were also prevented from benefiting from the white government's financial empowerment workshops directed at educating, capacitating, encouraging and supporting white-owned businesses.

The Population Registration Act No. 30 of 1950 was passed into law as a way of categorising people into racial groupings and to give them false identities for different reasons. This Act sanctioned the establishment of a Race Classification Board which had powers, particularly in cases of dispute, to declare the racial category in which a certain person would fall. This piece of legislation gave effect to the creation of a national register wherein everyone's race was to be recorded. One of the main implications of this law was that the colour of one's skin and socio-economic status determined the quality and quantity of basic services offered by the state. For example, being white meant good quality and sufficient quantity in terms of supply, while being black meant receiving poor quality services or none at all.

The fact that the racialised provision of basic services appears to remain an issue even in post-Apartheid South Africa could be viewed as an inevitable by-product and legacy of the previous Apartheid regime and its racist policies. In 1994, an "elite transition" as Bond has termed it (2005) was made, whereby the policy of Apartheid was officially abolished and political power was transferred from white Afrikaner elites to that of ANC elites. In the final analysis, colonial rule and the Apartheid regime did not only oppress black people but it also created a number of structural challenges, such as escalating deep-rooted socio-economic inequalities and racializing

the distribution of income and resources etc., which the current government will continue to grapple with for the unforeseeable future.

In other words, while appreciating much that has been done by the democratically-elected government in the past eighteen years to reverse the policies of Apartheid, it continues to be confronted with the huge obstacle of fundamentally transforming the poor socio-economic conditions of the majority of South Africans. Its failure to fully address the legacy of the colonial and later Apartheid regimes will surely haunt the transformational agenda of the ANC; hence the pace should be quickened in relation to bettering the lives of the people irrespective of colour, gender, class or creed. The state as an instrument, just like its Apartheid predecessor, has the necessary resources and capacity at its disposal to be at the centre of correcting the past injustices.

Flowing from the above mentioned policies that clearly give a sense of how white people were empowered at the expense of black people, the democratic State among other programmes and policies identified such as *Masakhane*, the RDP and B-BBEE and tenders as an integral part of economically empowering some blacks with the hope that they will in turn empower others. The government is arguably the largest customer in terms of consuming services provided by a number of privately-owned businesses. Most of the services that are provided by the state are outsourced. For example, the application and distribution of social grants is managed by a private agency called the South African Social Services Agency; in addition, catering, security and cleaning services in most public institutions are provided by privately-owned companies. The provision of public services by private agencies was somehow aimed at realising the goals of empowerment policies such as the RDP and BEE etc.

3. **Redressing the Injustices of the Past through Affirmative Action Policies such as *Masakhane*, RDP, BEE and B-BBEE**

As Bond (2005) has stated, the ANC won the first democratic elections in 1994 not only because of its struggle credentials but also because of its election manifesto in which it committed itself to eradicating the legacy of Apartheid and build a socio-economically equal society. According to the National Report on Social Development

covering the period 1995-2000, 61% of Africans were classified as poor compared to a mere 1% of whites. The report further noted that the unemployment rate for Africans stood at 42.5% compared to 4.6% for whites. These statistics are a confirmation of the fact that since the beginning of colonial rule, poverty and unemployment have always affected blacks in general and Africans in particular. Accordingly, the post-1994 government was essentially mandated by the general population to design programmes and policies that would address this legacy.

In their chapter entitled, "Ethical Dilemmas in Business: Employment Equity," Deon Rossouw and Leon van Vuuren (2010) have highlighted the need and urgency for the democratic government to address the legacy of Apartheid. They argue that immediately after coming to power, the first-democratically elected ANC government had to address the inequality that emanated from the discriminatory practices of the Apartheid regime. For example, the democratic government adopted AA policies that could be used to address the legacy of Apartheid. These empowerment policies included the RDP, *Batho Pele*, *Masakhane*, BEE and B-BBEE all of which will be unpacked in the subsequent paragraphs. These empowerment policies were seen as key programmes that possessed the potential to significantly reverse the legacy of Apartheid. It is for this reason that it becomes important to unpack AA policies since the rationale for its application was derived from the history of South Africa as has been mentioned above.

In addition, Rossouw and van Vuuren (2010) have outlined the manner in which the policy of AA has been used by different public and private institutions. They went further to argue that AA, as a technical term for economic empowerment of the historical marginalised sections of the South African population, can indeed go a long way in resolving the legacy of Apartheid. One of the ways of qualifying their arguments begins by defining Affirmative Action policies such the B-BBEE and other employment quotas as the "…temporary intervention of preferential treatment to rectify the consequences of discrimination in order to enable people to compete as equals for opportunities" (2010:184). They also contended that while the definition of the AA has elements of being descriptive, it is normative in a sense that it outlines particular criteria that must be followed when such a policy is to be implemented. This understanding clearly indicates that AA could be a contested subject in terms of

its meaning and the duration of its application. Hence, to do justice on this subject requires a critical look at some of the connotations associated with it.

It should be noted that while AA is a progressive policy initiative that must continue to unfold without hindrance, Rossouw and van Vuuren (2010) are however correct to categorically state the importance of making a clear distinction between AA and other connected concepts such as equal opportunities. The failure to make such a clear distinction between equal opportunities on the one hand and reverse discrimination on the other could result in conceptual confusion. It should also be noted that it is important to distinguish between these two concepts but that would be beyond the limitations of this dissertation. However, what does remain relevant is to allude to four points that justifies the importance of Affirmative Action (AA), Rossouw and van Vuuren (2010) justify such policies on the basis that they form a "temporary intervention" aimed at closing the gap between an unjust system of the past and the potential dispensation of fair employment, but AA policies must have timeframes. However, the issue of how this would be measured is a debate that is beyond the mandate of this chapter albeit this is indeed a genuine concern.

The empowerment policies or AA are essentially aimed at redressing the past imbalances emanating from protracted policies of racism. Hence, victims of discrimination must be given special preferential treatment so as to surmount the restrictions of the past. The third element is that all those people who have suffered in one way or another from Apartheid policies must equally be identified so that corrective measures could be taken. The raison d'être for empowerment policies such as the B-BBEE is to eliminate the impact of Apartheid which includes structural changes that are necessary in the empowerment of the previously disadvantaged blacks. This would mean that merely appointing the previously disadvantaged groupings into powerful positions on the basis of a quota system would be insufficient. On the basis of this, a holistic approach, which would include capacity building programmes, must also be a central part of empowerment policies. The ANC government also came up with other progressive policies in order to complement AA in its objective of addressing the legacy of Apartheid. One of these complementary policies was the RDP which resulted into a campaign called *Masakhane* (loosely translated: "building together" or "building each other").

Other additional policies that were accordingly adopted included *Batho Pele* (which means that the interests and concerns of the people must come first when service delivery projects are designed and implemented) which had similar objectives of creating a united country that will not be defined by race, gender or class. Valli Moosa once said that the primary intention of the Masakhane Campaign was aimed at fast-tracking the implementation of the RDP through and inculcating a new way of doing and thinking about things (*cf.* Mngomezulu, 2006). Mngomezulu further defines *Masakhane* as a term:

> …made up of four syllables, ma/sa/kha/ne of which the syllable 'akha' is a verb, which means, 'to build,' construct or develop. The verb 'akha' is a verb, which means, 'to build,' construct of develop. The verb 'akha' therefore means building or construction of houses or any other physical structure, homes, nations, communities, characters, cultures and traditions (2006:19).

From this definition, it can be deduced that the *Masakhane* Campaign was all about the reconstruction of everything that was destroyed because of previous Apartheid policies. It could also mean that the creation of new ways of doing things such as inculcating values based on treating human beings as ends in themselves, rather than merely being viewed as means to some economic or otherwise ends. In its official launch in 1995 by the then State President, Nelson Mandela, the key bases for the introduction of *Masakhane* campaign were summed up as including the following: to stress the birth of the democratic dispensation; to react to the socio-economic challenges; to encourage the contribution of all citizens in a variety of formations; to widen a new way of thinking and doing things (Mandela 1995).

Flowing from this, it is clear that *Masakhane* was, in principle, a very important programme intended at adding more value to other progressive policies such as AA. Whereas AA appeared to be specific in terms of targeting the workplace in particular, Masakhane was intended at being a holistic plan. Its programmes were mainly focused on reviving communities not only in terms of infrastructure but also in terms of moral regeneration and values. The RDP document is a product of different sectors' and organizational structures' inputs and was consequently adopted at the Conference on Reconstruction and Strategy in January 1994. The RDP became the blueprint upon

which the ANCs election manifesto was based (Bond and Khosa, 1999). In other words, it was officially the guide for the Government of National Unity "to create a people-centred society of liberty binding (the government) to the pursuit of the goals of freedom from hunger, freedom from deprivation, freedom from ignorance, freedom from suppression and freedom from fear" (Mandela 1994:1-2). This assertion clearly meant that the RDP was meant to be a broad project targeted at undoing an assortment of wrongs of the past.

The fact that the RDP document located the basis for socio-economic inequalities as stemming from Apartheid policies and its capitalist economy made it to be one of the main foundations to inform the democratic government's empowerment Programmes and policies. The RDP White Paper stated that:

> …rural areas were divided into underdeveloped Bantustans and well-developed, white-owned commercial farming areas. Towns and cities were divided into townships without basic infrastructure for blacks and well-resourced suburbs for whites (1994: 2-3).

This observation captured in the RDP White Paper is the main reason why almost throughout the first Decade of Freedom—which is the period around which the RDP was first adopted—there were specific and important programme initiated with the intention of meeting the "the objectives of the Freedom Charter..." (Mbeki 2005:3). This would have been consistent with the guiding principles of the RDP as captured above particular in the statement made by President Nelson Mandela. The RDP White Paper (1994) provided for three key programmes:

i. The RDP Base Document-Meeting Needs;

ii. Developing the country's Human Resources, Building the Economy;

iii. Democratising the State and Society and the implementation of the RDP.

While these programme are beyond the scope of this chapter, it is here sufficient to argue that the programme were aimed at ensuring that the country had an integrated development and transformation process that could address "the moral and

development of the society; develop a strong and stable democratic institutions and practices characterised by representatives and participation; becomes fully democratic and non-racial society and finally becomes a prosperous society, having embarked upon a sustainable and environmentally friendly growth and development path" (RDP White Paper 1994:3-4). This means that the RDP Programme was seen as an extension of a distributive economic empowerment programme. As a result, beneficiaries and providers of services were mainly taken from the historically disadvantaged section of the South African society. There was indeed a relationship between the RDP and the practice of tenders albeit to a limited extent. For example, the building of RDP houses was outsourced from private construction companies since the state did not have the capacity to build houses. In other words, the government issued tenders for the construction of RDP which clears indicates a link between RDP and tenders.

It is however problematic to note that the effectiveness of the RDP was frustrated by the fact that some government officials and politicians saw in this an opportunity to enrich themselves through projects related to the RDP in general and housing in particular. For example, a research conducted by Ellah Ngobeni (2007) for his Masters in Public Administration found that the Maphata Village community members were not consulted in developmental projections in general and the allocation of RDP houses in particular. The lack of consultation or failure by government officials and politicians to open space for the community to have their voice violated the principles of consultation, information and transparency as captured in the *Batho Pele* Handbook of 1997 (The *Batho Pele* Handbook, 1997). It is not only the issuing of tenders to construct RDP houses that has been alleged to be manipulated by corrupt officials in collaboration with both service providers and politicians, but also the allocation of completed houses to intended beneficiaries has also been marred by corruption.

Regrettably, the RDP did not last very long and there are different reasons that could be responsible for that. It is perhaps useful to briefly highlight some of the reasons that have been cited as been behind the termination of the RDP. One of the main reasons the reasons for discarding the RDP and replacing it with the Growth Employment and Redistribution (GEAR) policy which is believed to have been

mainly influenced by global and domestic business people who thought that the RDP was an expensive programme funded through tax increases etc.

Some scholars such as Bond (2005), Lodge (1994), Bond and Khosa (1999) explicitly argued that the influence of domestic business people in general and global market forces in particular, contributed to the premature termination of the RDP and its replacement with the new economic policy called Growth Employment and Redistribution (GEAR). GEAR was basically a policy that was aimed at accelerating economic growth with a hope that it would 'trickle down' in the form of employment opportunities. While economic growth was achieved, the gap between the 'haves' and the 'have-nots' widened instead of opening job opportunities being created and economic growth being redistributed. The replacement of RDP by GEAR meant that the democratic State's focus shifted from addressing the plight of ordinary women and men to that of economic growth. History indicates that the termination of the RDP and its replacement by GEAR widened the already hitherto existing racialised socio-economic disproportions (Bond, 2005). Accordingly, it becomes relevant to briefly discuss BEE as one of the mechanisms designed to transfer wealth from the white minority to some of the historically dispossessed sections of the South African society.

The idea was that those who have been economically empowered would, in turn, empower others. Reality on the ground however shows that while political freedom had indeed been achieved, the wealth of the country continued to be confined to the whites in general and white males in particular (Bond, 2005). It was mainly for this reason that around 2003, the BEE Act was passed and in 2007 various codes of good practice were also enacted to ensure that the ANC government's economic transformation agenda progressed without the restrictions and weaknesses that had been identified in previously existing policies (*City Press*, 08 May 2011:17). Some scholars, such as Bond and Khoza (1999) and political activists have argued however, that much as the ANC adopted an economic empowerment programme such as the BEE, choosing this empowerment strategy was not the idea of the ANC alone. This issue will be further unpacked in the successive sub-section where these empowerment initiatives will be criticised. For now, suffice it to say that this act was precipitated by a report from a BEE Commission that was set up around 2001. This

report identified BEE as an integrated and coherent socio-economic process that was to be located within the context of South Africa's national transformation programme, namely the RDP (BEE Commission Report 2001). The same report also stated that BEE is aimed:

> …at addressing the imbalances of the past by seeking to substantially and equitably transfer and confer ownership, management and control of South Africa's financial and economic resources to the majority of the citizens...to ensure the broader and meaningful participation in the economy by black people (so as) to achieve sustainable development and prosperity (2001:2).

The implementation of RDP, BEE and all other empowerment programmes were to be conducted in accord with the principles of *Batho Pele*. *Batho Pele* is a programme aimed at activating public officials to be adjusted towards doing their utmost best to achieve excellence in delivering services to the general population. *Batho Pele* is also intended to enable the public to make public servant accountable for the type and extent of services delivered. For example, the *Batho Pele* Handbook states that "the *Batho Pele* policy remains government's single most important campaign to achieve the necessary transformation of the hearts and minds of public servants and to put the citizen at the centre of planning and operations" (*Batho Pele* Handbook 1997:4). The handbook further stated that all people working in the public sector must be happy to be public servants. In other words, *Batho Pele* emphasised that working in the public sector must be seen as an honour and duty to serve the people. Hence, public servants should find joy for example, in executing their duties and enhancing the provision of services to the people as a whole. This, in summary, means that "*Batho Pele* is the soul of the public service and the heartbeat of the nation that will help us rise above the legacies of the past and drive us forward with courage and pride" (1997:4). Flowing from this is a new belief system summarised as "we belong, we care, we serve" which invigorated the culture of *Batho Pele*.

This new belief system we belong, we care, we serve" was also targeted at supporting eight principles of *Batho Pele* that serve as a guide to those requiring public services

in general and public servants in particular.[2] The principles of *Batho Pele* are as follows: (i) consultation; (ii) setting service (delivery) standards; (iii) increasing access; (iv) ensuring courtesy; (v) providing information; (vi) openness and transparency; (vii) redress and (viii) value for money. These principles were basically informed by the fact that the Apartheid government had reduced black people to mere unthinking tools that must be used as their servants while treating the minority of whites in general and Afrikaners in particular as human beings. For example, some white people treated their pets better than black people. Hence the sight of a dog sitting in the front seat of a car driven by a white person, while a black person sits in the back seat were familiar occurrences.

It is in this light that policies and programme such as *Masakhane*, RDP, BEE and B-BBEE could be viewed not merely as policies intended at economic empowerment that will favour the majority of black people who were deprived by a previously-unjust system of government. They should also be viewed as policies aimed at forging a new value system as well as a new way of doing things. The adoption of the *Batho Pele* principles is but one example to indicate that the previously disadvantaged people were now going to be treated with the respect that they deserve by public servants. The practice of *Batho Pele* was expected to guide the processes and anyone involved in the practice of tenders. The idea was that government tenders would advance the interests of the people first before they benefit service providers or those who won the tender.

Since part of the objectives of this chapter is to investigate the practice of tenders in the post-Apartheid South Africa, it only makes sense to now turn to discussing this subject.

4. The Practice of Tenders in Post-Apartheid South Africa

---

[2] While the principles of Batho Pele will be mentioned here, they will not necessarily be unpacked. The main reason for not unpacking them is because merely alluding to them will suffice to drive the desired point home.

The use of the tendering system to uplift the economic status of black people was perhaps informed by the idea that the state spends a lot of the public fiscal outsourcing some of its services. For example, the 2008 Department of Environmental Affairs and Tourism report noted that "public procurement accounts for between 11 and 15% Gross Domestic Product (GDP)". Stefan Andreasson (2006:312) puts it nicely when he stated that:

> Black Economic Empowerment…is a broad set of policies modelled on 'affirmative action' policies elsewhere and intended to provide better access to the marketplace (including education, job training, hiring, promotion and tendering) for previously disadvantaged South Africans.

The *Cambridge Advanced Learner's Dictionary* (2009:1499) defines a tender as a written offer to contract goods or services at a specified cost. The Preferential Procurement Policy Framework Act: No. 5 of 2000 states that a tender is "a written offer or bid in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of services or goods" (2001:4). As a matter of emphasis, the state consciously outsourced most of its basic services mainly from the black owned private companies with a sole purpose of empowering them economically. For instance, the government spends almost ZAR 120 billion of its budget on public procurement and this shows the extent to which the latter could be used as an important tool to create a new black bourgeoisie (see Gumede, 2005).

Regardless of this fact, it appears that the majority of black people are used as 'fronts' by some sections of the historically-privileged groups so that the latter could obtain state tenders. The use of black people as 'fronts' could result in a situation where the economy continues to be controlled by few white males, while black people are relegated to the role of being mere shareholders. It is this situation that has prompted the Trade and Industry Minister to suggest that there would be amendments in the public procurement policies. The proposed amendments would result in a "greater participation by black people in productive activities and tackle what is now emerging as increasingly complex practices of fronting" (*Business Day* 20 April 2011:2).

In terms of the Framework for Supply Chain Management Act (2003), there are processes that must be followed in the issuing of tenders in order to ensure that the process is transparent. For example, this Act requires that bid committee members must declare their business interests and that firms or companies that appear on the list of restricted suppliers must be automatically disqualified. Moreover, the guidelines state that after an identification of a certain service or job that must be done and the budget (which must not be exceeded) has been approved, an advertisement with a closing date inviting bidders appearing on a given database must be released. A company that qualifies must subsequently be shortlisted and the company that offers to provide such a service at the lowest price must be awarded. However, there have been stories of some politicians and state officials who have been accused of manipulating this guideline.[3] Irrespective of those negative incidents, the reasons as to why tenders result in corrupt practices remains relevant particularly for as long as the legacy of Apartheid continues.

On the basis of the above, the researcher believes that the practice of tenders forms a greater part of the government's economic empowerment processes. It must also be mentioned that the state regulates the private sector so that it also influences its procurement, particularly the large-scale projects such as mineral extraction and construction. There could be other reasons that inform the existence of the practice of tenders depending on one's school of thought, but this dissertation reaffirms the tentative conclusion that the practice of tenders was primarily aimed at complimenting other duly-adopted policies of economic empowering the majority of black South Africans. Be that as it may, it is nevertheless worrying to note that South Africa continues to be confronted by the increasingly racialised socio-economic gap between rich and poor. This has somehow contributed to the contemporary critique of empowerment programmes, particularly the policy of BEE.

5. A Contemporary Critique of the Affirmative Action Framework and Broad-Based Black Economic Empowerment (B-BBEE)

---

[3] This issue will be discussed in more depth in chapter three of this dissertation.

As with its 'predecessor' Apartheid, the AA framework have been marred with controversy such as the accusation that it forms part of reverse racism and could cause more harm than good. Others however have welcomed its introduction, albeit with caution. This is partially the reason why it is useful to mention the basis for the objections or criticisms of AA policies.[4] The objections as are as follows:

i.   That AA can cause feelings of envy, hatred, and resentment among the previously disadvantaged groups;

ii.   That AA may not only be detrimental to those whom it excludes, but it can also hurt those who are supposed to be its beneficiaries;

iii. Those persons promoted through affirmative action might have difficulty in gaining respect from co-workers. They will always be regarded as token appointments;

iv.   That AA might result in the lowering of standards of work since affirmative action might result in the appointment of people who are not fit for their new jobs;

v.   While AA may change the demographic profile of companies, it will not succeed in stamping out the underlying prejudices that live in the hearts and minds of people (*cf.* Rossouw and van Vuuren 2010)

These are some of the counter-arguments levelled against the use of AA. Rossouw and van Vuuren (2010) go to the extent of providing a possible way in which public and private institution can ameliorate the implementation of this important policy. Some of the criticisms against AA are genuine and should not be dismissed out of hand. Yet, AA needs to succeed without unnecessary sabotaging those who think it amounts to racism.

---

[4] Only summaries of the criticisms against AA will be highlighted here without unpacking them. The view of not unpacking them is informed by the fact that while they do not necessarily form part of the main objectives of this section, they nevertheless help in presenting a more engaged and informed argument.

At face value, the objection or criticism against AA appears to be genuine, but on closer scrutiny it could be merely the views of paranoid whites who fear that they could lose the unfair privileges given to them because of their skin colour. Moreover, it is indeed true that beneficiaries of AA could have their confidence compromised because they might think that they do not deserve to be where they are. However, as Rossouw and van Vuuren (2010) propose, the introduction of the Rational Interaction for Moral Sensitivity Strategy (RIMS) could assist in minimising these objections.[5] As indicated above, AA is but one key empowerment policy amongst many others which have received objections or criticisms such as that of BEE, which has also not been immune from criticism.

Since the introduction of Black Economic Empowerment (BEE) in 2003, there have been an increasing number of criticisms channelled against the post-1994 democratic government for its failure to ensure that empowerment interventions could realistically close the socio-economic gap which arises from the legacy of Apartheid economy. Some critics such as Murove (2010:4), in the first pages of his paper entitled "Black Economic Empowerment and the Post-Apartheid South African Quest for the Domestication of Western Capitalism", provide a summary of five arguments against economic empowerment through policies such as BEE or Indigenisation or Africanisation. As a matter of clarity, it is sufficient here to highlight four major points of his argument:

i.   BEE/Indigenisation could be equated to some form of legalised looting by those who have political powers and their close friends;

ii.   BEE creates a class of African capitalists whose affluence depends on political connections; hence it is difficult to differentiate between ethical business practices and corrupt business practices;

---

[5] While unpacking RIMS is not within the scope of this chapter, it is sufficient here to reaffirm that by holding regular workshops that involve both the beneficiaries of AA and its so-called victims, they could go a long way in attempting to deal with these objections.

iii.   Countries such as South Africa are confronted by huge developmental challenges; therefore, policies and funding should be directed to urgent issues such as basic education, health and infrastructural development;

iv.   BEE/Indigenisation/Africanisation could not instantly lead into the domestication of capitalism; thus beneficiaries will consequently continue on the same self-benefiting path as their colonial masters in lieu of empowering their respective communities (see Murove 2010);

These four points are valid particularly because since the democratic government's initiatives aimed at transforming the economy have been marred by a number of challenges. Some of these challenges include fronting, bribery, corruption and co-option of some politicians especially those that are associated with the ruling ANC. It is for this reason that the post-Apartheid economic empowerment programmes appear to be perpetuating economic disparities while giving false hope of some 'trickle-down' benefits to the majority of black people.

Most of the criticisms that have been raised against BEE appear to hold some validity not only because there is available literature supporting it; yet, the reality indicates that these criticisms are in fact baseless. Some people have argued that the real influence of black directors and owners of some South African companies is very minimal, if any exist at all. One of the reasons given is that most 'tycoons' or directors ordinarily rely on huge amounts of credits which they often fail to repay while in some instances, companies that are listed are being led by black directors in a non-executive capacity (see Southall, 2004). BEE, as one of the empowerment policies, appears to be limited by the fact that nothing can be done without the willingness or involvement of white capital as they continue to hold on to key economic sectors of the country. Hirsch (2005:213) argues that the origins of BEE do not necessarily lie with the ruling ANC. but that BEE is an initiative of the "established (white) corporate business where the once Afrikaner capital Afrikaanse Nasionale Lewens Assuransie Maatskappy (SANLAM) and Anglo-American hived off space specifically designed to cater to a new class of Black businessmen and women."

Hirsch (2005) goes on to say that these early BEE deals subsequently failed to produce the desired results. For example, the company, New Africa Investments Ltd. (NAIL), "faltered as the executive directors appropriated its assets for their personal fortunes" (Hirsch 2005:218). It is no wonder that most of the blacks who were co-opted BEE beneficiaries suddenly spoke out against any genuine people-based economic empowerment in support of a narrow BEE programme. The creation and co-option of a few blacks at the expense of the majority of black people could have been an inevitable outcome of BEE since it was, in the first place, not purely a product of the ANC. The arguments of Blade Nzimande (2011) somehow complements Hirsch in that the BEE programme is a creation of foreign big business aimed at co-opting and patronising some black people. These black people will not only give a false sense of economic empowerment but they will also defend, embrace and promote the capitalist economics whose foundation is the maximisation of profits. This argument is significant since it exposes the fact that while the ANC government genuinely adopted BEE as one of its key means of transforming the South Africa economy, there were foreign and domestic forces that manipulated economic empowerment policies.[6] This does not however take away the reality that the BEE Act of 2003 has contributed to empowering only a few black South Africans, while the majority still remains poor.

The BEE Act of 2003 was somehow consistent with the ANC government's strategic goal of creating a pool of black capitalist as echoed by Mbeki (1999). Dinga (2011) takes a more radical position when he said that perhaps it is time to completely scrap BEE and/or the practice of tenders if the dignity and spirit of entrepreneurship is to be returned. In other words, the practice of tenders as a means to achieve economic empowerment has had more challenges than victories. One of the challenges is unpacked by Murove (2010) who employs a public conversation between two ordinary men about how the BEE programme could suddenly make an individual rich. He uses this example to expose some of the serious ethical flaws of the policy of BEE.

Some of these ethical questions relate to the fact that the print and electronic media have been reporting how BEE is being manipulated and corruptly used to benefit a

---

[6] This subject will be covered in greater depth in chapter three.

few well-placed and politically-connected individuals at the expense of the majority. Murove therefore concludes that the indigenization policy has inevitably produced a stratum of "African capitalist who will end up being in solidarity with other capitalists" (2010: 65). Blade Nzimande (2011) in the online Journal *Umsebenzi,* expands on the last sentence made by Murove (2010) when he states that for the past fifteen years of democratic rule in South Africa, a narrow BEE model has been used to bring about some very few "stinky rich" blacks without any significant economic changes for the majority.

Additionally, economic empowerment in the post-Apartheid South Africa has produced a number of firms and individuals who are not involved in the production of any goods except to use their BEE and recently B-BBEE credentials to line up for the next government tender. According to Bill Freund (2006:13-14), the post-Apartheid South Africa has produced top business figures that fall into four categories. These categories are as follows:

i. Companies that were established by blacks with an intention of attracting the attention of whoever seeks to comply with the objectives of the State;

ii. Companies that that epitomizes the corporation between whites and blacks albeit they are owned by blacks which would make them qualify for BEE status and/or rating;

iii. The BEE-related parastatals which are led by ANC deployed cadres with fat salaries;

iv. Black executives and managers in charge of huge industrial, financial and commercial companies some of which thrived prior to 1990 (*cf.* Freund 2006).

On the basis of these issues, one of the assumptions that could be made is that there are black business figures whose fortunes occurred before the late 1990s permitted by the conditions of a changing white regime (Freund 2006). To illustrate this, the private sector started head-hunting and identifying future black executives before the official adoption of BEE by the democratic state (Freund 2006). As a result, a new crop of

rich black individuals, who had family or political connections especially with the governing ANC, instantly became millionaires riding on the BEE and B-BBEE ticket.

Criticising economic empowerment through indigenisation in Zimbabwe, Matikinye somehow agrees with Nzimande (2011) that the "first attempt at indigenisation succeeded in creating a legion of briefcase businessmen and petty traders. It also created a small clique of nouveaux riches, largely thriving on crony capitalism and feeding on intricate patronage system."[7] In the same vein, Moeletsi Mbeki (2005) argues that the South African tendering system and BEE amounts "to a social grant of the ruling ANC" because the majority of its beneficiaries are not involved in production of anything except merely being consumers. For example, he employs a global entrepreneurship monitor table to prove his point that Africans have the lowest entrepreneurial activity at 0.9% while Indians/Asians have the highest at 2.7% stressing the absence of inventiveness that African have in relation to entrepreneurs and lack of opportunities. Most of these new pseudo-bourgeoisies rely on political networks in order to get first preference or unfair advantage in the procurement process for public and private tenders. Instances such as this have a potential of, among other things, making mockery of transformation policies, and thus perpetuating the socio-economic inequalities. This is indicated in the table below which shows that post-Apartheid South Africa is not moving as fast as it should be in terms of addressing socio-economic inequalities particularly in the income gap between white and black people.

	2000	**1995**	**% change**
Income share of bottom 20% of households	1.63%	1.87%	-12.8%
Income share of top 20% of households	35.13%	35.05%	+0.2%
Income of African households (2000 Rand)	0.57	0.56	-11.8%

---

[7] <http://www.theindependent.co.zw/news/2/> [Accessed 05 October 2012].

Income of White households (2000 Rand)	R158 000	R137 000	+15.3%

Table 1

Income Inequality: Earning and Spending in South Africa: Selected Findings and Comparisons from the Income and Expenditure Surveys of October 1995 and October 2000, Pretoria

Source: Statistics South Africa (2002)

From Table 1 above, it is clear that the average income of black African households, as captured in year 2000 Rands, dropped by 18% from 1995 to 2000. Conversely, the average real incomes for white households improved by over 15% during the same period confirming the fact that while some victories have been scored through ANC-led empowerment policies, they appear to be just a drop in the ocean in comparison to their white counterparts. The main problem with these empowerment policies is the skewed relations of power and some structural limitations as inherited from the previous oppressive regime. Recognising the limitations of the economic empowerment policies, the BEE Commission Report produced by the BEE Economic Empowerment Commission—which was created under the directorship of the Black Council—approved a proposal of the passing of the Broad-Based Black Economic Empowerment Act. However, some structural limitations frustrated it from being continued and yielding the desired results which informed its establishment at the first instance.

Moreover, the democratic government seems to be aggravated by the agreements that the ANCs negotiating team entered into during the negotiations such as the adoption of a property clause in the Constitution which protects the wealth of white people which was, as Harvey noted (2005), "accumulated through dispossession." These are but some of the challenges BEE Programmes experienced which resulted in Reddy, an executive member, of BusinessMap (a company that monitors BEE) bickering that "business people are talking largely about the details of the implementation (of BEE policies), rather than expressing total opposition to the very notion (of BEE)"

(Business Day, 01 April 2005). There are some scholars that reject Reddy's line of reasoning and declare their support of BEE or indigenisation of the capitalist economy in order to benefit the hitherto deprived sections of the society. Some of these scholarly arguments could be found in Murove's (2010) article that was cited above.

To illustrate, Murove (2010) cites the following points which support the implementation of B-BBEE:

i.   The economy of Africa during Apartheid or colonialism was founded on handing business opportunities only to white people hence the post-independent African states had to embark on economic empowerment to address the legacy of colonialism;

ii.   Apartheid and colonialism inherently thrives through capitalist economy, hence as Murove (2010) can state, the perpetual presence of capitalism which is controlled by the hitherto beneficiaries of the racist regime would ensure that neo-colonialism continues unabated in the democratic South Africa;

iii. Political power without any economic freedom for the previously disadvantaged blacks defeats the whole purpose or logic of having a democratic government;

iv.   Capitalism in African has helped in advancing Western values that favour the West hence the policy of BEE/Indigenisation/Africanisation could, to a greater extent, assist as one of the useful economic policy tools to domesticate capitalism (see Murove 2010).

The above four points declare support for the economic empowerment policies which are very important if the struggle for the transformation of the economy is to be achieved. Their importance is informed by the fact that they reemphasise the progressive economic de-racialisation role that could still be played by these empowerment policies despite strong arguments levelled against them. In other words, irrespective of the weaknesses of economic empowerment policies, the bottom line is that the failure to attain economic freedom would mean that the struggle for political independence "will have been in vain and our plans for social and cultural

advancement frustrated" (Nkrumah, 1970:102). Nevertheless, there are some significant victories that have been scored by the indigenisation policies particularly after the recommendations made by the BEE Commission which had a mandate to evaluate progress on Black Economic Empowerment.

Black people have been progressively empowered since 1994 albeit the numbers are still very far from what is desired. For example, the Ernst and Young survey in Jawoko "found that at least 1, 364 empowerment deals with a total value of R285 billion (2005=US$40 billion) were concluded between 1995 and 2005. Blacks are in the boardroom and the numbers of blacks in senior management positions has been rising. Yet, it has also been observed that the number of black managers in the private sector is still small and black people are hardly in controlling positions in capital (1999:25)". This means that despite some criticisms leveled against the BEE, there have been some achievements which could signal that tenders have made some positive contribution in advancing economic empowerment.

6. Chapter Summary

As discussed in this chapter, the different colonial and Apartheid laws indicate the extent to which the Apartheid government wanted to entrench socio-economic inequality on the basis of race in South Africa. As a result of their legacy, socio-economic challenges continue to confront modern-day South Africa. Furthermore, this chapter briefly noted that the Apartheid government used State resources to empower the minority of white and Afrikaner people at the expense of black people. Consequently, it transpired that the economic empowerment policies and programmes that were used by the democratic government, such as BEE and Affirmative Action etc., were not necessarily the original ideas of the ANC. They were the product of white people aimed at giving false hope of economic emancipation for black people while co-opting only a few black individuals who are politically well-connected. The new democratically-elected government's economic empowerment programmes were heavily influenced by foreign and domestic white business people and academics.

This chapter also found that this could be one explanation as to why most beneficiaries of the democratic government's empowerment programme appear to be

the very same white people, usually males. Despite the foregoing, this chapter acknowledged the fact that the practice of tenders is one of the keys policy tools to achieve economic empowerment and as such was a good initiative. However, the issuing of tenders has been confronted by the same challenges that were identified in the BEE and AA policies in that it has as yet to significantly improve the socio-economic status of the majority of historically marginalized black people. What appears to have happened is that fronting, kickbacks, bribery and other formed of corrupt activities have been used as a means of looting State resources under the ticket of economic empowerment. These are the biggest challenges that have engulfed the practice of tenders. The next chapter will attempt to provide an understanding of the contribution of tenders to corruption in post-Apartheid South Africa.

CHAPTER THREE

THE CONTRIBUTION OF TENDERS TOWARDS CORRUPTION

1. Introduction

> Tenderpreneurs', found in both public and private sectors, and often the two colluding, are those who corruptly capture government tenders using their political positions or connections. In fact 'tenderpreneurs' pose the single biggest threat to genuine entrepreneurs, as the latter often do not have inside information or the necessary political connections to get government or even tenders in the private sector. 'Tenderpreneurship' expresses the worst in the intersection between holding of political position and business interests (Nzimande 2010:2).

As discussed in the previous chapter, the tender system was one of the important programmes used to empower some blacks with a hope that their economic advantage would 'trickle down' to the general population which was previously disadvantaged. However, the practice of tenders has become synonymous with kickbacks and underhand dealings such that a perception has been created that South Africa is a corrupt state. Consistent with popular belief, the tender system has been undermined by factionalism, cronyism and a manipulation of otherwise good procurement policies such as the preferential procurement.

Procurement policies were initially created out of a good intention which was the creation of black capitalists through government procurement. It is however important to note that instead of creating entrepreneurs, South African has witnessed the mushrooming of 'tenderpreneurs' who rely on criminally underhand deals to secure tenders. These 'tenderpreneurs' use different methods, such as overcharging or price inflation, to dishonestly milk government coffers.

More often than not, these 'tenderpreneurs' includes politicians and public servants who are sometimes directly involved in the issuing of state tenders. The manipulation of public tenders is a huge problem hence it requires urgent attention otherwise it has the potential of eroding the moral foundation—such as the Reconstruction and Development Programme (RDP) and *Batho Pele* —upon which the post-Apartheid

government have been based. Additionally, the perceived or real lack of political will to decisively deal with the reported abuse of the tender system by some politicians and State officials could corrode the confidence entrusted to the latter by the general population.

This chapter will aim at investigating the extent to which tenders contribute to corruption in post-1994 South Africa. To this end, this chapter is structured as follows:

i.   An overview of procurement policies in the post-Apartheid South Africa;

ii. An analysis of the manipulation of tenders and the Public Protector's 2011 findings on the Leasing of Buildings for the South African Police Services by the Public Works Department;

iii. A literature review on tenders and corruption;

iv. Brief arguments as to why corruption is, in the first instance, a moral problem;

v.   A chapter summary which will re-affirm the argument that corruption is both an economic and moral problem.

2. An Overview of Procurement Policies in Post-Apartheid South Africa

A tender refers to a formal offer of money or service in payment of an obligation. The *Concise English Oxford dictionary* (2006) defines a tender or to tender as a written offer to contract goods or services at a specified cost. In terms of the Preferential Procurement Policy Framework Act (PPPFA): No. 5 of 2000, a tender is "a written offer or bid in a prescribed or stipulated form in response to an invitation by an organ of State for the provision of services or goods" (2001:4). This Act provides that when tenders are awarded by any State organ a preference point system must be applied and that before invitation for bids are issued, an organ of State concerned must come up with a proper plan. This plan must be accompanied by an

accurate projection of the costs of the purchase of goods and/or services for the invitation of tendering that is envisaged. Moreover, the Preferential Procurement Policy Framework Act (PPPFA) states that during the adjudication of tenders, a State organ must give special consideration to goods that are produced locally provided that it is conducted in line with the Act's system of 80/20 or 90/10 points.

This means that a maximum of twenty points could be awarded to a contractor that either belongs to a historically-disadvantaged group or outsources some of its services from a business owned by historically-disadvantaged individual/s. The 90/10 preference points should be utilized to measure the points for the price in relation to tenders that exceeds ZAR 500, 000 (The Preferential Procurement Policy Framework Act 2001). The foregoing is more applicable to public procurement mainly because the State is the biggest employer and consumer of most goods and services. Hence, the ANC-led South African government mainly relies on public institutions and resources to empower historically-disempowered blacks in general and Africans in particular. This fact was echoed by both the Ministry of Finance and Public Works in 1997 (see "Green Paper on Public Procurement Reform", General Practice Notice 691 of 1997). Accordingly, in the post-1994 democratic South Africa, the government designed guidelines to regulate the practice of procuring goods and services. Developing tender guidelines was very important because procurement or the tender system was identified as one of the main programmes that could be used to achieve economic empowerment for black people.

Arising from the above, a number of Apartheid policies had to be transformed to facilitate State-driven programmes aimed at empowering black people. For example, before the 1994 first democratically-held elections, the issue of price was the principal policy criterion for the procurement of goods and services by the South African Apartheid state. However, the adoption of the 1996 Constitution transformed the principal criterion of issuing tenders strictly on the basis of pricing (Bolton 2007:36). Section 217 of the1996 South African Constitution serves as the foundation upon which all public procurement practices are to be based. For example, the South African Constitution provides that State institutions must procure services and/or goods in an equitable, fair, transparent, competitive and cost-effective fashion (Constitution of the Republic of South Africa 108 of 1996). In other words, the

principles of equity, fairness and transparency are essential in terms of guidelines relating to public procurement or the tendering system.

While it must be noted that the points system remains important in terms of addressing the legacy of Apartheid, by merely falling within a specific group does not automatically override other constitutionally enshrined principles such as fairness, cost-effectiveness and competition. A document entitled Supply Chain Management: A Guide for Accounting Officer/Authorities (SCM) was published by the National Treasury in February 2004 with an intention of providing a framework that must be followed by accounting officers in terms of how best they can execute their duties within the context of the SCM. However, the fact that South Africa has three spheres of government resulted in a situation where procurement policy regulations were designed in a manner that takes this fact into cognizance. Accordingly, there are two types of Supply Chain Management policies that respectively outline a governance framework that regulates the manner in which government contracts or tenders are to be awarded and how, for instance, consultants are to be appointed.

The preamble to the Public Finance Management Act (PFMA) of 1997 (Act No.1 1999 as amended by Act No. 29 of 1999) clearly stipulates that the Act seeks to support the aim of good financial management. The main reason for promoting good financial management is to accelerate the delivery of services by ensuring that the limited resources are used effectually and proficiently. Additionally, the PFMA is to make sure that all spheres of government's revenue, assets and liabilities are handled in an efficient and effective manner through the regulation of how finances are to be managed (Public Finance Management Act, 1999). In essence, the relationship of the PFMA to the Supply Chain Management (SCM) regulates the management of finances for both national and provincial government. Essentially, this Act provides that the national and provincial State organs must procure goods and services consistent with the principles of fairness, equity, transparency, competitiveness and cost-effectiveness. The PFMA-SCM further stipulates that affected state organs must ensure that procurement is conducted either through quotations or by way of a bidding process in line with the threshold values as captured by the National Treasurer (Bolton 2006).

A second type of a Supply Chain Management (SCM) framework intended for local government is referred to as the Municipal Finance Management Act 56 of 2003 (MFMA-SCM). Put simply, the Municipal Finance Management Act is Supply Chain Management framework essentially aimed at guiding the procurement of goods and services by a local municipality. The MFMA-SCM does not significantly differ with that of the PFMA-SCM in terms of its content. Amongst other things, it seeks "…to secure sound and sustainable management of the financial affairs of municipalities and other institutions in the local sphere of government" (Municipal Finance Management Act 2003, 2005). The management of finances by municipalities consistent with the MFMA is very important particularly for any government that supports the principles of Batho Pele (People First). They provide procurement guidelines and mechanisms aimed at ensuring public procurement becomes a effective tool for economic indigenization or economic transformation.

The Supply Chain Management to the Municipal Finance Management Act provides a variety of procurement processes. However, it is the National Treasurer's guidelines that categorize different procurement processes with an intention of establishing consistent minimum Government norms and standards. The different types of procurement include: (i) petty cash purchases; (ii) verbal or written quotations; (iii) written price quotations, and (iv) competitive bidding. The National Treasurer's guidelines state that:

> Petty cash purchases are prescribed for contracts up to R2,000, written or verbal quotations are prescribed for contracts over R2,000 but under R10,000, written price quotations should be obtained for contracts over R10,000 but under R200,000, and competitive bidding should be used for contracts over R200,000 (National Treasurer 2005).

On the basis of the foregoing, it is clear that the National Treasurer's rule is that all goods and services costing less than ZAR200,000 can be exempted from normal procurement procedures. Put differently, what could be deduced from the National Treasurer's requirements is that formal tender guidelines must be followed by all State organs unless the services and goods that are being procured are less than ZAR200, 000.

All three spheres of government can be exempted from following public procurement policies. There are at least four justifications for this exemption. The first, which is captured in the Practice Note Number SCM of 2005, stipulates that it is permissible for an organ of the State not to follow tender procedures when it is impractical to invite competitive bids such as during natural disasters or single contractor instances. This means that procurement could occur through other means such as negotiations or price quotations provided that a particular condition has been met. The condition is that the records of the reasons for deviating from public procurement policies must be approved by the appropriate authority and should also be kept safely.

The second exception to the procurement rules would be in the context of a municipal service delivery. The Local Government Municipal Systems Act of 2000 as amended by Act 44 of the Municipal Systems Act of 2003 argues that it is unnecessary to make use of tender procedures such as competition, if an organ of State contracts with another organ for the delivery of a particular municipal service. Put simply, any procurement that is taking place amongst (national/provincial and municipality) State organs can be exempted from following normal procurement policies unless the municipality concerned decides to outsource such a service from a private party.

The third type of permissible deflection from the standard procurement policies is what the National Treasury refers to as the "transversal term of contracts." This applies to the procurement of goods and services that are requested by more than one government department on condition that the arrangement of such contract is in the national interest while being cost-effective at the same time. To be specific, the PFMA/SCM Regulations therefore orders that if any organ of State is involved in a "transversal term contract" facilitated by the appropriate treasury, it could call for service providers offering a similar product or service during the "existence of the transversal term" contract to bid (National Treasurer 2011). The fact that no organ of State could be alienated from the State itself (since the State ought to function as a unity) coupled with a view that all State organs must complement one another could be some of the reasons justifying this third deviation.

The final deviation is in cases relating to national and provincial government where the PFMA-SCM regulations state that a State structure may go into any contract

arranged by means of a tender process by any other organ of State, subject to the written authorisation of such organ of State and the appropriate contractors (National Treasurer 2011). This implies that it will be unnecessary for any other public or State organ to engage in its own tender procedures.

In order to ensure an easier facilitation of the above mentioned policy changes in terms of procurement regulations, accounting officers have been vested with powers to ensure that they procure goods and services in a fair, equitable, transparent, competitive and cost effective manner in line with a Section 194 (1) (a) of the Constitution of the Republic of South Africa act 108 of 1996. This section provides that a high standard of professional ethics must be advanced and upheld by the State officials in particular. This literally means that the manner in which procurement is conducted must ensure that all elements that could tarnish the integrity of all processes are prevented. As already mentioned above, accounting officers are expected to adhere to the National Treasury's Code of Conduct for Supply Chain Management Practitioners as outlined in the Framework for Supply Chain Management (Section 76(4) (c) of the PFMA (2003).

All of the above guidelines relate to how public procurement must be issued not only in terms of the Constitutionally-enshrined principles of fairness, equity, transparency, competitive and in a cost effective way, but also to ensure that the practice of tenders contributes to resolving the socio-economic injustices of the past. In other words, the above serves as a guideline or a benchmark that must be followed when tenders are to be awarded particularly if the preference points system, which favours firms which are owned by the historically disadvantaged individuals, is applied. It is however interesting to note that despite these clear guidelines, the number of allegations and reports of some government officials and politicians who have manipulated these guidelines continues to escalate in media reports. The following section will show how tender guidelines are being manipulated in post-Apartheid South Africa.

3. The Manipulation of Tenders

There appears to be little (if any) reason to dispute the fact that the public procurement policy guidelines are crystal clear and succinct in relation to outlining

the procedures and processes that must be followed by State organs when procuring services and goods. Increasingly however, some politicians and government officials appear to have found loop holes in which they can manipulate public procurement and its regulations. In other words, instances where accounting officers and politicians have been alleged to have manipulated some of the above-mentioned guidelines seem to be escalating in post-Apartheid South Africa. The manipulation of the State tender system as a whole is not only contrary to the expectations derived from tender rules that regulate how tenders are to be issued, but it is also a tendency that questions the integrity of some of those officials involved in holding public office.

A recent example where government officials have colluded with a service provider in the manipulation of the issuing of public procurement is the suspended Commissioner of the South African Police Services (SAPS), Bheki Cele, and the then Minister of the Department of Public Works (DPW), Gwen Mahlangu-Nkabinde's leasing of the Transnet building in Durban and the Middestad building in Pretoria. These buildings were ostensibly leased for the purposes of accommodating the SAPS. At this point, it is significant to mention that the Public Protector forms part of the Chapter 9 Institutions that are independent from other spheres of government.

The main role of the Public Protector is captured in section 182 (1) of the Constitution of the Republic of South Africa. This section vests powers to the Public Protector which includes investigating "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; to report on that conduct; and to take remedial action" (Section 182 (1) of the Constitution of the Republic of South Africa, 1996). Flowing from this Constitutional clause, the recently-published report about the manipulation of public procurement rules by the DPW and the SAPS is consistent with fulfilling the already mentioned Constitutional mandate assigned to the office of the Public Protector. Hence, the Public Protector's investigations and findings thereof must be understood against this background.

The introduction of the report entitled "Against the Rules" notes that an objection was launched by Advocate P. Hoffman SC (the Director of the Institute for Accountability in Southern Africa) and Mr. P. J. Groenewald (South African Member of Parliament).

The essence of their grievance was informed by a 02 August 2010 article in the *Sunday Times* "Bheki Cele's ZAR500 million police rental deal." The Public Protector's report further noted that the published article mentioned that the *Sunday Times* can divulge that Cele sealed the lease contract to move the offices of senior leaders, such as those of the Minister of Police and the then Deputy Minister, to Roux Shabangu's building at least two months before the latter purchased it.

This deal violated procurement procedures as outlined by the Treasury since it was never published publicly in order to allow all interested bidders to bid. Another Treasury regulation that was undermined is the one that provides that all tenders that that exceeds ZAR500, 000 should be awarded via a process that was both transparent and fair. The quoted article went further to argue that the Department of Public Works could not provide any explanation as to the reason behind the violation of tender rules (Public Protector's Report 2011). This is a clear example of the manipulation of tender guidelines hence it becomes important to extensively unpack this report. The reason for this is that the leasing of these buildings is very much relevant to the aims and objectives of this chapter.

The Public Protector emphasized that the 02 August 2010 *Sunday Times* article further reported that the National Commissioner of the SAPS had also endorsed a second contract to move SAP offices in Durban to another building that Roux Shabangu, on behalf of Roux Property Fund (RPF), was negotiating to purchase. This second allegation concerning the Transnet building in Durban was actually in relation to the failure to follow procurement principles as captured in Section 217 of the South African Constitution and the 2007 Department of Public Works, Supply Chain Management Policy. As a result of these policy directives, the DPW—through the accounting officer or a delegated person/s—has a responsibility to ensure that the purchase of goods and services, including movable assets, are conducted in manner that advances the afore-mentioned policy objectives. As to whether these principles were observed or not in the leasing of buildings by the DPW on behalf of the SAPS is what the Public Protector was mandated to investigate.

The Public Protector, after considering evidence gathered from a number of interviews and other sources, concluded that the leasing of the Transnet and

Middestad buildings by the DPW for the SAPS was indeed against public procurement rules. As a result, the Public Protector made ten key findings in relation to the manipulation of procurement policies by both the DPW and SAPS. While most, if not all, of the Public Protector's findings could fit the purpose and scope of this section, it is sufficient to mention but a few of them.

The first finding is that the SAPS neither conducted a careful assessment of its own needs and nor did it have a budget as required by a procurement policy hence this amounted to an overt flouting of tender rules.

The second finding was that the SAPS participation progressed beyond the SCMs procedures of demand management stage. The Public Protector reemphasized the fact that the procurement of leased accommodation falls within the mandate of the DPW. Consistent with this mandate, it is the responsibility of the DPW to instigate procurement processes after identifying a need and corresponded with a concerned client (i.e., an organ of State). However, it is interesting to note that the SAPS interpreted the counsel from the DPW relating to the identification of a particular building by the SAPS and discussion with a single potential provider (Roux Shabangu's RPF) as interference.

The fact that the SAPS only discussed with a single service provider without the inclusion of the DPW and other possible bidders fundamentally compromised the procurement procedures and contravened the Constitutional principles of competitiveness. Accordingly, the conclusion reached by the Public Protector was correct in that the conduct of the SAPS in relation to the Transnet building constituted maladministration.

The third finding was that the principle of cost effectiveness was severely contravened since the Public Protector did not find any evidence suggesting that the DPW was ever requested by the SAPS to purchase alternative accommodation for one of its units closer to the communities that they are mandated to serve. Arising from this finding, it is clear that the SAPS deliberately failed to adhere to the principle of cost effectiveness as stipulated in the regulations. It could also be legitimate to deduce that the principle of fairness was equally violated since other bidders were not afforded a

fair chance to bid. Furthermore, the Public Protector's report noted that the then Minister of Public Works response to the provisional report acknowledged that the procurement process was inconsistent with the Constitutional principles as captured in Section 217. An additional finding that is important to note here was in connection with the Constitutional and the SCM's principles of fairness, equitability and transparency which must be adhered to particularly in order to diminish the dangers that a given digression could have in terms of the validity of the whole procurement process.

As has been discussed above, these findings are an integral part of practical examples of how some government officials have manipulated procurement policies to benefit themselves and their partners in crime. As to whether the manipulation of tender rules constitutes corruption or not will be dealt with in the following section. What is however important to note here is that this is just one instance of the manipulation of tender rules by public officials in corroboration with high profile politicians and business people. This is perhaps one reason that could explain other cases of the deliberate violation of tender procedures by some provincial governments.

The media has reported similar instances which further vindicates the claim that some government officials, who sometimes are in partnership with senior politicians and private business people, manipulate government tender rules. For example, the *City Press* in an article dated 16 October 2011 under the heading "AG lashes lax tender awards" reported that the Free State provincial government issued almost four tenders valued at ZAR63.7 million to bidders who failed to score the necessary high points. As such, the Free State provincial government violated procurement procedures as outlined in the Preferential Procurement Act of 2001. In the Western Cape, there were four projects whose initial budget escalated up to 260%. This was clearly against the principle of cost-effectiveness as provided for in section 217 of the Constitution and reaffirmed by the National Treasury's tender guidelines. In Limpopo, almost forty-two contracts estimated to be valued at ZAR227.6 million were issued to respective suppliers some of which did not have the necessary capacity to handle multiple contracts concurrently. This was done by the bid evaluation committee which miscalculated the points that must be met as outlined by the procurement policy.

At the centre of the manipulation of tenders in Limpopo is the former President of the ANC Youth League, Julius Malema. He is currently being investigated for having used his position to influence the issuing of tenders to his friends and associates who in turn fund his extravagant lifestyle. Moreover, in the Free State, Eastern Cape and Western Cape some projects were initiated and completed by service providers. However, the facilities that were built do not only remain unused by the relevant schools up to this date, but there was also have no need for them (*City Press*, 16 October 2011). This means that the building of these facilities went beyond the needs of learners concerned and thereby contravened the PFMA regulations which provide for a clear needs assessment as a first step before any procurement of goods or services can be conducted.

These represent a few of the more prominent cases which indicate that the State tender system is being used by some public officials and politicians for personal gain or to accumulate wealth in a corrupt fashion in the democratic South Africa. There are many implications that could be derived from the failure to adhere to the legislated procurement policies. The main one is that the violation of tender rules amounts to corruption since it is done by those who have authority vested in them by virtue of the public offices they occupy. Put simply, one of the inferences that emanates from the examples that have been cited above is that the manipulation of tender rules fundamentally amounts to fraud and by extension corruption. Having cited some of the examples of the manipulation of the tender process, it becomes important to attempt to demonstrate the conceptual or theoretical basis for assuming that the manipulation of tender rules in the post-Apartheid South Africa amounts to corruption and maladministration. To this end, the following section will review some of the literature that could reveal that there is indeed a mutual reinforcing relationship between the manipulation of tenders and corruption.

4. Tenders and Corruption

The illegal manipulation of State tenders appears to be increasing, hence it requires urgent attention otherwise the ideals of transparency, accountability, sustainable and equitable distribution of resources will remain but a pipe dream. While at a conceptual

level, corruption generally refers to the abuse of public office for personal gain, the manipulation of State tenders could well constitute corruption even though, as Williams and Quinot (2007) have argued, the concept of corruption can be hard to define. However, the differences around what corruption means should be noted for the sake of making more sense of corruption in relation to the abuse of the tendering system. Nye (1967) defines corruption as an action that departs from the customary tasks allocated to public office because of private-regarding (family or close private cabal) or contravening the rules against the practice of private-regarding influence. This includes bribery/kickback, nepotism and misappropriation of public resources for personal use. This definition relevant since it helps in terms of understanding and locating the post-1994 situation in relation to the corrupt abuse of public office for purposes of illegal gain.

According to the Commonwealth Secretariat (2000) and Kargbo (2006), the definition of corruption has been widened to include the abuse of all offices of trust for private gain either in the public or private sectors. Additionally, corruption manifests itself in a variety of ways hence it becomes significant to note the difference between personal corruption and political corruption. Personal corruption refers to all those instances that are motivated by personal gain, while political corruption is motivated by political gain. Another distinction that should be noted is between individual corruption and organizational or institutional corruption. Corruption, in terms of the context of the State, ordinarily refers to criminal or otherwise illicit behavior by government agencies/departments, or by officials of organizations while executing their mandate. This widened definition of corruption exactly fits the examples such as those described above where public officials—in collaboration with senior politicians—abused the powers assigned to their respective public offices to unfairly benefit themselves. Kargbo (2006) further contends that corruption functions within a particular system such that it could even be argued that corruption is as a result of an economic system that is founded on a political philosophy of democratic pluralism. In other words, corruption and its escalation should also be viewed in relation to the socio-economic and political system of a particular country where merely confining it to the abuse of public office would be inadequate.

Moreover, for Kargbo, the practice of democratic pluralism is now favoured by most independent African States. One of the characteristics of democratic pluralism is a multiparty system and a government that has received the highest number of votes on the one hand and an opposition party on the other. In such a system, politicians are referred to as representatives of the people and bureaucrats as public servants or officials mainly because of their respective duties which are believed "to be conductive to the common good. Corruption therefore becomes the improper behaviour" (Kargbo 2006:4). The essence of the argument advanced by Kargbo is that as much as the democratization process should be welcomed, it has also made it difficult to differentiate between the private and the public sectors particularly in Africa. Despite the difficulty in terms of making a distinction between the private and the public sectors, the fact remains that those who hold public office are expected to be above board or reproach when executing their public duties.

One practical example of Kargbo's argument is the current case of corruption through the tender system levelled against the MEC for Economic Development in KwaZulu Natal, who is also a former Provincial Treasury of the ruling ANC; a former MEC for Health and now Speaker of the Provincial Legislature and the ruling ANCs Provincial Treasury, a private businessman and a number of government officials. It is alleged that they violated public procurement policies first, to benefit themselves and second, to benefit their organization. Put differently, the essence of their charge is informed by the deliberate flouting of tender rules to advance both personal and economic interests. According to Kargbo, in circumstances such as this, there is the looting of public money. It is partially against this background that the cooperation of the National Commissioner of the SAPS and the suspended Minister of DPW with Roux Shabangu's company (RPF) forms part of classic examples of the misuse of public office in the manipulation of public procurement. Another reason is that the Public Protector's report cited above also made it clear that the RPF had an unfair comparative advantage over other possible bidders since it was privy to information about the leasing processes before it even begun. For the RPF to receive such information would suggest that it might have promised or actually bribed officials and politicians that were involved in this process otherwise it would have been difficult to access such critical information.

Raj Kamal Jha's article, published in the Transparency International's Global Report 2005, presents an argument that could be useful in understanding the link between the SAPS, DPW, RPF and corruption. Jha contends that tenders that are infected with corruption have a serious negative implication on public works. One such implication is that of shoddy or poor quality service/s and/or goods that would be provided by contractors who might not have the necessary capacity as outlined by the rules of tender. Jha further argues that the procurement of certain goods and services is ordinarily awarded at expensive cost. This situation occurs despite the fact that bidders make pledges that they will provide the best services in terms of quality, but the reality is that most contractors, particularly emerging and/or subcontracted ones, do not live up to their obligations. Some of these contractors deliberately use poor materials so as to generate more money or profit (Jha 2005). This point reaffirms the view that has already been captured above where the violation of tender rules also includes procuring costs from service providers who do not have capacity to deliver good quality services consistent with the principle of cost-effectiveness and value for money. It therefore not surprising that it has become a fashion to inflate the actual cost of procuring particular goods or services so as to increase the chances of benefiting through corrupt means.

The South African government procurement policies as outlined above makes it clear that after a needs assessment has been conducted, a budget that is equal to procurement such goods or service must be approved and that it should not be exceeded. Therefore, any official or a politician that seeks a bribe to award a particular tender or does something contrary to the provisions of the procurement policies that are in place could legitimately be charged with corruption. To award a tender because considerations that are outside those captured above will indeed be tantamount to corruption. Hence, Bayley (1966) is correct in contending that, at a conceptual level, corruption is attached to bribery and refers to the exploitation of authority because of personal gain considerations which do not necessarily need to be economic. Werlin (1973) makes more or less the same observation that political corruption is the swerving of public resources for non-public intentions. A very simple definition of corruption is "corruption is the abuse of public office for private gain" (World Bank 1997:8). This point merely reaffirms the view that corruption essentially implies the misuse of either public or private office for purposes other than

those that are expected from such an office. This definition of corruption further confirms the point that corruption is indeed relevant to the issues of tenders and the subsequent manipulation of tender guidelines.

As Willigo (1999) has observed, corruption is neither the conserve of Africa nor of the West, but a cancer consuming its way across the world. Hence, one of the key ways to get rid of corruption as a human problem, motivated and exacerbated by a lack of moral and ethical values and facilitated by the economy that is premised exclusively on profit making in the modern-day 'me era', and by dictatorship and the unfair economic international system. Willigo does indeed have a point particularly because foreign and domestic markets rely on profit making at all costs. For this reason some businesses are willing to pay kickbacks in order to receive unfair advantage over their counterparts. In such a context, conducting business in any honest and free of corruption fashion is increasingly becoming a hindrance to the prosperity of a particular business. Apart from the five reasons cited above that could propel politicians, government officials and private business people to be involved in maladministration or corruption, there are other causes that are cited as being the basis for corruption.

In 2001, a survey was conducted in South Africa by a group called the Panel Expert Survey. On the basis of this survey, a chart that sums up the causes of corruption as per the understanding of the general population was formulated. This investigation mainly focused on government corruption and its aim was to contribute to the debate about the causal factors of corruption. It also looked at the perception that the salaries of public servants are too low, thus leaving the latter with no choice but to engage in corrupt acts in order to complement their salaries. Below is a chart that attempts to capture the perceptions of the causes of corruption according to the panel.

Figure 1 below demonstrates the perceptions of corruption that are assumed to be mainly the result of moral degeneration as the raison d'être for corruption in South African society, in general, accounting for nearly a third (31%) of responses. This was followed by greed and the desire for self-enrichment (25%), and socio-economic conditions such as poverty and unemployment (18%). Institutional reasons such as weak checks and balances accounted for more than a tenth (14%) of the responses,

followed by the Apartheid legacy and the progression of transformation (12%) (The Panel Expert Survey 2001:2-5).
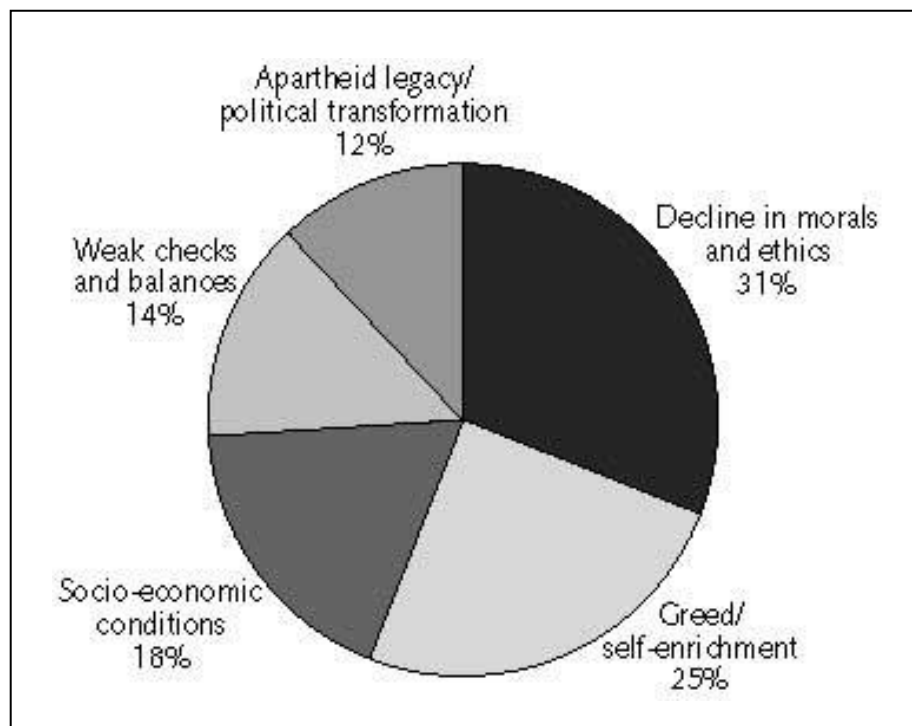
Figure 1

Respondents' Perceptions of the Causes of Corruption in South Africa

Source: The Panel Expert Survey (2001:2-5).

Figure 1 above affirms the view that corruption is essentially a moral problem. In other words, the above chart notes that much as there could be other reasons that are perceived to be perpetuating corruption, the lack of ethical leadership from the side of both State officials and politicians vindicates the argument that corruption is fundamentally a moral problem. The fact that corruption is essentially a moral problem does not seek to undermine other causes of corruption as mentioned above. However, it means that a clear commitment to a particular set of moral values would make it difficult for politicians, government officials and business people to be tempted to manipulate tender rules.

5. Corruption as a Moral Problem

As has been shown above, a strong commitment to ethical values could complement and strengthen public procurement policies thereby ensuring that politicians, government servants and/or private companies that seek to corrupt the tender system are minimized and prevented. The lack of a strong commitment to moral values from government officials is confirmed by the fact that a number of government officials have been found guilty of being corrupt. In other words, since the attainment of democracy in South Africa, cases of State officials and political figures that are either guilty or alleged to have manipulated tender guidelines in order to either benefit for themselves or their cronies are increasing. This is confirmed by the 2011 Public Services Commission Report which found that between September 2004 and 31 June 2010, a total of 7, 766 cases of corruption have been reported to the National Anti-Corruption Hotline. The report listed the following: fraud and bribery (1511); mismanagement of government funds (870); procurement irregularities (720), and appointment irregularities (627) (Public Services Commission Report, 2011). These statistics confirm that kickbacks or the paying of a bribe to receive an unfair advantage over others is on the rise in post-1994 South Africa. Again, this exposes the extent to which corruption can be attributed to the lack of a serious commitment to ethical or moral values.

As Kwame Gyekye can argue, corruption is a moral challenge because there is a tendency by many social scientists to assume that political corruption is the result of the limitation of a political or legal system "as well as from the economic situations of people" (2002: 215). Gyekye goes on to claim that people "put little, if any, stress on the moral circumstances of corruption, though morality clearly lies at the core of the phenomenon of political corruption. Thus...political corruption is fundamentally a moral problem." (2002: 215). There is validity in Gyekye's argument that the lack of moral values, ethical leadership and undemocratic practices could also be the reason why corruption exists in the first instance. Put simply, ethical leadership, moral values and undemocratic practices could also be the basis for corruption. Moreover, while it could also be correct to argue that corruption is a moral issue, it should be noted that an economic system that is based on notions of competitiveness, survival of the fittest,

'me-first and everyone else later' and crass materialism contributes into moral decay which gives rise to the entrenchment of the culture of corruption.

David Masondo has argued that there is a mutually reinforcing link between corruption, lack of morality and the political economy. He posited one of two approaches to corruption that are relevant to this study. This approach is the individualistic approach which argues that corruption is an individual challenge and that the key foundation for corruption is embedded in the trans-historical and omnipresent human nature connected with human greed and selfishness. Masondo (2010) further contends that to understand the root causes of corruption and also to be better equipped to deal with it, corruption should be recognized as a structural problem directly linked to the political economy and its values hence addressing it requires a holistic approach. This line of reasoning reaffirms the idea that corruption is essentially an ethical problem that has the potential of eating the moral fabric upon which the entire post-Apartheid South African society has been built.

In an article entitled "Corruption and the Development of Organisational Ethic since the 1996 Constitution", Ferreira argues that corruption is a progressively becoming a more significant motivating force in South Africa that is starting to seriously weaken the faith of the general population and which cuts at the very moral foundation and fabric of society. The extent to which some State officials and politicians are treating corruption or bribery as 'business as usual' is a serious problem that needs urgent solutions. Failure to urgently respond to the escalating instances of corruption could sanction the degeneration of moral values and lack of ethical leadership from both government officials and politicians. To be noted here is the fact that State officials and politicians that have been delegated to formulate policies and guidelines to curb corruption appear to be manipulating the very same regulations. While other instances of corruption should also be a cause for concern, it nevertheless appears that corruption pertaining to public procurement is the biggest challenge that needs to be tackled. The main reason for this is that the procurement of goods and services by any organ of State is the most affected by corruption and bribery; hence, failure to deal with it could negatively affect empowerment programmes in general and service delivery in particular.

Additionally, Williams and Quinot (2007) have argued that procurement corruption manifests itself in at least three forms: public, private or auto-corruption. Public corruption shifts from a particular supplier to the public official that is vested with the authority to decide on procurement-related matters. A classic example of this is when a public official, after being bribed, decides to award a tender to a particular company or chooses which firms to invite for procurement, or by stressing or crafting a contract to advantage a particular preferred purveyor. It seems that public corruption is the main persistent kind of corruption taking place in public procurement. Indeed, Williams and Quinot analysis appears to be valid especially because the examples that they give are increasing in post-Apartheid South Africa as captured in the aforementioned reports and figures about officials either found guilty or alleged to be corrupt. If not curbed, the deliberate manipulation of the tender system could legitimize and consequently perpetuate the perception that the easiest way to become rich or to get a government tender is through paying a kickback or a bribe.

The examples cited above have many implications for post-Apartheid South Africa. It must be indicated that this chapter has no intention to dwell on the consequences of manipulation of the practice of tenders in the current South Africa since this is beyond the scope of the present work. It is however sufficient to mention that the entrenchment of the culture of accumulating more wealth at any cost is pregnant with the potential of calamitous consequences in terms of the democratic government's developmental programme. This is well captured by Frisch (1996:68-70) who views corruption from the point of view of its impact on development. His thesis is informed by the observation that corruption is the principal hindrance which not only militates against development but also yields negative results. Among other consequences of corruption is any type of project that a certain government institution could formulate ostensibly to advance service delivery, but is also informed by a desire to benefit in a corrupt and unfair way. Put differently, the desire to make more money through dishonest ways means that government officials would create developmental programmes because they seek to use them to corruptly gain by them As Frisch (1996:71) illustrates, "a technology which is wholly unsuited to a specific need of country or the choice of a capital-intensive project—more lucrative in terms of corruption—rather than a labour-intensive one which would nevertheless be far more beneficial to that nation's development." Corruption, argues Judge Heath (2010:2),

deviates already meagre resources from addressing basic societal needs such as healthcare and food security, to megaprojects, which a given government could survive without, simply because such megaprojects could offer chances of receiving kickbacks. Cases such as this inevitably perpetuate poverty and underdevelopment and moral decay. For example, lack of education could lead to unemployment which results in a failure to generate income for oneself and one's family. Hence, left with minimal choices, one could be motivated to devise less honest or corrupt means to either earn or increase one's own buying power simply to get food on the table for one's family. It is for this reason that corruption should be viewed as an indication of the lack of moral values. Moral decay is facilitated by the same economic system that produces and promotes greed, competition, excessive love for material things or the 'bling-bling' culture of advancing individual interests at all costs. All these confirm the extent to which the lack of moral values and ethical leadership has resulted in the abuse of public procurement by some State officials and politicians in the post-Apartheid era.

The economic argument captured in the preceding paragraphs seeks to generate an explanation of corruption. However, the view that the practice of State tenders in modern-day South Africa does appear to perpetuate corruption appears valid. The fact that it is increasingly becoming a huge challenge for an honest business person to be awarded a tender without either knowing someone in government or be willing to pay a kickback or a bribe indicates the extent of the problem that has engulfed the tender system in post-Apartheid South Africa. Without undermining the negative contribution that the lack of effective institutions and the political will has in allowing the continuation of corruption and the abuse of the practice of tenders appears to support the conclusion that corruption is "a fundamental moral problem" (Gyekye 2002:215).

The manipulation of the practice of State tenders is not only a moral problem but it could frustrate the achievement of BEE through the use of procurement by State organs. The failure (or the apparent lack) of political will to ensure that the issuing of tenders is conducted in a manner that is fair, transparent, competitive, above board and targets the intended beneficiaries will not only perpetuate the growing socio-economic gap but it also has a potential of entrenching a culture of 'me-first and

everybody-else-later.' It is perhaps for this reason that Irvin (2002) as cited in Nicolaides (2009) argues that it sad to note that an increasing number of businesses are becoming more narcissistic in their cultural orientations. For Nicolaides, Irvin's observation should not be startling especially in the light of the fact that a number of senior white and black business executives that work for large corporations are likely to be egotistic with no realistic goals for personal achievement.

One example which fits the argument that is captured above is "the South African business scenario, where many of them (i.e., black businesses and their executives) were previously disadvantaged by the Apartheid Policy of the previous regime, they are eager to show that they 'have arrived'" (Nicolaides 2009:491). As a result, a number of them are reasonable obsessed with illusions of their own accomplishments and distinctiveness. Nicolaides goes on to argue that because of the demands of the false self, the narcissists cannot be content with their own accomplishments, status, material wealth and information. Furthermore, "the narcissistic grandiosity and sense of entitlement are equally incommensurate with his achievements. To bridge the grandiosity gap, the malignant (pathological) narcissist resorts to shortcuts and these very often lead to fraud" (2009: 491-492). This is a valid observation of a post-1994 business executive mentality in South Africa which has also affected public officials particularly those serving in the Supply Chain Management and finance departments of government. Put simply, it is correct to argue that the current South African business sector is driven by 'self-preservation' or a desire to accumulate more money. This money is mainly intended to fulfil false images of the self or fit into the mentality of crass materialism or conspicuous consumption which often leads to temptations of engaging in bribery, fraud and tax evasions etc., so as to maintain an expensive and extravagant lifestyle.

This narcissist tendency can be observed in both senior and junior government officials especially those that are vested with powers to take decisions on procurement. Moreover, the tendency to be preoccupied with self-centeredness can also be seen from the so-called 'tendertrepreneurs' or the so-called 'black diamonds.' It could be argued whether a culture of self-centeredness or narcissism could also be one of the more serious motivations driving some of the senior and junior State officials and politics to steal from the public coffers. What is clear however is the fact

that there is a connection between the tendency of self-preservation and corruption or bribery. Another issue that is patently clear is that the practice of tenders does contribute or result in perpetuating corruption in post-Apartheid South Africa. Nevertheless, the most important point is that corruption is both an economical and moral problem. Any intervention to deal with corruption in the democratic South Africa must therefore take into consideration both its economic and ethical dimensions.

In the light of the above economic and moralistic theoretical views on corruption, it can be deduced that the practice of tenders, including the manipulation of procurement policies, in post-1994 South Africa cannot be reduced to the lack of effective institutions. Instead, the perspectives captured above suggest that corruption is a moral problem because it is the individual's lack of ethical capacity that tempts them to either pay or receive a bribe or kickback. The manipulation of the tender system in general and its guidelines in the democratic South African State is a classic example of moral decay.

If all parties involved in the tendering processes were to be motivated by the highest level of professional ethics that put the people's needs first, there would likely be less instances of corruption. Moreover, the tender system is currently being perceived as one of the easiest ways in which a politically-connected black person or anyone that is willing to pay a bribe could accumulate wealth without working for it. This is perpetuated by the desire to make more money at all costs even if it means applying underhanded methods.

6. Chapter Summary

In this chapter, an investigation has been made into the extent to which the tender system coupled with the manipulation of its guidelines contributes to corruption in the new democratic dispensation. The chapter reaffirms the view that the tender system in a democratic post-Apartheid South Africa does increase corruption which in turn frustrates the progress of the ANC-led Government in terms of dealing with the legacy of Apartheid. Moreover, while it was noted that it could be valid to argue that

the current economic system and its values also promote corruption and sanctions the abuse of procurement policies, the general lack of moral values and ethical leadership could also be a main contributory factor in the manipulation of the tender system by State officials and politicians in collaboration with business people. In other words, this chapter reaffirmed the view that corruption is a moral problem and if not addressed has a potential of eroding even further the moral thread and trust upon which the idea of good governance is based. In the light of this discussion, the following chapter will demonstrate that African ethics can be applied as a panacea to corruption.

CHAPTER FOUR

RETHINKING AFRICAN ETHICS AS A PANACEA FOR CORRUPTION

1. Introduction

> Political and social changes without changes in interior habits of feeling and thinking will never work. Nevertheless political and social changes are crucial. In each sphere of life we have to identify impediments to *UBUNTU* if we are to promote personal growth and community in a way appropriate to that sphere. If, for instance, certain aspects of our health-care system—say the size and inefficiency of our hospitals—make *UBUNTU* difficult or impossible there, then they are enemies of personal growth and community (Shutte 2001:67)

In the previous chapter, the main challenge that was identified concerned the increasing number of government officials and politicians in collaboration with private business people who are either alleged or have been found to be manipulating the State tender system. The manipulation of the tender system normally comes in the form of taking bribes or kickbacks that are paid to those who are charged with the responsibility of the issuing of tenders. Another serious implication is that the ANC-led government's promise of a better life for all, service delivery, good governance, transparent and accountability has been turned into a mockery and political rhetoric. In other words, the allegations and instances of corruption and unethical behavior that are now associated with the public procurement process has made mockery of the very same ethical foundation upon which the South African democratic State was premised.

Accordingly, an ethical solution appears to be the most important element that is required to deal with corruption in general and tender corruption in particular in a post-Apartheid South Africa. This claim is based on the fact that the lack of a serious commitment to ethical behavior by public servants, politicians, business people and the population in general is not the only root cause of corruption, but it is a contributory factor which perpetuates it. Moreover, economic empowerment policies and principles such as *Batho Pele* and *Masakhane* were informed by an ethic of

Ubuntu. Therefore, it becomes important to rethink African ethics as a panacea for corruption.

There are many types of ethical approaches that could be used as a panacea to corruption but *Ubuntu* is more relevant and key since it could resonate with or talk to many Africans in general and South Africans in particular. *Ubuntu* is an African philosophy that views human beings as being interconnected to one another. As a result, they must behave in a manner that advances the wellbeing of all.

This chapter will attempt to argue that African ethics in general and *Ubuntu* in particular could be a panacea for corruption. To this end, the discussion will be structured as follows:

  i.   The implications of the principles of *Ubuntu* to corruption;

  ii.   *Batho Pele* and *Masakhane* principles and socio-economic empowerment;

  iii. Rethinking African ethics particularly *Ubuntu* as a panacea for corruption;

  iv.   A chapter summary which will reaffirm the view that State tenders will perpetuate corruption in the democratic South African unless the ethic of *Ubuntu* is considered as a panacea.

2. Implications of *Ubuntu* as a Panacea for Corruption

The ethic of *Ubuntu* is mainly about the recognition that all human beings depend on others for their survival. This means that *Ubuntu* is not merely a moral issue or ethical declaration, but is a way of life whose practical meaning cannot be reduced to an event since it is like a living organism or continuous process. *Ubuntu* is a way of life in that it speaks to the manner in which human beings ought to treat or relate to one another. For example, humility, humbleness, selflessness, self-respect, mutual respect and concern for others or putting other people's interests first constitutes the core values upon which that the ethic of *Ubuntu* is built. Having said this, it becomes

relevant to recall that the main intention of this present research is to understand the extent by which African ethics in general and *Ubuntu* in particular could be used in order to address corruption. As such, it must be remembered that corruption and/or the manipulation of the tender process in post-Apartheid South Africa has been viewed a corrupt activity.

Notwithstanding the different meanings of the concept of corruption, there appears to be a general consensus that corruption is a moral problem. This moral problem indicates a lack of good moral or ethical leadership. In other words, corruption has been viewed as an ethical and moral challenge. It is for this reason that an ethical solution that is equal to the problem must be found. As such, the African ethic of *Ubuntu* appears to be more relevant in terms of addressing corruption in post-Apartheid South Africa. One of the main reasons for believing that *Ubuntu* is a more relevant type of ethic for addressing corruption post-Apartheid South Africa is because this principle views the existence of all human beings as depending upon others. This means that for any human being to reach her or his full human potential s/he must ensure that the wellbeing and general interests of other human beings are promoted and defended. In other words, the ethic of *Ubuntu* measures the existence of human beings in terms of the degree by which the latter contributes to the wellbeing of others. This means that *Ubuntu* does not tolerate the promotion of selfish interest, profit maximization, or greed, since all these traits stimulate the desire to engage in corrupt activities. Instead, *Ubuntu* says there is an obligation to advance the wellbeing of others because of their relationship and/or interdependence.

African ethics in general and the ethic of *Ubuntu* in particular is based on a "communalistic orientation of the society in question [which] means that an individual's image will depend rather crucially upon the extent to which his or her actions benefit others than himself, not, of course, by accident or coincidence but by design" (Wiredu 1992:200). One of the inferences that can be drawn from this understanding is that those who are engaged in corruption would not have been encouraged to do so in the first place if they had internalized this understanding of the ethic of *Ubuntu*. In other words, if *Ubuntu* could be inculcated, as a way of life, in the mentality of government officials, politicians and businessmen, as well as the general population, instances or cases of the manipulation of tenders could arguably be

minimized. The reason for this claim is that the selfish manipulation of tender rules is totally in contradiction with the idea of the wellbeing of all humankind being contingent on the extent to which they advance each other's wellbeing.

The then president of South Africa, Thabo Mbeki, correctly summed up the forgoing in the fourth Annual Nelson Mandela lecture, when she stated, "because of the infancy of our brand new society, we have the possibility to act in ways that would for the foreseeable future, infuse the values of *Ubuntu* into our very being as a people" (2006:3). Mbeki went on to argue that even though it is difficult to find people in South Africa who practice the true values of *Ubuntu*, it is time that Nelson Mandela's idea of the 'Reconstruction and Development of the Soul' is taken up seriously. The main emphasis behind the 'RDP of the Soul' is to ensure that the self-seeking tendencies behind corruption which produces greed and a culture of conspicuous consumption should be addressed because they eat at the moral fibre upon which the democratic South Africa is based. In this way, Mbeki validates the importance and relevance of *Ubuntu* as a way of dealing with unethical behavior and notions of 'me-first-and-everybody-else-latter.'

As mentioned elsewhere in this research, the *Batho Pele* principles and the *Masakhane* programme formed the central part of socio-economic transformation as led by the ANC-led national government. Part of the rationale behind *Masakhane* and is to contribute to the reconstruction and development of the soul of South African society, by instilling the idea of prioritizing the interests and wellbeing of others, especially in the provision of public goods and services.

3.   *Batho Pele* Principles, *Masakhane* and Socio-economic Empowerment

It is well documented that the exclusively white Apartheid regime came up with different inhuman and unethical methods to oppress and relegate the majority of black people to the level of sub-humans. For example, black people were denied access to information which included the manner in which national and provisional government budgets were formulated and spent. As such, the democratic government had to transform such conditions in order to ensure that information is unrestricted. The

unrestriction of information is very important in the light of the fact that access to information forms part of a participatory, accountable and transparent government whose legitimacy is based on the will of the people. To this end, the public service and its work ethic had to be transformed so that it reflects the values of *Ubuntu* and democracy, such as respect for other human beings, humility, mutual respect, a spirit of sharing, accountability and transparency.

These values of *Ubuntu* and democracy are provided for in the South African Constitution as adopted in 1996. Consequently, a "White Paper on the Transformation of Public Service Delivery (*Batho Pele*)" gave further meaning to such new democratic values. This white paper captured what is now popularly known as *Batho Pele* which loosely translated to means "placing the interests of other people first".

3.1. The Eight *Batho Pele* Principles

There are at least eight key principles of *Batho Pele* that were essentially formulated to regulate the public service throughout the transformation process in general and the provision of public and sustainable services to the people. Additionally, these eight principles were also intended at restoring human dignity or *Ubuntu* to the majority of black people who had been mistreated in an inhuman way for some 300 years. According to the *Batho Pele* Handbook (1997), these eight principles are as follows:

3.1.1. Principle #1: Consultation

According to this principle, the people must be consulted about the type and quality of the public services that are delivered to them. This includes giving the general population an option of choosing the type of services that they want from those available.

3.1.2.   Principle #2: Service Standards

This principle states that people must be informed about the level and quality of government services, including the duration of the waiting period before the arrival of such public and services.

3.1.3.   Principle #3: Courtesy

The principle of courtesy relates to the fact that public officials or civil servants must treat the general population with courtesy and consideration. This principle seeks to contribute to the restoration of human dignity which was eroded because of inhuman Apartheid policies.

3.1.4.   Principle #4: Access

This principle requires that there must be equal access to public services which are entitled to all citizens irrespective of their socio-economic status, race, sex, religion or creed. It therefore seeks to ensure that all human beings are treated in a fair and equal manner when it comes to the type of government services that are offered to them.

3.1.5.   Principle #5: Information

This principle provides that access to accurate information must be given to all citizens in relation to the manner in which the government is conducting its affairs.

3.1.6.   Principle #6: Openness and Transparency

This principle is about openness and transparency in terms of how the government conducts its business. This principle requires that government officials or servants that

are charged with different public responsibilities must be known and accessible to the people.

3.1.7. Principle #7: Redress

The seventh principle is all about redress in that it states that citizens must be given an apology, full explanation and a speedy remedy should there an indication or instance where a particular standard of service that was promised is not delivered. This also means that citizens must receive sympathy and a positive response whenever a grievance has been launched about a poor service that has been delivered.

3.1.8. Principle #8: Giving Best Value

The last principle is value for money which refers to the importance of public services being rendered economically and efficiently so as to give citizens the best possible value for money.

3.2. *Batho Pele* and Service Delivery

The above eight principles of *Batho Pele* remain relevant and important in the arena of service delivery. However, they should not be viewed in isolation from each other because they mutually reinforce each other. All eight principles are founded on the ethic of *Ubuntu* since they reaffirm or restore the dignity of all black people in general and Africans in particular. The ethic of *Ubuntu* is about ensuring that human beings treat each other with humility, dignity, decency and mutual respect because of the interrelatedness that exists among all human beings irrespective of race, class, gender or religious belief. *Ubuntu* therefore promotes a mentality where human beings will view their existence as being of significance in terms of the way they contribute to the wellbeing of others.

In other words, *Ubuntu* promotes togetherness and mutual respect which includes self-sacrifice in order to benefit the other person. It instills a culture of selflessness which will ensure that citizens treat each other with dignity and, secondly, that public servants must be above reproach and accessible when executing their duties. The ethic of *Ubuntu*, similar to the principles and the spirit of *Batho Pele*, views human beings as being ends in themselves as opposed to being means to an end. As such, it becomes safe to say that *Batho Pele* and *Ubuntu* are two sides of the same coin since they reinforce each other. The ethic of *Ubuntu* and Batho Pele could legitimately be viewed as ethical foundations behind transformation policies such as *Masakhane*.

In other words, *Batho Pele* was aimed at introducing a new kind of ethic or moral foundation that would inform the manner in which government officials must relate to the people in the context of the provision of improved or better services for all. The *Batho Pele* Handbook states that *Batho Pele* is,

> …an initiative to get public servants to be service orientated, to strive for excellence in service delivery and to commit to continuous service delivery improvement. It is a simple, transparent mechanism, which allows customers to hold public servants accountable for the type of services they deliver. The *Batho Pele* White Paper signalled very strongly that the government's intention to adopt a citizen-oriented approach to service delivery, informed by the eight principles of consultation, service standards, access, courtesy, information, openness and transparency, redress and value for money (1997:8-9).

Put differently, the principles of *Batho Pele* should not be reduced to a 'by-the-way-issue' that is merely reviewed at the end of each financial year without being giving any practical meaning. Instead, *Batho Pele* should be viewed by the entire public service, from the most junior to the most senior public servants as a central part of their duties so that service delivery and customer satisfaction could ultimately be enhanced and achieved. Additionally, as the *Batho Pele* Handbook states, the operation is aimed at attaining:

> …the necessary transformation of the hearts and minds of public servants and to the citizen at the centre of planning and operations. [Such that] every person who works in the public service should be proud to be a servant of the people and relish the challenge of providing improved services to all. Batho is the soul of the public

service and the heartbeat of the nation that will help us rise above the legacies of the past and drive [South Africans] forward with courage and pride (1997:9).

Consistent with this above quotation is the suggestion that *Batho Pele* remains one of the key programmes that could instill a culture of a caring nation in general and government in particular where a spirit of brotherhood and sisterhood or "I am my brothers' and sisters' keeper" will flourish and inform human interaction and engagement.

The possibility of a caring society which is totally and directly the opposite of the one designed by Apartheid will go a long to ensure that the people are activated and motivated into becoming their own liberators. Put differently, an assumption that could be derived from a broader understanding of *Batho Pele* is that the government must make enabling environment that is conducive for the people to define their own destiny. This could perhaps be what former President Thabo Mbeki referred to in his 2002 State of the Nation Address. He made an important call to all South Africans to "Arise and Act-*Vuk'uzenzele*" and be committed to the government to make sure that it endeavors to provide practical meaning to the tactical challenges that confront the Public Service or *Batho Pele*. Mbeki further argued that the struggle to eliminate poverty and underdevelopment in South Africa is an integral part to creating a caring and people-centred society and this is should be a national objective. The former State president continued to argue that progress is being made inch by inch in relation to the realization of the historic objective of the addressing "the centuries-old legacy of colonialism, of racism and Apartheid" (Mbeki 2002:9).

Moreover, Mbeki noted that South Africa had established itself "as a winning nation, as a people determined to succeed" which therefore obliges all South Africans to ensure that they succeed in meeting their developmental and transformative goals. According to Mbeki, one of the necessary tools for South African to succeed is a "collective appreciation that no one can do for us what we should do for ourselves" (2002:10).This clarifies what *Vuk'uzenzele* is all about in that it calls upon all South Africans to realize that the future is in their hands, hence they need to inculcate a culture of doing things for themselves. In addition, the idea of *Vuk'uzenzele* seeks to ensure that people move beyond the stage of dreaming, a sense of entitlement and that

the government must do everything for them. In fact, this idea seeks to influence South African's way of thinking in general and that of blacks in particular to appreciate that they have a collective responsibility to contribute in resolving the legacy of Apartheid beyond mere rhetoric.

In terms of the *Batho Pele* Handbook, *Vuk'uzenzele* means "arise and act" not "arise and think" or even "arise and plan." The Handbook continues to claim that in the final analysis talking, thinking and planning are all actions. Accordingly, the *Batho Pele* Handbook goes on to state:

> In the spirit of the President's address, what he is asking us to focus on is "doing" things that will make a difference to people's lives. The President's words are perfectly aligned to current trends in public management to move away from a submissive and even subservient public service, to a strong, self-confident public service that accepts the responsibility for the success and prosperity of the people it serves—a public service that is prepared to lead from the front, while being sensitive to the needs of the people (1997:3).

The main idea behind this was to ensure that public servants view their tasks not merely as jobs with remuneration packages but rather as a duty to selflessly serve the general citizens of South Africa. This will also require that the conduct of government officials must be above board and transparent and that they should treat the general public with humility while preserving a high standard of professionalism.

The question of putting people first is not only important in terms of creating a caring society whose moral foundation is beyond reproach and to also instill a fresh pledge and intensified level of service provision, but it is also in line with the provisions made in the Reconstruction and Development Program (RDP). According to the RDP document all citizens are equally entitled to the rights, privileges and benefits of citizenship (RDP White Paper 1994). This means that public servants must do everything in their power, within the acceptable legal framework, to ensure that all citizens receive fair and improved public services. In order for this to take place, the Constitution of the Republic of South Africa states that working in the public service essentially amounts to being a servant of the people hence they must be accessible,

transparent, accountable, effective and free of corruption (The Constitution of the Republic of South Africa 1996).

The ANC-led government, through initiatives such as *Batho Pele* , *Masakhane* and *Vuk'uzenzele* sought to alter the motives that informed the Apartheid regime and its officials to one where the desire is to serve the people not only through a new work ethic, but that it is at the centre of all government servants and their work ethic. Additionally, these initiatives would not treat the people as spectators in a game that they are supposed to be playing. Instead, it sought to motivate the people to wake up and do things for themselves. This type of thinking is related to the ethic of *Ubuntu* which recognizes the interconnectedness among the people and the environment. Consequently, it would be legitimate to claim that the ethic of *Ubuntu* may be useful in addressing corruption which is the biggest threat to the achievement of South Africa's development goals as well as the moral fibre of its foundation.

4. Rethinking African Ethics: *Ubuntu* as a Panacea for Corruption

Since corruption is a moral or ethical problem that requires an ethical solution, it would be safe to claim that the African notion of ethics in general and that of *Ubuntu* in particular views the wellbeing and/or existence of human beings as contingent on other humans. The system of Apartheid did not simply oppress black people; it also resulted in the breakdown of family and community values. As has already been mentioned in the preceding chapters, the Apartheid regime provided public services of low quality to the disadvantaged black community, the legacy of which still confronts the present government. Additionally, black people began to hate themselves and their fellow human beings because of the inhuman treatment that was meted out to them by the Apartheid regime. In other words, the previous Apartheid regime eroded the moral fibre or soul of black people which had always served as an umbilical cord of hope among African people in general.

It was in this context that the ANC-led government initiated the *Masakhane* programme. *Masakhane*, which literally means, "let's build each other" was a broad and ambitious programme aimed at mobilizing people behind the development of

infrastructure and the provision of basic, but dignified, services to the general population that has been historically marginalized.

At the centre of the *Masakhane* programme was the reconstruction of everything from infrastructural development to the soul of individuals and families that had been broken by Apartheid.

Despite the noble intentions behind *Masakhane*, most of the projects that related to *Masakhane* were done through public procurement. Consequently, *Masakhane* projects, such as the building and allocation of the so-called "RDP houses," were marred by corruption. One of the issues that appeared to be at the centre of this corruption was the lack of a strong commitment to a particular set of ethics as already mentioned in the previous chapter. The desire to get on the RDP housing list first prompted the general population to pay bribes to those public servants who were charged with the responsibility of allocating the houses. As Ngobeni (2007:15) has noted:

> "Corruption affects the entire country as it increases the cost of public services and slows down service delivery to the public the public… [and goes] against the Constitution and the *Batho Pele* principles."

As Chapter 3 of this research has shown, corruption is an ethical or moral problem; hence it requires an ethical solution. It is here that rethinking African ethics as a panacea to corruption becomes relevant. It is also informed by the thinking that the interconnectedness between human beings and their material conditions is very important to the wellbeing of all living things and the future. As Nicolaides (2009:491) has pointed out:

> "African ethics is part of a social quintessence that has strong cultural roots and presents itself in actions and behaviors which are ultimately aimed at guaranteeing the survival of the system from which they emanate. The roots of African life, culture and value systems, in Southern Africa, are found in the philosophy of *Ubuntu.*"

Nussbaum (2009) makes a similar point when he writes:

> "*Ubuntu* is the capacity in African culture to express compassion, reciprocity, dignity, harmony and humanity in the interests of building and maintaining community. *Ubuntu* calls on us to believe and feel that, in the words of an old South African saying, Your pain is My pain; My wealth is Your wealth; Your salvation is My salvation" (2009:100-101).

In essence, African ethics is fundamentally about the understanding and practice, that an individual's prosperity, wellbeing and sorrows are directly linked to that of other individuals since no-one exists in isolation from the other human beings. It is this type of thinking that could help in the fight against unethical behavior by some public servants and politicians, and business people. In other words, African ethics in general and *Ubuntu* in particular could really be useful as a panacea to corruption in the post-Apartheid South Africa.

5. Chapter Summary

This chapter has attempted to live up to the aims outlined in the introduction. In briefly defining the distinction between African and Western notions of ethics, it was argued that while there could be some superficial similarities between the two, African ethics is all about viewing the existence and wellbeing of human beings as being dependent on others. Human beings have a responsibility to conduct their business in a manner that promotes the wellbeing of others without necessarily reducing this merely to some mathematical formulae. Conversely, it was argued that the Western notion of ethics which views individual human beings as being concerned with their own personal interests and having the capacity to act morally or rationally without this being linked to the existence of others. Equally, the theory of relationality, as an integral part of the African notion of ethics, revealed that human beings are indeed interconnected not only to their environment but to each other as well. As such, *Batho Pele* and *Vuk'uzenzele* are based on the notion of African ethics in general and *Ubuntu* in particular. Therefore, African ethics and *Ubuntu* in particular could be relevant in serving as a panacea to the manipulation of State tenders and corruption in a post-Apartheid South Africa.

CHAPTER FIVE

CONCLUSIONS AND RECOMMENDATIONS

1. Introduction

> "Professional and deserving service providers cannot do business anymore in government because Judas has taken people's money and has to ensure that other deserving competitors are eliminated. Government tenders are predetermined because Judas has received his kickback" (Bishop Lekganyane 2012).

By way of a conclusion to this present research project, this chapter will provide an assessment of the extent to which the research objectives have been met as outlined in chapter one. To this end, this chapter will provide the following:

i. A concise recapitulation of the research objectives;

ii. A brief outline of the key research findings;

iii. A presentation of some key recommendations which could be considered in future research on the subject at hand.

2. Key Research Objectives of the Present Study

It will be useful to recap the key research objectives that this study intended to address. One key research objective was to ascertain whether a relationship exists between corruption and State tenders and whether it is justifiable for politicians and public servants to be involved in the practice of tenders. Additionally, the research had to grapple with the issue of whether a link exists between corruption and unethical leadership and if corruption and the manipulation of the tender process in a contributory factor to the non-delivery of basic services.

Beyond these related key questions and problems, there were also broader issues that

had to be investigated. Hence, this investigation also sought to investigate the reasons behind the tendency of public servants and politicians to undermine their own initiatives such as the tender rules and the principles of *Batho Pele* when tenders are being awarded. Additionally, the research had to grapple with the issue of whether a link exists between corruption and unethical leadership and if corruption and the manipulation of the tender process in a contributory factor to the non-delivery of basic services. Finally, in terms of the overall objectives of the research project, an attempt was made to apply the ethic of *Ubuntu* as a panacea to corruption.

3. Tenders and Economic Empowerment in Post-Apartheid South Africa

In reading and analyzing the literature that is available in relation to the issue of tenders and economic empowerment in the post-Apartheid South Africa, it transpired that the ANC-led government was correct in identifying the practice of tenders as one of its key economic empowerment policies. The guidelines, such as the Supply Chain Management Act, that were developed as a way of ensuring that tenders are issued in a transparent and fair manner were found to have been sufficient. In addition, this research has reaffirmed the relevance and importance of other policies that are directed at economic transformation such as the Affirmative Action, Batho Pele , Preferential Procurement Policy Framework Act (PPPFA) 2000 (Act No. 5 of 2000) and (Broad Based) Black Economic Empowerment Act of 2003.

This study found that policies and programmes that were meant to address the socio-economic injustices of the past could have yielded more tangible results if they were taken seriously by those charged with the responsibility of implementing them. Put simply, the research concluded that in some instances some government officials and politicians consciously undermined the importance of putting people first when in the execution of public affairs. For example, some government officials and politicians saw an opportunity to misuse empowerment initiatives to advance their personal, economic and political agendas at the expense of the intended beneficiaries of such programmes. This tendency fuelled the opposition channeled by some sections of the South African population towards empowered policies such as Affirmative Action

(AA). For example, in some instances nepotism and the appointment of unqualified people in responsible positions of authority deliberately distorted AA policies or merely made some public officials and politicians view them as just another batch of policies without any practical meaning. Hence, this has been used by opponents of the ANC-government's transformative initiatives which seek to address the legacy of Apartheid.

This legacy of Apartheid has been reaffirmed by this study as being structural. To be specific, the available literature confirmed the claim that the issue of economic empowerment is more of a structural issue that requires a social content since it cannot isolated from other social programmes. Social programmes are needed that will erode the 'survival of the fittest' and 'dog-eat-dog' mentality and in their place instill a sense of caring for one another and a spirit of selflessness. This study has found that the level to which Apartheid policies were entrenched within society and government institutions has ensured socio-economic disparities continue to haunt the ANC-led government almost seventeen years after the achievement of political power through democratic means. To deal with these inequalities, the democratic government must adopt an integrated or structural approach that will facilitate the effective implementation of economic empowerment initiatives in a manner that directly benefits the intended beneficiaries.

Another important point that was confirmed in this present study was that Black Economic Empowerment (BEE) was not necessarily the original idea of the ruling African National Congress (ANC). Contrary to popular belief, it was the brainchild of white Afrikaners who had successfully used similar programmes during the Apartheid era to empower each other while creating a white middle class in the process. It is should not be surprising that the very same strategy used by the Apartheid government was assumed to be have the same potential and effect on the historically-oppressed and exploited black majority. Arising from this, the study has suggested that this could be one reason why most economic empowerment policies appear to have either benefited the very same hitherto benefiting whites and very few black people who have political connections. Moreover, those who have benefited from these economic empowered programmes have little, if anything at all, to show as

proof of successfully empowering others as was initially envisaged. What instead appears to be the norm is that those who have benefited want to benefit more at the expense of others whose ticket is used to accumulate wealth. The tendency to perpetually benefit from the government's economic empowerment 'cake' is not necessarily linked with any significant transformation of the core economic structures, but instead, reproduces the culture of greed, patronage, political networks that is the legacy of Apartheid.

Finally, it is clear that while economic empowerment remains relevant, some government officials, politicians and business people have acted in a manner that makes mockery of the moral foundation upon which these programmes and legislation were based. Consequently, this study, in the absence of other explanations to the contrary, confirmed that tenders significantly contribute to corruption.[8] Moreover, what does remain crystal clear is that there is a nexus between tenders and corruption in post-1994 South Africa irrespective of whether the Apartheid government itself was corrupt.

4. The Contribution of Tenders towards a Culture of Corruption

This study has noted that the 1994 electoral victory where the ANC emerged as the governing party was viewed as a signal of good things to come. These good things included the improvement of the quality life for all with a special concentration to the historically-disadvantaged and exploited black peoples of South Africa. In other words, the 1994 democratic trajectory raised genuine expectations of a new society where the colour of one's skin, sexual orientation and socio-economic status would not militate against the achievement of a better life and prosperous country for all. It was further noted that despite the opportunity to create a new society, the majority of black people continue to be confronted by unemployed, deepening poverty, inequality and many other social ills. However, this does not undermine some significant victories that have been scored by the democratic government, but the point is that a

---

[8] The extent to which corruption takes place cannot be here determined as this would be the subject of an additional study which is beyond the scope of this present research. Hence, future research is recommended in this regard.

lot still needs to be done if all black people are to be empowered economically.

By virtue of the evidence that was provided in this study, it emerged that the intention behind using tenders as one of the significant programmes to empower the historically oppressed black people in general and Africans in particular remains relevant. However, the issue of tenders was found to be becoming increasingly synonymous with 'get-rich-quick-schemes' to an extent that the ANC-led government is viewed as inherently corrupt. Factionalism, cronyism and the misuse of the tender rules have significantly fuelled this perception.

The study has also found that since the practice of tenders by the democratic system, allegations and actual cases of corrupt behavior by some government officials, politicians and business people have been on the increase. This is one reason why this study has confirmed the claim that the tender system has perpetuated corruption in the democratic South Africa. As a result, this frustrates the progress that the government has made in relation to addressing the legacy of Apartheid through using tenders as one of its economic empowerment programmes.

Put simply, this present research found that empowerment programmes and policies, such as public procurement policies and/or guidelines, were initially crafted with good intent. This was to utilize the capacity of the State, as arguably the biggest employer and consumer of goods and services, to create a black capitalist middle class and improve the overall life of the general population of black people. The research did indicate that there are undeniably very few rich black people in South Africa and the middle class that has been created as a result of the practice of tenders is still very small. As a result, the majority of black South Africans still live in poverty. An unintended consequence of the tender system led to the emergence of a relatively small number of black business people who primarily rely on State tenders for their businesses to flourish. Unlike other entrepreneurs who bid for State tenders but are also engaged in the production of different commodities, these business people who rely on tenders alone are not involved in any serious production activities beyond providing services such as catering or, at worst, being used as fronts for established white businesses. Such classes of business people often rely on cronyism, underhand dealings, political networks and political factions to obtain State tenders. This study

found that the SACPs term "tenderprenuers" sufficiently describes this class of business person who has emerged as a result of public procurement policies.

Moreover, tenderprenuers have, in collaboration with some public servants and officials including politicians, have undermined the tender rules. As a result, they have legitimized the use of bribes and kickbacks in order to influence the outcome of tender bids or processes which are apparently prearranged. The 2011 Report entitled, "Against the Rules" issued by the South African Public Protector gave detailed examples of how politicians, public officials and tenderprenuers cooperated with one another to consciously manipulate tender rules.

The research study further noted that there are many implications to the manipulation of the tender rules. Among the most serious is the siphoning away of resources aimed at service delivery to fight corruption. As such, this research concluded that tender fraud or corruption is a sad reality that is diametrically opposed to the original motives of the ANC-led government to employ public procurement an important means of liberating black people from socio-economic bondage that originated with the policies of the previous Apartheid regime.

From this study, it was clear that the violation of the tender guidelines has contributed to eating away at the moral fibre upon which the democratic State was founded in 1994. The abuse of the practice of tenders contributes to corruption by public officials, politicians and tenderprenuers deliberately flouting public procurement policies. This is essentially an ethical problem. Hence, fighting against the manipulation of tenders rules would not suffice unless it is linked to a clear programme that seeks to inculcate a renewed sense of personal and corporate ethics. However, this revised culture of ethics that should be inculcated must not be reduced to declarations pasted on notice boards of different government departments, but instead there should be clear educational programmes that will promote them. Such programmes should be compulsory for all public officials, servants, politicians and business people. Those who have been found to have violated the tender rules must not only be subjected to criminal procedures, but they should also be suspended or prevented from working for the government for a set period of time. The ethical or moral capacity of the general population must also be targeted by these educational

ethics programmes. This could motivate and sensitize the people about the importance of reporting acts of corruption because it is the general population that becomes the ultimate victim of all corruption. The content of this type of ethics must be African ethics and *Ubuntu* in particular given its relevance in the South African context.

5.   Rethinking African Ethics as a Panacea for Corruption

Having noted that corruption is a very broad concept that has different meanings, this study agreed with a definition that views corruption as the abuse of public office for personal gain beyond the salary packages legitimately attached to that office. Based on the evidence provided in this investigation, it became clear that personal benefits do not essentially refer to monetary gains. Hence, if a person who had been awarded a tender were, out of 'goodwill' be given a particular gift as a token of appreciation by an official or politician in that department which issued a tender s/he could be accused of bribery. In other words, gifts given by a bidder who won a tender to an official or politician within the department that issued a tender could correctly be viewed as corruption. This study used this very same thinking to conclude that corruption in all of its forms, bribery, kickback ands the like, indicate a lack of good moral or ethical leadership and/or judgement. Therefore, this study reaffirmed the fact that a moral or ethical problem could not be sufficiently dealt with in isolation from an ethical or moral solution that would match the problem.

This study also noted that among the many different ethical approaches, the Western notion of ethics appears to be more dominant than others. The study thus attempted to contrast the Western notion of ethics with an African conception. While it noted that there could be one or two similarities between these two notions of ethics, but are fundamentally opposed to one another. One of the main differences between the two perspectives is that the Western notion of ethics argues that individual human beings have a moral capacity to advance their wellbeing without any duty to empower others. It is for this reason that the Western notion of ethics was found to be irrelevant in terms of being used as a panacea to corruption in the South African context. In fact, the study found that the obsession with individuality at the expense of the collective

or society has produced and promoted the culture of greed and associated mentality of 'me-first-everybody-else-after.' Moreover, the promotion of individualism has inevitable contributed in perpetuating the culture of treating human beings as a means to an end—in this case to personal economic gain.

Conversely, this study found that African ethics in general and *Ubuntu* in particular is mainly premised on the idea that a human beings existence cannot be isolated from other human beings or their surroundings. In other words, the African notion of ethics holds that individuals are viewed as being part of the entire community hence their wellbeing is dialectically connected to other human beings. The ethic of *Ubuntu* is thus based on the thinking that human beings exist because of others. This is famously known as 'I am because you are' which means one's person pain and joy or wellbeing is shared and/or determined by other human beings. This study found that ANC-led government's transformative agenda was influenced by the ethic of *Ubuntu*. While addressing the legacy of Apartheid, the idea was to build a caring society where the mentality of 'the dog-eat-dog" will not be featured. This research noted that policies such as *Batho Pele*, the Reconstruction and Development Programme and Supply Chain Management Acts are essentially in line with the ethic of *Ubuntu*.

Accordingly, this study resolved that if public servants, officials, politicians and business people should value the ethic of *Ubuntu*. By doing so, they would understand that the people's interests must take centre stage whenever the procurement of goods and services are provided. The fact that the ethic of *Ubuntu* views the wellbeing of others as interconnected to the wellbeing of other human beings means that the culture of greed and the mentality of 'me-first-everybody-else-later' could be challenged and minimised if not prevented. Parallel to the ethic of *Ubuntu* is the theory of relationality, which as an integral part of African ethics maintains that human beings are interconnected to each other and to their environment. As such, the theory of relationality reinforces the ethic of *Ubuntu*. Based on the sources as presented in this research, the study concluded that African ethics in general and *Ubuntu* in particular could be utilised as a panacea to corruption in South Africa.

6. Conclusions and Recommendations

On the basis of the evidence presented, this study concluded that the ANC-led government was correct in using public procurement as one of its methods to address the legacy of Apartheid. However, some government officials, public servants, politicians and business people have found a way of manipulating tender rules and other economic empowerment policies to enrich themselves at the expense of the people of South Africa. This tendency was identified as corruption which signals a lack of good ethical and moral leadership and judgment. The research study also confirmed that corruption, despite having different meanings, is essentially a moral or ethical problem. As such, there should be an ethical solution to it. While there are many ethical perspectives, this study found that African ethics in general and *Ubuntu* in particular is the most relevant type of ethic that could be used as a panacea to corruption.

6.1. Recognising Key Gaps for Future Research

This study will avoid the temptation to list a number of recommendations which are impractical in the final analysis. Such research could be aimed at studying the exact extent to which African ethics particularly *Ubuntu* could be used as a solution to tenders and corruption in the post-Apartheid South Africa, and possibly for the entire African continent as well. In terms of the limitation of this present study, three key gaps have been identified that should be considered for future research:

i. Public officials must be prevented from issuing tenders. This means that future research could look at the ways in which the State could procure goods and services without going through bidding committees. For example, there could be different agencies that would be responsible for issuing tenders. Future research could then look at the modalities such as how they should be constituted or that personnel serving in them must rotate or be announced on the same day when a decision is taken to award a tender.

i. A second key area for future research would be to look at the manner in which African ethics and *Ubuntu* could be introduced within formal and informal education. This might require the government consciously promoting African ethics. Again, future research will have to look at the modalities in terms of how best the government and private sectors, including the general population, can play a role in rethinking or reviving African ethics.

i. The third and final recommendation is that the government must reform the tender system so that it closes the loopholes which make the process easily misused. Perhaps, this could include passing more stringent legislation that severely penalizes those who have been found to be involved in corruption and not just blacklisted or fired but also must face heavy prison sentences because corruption is very serious given its human impact in terms of delaying or frustrating development and the overall wellbeing of the nation.

REFERENCES

1. Published Books and Journal Articles

Andreasson, S. 2006. "The African National Congress and its Critics: 'Predatory Liberalism,' Black Empowerment and Intra-Alliance Tensions in Post-Apartheid South Africa." *Democratisation* 13/2, 303-322.

Bayley, D. 1996. "The Effects of Corruption in a Developing Nation." *The Western Political Science Quarterly* 19/4, 317-339.

Bolton, P. 2007. "An Analysis of the Preferential Procurement Legislation in South Africa." *Public Law Procurement Review* 1, 1-36.

Bond, P. 2005. *Elite Transition*: *From Apartheid to Neo-liberalism in South Africa.* Pietermaritzburg: University of KwaZulu Natal Press.

———, and M. Khosa. 1999. *An RDP Policy Audit: "Meeting Basic Needs."* Pretoria: HSRC Publishers.

Brits, J. P. 2008. "Thabo Mbeki and the Afrikaners, 1986-2004." *Historia* 53, 33-96.

Cambridge Advanced Learner's Dictionary, 2009. Cape Town: Cambridge University Press.

Everatt, D. 2003. "The Politics of Poverty, the Real State of the Nation: South Africa After 1990." *Developmental Special* 4/3, 75-99.

Friedmann, J. 1996. "Rethinking Poverty: Employment and Citizen Rights." *International Social Sciences Journal* 148, 191-172.

Gumede, W. 2005. *Thabo Mbeki and the Battle for the Soul of the ANC*. Cape Town: Zebra Books.

Gyekye, K. 2002. *Tradition and Modernity.* Oxford: Oxford University Press.

Harvey, D. 2005. *The New Imperialism*. Oxford: Oxford University Press.

Hirsch, A. 2006. *Season of Hope: Economic Reform under Mandela and Mbeki.* Pietermaritzburg: University of KwaZulu Natal Press.

Hope, K. R. and B. C. Chikulo. 2000. *Corruption and Development in Africa*. New York: Palgrave.

Jack, V. 2007. *Broad-based BEE: The Complete Guide*. Northcliff: Frontrunner Publishing Pty (Ltd).

Kiltgaard, R. 1998. "International Cooperation against Corruption." *International Monetary Fund/World Bank, Finance and Development* 35/1, 3.

Legassick, M. 2007. *Towards Socialist Democracy.* Pietermaritzburg: University of KwaZulu Natal Press.

Masondo, D. 2010. "Corruption, Nationalisation and Factions." *African Communist* 180, 5-21.

Mbigi, L. 1997. *Ubuntu : The African Dream in Management*. Pretoria: Sigma Press.

McGrath, T. and A. Whiteford. 1994. "Disparate Circumstances." *Indicator South Africa* 11/3, 30-51.

McMullen, M. 1961. "A Theory of Corruption." *The Sociological Review* 9, 181-201.

Metz, T. 2009. "African Moral Theory and Public Governance: Nepotism, Preferential Hiring and Other Partiality," Pages 336-356 in *African Ethics* edited by Felix Murove. Pietermaritzburg, University of KwaZulu Natal Press.

Mthembu, D. 1996. "African Values: Discovering the Indigenous Roots in Management," Pages 211-226 in *Sawubona Africa: Embracing Four Worlds in South African Management,* edited by R Lessem and B. Nussbaum. Cape Town: Zebra Press.

Murove, F. 2010. "Black Economic Empowerment and the Post-Apartheid South African Quest for the Domestication of Western Capitalism," Pages 47-67 in *The International Society of Business Economic, and Ethics Book Series,* Vol. 1, edited by G. Moore. Cape Town: Springer.

Myith, U. 2000. "Corruption: Causes, Consequences and Cures." *Asia-Pacific Development Journal* 7/2, 39-40.

Nkrumah, K. 1970. *Africa Must Unite.* London: Heinemann.

Nicolaides, A. 2009a. "Business Ethics in South Africa." *Journal of Contemporary Management* 6, 490-509.

———. 2009b. "African Moral Consciousness: An Inquiry into the Evolution of the Prospects and Perspectives," Pages 489-511 in *Ubuntu and the Primacy of Relationality in African Ethics*. California: LAP Lambert Academic Publishing GmbH & Co. KG.

Nussbaum, B. 2009. " *Ubuntu* and Business: Reflections and Questions," Pages 238-256 in *African Ethics,* edited by M.F. Murove. Pietermaritzburg: University of KwaZulu Natal Press.

Nyerere, J.K. "Ujamaa: The Basis of African Socialism," Pages 65-72 in *I am Because We Are: Readings in Black Philosophy* edited by J. Scott Lee. Massachusetts, University of Massachusetts Press.

Nye, J. 1967. "Corruption and Political Development: A Cost-benefit Analysis." *American Political Science Review* 61/2, 417-427.

Nzimande, B. 2010. "Brics: A Critical Platform to Advance and Deepen the National Democratic Revolution." *Umsebenzi Journal* 10/10, 1-3.

———. 2010. "Fight Tenderpreneurs to Defend Entrepreneurship!!" *Umsebenzi Journal* 9/12, 1-5.

Omotoso, K. 1994. *Season of Migration to the South*. Cape Town: Tafelberg.

Polanyi, K. 2001. *The Great Transformation: The Political and Economic Origins of Our Time.* Boston, MA: Beacon Press.

Ramose, M. 2002. *African Philosophy through Ubuntu* . Harare, Mond Books.

Republic of South Africa. 1997a. *Batho Pele Handbook.* Pretoria: Government Printer.

Rossouw, D. and L. van Vuuren. eds. 2010. "Ethical Dilemmas in Business: Employment Equity." in *Business Ethics.* Fourth Edition. Cape Town: Oxford University Press.

Samkange, S. and T. M. Samkange. 1980. *Hunhuism or Ubuntu sim: A Zimbabwean Indigenous Political Philosophy*. Harare: The Graham Publishing Company.

Seme, I. 1906. "The Regeneration of Africa." *Journal of the Royal African Society* 5, 404-408.

Oxford Dictionaries, 2006. *The Concise English Oxford Dictionary*. Oxford: University of Oxford Press.

Walligo, J. M. 1999. *Corruption and Bribery: An Africa Problem.* Uganda: Uganda Martyrs University Press.

Iroghana, I. P. 2011. "Public Perception of Government's Effectiveness in Handling Corruption in Nigeria." *Business and Economic Journal*, 13-26. University of Benin, Institute for Public Administration and Extension Services: Benin City.

Williams, S. and G. Quinot. 2007. "Public Procurement and Corruption: the South African Response." *South African Law Journal* 124/2, 339-363.

2. Government and Private Agency Reports

Commonwealth Secretariat Report. 2000. "Fighting Corruption: Promoting Good Governance, Commonwealth Secretariat." London.

Ferreira, I. W. 2005. "Corruption and the Development of Organizational Ethic Since the 1996 Constitution." A Paper Presented at the 66th Annual ASPA Conference held from 2-5 April 2005, Milwaukee, Wisconsin.

Kargbo, A. H. 2006. "Corruption: Definition and Concept Manifestations and Typology in African Context." A Presentation Made in the Training for Members of Parliament and Members of Civil Society from English-speaking West Africa: Zambia, Ghana, Nigeria, Liberia and Sierra Leone. Bitumani Hotel: Aberdeen, 4-8 September.

Jha, R. K. 2005. "Global Corruption Report 2005." Transparency International. Berlin, Germany.

Mandonsela, T. 2011. "Against the Rules." Public Protector's Report. Pretoria.

Public Services Commission Report. 2011. On Corruption in the Public Services. South Africa.

Statistics South Africa. 2005. Income and Expenditure Survey: 2000 and 2005. Pretoria: Government Printer.

———. Income and Expenditure Survey: 1995 and 2000. Pretoria: Government Printer.

Republic of South Africa. Department of Environmental Affairs and Tourism. 2008. Quarterly Report. Pretoria: Government Printer.

———. Department of Social Development. 2002. "Transforming the Present: Protecting the future." Report of the Committee of Inquiry into a Comprehensive System of Social Security in South Africa. Pretoria: Department of Social Development, 220-276.

———. 1994. White Paper: the Reconstruction and Development Programme. Pretoria: Government Printer.

World Bank. 1996. *Helping Countries Combat Corruption: The Role of the World Bank*. New York, NY: Oxford University Press.

———. 1992. "World Development Report" Pages 105-107 in H. Marais. 1998. "South Africa: Limits to Change." Cape Town: University of Cape Town Press.

3. Unpublished Conference Papers, Political Reports and Speeches

Bolton, P. 2006. "Grounds for Dispensing with Public Tender Procedures in Government Contracting: The Legal Regulation of Government Procurement in South Africa." Western Cape, University of Western Cape.

Mandela, N. R. 1995. Speech Delivered by the First Democratically Elected President on the Launch of Masakhane Campaign. Pretoria: Government Printer.

———. 1994. Inaugural Address to a Joint Sitting of Parliament. Pretoria: Government Printer.

Mbeki, T. 2005. Statement of the National Executive Committee of the African National Congress on the Occasion of Year 93 of the ANC." 08 January Statement. Johannesburg: African National Congress.

———. 1999. Speech delivered by Thabo Mbeki at the Annual National Conference of the Black Management Forum. Kempton Park, 20 November.

———. 1978. "Historical Injustice." Lecture Delivered by Mbeki in Canada.

4. Dissertations and Theses

Mngomezulu, G. P. 2006. The roles of Masakhane Campaign in Middelburg between 1994 and 1998: The Case of Mhluzi Township. Unpublished Dissertation, Masters of Administration degree, School of Government, University of Cape Town.

Murove, M. F. 2005. The Theory of Self-Interest in Modern Economic Discourse: A Critical Study in the Light of African Humanism and Process Philosophical Anthropology. Unpublished PhD. Thesis, University of South Africa.

5. Newspaper Articles

City Press. 2010. "ANC Shocked by Block's Arrest." 14 November, 1.

Davies, R. 2011. "New State Bid to Make BEE more Hands-on." *Business Day*, 20 April, 9.

Dinga, M. 2011. "The BBBEE Farce is Unravelling Fast." *The Sowetan*. 26 April, 2.

Dlodlo, C. 2011. "AG Lashes Lax Tender Awards." *City Press*, 16 October 2011, 2.

Rampedi, P. 2010. "Tenderpreneur Writes His Own Rule Book." *City Press* 21 November, p. 8.

Rassouw, M. 2011. "Tender-fraud Continues to be Rife in ANC-led Government." *Mail & Guardian* 07 January, p.2. ANC

Reddy, C. 2005. "BusinessMap Reports on BEE Progress." *Business Day* 1 April, pp. 3-4.

Sowetan. 2010. "Ithala Boss Suspended." 30 August, 2.

The Natal Witness, 2011a. "Amigos list grows". 2 August, 1.

———. 2011b. "Mike Mabuyakhulu and Peggy Nkonyeni to Appear Before the Pietermaritzburg High Court." 29 April, 2.

Vavi, Z. 2010. "Vavi on Corruption: Culture of Self-enrichment." *The Natal Witness*. 30 April, 5.

Zungu, S. 2011. "Time for BEE to Hit Target." *City Press,* 8 May, 17.

Zuma, J. "17th Freedom Day Celebration Address." *Sowetan,* 27 April, 1-2.

6.   Online (Internet) Resources

Allen, A. and A. Ismail. 2009. Africa: Winners and Losers in Corruption Stakes. 19 November. Available at <http://allafrica.com/stories/ 200911190961.html/>. [Accessed 7 May 2010].

African National Congress. 2007. "Strategy and Tactics Discussion Document." 1-6. Available at: <http://www.anc.org.za/show.php?include=docs/misc/ 2010/umzabalazo.html/>. [Accessed 16 January 2011].

Cosatu. 2010. Fighting the Predatory Elite: A Discussion Document Prepared By Cosatu Central Executive Committee. Available at: <http://www. politicsweb.co.za/politicsweb/web/view/politicsweb/en/page72308?oid=197859&sn=Marketingweb+detail&pid=90389/>. [Accessed 9 September 2010].

Ernst and Young. 11th Global Fraud Survey 2009/2010. "Driving Ethical Growth-new markets, new challenges." Available at: <http://www.ey. com/Publication/vwLUAssets/Driving_ethical_growth_new_challenges:_11[th]_ Global_Fraud_Survey/$FILE/EY_11[th]_Global_Fraud_Survey.pdf/>. [Accessed 12 March 2011].

Expert Panel. 2001. "Corruption in South Africa: Results of an Expert Panel Survey". Monograph, No. 65. Available at: <http://www.iss.co.za/Pubs/ Monographs/No65/Chap4.html#Anchor-Table-19006/>. [Accessed 06 December 2011].

Ellis, E. 2003. "The Dossier of Corruption." *Saturday Star*, 26 August, 15 Available at: <http://www.thestart.co.za/index.php?fArticleId=214843/>. [Accessed 2 May 2010].

Gordhan, P. 2010. Tender Fraud Forces Policy Review. *City Press*, 21 February, 2.

Freedom Charter, 1955. Available at: <http://www.anc.org.za/show
.php?include=docs/misc/1995/charter.html/>. [Accessed 27 April 2011].

Frisch, D. 1996. "The Effects of Corruption on Development." *The Courier* 158, 68-
70. Available at: <http://www.euforic.org.courier/158e_fri.htm/>. [Accessed 8
May 2010].

Heath, W. 2010. Private Sector Main Instigator of Corruption: A Speech Delivered at
the South African Communist Party Anti-Corruption Seminar. 09 March.
Available at: <http://.www.transparency.org.policy_research/surveys_
indices/gcb/>. [Accessed date 5 May 2010].

Houghteling, W. 2007. "Growing 'Black Diamonds': The Role of the Government in
Small Business Development and Black Entrepreneurship." Available at:
<http://digitalcollections.sit.edu/isp_collection/109/>. [Accessed 5 March
211].

Jawoko, K., Z. Asaf, N. Cato, and E. Rosevear. 1999. "Promise Unmet: Addressing
inequality in Post-Apartheid South Africa." Available at: <http://
www.forumfed.org/libdocs/2010/ConstitutionalDesign-SouthAfrica.pdf/>.
[Accessed 15 March 2011].

Knight, R. 2011. South Africa: Economic Policy and Development. Available at:
<http://richardknight.homestead.com/files/sisaeconomy.htm>. [Accessed 27
April 2011].

Matiyikinye, R. 2011. "Indigenisation Remains Relevant". *The Zimbabwe
Independent*, 10 March 2011. [Online]. Available at:
<http://www.theindependent. co.zw/news/2/>. [Accessed 10 May 2011].

Mbeki, T. 2006. 4th Annual Nelson Mandela Lecture. Available
at:<http://www.info.org.za/speeches/2006/06073111151005.htm>. [Accessed
10 May 2011].

———. 2002. State of the Nation Address. Available at:
<http://www.info.gov.za/speeches/2002/0202281146a1001.htm/>. [Accessed
28 February 2012].

Public Service Accountability Monitor. 2003-2004. Available at:
<http://www.case.psam.ru.ac.za/cmwstypes.asp#corruption/>. [13 January
2011].

Republic of South Africa. 1997. *Masakhane Campaign*.
<http://www.dplg.gov.za/documents/publications/masakhane/masakhaneintro
duction.htm/>. [Accessed 9 August 2011].

Shubane, K. and C. Reddy. 2005. Behind the Deal. The BusinessMap Foundation, 1
April. Available at: <http://www.businemap.org.za/Documents/
1277/BEE2005businessmap_Final.pdf/>. [Accessed 03 April 2011].

Southall, R. 2004. The ANC and Black Capitalism in South Africa. *Review of African
Political Economy* 31/100, 313-328. Available at:
<http://www.hsrc.ac.za/research_publication/>. [Accessed 10 January 2010].
The National Treasury. Available at: <http://www.treasury.gov.za/>.[Accessed
27 August 2011].

7. Government Acts and Regulations

Republic of South Africa. Department of Labour. 2009. *The Basic Conditions
Employment Amendment Act [No. 11 of 2002]*. Pretoria: Government Printer.

———. *The Constitution of the Republic of South Africa*, 1996.

———. *The National Treasury*. 2004. "Supply Chain Management: A Guide for
Accounting Officer/Authorities." Pretoria: Government Printer.

———. Department of Trade and Industry and Industry. The Framework for Supply
Chain Management Act 2003. Government Gazette No. 25767, 05 December
2003. Pretoria: Government Printer.

———. 2001. Preferential Procurement Policy Framework Act: No. 5 of 2000.
Pretoria: Government Printer.

———. The National Treasury. 1999. Regulations for Departments of Trading
Entities, Constitutional Institutions and Public Entities Published in Relation
to the Public Finance Management Act of 1999. Government Gazette.

———. General Notice, 1997. Ministry of Finance and the Ministry of Public Works.
Government Gazette No. 179728, Notice No. 691, 14 April 1997. Pretoria:
Government Printer.