

UNIVERSITY OF KWAZULU-NATAL

**COLLUSION, CADRES AND CORRUPTION-
A CRITICAL STUDY OF THE PROCUREMENT SECTOR AND CORRUPTION
IN LOCAL GOVERNMENT: THE CASE OF ETHEKWINI MUNICIPALITY**

by

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As the candidate's supervisor I have/have not approved this thesis/dissertation for submission.

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TO

All South Africans who face the harsh realities of corruption on a daily basis, and who strive for a better future. May your endeavour to fight corruption be filled with vigour and passion, and may you never forget that change is inevitable; we are the atmosphere changers of our nation.

Let us make our mark.

“Our deepest fear is not that we are inadequate. Our deepest fear is that we are powerful beyond measure. It is our light, not our darkness that most frightens us ... There is nothing enlightened about shrinking so that other people will not feel insecure around you. We are all meant to shine, as children do. We were born to make manifest the glory of God that is within us. It is not just in some of us; it is in everyone and as we let our own light shine, we unconsciously give others permission to do the same. As we are liberated from our own fear, our presence automatically liberates others.”

Marianne Williamson

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ABSTRACT

Corruption is a complex and multifaceted phenomenon that takes various forms and functions in different settings. With the transition to a democratic dispensation in South Africa, there has been an escalation in corruption which is frequently associated with the manipulation of tender practices in the public procurement sector. The aim of this study was to critically investigate corruption in the procurement sector in local government with specific reference to the case of the eThekweni Municipality. The objectives of the study were: to review international trends in corruption in the procurement sector; to investigate specific cases of corruption in the procurement sector in the eThekweni Municipality; to assess the social, economic and political implications of corruption in eThekweni Municipality; and to examine the instruments and mechanisms that are used in preventing, detecting and responding to corruption and the effectiveness of such measures.

Influenced by the Human Rights based approach, this study adopted a qualitative approach. This study found that corruption in the public procurement sector in the eThekweni Municipality is rife. The Supply Chain Management (SCM) faces numerous challenges including councillors and officials conducting business with eThekweni Municipality; councillors and officials incompetency due to limited knowledge of policy; unauthorised, irregular and wasteful expenditure; abuse of Section 36; unfair procurement process; inadequate and inefficient contract management and inadequate SCM controls. Hence, the SCM is synonymous with loopholes, kickbacks, cronyism and ‘tenderpreneurship’. Numerous social, economic and political consequences of corruption were evident in this study, however, the main result of corruption in the procurement process is poor service delivery to citizens. This has resulted in human rights violations and citizens taking to the streets in violent service delivery protests in order to highlight their grievances regarding the poor quality of life they experience. It is the poor of the eThekweni Municipality who face the detrimental impacts of corruption as they are reliant on the government for basic services for their survival.

A holistic approach to corruption needs to be adopted in order to fully address this pandemic. An area that needs serious attention in procurement reform is blacklisting. Councillors and officials need to be educated about corruption and ethics. Greater oversight and transparency is needed throughout the procurement process to allow for fair and an equitable distribution of tenders in the Municipality.

LIST OF ABBREVIATIONS

ACU	Anti-Corruption Unit
ADB	Asian Development Bank
AG	The Auditor-General
ANC	African National Congress
AU	African Union
BAC	Bid Adjudication Committee
BCEA	Basic Conditions of Employment Act
CBD	Central Business District
CIU	City Integrity and Investigations Unit
CoE	Council of Europe
CPI	Corruption Perception Index
DA	Democratic Alliance
DPW	Department of Public Works
DSO	Directorate of Special Operations
DSW	Durban Solid Waste
EU	European Union
EXCO	Executive Committee
GAC	Global and Anticorruption Strategy
GDP	Gross Domestic Product
GIPO	Geographic Information and Policy Office
HRBA	Human Rights Based Approach
IACAC	Inter-American Convention Against Corruption
IFP	Inkhata Freedom Party

IMF	International Monetary Fund
MEC	Member of the Executive Council
MFMA	Municipal Finance Management Act
MPAC	Municipal Public Accounts Committee
NGOs	Non-Governmental Organisations
OAS	Organisation of American States
OCED	Organisation for Economic Co-operation and Development
PFI	Protection of the European Communities Financial Interests' Convention
PFMA	Public Finance Management Act
PP	Public Protector
PPF	Preferential Procurement Framework
PSC	Public Service Commission
SAPA	South African Press Association
SAPS	South African Police Services
SCM	Supply Chain Management
SIU	Special Investigating Unit
TI	Transparency International
UN	United Nations
UNCAC	United Nations Convention against Corruption
UNCITRAL	United Nations Commission on International Trade Law
UNCTOC	UN Convention Against Transnational Organized Crime
US	United States
WB	World Bank
WBG	World Bank Group

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CHAPTER ONE

INTRODUCTION

1.1 Preamble

Corruption can be traced back for at least 5000 years, when bribery was considered a part of social behaviour (Terracino, 2012). Bribery was seen as a means of mutual beneficial exchange between two people. In ancient times, reciprocity was seen as the foundation of human relationships in economic, social and political instances (Pervan, et al., 2004). It was the prominence of religious values that led to changes in morality which gave rise to an anti-bribery ethic, and ultimately the condemnation of corruption. Evidence suggests that the condemnation of corruption in the form of bribery may have occurred in 3000 B.C. It was found in various ancient sources such as the *Code of Hammurabi* (Babylon 2200 B.C.), the *Great Edict of Horemheb* (Egypt, 1300B.C.) and *Kautilya's Arthashastra* (India 400 B.C.), that Roman emperors in the 4th Century mandated legislation between the periods 316 A.D. and 398 A.D. against judicial corruption and had trials on corruption in provincial administrations (Terracino, 2012).

Corruption can be regarded as the 'enemy of human kind', which not only affects moral values, but also economic and social development in every facet (Terracino, 2012). This has resulted in corruption being an obligatory topic on the agenda of numerous international institutions. Beginning in the 1960s attention has been given, by both the academic and policy-orientated studies, to ascertaining the definitions, origins, character and costs of corruption around the world (Camerer, 2009).

Corruption is a complex and multifaceted phenomenon that takes various forms and functions in different settings. Hence, it can range from a single act of payment which is contradictory to the law to an endemic malfunctioning of a political and economic system (Andvig et al., 2000). Globally, it is estimated that in 2014 the cost of corruption equates to more than five percent of the global GDP (US \$ 2.6 trillion) with over US \$ 1 trillion paid in bribes each year (OCED, 2014: 2). The African Union estimated that 25 percent of the GDP of African states, resulting in US \$ 148 billion, is lost to corruption annually (OCED, 2014:3).

With the transition into a democratic dispensation in South Africa, which is based on constitutional commitments to ideals of openness, transparency and responsiveness, there has been an escalation in corruption (Ambe & Badenhorst-Weiss, 2012). The government has publicly declared itself committed to tackling corruption, which has largely been attributed to the 'legacy of apartheid' (Camerer, 2009). Corruption did not disappear with the fall of the old regime. Corruption takes

many forms in post-apartheid South Africa, and is associated most often with the manipulation of tender practices. The Public Procurement Sector has been riddled with corrupt practices, in which tender rules and regulations are not followed (Ambe & Badenhorst-Weiss, 2012). Tenders are often given to families and friends, resulting in nepotism. Officials and councillors collude and conduct business with a municipality, which is contrary to the *Municipal Finance Management Act No. 56 of 2003* (MFMA). According to Hofmeyer, the previous head of the Special Investigating Unit (SIU) and Assets Forfeiture Unit, between R25 – 30 billion, that is 20 percent of South Africa's procurement budget, was lost due to corruption (Bruce, 2012).

Due to the release of the *Manase Report* and the informative role of the media, it has become public knowledge that corruption is rife in the eThekweni Municipality (Maharaj & Karodia, 2013). This study is a critical investigation of corruption in the public procurement sector. It adopts a case study approach to procurement in the eThekweni Municipality. Conceptually, this study is influenced by the theoretical framework of the *Human Rights Based Approach*.

In South Africa corruption, in the public procurement sector delegitimizes the government and erodes democratic consolidation. Corruption not only erodes the confidence of citizens in government officials and politicians, but it also emphasises how expensive the fight against corruption is and how it drains the fiscus. Large sums of money are spent in the fight against corruption which could be used to provide basic service delivery (Zondi, 2012). Furthermore, tenders are given to companies that are unable to carry out service delivery, hence, the basic needs of citizens are jeopardized. The poor are deprived of essential services as funds are siphoned off for personal use and enrichment (Chattopadhyay, 2013). It has been contended that the eThekweni Municipality has done very little to address corruption since the release of the Manse Report. No eThekweni councillors or bureaucrats have been punished as a result of the findings of the Report, and no councillors have been brought before the municipality's ethics committee. Thus, proper disciplinary channels have not been followed (Stolley, 2013). It is against this background that this study investigates corruption in the procurement sector in the eThekweni Municipality.

1.2 Geographical Orientation

Corruption has for many years been on the periphery of political, economic and international relations research (Ellero, 2015). It was only in late 1980s that academic and policy debates on the character of corruption and anti-corruption strategies began to flourish (Doig & Riley, 1998). According to Bracking (2007) the world's opinion has changed toward corruption, and the international community has become far less tolerant of it than they were a few decades ago. Critical scholars and activists have begun to research the implications of corruption and how it infringes on human rights. Geographers have largely ignored corruption even though there has been a burgeoning interest in corruption by various disciplines (Brown and Cloke, 2004).

Geographers can however aid the study of corruption in many ways and they can provide a spatial understanding of the complexities of malfeasance (Brown & Cloke, 2004). Political corruption inevitably has spatial specificity (Perry, 1997). Hence, corruption is a spatial feature of specific places and varies greatly between geographical areas and countries (Gebeye, 2012). Geography is able to provide an understanding of how people, place and spatial variables interact; and how these factors can allow for favourable conditions for corruption activity to occur. For example, corruption may be more prevalent at specific spatial locations such as ports and border crossings, where bribery can take place. Geographical inquiry can also provide insights into variations in occurrences of corruption in one place rather than another (Brown & Cloke, 2004).

According to Goel & Nelson (2010) the geography of a country can also affect the occurrence of corruption, and larger countries face obstacles in monitoring of government officials effectively. Natural resource endowments also create opportunities for rent generation and rent-seeking activities. In areas with dense populations, whistle-blowers or the public may have a greater chance in exposing corrupt practices (Goel & Nelson, 2010).

It is evident that a geographical perspective can contribute to the study of corruption. Geographers can contribute to the study of corruption by explaining how different types of corruption occur at various geographical sites and on various scales, and how this influences the dynamics of a specific national or local political culture. Geographers can also provide an empirical analysis of the success or failure of the various policy instruments and anti-corruption strategies (Brown & Cloke, 2004). A geographical perspective allows for a multidisciplinary, holistic approach to the study of corruption.

1.3 Motivation for this Study

The issue of corruption and how to fight it has been brought to the forefront of policy agendas around the world. Whilst governments and non-governmental organisations (NGOs) have allocated resources to combat this phenomenon, it is evident that corruption has become a central concern for countries globally and it shows no sign of declining (Heywood, 2008). Corruption in South Africa is a human rights issue, specifically when individuals and families have to pay bribes to access food, housing, property, education, jobs and the right to participate in the cultural life of a society. Furthermore, corruption adversely affects the poor due to their powerlessness and their inability to pay bribes, creating inequalities which violate their human rights (Pilapitiya, 2004). In the eThekweni Municipality corrupt councillors and officials lead to basic services such as refuse collection, access to housing and water not being provided to its citizens. This has led to public outcry and resulted in its citizens taking to the streets in service delivery protests (Powell & Visser, 2015). Corruption distorts the procurement process and results in various uneconomic 'white elephant' projects which have plagued many developing countries with debts they cannot repay (Sampford et al., 2006). This has been abundantly evident in the eThekweni Municipality, due to the city's over-expenditure, constant

contract renewals and the use of Section 36 from the SCM policy, which has been abused to validate shady tender practices.

The academic study of South African corruption is rather limited. Specialists in South African public administration have paid little attention to corruption (Lodge, 2003). Prior to 1994 the study of corruption was virtually non-existent due to the secretive nature of the issue and reporting restrictions. After 1994, more information has become available due to official investigations and the removal of restrictions on public access to information (Lodge, 2003). However, it is still difficult to prove corrupt acts beyond reasonable doubt in court, which is necessary for a conviction (Mubangizi, 2004). Due to the elusive, 'off the books' nature of corruption, it becomes difficult to prove beyond reasonable doubt. Also, investigations on corruption are costly, time-consuming and dangerous. Researchers can face intimidation and their lives can be put in jeopardy, which has served as a deterrent to study this issue.

It is evident from the *Manase Report* on the eThekweni Municipality, that corruption is a vicious cycle. It penetrates all government sectors, and has drastically altered the public procurement process. This has affected service delivery for the poor. The adoption of a case study approach to analyse corruption in the eThekweni Municipality may hopefully be of great significance. In essence this study can enable and stimulate scholarly debate around the discourse of corruption and public procurement corruption within South Africa. It serves to lay the initial framework for future research on this subject matter.

1.4 Chapter Sequence

1.4.1 Chapter One: Introduction

This Chapter presents an introduction to the study. It provides an overview to the research, geographical orientation and the motivation for the study.

1.4.2 Chapter Two: Theoretical Framework and Literature Review

Chapter Two provides an overview of the theoretical framework and provides a literature review on corruption from global, regional and national perspectives. It also focusses specifically on public procurement corruption.

1.4.3 Chapter Three: Methodology

This Chapter discusses the study area and the methodology utilized in this study. It further provides insight into why these various methods were selected. The ethical considerations and limitations of the study are also discussed.

1.4.4 Chapter Four: Data Analysis

Chapter Four presents the data analysis, using a thematic approach.

1.4.5 Chapter Five: Evaluation, Recommendations and Conclusion

Chapter Five presents the evaluation, theoretical reflections, recommendations and conclusion to the study.

1.5 Conclusion

Corruption is a crippling phenomenon that has drastically altered the fabric of South African society. It undermines the democratic principles enshrined in the Constitution. Corrupt councillors, officials and business person's siphoned money intended for the poor through corrupt practices in the public procurement sector. This leads to a violation of citizens' human rights through the inability of the local government to provide basic services which citizens are entitled to in the eThekweni Municipality. Scholars have largely neglected the study of corruption due to its secretive nature, difficulty in measuring and its inherent danger. Hence, this dissertation provides an important investigation into corruption in the public procurement sector in the eThekweni Municipality.

CHAPTER TWO

LITERATURE REVIEW

2.1 Introduction

Corruption has become a worldwide phenomenon. It has devastated economies and undermined the human rights of citizens. An area largely plagued by corruption is the public procurement sector money is siphoned from the public purse to satisfy the whims of the corrupt, rendering the local government incapable of providing basic services to its citizens. This chapter provides the literature review for the study and the theoretical content. It is divided into eleven sections. The first section provides the definitions, forms and types of corruption; measuring corruption is discussed in the second section. The theories of corruption are discussed in the third section. The causes and consequences of corruption are discussed in the fourth and fifth sections, respectively. In the sixth section, corruption in an international context is reviewed. Public procurement corruption is outlined in the seventh section. Corruption in Africa and public procurement corruption in Africa are discussed in the eighth and ninth sections. Corruption in the South African context is discussed in the tenth section. In the final section, the nature of public procurement corruption in South Africa is outlined.

2.2 Definitions, Forms and Types of Corruption

Corruption occurs in every sector of society, making it an activity that is complex, case specific and difficult to define. There are various forms, types and levels of corruption rendering it an ‘elusive concept’ (Uslaner, 2008). It is important to identify the manner in which corruption is understood in order to determine the various strategies that may be adopted in prevention and control (Camerer, 2009; Eicher, 2012).

i) Definition

The term ‘corruption’ is derived from a specific form of the Latin verb, *rumpere*, which means to break, which suggests that something is severely broken (Hope & Chikulo, 2000). The Oxford English Dictionary defines corruption as the “perversion or destruction of integrity in the discharge of public duties by bribery or favour, the use or existence of corrupt practices, especially, in a state, public corporation, etc” (Nicholls *et al.*, 2011:2).

While the Oxford Advanced, Learner's Dictionary defines corruption as “dishonest or illegal behaviour, especially of people in authority; the act or effect of making somebody change from moral to immoral standards of behaviour” (Gunardi, 2008:12). This definition has two key words, authority and morality. Various authors such as Gould (1991:468) identify corruption as a moral issue, “an immoral and unethical phenomenon that contains a set of moral aberrations from moral standards of society, causing loss of respect for and confidence in duly constituted authority”. However, acceptable moral behaviour differs in various societies (Gunardi, 2008). This constitutes the greatest challenge in trying to define corruption because its meaning varies in social contexts. Socio-cultural and traditional norms influence morality and the way in which corruption is understood (Dimant, 2013). For example, some aspects of African culture provide socio-structural support for corruption, in the form of gift giving and providing projects and jobs to family members and friends (Egbue, 2006).

Labelling corruption as a moral issue, however, is problematic as it individualises the social aspects and neglects the socio-political implications of corruption (Gunardi, 2008). According to Golunov (2014) both wide and narrow definitions of corruption create their own specific problems. If a definition is too wide, it can be challenging to identify corrupt acts and develop measures to curb corruption. If the definition is too narrow, there lies the risk of not conceptualising certain acts that may constitute corrupt activity. Furthermore, it creates a ‘grey zone’ between corruption, unethical or ethically ambiguous behaviour (Golunov, 2014). Defining corruption is so complex that even the United Nations Convention against Corruption (UNCAC) does not provide a definition for corruption. However, it does call for states to adopt legal measures to establish specific criminal offences, encompassing bribery, embezzlement, misappropriation, abuse of functions and money-laundering by both the public and private sectors (Nicholls et al., 2011). These legal measures have been adopted in many countries, including South Africa.

This study adopts the definition provided by Transparency International (TI) which defines corruption as the “misuse of entrusted power for private gain” (Asis et al., 2009:12). Various scholars and the World Bank (WB) have widely used this description. The definition has the merit of simplicity, and, to an extent, encompasses offences such as bribery, misconduct in public office, embezzlement, fraud and theft, which are offences that are committed during corrupt activities (Nicholls et al., 2011). The eThekweni Municipality also provides examples of what it considers as examples of fraud and corruption (Table 2.1). Many of these examples are seen in the public procurement sector of the eThekweni Municipality.

Table 2.1 Examples of fraud and corruption in the eThekweni Municipality

• Breach or disregard for the <i>Municipal Finance Management Act</i>
• Breach or disregard for the <i>Supply Change Management Policy</i>
• Accepting or the giving of anything of material value to gain undue favour
• Any conflict of interest
• The deliberate failure to report acts of dishonesty
• The deliberate withholding of information which would provide insight into or assist in investigating irregularities
• Extortion by municipal employees in the performance of their duties
• Failure to put in place controls internally, thus causing loss to eThekweni Municipality
• False sick leave, overtime or qualifications
• The forgery or alteration of any financial document relating to transactions with the Municipality. These include cheques, bank drafts and stock records
• Housing subsidy fraud
• Illegal or irregular sale of Municipality property
• Irregular allocation of low-cost houses
• Irregular destruction, removal or inappropriate use of records, documents, furniture, fixtures, material and equipment
• Misappropriation or theft of funds, securities, supplies or assets
• Procurement fraud
• Any other dishonest, fraudulent or corrupt act

Source: (Ellero, 2015:27)

There are also various types and forms of corruption. These will be discussed in the following section to enable a greater understanding of what constitutes corrupt behaviour.

ii) Types of corruption

Beyond definitions, another way of approaching corruption is to identify the numerous types of malfeasance. According to Boehm (2011) corruption can manifest itself in different ways including, bribery, embezzlement, fraud, extortion, favouritism and nepotism.

Bribery refers to the payment that is made in a corrupt relationship and is regarded as the essence of corruption (Øverland, 2012). There are various terms used to refer to bribery, such as ‘kickbacks’, ‘gratuities’ and ‘grease money’. These all refer to money or favours paid to politicians or bureaucrats for preferential decisions or government services. It ensures that things pass quickly, smoothly and

favourably through state or government bureaucracies (Andvig et al., 2000). This includes favourable treatment in terms of taxation, environmental regulations and protection of the market (Øverland, 2012). In this form of corruption, the representative of the state misuses his or her power for their own gain.

Embezzlement refers to the theft of resources by those who are put in positions of authority, such as officials to administer them. Instead of fulfilling their role as administrators of state resources, disloyal employees steal from their employers (Andvig et al., 2000). From a strict legal perspective, this misuse is seen as theft rather than corruption. However, it is included in the broader definitions of corruption (Øverland, 2012). When funds are misappropriated through embezzlement, the public is deprived of vital service delivery.

Fraud refers to deceit, trickery or to swindle (Andvig et al., 2000). Public officials manipulate or distort information and facts in order to gain private profit (Øverland, 2012). Fraud is a broader legal term than bribery and embezzlement. For example, fraud is evident when state agencies and representatives engage in illegal trade networks, counterfeit, racketeering, forgery and smuggling (Appolloni & Nshombo, 2014).

Extortion occurs when money and resources are taken through the use of coercion, violence or the use of threats (Andvig et al., 2000). Money or resources can be extorted in a classical way known as the Mafia style, where criminals use insecurity, harassment and intimidation for desired ends. The mafia and criminals practise this form of extraction which is known as extraction ‘from below’ (Andvig et al., 2000).

Favouritism is a construct of power abuse entailing ‘privatisation’ and biased distribution of state resources, regardless of the intended purposes of those resources. Hence, resources are given to people that are close to those who are in power and who make decisions (Øverland, 2012). This redistribution rests on mutually beneficial relationships rather than on merit or qualifications. Favouritism is associated with clientelism and nepotism (Andvig et al., 2000).

Nepotism is a form of favouritism in which office holders select their kinfolk and family members for important state positions. This occurs largely in governments which have presidents who try to secure their power by nominating family members to key political, military or economic positions in the state sphere (Andvig et al., 2000). Hence, nepotism, is strongly related to cronyism, often there is a biased redistribution of contracts, jobs and money to cronies or cadres.

In addition to the various types of corruption, there are various forms of corruption. These indicate the scale at which corruption occurs and provides a greater understanding of the types of corruption.

iii) Forms of corruption

There are various forms of corruption that occur at different levels of society. These include petty, grand and systemic corruption. According to Riley (1998) policies instituted to curb forms of corruption need to pay attention to the types and levels of corruption that exist. A useful way to differentiate between the types of corruption is to make the distinction between grand and petty corruption.

Grand corruption involves top officials and political decision-makers, it occurs on a large scale and involves large sums of money. In grand corruption, top officials and politicians exploit their positions to extract bribes, and embezzle large amounts of money or formulate regulations that will benefit their personal interests (Teixeira et al., 2015). Grand corruption is often motivated by greed and has been used to describe large-scale deals involving top public officials and companies trading or investing on an international scale. An important mechanism referred to as ‘the cabal’ has been used to describe grand corruption. According to Camerer (2009), Transparency International has noted that in each state there is the existence of a small cabal of individuals who are strategically positioned in prominent departments or agencies to assist corrupt deals. An example of grand corruption in the South African context is the South African arms deal (Camerer, 2009).

Petty corruption occurs in less-developed countries and involves middle or low level public officials who interact with the public. It relates to small amounts of money but often harms those who are poor in society and those that are reliant on state services such as housing and health care (Teixeira et al., 2015). Petty corruption is usually driven by need, including the need to survive, and it involves what is referred to as ‘speed’ or ‘grease money’ (Camerer, 2009). Junior officials who render services to the public begin to receive and obtain grease payments. Therefore, the public engage in dishonest transactions with officials to prevent sanctions and to acquire services that are needed. Petty corruption also occurs in societies where civil servants receive low salaries, inducing the need to acquire basic services at a cheaper rate (Mwenda, 2007). An example of petty corruption in the South African context would be a bribe that a police officer requests from a citizen in order to evade a traffic fine. However, petty and grand corruption can go hand in hand and perpetuate levels of corruption. For example, both lower officials and those in higher positions, turn a blind eye to corrupt acts and collude for kickbacks.

According to Igwe (2012) systematic corruption is not a special category of corrupt practice. Corrupt individuals and groups dominate and seize the major institutions and processes of the state. Hence citizens have limited alternatives but to deal with corrupt officials. Systematic corruption refers to unrestrained corruption in the civil service and public corporations. An administration develops in which wrongdoing is the norm and public responsibility is the exception rather than the rule

(Camerer, 2009). These forms of corruption can vary within a country, for example, grand corruption can occur where there is little petty corruption and petty corruption can take place in a country where the government is deemed to be 'clean'. It is imperative that sound methods of measuring malfeasance are employed to gauge corruption levels in a society.

2.3 Measuring corruption

Corruption is not only difficult to define but is also notoriously hard to measure (Ellis & Tutu, 2012). It is almost impossible to determine scientifically whether corruption is increasing or decreasing in a country, or if it is more prevalent in one place than another. There are various challenges that researchers face in developing accurate ways of measuring corruption. This is because attempts are being made to measure clandestine activities which are usually hidden from society (Jain, 2001). Even though corruption can be traced back for more than 5000 years, it was only in the 1990s that it was first measured (Kajsiu, 2015). This resulted in the formation of cross-country data sets and perception-based assessments of corruption (Arnone & Borlini, 2014).

Perception indicators were developed in an attempt to measure corruption and to formulate appropriate combative measures. In 1995, TI developed the most popular perception indicator known as the Corruption Perception Index (CPI) (Sampford et al., 2006). The CPI ranks different countries according to their perceived levels of corruption and it is considered to be the most elaborate quantitative indicator, in which all countries are evaluated. The CPI is a composite index that is calculated using data sources from a range of other institutions which measure the overall extent of corruption in the public or political sectors (Heywood, 2008). It ranks countries on a scale that ranges from 100 – 0, based on the supposed level of corruption. A score of 100 indicates an honest country, where levels of corruption are low or non-existent. A score of 0 shows that a country is perceived to be totally corrupt (Ruhl, 2011).

Although the CPI is widely regarded as playing a fundamental role in highlighting the issue of corruption, three broad weaknesses have been identified (Heywood, 2008). As is explicit in the title of the index, it measures perceptions, rather than reported cases, prosecutions or proven incidences of corruption. This is significant, because perceptions have the ability to influence behaviour in various ways. For example, if we believe that the whole society is engaging in corrupt behaviour, it may make us more prone to adopt such practices ourselves (Heywood, 2008).

The second problem relates to the question of how we can adequately interpret what respondents to the various surveys understand by corruption. Each of the different surveys operates with its own understanding of corruption; which may focus on different aspects, such as bribery or embezzlement. Additionally, surveys ask a panel of experts to rank corruption on a scale from low to high. However,

it is unknown whether the experts share a common view of what constitutes corruption. Hence, what constitutes a low level of corruption to one person may look high to another (Heywood, 2008).

Furthermore, when the sources used by the CPI are examined more closely, one will notice that those surveyed are predominantly the élite comprised of regional and international businessmen and academics. The question must then be asked whether these select individuals can provide an accurate assessment of levels of corruption in countries, beside their own. A third problem relates to the interval scales used in the CPI index, which ranks on a scale of 100. This suggests that a high degree of accuracy and precision can be achieved, and that distinct differences can be identified between countries that score 7.0 as opposed to 6.9. The impression of accuracy is further reinforced by ranking being represented in a 'league table' format. However, since the number of countries included in each annual CPI varies, the position a country holds on a table can simply be influenced by the number of countries that are covered in that specific year (Heywood, 2008).

There are other perception indicators that have been developed, some even as a response to the criticism of the CPI. For example, since 2003, TI has published the annual *Global Barometer* based on the Gallup Survey which gauges both perception and lived experiences (Landman & Robinson, 2009). The WB's *Worldwide Governance Indicators*, also includes 'control of corruption' as one of its six elements and is a perception-based measure developed through weighted averages. To some degree it is based on similar polls and surveys that are used in the CPI (Landman & Robinson, 2009).

Other popular corruption indicators are those developed by private risk firms, such as *The International Country Risk Guide's corruption indicator*. This captures the likelihood of special payments and demands made by high government officials, and the extent to which illegal payments are expected in the different tiers of government (Svensson, 2005). Since the mid-1990s, a large number of academic studies have begun to use these alternative indicators to measure corruption, either instead or as a complement to the CPI. However, many methods of measuring corruption are subject to similar weaknesses of the CPI experience and perception-based measures in general. Various indexes and indicators have been developed in order to quantify corruption. However, no single measurement system is able to accurately account for levels of corruption within a country and at a global level. Due to the various forms corruption takes, it is not possible for one indicator to capture the multidimensional nature of corruption in an objective manner (Rohwer, 2009). In addition to challenges relating to measuring corruption, it is also difficult to theorise corruption.

2.4 Theories of corruption

Corruption is a complex phenomenon that has countless forms with multiple causes and consequences, some of which are severe and almost irreversible (De Graaf et al., 2010). There have been significant debates around the issue of corruption, making it difficult to theorise. Caiden (2010:9) compares theorising corruption with “exploring a complicated maze replete with dead ends and surprising turns enough to frustrate the hardiest venture”. However, theorising corruption is necessary as it reduces confusion, simplifies evidence and allows for the incorporation of new thinking into the discourse (Caiden, 2010).

Apart from being a widespread phenomenon, corruption also has a long tradition as a field of academic inquiry (Rose-Ackerman, 1997). Many corruption theories have been identified and seek to explain the complex nature of corruption. These include the Weberian-Ideal Typical Approach, the Structural Functionalist Approach, the Systems Theory, the Post-Positivist Approach and the Public Choice Theory.

The Weberian-Ideal Typical Approach was framed by the German Sociologist Max Weber. He wrote extensively on bureaucracy which has influenced the understanding of contemporary corruption (Rubinstein & Maravic, 2010). Weber believed that corruption was a trait of the earlier primitive stage of society and that it would disappear with professionalised bureaucracy. The Approach sees corruption as a lack of rationalisation of the public service (Rubinstein & Maravic, 2010). Basically, it acknowledges that loopholes are prevalent in a premature bureaucratic system which allows for corrupt acts to take place (De Graaf et al., 2010). The Structural Functionalist Approach sees society as a collection of coherent systems in which all societal problems have a function, including corruption (De Graaf et al., 2010). Structural Functionalist scholars try ascertaining the role corruption plays and satisfies in societies. The most extensive example of Structural Functionalist Approach to corruption is found in the writings of Fred Riggs in his theory of the prismatic society (Zwart, 2010).

The Systems Theory was framed on the work of Niklas Luhmann’s approach to corruption. In this Theory society is divided into separate entities, which have self-referential and uniformity in their values. This theory sees corruption as a result of overlapping systems (De Graaf et al., 2010). The Post-Positivist Approach seeks to explain how corruption is socially constructed. In this Approach corruption displays itself as a certain type of social relationship and must be understood in relation to its social setting. Thus there is no one singular definition of corruption, nepotism or deviance (De Graaf et al., 2010). The Public Choice Theory emphasises the importance of independent variables to explain corruption, and it focuses at the level of the individual (De Graaf, 2007). The resultant causal chain is that an individual makes a rational decision that has a predetermined outcome. The basis of

Public Choice Theory is that individual corrupt officials seek to maximise their utility. This form of casual theories was made popular by Rose- Ackerman (1978) who found that public officials were corrupt because they see the potential benefits of corruption outweigh the potential costs. Thus the Public Choice Theory sees corrupt officials as rational utility maximisers who use the most profitable course of action (de Graaf et al., 2010).

Each of these theories has been developed in isolation and each provides a specific insight into corruption through each disciplinary lens. However, these interpretations fail to provide a holistic understanding to the causes and consequences of corruption (Gebeye, 2012). A study on corruption is complex and requires a multi-disciplinary approach (de Graaf et al., 2010). The Human Rights Based Approach (HRBA) provides a means through which the implications of corruption can critically be analysed in this study. Most studies indicate that corruption in the public procurement sector, negatively impacts on service delivery and deprives citizens of basic services for their survival (Gebeye, 2012).

2.4.1 Human Rights Based Approach

The HRBA is a conceptual framework for the process of human development that is based on international human rights standards and is solely directed to promoting and protecting human rights (Pilapitiya, 2004). It aims to analyse inequalities that are central to development problems and seeks to redress discriminatory practices and unequal distribution of power which inevitably hinders developmental progress (Goodhart, 2013). International Law establishes the plans, policies and processes of development that are entrenched in a system of rights and corresponding obligations, under a HRBA. The approach embodies various elements which include, “expressing linkages to rights, accountability, empowerment and participation and attention to disadvantaged groups” (Pilapitiya, 2004:5). These have been developed to address inequalities and to ensure that the poor and disadvantaged are equal partners in development (Pilapitiya, 2004).

There are three main criticisms of the HRBA (Katsui, 2008). The first pitfall lies in its origin. Although principles of human rights concepts such as equality, are not specific to Western countries, it is feared that the human rights discourse is not as effective in other parts of the world due to its origin in the West (Uvin, 2004). The human rights era began with the United Nations Declaration on Human Rights in 1948, when peace was on the agenda after World War Two. Due to the Cold War between the East and West, human rights were also classified according to political ideologies until the end of the Cold War. Uvin (2004) identifies three generations of human rights. The first generation is based on civil and political rights, this was centred on the West. The second generation was based on economic, social and cultural rights, encompassing an adequate standard of living, this

was centred on the East. The third generation of human rights was based on rights to development and self-determination.

The second drawback is based on the problems of operationalising the HRBA. It fails on three aspects of operationalizing, namely, neglect in intervention, priority making and cultural insensitivity. According to Katsui (2008) the human rights discourse does not provide operational guidance for making a concerted effort for change and the operationalising mechanism is weak. Priority-making is also a challenge. Priority should, in principle, be given to those most marginalised. However, human right systems usually benefit the affluent, because human rights are usually dependent on power relations within a society (Steiner et al., 2008). The priority-making process which is based on the existing power relations further impoverishes the vulnerable and poor because they are beyond the reach of the activities of the HRBA (Katsui, 2008). Human rights are also vague and culturally insensitive and this hinders the operationalising of this approach. In practice, the HRBA adopts a top down, one-size-fits-all approach. Little or no attention is given to the social, political and historical specificity of a country.

The third critique relates to the negative consequences that are exhibited when a narrow definition of HBRA is applied (Katsui, 2008). When HRBA is narrowly conceptualised, legal formalisation and policy-making becomes a priority rather than actual implementation of the policies. For example, in South Africa, housing is a fundamental human right, however, there are people still living in informal settlements. Consequently, there are idealistic principles, but the actual follow through is neglected (Katsui, 2008).

2.4.2 Human Rights and Corruption

Human rights are not given, earned or inherited; they belong to individuals simply because they are human and are inherent to each individual. Human rights are applicable to every person regardless of their gender, race, religion, ethnicity, political opinion or social origin. They are birth rights of all human beings and are universal (Gebeye, 2012). Human beings are dependent on human rights to live a minimal good life and the violation or lack of a single human right affects the quality of life a person experiences (Pilapitiya, 2004). There is a direct link between corruption and human rights. Corruption inevitably violates human rights and affects many individuals' lives, more specifically the poor, due to their powerlessness to change the status quo and inability to pay bribes. Corruption in the public procurement sector, specifically, negatively effects basic service delivery such as water and housing (Ambe & Badenhorst-Weiss, 2012). Hence, the poor face a poor quality of life as they are reliant on government services for their survival. When these basic services are not provided their human rights are violated. Hence, corruption allows for a narrow élite to amass huge fortunes within

the eThekweni Municipality, through tenders and this compromises the large majority of citizens through poor service delivery (Zondi, 2012).

When citizens have to pay bribes in order to access food, housing, property, education, jobs and the right to take part in the cultural life of a community, it is evident that human rights are violated (Robinson, 2004). In essence, corruption hinders economic development, minimizes social services and diverts investment in infrastructure, institutions and social services which are all used to improve the quality of life for citizens of a country (Pilapitiya, 2004). Since the UN Convention against Corruption in Seoul, 2003, large scale corruption is considered as a crime against humanity. The Seoul findings labelled corruption as immoral and contradictory to the *Universal Declaration of Human Rights* (Bagchi & Das, 2012). Through the use of a human rights based approach attention can be placed on the implications corruption has for society; and the challenges that arise from human rights violations due to corruption (Gathi, 2009).

There are various ways that corruption hinders human rights. It can negatively impact on human rights when a corrupt act is intentionally used to violate a right, for example, when a bribe is presented to a judge and it is accepted. It directly impacts on the autonomy and impartiality of that judge. It can also directly impact on human rights when states unlawfully prevent individuals from gaining access to a certain right (Gebeye, 2012). Additionally, when corruption occurs in education, in the form of citizens bribing a principal to acquire a place in a school for their child, corruption can indirectly lead to a human rights violation. For example, if public officials allow for the illegal importation of toxic waste in exchange for a bribe and the waste is dumped in a residential area, it infringes on the human right to have a clean environment (Gebeye, 2012). Corruption also influences the social structure of society given that everyone should be treated equally in society. However, when a person pays a bribe to a public official, they acquire a privileged status in relation to a person who is unable to pay a bribe. This socially stratifies society, separating the poor from the élite who benefit from corruption (Pilapitiya, 2004).

Implementation of human rights can aid the fight against corruption because human rights addresses the abuse of power. Corruption is a direct abuse of power (Gebeye, 2012). The use of human rights as a theoretical approach highlights the power relations that persist in society. It focuses on discrimination, equality and the eradication of economic, social and political obstacles that prevent marginalised groups from receiving their human rights. Literature on corruption usually ignores the suffering of the poor and focuses on the economic and political impacts of corruption. The HRBA provides a greater understanding of the implications of corruption on those marginalised (Pilapitiya, 2004). Furthermore, it significantly contributes to the formation and implementation of anti-corruption policies. The human rights based approach also highlights how corruption negatively

affects society. This allows for greater public knowledge and accountability on the impacts of corruption. This spurs political will and support for anti-corruption policies to combat corruption (Ellero, 2015). When human rights are ensured and protected, specifically the rights to basic services, then corrupt practices can be reduced (Gebeye, 2012).

2.4.3 The Bill of Rights and Corruption

After the 1994 election in South Africa, the Constitutional Assembly was given the task of formulating the Constitution. Within the Constitution is the Bill of Rights which provides citizens with their rights and responsibilities (Currie & De Waal, 2013). Chapter 2 (sections 7-36) of the Constitution provides the human rights that are protected in South Africa. Table 2.2 contains a Summary of the South African Bill of Rights.

Table 2.2 Summary of the South African Bill of Rights

SECTION	DESCRIPTION	INFORMATION
9	Right to Equality	You cannot be discriminated against. But affirmative action and fair discrimination is allowed.
10	Right to Human Dignity	Your dignity must be respected and protected.
11	Right to Life	You have the right to life.
12	Freedom and security of the person	You cannot be detained without trial, tortured or punished cruelly. Domestic violence is not allowed.
13	Slavery, servitude and forced labour	Slavery and forced labour are not allowed.
14	Right to Privacy	You cannot be searched or have your home or possessions searched.
15	Freedom of religion, belief and opinion	You can believe and think whatever you want and can follow the religion of your choice.
16	Freedom of expression	All people (including the press) can say anything they want.
17	Freedom of Assembly, demonstration, picket and petition	You can hold a demonstration, picket and present a petition. But you must do this peacefully.
18	Freedom of association	You can associate with whomever you chose.
19	Political rights	You can support the political party of your choice. If you are a citizen, and 18 years old, you can vote.

20	Citizenship	Your citizenship cannot be taken away from you.
21	Freedom of movement and residence	You can go and live anywhere in South Africa.
22	Freedom of trade, occupation and profession	You can do whatever work you choose.
23	Labour relations	You may join trade unions and go on strike.
24	Environment	You have the right to a healthy environment.
25	Property	Your property can only be taken away from you if the proper rules are followed.
26	Right of access to Housing	The government must make sure people get access to proper housing.
27	Right of access to Health care, food, water and social security	The government must make sure you have access to food and water; health care and social security.
28	Children's Rights	Children under the age of 18 have special rights, like the right not to be abused.
29	Education	You have the right to basic education, including adult basic education, in your own language (if this is possible).
30	Language and culture	You can use the language of your choice and follow the culture that you choose.
31	Cultural, religious and linguistic communities	Communities can enjoy their own culture; practice their own religion; and use their own language.
32	Access to information	You have the right to any information, which the government is in possession of.
33	Just administrative action	Actions by the government must be fair.
34	Access to courts	You can have a legal problem decided by a court, or a similar structure.
35	Arrested, detained and accused persons	This right protects people who have been arrested, imprisoned or accused.
36	Limitations on rights	All these rights can be limited if it would be fair to do so.

Source: (Currie & De Waal, 2013: 250-744; FunDza, 2014: 10)

Chapter nine of the Constitution also notes seven institutions or protection mechanisms that have been created for protecting people's rights. These include; the Public Protector, South African Human Rights Commission, Commission on Gender Equality, Office of the Auditor-General, Independent Electoral Commission, Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities and Independent Communications Authority of South Africa (Currie & De Waal, 2013). Some of these institutions will further be discussed in Section 2.11.2.

Human rights and corruption are closely intertwined. In many cases, corrupt acts often lead to the violation of human rights and specifically in South Africa it undermines the Bill of Rights (Currie & De Waal, 2013). In South Africa it is the government's responsibility to provide legitimacy for the Bill of Rights. In many instances corrupt acts hinder the government from successfully implementing relevant plans and policies developed in order to fulfil the economic, social and cultural rights that are outlined in the Constitution. Corruption affects the quality of public services, stalls service delivery and results in inferior infrastructure (Corruption Watch, 2013). Additionally, corrupt procurement deals lead to an escalation in prices or non-delivery of imperative resources and services to citizens. Furthermore, the siphoning of money from the public purse and misdirection of funds affect the rights of citizens (Corruption Watch, 2013). The Bill of Rights outline the rights citizens should experience, however, corruption directly prevents these rights from being fully experienced in South Africa.

2.5 Causes of Corruption

It is significant to understand the causes of corruption in order to facilitate efficient measures to combat it (Bayar, 2003). There are a number of different approaches to conceptualising the causes of corruption, each identifying a range of prerequisites and proximate causes. According to Treisman (2000) very little is known about what causes corruption to be higher or lower in one place than in another. Discussions about the causes of corruption have tended to explain how and why corruption occurs, rather than identifying the deterministic causes. Studies (de Graaf, 200; Caiden et al., 2001) usually produce a mixture of situations, attitudes and processes that can be noted as enabling factors, indicators or conditions that allow or aid corruption. However, very few of these factors can, in isolation, contribute to corruption (Mills, 2012).

The first cause of corruption relates to government size and decentralisation. Government involvement in the private market is often noted as a source of corruption (Lambsdorff, 2005). Larger governments may aid corruption by increasing the red tape and developing more regulations which force individuals to find illegal ways to evade the rules. These rules and restrictions can also create significant opportunities for rent seeking by bureaucrats (Goel & Nelson, 2010). In order to address government intervention, market restrictions and a burgeoning bureaucracy (Lambsdorff, 2007), privatisation has been instituted as a means of reducing corruption and increasing efficiency (Rose-

Ackerman, 1999). Hence, neo-liberalist reforms are seen as a means to reduce corruption. Through privatisation, the size of government control on certain assets is reduced and leaves less opportunities for citizens to be 'milked' of their money. However, Lambsdorff (2007) argues, that although privatisation may have economic advantages, the effect on reducing corruption appears to be ambiguous. Privatised firms are subject to their own forms of corruption. For example, the bribes taken from public officials would now be requested from private firm staff. Additionally, private firms can also be exposed to public interference and demands for bribes. Furthermore, there is no guarantee that the private firms are not upholding politically motivated interests (Lambsdorff, 2007). Neoliberal proponents also argue that privatisation and an increase in competitiveness, due to the lack of trade controls, will curb corruption.

Decentralisation of government functions, also has an effect on corruption (Goel & Nelson, 2010). Greater decentralisation allows for better monitoring, reducing corrupt activities and brings the government closer to the people (Lambsdorff, 2007). Conversely, heightened decentralisation may exacerbate the red tape and allow for greater opportunities for corrupt activities. According to Brueckner (2000) corrupt activity is an occurrence that flourishes in subnational governments.

The second cause of corruption relates to the salaries that civil servants receive. When wages are low, citizens are barely able to meet their basic needs and are unable to survive on the salaries they are paid. Corruption is then used as a mechanism of survival to supplement the income they receive (Tanzi, 1998). Van Rijckeghem & Weder (2001) argue that low salaries cause public servants to supplement their incomes through corrupt activity, while Lindbeck (1998) attributes the low levels of corruption in Sweden to high level administrators earning 12-15 times more than an average industrial worker. This implies that corruption occurs due to greed or need. However, regardless of salary levels, some officials are corrupt due to their own psychological and moral make-up; some are weak and unable to resist large bribes. However, not all officials react in the same way toward bribes, highlighting the complex nature of corruption (Tanzi, 1998).

The third cause is lack of sound political leadership. Corruption thrives when political leaders do not provide the right example, either because they are involved in corrupt acts themselves or condone corrupt acts because family members or friends are involved (Tanzi, 1998). In South Africa for example, President Jacob Zuma was accused of corruption on a grand scale in terms of the Nkandla scandal (Smith, 2013).

Geographical location is the fourth cause of corruption. Goel & Nelson (2010) argue that country-specific factors like geographic expanse have an impact on the incentives to engage in corrupt activity. Large, more spread out countries are more likely to face a greater amount of corrupt activity

(Goel & Nelson, 2010). This can be attributed to two reasons: first, it is hard to monitor government officials who live in different geographical locations; and second, a prisoner's dilemma is less likely to occur as employees are isolated and do not have the threat of other employees reporting them to the authorities for engaging in corruption (Goel & Nelson, 2010). The resource curse and the paradox of plenty also allow for corruption to occur, more specifically in developing countries. When a country is rich in natural resource endowments, an opportunity for rent generation and rent seeking activity is established. Multinational corporations pay bribes to officials for access to natural resources, which are then exploited (Hanson et al., 2014).

Historical influences shape the cultural norms that influence corrupt activity in societies (Goel & Nelson, 2010). In Africa, for example, corruption appears to be a social phenomenon rooted in the historical process of colonisation. Thus, African leaders continued in the same manner as their previous colonial rulers, manipulating institutions for self-enrichment (Mulinge & Lesetedi, 1998).

In different societies and cultures, bribe giving and taking may be more socially acceptable in one country, while in other countries they are seen as taboo (Goel & Nelson, 2010). According to Hope (2000) loyalty to families, tribes and friends is widespread in Africa and is a norm. Over periods of time bribe-givers and takers are able to formulate effective mechanisms to engage in mutually beneficial corrupt practices. These practices are difficult to uproot and become entrenched over time (Goel & Nelson, 2010).

2.6 Consequences of Corruption

Corruption has many dimensions and has numerous political, economic, social and environmental consequences (Boersma, 2012). Rose-Ackerman (1999) describes corruption as a symptom of something gone wrong in the management of the state. The institutions designed to govern the interrelationship between the citizen and the state are used for personal enrichment, rather than for the provision of basic services for citizens. Corruption reflects poor governance and erodes the moral fibre of society. Corruption in any form affects societal harmony, dignity, freedom of speech, equity and social development (Pathak & Prasad, 2005). It is imperative to understand the consequences of corruption, in order to develop and enforce measures to counteract corrupt acts (World Bank, 2000).

2.6.1 Political

Corruption undermines trust in the efficient functioning of a political system, which leads to instability and possible disengagement of citizens (Rose-Ackerman, 1997). It weakens good governance by discouraging public trust in government and can lead to a reduction in political participation by citizens (Akonor, 2009). Numerous political contestations arise when individuals vie for the benefits that corrupt activity may generate (Jain, 2001). Consequently, it becomes difficult for

governments to form and implement policies that respond to citizens needs and to use scarce resources in beneficial ways (Rose-Ackerman, 1997).

Corruption directly erodes democracy and the legitimacy of government. It hinders democratic governance, for example, an election that is rigged, will result in those in power not being accountable to the public (Adediji, 2013). When corruption is prevalent, citizens are unable to put their trust in the political system, which renders it illegitimate. Governments' political decisions are undermined by corruption, causing citizens to lose faith in the state's ability to provide services.

Corruption can also lead to armed conflict, especially when large endowments of natural resources are present (Bannon & Collier, 2003). Corruption significantly heightens grievances and opposing demands for political change. The negative economic connotations of corruption and increasing inequalities result in discontentment (Boersma, 2012). Thus, political instability arises as citizens begin to support movements that advocate for political change. Le Billion (2003) indicates that leaders of violent coups promise to address corruption by the previous government to gain political support. War also provides many opportunities for individuals to participate in illicit practices. For example, the allocation of wages to ghost soldiers and the selling of illegal weapons (Le Billion, 2003).

2.6.2 Economic

Economic growth plays a role in development, specifically to improve the quality of life of citizens. Poor countries may have economic growth without development, however no country can sustain economic development without growth (Dong, 2011). Several empirical studies provide statistical evidence that countries with greater corruption levels have a weaker economic performance (Chetwynd et al., 2003). Corruption is detrimental to economic development and growth because it reduces domestic and foreign investment, alters the size and composition of government expenditure away from basic services, to projects that can be easily manipulated (Camerer, 2009).

Corruption is a major disincentive for foreign investment. A seminal study by Mauro (2002) analysed 106 countries to show that high levels of corruption are associated with lower levels of investment. Investors who seek a transparent, fair and competitive business environment will avoid investing in countries where there is a high level of corruption.

Corruption has significant consequences on the revenue and expenditure of the government budget (Cooray, 2013). It weakens the financial and tax system and further strengthens the underground economy that aids organised crime (Camerer, 2009). Paying bribes can lead to a reduction in various

sectors such as taxes and public utility charges. However, bribes can also be used to evade paying for services such as water and electricity. This leads to major losses of revenue in the government budget (Myint, 2000). A study by Tanzi and Davoodi (1997) analysed the extent to which corruption changed the allocation of public spending away from basic needs such as education and health care.

Corruption can be directly linked to the rise of the underground economy. There are two types of underground economic activities. First, those that are illegal due to them engaging in the drug trade or smuggling. Second, the activities that are legal but not recorded in order to escape taxes (Myint, 2000). When a large area of an economy goes underground, official macroeconomic data, which covers the formal sector becomes unreliable, making it difficult to formulate economic policies.

2.6.3 Social

There is vast literature on corruption, and many of the approaches provide an economic or a political viewpoint on the subject. Therefore, analyses of the causes, effects and combative measures reflect these approaches (Pearson, 2001). However, these approaches do not provide an understanding of the actual social consequences of corruption. Corruption can simply be put as the stealing from the ordinary man and giving to the rich. Under a corrupt regime, the privileged élite symbiotically benefit from connections to government officials (Myint, 2000).

Corruption derails the poor as they are unable to pay required bribes to send their children to schools, acquire healthcare and basic services. Resources which are meant to provide for public services are siphoned off to the bank accounts of those in power, resulting in basic services such as healthcare being reduced in both quality and quantity (Gebeye, 2012).

Widespread corruption also has a detrimental impact on development and distribution of the associated benefits (Pearson, 2001). Corrupt practices undermine meaningful development efforts; corrupt officials rechannel allocated resources for personal enrichment. Poor targeting of social programmes persist, due to the use of government-funded programmes that benefit the wealthy (Gupta et al., 2002). For example, in India and Pakistan, the subsidy in agriculture is distributed unevenly, and those at the bottom of the system have a limited access to these benefits (Rose-Ackerman, 1997).

Corruption also erodes established social standards of society, and citizens turn to illegitimate means to earn money for their survival (Igwe, 2012). Thus, corruption becomes the norm and destroys the ethical and moral foundations of society.

2.6.4 Environmental

Corruption not only has economic, social and political consequences, but it also severely impacts on the environment. Natural resource endowments may lead to corrupt practices, and the exploitation of resources can undermine the principles of sustainability (Boersma, 2012). Due to globalisation and the current economic system, many multinational corporations try to do business with countries that have low taxes, cheap labour and lax environmental regulations. In order to attain profit, businesses may bribe public officials to overlook environmental regulations. For example, Monsanto, a US agrochemical corporation, bribed a high level official in the Indonesian Ministry of Environment to ignore the environmental assessment of genetically modified cotton (Winbourne, 2004).

Corruption is also detrimental to wildlife, public officials are bribed to turn a blind eye to poaching. Public officials also embezzle money intended for anti-poaching and conservation projects (Boersma, 2012). Corruption allows for environmentally damaging practices to be established, which aid bureaucrats and criminals. This allows for the ease of trafficking in wildlife and other natural resources and provides a platform for the depletion of natural resources and pollution of the environment (Winbourne, 2004). Corruption is a widespread phenomenon that has numerous consequences. It has also manifested itself greatly at an international scale and has significantly influenced the way in which states operate.

2.7 The International Context

Since the 1960s there has been some scholarly interest in policy-orientated studies to understand the character, origins, definition and cost of corruption (Camerer, 2009). Events in developing countries and the previous Soviet Block in the mid-and late-1980s changed the academic and policy debate on the character of corruption and anti-corruption strategies (Doig & Riley, 1998). This allowed for political and administrative reform, and the rise of structural adjustment programmes and democratisation in the developing world (Camerer, 2009). Publicised acts of corruption at the end of the Cold War, in the 1990s, highlighted that malfeasance was increasing in both the developing and developed world. Since 1996, addressing corruption has been a key issue amongst international institutions such as the WB, and the United Nations (UN) and has been prominent on the agenda of many NGOs (Ougaard & Leander, 2010).

2.7.1 The Current Situation

Over the last 15 years, the issue of corruption has radically changed from being mainly a national concern into a global political issue that has been largely driven by civil society organisations and watchdog groups (Cockcroft, 2010). In 2001, a TI survey showed that in Pakistan 90 percent of homes that had access to public education paid an average bribe of \$90 to teachers to ensure that children made it to higher grades. Surveys in Ecuador, Paraguay and Bolivia all indicated that public service delivery required bribes. In 2009, a survey in Uganda found that citizens were obliged to pay bribes of \$20 to \$60 for basic health services. In 2009, an assessment of India's food distribution programme revealed that 40 percent of the supplies were diverted through corruption (Cockcroft, 2010).

In the 2014 CPI, a total of 175 countries were evaluated, scores range from 0-100. A score of 100 indicates a clean country, free of corruption, while 0 indicates a highly corrupt country. The global average CPI score was 43 (Transparency International, 2014). Table 2.3 contains the 2014 CPI results by region.

Table 2.3 2014 Corruption Perception Index (CPI) results by region

REGION	AVERAGE SCORE	TOP COUNTRY & SCORE	BOTTOM COUNTRY & SCORE
Americas	45	Canada 81	Haiti & Venezuela 19
EU & Western Europe	66	Denmark 92	Greece, Italy, Romania 43
Eastern Europe & Central Asia	33	Georgia 52	Turkmenistan 17
Middle East & North Africa	38	United Arab Emirates 70	Sudan 11
Asia Pacific	43	New Zealand 91	Korea (North) 8
Sub-Saharan Africa	33	Botswana 63	Somalia 8

Source: (Transparency International, 2014:6-7)

It is significant to note the disparity in CPI scores between nations that are considered developed and developing. With developed countries attaining scores that are closer to 100, countries that are developing acquired scores closer to 0. South Africa falls within the Sub-Saharan region and attained a CPI ranking of 44 (Transparency International, 2014). In an attempt to curb corruption a number of

international organisations, instruments and conventions have been formulated. These form part of a broader set of international regulations that have been implemented to fight corruption.

2.7.2 The International Regulation of Corruption

In the 21st Century corruption has become an international concern (Ferreira & Morosini, 2013) and is regulated by international law. It is essential to note anti-corruption treaties and the resolutions adopted by international organisations, as an integral part of international corruption regulation (Terracino, 2012). Table 2.3 contains a summary of international instruments and conventions in the fight against corruption.

Table 2.4 Summary of international instruments and conventions in the fight against corruption

ORGANISATION	RESOLUTIONS	CONVENTIONS	ADDITIONAL INFORMATION
<p>United Nations (UN)</p>	<p>In 1975, General Assembly Resolution 3514, entitled the 'Measures against Corrupt Practices of Transnational and Other Corporations, their Intermediaries and Other Involved' was adopted. This resolution denounced all corrupt activity and led to the establishment of the United Nations Commission on Transnational Corporations to consider measures to eradicate corrupt practices.</p> <p>In 1997, the General Assembly released Resolution 51/191 the 'United Nations Declaration against corruption and Bribery in International Commercial Transactions. This was supported in 1998 by the 'Action Against Corruption and Bribery in International Commercial Transactions'.</p>	<p>In 2000, the 'UN Convention Against Transnational Organised Crime (UNCTOC)' was developed. This came in to force on the 29 September 2003 and was endorsed by 147 State Parties. UNCTOC does not define corruption, but differentiates between passive and active bribery of national and foreign public officials. It also recognises that there are other forms of corruption.</p> <p>In 2003, the 'UN Convention against Corruption' (UNCAC), was adopted and took effect on the 14 December 2005. UNCAC has 71 articles and has 154 State Parties. The obligations of signatories are divided into 4 groups; prevention, criminalisation, international cooperation and asset recovery.</p>	<p>Between 1975 and 1997, the UN adopted instruments such as the Code of Conduct for Law Enforcement Officials, Recommendations on International Co-operation for Crime Prevention and Criminal Justice in the context of Development and the International Code of Conduct of Public Officials.</p>
<p>European Union (EU)</p>	<p>In 1995, the EU developed the Resolution on Combating Corruption in Europe. It was one of the first EU strategies to combat corruption.</p> <p>In 2005, the EU developed Resolution on 'Aid Effectiveness and Corruption in Developing Countries'. This highlighted how corruption hinders the effectiveness of the aid and development objectives of the EU.</p>	<p>In 1995, the EU adopted the 'Protection of the European Communities Financial Interests' Convention (PFI) (1995), First Protocol (1996) and Second Protocol (1997). The PFI came into force on the 17 October 2002, and deals with concerns that pertain to fraud. The main responsibility of State members of the PFI is the criminalisation of offences in threwnational legislation.</p>	<p>Article 29 of the EU Treaty outlines preventing and combating of corruption as one of its objectives.</p>

ORGANISATION	RESOLUTIONS	CONVENTIONS	ADDITIONAL INFORMATION
		<p>In 1997, the EU developed the 'Convention on the Fight Against Corruption Involving Officials of the European Communities or Officials of Member States of EU Union'. However, this convention only entered into force in 28 September 2005.</p>	
<p>Council Of Europe (CoE)</p>	<p>In 1997, CoE adopted Resolution (97) 24, which detailed Twenty Guiding Principles for the Fight against Corruption.</p>	<p>In 1999, CoE adopted the 'Criminal Law Convention on Corruption'. This convention was enforced in 2002 and has 41 signatories.</p> <p>In 2003, the additional Protocol to the Criminal Law Convention on Corruption was adopted, which calls for states to criminalize both active and passive bribery by domestic and foreign perpetrators under their national law</p>	<p>In 1994, European Ministers of Justice saw corruption as a threat to democracy, rule of law and human rights and developed its own anti-corruption initiative</p> <p>In 2003, the CoE formulated the 'Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns'. This enlists states to financially support political parties, to be objective, fair and not to jeopardise independence</p> <p>CoE also created the 'Model Code of Conduct for Public Officials'. The purpose of this code is to outline the standards of integrity and conduct that needs to be observed by public officials</p>
<p>The Organisation Of American states (OAS)</p>	<p>OAS General Assembly Resolution 2222, 'Cooperation among the Member States in the Fight against Corruption and Impunity',</p>	<p>In 1996, adopted the Inter-American Convention Against Corruption (IACAC), which has 33 State Parties. This instrument</p>	<p>The IACAC does not have a monitoring procedure, thus, the follow up mechanism (MESICIC), was developed in 2001.</p>

ORGANISATION	RESOLUTIONS	CONVENTIONS	ADDITIONAL INFORMATION
	<p>requests states to hand over corrupt individuals to the state so that necessary laws can be carried out.</p> <p>The 'Declaration of Quito on Social Development and Democracy, and the Impact of Corruption' notes that corruption that occurs in the private sector may have detrimental impacts on the economy</p>	<p>addresses acts of corruption in the public sector at any level government.</p>	<p>The purposes of MESICIC, is the promotion and implementation of the IACAC, to follow up on member states implementation, and provide technical co-operation activities and exchanging of ideas between member states.</p>
<p>Organisation for Economic Co-operation and Development (OCED)</p>		<p>In 1997, the OCED adopted the 'Convention on Combating Bribery of Foreign Public Officials in International Business Transactions'. There are 40 countries that are party to the convention, which makes provision for the criminalisation and punishment of active bribery of foreign public officials on international business transactions by State Parties.</p>	<p>In 1994, OCED developed the 'Recommendation of the Council on Bribery in International Business Transactions', which enforces measures at national and international levels to deter, prevent and combat bribery of foreign public officials.</p> <p>In 2009, the OCED enforced the 'Recommendation of the Council on Tax Measures for Further Combating Bribery of Foreign Public Officials in International Business Transactions', which prohibit tax deduction of bribes to foreign public officials</p> <p>The OCED also adopted the 'Recommendation on Enhancing Integrity in Public Procurement', which provides policy makers with principles for heightening their</p>

ORGANISATION	RESOLUTIONS	CONVENTIONS	ADDITIONAL INFORMATION
			integrity in the public procurement cycle.
Asain-Pacific			In, 2000, the Asian Development Bank (ADB) and OCED launched the 'ADB/OCED Anti-Corruption Initiative. DB/OCED Anti-Corruption Initiative', which has 28 members.
International Monetary Fund (IMF)			<p>In 1996, the IMF Interim Committee developed the 'Declaration of Partnerships for Sustainable Global Growth', which aims to promote good governance in all areas. This includes implementing rule of law, enhancing the efficiency and accountability of the public sector and combating corruption.</p> <p>In 1997, IMF Executive Board, adopted the 'Guidelines Regarding Governance Issues'.</p> <p>Since 2002, more than half of the IMF's Public Information Notices makes reference to governance or corruption.</p>
World Bank (WB)			<p>During the 1970's the WB, turned a 'blind eye'</p> <p>In its 1997, World Development Report, a chapter focusses on 'Restraining Arbitrary State Action and Corruption'</p>

ORGANISATION	RESOLUTIONS	CONVENTIONS	ADDITIONAL INFORMATION
			<p>In 1997, the Poverty Reduction and Economic Management arm of the WB produced a report, 'Helping Countries Combat Corruption: the role of the World Bank'.</p> <p>In 2007, the World Bank Group (WBG) launched the Global and Anticorruption Strategy</p>
<p>Transparency International (TI)</p>			<p>TI is most noticeable non-governmental player in the anti-corruption movement.</p> <p>Developed the Corruption Perception Index and Bribe Payers Index to measure corruption</p> <p>TI focusses on gathering and distributing research and information on corruption. This is done through the publishing of codes of conduct, hosting conferences and networking with private and public sector that are aware of corruption.</p>

Source: Boersma, (2012), Bukovansky, (2006), Nicholls, et al., (2011), Obidairo (2013) and Terracino (2012)

It is evident that international organisations such as the UN, the WB, OCED, the CoE and a number of other international governmental organisations and NGOs have engaged in various anti-corruption initiatives, informed by a 'good governance' institutional reform agenda. Table 2.4 shows the various international organisations and the resolutions and conventions that have been adopted in the fight against corruption on a global scale. The two areas in which international organisations reform efforts have been situated include the criminalisation of bribery and corruption and institutional reforms and capacity building. In order to make international corruption a crime, laws have to be changed or new mechanisms adopted to ensure uniformity. A fundamental aspect to international cooperation is the exchange and sharing of information about corruption and curbing techniques and legislation. The UN, through the Crime Prevention and Criminal Justice Branch in Vienna, has made efforts to provide materials to assist nations in developing anti-corruption reforms, including the development of a manual to combat corruption (Camerer, 2009).

In 1977, the United States (US) began the anti-corruption campaign, with the formulation of the *US Foreign Corrupt Practices Act* making it a criminal offence for US companies to bribe foreign officials. This legislation aimed to create a level playing field and secure good governance by enforcing an internationally binding convention that would ensure that multinational companies were bound by the same rules when functioning around the world (Boersma, 2012). In 1994, the OECD urged developed and developing nations to take effective measures to deter, prevent and combat the bribery of foreign public officials in relation to international business transactions (Camerer, 2009).

Organisations such as the WB and IMF have in recent years used their financial influence to promote anti-corruption efforts. According to the WB (1997) the main way to reduce corruption is to encourage economic liberalisation and deregulation in borrowers. Previously lending decisions were based firmly on economic criteria, however, now financial assistance can be suspended or delayed if poor governance is exhibited by borrowing states. For example, in 1997, the IMF cut off a \$220 million loan to Kenya due to the failure of the Kenyan authorities to address bribery. However, cynics argue that corruption is another means by which the WB can ensure that its real goal of structural adjustment is adopted and has less interest in strengthening public institutions, and increasing public education and awareness on the issue (Camerer, 2009).

The arguments that favour international organisations playing a role in combating corruption in the developing world are compelling (Davis, 2009). However, there are also disadvantages with regard to international organisations dealing with corruption in developing countries. According to Davis (2009) the disadvantages fall into three categories: indifference, incompatibility and institutional displacement.

Firstly, it is argued that foreign actors could exhibit selective indifference in the fight against corruption in the developing world. For example, foreign actors may focus on combating corruption as a way of obtaining legitimate government contracts in jurisdictions whose economic development is deemed important, while turning a blind eye to bribes paid to obtain unobtainable goods such as illegal logging concessions. Secondly, it is argued that foreign institutions' anti-corruption efforts may be incompatible with a developing country's local needs or desires. For example, incompatibility can stem from a clash of values, foreign actors may impose harsh penalties on acts that may be not considered as corrupt in that specific society, due to cultural dynamics. Thirdly, the argument of institutional displacement suggests that foreign institutions can serve as substitutes for domestic institutions. For example, if victims of corruption only relied on foreign police forces, prosecutors, lawyers and courts to investigate, prosecute cases of bribery and to levy criminal or civil sanctions, there would be no need for domestic institutions. Hence, international institutions would actively retard the development of these institutions (Davis, 2009). Corruption has also become endemic within the public procurement sector and has undermined the ability of governments to provide essential services to its citizens.

2.8 Public Procurement and Corruption

Corruption has been a focal point in recent years in the development agenda of numerous international organisations, both in the developed and developing world (Williams-Elegbe, 2012). The public procurement sector however, is an area of rampant corruption. Procurement of goods and other services by public bodies average between 15 percent and 30 percent of the Gross Domestic Product (GDP). Damage from corruption is estimated between 10 percent and 25 percent, and in some instances it escalates to 40 percent to 50 percent, of the contract value (Kostyo, 2006). Due to this, states have adopted various measures to prevent and curb corruption in the public procurement sector. This section will attempt to define and outline the procurement cycle and associated risks, and assess preventative measures against procurement corruption.

Transparency International broadly defines procurement as:

the preparation, award and administration of contracts for goods, works and other services, and thus covers, not just the narrow selection of a contract partner by a purchasing body and the actual entering into a contract between the two, but the entire process from needs assessment through preparation, award and administration of contracts for goods, works and other services such as consultant services of a technical, financial, legal or other nature (Kostyo, 2006:14).

Public procurement specifically relates to all contracts between a government department, publicly owned corporations, companies or individuals (Kostyo, 2006). According to the Environmental Protection Agency (2015), public procurement is the acquisition, whether under formal contract or not, of works, supplies and services by public bodies. This spans from the purchasing of routine supplies and services to formal tendering and applying for contracts for large infrastructural projects.

2.8.1 Corruption in the Procurement Cycle

Corruption and its associated risks are manifest throughout the entire public procurement cycle, and may differ at each phase. Figure 2.1 presents an outline of the procurement cycle and the common manifestations of corruption and risks at each stage as outlined by the Transparency International's *Handbook for Curbing Corruption in Public Procurement* (Kostyo, 2006).

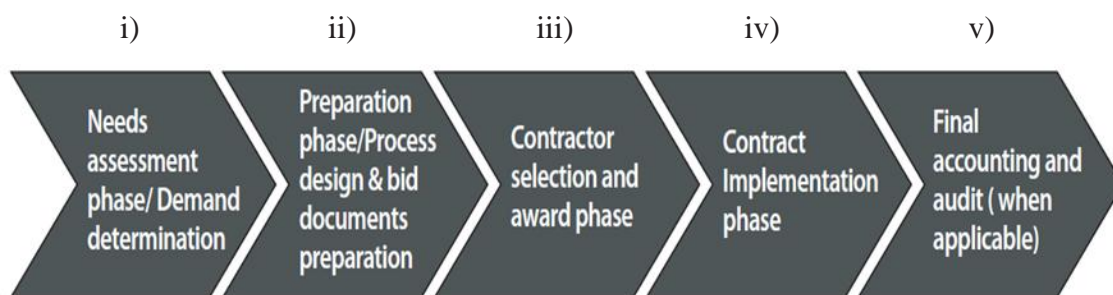


Figure 2.1: Procurement Cycle

Source: Kostyo (2006:17)

i) **The Needs assessment phase/Demand determination**

This stage pertains to the decisions on the scope, economic viability, environmental and social impacts of the project and the subsequent budget allocations (Rozo, 2010). The associated risks are as follows:

- The investment or purchase in this phase is redundant. Therefore, demand is encouraged in order for particular companies to made deals. However, this provides little or no benefit to the society.
- Rather than the use of systemic leak detection or grid loss reduction, a new capacity is established which allows for a greater bribe potential.
- The investment that is presented is economically unjustified or environmentally detrimental.
- The goods and services are overestimated to favour specific providers.
- Previous political favours or kickbacks are paid by incorporating a ‘tagged’ contract, which is a budget for a contract that has a pre-arranged contractor.

- Conflicts of interest are unmanaged, thus decision-makers decide on the need for contracts that affect their old employers.
- Over-specification and lock-out specification occurs which results in procurement orders being developed to lower the number of potential firms (Fitzpatrick, 2003).

ii) Preparation phase/Process design and bid documents preparation

During the project review and the approval process, the contracting authority is required to formulate detailed technical designs and to prepare a comprehensive procurement plan. The authority should ensure that the appropriate procurement method under the law has been selected, to develop the bidding documents and thereafter they should announce the call for bids (Rozo, 2010). The risks in this phase are as follows:

- Essential goods and services are under- or over-estimated to favour a specific bidder;
- Needless complexity of bidding documents or terms of reference are utilised to create an air of confusion to conceal corrupt acts and to make monitoring problematic;
- Consultants develop a design that benefits a specific bidder;
- Bases for direct contracting are abused;
- Bidding documents or terms of reference are developed to benefit a specific provider, hence competition cannot occur;
- Cover biddings or phantom bids occur that give the impression that there is competition;
- Bid suppression occurs which allows the winning of contracts by designated firms;
- Bid rotation where firms rotate the winning bids amongst themselves and through a side payment each receives a share of the income; and
- Market division takes place where firms agree not to enter a bid in order to suppress competition against one another (Fitzpatrick, 2003).

iii) Contractor/supplier selection and award phase

This stage provides clarification to interested bidders, the submission, evaluation of the bids and the awarding and signature of the contracts (Rozo, 2010). The various risks are:

- Decision-makers are biased, thus, bribes, kickbacks or conflicts of interest are involved;
- The selection criteria are subjective and this allows bias to influence decisions;
- Advantages to specific bidders are granted through the transfer of confidential information prior to the bid submission or during the classification period;
- Confidentiality is abused and prolonged beyond legally protected information, making monitoring and control problematic;

- The bases for selection of the winner are not made public, hence there is no transparency in the bid; and
- Costs are inflated due to limited or non-existent competition.

iv) Contract Implementation phase

In this stage the contractor or supplier has been given the contract, and they provide the goods or carry out the work or services as required. This is done under the supervision of the contracting authority of an outsourced consultant. The payment occurs after the supervision of the process (Rozo, 2010).

Frequent risks in this phase include:

- Winning bidders/contactors tend to produce poor quality and defective work which usually requires early repairs or costly correction;
- Contract renegotiations or ‘change orders’ make changes to the contract, this occurs in small proportions which can be determined by the site engineer;
- Price increases throughout execution due to ‘change orders’ reflect in changes in specifications or cost escalations. This is usually enabled by collusion between a corrupt contractor and a corrupt control official;
- False or non-existent claims are approved;
- Contract supervisors or monitors are bribed to justify false or non-existent claims; and
- Contract renegotiations are allowed that render the bidding process ineffective.

v) Needs assessment phase/Demand determination

At the conclusion of the contract execution, the contracts final accounting and payment occurs under the supervision of government employees (Rozo, 2010). The risk in this phase is:

- Accountants who handle the final accounts and auditors are biased or can be bribed, and become willing to support falsified certificates.
-

2.8.2 Combative measures

Many public procurement regulations cover measures that are directed at preventing corruption in the public procurement sector. However, these measures in procurement legislation against corruption may not be specifically directed against corruption and may address related issues such as transparency, open competition and heightened accountability in awarding government contracts (Williams-Elegbe, 2012). Other measures pertain directly to the prevention of corruption in the public procurement sector. However, corruption is a complex issue, with indigenous casual factors. The strategies adopted need to be state and country specific, taking into consideration the history and

cultural complexities of a country (Andvig et al., 2000). Six measures have been identified by Kostyo (2006) to address procurement corruption.

The implementation of Good Procurement Principles is the first preventative measure of procurement corruption. According to Kostyo (2006) the adoption of principles of integrity, transparency, accountability, fairness and efficiency in the decision-making process on investments and purchases will reduce corruption. Integrity refers to the procurement process being honest and compliant with laws, and it ensures that the possessor of the appropriate technical expertise is appointed. Also, fair and open competition allows for an adequate pricing and quality product to be provided (Williams-Elegbe, 2012). Transparency means that laws, regulations, institutions, processes, plans and decisions are accessible to the public. This allows for processes and decisions to be monitored, reviewed and decision-makers can be held accountable (Kostyo, 2006). Accountability means that government and public institutions must be held responsible for decisions taken and for the completion of tasks and duties. Records that justify all decisions and actions should be created. Where violations occur the perpetrator must be held accountable and they must be dealt with appropriately (Kuhn & Sherman, 2014). Contracts awarded should be fair and impartial, suppliers and contractors should be appointment on merit in terms of their qualifications and expertise.

The implementation of Good Procurement Laws is the second preventative measure. Due to globalisation, trade agreements and conditions together with procurement laws worldwide are becoming similar. For example, many of the laws establish open bidding as the norm and restricted bidding, short listing or direct contracting as the exception (Kostyo, 2006). At the international level, the *World Bank's Procurement Guidelines* and the *United Nations Commission on International Trade Law (UNCITRAL)* model are used (Nicholas, 2010). In 1995, UNCITRAL issued a *Model Law on Procurement Goods, Construction and Services*. The *Model Law* comprises the WB's procurement principles and seeks to evaluate and modernise countries' procurement laws and practices (Nicholas, 2010).

Law enforcement is another combative measure against procurement corruption. Criminal punishment entrenched in the national legal structures are significant in reducing corruption. Criminal liability of legal persons/corporations and administrative fines can be used as a deterrent to corruption. When companies can be held liable, under the law, for the prevention of corrupt acts, they ensure that measures are taken to reduce corruption. Although the levying of administrative fines can be used as a significant deterrent, it often makes little or no impact due to the low ceiling on the fines (Kostyo, 2006). Hence, fines need to be set at a level that far exceeds the economic benefits of illicit activity, in order to be a successful measure. Liability for damages can also be used as a measure to reduce corruption in the public procurement sector (Wickberg, 2013). Corruption during the procurement process can cause damage to the principal and other bidders who incurred costs in preparing their

bids, thus corrupt individuals and companies need to be held liable for the damage. The practice of pre-determining thus means that, if damages occur, a certain percent of the contract value will be deducted.

Another effective sanction is the forfeiture or confiscation of illegal gains and profit. Companies that have received contracts through corrupt acts can be forced to return not only the actual 'profit' of the payment, but the entire payment for the contract (Kilchling, 2001). Debarment (blacklisting) of corrupt individuals and companies has been seen as an effective way to reduce corruption. This prevents the participation of corrupt entities in the competition for public contracts. Debarment lists are published through the internet, for example, the WB debarment register (Williams, 2007).

The use of prevention is another key strategy to curb public procurement corruption. Methods to prevent corruption in the public procurement sector should be the responsibility of the government officials and the bidders. A clear and transparent process is required, where governments provide clear procurement rules that focus on competitive and open bidding procedures (Kuhn & Sherman, 2014). The use of the 'four eyes principle' and rotation of officials has been seen as a successful administrative preventative measure to prevent corruption. The staff needs to develop clear behavioral rules, in the form of codes of conduct. The Code of Conduct needs to be based on the commitment to integrity and ethical behaviour, and corruption should be strictly prohibited (Kostyo, 2006).

Information gathering in the form of whistle-blowing is another important measure to curb public procurement corruption. Corruption is characterised by secrecy. Individuals who are most likely to be aware of corruption are office colleagues of corrupt officials or competing bidders. Usually these individuals are reluctant to approach authorities (Masuku, 2005). Hence companies should develop whistle-blower encouragement and protection rules. Establishing a central anti-corruption office, hotline telephonic connection or an electronic information gathering system for the purposes of anonymity will encourage individuals to divulge corrupt activity.

In recent years, governments have made use of the internet for the public procurement process (Søreide, 2002). E-procurement is the collaborative procurement of goods, works and services using electronic methods at the various stages to maximise efficiency and transparency (Satyanarayana, 2007). The main purpose of using e-procurement is to attain value for money, foster access to competition, impartiality and transparency and to allow for some control by civil society. The E-procurement process provides general procurement information on all government departments, tender notices, bidding documents, minutes/records of bidders' conferences, the submission of bids, received bids and reports of award proceedings, for example, who won and at what price (Kostyo, 2006). However there are some constraints to using this method such as cultural barriers in terms of getting smaller companies to work with the internet, as well as resource constraints in terms of

personnel and finances (Kostyo, 2006). Corruption is not, however, only an international concern; it is also endemic in Africa and has had devastating impacts on the developing world.

2.9 Corruption in Africa

“Corruption in African has had an extremely negative impact on the socio-economic development and the fight against poverty on the continent. Corruption in Africa has been characterised by economic stagnation, political instability and uncontrollable public debt” (Sebudubudu, 2002). It has thus become a global concern and has attracted the attention of numerous international organisations which have focused their attention on the root causes and consequences of corruption, in order to provide effective means to curb this practice (Hope, 2000).

Corruption in Africa is entrenched in the politics of the post-colonial state and the problems that followed after independence (Sebudubudu, 2002). The post-colonial state did not possess the capacity and resources to meet the demands that were required. Furthermore, the institutions that were inherited during independence sought to serve the economic interests of the colonial state (Griffiths, 2005). Due to the economic strain and societal demands, a few years after independence, the African states became characterised by centralisation, authoritarianism, personal rule, patronage and clientelist politics (Szeftel, 2000). Thus, the post-colonial state in Africa after independence was based on authoritarian personal rule and on the use of force. According to Hope (2000) these neo-patrimonial states were characterised by bureaucratic autocracies which lacked accountability, transparency and the rule of law.

Clientelism also became rife and a source of corruption, supporters of the clientelist network showed loyalty to the ruling party and in return would be rewarded or gain access to state resources (Sebudubudu, 2002). Additionally, politicians and senior public officials’ lack of ethical leadership prevented accountability. Hence, personal and private interests took priority over national interests (Hope, 2000).

According to the WB and African Union (AU) Surveys, corruption costs Africa \$148 billion a year (Blandy, 2007). It is estimated that corruption occurs in up to 70 percent of public procurement contracts in Sub-Saharan Africa (Tutu et al., 2014). In these cases, bribes and illicit transactions inflate the project costs by 20-30 percent (Mawenya, 2008). African countries are taking an extensive interest in this area as it increases poverty, human suffering and further marginalises the poor, undermines capacity building and increases the misuse and looting of Africa’s natural resources.

During the initial years of independence in Africa, states paid their public workers low wages. However, the workers were required, not only to financially support themselves and their nuclear family, but to share the benefits of their public office with their extended family, which in some

instances, included the whole village (Appolloni & Mushagalus, 2013). It was thus argued that unless the civil servant was permitted to supplement his income with a bribe, which in essence would enhance his ability to meet his various obligations, he was unlikely to remain in the public sector (Mbaku, 2007). However, in contemporary African society, civil servants continue to engage in corruption. Corruption has also ravaged the public procurement sector in Africa and has actively undeveloped and impoverished its citizens.

2.10 Public Procurement Corruption in Africa

Public procurement in Africa is known to be prone to corruption. This impedes the socio-economic development and growth of the continent (Mawenya, 2008). There are various determinants of public procurement corruption in Africa, which are complex and multi-faceted. According to Appolloni and Mushagalus (2013) the major economic determinant of public procurement corruption in Africa was related to the low salaries of public servants and officials.

Appolloni and Mushagalus (2013) also point out that there are organisational determinants of procurement corruption in Africa. These include: lack of transparency and accountability in the codes or organisational functions; lack of capacity amongst technical staff of various public organisations relating to procurement planning; writing of specifications; evaluation of bids and contract management; lack of effective supervision in organisations; and adequate facilities for procurement staff in organisations (Appolloni & Mushagalus, 2013).

According to Appolloni and Mushagalus (2013) political factors also play a role in heightening corruption as political leaders reign over complex governance structures. Politicians both at the central and local government levels, manipulate public resources to bribe voters. Thereafter, they recover the money spent by swaying the award of government contracts to receive direct benefits. However, in most cases of procurement corruption in Africa, it is the officials who have strong political connections that influence the award of government tenders through collaboration with technical officials of the government and the private sector (Appolloni & Mushagalus, 2013).

Two organisations, namely, the UN and the AU, have spurred the fight against public procurement corruption in Africa. In its Resolution 58/4 of 31 October 2003, the UN's General Assembly instituted UNCAC, which was followed by the Convention. UNCAC is significant when dealing with public procurement corruption. Article 9 is entitled *Public procurement and management of public finances* (Nicholls et al., 2011). This Article requires states to take the necessary action to formulate relevant systems of procurement, which is founded upon transparency, competition, and objective criteria in decision-making in order to combat corruption (Appolloni & Mushagalus, 2013).

The AU has also instituted a number of measures to address corruption in the public procurement sector, the most prominent being the *African Convention on Corruption*, which requires state parties to ensure that public officials declare their assets at the inception and conclusion of their time in public service. It also requires State parties to ensure transparency in their public procurement sectors (Williams-Elegbe, 2012).

The *WB Country Procurement Assessment Survey* conducted in 2012, revealed that \$60 out of every US\$100 spent by the African Union was being lost to corrupt acts (*African Union Procurement Authority*, 2015). An average of \$25 billion was being lost annually to fraudulent practices, exhibiting itself in the form of insufficient procurement plans, poor project prioritisation, poor budgeting processes, lack of competition and value for money and various other manipulations of the procurement and contract award processes (*African Union Procurement Authority*, 2015). Hence the AU initiated the *Public Procurement Reform* as measure to restore due process in the award and execution of contracts. This led to the formation of the AU Procurement Authority Unit in 2013, which was tasked to implement the *AU's Public Procurement Reform Policy* aimed at minimising abuses in processes and standards, in the awarding of public sector contracts in the region (*African Union Procurement Authority*, 2015).

In Africa, public procurement frameworks have made significant progress in formulating safeguards against public procurement corruption. Countries such as Rwanda, Uganda and Kenya have used regulatory frameworks to prevent corruption (Appolloni & Mushagalus, 2013). However, adjustments and reforms could aid and strengthen safeguards. Williams-Elegbe (2015) notes that procurement reform in Africa tries to make procurement less prone to corruption, fraud and mismanagement. However, a number of strategies need to be adopted in order to impede procurement corruption in Africa (Appolloni & Mushagalus, 2013).

A comprehensive legislation for public procurement is fundamental first for a clear, transparent and fair public procurement system. In order to strengthen trust in the fairness of public procurement, legislation should be unambiguous and reliable and the main regulations should be passed as parliamentary law. Second, specific steps in the procurement process, such as needs assessment, definition of technical specifications and contract execution need to be extensively revised, as a high degree of discretionary decision-making is needed which is prone to corruption. Third, standardised, clear and concise procedures which are comprehensive are needed as it creates transparency in the public procurement sector. Fourth, emphasis needs to be placed on emergency procurement or exemptions that will apply when tendering fails. Fifth, safeguarding the integrity of individuals who engage in the public procurement sector, such as procuring entities or suppliers of products, is an essential means of preventing corruption in public procurement. Sixth, the active use of sanctioning

and temporary or permanent debarring from public procurement is crucial and acts as a deterrent to public procurement corruption (Appolloni & Mushagalus, 2013).

In addition to corruption being a grave problem in Africa, it has also manifested prominently in South Africa.

2.11 Corruption in South Africa

With the fall of the apartheid regime in South Africa a new democratic dispensation dawned, based on a constitution that has core values of openness, transparency and responsiveness (Rai & Johnson, 2014). The South African government has publicly committed itself to deal with issues of corruption, which has been substantially blamed on the legacy of the apartheid regimes (Heidenheimer & Johnston, 2011). The South African government however, has not fully dealt with this phenomenon, as it has been found that South Africa has lost R700 billion to corruption over the last 20 years, since its democracy (Sibeko, 2015). In the 2014 CPI, South Africa ranks a disappointing 67 out of a possible 175 countries, with a dismal score of 44 out of 100. Even with the fall of the apartheid regime, corruption is still rife and active in democratic South Africa.

The difference between corruption in the apartheid era and during democracy is that the latter allows for greater detection of corrupt activities, allowing for the exposure and prosecution of corrupt acts (Hyslop, 2005). The media is flooded with numerous cases of government misappropriation and illicit acts but little is done to formulate measures to combat it. According to Ellero (2014), South Africans are immune to corruption and it is becoming the norm. Citizens and politicians alike, feel powerless and fearful to report on corruption, due to fear of being victimised. However, it is imperative that cases of corrupt activity are reported in order to ascertain the true extent of corruption in South Africa in order to develop specific combative measures.

2.11.1 History of Corruption in South Africa

What typifies the South African context is its historical legacy of apartheid. For the last 300 years South African has endured intense colonisation and racial discrimination (Hilliard and Wissink, 2001). Nearly every contemporary challenge faced by South Africa cannot be explained without reflecting on its past, as they are intertwined. According to Hyslop (2005), during the age of Paul Kruger corruption in the Transvaal was used as a means of propaganda; administrative corruption was noted as a downfall of the ruling party and a way to advocate a British takeover of the territory. The pro-imperial lobby in the Transvaal and Britain, showed the Boer regime as primitive and unable to provide the necessary support for the modernisation of the country during the gold discoveries in South Africa (Hyslop, 2005).

In the late 1880s and 1890s however, Kruger made efforts to modernise. A civil organisation was formed under the leadership of Dr. Leyds, who brought well educated Dutch administrators to run the system. Kruger further developed economic policies that brought about rent-seeking opportunities within patronage networks, hoping that his supporters would benefit from such policies. One of his main policies granted concessions, specifically the right to manufacture or distribute certain category goods in the Transvaal. This usually went to entrepreneurs who were sympathetic to the regime (Hyslop, 2005).

Decades after the Union of South Africa was formed in 1910. Led by Jan Smuts, the main goal was to form a strong white controlled polity within the British Empire. During this period, corruption levels in the hierarchy of the senior bureaucracy seemed to have been low, even though the use of the pass system to control the movement of black labourers allowed for bribery between officials and workers (Hyslop, 2005). The victory of the National Party in 1948 introduced apartheid policies and indicated an administrative change (Hilliard and Wissink, 2001). The use of preferential funding for Afrikaner cultural and educational institutions, and the awarding of contracts to Afrikaner enterprises and other policies all favoured government supporters. However, even though the role of patronage was immense, there was little evidence of obvious corruption in the higher levels of bureaucracy. Furthermore, legal fetishism that was the characteristic of the Afrikaner nationalist ideology of the time constrained corruption. However, the administration of racist legislation, specifically the pass laws, heightened corruption at the lower levels of bureaucracy (Van Vuuren, 2006).

From the 1980s onwards, there was a withdrawal from the harsh form of the Verwoerdian model of apartheid, in which the presence of the urban black population was accepted and an attempt was made to include coloured and Indian minorities into the white polity. However, corruption during this period began to increase in government administration and parastatals, especially in the Bantustans (Hyslop, 2005). There was also much confusion in the ideological vision that was present. The National Party leadership ethos changed from that of the service of the *volk* to that of the Swiss bank accounts. The Afrikaner rule was unable to constrain its followers and there was a rush for personal enrichment. This can be illustrated by the ‘Muldergate’ scandal of the 1970s (Hyslop, 2005), whereby concealed funds were used to manipulate internal and external media’s presentation of South Africa. For example, the entrepreneur Louis Luyt used such funds to create a pro-government newspaper, *The Citizen*, but used some of the money to help his failing fertiliser company (Van Vuuren, 2006).

The mid-1980s saw the last endeavour to maintain white control through repression and the military. By the end of the decade this attempt had collapsed and under the leadership of FW De Klerk of the National Party negotiations for political transition began. It was at this time that corruption at the top levels of administration increased significantly. Once the fall of white rule was evident, there was

haste to attain as much of the spoils as possible before the curtain came down on apartheid (Hyslop, 2005).

Corruption was not only evident in the apartheid regime, but was also present in the political struggle carried out by African National Congress (ANC) aligned organisations during the 1980s. Foreign donors began to put money into the hands of trusted resistance figures to aid the struggle. However, proper records of this money were not kept, and some leaders did not honour the trust that was placed upon them (Hyslop, 2005). There was also a political culture that developed in the ANC, that of organisational loyalty, which has been further carried into the post-apartheid government. Such loyalties make it problematic for acts of corruption by the old comrades, to be publicly denounced by the ANC (Hyslop, 2005).

With the fall of apartheid in 1994, the ANC government inherited a divided South Africa, characterised by high crime rates, extreme poverty, high levels of unemployment and the dubious title of being the most unequal society in the world (Hilliard and Wissink, 2001). According to Hyslop (2005), when looking at the old apartheid regime and its leadership, the new democratic regime has just exacerbated old forms of corruption and created new ones. A small black élite was benefiting from the new opportunities, while the majority were still largely disadvantaged (Ellero, 2015).

2.11.2 South African Anti-Corruption Initiatives

There are a number of international treaties that have been signed and anti-corruption agencies have been established in South Africa to curb and prevent corruption. According to Majila et al., (2014) South Africa has formulated and promulgated legislation that is regarded as an international example of good practice and has developed agencies for the purpose of combating corruption. However, the effectiveness of these anti-corruption measures has been questionable. Overall, the challenge lies in the implementation of South Africa's anti-corruption legislation, which, in essence has proven to be ineffective (Majila et al., 2014). South Africa has ratified four main international and regional treaties these are the *UN Convention against Transnational Organized Crime and Corruption (2005)*, the *OECD Anti-bribery Convention (2007)*, the *AU Convention on the Prevention and Combating of Corruption (2005)* and the *SADC Protocol against Corruption (2001)* (Nicholls et al., 2011; Boersma, 2012). All four of these treaties require the South African government to institute legislation to take aggressive action to address corruption.

In addition to the international conventions and treaties, there are also a number of anti-corruption agencies to combat corruption. *The National Development Plan* refers to the use of a multi-agency corruption system for combating corruption in South Africa. Table 2.5 outlines some of the anti-corruption agencies in South Africa.

Table 2.5 Anti-Corruption Agencies in South Africa

ANTI-CORRUPTION AGENCY	DESCRIPTION
South African Police Services (SAPS)	Based on an initiative of the National Commissioner of 1995, the National Anti-Corruption Unit (ACU) was formed in 1996, within SAPS. The functions of SAPS ACU is to investigate all allegations of corruption and related instances in SAPS, to initiate and implement an anti-corruption awareness programme and to coordinate all anti-corruption investigations in SAPS.
The Auditor-General (AG)	The Mandate of the AG is to conduct audits of government departments and other public sector bodies. This provides assurance to Parliament that these accountable bodies have attained their financial objectives and managed their finances according to fair financial principles and in line with the legal framework formulated by Parliament.
The Public Protector (PP)	The PP has the power to investigate any conduct in the state or in the public administration in government, that is seen to be improper or that may lead to impropriety or prejudice.
The Public Service Commission (PSC)	The PSC is an independent and impartial body responsible for investigating, monitoring and evaluating the organisation and practices of the South African Public Service.
The Directorate of Special Operations (DSO)	The DSO nicknamed the Scorpions mandate, was to combat organised crime, corruption within the criminal justice system, serious economic crimes and crimes against the state such as terrorism. In 2008, the Scorpions were disbanded and a total of 287 DSO cases were transferred to the Directorate for Priority Crime (HAWKS).
The Special Investigating Unit (SIU)	The purpose of the SIU is to investigate serious malpractices or maladministration in reference to the administration of State Institutions, State assets and public money as well as conduct that may harm the interest of the public.

Source: (*Public Service Commission*, 2001:3-21; Sebudubudu, 2002:153-203; Berning & Montesh, 2012:3-8).

Table 2.4 shows that there are numerous anti-corruption agencies in South Africa. All of these agencies play a distinctive role in curbing malfeasance. However, these agencies suffer from challenges that affect their ability to carry out their mandated task in the fight against corruption in South Africa. These challenges include lack of capacity, skill shortages and lack of legitimacy.

2.11.3 Critical reflection of Anti-Corruption initiatives in South Africa

Government's efforts to deal with corruption have largely failed. Similarly, the anti-corruption agencies in South Africa face various problems which ultimately impact on their effectiveness in combating corruption. Rangata (2008) notes that many agencies and laws suffer from overlapping mandates which affect their operating ability and hinders their efficiency in combatting corruption (*Public Service Commission*, 2001).

In South Africa, anti-corruption agencies are under-resourced in terms of financial and human resources. In the Financial Year 1998/1999, the PP requested R22 million but was given R7.5 million (Sebudubudu, 2002). Hence the PP had to cancel a planned communications campaign due to a shortage of financial resources. In terms of human resources, it was noted in the *Public Service Commission Report* (2001) that it was very difficult to find training opportunities for ombudsmen officers. In 2000, the Office of the PP had 61 investigators and had a huge backlog and could only handle half of the 200 complaints it received monthly (Sebudubudu, 2002). According to Camerer (2008) a successful and effective anti-corruption agency should have sufficient monetary resources. With inadequate funds, institutions are unable to attract or retain qualified personnel who are needed to carry out activities effectively such as prosecution, investigation and civic education programmes (Rangata, 2008).

A successful and effective anti-corruption agency should also have special powers and independence. Agencies that are not independent face challenges in being an efficient agent to combat corruption (Camerer, 2008). This is seen in the case of the SIU who experience delays in issuing or approving proclamations. The SIU works on the basis of proclamations which are made by the Department of Justice and these are thereafter sent to the President for approval. Without the proclamations the SIU cannot function, causing delays that can take up to six months (Sebudubudu, 2002). Agencies such as the PP and DSO lack independence and autonomy from the government.

Combatting corruption requires a holistic approach, as it takes various forms and occurs at all levels of government and society (Ellero, 2015). This is particularly evident in the public procurement sector of South Africa in which corruption is rife, and is the focus of this study.

2.12 Public Procurement Corruption in South Africa

Corruption in procurement is one of the main forms of malfeasance in South Africa. In 2011, Hofmeyer, the previous head of the SIU and Assets Forfeiture Unit, noted that between R25 – 30 billion, that is 20 percent of South Africa's procurement budget, was being lost annually due to corruption (Bruce, 2012). Hofmeyer further contended that the SIU was investigating 558 procurement contracts that were valued at R1.9 billion (Bruce, 2012). Most cases of procurement

corruption are related to areas of government that have large outsourcing budgets. Therefore, allegations of public corruption have received publicity in terms of the Department of Public Works, Department of Health, Department of Education, Municipalities such as the eThekweni Municipality and parastatals such as PetroSA (Speckman, 2013).

During the apartheid regime, public procurement was a method to protect the interest of the minority, that is, the large white owned enterprises. It further discriminated against the small, medium and black owned businesses (Williams & Quinot, 2007). However, with the fall of apartheid, it was decided that public procurement would be a way to democratise the economy and provide employment and business opportunities for those who were previously excluded from the system (Williams & Quinot, 2007). Major legislative reforms were needed in order to reach this goal.

The Green Paper on public sector procurement reform was published in 1997, and specified the required legislative and policy changes (Bolton, 2006). The Green Paper tried to define the new procurement system in relation to four principles: addressing the injustices of the past without compromising on the ideal of value for money; to maintain good governance and sound financial controls, zero tolerance for corruption in the public sector and within public procurement, and to ensure that all government suppliers meet their tax obligations (Bolton, 2006). In 2001, the South African Cabinet further approved methods to reform the procurement process, based on the principles of value for money, open and effective competition, ethics and fair dealings and accountability (Ellero, 2015). However it is questionable as to whether or not these measures have been successful in upholding its principles, specifically, in relation to corruption.

2.12.1 The Legislative Framework for procurement practices in South Africa

The SCM is an integral tool for managing public procurement in South Africa. The aim of SCM is to add value at each stage of the procurement process in an attempt to address deficiencies in practices relating to procurement, contract management, inventory and asset control, and unnecessary planning. The national government developed the regulatory framework within which the SCM operates, this extends to provinces and local government bodies (Ambe & Badenhorst-Weiss, 2012). There are numerous legislative frameworks that guide procurement practices in South Africa and these include the:

- *The Constitution of the Republic of South Africa*
- *Public Finance Management Act 1 of 1999*
- *Municipal Finance Management Act No 56 of 2003*
- *Preferential Procurement Policy Framework Act No 5 of 2000*
- *Broad-based Black Economic Empowerment Act 53 of 2003*

- *Promotion of Administrative Justice Act No 3 of 2000*
- *Promotion of Equality and the Prevention of Unfair Discrimination Act No 4 of 2000*
- *Construction Industry Development Board Act No 38 of 2000*
- *Prevention and Combating of Corrupt Activities Act No 12 of 2004 (Table 2.5)*

Table 2.6 Legislation and their functions in procurement practices in South Africa

ACT	FUNCTION
<i>Public Finance of Management Act of 1999</i>	Establishes a regulatory framework for SCM, which includes procurement in national and provincial departments and state-owned enterprises.
<i>The Promotion of Equality and the Prevention of Unfair Discrimination Act of 2000</i>	Prohibits the state or any person from discriminating unfairly against any person on the grounds of race or gender through the denial of access to contractual opportunities for rendering services or by failing to take steps to reasonably accommodate the needs of such persons.
<i>Preferential Procurement Policy Framework Act of 2000</i>	Establishes the manner in which preferential procurement policies are to be implemented.
<i>Construction Industry Development Board Act of 2000</i>	Establishes the means by which the Board can promote and implement policies, programmes and projects, including those aimed at procurement reform, standardisation and uniformity in procurement documentation, practices and procedures within the framework of the procurement policy of government, through the establishment of: <ol style="list-style-type: none"> 1. a national register of contractors (and if required, consultants and suppliers) to manage public sector procurement risk and facilitate public procurement; 2. a register of projects above a financial value with data relating to contracts awarded and completed and a best practice project assessment scheme; 3. best practices Establishes a code of conduct for the parties engaged in construction Procurement.
<i>Broad-based Black Economic</i>	Establishes a code of good practice to inform the:

<i>Empowerment of 2003</i>	<ul style="list-style-type: none"> • development of qualification criteria for the issuing of licences or concessions, the sale of state-owned enterprises and for entering into partnerships with the private sector; and • development and implementation of a preferential procurement policy.
<i>Local Government: Municipal Finance Management Act of 2003</i>	Establishes a regulatory framework for SCM which includes procurement in municipalities and municipal entities
<i>Prevention and Combating of Corrupt Activities Act of 2004</i>	Makes corruption and related activities an offence; establishes a Register in order to place certain restrictions on persons and enterprises convicted of corrupt activities relating to tenders and contracts; and places a duty on certain persons holding a position of authority to report certain corrupt transactions.

Source: (Ambe & Badenhorst-Weiss, 2012:249).

2.12.2 Challenges faced in Public Procurement

Despite the formulation of an extensive legislative framework and the use of SCM as a management tool, public procurement in South Africa still faces numerous challenges which have left the sector open to corruption. The first challenge is the lack of proper knowledge, skills and capacity. Skills and capacity shortages have been noted as the greatest impediment to the success of public procurement in South Africa (Sheoraj, 2007). SCM Officials lack of capacity and knowledge has led to poor governance and has allowed for loopholes in the procurement process. Non-compliance with policies and regulations is the second challenge public procurement faces (Ambe & Badenhorst-Weiss, 2012). Numerous policies and regulations guide the however, compliance with these laws has become problematic. This has allowed for the manipulation of laws for self-enrichment. This can be typified in the abuse of section 36 of the Supply Chain Policy. Section 36 allows for the by-passing of normal tender processes in the case of emergencies. However, what constitutes an emergency is manipulated by officials which leaves the tender process open for abuse (Ellero, 2015).

Inadequate planning and linking the budget to demand is the third challenge to the public procurement processes in South Africa (Ambe & Badenhorst-Weiss, 2012). Demand management is an integral entity to the SCM process. It defines the decision-making process and allows departments to procure at opportune times. Some government entities are unable to quantify the needs of the public, properly estimate costs, nor can they accurately track, control or report on expenditure. This allows for abuse of legislation to occur in terms of Section 36, and causes renewals of previous contractors, without a fair competitive bidding process (Luyt, 2008). Lack of accountability and inadequate measures for

monitoring and evaluation for the SCM is the last challenge. Without transparent, accountable and adequate monitoring systems, the entire procurement process can be manipulated. Collusion between state officials, politicians and business owners can occur at any stage of the procurement process, allowing for kickbacks and illicit activity (Ambe & Badenhorst-Weiss, 2012).

An example where government officials have colluded with a service provider in the manipulating of the issuing of public procurement is the former Commissioner of SAPS, Bheki Cele, and the previous Minister of the Department of Public Works (DPW) Gwen Mahlangu-Nkabinde's leasing of the Transnet building in Durban and Pretoria (Public Protector, 2011). Cele sealed a lease contract to move the offices of senior leaders, such as the Minister of Police and the Deputy Minister, to Roux Shabangu's building two months prior to purchasing. This deal violated procurement procedures as provided by the Treasury, since it was never publicly advertised in order to invite potential bidders. It further undermines the Treasury regulation that states that all tenders that exceed R500 000 should be awarded in a process that was transparent and fair (Public Protector, 2011).

It was also reported that the National Commissioner of the SAPS endorsed a second contract to move the SAPS offices in Durban to a different building that Roux Shabangu was negotiating to buy. This contract failed to follow the procurement principles in *Section 217 of the South African Constitution* and the *2007 Department of Public Works and Supply Chain Management Policy* (Zondi, 2012). After the Public Protectors' investigation, it was found that the leasing of the Transnet buildings and Middestad buildings were against public procurement rules.

Some other examples include that of the Free State provincial government that issued four tenders valued at R63.7 million to bidders who did not score the necessary points. Hence, the Free State provincial government violated the *Preferential Procurement Act of 2001*. In Limpopo, almost 42 contracts valued at R227. 6 million were given to suppliers some of whom who did not have the capacity to handle multiple contracts. The key figure of the manipulation of tenders in Limpopo is the former President of the ANC Youth League, Julius Malema, who used his position to influence the issuing of tenders to his friends who, in turn, aided his extravagant lifestyle (Zondi, 2012). These examples reflect the ways in which those with power and authority collude in order to seek improper financial gain by manipulating the public procurement procedures of South Africa.

According to Nathan (2013) almost all municipalities in South Africa have experienced corruption at one time or another. This is particularly true for the eThekweni Municipality in which corruption, specifically in the public procurement sector, has been highlighted in the Ngubane, Manase and AG Reports. Various commissions, committees and units such as the Ombudsman, Municipal Public Accounts Committee (MPAC) and City Integrity and Investigations Unit (CIU) have been

established to curb corruption. However, these have largely been unsuccessful due to the numerous challenges they face such as lack of expertise, competency, skills and finance (Ambe & Badenhorst-Weiss, 2012).

In the eThekweni Municipality corruption in procurement process means tender rules and regulations are frequently broken and flouted (Ellero, 2015). Nepotism, cronyism, cadre deployment, and collusion between government officials, politicians and business owners for self-enrichment characterise the procurement process. Instead of providing basic services, which are needed for survival, the procurement sector of the eThekweni Municipality is manipulated for private gain and characterised by ‘turning a blind eye’ and ‘cover ups’ for personal enrichment. Hence many citizens experience poor service delivery and are largely dissatisfied; this has spurred violent service delivery protests and fostered political instability in the eThekweni region.

2.13 Conclusion

This chapter reviewed the published literature to explain corruption and public procurement corruption from an international, continental and national perspective. It is evident that corruption has infiltrated into all spheres of government and has incapacitated the application of the principles of good governance, democracy and basic human rights. In South Africa, corruption has its roots in the apartheid and the colonial periods. In South Africa, the public procurement sector is riddled with corruption, and undermines the goal to alleviate poverty and provide basic services for all.

Corruption inevitably violates human rights and has a detrimental impact on citizens’ lives. More specifically it is the poor, due to their powerlessness to change the status quo, who are adversely impacted. Corruption in the public procurement sector negatively effects basic service delivery (Ambe & Badenhorst-Weiss, 2012) and thus a poor quality of life is experienced by those who are reliant on government services for their survival. When these basic services are not provided their human rights are violated.

Through the use of the human rights based approach an understanding of the implications of corruption on the poor and disadvantaged is revealed. Even though legislation and various measures have been implemented to curb corruption: cronyism, ‘tenderpreneurs’ and abuse of legislation have rendered these measures ineffective in the eThekweni municipality (Zondi, 2012). The inability actively to address corruption has resulted in poor service delivery, human right injustices and poor quality of life experienced by the poor and disadvantaged.

CHAPTER THREE

METHODOLOGY

3.1 Introduction

When conducting research it is imperative that the methodologies utilised are sound and that the strengths and weaknesses of the methods adopted are acknowledged. When conducting research on corruption there is an air of secrecy and sensitivity that surrounds the topic, which makes it difficult to gather significant information. Data if available are often 'soft', unreliable and masked (Andvig et al., 2000). Furthermore, it is difficult to quantify or measure activities which are hidden from society (Jain, 2001). This chapter outlines the methodology that was utilised in the study and provides a description of the study area.

3.2 Aim

The aim of this study is to critically investigate corruption in the procurement sector in local government with specific reference to the case of eThekwini Municipality.

3.3 Objectives

The objectives of the study are to:

- i) Review international trends in corruption and the procurement sector;
- ii) Investigate specific cases of corruption in the procurement sector in the eThekwini Municipality;
- iii) Assess the social, economic and political implications of corruption in eThekwini Municipality; and
- iv) Examine the instruments and mechanisms that are used in preventing, detecting and responding to corruption and the effectiveness of such measures.

3.4 Study Area

This critical investigation on corruption employed a case study approach that focused on the eThekwini Municipality which is a Metropolitan Municipality that includes the city of Durban (Sutherland et al., 2013). This Municipality was created in the Year 2000. eThekwini is a Category A Municipality and is one of the eleven districts of the Province of KwaZulu-Natal. eThekwini is the largest Municipality in KwaZulu-Natal and the third largest Municipality in the country, with a population of 3.5 million people (eThekwini Municipality, 2011). The area of the Municipality is 2297 km²; 36 % of this area comprises rural areas and a further 29% is considered peri-urban. The Municipality extends from Umkomass in the South, through some tribal areas in Umbumbulu, to

Tongaat in the North, stretching inland to Ndwedwe and ending at Cato Ridge in the West (Cogta, 2015).

A 206 member city council manages the eThekweni Municipality, which has 103 wards. The Council consists of the Mayor James Nxumalo (2011-2016), councillors, executive committees and several mayoral committees. Additionally, the council facilitates the provision of infrastructure and services to the people of the Municipality (eThekweni Municipality, 2011). The City administration is headed by the City Manager Sibusiso Sithole (2012-2016), who is supported by an Executive Management Team. The City's service delivery sectors are divided into seven administrative clusters, and include: Corporate and Human Resources, Governance, Health and Social Services, Procurement and Infrastructure, Safety and Security, Sustainable Development and City Enterprises, and Treasury. These all have their own roles and responsibilities in aiding service delivery in the Municipality (eThekweni Municipality, 2011). Figure 3.1 contains a map of the eThekweni Municipality.



Figure 1. 1: The eThekweni Municipality

(Source: Geography Cartographic Unit, UKZN Howard College)

3.5 Research Methodology

This section outlines the methodology adopted in this study. It will discuss the case study approach, the Data Sources, Sampling techniques and the ethical considerations for a study of this nature.

3.5.1 Case Study Approach

This investigation utilised a case study approach in order to provide greater understanding of corruption, specifically focused on the public procurement sector at the local government level. This study focuses specifically on corruption in the eThekweni Municipality. Simons (2009) describes a case study approach as an in-depth exploration from multiple perspectives of the complexity and uniqueness of a specific project that takes place in a real life context. The primary purpose of this approach is to attain an in-depth understanding of a specific topic and to generate knowledge to inform policy and civil society. The case study approach is an investigative approach which can be used to describe highly complex phenomena thoroughly, and in a way that provides new and greater understanding of these phenomena (Moore et al., 2012).

A case study approach is ideal when investigating corruption in the public procurement sector as it allows for specific incidences of corruption to be focused on and allows for an in-depth understanding of corruption. The case study approach often identifies participants through the use of purposive sampling, as opposed to random sampling. With the use of purposive sampling informants are selected according to who can provide the most information. Furthermore, interviews are often used in the case study approach, which make use of open-ended questions which allow for more details to be provided (Moore et al., 2012). All these techniques are ideal when conducting research on corruption. They allow for the complexities of corruption to be addressed when focused on a specific location such as the eThekweni Municipality.

The case study approach does have drawbacks. It has been criticised for focusing on a small area and is seen as not useful in theory creation or as providing the basis for making generalisations (Flyvbjerg, 2006). However, such criticism is oversimplified and misleading, because the case study approach allows for in-depth analysis. According to Hesse-Biber & Leavy (2011) the case study approach provides a researcher with a holistic understanding of a problem or issue within its social context. By adopting a case study approach an in-depth understanding of the complex nature of corruption is developed. Furthermore, it allowed for specific cases of corruption in the public procurement sector to be outlined. It also allowed for a greater level of understanding of the social, political and economic implications of corruption within the eThekweni Municipality. It further aided the study by providing an understanding of the instruments and mechanisms that are used in preventing, detecting and responding to corruption and of the effectiveness of such measures.

3.5.2 Sampling Methodology

There are a number of different types of sampling methods that can be adopted in a study that is qualitative in nature (Ritchie & Lewis, 2003). A sampling method needs to be selected that best suits the study, which allows for the maximum amount of appropriate data to be gathered. For this study, non-probability sampling was utilized, where units are deliberately selected to represent specific features of groups within the population. This method is not intended to be statistically representative and the chances of selection for each of the elements are unknown, but the features of the population serve as the foundation of the selection process (Ritchie & Lewis, 2003). It is this aspect of non-probability sampling which makes it suited to small scale and in-depth studies which are optimal for this study. This study made use of two sampling techniques, purposive and snowball sampling.

The purposive sampling technique, allows a researcher to select subjects with the particular goal of focusing on a characteristic of a population that is of interest, which allows for the research questions to be answered (Mugera, 2013). In this technique the sample units are selected because they have features and characteristics which allow for a detailed study of the focal themes the researcher wishes to study (Ritchie & Lewis, 2003). However, purposive sampling has been critiqued for being prone to bias and the element of subjectivity when selecting individuals to be interviewed (Mugera, 2013). Purposive sampling has many advantages these include efficiency and the collection of relevant information. This method allows individuals who are knowledgeable and who will provide maximum information on the topic of study, to be selected.

It is for these reasons that 205 councillors of eThekweni Municipality were contacted via email, in which the nature of the study was outlined, and an inquiry for a possible interview was made. Fifteen councillors from different political parties responded. Thereafter, contact was maintained via email and telephone calls made over a period of three months. Interview dates were set and meetings were held across the eThekweni region over a period of two months, May and June 2015.

The other sampling technique adopted in this study was snowball sampling. This can be defined as an approach which asks people who have already been interviewed to identify other individuals that they know that will best fit the selection criteria (Ritchie & Lewis, 2003). Some populations that researchers are interested in studying are hard to reach or are hidden due to their social stigma which renders them socially marginalized, for example, drug addicts or individuals with HIV/AIDS (Mugera, 2013). Snowball sampling provides a way to gain access to hidden populations and enables research on sensitive areas of study. The limitation of snowball sampling is that it is impossible to determine the sampling error and to make statistical inferences from the sample to the population, because units are not selected randomly (Mugera, 2013).

However, snowball sampling can be useful when conducting research because it enables the identification of those that are hard to reach and allows for the issues of sensitivity to be addressed. When conducting a study on corruption it is difficult to identify bureaucrats or councillors who would be willing to avail themselves for a sit-down interview. The researcher had developed contact with councillors from frequent emailing and telephone calls over a period of three months. Once interviews were conducted the researcher asked all the councillors, to provide names of other councillors or bureaucrats who could be contacted on the basis of reference for possible interviews.

3.5.3 Data Sources

This study made use of both primary and secondary data sources, which allowed for the complex nature of corruption to be investigated. The primary data were obtained from in-depth interviews conducted with councillors and bureaucrats. Secondary data came from Media Analysis, the Manase Report, Auditor-General Reports, a Municipal Public Accounts Committee Agenda, and published literature in the form of journal articles and books on corruption.

a) Primary data

Primary data is the original data gathered for a specific purpose of solving a research problem (Goeldner & Richie, 2006). It is data that is made during the time period under investigation by individuals who witnessed or experienced an event (Hines, 2012).

3.5.3.1 In-depth Interviews with Councillors and Bureaucrats

In-depth interviews were conducted with eThekweni Municipality Councillors and City bureaucrats. The use of in-depth interviews is a qualitative research technique that allows for the conducting of intensive individual interviews with a small number of respondents to explore their perspectives on certain topics (Boyce & Neale, 2006). The interview guide (Appendix 1) allowed for open-ended responses. The interviews conducted with officials and bureaucrats were unstructured, which allowed for a confidential and secure conversation between interviewer and respondent.

The use of in-depth interviews has limitations; it could lead to bias, in terms of interviewees saying what the researcher wants them to say or through the use of leading questions. It is also time intensive; in terms of conducting the interview and transcribing interviews. Furthermore, if the researcher is not properly trained in the interviewing style, this technique may not be successful as in-depth interviews require probing and creating a comfortable setting (Boyce & Neale, 2006).

This form of interviewing has been selected for its ability to provide detailed information about corruption and the freedom it provides the researcher to probe certain aspects during the interview. Furthermore, it provides a relaxed atmosphere in which to obtain information where interviewees can have a comfortable conversation with the researcher as opposed to filling out a survey or

questionnaire. (Boyce & Neale, 2006). Fifteen eThekweni councillors and bureaucrats agreed to be interviewed on the basis of anonymity. The recording of the interviews was done through the use of an electronic device that created a voice note. The respondents were allowed to say whatever they wanted, and the researcher had to make crucial decisions pertaining to what went into the analysis. In this study the researcher had to listen to audio recordings in order to engage with the themes, read transcripts and use a highlighter to note the key themes that were crucial for the study. The information from these interviews were thematically analysed in Chapter 4.

b) Secondary data

Secondary data refers to information that is already available, which has been collected and analysed by other individuals. Secondary data may be either published or unpublished data (Kothari, 2004). In order to gain an intensive understanding of the corruption, a literature review was conducted. Previous case studies were used to understand the nature of corruption specifically in public procurement. The secondary data included Media Analysis, the Manase Report, Auditor-General Reports, a Municipal Public Accounts Committee Agenda and published literature, journal articles and books.

3.5.3.2 Media analysis

Another technique that was utilized in this study was that of media analysis. Information from the media was used to provide insight into corruption. Media content analysis is a distinct sub-set of content analysis and is a well-formulated research method (Macnamara, 2003). Media content analysis is the evaluation of pieces of media through either quantitative or qualitative research methods. According to Ellero (2015) quantitative media analysis is more structured but it is still a restricted form of data gathering, while qualitative methods involve open discussions and debate on themes and content.

Media analysis is subject to limitations, especially relying on a researcher's interpretation, which can lead to bias. In addition, media reports can be sensationalist, focusing on aspects that can have a great shock value, but which fail to pay attention to the actual issues (Smith & Martin, 2007). However, media analysis has the benefit of being able to utilise combined methods. It allows the social scientist to see how society deals with various social issues and provides insight into the historical and cultural aspects of society through texts. Furthermore, media analysis is an unobtrusive form of analysing interactions which allows for insight into human thought through language (Macnamara, 2003).

This study has utilized media sources in the form of newspapers articles. Newspapers were scanned for relevant information relating to corruption both nationally, provincially and to site-specific instances within the eThekweni Municipality. Online newspapers such as the *City Press*, *Daily News*, *Mail and Guardian*, *The Mercury*, *News24*, *The Sunday Times* and *Sunday Tribune* were all utilized. Furthermore, the search engine SABINET was utilised which has a database of newspaper articles

from SA Media and the South African Press Association (SAPA). These articles were selected from 1994 to 2015.

3.5.3.3 Manase Report

One of the most important documents utilised in this study was the *Manase Report*. The Department of Co-operative Governance and Traditional Affairs commissioned this *Report* to investigate corruption in the eThekweni Municipality (Maharaj & Karodia, 2013). This was after evidence of corruption and maladministration in the Municipality was revealed in the 2010/2011 AG Report. The AG found that the Municipality had illegally spent R532 million and that 10 councillors had business interests in the eThekweni Municipality. The *Manase Report* consists of more than 7000 pages that outline corruption and fraud in the eThekweni Municipality. The *Report* was initially kept secret and only a summarised version was made accessible to the eThekweni Municipality councillors, who had to sign a confidentiality clause to see the *Report*. However, due to pressure from opposition groups and the media, the *Manase Report* was publicly released in June 2013 (Maharaj & Karodia, 2013). The *Manase Report* was used in this study as it divulges irregularities in the tendering process, implicates councillors who were involved in corrupt deals with the Municipality and makes recommendations to address corruption and fraud within the Municipality.

3.5.3.4 Auditor-General Reports

In terms of legislation the Auditor-General was appointed in terms of *Section 181 of the Constitution of the Republic of South Africa, Act No. 108 of 1996* (Corder et al., 2014). The independence of the AG is entrenched in the *Constitution of the Republic of South Africa*, which notes that it must be impartial and carry out its mandate without fear, favour or prejudice. The AG reports on all finances including accounts and financial management, at all levels of government (Ellero, 2015). The AG releases annual reports of financial performance of government. In this study AG Reports, specifically the *Municipal Finance Management Act (MFMA)* and *Public Finance Management Act (PFMA)* general reports were sourced from the Auditor-General's Website. These documents ranged from Financial Year 2001/2002 – 2013/2014.

3.5.3.5 Municipal Public Accounts Committee Agenda

MPAC is a committee of the municipal council, appointed in accordance with *Section 79 of the Municipal Structures Act (SALGA, 2012)*. The main purpose of MPAC is to provide oversight over the executive functionaries of council and to maintain good governance in the Municipality. The MPAC meet at least four times per annum, agendas of the meetings are delivered to members in advance in order for them to prepare for the meeting (SALGA, 2012). In this study a councillor of the Municipality released the MPAC Committee Agenda for the 5 May 2015 to the researcher, on the

basis that anonymity was to be maintained with regard to the councillor and that the agenda was to be utilised solely for the purpose of this study.

3.5.4 Ethical Considerations

Integrating ethics into the entire research process is of vital importance. It ensures that the research is guided by ethical principles and it gives validity to a study (Hesse-Biber & Leavy, 2011). Corruption is a complex act and is carried out in secret. It is a sensitive topic due to its composite nature. It was imperative that when dealing with the issue of corruption that ethical principles were maintained. Ethical clearance for the study was obtained from the University of KwaZulu-Natal Research Ethics Committee (Appendix 2).

3.5.4.1 *Informed Consent*

Informed consent covers a variety of procedures that must be followed when a study includes human subjects. It is imperative that respondents are informed of the nature of the study and their consent obtained prior to their participation in the study (Hesse-Biber & Leavy, 2011). In this study the councillors and bureaucrats who were willing to be interviewed for the study were asked to sign a consent form that provided a detailed description of the study (Appendix 3). The tape recording was explained and signed permission for recording was obtained. The informed consent was categorized in the following sequence:

i) Voluntary Participation and Freedom to Withdraw

A major principle of research ethics is that participation must be voluntary. No one should be forced to participate. All participants must be aware that they are participating in the study and they should be informed of all consequences of the study (Rubin & Babbie, 2009). The Councillors and bureaucrats of eThekweni Municipality were informed on numerous occasions that participation in this study of corruption was voluntary. This was further emphasized in the consent letter that they were required to sign. Councillors and bureaucrats were also made aware of their right to withdraw from the study at any point if they wished to do so (Appendix 3).

ii) Anonymity and Confidentiality

Corruption is a sensitive topic, in essence it is a crime that is being committed in the form of stealing. Thus, it was imperative that anonymity and confidentiality of the respondents were maintained. This was done to ensure the safety and privacy of each respondent. It was made known to all respondents that anonymity and confidentiality is of vital importance throughout this study. In the analysis pseudonyms were utilised when reference was made to responses from the interviews.

3.5.5 Limitations

Due to the secretive and complex nature of conducting a study on corruption, various challenges and limitations had to be overcome, in order to conduct a sound study.

These limitations include:

- ❖ Building trust with councillors and bureaucrats was a difficult task. The study involved identifying various councillors and bureaucrats to be interviewed on corruption. This was challenging due to political affiliations of some councillors and due to the lack of understanding about the research process. Many councillors refused to participate, due to fear for their lives. However, respondents who participated were continually assured of the anonymity and confidentiality of the study and by signing a consent form which was a signed agreement between respondent and researcher. Furthermore, the snowball technique adopted, allowed for a greater sample to be obtained. Due to the trust that was built during the interviews, many respondents provided assistance in referring the researcher to different councillors and bureaucrats who would be willing to participate.
- ❖ Time constraints was an issue as some councillors and bureaucrats either postponed the interview or on several occasions forgot about the interview, even though reminders had been sent to them. This created a backlog in the interviewing process. However, the researcher adopted a resilient attitude and continued to reschedule interviews until the interview was conducted.
- ❖ Issues of safety for the interviewer was a concern, as a young Indian female, going into the field, it was challenging. This was largely due to the fact that the majority of interviews were conducted in the Durban Central Business District (CBD). Some interviews were even conducted at Councillors' homes. Concern for security was overcome by establishing prior knowledge of the councillors and bureaucrats, and by proposing to meet in public places, which created a sense of safety.

3.6 Conclusion

This chapter explained the methodology adopted in this study. It outlined the information on the data sources and sampling techniques that were employed. This study made use of in-depth interviews which, coupled with media analysis, the Manase Report, Auditor-General Reports and the Municipal Public Accounts Committee Agenda, allowed for a critical investigation into corruption in the public procurement sector. This study adopted a case study approach which allowed for an analysis of

corruption specifically in the eThekweni Municipality. Ethical clearance was obtained from the University of KwaZulu-Natal Research Committee to ensure that ethical principles were upheld throughout the duration of the study. The assessment of corruption levels is a difficult task, measuring corruption is almost impossible due to the illegality and secrecy that surrounds the topic (Pellegrini & Gerlagh, 2008). Various challenges and limitations had to be overcome. The main challenge was the reluctance of officials and councillors to speak on issues of corruption.

CHAPTER FOUR

DATA ANALYSIS

4.1 Introduction

The aim of this study is to critically investigate corruption in the public procurement sector in local government with specific reference to the case of the eThekweni Municipality. This chapter provides the research findings of this study. Thematic analysis was used to analyse data collected from in-depth interviews conducted with councillors and bureaucrats from the eThekweni Municipality; data obtained from *AG Reports*; documents from councillors such as the *2015 MPAC Minutes and Agendas*, newspaper articles and *The Manase Report*. Pseudonyms were used to protect anonymity of interviewees and quotations from interview transcripts have been edited for grammar, stutter words and clarity.

This chapter has been divided into four sections. The first section discusses corruption in the eThekweni Municipality. The second section focuses on corruption in the SCM, especially how this has been manipulated for private gain. The third section provides insight into the social, economic and political implications of corruption in the eThekweni Municipality. The fourth section discusses government adopted measures to curb corruption and the role the media and NGOs play in the fight against corruption.

4.2 Corruption in eThekweni Municipality

Corruption in South Africa has become endemic within municipalities and there is a view that it has reached a point of no return (Maharaj & Karodia, 2013). It hinders the functioning of an active democracy and the billions of Rand squandered deprive the poor of basic needs such as housing, health care, food, water and social security. Corruption has adversely affected the eThekweni Municipality, specifically in the Public Procurement Sector. Councillors, officials and bureaucrats alike, manipulate the tendering system, for the purposes of self-enrichment. The AG in several audit reports highlights this issue (Table 4.1).

Table 4.1 AG Audit opinion of eThekweni Municipality from 2006-2014

Year	Audit Opinion
2006-07	Financially Qualified (with other matters)
2007-08	Financially Unqualified (with no other matters)
2008-09	Financially unqualified (with other matters)
2009-10	Unqualified with findings
2010-11	Unqualified with findings
2011-12	Unqualified with findings
2012-13	Unqualified with findings
2013-14	Unqualified with findings

Source: AG Reports (2006 – 2014)

The AG's reports highlight areas of concern which include issues pertaining to non-compliance with SCM policy; unauthorised, irregular, fruitless and wasteful expenditure; underspending and mismanagement of funds (*Auditor-General, 2007/2008, 2008/2009, 2009/2010, 2010/2011, 2011/2012, 2012/2013 and 2013/2014*). All of this will be discussed further in detail in the subsequent sections of the analysis. The *Manase Report* also revealed many examples of corruption in the eThekweni Municipality.

4.2.1 The Manase Report

When the *Manase Report* was publicly released in June 2013 (after some public and political pressure), it revealed major monetary irregularities. It published names of councillors and officials who were seen as contravening the SCM legislation and the MFMA. It even made recommendations to address the transgressions highlighted in the *Report*. Initially the full 7000 page *Report* was not released and a summarised version was released for public view. Stolley (2013) noted that councillors who wanted to see the *Report* had to sign a confidentiality clause barring them from going public with any of its contents. It was divulged that anyone who wanted to view the *Report* had to make an application to the Department of Cooperative Governance and Traditional Affairs (COGTA) under the Promotion of Access to Information Act. Hence, opposition parties accused the government of wanting to keep the *Manase Report* under wraps (Stolley, 2013). However, in an article in the *City*

Press (2013) COGTA argued that the City needed more time to complete investigations and disciplinary procedures against councillors and staff and investigations could be jeopardised by making the full *Report* public.

Furthermore, ANC councillors argued that witnesses cited in the *Report* needed to be protected and that the document also made reference to names of individuals that had to be verified prior to release in order to prevent court cases (ANC 1, 21 May 2015; ANC 2, 22 May 2015 and ANC 3, 3 June 2015). According to Mbuyazi (2012a) some councillors were worried that there might be legal consequences for the City if the *Report* was made public, given that implicated officials threatened to take action against the City. However, due to pressure from the media, lobby groups and political parties, through the *Promotion of Accesses to Information Act*, the *Manase Report* was released in 2013. However, councillors from the opposition parties argued that the *Report* was disappointing, weak, watered down and essentially incomplete (DA 9, 28 May 2015 and IFP 1, 14 May 2015). According to Nair (2013) opposition parties felt that the *Report* was a "cover-up" and watered down. An additional concern was that the ANC had tampered with the *Manase Report* and that an edited version was released to the public (IFP 1, 14 May 2015; DA 1, 4 May 2015). However, in an article by the *Daily News*, Nomsa Dube (KwaZulu-Natal MEC for COGTA), denied that the report been "doctored, watered down or sanitised in any way" (Madlala, 2013: 1).

The previous City Manager, Mike Sutcliffe, contended that foul play was evident with the *Manase Report* being released without him being able to see or respond to it. He further argued that the proper process of presenting the findings to whom the allegations were being made and the opportunity for them to state their responses had not been followed and that this invalidated the investigation (Teke, 2012a). In a letter via his lawyer to Manase and Associates, Sutcliffe called for the firm to reopen the forensic probe and claimed that Manase had lifted the wrong information from the previous Ngubane Report, without conducting investigations of their own (Teke, 2012b).

The *Manase Report* highlighted numerous instances of corruption and implicated many councillors and officials in corrupt activities. No eThekweni councillors have ever been punished as a result of the findings of a forensic audit report. Neither has any councillor been brought before the Municipality's ethics committee (Stolley, 2013). Subsequent sections in this chapter will draw from the *Manase Report* to illustrate examples of corruption.

Corruption as a term has caused much confusion in eThekweni Municipality, in terms of what it constitutes and in proving its existence. This will be discussed in the next section.

4.2.2 The Corruption Conundrum

It is evident from Chapter Two that there are different definitions and interpretations of corruption. Hence, a corruption conundrum arises in terms of what is considered as inappropriate, immoral and unethical. Councillors identified having difficulty in distinguishing what constitutes a corrupt act:

When politicians take decisions that are blatantly wrong at a council or committee level we need to ask whether that actually constitutes corruption. We sit in a council meeting, like we did on the 3rd April. We get told there is a recommendation. The Metro police are going to engage in sport and games. The recommendation is that the councillors from the community and emergency services will receive tracksuits and kits because they will join the team at the games and represent the Municipality. We did not have a problem with that as all the financials were stated in the report. We came to the council meeting, the ANC makes a recommendation that every single councillor now in the Municipality must get a tracksuit and kit. So now it's gone from about 20-25 Councillors getting kits to 206 Councillors getting kits. Now you must remember when they are getting kits you are talking about Adidas or Reebok, name-brand stuff. A kit itself could cost about R3000, now multiply that by 206 and you see what the financial implications are. So when you tell people you cannot pass that because it has financial implications, it's against the MFMA. you get dismissed as not knowing what you are talking about and the recommendation gets passed, even though you vote against it. Now that I would question whether that is a form of corruption. It is an angle that needs to be looked at. It's not mismanagement anymore (DA 1, 4 May 2015).

Another conundrum is the difficulty in proving that there is corruption, which by its very nature is clandestine:

There are things that cannot be see ... sometimes it is very hard, because there are no bank transactions, because someone took a bag of money (ANC 4, 25 June 2015).

Now the problem we have with corruption in eThekweni is that we hear a lot of stories ... and as Councillors we get tip offs ... But it's only once investigations begin that you can actually start proving

these things. Because the people doing the corruption are within the departments, they are handling the paperwork. They are the people that are able to cover it up again and unless somebody comes out with paperwork to prove these things or bank statements it is very difficult to prove (DA 1, 4 May 2015).

Lots of rumours and no actual facts. People are clever and hide their tracks (DA 5, 7 May 2015).

It's all about a cash business, so when they are giving the money to the Councillors and the Politicians, they are giving them cash in brown paper bags (DA 8, 19 May 2015).

Corruption is a complex phenomenon. Blurred lines have developed in identifying what could be defined as corruption. The lack of concrete evidence and its elusive, secretive nature makes it difficult to expose corruption. Corruption in the eThekweni Municipality can be attributed to various causal factors and this will be discussed in the next section.

4.2.3 Causes of Corruption

Within the eThekweni Municipality, councillors and bureaucrats alike, share similar sentiments about the causes of corruption – greed, money, power and position:

In eThekweni Municipality, greed is the cause of corruption ... people tend to budget for more than what they earn (ANC 4, 25 June 2015).

Greed, it has everything to do with money, in some cases it has to do with politics and sometimes with position and power... there are officials who are corrupt simply because they want to make more money. They are not satisfied with the salaries they earn and have found loopholes or a way to manipulate the system to make extra money (DA 1, 4 May 2015).

A bigger problem is that the ANC has got lots of power. So they are power drunk (IFP 1, 14 May 2015).

Its universal cause, whether eThekweni Municipality, provincial government, national government ... is greed (Bureaucrat 1, 28 May 2015).

Councillors and bureaucrats' abuse, and lack of knowledge, of legislation and the absence of transparency and accountability were also identified as factors contributing to corruption:

I think that the primarily cause of corruption in eThekweni Municipality will be by and large the disregard of what is entailed in the Acts, most especially the MFMA (ANC 1, 21 May 2015).

I would say that the causes of corruption would stem from the fact that we have proper policies in place like your MFMA, your Systems Act, they are all really sound policies and legislation. Corruption comes in when the legislation is not enforced ... it is the people who have been appointed to follow these policies to ensure legislation is enacted properly who are the people abusing policies (DA 2, 4 May 2015).

There is this blurring of the administrative side and political side that's where the abuse comes ... because the SCM is being manipulated for private gain (DA 3, 4 May 2015).

The persisting problem in the Municipality is that while policies and laws have been established to maintain an efficient and transparent governance system, implementation and understanding of the legislation is weak, loopholes are exploited, and this contributes to malfeasance.

Opposition parties identified the strength and hegemonic dominance of the ruling ANC party as the cause of corruption. Thus, the ANC is able to enforce unpopular decisions without public oversight, essentially creating an environment in which corruption can thrive:

I would also suggest that when you have a huge majority running a city, when somebody that has 75% of the vote in the city they feel everything is their way. So they don't listen to anyone else. And they just do their own thing and just say sorry we are in charge (DA 4, 4 May 2015).

Major cause is the strength of the ANC in Durban ... where you have the current situation where the ANC is 106 out of 205, that is 51% and they can do what they like (DA 5, 7 May 2015).

However, in an article by *The Citizen*, ANC MP Bertha Mabe stated, "that government could not be blamed for the alarming high incidents of corruption, and that it had inherited corruption from the apartheid government" (Williams, 2015:1). Additionally, ANC MP Xoliswa Tom responded to the

accusations that the ANC is the cause of corruption. She stated, “cynicism, scoffs and sneers at the human efforts ... it’s important for us to stop and think because cynicism is a form of self-righteousness ... The ANC is committed to a corrupt free society” (Williams, 2015:1).

ANC councillors also expressed concern about severe party political pressure to endorse or turn a blind eye to questionable decisions:

Political pressure ... is exerted on officials by politicians or the principals ... let me make a scenario, you will find those that have a high position in the ANC will put more pressure on those at lower levels or would want officials to do things probably outside the boundaries or parameters of what is expected by the law (ANC 1, 21 May 2015).

I have a good relationship with some ANC councillors ... majority of ANC councillors realise what is going on but the sad fact is they are threatened by senior people and that is the problem (DA 5, 7 May 2015).

I do think there are one or two deputy or city managers and one or two heads of the department that are not politically aligned. But they do come under severe pressure ... people from administration are told what to do, in most cases for political expediency rather than administration (DA 1, 4 May 2015).

This indicates how ANC councillors are subject to political pressure from senior members of the party, to witness or carry out acts that could be classified as malfeasance. More disturbing is the hierarchy that prevails in political parties, which hinders lower-ranking members from exposing individuals who are corrupt.

According to respondents, other causes of corruption included passive citizens who fail to report corruption, lack of moral obligation, and those who appear to be indifferent to malfeasance:

Then again I blame society, we have become immune to corruption ... for example, if someone goes missing in our society, we don’t know about it, unless people make a noise about it ... Yet if someone goes missing in Paris or Sweden the entire country comes to a standstill ... we have become desensitised. I blame society, ask not what your government can do for you, but what you can do for your government (DA 2, 4 May 2015).

People should report incidences ... everyone is to blame ... there should be an effort from everyone, basically if you talk about eThekwini municipality as citizens if you are aware or suspicious that something might be happening, do what you have to do to report it (Bureaucrat 1, 28 May 2015)

ANC councillors expressed another view, that there was no corruption - it does not exist in the eThekwini Municipality. Rather, there is a perception that corruption is prevalent in Durban:

I wouldn't say that the eThekwini Municipality is corrupt... the corruption is not rife, it's the manner they perceive, especially the people who are outside, when you are inside dealing with documents its different (ANC 2, 22 May 2015).

If you speak about corruption without concrete evidence you are speaking of a perception ... Sometimes it's how you view corruption ... for argument sake if I'm a Councillor and I do business with the government and I don't disclose it ... maybe it may be termed as corruption ... I would classify this as a breach of the Systems Act ... but it can be quickly termed as corruption (ANC 3, 3 June 2015).

At best, this can be regarded as a form of denialism.

Due to the composite nature of corruption, various casual factors have been evident in the eThekwini Municipality. An area largely affected by corruption in the eThekwini Municipality is the public procurement sector, the focus of this study, and this will be discussed in the next section.

4.3 Corruption in the Supply Chain Management in eThekwini Municipality

Notwithstanding the protestations to the contrary, a sector in which corruption is rampant in the eThekwini Municipality is in the SCM. According to the AG Report (2013/2014) the irregular expenditure of eThekwini Municipality was R334, 8 million. A significant amount of expenditure was incurred without complying with the relevant SCM legislation and associated procedures.

This section focuses on corruption in SCM in the eThekwini Municipality. It will analyse areas of concern and risks, illustrating how corruption has manifested itself in the SCM. More specifically, the focus will be on councillors and officials conducting business with the eThekwini Municipality; councillors and officials' incompetency and limited knowledge of policy; unauthorised, irregular and wasteful expenditure; abuse of Section 36; unfair procurement process; inadequate and inefficient contract management, and inadequate SCM controls.

4.3.1 Councillors and officials conducting business with the eThekweni Municipality

Councillors and officials conducting business with the Municipality is an issue repetitively highlighted in SCM as an area of concern. SCM Regulation 44 prohibits awards to persons or entities whose directors, managers, principal shareholders or stakeholders are in the service of the state (*Supply Chain Management Policy*, 2005). SCM Regulation 13 (c) (i) and (ii) requires a provider to declare whether they are in the service of the state. Non-disclosure is tantamount to being corrupt, and, according to SCM Policy Regulation 38 this will result in the cancellation of the contract (*Supply Chain Management Policy*, 2005). These regulations have been contravened in eThekweni on several occasions as illustrated in Table 4.2.

Table 4.2: Contracts awarded to persons in the service of the state in eThekweni Municipality, South Africa (2009-2012)

Year	Awards	Provider did not declare interest
2009/2010	53 (R 16 931 998)	12 awards (R1 882 221)
2010/2011	127 (R39 240 000)	127 (R39 240 000)
2011/2012	74 (R77 440 000)	74 (R77 440 000)

Source: *AG Reports* (2009/2010, 2010/2011 and 2011/2012).

Table 4.2 indicates the progressive increase in the contracts awarded to persons in the service of the state from the period 2009-2012. Another disturbing issue is that the number of contracts awarded and those who did not declare a conflict of interest was the same between 2010 and 2012. This was a violation of the MFMA in terms of which persons in the service of the state cannot conduct business with the Municipality. It is evident that the legislation is being flouted and the procurement sector is being manipulated for private gain in the eThekweni Municipality, and this was emphasised in the *Manase Report*.

This blatant flouting of legislation in the eThekweni Municipality has serious implications for the procurement process. Not only does this nullify a fair and transparent process, but also reduces the ability of ordinary citizens in the eThekweni Municipality to bid for tenders and contracts. Those who control tenders are able to acquire wealth at the cost of the ordinary citizen and the public purse.

Councillors conducting business with the Municipality were also an issue noted by the respondents:

We have two Councillors in Exco Committee, Stanley Xulu ... who is our Chief Whip of eThekweni and Ndumiso Cele. Both of these people were found guilty of doing business with the municipality and when you're a councillor you are not meant to do it. So they would argue they were found guilty of doing business, while others would argue that they are corrupt. They should know as senior Councillors to not do business with the municipality (DA1, 4 May 2015).

Our Chief Whip, he had a contract with the city for R8 million, he was fined R28 000 and in actual fact the law systems and structures says he should have been dismissed, but because of political cronyism, he is still there (DA 9, 28 May 2015).

According to the *Manase Report* (2012) ten councillors were identified as having business interests with companies that conducted business with the eThekweni municipality (Table 4.3).

Table 4.3 Councillors who conducted business with the eThekweni Municipality, South Africa

Name of Councillor	Name of Trading Entity	Trading Period	Total R
Gabriel Mbongeni Cele	Sxexasethu Contractors CC	2008 - 2010	177 860.75
Senzangakhona Shanghe	Khetha Thina Trading CC	2007 - 2011	873 223.00
Stanley Zamokwakhe Xulu	Igagasi Lolwandle Trading CC	2008- 2011	11 091 734.96
Stanley Zamokwakhe Xulu	Ingagasi Lolwandle Foundation CC	2008-2011	589 875.00
Stanley Zamokwakhe Xulu	Inkasasa Development Primary Co-op	2008- 2011	705 245.23
Stanley Zamokwakhe Xulu & Primrose Phumzile Hlengwa			<hr/> 12 386 855.19
Joice Nondumiso Cele	Cuphiwe Trading Enterprise CC	2009-2011	251 872.74
Bonke Armstrong Chili	Yiphe Building Construction CC	2009-2011	531 522.00
Sithembiso Gumede	Namibia Construction CC	2008-2011	772 752.00
Mduduzi Phineas Gumede	Cupra 011 Trading CC	2011	35 728.50
Themba Solomon Mtshali	Solly Themba Trading CC	2009-2011	186 878.25
Mthembeni Shezi	Chatsworth Cleaning Services	2009-2011	3 812 168.15
	Khethesakhe Trading	2010-2011	<hr/> 366 448.50
			<hr/> 4178 616.65

	Services		
			19 395 309.08

Source: *Manase Report* (2012: 80) and Mbanjwa (2013b)

The 10 Councillors referred to in Table 4.3 had contravened paragraph 6 of Schedule 1, Code of Conduct for Councillors of the *Municipal Systems Act, No. 32 of 2000*. Additionally, the Manase Team found no evidence to support the previous City Manager Mike Sutcliffe’s response to the AG of 5 November 2010, which stated that action would be taken against all councillors who have ‘not disclosed’ and who have ‘disclosed but were still doing business with the Municipality’. It was further highlighted that due care was not practised in the completion and submission of disclosure forms. A review revealed inconsistencies in the dating and appending signatures of disclosure forms (*Manase Report*, 2015).

The purpose of this study is to critically assess corruption in the eThekweni Municipality and to analyse cases of corruption in the SCM. Two case studies of councillors doing business with the city, based on the largest amounts received as reflected on Table 4.3, will be examined in detail.

Case Study 1: Councillor Stanley Zamokwakhe Xulu

Councillor Xulu was appointed to office on 12 September 2000 (*Manase Report*, 2012). Igasasi Lolwandle Trading CC was registered on the 21 April 2006 of which Xulu was the sole member of the CC. The company Igasasi Lolwandle Foundation (Pty) Ltd was registered on the 27 March 2008 and Xulu was also registered as the only director on that day. A review of Xulu’s disclosure form showed that it was duly signed by him on the 5 November 2010. However, it was dated and signed by the Commissioner of Oaths on the 4 November 2010 (*Manase Report*, 2012). These documents were not signed and dated by the Deputy City Manager or City Manager and did not indicate the councillor’s date of appointment. Xulu listed the companies under section 2 of the form titled, ‘Directorships and Partnerships’. However, section 4 of the same form titled, ‘Remuneration work outside the Municipality’ and section 5 titled, ‘Consultancies and Retainerships’ had not been completed. The disclosure form was then date-stamped received on the 03/02/2011 by the eThekweni Performance Monitoring Evaluation Department.

The application for registration of Igasasi Lolwandle Trading CC was signed by Xulu listing himself as the only shareholder with home address ‘House 528 Umgababa’, the same address as the company. The application for registration of Igasasi Lolwandle Foundation CC was also signed by Xulu, making reference to Sfiso as a contact person and lists himself as the only shareholder with the home address of ‘House 528 Umgababa’, the same home address as the company. In the application for

registration of Inkasa Development Primary Co-operatives; a third company Xulu was a shareholder of, he was listed as 20% shareholder of the company.

According to the *Manase Report* (2012), Igagasi Lolwandle Trading CC was paid an amount of R11091 734.96 from the period July 2008 to June 2011. The majority of the payments related to services of the rehabilitation of council dwellings. Payments totalling R589 875 were made to Igagasi Lolwandle Foundation CC during a period from July 2008 to June 2011. A review of these payments indicated, Accounts Payable Department of eThekweni Water and Sanitation for services provided in terms of collection of refuse to Lovu C Section, Ward 97 and Ekhabazel, Enhlango, Protea and Gudlintaba areas, Ward 8. Payments of R705 245.23 over a period of July 2008 to June 2010 were made to Inkasa Development Primary Co-operative. A review of these disbursements indicated that payments were made through the Accounts Payable Department of eThekweni Water and Sanitation for services related to refuse collection in Kingsburg West A, and for the supply of labour for the installation of a 721m water pipe for the Bhekulwandle Project (*Manase Report*, 2012).

The Manase Report (2012) notes two interviews conducted with Xulu in an attempt to ascertain his thoughts on payments received by his companies. In the first interview, he indicated that he was not aware that it was wrong to register the companies while he was a councillor and had done so in the event of him not being re-elected as a councillor, resulting in him not having an income. He further stated that he had no knowledge of the provisions of the MFMA and both companies had been duly declared and it was his understanding that if he declared his business interests, he could conduct business with the Municipality. When asked why he did not declare acquiring money from these companies on his disclosure form, he indicated he had left it blank as he did not understand how to fill in the form.

Xulu also stated that in 2009 he had been cautioned by the previous Municipal Manager, Mike Sutcliffe, on his conducting business with the Municipality. He then went on to appoint an attorney to help him with resignation from Igagasi Lolwandle Trading which he sold to Ms. Ashika Ramcheret who was appointed as director around the 8 December 2010. Despite being warned by Sutcliffe in 2009, Xulu continued to accrue financial benefits from Igagasi Lolwandle Trading until December 2010. When questioned further on his involvement with Igagasi Lolwandle Foundation and the waste removal services conducted for the Municipality, Xulu stated that, despite being cautioned by the Municipal Manager, he continued to trade with the Municipality through this business. In the second interview conducted by the Manase team with Xulu, he stated that all three companies had stopped trading with the eThekweni Municipality in mid-2011. He also wrote a letter to SCM indicating that all three companies were in the process of ceasing to trade. However, he still holds interest in all three companies, but they 'have resigned from Council'. Currently, Xulu represents the ANC political party as Public Representative No.1 as the Chief Whip (Mbuyazi, 2012b).

Case Study 2: Councillor M Shezi

According to the *Manase Report* (2012), Councillor Shezi was appointed in June 2011. Through two companies, Chatsworth Cleaning Services Primary Co-operatives and Khethezakhe Trading Services CC, he received the sum of R4 178 616.65 from contracts with the Municipality from the period July 2008 to June 2011. A disclosure form was signed by Shezi in the presence of a Commissioner of Oaths on 27 May 2011. He made one disclosure of an entity named Khethezakhe Trading CC under the heading “Name of Company Person” with the “Nature of Business” as cleaning services and the amount of remuneration indicted as R17 000.00. The company, Chatsworth Cleaning Services Primary Co-operative, was not indicated on the form which was signed by the City Manager on the 27 May 2011. A review of the Application for Registration on the eThekweni Municipality Procurement Directory indicated Shezi having 100% interest in Khethezakhe Trading Services CC and a 20% interest in Chatsworth Cleaning Services Primary Co-operative. In an interview conducted with Shezi by Manase, it was relayed that he had previously been a member of the Chatsworth Cleaning Services Co-operative, but had resigned in mid-2011, when he became aware of the Code of Conduct. He further mentioned being a 60% shareholder in the company, Khethezakhe Trading Services CC, which was awarded a grass cutting contract through the Durban Solid Waste (DSW) Unit. He claims that the job is run by another member of the Company known as Veli, but the money from the contract is deposited into his bank account of which he takes a stipend of only R2000.00 per month, while the rest is given to Veli (*Manase Report*, 2011).

From the two case studies discussed above, there are glaring issues that have been revealed in the case of councillors conducting business with the eThekweni Municipality. These include inconsistencies in the proper filling out of disclosure forms by the two councillors; forms being incomplete, and inaccurate information being captured. Furthermore, the inconsistency of required signatures from Deputy City Managers or the City Manager and the incompetency of the mentioned authorities in signing these documents even though they are either incomplete or inaccurate is also an issue. Another conspicuous issue is the repetitive lack of knowledge of the MFMA, Codes of Conduct and SCM policy. There also appeared to be a misconception that disclosure meant that councillors could conduct business with the Municipality. Most disconcerting is the failure of officials to identify councillors who are shareholders in companies doing business with the city:

It begs the question in terms of our Supply Chain Management processes why did they not pick up that these companies are owned by these two prominent people (Councillors Xulu and Cele) (DA 1, 4 May 2015).

The *Manase Report* recommended that action should be instituted by the Council, in terms of paragraphs 13 and 14 of Schedule 1, *Code of Conduct for Councillors of the Municipal Systems Act*,

No. 32 of 2000, against all implicated councillors for contravening paragraph 6 of Schedule 1, *Code of Conduct for Councillors of the Municipal Systems Act, No. 32 of 2000*. However, following the release of the *Manase Report*, Council indicated that it would not suspend implicated employees or take disciplinary action recommended by the forensic auditors until it was clear as to the appropriate procedure to be followed. Additionally, the *Report* (Manase) had not found anyone guilty, and the different parties would be given a chance to state their side of the story (Mdletshe, 2012). However, two years after naming and shaming the councillors, the City had yet to take action against the 11 ANC councillors who flouted the rules (Khoza, 2013). In response to the *Manase Report* and the public outrage, the Council established the Ethics Committee to address councillors' infringements and the appropriate sanctions (Table 4.4).

Table 4.4 Action taken against councillors who had conducted business with the eThekweni Municipality, South Africa

NAME	VERDICT	ACTION TAKEN
Clr Stanley Zamokwakhe Xulu	Guilty	A years' worth of salary (R195 002.22)
Clr Primrose Phumzile Hlengwa	Guilty	Six weeks salary
Clr Sezangakhona Shange	Guilty	Four weeks of salary (R18 187.95)
Clr Nondumiso Joice Cele	Guilty	Two weeks salary (R8 248.19)
Clr Gabriel Mbongeni Cele	Cleared	No longer a Councillor
Clr Bonke Armstrong Chili	Cleared	
Clr Sithembiso Gumede	Cleared	Deceased
Clr Mduduzi Phineas Gumede	Cleared	
Clr Solomon Themba Mtshali	Cleared	
Clr Mthembeni Shezi	Cleared	Deceased

Source: *Daily News* (2013) and Mbanjwa (2013b)

Although action was taken against the guilty councillors (Table 4.4), there was a public outcry that they had seemed to get away lightly with a 'slap on the wrist' (Nair, 2013) :

Councillors found guilty of doing business with the municipality should have not got off lightly with just a fine and should rather have been removed from their positions as councils are empowered to do this ... these sentences could be setting a wrong precedent. Are we saying (as a councillor) I can break the law and the only sanction I am going to get is a fine? (Khoza, 2013:1)

The *Manase Report* not only identified councillors engaging in corruption, but officials of the Municipality were also mired in malfeasance. This was reiterated in interviews with councillors who confirmed that some officials colluded with councillors for self-enrichment:

*Also there is the collusion that is between officials and councillors
(ANC 1, 21 May 2015)*

*If I have to look at the officials that I work with, there are few in this
city that I perceive to be honest and not corrupt (DA 1, 4 May).*

According to the AG's Management Report titled, "*Consolidated Regularity Audit of eThekweni Municipality and its Municipal Entities for year ended 30 June 2010*", irregular expenditure was incurred due to the lack of compliance with applicable legislation, resulting in irregular expenditure. Contracts were awarded to people who were in the service of the state which is contrary to the Municipal SCM Regulation 44 (*Manase Report*, 2012). According to the AG's Report titled, "*Specific focus areas, significant findings from the Audit of procurement and contract management, irregular expenditure: Awards to persons in service of the state*", a total of 46 awards to the value of R5, 496 million was made to entities whose directors/ members/ principal shareholders/stakeholders were in service of eThekweni Municipality (*Manase Report*, 2012). In order to ascertain whether a provider is in the service of the state, a declaration by the provider is needed. All of the 12 awards that went through the Bid Adjudication Committee (BAC) in 2010 did not declare their interests, contravening the Municipal SCM Regulation 13 (c) (i) and (ii).

In a report from the Office of the Ombudsman to the City Manager, dated 15 May 2011, a complaint had been received by their office from the AG in which 45 companies were owned by council employees who were conducting business with the eThekweni Municipality (*Manase Report*, 2012). This was in contravention of Section 4(2) (a) (i) and (ii) and Section 5(1) of Schedule 2 of the *Municipal Systems Act 32 of 2000*. Furthermore, the names of companies and employees were identified and disciplinary action was recommended. Through municipal correspondence it was then revealed that 38 council employees' names were submitted to the City's Legal Services for disciplinary proceedings. On 22 November 2011, a follow-up was conducted with the eThekweni Legal Department to ascertain the progress in the disciplinary proceedings of officials. The Legal Department redirected the Manase team to the Office of the Ombudsman who revealed the outcomes as reflected in Table 4.5.

Table 4.5 Action taken against local government officials who had conducted business with the eThekweni Municipality, South Africa

No	Surname	Initials	Department	Position	Action
1	Mkhwanazi	DS	Metro Police	Senior Constable	Final Written Warning
2	Xaba	SS	Metro Police	Authorised Officer	Final Written Warning
3	Sosiba	JM	Metro Police	Senior Constable	Final Written Warning
4	Mabaso	MC	Metro Police	Authorised Officer	Final Written Warning
5	Mseleku	AS	Metro Police	Senior Constable	Final Written Warning
6	Ngubane	SD	Metro Police	Principal Clerk	Final Written Warning
7	Shezi	CH	Metro Police	Hourly Rate Employee	Final Written Warning
8	Ndlovu	NH	Metro Police	VIP Protection Officer	Final Written Warning
9	Mduli	ES	Metro Police	Hourly Rate Employee	Final Written Warning
10	Moloisane	ZD	Parks	Small Plant Operator	Matter to be rescheduled
11	Khanyile	RM	Parks	Cemetery Supervisor	Final Written Warning
12	Sifumba	AD	Parks	Food Supervisor	Final Written Warning
13	Madikizela	ME	Parks	General Assistant	Final Written Warning
14	Duma	MJ	Parks	General Assistant	Final Written Warning
15	Dlamini	BH	Parks	Principal Clerk	Final Written Warning
16	Mngwengwe	BY	Parks	General Assistant	Final Written Warning
17	Ngwenya	CV	Parks	Pool Supervisor	Final Written Warning
18	Cele	PZ	Parks	General Assistant	Final Written Warning
19	Narainsamy	D	Water and Sanitation	Civil Engineer	Final Written Warning
20	Ndlovu	BS	Water and Sanitation	Artisan Attendant	Matter to be rescheduled
21	Ngcobo	DP	Housing	Sales Campaign Officer	Final Written Warning

22	Ndzoyiya	ZS	Housing	Administrator	Resigned
23	Ngubo	P	Housing	Sales Campaign Clerk	Contract Terminated
24	Mphunyuka	PP	Housing	Secretary	Final Written Warning
25	Mthembu	TB	Housing	Senior Clerk	Final Written Warning
26	Gumede	BE	Electricity	Principal Clerk	Final Written Warning
27	Miya	EB	Electricity	Clearance Assistant	Final Written Warning
28	Linganisa	MB	Electricity	Meter Reader	Final Written Warning
29	Nkophe	M	DSW	General Assistant	Final Written Warning
30	Zondi	CM	DSW	General Assistant	Final Written Warning
31	Sibeko	SC	HR	Senior Clerk	Final Written Warning
32	Ngubo	BR	EMS	Fire Fighter	Final Written Warning
33	Msomi	LH	SCM	Stores Clerk	Final Written Warning
34	Mkhize	C	Safer Cities	Clerk	Final Written Warning
35	Nxumalo	ME	Tourism	Clerk	Final Written Warning
36	Ngema	PL	City Health	Senior Technician	Final Written Warning
37	Mlungwana	LM	Treasury	Administrator	Final Written Warning
38	Sikakane	ZC	Regional Centre	Principal Clerk	Final Written Warning

Source: *Manase Report* (2012: 346-349)

In addition to the previous 38 employees mentioned, the Office of the Ombudsman, through investigation, provided the Manase team with the names of eight officials, all of whom were also disciplined for conducting business with the Municipality (Table 4.6).

Table 4.6 Names and action taken against local government officials who had conducted business with the eThekweni Municipality, South Africa

No	Surname	Initial	Department	Action
1	Msimang	V	Health	Final Written Warning
2	Mjola	SAL	Housing	Deceased
3	Phewa	SM	Housing	Dismissed
4	Mthembu	PG	Engineering	Dismissed
5	Cele	SM	IS	Dismissed
6	Luthuli	SH	City Hall	Dismissed
7	Makhanya	NC	Parks	Dismissed
8	Ximba	EV	Business Support	Dismissed

Source: *Manase Report* (2012: 349-350)

Apart from the officials implicated by the AG and the Ombudsman, a further 123 employees were identified by the Manase team as having conducted business with the Municipality. It was recommended in the *Manase Report* that similar action should be taken against the additional 123 officials. However, since the *Manase Report*, the Municipal Manager, Sibusiso Sithole, has argued that there has been a dramatic decline in the number of councillors and officials doing business with the Municipality. He contended that in 2009/2010 there were only six councillors conducting business with the state, and at the moment (2015), there were no councillors or officials doing business with the city (Khoza, 2015a).

It is evident that the SCM in the eThekweni Municipality is an area that is prone to corruption. Councillors and officials alike have flouted legislation in order to acquire monetary benefits. When dealing with corruption in the SCM, it is significant to note the determining factors of these corrupt occurrences. Councillors and officials lack of knowledge of policy and legislation, and the incompetency they exhibit, are ideal conditions for corruption to manifest.

4.3.2 Councillors and Officials' incompetency and limited knowledge of legislation

According to the *AG's Reports (2009/2010, 2010/2011, 2011/2012, 2012/2013 and 2013/2014)* the MFMA requires officials to meet prescribed competency levels in financial management and SCM. However, a number of chief officers and heads of the SCM Unit fail to meet the minimum qualification and competency requirements, but are appointed in high positions.

There were suggestions that some councillors and officials in eThekweni Municipality were not very competent, stemming from their failure to carry out their duties. One reason for some councillors being incompetent was due to their lack of education and training. According to Mbanjwa (2008) one in three municipal councillors cannot read or write, and more lack basic competencies to understand

local government finances. Some are embarrassed to admit they do not understand English and are therefore unable to follow council proceedings or training sessions. On average, only half of local government politicians have a post-matriculation qualification. SALGA noted that 32% of councillors required ABET training. Without such basic skills (reading and writing) councillors may not be able to fully develop their abilities and contribute optimally to council activities (Mbanjwa, 2008).

The inability to understand the complexity of local government hinders councillors' and officials' capability to function at their full capacity, leading to inadequate services being provided to citizens. Councillors in the eThekweni Municipality find it difficult to understand the complexities of a local government system:

The local government is very complex ... If you come into the municipality and if you don't have an education, it's very difficult for you... Have you seen Schedule 1 ... A master's student can understand but I can guarantee you if I give an undergrad, they cannot understand the things in there ... imagine an ordinary aunt or uncle that gets elected in a ward to come inside here with very limited education (ANC 3, 3 June 2015)

We are given financial reports ... a thick stack of documents for us to read. Who's going to read that, we never read that because we don't understand the way it is prepared (DA 8, 19 May 2015)

A related issue is the limited knowledge of legislation by officials and councillors of the eThekweni Municipality, more specifically that of SCM and MFMA. According to Mbanjwa (2008:1) "More than two-thirds of councillors, including those who serve on mayoral committees, don't understand their roles, their responsibilities or local government legislation". Due to the lack of knowledge, councillors and officials contravene legislation, which can be viewed as an act of corruption. This was highlighted in the *Manase Report* (2012) in which many councillors contended that they were unaware that trading with the Municipality was against the legislation. Many who were found guilty indicated that they were under the impression that disclosure allowed them to continue to conduct business with the Municipality. Some councillors stated that they did not have a clear knowledge or understanding of the provisions of the MFMA and the code of conduct:

As I sit on a committee called MPAC, each and every time we interview the head of department you will find out our workers are not well equipped with our policies especially SCM and MFMA ... there is poor performance in SCM policies (ANC 2, 22 May 2015).

The one thing that's put across is that when the issue of disclosure of interest was explained to them ... in a manner that was not clear cut, in terms of a breach of conduct. You can have a company and disclose but the issue of if you have disclosed can you trade ... but it then depends on an interpretation (ANC 3, 3 June 2015).

Another area that has been noted as a concern in SCM is the unauthorised, irregular and wasteful expenditure.

4.3.3 Unauthorised, irregular and wasteful expenditure

An area that has constantly been noted in AG's Reports (2009/2010, 2010/2011, 2011/2012, 2012/2013 and 2013/2014) is the issue of unauthorised, irregular and wasteful expenditure. There are clear distinctions between these three terms (AG Report, 2012/2013). Unauthorised expenditure refers to spending that was not incurred in accordance with the approved budget. Irregular expenditure refers to a deviation from expenditure prescribed by legislation. Fruitless and wasteful expenditure refers to costs that were incurred in vain and, which could have been prevented, if there had been reasonable due diligence. In eThekweni, there have been serious concerns about unauthorised, irregular and wasteful expenditure, largely due to the failure of the political and bureaucratic leadership to enforce the necessary supply management regulations (AG, 2008/2009). Hundreds of millions of Rands of public funds have been squandered, which impacts directly on the Municipality's ability to provide efficient and effective service delivery to its citizens, especially the poor. According to the AG, the irregular expenditure in the eThekweni Municipality for the Financial Year 2013-2014 was R334,8 Million (AG Report, 2013/2014).

Respondents contended that there is no oversight or accountability within the Municipality over money spent, resulting in legislation being flouted and money being misused. Some examples included:

Typical example, the Fire Department show in Germany, two firemen had been chosen to go and participate in the fire department contest. Now they sent two councillors, what are the councillors going to do there... They go for a free ride, first class, all from the ANC ... When I was in the economic and development committee, they sent a councillor to China who came back and gave no report on what transpired (DA 8, 19 May 2015).

There were 400 security guards that were employed in the city, the initial process was for only 40 to be employed ... no one authorised

the employment of those 400. No one from the department was owning up to the authorisation ... they said it was mentioned in a presentation. But the municipality was compelled to pay those people because they provided the services. But we did not procure for those services, how could we pay? Can somebody come to your house with the cooked food and ask you to pay because the service has been provided? (ANC 4, 25 June 2015).

The Manase Report also recorded various instances of unauthorised, irregular and wasteful expenditure. It is important to note that the *Manase Report* was initiated after the *AG Report (2009/2010)* stated that the eThekweni Municipality had irregularly spent R532 million. One example from the *Manase Report* that will be used to exemplify unauthorised, irregular and wasteful expenditure is the allegation of duplicate payments and irregular, upfront payment to Dimension Data. It was alleged that a duplicate payment of R2 million was made to Dimension Data and that it received an upfront payment on a contract that required payments to be made on a month-to-month basis in relation to the services provided (*Manase Report, 2012*).

These allegations were made by a former employee of the eThekweni Municipality, Mr Pragasen Govender, who in an affidavit stated that in his second month of employment in the Municipality a payment of R2 million was signed off and paid to Dimension Data KZN by Ms. Subban, the former head of Geographic Information and Policy Office (GIPO) (Mbanjwa, 2013a). This payment was a duplicate payment and he requested Dimension Data to return the overpaid R2 million through the accounting department of GIPO. In his affidavit, Govender alleged that Maroshnee Craig, a senior Administration Clerk of GIPO, noted that Dimension Data had been paid an amount of R15 million in September 2009 (Mbanjwa, 2013a). This was authorised by the City Manager, City Treasurer and Subban, for a month-to-month maintenance contract that began on the 1 July 2009 to 30 June 2011. This payment was irregular and a breach of the SCM regulations. Additionally, Govender alleged that the City Manager and Subban placed the eThekweni IT network at risk by enabling Dimension Data to solely control the data network by awarding exclusive Section 36 tenders to Dimension Data and H2O Networks South Africa (*Manase Report, 2012*).

The Manase Team found that a duplicate payment of R2 629 750, 86 was made to Dimension Data on 10 September 2008, after a similar amount had been paid on the 2 September 2008. The duplicate payment was recovered by credit note issued by Dimension Data, and received by the eThekweni Municipality on the 18 March 2009 (*Manase Report, 2012*). However, the allegation of irregular upfront payment to Dimension Data was found to have no merit. Disciplinary action was recommended against Subban on a charge of negligence, in three instances. First, for her approval for the second payment to Dimension Data within nine days of approval of the first payment for the same

service. Second, her failure to show the due care that is expected of a person in her position in reference to when she endorsed the credit note from Dimension Data as “Approved for payment”, and third, for not immediately recovering the overpayment to Dimension Data when it was initially brought to her attention (*Manase Report*, 2012).

Following the release of the *Manase Report*, internal disciplinary charges were brought against Subban for the offences revealed in the *Manase Report* (Mbonambi, 2012). However, in an article by *The Mercury*, it was reported that Subban was still employed by the Municipality and continued to receive a salary despite the Minister of Police, Nathi Nhleko, reporting to the National Assembly that Subban was no longer employed by the Municipality.

Since 2012, the City has faced a lawsuit of unfair dismissal from the former deputy IT head, Mr Govender (Manda, 2015a). He claims that he was fired in 2010 on the basis of what he claims to be fabricated charges after he reported irregularities and corruption within the IT department in 2008 and 2009. Among these irregularities was the duplicate payment of R2, 6 million made to Dimension Data. He accused Subban of being the mastermind behind his dismissal and claimed he had been victimised for blowing the whistle on irregularities in the IT department (Mbanjwa, 2013a). In this ongoing case Govender seeks to be reinstated and paid the equivalent of his annual pay of about R400 000 for two years (Barbeau, 2013) as well as suing his ex-bosses for R50 million (Manda, 2015a).

Even after the release of the *Manase Report*, irregular expenditure, fruitless and wasteful expenditure are still issues that are prominent in the eThekweni Municipality due to the lack of adherence to MFMA and SCM policy. Another issue relating to irregular expenditure is the improper regularisation of irregular expenditure.

4.3.5 Abuse of Section 36

Section 36 1 (a) of the SCM policy makes provision for an emergency where a municipality cannot wait 75 days for ‘essential services’, for example, emergencies relating to natural disasters. Additionally, it accommodates situations in which services are only available from one single provider (*Supply Chain Management Policy*, 2005). However, there has been a blatant abuse in the eThekweni Municipality of this legislation, which can be attributed to various reasons such as cronyism, self-enrichment and poor planning. Former city manager, Sutcliffe, argued that, since Sithole’s take-over as City Manager, the value of Section 36 contracts had increased fourfold. In the 2010/2011 Financial Year, authorisation of Section 36 contracts totalled R469 million. In the 2011/2012 Financial Year, this escalated to R1.1 billion and in the 2013/2014 Financial Year a total of R1.8 billion was spent on Section 36 contracts (Mbanjwa, 2013b).

Abuse of Section 36 (1) (a) was repeatedly mentioned in interviews as a problem faced in the SCM. Councillors indicated numerous occasions when Section 36 was used to justify awarding of a contract, even though it was being used in the wrong context:

There is a lot of speculation of corruption happening at a supply chain management level. We see examples where things might be going wrong. Certain companies are given housing contracts. Time and time again they give these contracts on what is known as Section 36 contracts ... and the same company will get it again and again and in fact that the company has about R2 to 3 billion worth of housing contracts in the past 2-3 financial years from the Municipality (DA 1, 4 May 2015).

Even if you look at the number of tenders given under section 36 because that is the section that has been utilised or has been perceived to be utilised by most of the people implicated by corruption. This is because in terms of giving tenders with Section 36, we don't have to go through all the processes, we just give a person a tender and say its justified by saying, no it was an emergency (ANC 1, 21 May 2015).

I raised my concerns with section 36, I'm aware there's a bit of reduction on the use of Section 36 ... Section 36 is legally a part of legislation, its law, it's not a crime, but the way it is implemented is the problem (Bureaucrat 1, 28 May 2015).

The *Manase Report* highlights numerous examples of the abuse of Section 36 in the eThekweni Municipality and a deviation away from the prescribed tender processes to ensure that certain companies or individuals acquire lucrative contracts from the Municipality. In some instances, the companies that acquire these contracts are ill-equipped to handle the task on hand, leading to poor workmanship and an inadequate service delivery to citizens. One example from the *Manase Report* is the case of Section 36 contracts awarded to H20 Networks.

On the 8 January 2009, GIPO prepared a report to the BAC to get approval for the appointment of H20 Networks South Africa. This is a company which specialises in putting fibre-optic cables in sewers to create high-speed broadband networks. H20 Networks was noted as the only South African supplier of this technology and was awarded a contract through Section 36. A pilot project for the laying of these cables over a distance of 1, 25 km at a cost of R282 459. 57 was awarded to H20 based on a quote from that company which was dated 12 December 2008 (*Manase Report*, 2012).

The apparent reason for the use of Section 36 was that H2O networks South Africa was the only company that could provide this solution. The document was signed on behalf of GIPO by former City Manager, Sutcliffe, and it stated that document queries were to be referred to Ms. Subban, the former head of GIPO. The quote from H2O was for R293 575, instead of R282 459.57 (*Manase Report*, 2012). On the 7 October 2009, GIPO prepared a report to BAC indicating that the Pilot Project should be extended so that the Municipality could consider a greater adoption of the technology. This was also carried out through Section 36, as was the quote given by H2O Networks South Africa for installation of 129 km of cables, which was for R24 015 728, excluding VAT. Even though funds had not been allocated for this expenditure in the 2009/2010 Financial Year, the savings would be highlighted and an Adjustment Budget would be made to meet this expenditure. Mr Petersen, the Deputy Head of SCM accepted H2O's proposal on the 11 November 2009 (*Manase Report*, 2012).

The *prima facie* evidence showed that two Section 36 awards made by Ms. Subban were irregular and did not comply with the requirements of the SCM policies of the eThekweni Municipality. The first award of R293 572 was irregular as it was awarded on the 30 January 2009 when H2O Networks South Africa did not have a valid tax certificate which they only acquired on 30 June 2009. Furthermore, Ray Dhavraj, a former employee of GIPO, who had previously reported directly to Subban was involved in the management of H2O Networks South Africa. The pilot project was awarded to H2O Networks South Africa, only eight months after Dhavraj had resigned from the Municipality. At the time of the award of the Section 36, H2O Networks South Africa was not even a registered supplier on the database (*Manase Report*, 2012). The second contract for the amount of R27 377 932 was found to be irregular as the vendor enjoyed undue preference, due to the contract being drafted by H2O Networks South Africa. Additionally, on the 22 January 2010, H2O Networks South Africa was paid in advance an amount of R15 977 929.92 for the project (*Manase Report*, 2012).

The City Manager, Sbu Sithole, subsequently argued that new procedures had been introduced to reduce abuse of Section 36. For example, Section 36 applications had to be approved in principle by Executive Committee (EXCO) before being submitted to the BAC (Mbanjwa, 2013b). Additionally, in an interview by the *Daily News*, the chairperson of the Finance and Procurement Committee, Fawzia Peer, stated that her Committee was doing everything in its power to address the abuse of Section 36 (Teke, 2013). For example, the committee was monitoring all Section 36 contracts on a monthly basis. Councillors also supported the use of EXCO and the Finance and Procurement Committee as screening agents of Section 36 contracts:

Section 36 is law ... People tend to abuse Section 36, because it was meant to address situations of real emergencies ... but also the

municipality has now since agreed that all the cases of Section 36 must go via EXCO for approval ... Hence, there has been a decrease in amount of tenders ... (ANC 1, 21 May 2015).

In terms of Section 36, we have called for a budget plan on the project ... if we find poor planning then someone needs to be held accountable in this case the heads of department ... we will be looking at their bonuses ... Because we can't use Section 36 for poor planning ... so we are targeting the heads of department, the DCM and the City Manager to be charged ... they will have zero bonuses ... we will sample some Section 36 applications, we will be calling some departments to Council, come and explain this Section 36 ... If people lose money out of this then they will definitely change their behaviour (ANC 4, 25 June 2015).

A SCM report presented to the Finance and Procurement Committee on 23 July 2015 however revealed that the City had awarded more than R36 million in contracts in June alone, without any public tender (Rondganger, 2015). City Treasurer Krish Kumar argued, however, that the awarding of Section 36 contracts has been reduced in recent years due to stricter measures (Rondganger, 2015). In an article by the *Daily News*, the Chairwoman of the Finance and Procurement Committee, Fawzia Peer, noted the different measures instituted to crack down on the abuse of Section 36. She claimed that her committee monitors all Section 36 awards on a monthly basis, as well as all other tender awards. Furthermore, they had introduced a quote management system to facilitate e-procurement to allow for an accountable and transparent SCM process (Teke, 2013). Nevertheless, in an article by *Nosweek* it was reported that in the last financial year (2014/2015), the City used Section 36 no fewer than 869 times, but only on 23 occasions did the header actually read 'emergency' (Hamilton, 2016).

Section 36(1) (b) has also been manipulated and has caused the improper regularisation of irregular expenditure in the eThekweni Municipality. According to the SCM Policy (2005) Section 36 (1) (b) indicates that an accounting officer may ratify any minor breaches of the procurement processes by an official or committee acting in terms of delegated power or duties which are solely of a technical nature. Additionally, the accounting officer must record the reasons for the deviation and report it to the next meeting of Council. However this section is being abused since major deviations of a non-technical nature are being regularised and are not reported to Council:

One thing that annoyed me, I raised it yesterday in a meeting. Section 36 (1) (b), you can deviate. The city manager can regularise the irregular expenditure of a technical nature or a minor deviation.

Now they regularise any amount and they quote that section (ANC 4, 25 June 2015).

An example that can be utilised to depict this abuse of legislation is the retrospective regularisation of irregular expenditure raised by the AG in his audit report on the 2009/2010 financial statements. According to the *Manase Report* (2012) the regulatory audit conducted by the AG showed numerous irregularities, all of which were relayed to the former Accounting Officer and City Manager, Sutcliffe. The Report stated that the irregular expenditure totalling R532 576 million (2009/2010) was as a result of contracts awarded to suppliers that were in contravention of the SCM regulations. The Manase team obtained the documents produced by the BAC for the approval of the retrospective regularisation of irregular expenditure for the Year ending June 2010. The AG report found that there was material non-compliance with SCM policy in terms of Section 36(2) of the MFMA, in that the deviations from the procurement process had not been reported to Council (*Manase Report*, 2012).

Another instance of abuse of Section 36 1(b) was noted at the eThekweni Finance and Procurement meeting on the 19 June 2013, where the DA voted against the regularisation of irregular expenditure. According to Crouch (2013) the irregular expenditure was not a situation where someone had made a mistake, but was a deliberate act of fraud by municipal employees illegally conducting business with the city. The amounts involved ranged from R251 by a Senior Civil Engineering Technologies employee to R15 751 414 by the Manager of Race and Gender, which can hardly be described as a minor deviation. However, the recommendation to regularise such crooked expenditure was approved due to the ANC's majority vote (Crouch, 2013).

Section 36 has been abused repeatedly and has led to various instances of corruption. However, the contravention of legislation also leads to an unfair procurement process and this will be discussed in the next section.

4.3.7 Unfair Procurement Process

An area that has been largely problematic in the SCM is the unfair procurement process. The AG Report (2010/2011) states that the principles of contracting goods and services in a manner that is fair, equitable, transparent, competitive and cost-effective is enshrined in the South African constitution. Legislation such as the SCM and MFMA outline the processes that need to be followed to ensure that these principles are followed. Additionally, the Preferential Procurement Framework (PPF) takes into consideration previously disadvantaged communities and allows for affirmative remedies. However, the use of Section 36 has led to an uncompetitive procurement process, which appears to favour politically connected cronies.

According to the *AG Reports (2009/2010, 2010/2011, 2011/2012, 2012/2013, 2013/2014)* the eThekweni Municipality has an unfair procurement process. These include not obtaining three price quotations, not listing accredited prospective providers, inadequate administration of providers, competitive bids not being invited, preferential points not applied, and inadequate public invitations to tender. All of these factors contravene the SCM policy and the MFMA, creating a tendering process which is unfair and uncompetitive.

A number of similar issues were also highlighted by respondents who complained that tenders and contracts were not advertised in the public arena:

The municipality will say we want quotes ... they will not even put out an advert they will just get quotes from three people ... people say contracts are not advertised properly and are going to cronies, connections of Councillors or people who work in SCM (DA 1, 4 May 2015).

This lack of advertising can be illustrated by an example from the minutes from the MPAC meeting held on the 12 February 2015. At this meeting the head of the Community Participation and Action Support Unit, Mr. Cebekulu, indicated that due to delays in the finalisation of dates for the budget hearings, the Unit had failed to comply with SCM regulations. Only one quote had been obtained for catering (MPAC Minutes, 2015), however it had not been advertised, as per the SCM policy. Mr. Cebekulu further assured the committee that measures had been instituted to prevent the recurrence of such an irregularity. It was resolved at the meeting that the explanation provided by Cebekulu in relation to the irregular expenditure by the Community Participation and Action Support Unit in 2013/2014 be noted, on the basis that Mr Cebekulu and the City Manager would formulate a strategy for procuring marquees and associated services for budget hearings in a way that was compliant with legislation (MPAC Minutes, 2015).

Another issue that was highlighted by respondents as problematic was the manner in which contracts were awarded. In terms of Standard Operating Procedures (2013) the Municipality shall only award a contract where it represents Best Value. Furthermore, a contract shall only be awarded using the tender evaluation criteria; price, quality and preference. However, due to incompetency, political interference, cronyism and deliberate neglect, officials do not research companies before they award tenders. Hence, whether the company has the necessary resources such as equipment and the skills to successfully complete the project is largely unknown. Often a contractor's lack of skill results in incomplete projects and poor service delivery:

Our tendering process at the moment gives the company or person who is most responsive. Now that's the key word, because it's got to

do with money and not ability. You could form a company, come in cheaper on a R5 million contract and get the job, and you may not have built a road in your life before but you got a tender to do a road and this is why our contracts keep failing ... I've had numerous contractors coming to my ward to do the simplest things and they walk off site or run out of money or they just can't finish the job (DA 1, 4 May 2015).

Another problem identified by interviewees is the awarding of tenders to specific companies by officials before the contract is even discussed by the BAC. This occurs due to the kickbacks which are difficult to prove unless there is a lifestyle audit of officials. Contractors thus inflate charges and costs knowing that the tender award is guaranteed, leading to an inevitable increase in the cost of services and products to citizens:

If I may make an example, where you may procure the goods to a preferred bidder, as opposed to going to public tender process ... and you actual assure him or her is going to get the job. Definitely he will put a lot of fat in that tender, if the tender is R30 million, he may tender with R70 million, so you have to get your cut. Also triple their interest or profit ... So if the electricity pole costs R1000 per pole, in this kind of situation the municipality might pay R4000 per pole. It cripples the finances of the city (ANC 4, 25 June 2015).

It's sad, sad reality, the people really suffer because instead of paying for R20 for a phone we are paying R200 ... The other day, the NFP guy raised an issue about the JoJo tank. We are paying about R10 000 ... It is concerning because the JoJo tank cost is R4000, why we paying R10 000 and they never had an answer for him ... prices are inflated ... because they got to give the kickback and that robs the poor people of service delivery (DA 8, 19 May 2015).

Corruption in the eThekweni Municipality and specifically in the tender process has hindered the ability to have a fair and transparent tender process. It has resulted in situations where many businesses refuse to tender for projects because they know that the award has been predetermined. Another issue that has been evident in the SCM process is inadequate and inefficient contract management.

4.3.8 Inadequate and inefficient contract management

Contract management refers to how tenders are managed after they have been awarded. *The AG Report (2013/2014)* indicates that shortcomings in contract management result in delays and fruitless and wasteful expenditure. Inadequate and inefficient contract management manifests itself in the SCM process in numerous ways. These include contract amendments, extensions or renewals without approval to avoid the competitive bidding process (*AG Report, 2009/2010*) inadequate contract performance measures and monitoring, performance of contractors not being evaluated on a monthly basis, and payments made in excess of approved contract price, with further approved extensions (*AG Report, 2011/2012*). Usually, Section 36 is used to renew these contracts.

Inadequate and inefficient contract management was highlighted by interviewed councillors as an area of concern:

[Sigh] the tendering process is without a doubt flawed, whereas it looks good on paper. The application of the tendering process is a problem, the fact that we have so many appeals to tenders that are given out ... we keep on renewing the current service providers (DA 1, 4 May 2015).

For example if we need chemicals, for the next week and if you don't ... no one will get water. So in a senior position what do you do, definitely you will allow for Section 36 ... I said to council, there should be consequences for poor planning (ANC 4, 25 June 2015).

The system is lax. Let's assume I give you an IT contract to maintain our system. I give it to you for two years. Surely to goodness, six months or a year before the contract is to be terminated there must be some system on our computer that flags and says the contract is due to expire in December. We must start doing the paper work to get a new contract, six months before awarding and put out the paper work for new contract ... it doesn't prevent you from reapplying but on 31 December when your contract comes to an end we have a new person to step in effortlessly into the job. But they wait, to the very last minute and there is a mad rush now we can never get it done and then they say let's use Section 36 ... that is joke and a very very poor excuse for bad management and bad planning (DA 9, 28 May 2015).

Councillors also identified sub-contracting as a means of tender abuse and exploitation. The main contractors sub-contract the work awarded to them by the eThekweni Municipality. The sub-contractors are paid a pittance and are forced to cut corners and produce shoddy work. This form of malpractice occurs because there is a lack of monitoring of contractors being hired by the eThekweni Municipality:

It's like when you have any tender for a project, the main contractor gets a lot of money and those that are subcontracting get peanuts and you will find that it is not even easy to complete the job (ANC 2, 22 May 2015).

People tender for jobs, they have no skill whatsoever, because they have the right classing structure and BEE credentials, they get the contract. The moment they do they subcontract ... happens mainly with Indian subcontractors ... some black guy gets the job ... he phones his Indian pal and says, 'Rajesh, I have a job for you'. Guy says thank you very much, the contract is worth R4 million, you put R1 million in your pocket and you do it for me ... (DA 9, 28 May 2015).

An area neglected in the tendering process was the sub-division of contracts. This refers to larger contracts being divided among smaller emerging contractors who otherwise would not have the capacity to tender for a project. It can lead to the creation of more jobs and smaller sub-contractors can acquire more experience and expertise. However, this process is unpopular in certain projects such as building of roads or building of a hospital, as it is hard to monitor a project if sub-division takes place:

Depends on the nature of the project ... you can be able to subdivide, for example, maybe a senior citizens function, the various things can be subdivided ... but in the case of maybe roads or central structures being built, it's definitely hard to subdivide ... it's better for it to be monitored at a central level by the main contractor (ANC 4, 25 June 2015).

A popular company got a tender of R300 million. My question is why we gave that one company a tender of R300 million why don't you slice the cake for 10 companies. Because there are so many people who are tendering in eThekweni (IFP 1, 14 May 2015).

Even if it's a huge contract and if you get 200 bidders, subdivide that contract into 200 ways and give everybody a portion of that pie to eat. Everybody gets a fair share. So we will be giving people employment from different walks of life and giving other people the opportunity to grow big as well (DA 8, 19 May 2015).

Inadequate and inefficient contract management has become a grave stumbling-block in the SCM department. The failure to adequately monitor contracts the CSity has awarded has led to countless renewals to the same contractors, hindering the competitive bidding process and denying opportunities for new entrepreneurs. Additionally, the failure to conduct follow-ups on contracts and monitor projects on site has led to poor workmanship, and, ultimately, poor service delivery. However, inadequate contract management can largely be attributed to the weak SCM controls.

4.3.9 Inadequate SCM controls

Inadequate SCM controls is one of the contributing factors to corruption. It creates loopholes for the abuse of SCM legislation and the MFMA. *The AG's Reports (2009/2010, 2010/2011 and 2011/2012)* note inadequate SCM controls as a concern in the eThekweni Municipality. Inadequate controls in the SCM manifests itself in numerous ways in the eThekweni Municipality (see Table 4.7).

Table 4.7 AG findings on SCM controls for eThekweni Municipality (2010/2011)

FINDING	DETAIL
Inadequate controls to ensure interest is declared	<p>Controls inadequate to ensure:</p> <ul style="list-style-type: none"> • Officials declare whether they or their close family members, partners and associates have interests in suppliers. • Suppliers declare any connections to persons in service of the state or other state institutions.
Inadequate controls for vendor acceptance and maintenance	<p>Controls inadequate to ensure:</p> <ul style="list-style-type: none"> • Only vendors meeting the acceptance criteria of the municipality are added to its database. • That the vendor database is updated frequently to include only those who still meet the acceptance criteria.
Inadequate separation of duties in procurement	<ul style="list-style-type: none"> • Separation of duties relates to the dividing of the responsibility for authorisation, recording and custody among employees. There was inadequate segregation of duties in procurement.

Other controls	<ul style="list-style-type: none"> • No controls to monitor performance of contractors • SCM officials not adequately trained • Register of bids received on time not published on website • No SCM policy
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Source: *AG Report* (2010/2011: 50)

The *Manase Report* identified multiple examples of inadequate SCM controls in the eThekweni Municipality. It demonstrated how lax implementation and pure disregard for SCM policy by officials allows for the contravention of SCM legislation and the MFMA. A good example would be the case of Councillor Senzangakhona Shange who was found guilty of doing business with the municipality through the company, Khetha Thina Trading 16 cc. An amount of R873 223 was paid to this company by the eThekweni Municipality (*Manase Report*, 2012).

The Manase team held an interview with Councillor Shange on the 25 July 2011, he revealed that he had been a councillor for Ward 95 for 10 years and had some understanding of the code of conduct. He further indicated that he was under the impression that disclosing his company would allow him to continue trading with the Municipality. Furthermore, in a sworn affidavit, he stated that the company had been registered by his girlfriend, and that he received monthly cash payments of R2000 from her. The last payment was received during May 2011 (*Manase Report*, 2012).

Another shortcoming relating to SCM controls is the lack of multi-party political oversight in the tender process. Previously, councillors used to sit on the tender and contracts committee. However, councillors are now not allowed to be involved in the bid adjudication and evaluation process, resulting in a lack of transparency and contravention of SCM policy and the MFMA:

When the new Procurement Act was introduced, six-seven years ago, there was what was used to be known as the tender and contracts committee in eThekweni. It was a multi-party committee. I myself was on that committee, we would have never allowed most of the things to occur... but they did away with the committee and removed political oversight, and they left it in the hands of the officials (DA 9, 28 May 2015).

The process of giving tenders is up to officials in the SCM, they have a bid committee and adjudication committee and all systems in their department. So when it comes to us as councillors, we have the least powers to change anything (ANC1, 21 May 2015).

Furthermore, the lack of oversight in the tendering process has allowed officials to abuse their power leading to a manipulation of the procurement process. Officials decide who gets tenders, resulting in kickbacks and collusion between potential bidders, councillors and officials:

People are able to get away with murder, because they are their where they can make decisions according to their preferences ... they have selected people they wanted that work to be completed and at the end of the day get a kickback (ANC 1, 21 May 2015).

The SCM unit in eThekweni Municipality has been fraught with corruption. Councillors and officials have manipulated the tender system to designate contracts to preferred individuals, enabling them to secure kickbacks and abuse their positions in power for their own monetary gain. Inevitably, service delivery has been hampered, as the city's budget is siphoned off to cadres and cronies in the form of predetermined tender allocations. Most disconcerting is the fact that the citizens of eThekweni Municipality face disastrous consequences from corruption and this will be discussed in the next section.

4.4 Implications of Corruption in the eThekweni Municipality

Corruption affects every citizen of South Africa; it threatens sustainable development, ethical and moral conduct, values and justice and hampers the rule of law (*Corruption Watch, 2015*). Those who rely on government housing, health care, education and welfare are those who are most greatly affected by resources lost to corruption. Corruption delays infrastructure development and fosters inadequate and inefficient service delivery to citizens (*Corruption Watch, 2015*). In this section, the social, economic and political implications of corruption in eThekweni Municipality will be discussed.

4.4.1 Social Implications

Councillors and bureaucrats in the eThekweni Municipality recounted various social impacts which corruption has on the eThekweni Municipality and its citizens. Socially, corruption diverts public funds away from essential services that government provides for its citizens. The allocation of contracts to cadres and cronies who lack the necessary skills and resources to carry out tenders efficiently leads to poor service delivery:

Corruption it cripples the society, in substandard jobs, houses cracking, roads not being complete (ANC 4, 25 June 2015).

In housing, because of corruption corners are cut, buildings are shoddy ... made poorly. People move in they don't get tenure, they

*don't get title deeds to their property ... within a year it starts to fall
(DA 9, 28 May 2015).*

The Human Sciences Research Council findings show that the ANC's deployment strategy systematically places loyalty ahead of merit and competence, and is a serious obstacle to efficient public services (Areff, 2012). However the ANC has defended its policy of cadre deployment in key municipal positions. ANC secretary-general, Gwede Mantashe, stated that one of the things we should never agree on is to regard cadre deployment as a swear-word, you cannot expect the ANC to depend on people who are hostile to the position of the ANC” (Seale, 2014:1). He further noted that the policy of cadre deployment could not be done away with as it allows for the alignment of the administration and political leadership (Seale, 2014).

Corruption violates the human rights of citizens in the eThekweni Municipality. The Constitution of South Africa outlines the basic services to which citizens are entitled. However, corrupt activity hinders the delivery of basic services to its citizens:

I think it robs the people of eThekweni ... people have rights to receive services. People got rights to shelter and also a decent living. But now people will need to stay or live in informal settlements for a very long time ... I think it becomes unfair and unjustifiable (ANC 1, 21 May 2015).

You have a right to clean water ... and a right to be safe. But those rights mean nothing if these services are not there. You have rights you can't realise because they have been polluted by corruption (DA 10, 28 May 2015).

Corruption thus directly violates the human rights of citizens in the eThekweni Municipality. It is the lack of basic service delivery to citizens, specifically the poor, who are reliant on government subsidised services and who are the worst affected. When citizens do not receive basic services such as water and housing, their human rights are violated.

Corruption also fosters inequality among its citizens due to the disparity in services received by the rich and poor. Furthermore, citizens become disenchanted with service delivery which results in mass service delivery protests. According to the *Civic Protests Barometer 2007-2014*, the number of protests in South Africa reached a high of 218 in 2014. The eThekweni Municipality was the third highest protest-prone municipality in South Africa (Powell & Visser, 2015). These protests are characterised by violence as a means to highlight the inefficiencies of the government and the poor quality of life citizen's experience:

Service delivery is hampered, the service protests that are happening are because there is no service delivery. The protests are happening because people are not happy with government that promises things and they are not receiving (DA 6, 13 May 2015).

You see people on the streets burning tyres, destroying cars, doing all sorts of things ... It's been so many years, they waiting for their service delivery ... it's not happening (IFP 1, 14 May 2015).

Corruption not only has social impacts but economic implications as well.

4.4.2 Economic Implications

Councillors and bureaucrats identified the various economic implications corruption has on the eThekweni Municipality and its citizens. An important economic implication of corruption is that the City's budget becomes depleted due to the irregular expenditure that is not recovered. The City thus has to turn to higher levels of government to cover its loss and inevitably reduce expenditure on basic services. Corruption creates a situation in which the local government cannot sustain itself and will eventually succumb to deficits:

eThekweni, there is no tomorrow and corruption is not sustainable ... we will go broke at the end of the day and that is coming quite fast. I think within the next eight years we will be broke. Now this is a city where, when I first was a councillor about 12 years ago, it had an egg nest of R6 billion invested in various places. It has now down to R2 billion ... it can't go on like this ... the city and the country have finite resources that have to be spread in a reasonable way (DA 5, 7 May 2015).

Additionally, corruption hinders international companies from investing in eThekweni Municipality. A bad reputation is created, as companies feel that the costs of kickbacks to acquire contracts will be too costly, preventing investment. This will stunt economic development, reduce the flow of foreign capital and possible job opportunities in the city. Furthermore, corruption affects the tourism industry as international travellers fear the political instability that is associated with corruption:

We should be creating a safe society, where external companies, whether it be in the city or country will want to come and invest money and create jobs, but we are not doing that (IFP 1, 14 May 2015).

It can affect the credit rating in terms of the municipality ... investors will do all the checks and balances before investing ... we always market eThekwini as South Africa's playground in terms of tourism attraction ... (corruption) ... can have repercussions and knock on effects (ANC 3, 3 June 2015).

Corruption in the eThekwini Municipality has led to irrecoverable irregular expenditure and budget deficits which drastically impact on service delivery. Corruption also has numerous political implications.

4.4.3 Political Implications

Politically, corruption undermines democracy and the rule of law. In a democratic system, legitimacy can be lost when people misuse their position and power for private gain. Councillors and bureaucrats recounted various political implications of corruption in the eThekwini Municipality. Politically, corruption may lead to a situation in which the city becomes ungovernable. Additionally, it creates a situation in which the ANC is delegitimised, as corruption may be regarded as synonymous with the ANC, in turn, legitimising opposition parties:

Political, I guess that it (municipality) becomes ungovernable and that no party will be able to control it. Like Somalia, it'll be fire all over the place, fire and blood (DA 5, 7 May 2015).

Politically, it can seriously damage the municipality that's led by the ANC. So they will then say ANC is corrupt look at eThekwini (ANC 3, 3 June 2015).

Politically, it works against the ruling party, whenever corruption gets exposed or allegations of corruption, it works in favour of the opposition party who actually expose it (DA 1, 4 May 2015).

Another issue that has been highlighted strongly by councillors in eThekwini Municipality is that corruption creates divisions within the ANC. According to Khoza (2015b), eThekwini which is the ANC's biggest region has been marred by the Party failing to convene a successful elective conference. The highly influential regional chairperson's position is being contested between eThekwini mayor James Nxumalo and Councillor Zandile Gumede, both members of the eThekwini executive council (Khoza, 2015b). A split thus exists in the ANC where two factions have arisen, caused by aspirations for power. At the ANC conferences there are major arguments in terms of who will run the City's budget. Inevitably, this individual will be able to determine who is awarded tenders and how the budget will be managed:

Serious problem in the ANC, two serious factions with James Nxumalo and Sandile Gumede fighting one another because both want power. So they can clean out the city. James Nxumalo is controlled by Cele and Gumede is controlled by Zwele Mkhize, those are the two factions (DA 6, 13 May 2015).

I'm thinking there's two things going on at the moment, it's an issue of positions, prestige and power... money will contribute to that but the key is holding positions in terms of power (ANC 3, 3 June 2015).

Corruption has numerous political implications for eThekweni Municipality. Not only does it delegitimise the ANC, it also undermines the principles of democracy. Additionally, it creates divisions within political parties and creates instability within the Municipality.

It is thus imperative to discuss the measures to curb corruption in the eThekweni municipality, which is the theme of the last section of this Chapter.

4.5 Measures to Curb Corruption in the eThekweni Municipality

Since the release of the *Manase Report*, it is significant to note the anti-corruption agencies that have responded and the various measures that have been adopted in response to the heightened levels of corruption. There are numerous anti-corruption agencies active in the eThekweni Municipality such as the SAPS, the AG, PP, PSC and SIU (*Public Service Commission*, 2001; Sebudubudu, 2002; Berning & Montesh, 2012). Various committees have also been instituted to curb corruption. These either play an oversight role or have been specifically formulated to investigate reported acts of corruption. These include: EXCO, MPAC, Audit Committee, Risk Committee, Ethics Committee, Ombudsman and CIU (Sarju, 2015). However, the effectiveness of these agencies and measures in preventing, detecting and responding to corruption is questionable. This section will assess the measures adopted by the eThekweni Municipality to curb corruption, the challenges faced, measures proposed by councillors and bureaucrats to address corruption, and the role the NGOs and the media play in highlighting, exposing and reducing corruption.

4.5.1 Measures Adopted

According to Pillay (2014) the PP is mandated to investigate and make recommendations to state departments in reference to instances that may result in prejudice to citizens. The PP does not identify itself as a key role-player in the fight against corruption (Pillay, 2014); however it highlights and refers corrupt cases to the relevant agencies. The PP was noted by interviewees as an instrument that is used to address corruption in the eThekweni Municipality. Some felt it was effective in addressing corruption, while others felt the PP had no follow-up criminal investigation after its findings.

Another instrument mentioned by respondents was the Office of the Ombudsman. The Ombudsperson seeks to address complaints relating to maladministration, fraud and corruption with impartiality and to find solutions with relevant agencies (eThekweni Municipality, 2015). Some interviewees felt that the Ombudsman was an effective instrument in dealing with corruption, but only with those who hold lower posts in government. Others contended that the Ombudsman was ineffective, lacked legitimacy and was a waste of time because it was selective in the cases of corruption which it investigated. Additionally, the lack of political oversight of this office was problematic, as it was directly under the control of the city manager:

I have personally gone to the City Manager and brought to his attention, allegations of corruption ... he is dismissive ... it will be investigated by the Office of the Ombudsman. I have seen the Ombudsman Office act very quickly against a member of staff who was accused of theft by false pretences. They even came immediately and arrested her in her office. Yet, they will not lift a finger to investigate the real cases of corruption that are happening ... the problem is, that particular office works with almost no political oversight. They are not going to the executive committee and stating what is being done to curb corruption. We don't know how many people are being arrested, how many people taken to court or fired or disciplined or anything. It's all done behind closed doors ... the Ombudsman Office is directly under the Office of the City Manager. If the City Manager doesn't want to give you information that's it. (DA 1, 4 May 2015).

Interviewed councillors also identified various committees that have been instituted to address corruption which include the ethics committee, risk committee (see Table 4.7) and the MPAC. Some felt that these committees were successful, while others called into question their effectiveness in curbing corruption. More specifically, the MPAC was identified as an effective measure, however it suffers from budgetary and expertise constraints which have limited its ability to take on a greater number of cases:

Let's say in 2012, was the setup of the ethics committee, then we got MPAC ... you got your policies put into place like your whistle blowing and anti-fraud and corruption. But over and above that there is also a risk in terms of internal control, they have put together a kind of risk that we must be also alert ... so you've got a risk strategy ... they are effective (ANC 3, 3 June 2015).

I think the oversight committees are effective, such as MPAC ... if we hear of anything we investigate it and we try to deal with it, but the capacity for proper investigation is seriously lacking ... we employ the wrong people I guess ... we have also been quibbling for a MPAC budget and we have been turned down every time ... I think there is a fear that we will become too good (DA 5, 7 May 2015).

For matters implicating politicians there's an ethics committee. So in terms of structures and processes in place, they have done well ... there's another issue now, talking of the effectiveness (Bureaucrat 1, 28 May 2015).

We do have the Municipal Accounts Committee, which incidentally should have been in place many years ago, but of late has been put into place and at least that is a body in fact that highlighted some areas of concern - poor accounting practices, poor administration, tender irregularities (DA 9, 28 May 2015)

Table 4.8 Top priority risks relating to corruption (2013/2014)

Risk Name	Risk Description	High Level Controls
Supply Chain Management	Inability to procure and distribute goods and services in a timely manner	<ul style="list-style-type: none"> • Procurement Scheduling (Planning) • Revised organogram
Human Settlement expectation	Inability to effectively deliver houses in the human settlement mandate	<ul style="list-style-type: none"> • Stakeholder engagement • Backlog Services Task Team • Housing Delivery Strategy
Public Protest	The risk of public protest due to 2014 National election	<ul style="list-style-type: none"> • Permits for public protest • Ward committees
Fraud, Theft and Corruption	The impact of activities and decisions that are taken in an unethical manner by stakeholders	<ul style="list-style-type: none"> • Fraud Hotline • Ethics training for staff • Declarations of interests • Anti-Fraud and corruption policy • Code of conduct • Disciplinary processes • Anti-fraud and prevention strategy

Governance Processes	Unclear separation, understanding, implementation and coherence of administrative versus political activities	<ul style="list-style-type: none"> • Induction programmes • Leadership Development Programmes
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Source: *MPAC Minutes* (2015:31-32)

Table 4.8 indicates the top priority risks identified by the risk committee for the period 2013/2014. It also provides the high level controls that have been proposed and implemented to reduce the risks that prevail in the eThekweni Municipality.

In order to maintain good governance, the Municipality established the CIU to ensure that the Municipality is clean and corrupt-free (*Integrated Development Plan, 2014/2015*). However, this Unit faces challenges in terms of lack of capacity and person power which hinder its ability to function effectively. Another issue is the lack of follow-through by the City Manager and committees in terms of action against criminals from the findings by the CIU:

The city integrity and investigations unit was established to fight fraud and corruption in the eThekweni Municipality ... functionally this unit reports to an oversight committee, your MPAC ... we also report to the audit committees, there are two in fact, there's audit and risk committee ... capacity is the main issue. I can tell you my team, I don't think I could ask for more, they are working a seven day week, extended hours, on average each forensic investigator has close to 40 cases, that's not healthy, but what do you do those are the challenges ... our role is part of the process to fight fraud and corruption. If person A is charged with ABC, a criminal case is opened and different people need to take action ... whether action is taken however is a different story (Bureaucrat 1, 28 May 2015) is.

The Office of the AG has a “constitutional mandate to audit and report on the accounts, financial statements and financial management of public sector agencies” (Pillay, 2014:61). Consequently, the AG is not an anticorruption agency but takes preventative action toward corruption through a small forensic auditing division. The AG has played a significant role in identifying irregularities in the eThekweni Municipality which essentially prompted the Manase investigations. Some interviewed councillors noted that the AG’s office has become less detailed in its reporting in recent years and inadequate as municipalities can receive clean audits by disclosing areas where irregularity has taken place:

I think we have an Auditor-General and he is becoming less effective, because I think his audits are becoming less and less detailed (DA 5, 7 May 2015).

The AG, you can now receive a clean audit report, with matters of concern if you report all fraud and corruption in your financials (DA 6, 13 May 2015).

The SAPS was also mentioned as an instrument to curb corruption, but there were some concerns that it was an organisation entrenched in corruption:

It is a serious concern about the number of police who have allegations and cases of corruption against them (ANC 2, 22 May 2015).

Allegations of corruption in metro police in the Manase Report ... when I asked the City Manager where the criminal investigation to this was... he said we have done the cases numbers and investigating it. However, it's very easy for people higher up to let these dockets lie (DA 1, 4 May 2015).

Generally, members of the opposition who were interviewed indicated that not enough was being done by government to address corruption in the eThekweni Municipality. Not enough time, money and person power has been invested in campaigns and commissions to curb corruption:

Not enough is being done, the fact of the matter is that when the Mayor James Nxumalo came in, his opening address was heavily leaning towards anti-corruption and doing the right thing. Yet, we've seen throughout his term very senior people who sit as right hand men and woman in EXCO themselves found guilty of things that could be construed as corrupt (DA 1, 4 May 2015)

Corruption having two people commissions or 10 people commissions, what is that going to do for the people (DA 2, 4 May 2015).

No, they don't give a damn, nobody cares, enriching yourself as quickly as possible with as much money at any means possible - that's the attitude of Durban's operation (DA 6, 13 May 2015).

Mixed views of government's endeavours to curb corruption were held by some members of the ANC. Some indicated that corruption is being dealt with effectively and government is doing everything in its capability to curb malfeasance. However, it is hampered by the ability of corruption to manifest itself in different forms. Others felt government could do more to address corruption in the eThekweni Municipality:

I think there are some inroads in effect by the Council in respect to corruption. Because even if you can look at the number of tenders given through Section 36 ... there has been a decrease in the amount of tenders (ANC 1, 21 May 2015).

I know your topic is specifically on eThekweni, but I would like to draw it nationally in all municipalities, all provinces. I think we need to roll up our sleeves and deal ... not enough, still more needs to be done (ANC 2, 22 May 2015).

I think enough is being done, but the issue of corruption, you're dealing with a virus, a virus mutates in different forms, just like an HIV virus. You use this drug it will find to express itself in another form ... it's got a human factor within the system. So when you are dealing with that you can put all the measures in place ... but there will always be that component (ANC 3, 3 June 2015).

Various problems persist which hinder the formulation of measures to curb corruption and prevent the measures instituted from effectively reducing the levels of malfeasance in the eThekweni Municipality. One of the greatest challenges that faces the eThekweni Municipality in the fight against corruption is the lack of accountability and transparency. Due to the lack of oversight in public procurement processes, corruption has thrived. The Municipality has been criticised for not implementing an effective internal monitoring system (Tolsi, 2011). Furthermore, there is poor implementation of good strategies that have been developed to effectively run the public procurement sector:

We don't have enough oversight within the eThekweni Municipality ... the problem is the municipality is run as a clandestine organisation. It is full of political intrigue ... a hall of shadows and mirrors, you don't really know what's actually going on. Don't know how decisions are made, not much accountability (DA 1, 4 May 2015).

The lack of astute political leadership is a grave challenge in the fight against corruption. Instead of a leadership that advocates a true anti-corruption campaign, there are politicians who are repeatedly accused of corrupt acts. This creates a society in which citizens become desensitised and immune to corruption, impeding the ethical infrastructure of society:

It is the moral fibre of the society we live in but over and above that is the issue whether there is an ethical infrastructure that is inside the system itself. You may have whistle blowing -those are just tools in doing it, but you still need to look in terms of the ethical and moral reasoning of the people involved inside the system (ANC 3, 3 June 2015).

There's no Ubuntu, we need moral regeneration to revive our consciousness and just remind each and every one of us where we are coming from because it is like people have forgotten (ANC 2, 22 May 2015).

Another challenge to curbing corruption is the labour laws of the country. *The Basic Conditions of Employment Act 75 of 1997 (BCEA)* contains no provisions that prevent an employee from resigning when faced with disciplinary action. The BCEA also contains no provision giving employers the power to refuse to accept a resignation (*The South African Labour Guide, 2015*). Numerous resignations by senior officials implicated in the Manase Report have taken place in the eThekweni Municipality:

For instance in the eThekweni Municipality ... some resign before charges were laid ... It's not fair, but there's nothing much we can do because it's our labour laws, which state that once I resign nobody has a right to follow me (ANC 2, 22 May 2015).

There are stages in the Act that says what you can do, whatever is being done is per what the Act offers ... people run away, when you resign you have committed something serious. It closes the chapter from the Municipality, but it doesn't close from SAP's (ANC 3, 3 June 2015).

Thus, the laws of the country allow those facing disciplinary hearings to resign. However, it must be noted that disciplinary hearings can still continue even though an individual resigns (*The South African Labour Guide, 2015*). In an article by the *Daily News*, the ANC provincial spokesman, Senzo Mkhize, noted that even those who have quit their jobs at the Municipality were still being

investigated (Mbanjwa & Barbeau, 2013). However the problem in eThekweni is that, once councillors and officials resign, the Municipality then fails in its duty to continue investigations against those who were implicated in corrupt acts.

Corruption is a complex, elusive and constantly mutating phenomenon. It is difficult for policy-makers to develop definitive strategies that will adequately address corruption due to its dynamic nature. Multiple challenges have been evident and the eThekweni Municipality is largely ill-equipped and has not scratched the surface in curbing corruption. However, councillors have highlighted numerous measures that the eThekweni Municipality could employ to curb corruption more vigorously.

4.5.2 Measures Proposed

Due to councillors being part of the local government system, many note the inadequacies and inefficiencies of the current endeavour to fight corruption. They are also privy to the ways in which corruption affects the lives of citizens and the means by which the system is abused.

Councillors largely proposed that those found guilty of corruption should face the full might of the law. According to the ANC provincial spokesman, Senzo Mkhize, those who have broken the law must be charged criminally and face the full might of the law (Mbanjwa & Barbeau, 2013). Hence, through the implementation of the law, individuals found guilty of corruption should be named, shamed, fired and arrested. In doing so, the principles of the South African Constitution will be upheld:

Arrest some people, make some examples. People need to be locked up and when they are locked up they should not be coming out on sick parole (DA 1, 4 May 2015).

They must face the might of law, there is no other way, you know you cannot have your bread buttered on both sides. You cannot eat your cake and still have it. So really we need to ensure we get good governance and issues related to public accountability must be taken seriously (ANC 1, 21 May 2015).

The law must take its course, you must serve time, they must weigh the charge (ANC 2, 22 May 2015).

There needs to be strong political will, if an official or politician is found guilty of corruption they should be fired immediately ... we

need to start instilling in our society and leaders the shame of being corrupt (DA 2, 4 May 2015).

Another measure proposed is to institute an independent investigative unit in the AG office or an apolitical investigation sector under the Ombudsman with capabilities to investigate and act against corruption. Additionally, the use of independent external auditors to conduct audits on local government clusters will remove political influence and allow for unbiased investigations:

To me in an ideal situation the AG would have an investigation section. Immediately when they find rubbish going on to pass it to investigative sectors and actually lay criminal charges (DA 6, 13 May 2015).

Get an outside independent unit in to investigate these things and to have a totally neutral investigative branch. We had the Scorpions and now the Hawks, but even these people are subject to political persecution ... at a local level ... form an independent investigative branch under the office of the Ombudsman and make it open and transparent, where you have people from all political parties ... and give them the power of subpoena and they need to have a multi-disciplinary task team ... who can actually go and arrest (DA 1, 4 May 2015).

Interviewed councillors also highlighted blacklisting as an activity that has been instituted by local government. Councillors encouraged the use of blacklisting of companies that do not complete tenders as per specifications. The eThekweni Municipality established a committee to blacklist errant businesses and prevent them from doing work for the City (Padayachee, 2013). However this committee was weak and ineffective:

I don't see effective blacklisting of companies either. Once you cannot do the job ... you should be blacklisted and should not be doing business with the city anymore (ANC 1, 21 May 2015).

Stronger political leadership was required to curb corruption. If someone was found guilty of corruption s/he should not be allowed to hold a post in local government. Furthermore, laws should be enforced to prevent councillors from entering the supply chain management department:

For example, if I'm found guilty of corruption today and I get fired and they will have a bi-election in my ward, nothing stops me from standing as a councillor. My party might not take me back, but I

could stand as an independent candidate ... there needs to be some kind of legislation that says if you are found guilty of all these kinds of stuff [corruption], you are not going to be a public representative anymore (DA 1, 4 May 2015).

Well I think the first thing is that there has to be measures to ensure that councillors do not interfere with the administration of the procurement or SCM. They should be made aware of the political administration dichotomy that as councillors you are responsible for the development of policies, and then you must not also jump in the line and interfere with what officials are supposed to be doing (ANC 1, 21 May 2015).

Another measure proposed was the introduction of ethical training during induction and the appointment of an ethical officer to allow for synergy between the different committees that deal with corruption:

I feel the issue of ethical training needs to be part of every single individual who enters the system, as part of induction. You mustn't take for granted the issue of ethics and morality – it is critical ... I think for me one of the key things we need to include in induction is being ethical. Hence, I'm speaking about the issue of ethical infrastructure, because we can have all these things ... where is all the coordination? For example, if you have city integrity we should have an officer, ethical officer in the municipality ... you should have somebody responsible for ethics in administration (ANC 3, 3 June 2015).

Through the induction of ethical training, employees of the state will be well versed in acts that are considered to be corrupt. Furthermore, this form of education on malfeasance will allow for a regeneration of the moral fibre of those in positions of power, and create the verve that is needed to address corruption. The introduction of an ethical officer will reinforce rules and regulations on corruption and establish consistency concerning the procedures and protocols that need to be adopted by various committees in order to curb malfeasance.

It was further noted by interviewees that education about legislation during induction will improve knowledge and awareness of the rules and regulations. This will also address the issue of limited knowledge of the MFMA and SCM, and help prevent the occurrence of corrupt acts. Skills audits, regular testing of job requirements and further basic education would help improve the competency of

councillors and officials. According to Mdletshe (2013) the eThekweni Municipality enrolled 25 councillors for an executive leadership development programme aimed at capacitating councillors with regard to matters pertaining to local governance. Furthermore, lifestyle audits on officials and councillors of the municipality were proposed in order to ascertain if individuals are living beyond their means:

For people involved directly in the supply chain unit we said we need to do a lifestyle audit ... check their partners and spouses as well so we are able to see (ANC 4, 25 June 2015).

The final measure proposed by interviewees to curb corruption is the rotation of workers in the SCM. This will prevent officials from conducting a particular job for a prolonged period of time, hence reducing the prospects to establish corrupt ties:

The rotation of workers, from one section to another (SCM), one person must not be dealing solely with a particular area...we need to rotate (ANC 4, 25 June 2015).

There are diverse ways in which corruption is manifested with multiple impacts on society. Needless to say, it is almost impossible to derive one universal solution to curb and eradicate corruption from the eThekweni Municipality. NGOs and other civil society organisations can play a role in the fight against corruption.

4.6.3 Role of NGOs

The NGOs see corruption as a social cancer that impoverishes and disempowers citizens, heightens socio-economic polarity and destroys the social and moral fabric of society. NGOs have in-depth knowledge of sectors that are susceptible to corruption (Holloway, 2006). They play an informative role for the public and exert pressure on the government to act on corruption. In the eThekweni Municipality, a clear dichotomy was evident in the opinions held by interviewed councillors on the role NGOs play in the fight against corruption.

Some councillors and bureaucrats held a positive disposition toward NGOs, indicating that they play a role in the fight against corruption, for example, in alerting the public to cases of corruption and making the perpetrators feel uncomfortable. However it was felt that NGOs need greater support from the public in order to fulfil their public accountability role:

Well, they (NGOs) are doing their part, but need support of the people... the involvement of the community is very important (ANC 4, 25 June 2015).

They (NGOs) do play a role, remember they alert us, you see these guys specifically look at what's happening in corruption and for some reason these guys get the information on what's happening ... I think they doing enough, but not getting enough support to really push the thing forward (DA 8, 19 May 2015).

As far as I know, they are to report what they see wrong happening, they are more like whistle blowers, also to make noise ... they are trying their best ... but the fact of the matter, we know they are there, they exist, they do make noise but are not supported by other structures (Bureaucrat 1, 28 May 2015).

On the other hand, a large proportion of councillors indicated that NGOs did not aid the fight against corruption because they lacked authority or legitimacy, they do not truly understand how corruption works, they were not vocal on issues of corruption, were too idealistic and not practical, and did not attend Council meetings to become informed on issues:

No, which NGOs locally have done anything to tackle corruption, they are not doing anything ... first of all if NGOs were so interested in corruption they would come to our meetings, obtain copies of the agendas. I don't see any, I stand to be corrected, but I don't see any major NGOs getting involved in the fight against corruption. They do not call me or any other EXCO member of the council and asking what can we do to help fight against corruption. Not coming with money to help fund court cases and that's where it counts at the end of the day (DA 1, 4 May 2015).

I don't even see their role ... the only people who become vocal about corruption is the opposition, they will look and leave no straw unturned (ANC 1, 21 May 2015).

No, they not doing enough. The problem is with them they don't understand what corruption is. How is corruption taking place in terms of patterns? Who are the corruption potentialities? (ANC 2, 22 May 2015).

NGOs are not the only agents that have had an impact on curbing corruption. The media has a vital role to play in the fight against corruption.

4.6.4 Role of the Media

The media plays a significant role in investigating and reporting on corruption, its causes and consequences and prompts possible solutions (Wasswa and Kokooza, 2011). The media informs the public about corrupt acts that occur in the government and promotes strategies to curb malfeasance.

Some councillors who were interviewed held the opinion that the media plays an influential role in curbing corruption. Through freedom of the press, corruption is exposed to the public. Furthermore, the media provides a system of checks and balances for the government, who are aware that the media will report on the corruption and force them to take action on cases. However, the media does suffer from the threat of litigation which has significantly hindered its ability to report freely:

Well the role of the media is very important. Those people who are the media they do tell us on the ground what is happening. In fact, the government of South Africa is afraid of the media ... I would say if the media is not playing their role we would be like other African countries so I really congratulate and commend the media in South Africa because even if they are being threatened, they do report what is happening (IFP 1, 14 May 2015).

Media is robust in tackling it (corruption) of late I have noticed the media is reluctant to publish anything on corruption, where it directly implicates anybody unless they have documents backing it up. A few years ago they were keen to write complete stories ... but the threat of litigation is so bad these days that they won't do that anymore ... we've seen a few of the bigger papers come short like that (DA 1, 4 May 2015).

I think the role of the media in bringing corruption to the attention of public has been superb ... I don't think there's any country like South Africa where the media has got all the rights to expose corruption (ANC 1, 21 May 2015).

Other councillors contended that the media was neglecting its duty in reporting accurately (DA 4 , 4 May 2015) owing to various reasons, such as newspapers being politically aligned and being owned by ANC supporters and by not running stories on opposing political parties. However this can be disputed in terms of the conflict that arose between the eThekweni Municipality and the *Daily News* in 2005. The Editor of the *Daily News*, Dennis Pather, and journalist, Veven Bissetty, were accused of launching a campaign to discredit the work of the Municipality (Sutcliffe, 2005). Bissetty

had written articles pertaining to matters such as street children, the employment of consultants, the rates system and the decision of EXCO to support the holding of the South African municipal games in Durban. Sutcliffe (2005) stated that the articles failed to provide the facts, quoted unnamed sources telling untruths, and had only obtained comment from the DA. Thus, in response, the Municipality stated it would no longer have any official dealings with the Editor or journalists from the *Daily News*. This included the placing of advertising in the *Daily News* as it would constitute a clear abuse of public funds (Sutcliffe, 2005). This exemplifies one instance in which political affiliations negatively affected the freedom of press in the eThekweni Municipality.

Some of the interviewed councillors contended that the quality of journalists and journalism has also declined dramatically over the years. The media, specifically the newspapers, are subject to many inefficiencies resulting in a poor effort in the fight against corruption. They suffer from a lack of investigative capacity, idle reporters and shoestring budgets:

I'm a former editor of a newspaper ... newspapers are suffering from a lack of capacity, they should be investigating every bit of corruption they can get their hands on and they are not ... the lack of capacity, not investing enough money in reporters and they don't have the will anymore (DA 5, 7 May 2015).

In so many local daily newspapers the standard of journalism is very poor ... much of the time it is sensationalist and they don't dig deep enough and will take an off the cuff remark and make it news ... I've had to phone journalists up and ask them where did you get that information because you weren't even there (DA 9, 28 May 2015).

Papers used to be good, journalists were very investigative, now the quality of journalists is very bad, it's like the tabloid ... you just read a story that is rehashed (ANC 3, 3 June 2015).

Holistically, corruption is a challenging issue for the media to tackle; threats of litigation have made media houses fearful to challenge individuals who are deemed to be corrupt. Since its 52nd National Conference in Polokwane in December 2007, the ANC has threatened to curb access to information and to introduce a Press Tribunal (where the state will be judge, jury and executor) to indict errant journalists. These measures have emerged amidst reports of escalating corruption and controversial public decisions which have implicated the ANC elite. As the ANC fails to deliver to the poor and disadvantaged, and the independent press exposes how hundreds of billions of Rand have been squandered through corruption, exacerbating socio-spatial inequalities of the apartheid era, some

senior ANC officials labeled the media as the ‘opposition’. Hence, blaming the messenger for the message (Maharaj, 2012).

4.7 Conclusion

Corruption is a disease that has plagued the eThekweni Municipality. Due to its complex and elusive nature a ‘Corruption Conundrum’ has arisen, exemplifying the difficulty in characterising and proving corruption. Interviewed councillors and bureaucrats identified numerous casual factors attributing to the rise in corruption in Durban. These largely pertained to self-enrichment, greed, power, politics and a lack of moral obligation by councillors, officials and citizens alike. A key focus of this study was the public procurement sector.

Mismanagement, fruitless, irregular and wasteful expenditure typifies the SCM. Councillors and officials lack expertise and the basic knowledge of legislation, resulting in the abuse of SCM legislation and the MFMA. This was evident from the abuse of Section 36 and the lack of disclosure of business interests by councillors. The blatant abuse and manipulation of SCM legislation has led to mismanagement and poor service delivery to citizens. This is a direct infringement of the human rights of citizens of the eThekweni Municipality.

Various social, economic and political implications of corruption in the eThekweni Municipality were identified to illustrate how corruption actively undermines democracy and creates a society in which inequality prevails, where the rich get richer and the poor get poorer. Since the release of the *Manase Report*, the eThekweni Municipality has publicly declared that it is dedicated to the fight against corruption. Local government has established numerous committees, strategies and commissions to curb corruption. NGOs and media entities have also made an attempt to aid the fight against corruption. However, these measures have not even scratched the surface to expose and curb corruption.

The siphoning of money from the public purse to accommodate the lavish lifestyles of those in power and their allies, has reached alarming levels. Tender manipulation, cadre deployment and crony protection have resulted in numerous lucrative contracts being repeatedly allocated to the selected élite. Tender abuse persists in the Municipality and irregular expenditure is the norm, due to the continuous awarding of tenders through section 36 (Manda, 2015b).

The South African Constitution guarantees socio-economic, political and environmental rights to all living in South Africa. However, corruption undermines the rights of all those who rely on government for their basic services. Legislation to prevent and curb corruption has not been enforced in the eThekweni Municipality. Local government need to adopt mechanisms and strategies to ensure that the policies and legislation that are put in place are implemented effectively. Policies and

legislation need to be re-evaluated to ensure that the fight against corruption is spurred on and to improve the quality of life of the citizens of eThekweni Municipality.

CHAPTER FIVE

EVALUATION, RECOMMENDATIONS AND CONCLUSION

5.1 Introduction

Corruption is a phenomenon that appears to be increasing throughout the world. It is complex, clandestine, and affects both the developed and developing countries to varying degrees (Pearson, 2001). For decades, international institutions like the WB and the IMF had remained silent on the issue of corruption. However, during the late 1990s, many regional institutions, business and non-governmental organisations began to focus on corruption (Bukovansky, 2006). Malfeasance actively contributes to the de-legitimisation of political and institutional systems in which it takes root (Camerer, 2009) and it is used to benefit the interests of the élite, while the poor suffer from the ravages of corruption. In South Africa, corruption flourished under the apartheid administration (Hyslop, 2005). These corrupt constructs have persisted in the democratic dispensation, violating the human rights of South African citizens. The public procurement sector has been riddled with corruption. It has become synonymous with kickbacks, tenderpreneurs, factionalism, cronyism and the manipulation of systems and processes for private gain (Zondi, 2012).

The aim of this study was to critically investigate corruption in the procurement sector in local government with specific reference to the case of eThekweni Municipality. This study found that corruption was rampant in the eThekweni Municipality, specifically in the public procurement sector. Corruption was attributed to various causes and adversely impacted on the local government's ability to provide basic services to the urban poor. In Durban, there are many different actors who engage in corruption in the public procurement sector, including councillors, officials and private business persons. Despite legislation designed to create a fair and transparent procurement process, the SCM is fraught with corruption which has impeded its ability to function effectively. Cases identified in this study included councillors and officials conducting business with the Municipality; incompetency and limited knowledge of legislation; unauthorised irregular and wasteful expenditure; abuse of Section 36 of the SCM policy; an unfair procurement process; inadequate and inefficient contract management and inadequate SCM controls. More significant is the presence of cronyism, cadre deployment and tenderpreneurs, which has significantly hindered the fair allocation of tenders in the Municipality. Overall, it is the poor who experience the ravages of corruption and violations of their rights as they are reliant on government for basic service delivery. Various measures in the form of anti-corruption strategies have been instituted to curb corruption in the eThekweni Municipality; however, given the extensive nature of corruption, these strategies have largely failed in curbing and preventing corruption in this Municipality.

This chapter is divided into three sections. The first section presents the evaluation of the key findings of the study. The second section offers some theoretical reflections of how the human rights based approach relates to corruption in the eThekweni Municipality. The third section, provides recommendations to prevent corruption in the eThekweni Municipality.

5.2 Evaluation

The objectives of this study were to:

- Review international trends in corruption and the procurement sector;
- Investigate specific cases of corruption in the procurement sector in the eThekweni Municipality;
- Assess the social, economic and political implications of corruption in eThekweni Municipality; and
- Examine the instruments and mechanisms that are used in preventing, detecting and responding to corruption and the effectiveness of such measures.

5.2.1 International trends in corruption and the procurement sector

It was evident from the study that although corruption is extensive and impacts on every society, international institutions and scholars had largely been silent and ignored the issue of corruption (Leff, 1964; Bukovansky, 2006; Sampson, 2010). However this changed in the 1990s with the end of the Cold War and the fall of totalitarian states, which ushered in openness, democratic principles and spurred on the anti-corruption campaigns. Collier (2013) contended that the post-Cold war trends toward democratisation, transparency and greater public accountability lifted the veil of silence surrounding political corruption. Publicised acts of malfeasance at this time also highlighted that corruption was evident and increasing in both the developed and developing world. This contrasts with the findings of Klitgaard (1988) who contends that corrupt activities are more widespread and systematically embedded in the developing world than in the West.

A review of the relevant literature revealed that there is no universally agreed definition for corruption and this is a challenge. Koetzle and Sandholis (2000) contended that nearly every published work dealing with corruption from the 1960s has tried to deal with the problem of defining it. The greatest problem in attempting to define corruption is that its meaning differs in different social contexts. Hence, what may constitute corruption in one society can differ greatly from that which is regarded as corruption in another. This is due to different cultural and traditional norms (Hodgkinson, 1997; Atuobi, 2007; Spector, 2012; Dimant, 2013). Similarly, in this study, a ‘corruption conundrum’ arose as councillors and bureaucrats had difficulty in distinguishing what constitutes a corrupt act in the eThekweni Municipality.

The literature reviewed revealed that corruption has become an international concern, due to the increased awareness of the detrimental effects of this malfeasance. Strategies to fight corruption have become a priority in policy discussions around the world. International organisations have adopted various anti-corruption instruments and reforms in the fight against corruption. This study revealed, however, that even though the international community has been successful in drawing attention to the issue of corruption, the anti-corruption efforts have largely failed to curb this practice (Doig & Riley, 1998; Kpundeh, 1998; Szeftel, 1998; Riley, 2000; Warigi, 2001; Johnston, 2005; and Persson et al., 2010).

This study found that the public procurement sector is an area of rampant malfeasance. Corruption and its associated risks are manifest throughout the entire public procurement cycle, and may differ at each phase (Klitgaard, 1992; Appolloni & Mushagalus, 2013; OCED, 2015). Abuses in the public procurement sector relate to the manipulation of procurement processes by a number of different actors who include senior managers, officials, councillors and private businessmen/women. The procurement sector has become synonymous with bribery, kickbacks, nepotism and favouritism. Even though legislation pertaining to public procurement regulation is established, it is largely abused and manipulated for self-gain. Klitgaard (1992) contended that countries enact laws and rules which outline comprehensive and well-regulated systems in public procurement and violations of those laws and rules are criminalised. However, legislation is ignored and carried out inefficiently, which enables opportunities for corruption to exist in the SCM.

5.2.2 Corruption in the procurement sector in the eThekweni Municipality

According to Bolton (2006), public procurement in South Africa has been given constitutional status and is seen as a means of addressing past discriminatory policies and practices. However this study reveals that public procurement has been unsuccessful in addressing the discriminatory practices of the apartheid regime, due to a certain élite group of formerly disadvantaged people being able to manipulate and benefit from the current procurement system. This is in line with the findings of Hilliard & Wissink (2001), CASAC (2011a) and Zondi (2012) who noted that since 1994, a small minority of previously disadvantaged individuals who are politically well-connected have become exceedingly rich through benefiting from state tenders, while the majority are still largely disadvantaged. In South Africa, the SCM is an important tool for managing public procurement, yet this study reveals that the SCM has faced numerous challenges which has allowed for loopholes to be created and corruption to flourish. Similarly, Ambe and Badenhorst-Weiss (2012) contend that despite the use of SCM as a strategic tool, the public procurement sector faces challenges that have made it vulnerable to corruption.

In Durban, the first challenge encountered in the SCM was that some councillors and officials conducted business with the eThekweni Municipality. Van Vuuren (2014) contends that the problem

is the looting of state coffers, where millions of Rands are being awarded in tenders to municipal officials and their families. Despite SCM regulation 44 prohibiting tender awards to persons in the service of the state, numerous contracts were awarded in the eThekweni Municipality and this contravened the MFMA and SCM legislation. The awarding of contracts to persons employed by the state and councillors has increased over the years, and has nullified the fair and transparent tender process in the Municipality. Ten councillors and one hundred and sixty-nine officials were identified as having business interests in the Municipality. The most prominent case involved the current Chief Whip, Stanley Zamokwakhe Xulu, who had collectively earned R12 386 855.19 from the eThekweni Municipality. However, when he was found guilty of corruption, he only received a R195 002.22 fine.

The study revealed that councillors were under the impression that they were allowed to trade with the City as long as they disclosed their businesses interests. However, the study showed that there were inconsistencies in the proper completion of disclosure forms by councillors; forms being incomplete and inaccurate information being captured. Furthermore, required signatures from Deputy City Managers or the City Manager were missing on disclosure forms. Additionally, there was neglect and failure of officials to identify councillors who were shareholders of companies doing business with the Municipality.

The study revealed that action should have been instituted by the Council in terms of paragraphs 13 and 14 of Schedule 1, *Code of Conduct for Councillors of the Municipal Systems Act, No 32 of 2000*, against all implicated councillors for contravening paragraph 6 of this Act. In this regard, the actions taken against errant councillors and officials were minor and viewed as a ‘slap on the wrist’ in comparison to the acts committed. Many received fines, final written warnings, or resigned, and only six guilty officials were dismissed. Similarly, Bauer (2000) contends that in South Africa the system functions in such a way that people who are accused continue in their posts, move to another department or slide into retirement.

The second challenge encountered in the SCM is incompetency of councillors and officials and a limited knowledge of legislation. These findings concur with studies conducted by Kalombo (2005); Sheoraj (2007); Ambe & Badenhorst-Weiss (2012) and Managa (2012). Councillors and Officials indicated that a lack knowledge of the provisions of the MFMA and Codes of Conduct and other relevant legislation had caused them to unintentionally commit corrupt acts in the Municipality. Lack of education and training was a major challenge for councillors and officials and inevitably impeded their capability to function at their full capacity in a complex local government system. Similarly, McCarthy (2006) contends that there is a lack of capacity and knowledge among officials to handle procurement processes that has led to bad governance. However Migiro and Ambe (2008) argue that many councillors and officials have attended a number of training workshops on SCM, but they still lack the appropriate knowledge for proper implementation of the regulations.

The third challenge encountered in the SCM in the eThekweni Municipality is unauthorised, irregular and wasteful expenditure. According to the AG Report (2013/2014) the irregular expenditure in the eThekweni Municipality was R334, 8 Million. The study revealed that the unauthorised, irregular and wasteful expenditure was attributed to the failure of the political and bureaucratic leadership to enforce the necessary supply management regulations. There is no oversight or accountability within the Municipality over money spent, resulting in legislation being flouted and money being misused. This was exhibited through the case of duplicate payments and irregular, upfront payment to Dimension Data.

This study showed that an unfair procurement process is one of the contributing factors to corruption in the SCM. Lack of advertising, not obtaining three price quotations, not listing accredited prospective providers, inadequate administration of providers, competitive bids not being invited and inadequate public invitations to tender were all evident in the eThekweni Municipality. This is similar to the findings of Mathee (2006) and Van Zyl (2006) who assert that practices relating to non-compliance with the SCM allow for uncompetitive processes for both quotations and bids, lack of appropriate bid committees; use of unqualified suppliers and passing over of bids for expediency.

The study showed that inadequate SCM controls, monitoring and the neglect of oversight have allowed for the tender process to be manipulated for private gain in the Municipality. This is supported by Stemele (2009) who argues that there is lack of proper monitoring and evaluation. Similarly, Ambe & Badenhorst-Weiss (2012) assert that inadequate monitoring and evaluation are linked to the absence of a control environment and that government entities are unable to implement SCM as required by the policy. In this manner, deviations or non-compliance with SCM policy remain undetected.

Another huge challenge to the SCM is the manipulation of legislation for private gain in the form of Section 36. According to Rangata (2008), Section 36 contracts are used as an easy way to bypass normal tender procedures and support the desired contractors. However although Section 36 was promulgated for emergency situations only (*Supply Chain Management Policy, 2005*), this study revealed that Section 36 contracts were common in the eThekweni Municipality, and that this Section was used as a means to subvert the normal tender procedures. This is in line with the findings of Reddy & Wallis (2011); Schulz-Herzenberg et al., (2012) and Mhlongo (2014). This study attributed such abuses to various reasons such as cronyism, self-enrichment and poor planning. Inadequate and inefficient contract management was also a challenge in the SCM and usually formed the basis for Section 36 contract renewals. Similarly, Ambe & Badenhorst-Weiss (2012) stated that poor planning and budgeting have affected the implementation of SCM. Luyt (2008) argues that there is a need to monitor the delivery of services to ensure that resources are efficiently and effectively procured.

5.2.3 Implications of corruption in the eThekweni Municipality

This study revealed that corruption has resulted in numerous social, economic and political implications for the eThekweni Municipality. According to Boersma (2012) corruption has many dimensions and has numerous political, economic and social consequences. This study indicated that socially, corruption has diverted public funds away from essential services that government provides for its citizens. This is similar to the findings of CASAC (2011b), Manyaka & Nkuna (2014) and Brink (2015). Furthermore, the allocation of these contracts to cronies and cadres who lack skills and resources resulted in poor service delivery to citizens.

According to Sansom & Mckinlay (2013:111), “the image of communities protesting against service backlogs, maladministration and corruption is a common occurrence in South Africa”. Mass service delivery protests are a common occurrence in the eThekweni Municipality. It is the continual dissatisfaction of service delivery that fosters violent protests. Similarly, in a study by Haans (2014) it was noted that protests broke out in Brazil, in which middle class Brazilians called for better public services and less corruption.

This study revealed that there are also economic implications of corruption in the eThekweni Municipality. Councillors and bureaucrats noted that corruption leads to depletion of the City’s budget due to the irregular expenditure. Inevitably, corruption creates a situation in which the local government cannot sustain itself and will eventually succumb to deficits. Economically, corruption also prevents international investment and stunts economic development. This is similar to the findings of CASAC (2011a) which states that corruption has a negative effect on foreign investment by destroying investor confidence.

This study revealed that corruption has multiple political implications in the eThekweni Municipality. According to Rose-Ackerman (1997) corruption undermines trust in the efficient functioning of a political system, which leads to instability and possible disengagement by citizens. This study revealed that corruption may lead to a situation in which the City may become ungovernable. This is supported by the findings of Mottiar & Bond (2012) and Mbazira (2013) who highlight the declaration made by the ANC Youth League in the Western Cape to make the city ungovernable through protests if services remained undelivered.

According to Jain (2001) numerous political contestations arise when individuals vie for the benefits that corrupt activity may generate. This study indicated that divisions had been evident in the eThekweni Municipality, due to conflict over who would make decisions concerning the City’s budget and inevitably the lucrative contract distribution. An evident split in the ANC was present in eThekweni, characterised by a struggle for power, prestige and control over public resources. Twala (2014) contends that at national, provincial and local levels, factionalism is evident within the ANC.

5.2.4 Measures for preventing, detecting and responding to corruption in the eThekweni Municipality

This study revealed that South Africa has multiple corruption fighting agencies and a strong legislation to combat and curb its effects (Rangata, 2008; Majila et al., 2014). Since the release of the Manase Report numerous measures have been instituted to combat corruption in the eThekweni Municipality. However, in reality, these have failed in their endeavour to combat corruption. This can be attributed to the lack of effective implementation and enforcement of law. Additionally, there is a lack of co-ordination between various anti-corruption organisations, rendering them inefficient and incapable of curbing corruption (*Public Service Commission, 2001; Sebudubudu, 2002; Rangata, 2008; Camerer, 2008; Ellero, 2015*).

This study indicated the various anti-corruption agencies and committees that were effective in the eThekweni Municipality. These included the PP, the Ombudsman, the ethics committee, risk committee, MPAC, CIU, the AG and SAPS (*Sebudubudu, 2002; Berning & Montesh, 2012*). However even these measures, in some instances, were noted to be ineffective and insufficient to deal with corruption. Challenges ranged from lack of follow-up with criminal investigations after findings, lack of legitimacy and political oversight, budgetary and expertise constraints and lack of capacity and man power (*Public Service Commission, 2001; Sebudubudu, 2002; Camerer, 2008; Rangata, 2008*). Similarly, Gumede (2011) contends that, on the surface, South Africa has the necessary anti-corruption rules, watchdogs and enforcement agencies, however these are not sufficient. Corruption flourishes where there is weak capacity in the enforcement agencies, or where there are gaps in the laws, and lack of political will.

The key players in combating corruption are civil society organisations and the media (Caiden et al., 2001). According to Holloway (2006), NGOs have an informative role to play for the public and to exert pressure on the government to act on corruption. The study revealed that some NGOs played a significant role in drawing attention to corruption in the eThekweni Municipality. They alert the public to cases of corruption and create levels of discomfort for those engaged in corrupt acts. However the study also found that NGOs lack authority and legitimacy. Similarly, Price (2003) contends that NGOs influence can be limited due to lack of authority, legitimacy and access.

The study revealed that the media has, to some degree, played an influential role in curbing corruption in the eThekweni Municipality. Through freedom of the press, corruption is exposed to the public and this creates a system of checks and balances for the government (Ahrend 2002; Brunetti & Weder 2003; Fardigh et al., 2011). However, the study also revealed that the media had also been neglecting its duty in reporting accurately. This is due to a number of reasons such as media houses being politically aligned, the declining quality of journalists and their training, and the threat of litigation.

5.3 Theoretical reflections

According to Dimant (2013), the impact of corruption is multifaceted and varies greatly across countries. The corruption discourse has developed prolifically over the years (Kajsiu, 2014), however there is little consensus on aspects of corruption, making it difficult to theorise. This is evident in this study on public procurement corruption in the eThekweni Municipality, as there is no distinct theory that can be used to understand corruption.

According to Rubinstein & Maravić (2010) the Weberian-Ideal Typical Approach sees corruption as a lack of rationalisation of the public service. Loopholes exist in the poorly developed bureaucratic system in which corrupt acts can occur. In South Africa, the public procurement sector is used as a policy tool to address the discriminatory and unfair practices of the past. Prior to 1994, this sector was geared toward large and established contractors, and it was difficult for new contractors to participate in government procurement procedures. Reforms in public procurement and the introduction of the SCM policy, were initiated to promote principles of good governance and to address the inconsistency in policy application, lack of accountability and supporting structures (Ambe and Badenhorst-Weiss, 2012). However, despite the employment of these measures, corruption in the public procurement sector in the eThekweni Municipality is rampant. Instead of creating an efficient service delivery system, a situation has been created in which the narrow élite accrue huge fortunes by means of ‘tenderpreneurship’, and poor service delivery is the common experience for a large proportion of citizens.

The Structural Functionalist approach sees society as a collection of coherent systems in which all societal problems have a function, including corruption (De Graaf et al., 2010). According to Waquet (1992) corruption can provide protection and influence for social groups with material wealth. In the case of public procurement corruption in the eThekweni Municipality, this could be portrayed through cadre deployment and cronyism in which tenders are repetitively given to selected individuals, specifically, those who show their allegiance to the ANC. Hence corruption in this sense is a means by which the ANC can maintain control over the resources of the eThekweni Municipality.

Some scholars argue that the Systems theory can be utilised to adequately explain corruption (Preston et al., 2002; Hiller, 2010). This theory identifies corruption as a result of the overlapping of systems, resulting in the abuse of another system’s logic. The overlapping of roles and systems were evident in the eThekweni Municipality at two different junctures. First, there is a blurring of lines between the political party and the state, making the state an extension of the political party, allowing for no accountability, transparency and the manipulation of SCM procedures. Additionally, the anti-corruption agencies suffer from overlapping mandates which affects their operating ability and hinders their efficiency in combatting corruption (*Public Service Commission, 2001*).

The Post Positivist Approach focuses on how corruption is socially constructed (De Graaf et al., 2010). In this theory, corruption has a social meaning and must be understood with reference to its social setting (Sissener 2001). In this study, a corruption conundrum was evident in the eThekweni Municipality, specifically, in the difficulty in characterising and proving corrupt acts.

The Public Choice Theory views corrupt officials as rational individuals who employ the most profitable course of action (De Graaf et al., 2010). In the public procurement sector, tenders are seen as a source of wealth, and an area in which loopholes and kickbacks can be acquired. Service delivery is imperative and is needed on a daily basis for the citizens of eThekweni Municipality. This explains why officials, councillors and bureaucrats capitalise on the loopholes in the SCM legislation to obtain kickbacks.

All these theories do not however adequately account for corruption in the public procurement sector in the eThekweni Municipality. These theories neglect to take into consideration the historical background of South Africa, which has resulted in service delivery deficits to the poor. Prior to 1994, public procurement was geared towards large and established contractors. It was a challenge for new contractors to participate in government procurement procedures. With the democratic dispensation public procurement has been used as a policy tool to address the discriminatory practices of the past (Ambe and Badenhorst-Weiss, 2012). Reforms and the SCM were instituted to promote principles of good governance and introduce a preference system to address the socio-economic objectives. However these have faced numerous challenges, and there is non-compliance with procurement and SCM legislation, as well as with tender procedures (Ambe and Badenhorst-Weiss, 2012). There has thus been poor service delivery to the citizens of eThekweni Municipality and the local government grapples with corruption in the public procurement sector. These theories also fail to provide an understanding of the factors that contribute to corruption in the eThekweni Municipality, such as the legacy of colonialism and the apartheid regime.

While there are a number of different theories that can provide insight into the corruption discourse, it has become apparent that corruption impacts on the most vulnerable sections of the society such as women, children, minorities and those who are poor (Gebeye, 2012). Corruption undermines the ideals of equality, justice and human dignity and violates the human rights of poor citizens through the diversion of public resources and the right to basic service delivery. In the eThekweni Municipality, corruption impedes service delivery, entrenching inequalities and fuelling dissatisfaction that citizens experience.

According to Gebeye (2012) corruption is a global challenge and its degree of severity varies from country to country. However, it is the poor in these countries that are most affected by corruption due to their powerlessness to change the status quo and their reliability on state resources to survive. This was exemplified in the eThekweni Municipality, as it is the poor and those reliant on basic service

delivery whose rights are violated. Corruption in the eThekweni Municipality results in large scale unauthorised, irregular and wasteful expenditure, in which billions of Rands were lost. Furthermore, corruption directly undermined the Constitution and the Bill of Rights as citizens were unable to access basic services such as housing and water, which they have a right to as per the Bill of Rights. Similarly, Olaniyan (2014) states that it is incontestable that corruption undermines the rights outlined in the Bill of Rights.

Instead of utilising the SCM processes and reforms to address the inequalities of the past, a new élite has been created due to cronyism, ‘tenderpreneurship’ and the manipulation of legislation, such as Section 36, which entrenches inequality. Cadre deployment in the eThekweni Municipality also contributes to human rights violations. Apart from preventing qualified and experienced officials from getting jobs, it has also created a situation in which incompetence and lack of expertise by officials has fostered inadequate service delivery to citizens of the Municipality. Thus, instead of legislation preventing corruption, loopholes were created and the system was manipulated to gain kickbacks which severely hampered service delivery to citizens.

With the release of the Manase Report in the eThekweni Municipality, numerous measures have been instituted to curb and prevent corruption in the eThekweni Municipality to ensure that the human rights of citizens are upheld. However these have largely failed in their duty to reduce corruption. It is the poor who are subject to the consequences of corruption, and it is for this reason that many embark on large scale service delivery protests. This was the case in the eThekweni Municipality when numerous communities engaged in violent service delivery protests in order to advocate for better service delivery and to highlight the inadequacies of the current government.

The media and NGOs also played a role in drawing attention to the human rights violations caused by corruption and have played an informative role in educating citizens on their human rights. Corruption in the public procurement sector is a grave issue that has many knock-on effects. Not only does it create a lack of transparency and accountability in public procurement processes, it delegitimises the government. It also allows for the manipulation of legislation for personal gain and redistributes money intended for the provision of public services into the pockets of the corrupt. It allocates tenders to individuals who do not carry out projects to specifications, or do not deliver the services at all. In its entirety, corruption in the public procurement sector results in poor service delivery to its citizens, which is a direct infringement of their human rights and is contrary to the Constitution of South Africa. Through the use of the human rights based approach to corruption, this study has drawn attention to the fact that corruption is not just the misappropriation of money or abuse of power. It emphasises that corruption has detrimental effects on citizens which can lead to human rights violations (Pearson, 2001).

5.4 Recommendations

Despite South Africa's comprehensive anti-corruption legislation and institutions, malfeasance continues to increase (CASAC, 2011a). After the Manase Report, the eThekweni Municipality introduced a myriad of committees and measures to curb corruption. However levels of corruption still remain high in the public procurement sector in the eThekweni Municipality. The following recommendations should be considered to address public procurement corruption in the eThekweni Municipality.

5.4.1 Procurement reform

Corruption in the public procurement sector in the eThekweni Municipality is rife. There need to be strict rules and vigilance pertaining to tender processes, such as in awarding tenders. Also, state officials conducting business with the Municipality should be blacklisted and punished. A re-evaluation of what can be classified as an emergency in terms of Section 36 is sorely needed.

Another area that needs serious attention in procurement reform is blacklisting. In the eThekweni Municipality, a blacklisting committee was formed to address corruption (*eThekweni Municipality*, 2015). However the effective and efficient blacklisting of companies who are corrupt is absent (SALGA, 2011). This has allowed companies who should be blacklisted to continue receiving contracts, amassing huge amounts of money, with little or inadequate service delivery to the public.

5.4.2 Developing skills and knowledge through education and teaching

Municipalities across South Africa face challenges in the application of the concept of SCM as well as the legislative requirements binding SCM (Migiro & Ambe, 2008). In the eThekweni Municipality many councillors have been found guilty of conducting business with the Municipality and they exhibited no recollection of codes of conduct, provisions of MFMA and SCM. Councillors and officials need to be educated on the law and legislation pertaining to the SCM. Furthermore, from this study it was noted that many councillors lack basic education which prevents them from carrying out their duties effectively and from understanding legislation and regulations. The government has instituted programmes to facilitate education programmes and ABET classes however councillors and officials need to be educated about corruption and ethics. This may build a strong and informed constituency against corruption (Manyaka & Nkuna, 2014) and promote and encourage ethical behaviour at a local government level.

5.4.3 Allocation of Contracts

An area that was plagued with corruption is the allocation of tenders in the SCM. Large-scale decentralisation has occurred within municipalities all over South Africa (Siddle, 2011).

Municipalities thus have bid adjudication, bid evaluation committees and public officials making the decisions on the allocations of tenders (Ambe & Badenhorst-Weiss, 2012). This places power in the hands of officials and can allow for bribery, kickbacks and ‘tenderpreneurship’. Greater oversight and transparency is needed throughout the procurement process to allow for the fair and equitable distribution of tenders in the Municipality. Alternatively, public officials should be prevented from issuing tenders (Zondi, 2012).

5.4.4 Reducing opportunities for corruption

It is imperative that the oversight and accountability institutions such as the AG and the PP are mandated with powers to take disciplinary action against corrupt individuals (Manyaka & Nkuna, 2014). With greater manpower and expertise these institutions could play a significant role in curbing corruption. People engage in corrupt activities as they know they can beat the system, however if the prevention and detection systems are strong, people are less likely to engage in corruption because the chances of being caught and punished are greater (Manyaka & Nkuna, 2014). Raising public awareness of the existence and consequences of corruption is also imperative. By educating the public on corruption and how to report it, the campaign against it will be advanced.

5.5 Conclusion

Corruption is a feature of both the developed and developing world and affects all citizens. Corruption is cancerous and contagious as it erodes the moral fibre of society. Malfeasance manifests itself in many forms in post-apartheid South Africa. However, corruption in the public procurement sector and the manipulation of tenders have become a grave challenge. Public procurement corruption in the eThekweni Municipality is a reflection of the challenges and manifestations of corruption experienced throughout South Africa, and globally.

Numerous social, economic and political consequences of corruption were evident in this study, nevertheless, the main implication of corruption in the procurement process is poor service delivery to citizens. This has resulted in human rights violations and citizens taking to the streets in violent service delivery protests in order to highlight their grievances and poor quality of life they experience. It is the poor of the eThekweni Municipality who face the detrimental impacts of corruption as they are reliant on the government for basic services for their survival. Therefore, in order for South Africa to fulfil its constitutional commitments to openness, transparency and basic services for all, there needs to be vigour and a renewed spirit to fight against the scourge of corruption. A holistic approach that identifies the implications of corruption for society is required in order to fully understand the true extent of corruption.

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APPENDICES

Appendix 1: Interview Guide

Collusion, Cadres and Corruption: A critical study of the procurement sector and corruption in local government the case of eThekweni Municipality.

Interview Guide for Councillors and Bureaucrats

1. Corruption has become a global crippling phenomenon that has dramatically increased in contemporary society. Do you agree or disagree with this statement and why?
2. What are the causes of corruption?
3. What are the social, economic and political implications of corruption?
4. How do you feel corruption in eThekweni infringes on the human rights of citizens?
5. Do you think enough is being done by the local/provincial/national government to address corruption?
6. Are you aware of measures that have been successful in curbing corruption?
7. Do you think the measures that have been implemented by the local/provincial/national government are effective?
8. What measures do you propose should be taken in order to curb corrupt activities?
9. Do you know of the Manase report and what is your opinion of the report?
10. What measures have been instituted to curb corruption post-Manase report?
11. Do you feel the tendering process in the eThekweni municipality is fair and transparent? Yes or no, and provide reasons for your answers.
12. Do you feel non-governmental organizations and anti-corruption organizations are doing enough to address corruption. Agree or disagree and why?
13. How does corruption effect your view of the government or the political party that is in power?
14. How do you feel individuals that engage in corruption should be dealt with?
15. In your view in which sector of government is corruption most rife and why?
16. Do you think there is a link between corruption, public protest and service delivery?

Appendix 2



14 May 2015

Ms Shanice Rajah 210519084
School of Agriculture, Earth and Environmental Sciences
Westville Campus

Dear Ms Rajah

Protocol reference number: HSS/0452/015M

Project title: Collusion, Cadres and Corruption: A critical study of the procurement sector and corruption in local government the case of eThekweni Municipality

Full Approval – Expedited Application

In response to your application received on 7 May 2015, the Humanities & Social Sciences Research Ethics Committee has considered the abovementioned application and the protocol have been granted **FULL APPROVAL**.

Any alteration/s to the approved research protocol i.e. Questionnaire/Interview Schedule, Informed Consent Form, Title of the Project, Location of the Study, Research Approach and Methods must be reviewed and approved through the amendment/modification prior to its implementation. In case you have further queries, please quote the above reference number.

PLEASE NOTE: Research data should be securely stored in the discipline/department for a period of 5 years.

The ethical clearance certificate is only valid for a period of 3 years from the date of issue. Thereafter Recertification must be applied for on an annual basis.

I take this opportunity of wishing you everything of the best with your study.

Yours faithfully

.....
Dr. Shenuka Singh (Chair)
Humanities & Social Sciences Research Ethics Committee

/pm

Cc Supervisor: Prof Brij Mahara
Cc Academic Leader Research: Professor Onesimo Mutunga
Cc School Administrator: Ms Marsha Manjoo

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Appendix 3: Consent form

Dear Sir / Ms

The title of this master's research is Collusion, Cadres and Corruption: A critical study of the procurement sector and corruption in local government the case of eThekweni Municipality. The aim is to critically investigate corruption in the procurement sector in local government with specific reference to the case of eThekweni Municipality. Four of the objectives in the research focus on specific cases of corruption in the procurement sector in the eThekweni Municipality, public perception of corruption in the procurement sector in eThekweni Municipality, assess the social, economic and political implications of corruption in eThekweni Municipality and examining the instruments and mechanisms that are used in preventing, detecting and responding to corruption and the effectiveness of such measures.

It will be highly appreciated if you a councillor in the eThekweni Municipality can help me- Shanice Rajah to obtain information through conducting an in-depth interview. This in-depth interview aims to obtain information from you a councillor in the eThekweni Municipality on your view of corruption. This interview will be recorded on an electronic device that is a

Dictaphone, however, all tapes will be kept in in secured locked safe. When the final draft of the thesis is produced all tapes will be incinerated and destroyed. The participation is voluntary and will be treated in a confidential manner. Your details will be kept confidential and there will be no way information can be traced back to you the participant. If you wish to opt out of the in-depth interview at any time you are free to do so. If you have any questions do not feel afraid to ask.

Declaration:

I (Full name of participant) hereby confirm that I understand the contents of this document and the nature of this research project and I consent to participation in this research project. I understand that I am at liberty to withdraw from the project at any time, should I so desire.

Additional Consent

I hereby consent to:

Audio-record my interview YES / NO

SIGNATURE OF PARTICIPANT

DATE

.....

.....

Researcher: Shanice Rajah Supervisor:

Brij Maharaj

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