



**UNIVERSITY** *of the*  
**WESTERN CAPE**

Anti-Corruption Initiatives in South Africa since 1994:  
A Critical Evaluation

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## **Faculty of Law**

### **Plagiarism Declaration**

I declare that ‘**Anti-Corruption Initiatives in South Africa since 1994: A Critical Evaluation**’ is my work and has not been submitted for any degree or examination in any other university or academic institution. All sources and materials used are duly acknowledged and are properly referenced.

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**Date: 25 November 2013**



## **ABSTRACT**

The legacy of apartheid may be likened to a Hydra. This mythical beast was rumoured to be large in stature, with poisonous breath. However, the trait it was better known for was that it possessed many heads and for every one head that was cut off, two would grow in its place. The elimination of the apartheid system effectively cut off the head of this hydra, severely wounding the beast but giving birth to various other terrors. Public sector corruption is one of those terrors.

As an individual who was too young to be a part of the battle against apartheid, I have recognised that there is still a battle that needs to be won. As corruption continually thwarts the efforts of those who died for the liberation of South Africa and hinders the upliftment and development of the State, it becomes necessary to combat this scourge. However, before going into battle one must first understand the battle arena. Thus, the purpose of this dissertation is to gain understanding as to how the South African Government has attempted to combat corruption by means of policy and legislation. The information gained during this process may be used to identify areas of weakness, which may be considered in re-strategising anti-corruption efforts. This battle against corruption needs to include all South Africans as public sector corruption has a negative impact on all who find themselves within our borders. Thus, we cannot call ourselves truly liberated before this enemy of good governance is defeated.

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I dedicate this dissertation to Eugene and Carol Kammies, and Pastors Kevin and Mary Eley. Thank you for serving as a constant inspiration. Further, I thank Professor Nicolaas Steytler and the Community Law Centre for guiding me along the path I sought to run from. I thank Mariam Adams and Pieter Koornhof for teaching me to look to the future, and my sister Kaylin for keeping a smile on my face. Furthermore, special thanks must go to Rochell Eley who is small in stature but a rock to me. To Daniel and Dianna Mosselini, my family, true friends and Lofdal Celebration Centre, I honour you for encouraging my dreams. To Pastors Mark William and Eric Abrahams, I would bow to their treasured mentorship. Most importantly, I thank God for every opportunity I have been graced with, and for His plans which always play out perfectly.



## ACRONYMS

ACA:	Anti-Corruption Arm
ACTT:	Anti-Corruption Task Team
COGTA:	Department of Cooperative Governance and Traditional Affairs
CPI:	Corruption Perceptions Index
DOJ:	Department of Justice and Constitutional Development
DPSA:	Department of Public Service and Administration
DPLG:	Department of Provincial and Local Government
FICA:	Financial Intelligence Centre Act
GCB:	Global Corruption Barometer
ICD:	Independent Complaints Directorate
IPID:	Independent Police Investigative Directorate
NACF:	National Anti-Corruption Forum
NDP:	National Development Plan
NPA:	National Prosecuting Authority
NPC:	National Planning Commission
PDA:	Protected Disclosures Act
PFMA:	Public Finance Management Act
PPA:	Public Protector Act
PRECCA:	Prevention and Combating of Corrupt Activities Act
PSC:	Public Service Commission
RTD:	Register for Tender Defaulters
SACU:	Special Anti-Corruption Unit

SAPS: South African Police Service

SIU: Special Investigating Unit

VOCS: Victims of Crime Survey

## **KEY WORDS**

Anti-Corruption

Corruption

Development

Evaluation

Government

Initiatives

Multi-level Government

Public Sector

South Africa



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## CHAPTER 1: Introduction

### 1. PROBLEM STATEMENT

South Africa, as a relatively new democracy, constantly grapples with high levels of perceived and actual corruption within its public sector. Plainly put, corruption may be perceived as dishonest or fraudulent conduct and abuse of power by those acting within the public sphere for self-benefit, or for the benefit of others.<sup>1</sup> All three spheres of government (national, provincial and local government) have had various attempts at combating corruption but have not as yet been able to eradicate this from the public sector.<sup>2</sup> National government has been very active in enacting anti-corruption legislation. The Public Service Commission has reported that despite the provision of appropriate laws and regulations, cases of corruption are being reported at a provincial level;<sup>3</sup> however, local government is seen as the weakest link with the majority of municipalities failing to receive clean audits, indicating the rife nature of corruption, fraud and maladministration.<sup>4</sup>

The Corruption Perceptions Index 2012 is a survey of 176 countries to ascertain the levels of perceived public sector corruption within each of those countries.<sup>5</sup> On a score of zero to one-hundred (0 – 100), with 0 being ‘Highly Corrupt’ and 100 being ‘Very Clean’, the survey showed South Africa being ranked 69<sup>th</sup> with a score of 43. According to this survey, the fact that South Africa scored below 50 shows the lacking in transparency and accountability within the public sector and high levels of perceived corruption.

The media has reported that corruption cost the taxpayer nearly one billion rand in the 2011–2012 financial year in South Africa. This has both a direct and indirect negative effect on the delivery of services by Government.<sup>6</sup> Investigations into various spheres of government have

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<sup>1</sup> SADC Protocol Against Corruption, art 1; Section 3 Prevention and Combating of Corrupt Activities Act.

<sup>2</sup> Section 40(1) Constitution of the Republic of South Africa.

<sup>3</sup> Public Service Commission ‘Report on Financial Misconduct for the 2009/2010 Financial Year’ available at [www.corruptionwatch.org.za/sites/default/files/Report%20on%20the%20Financial%20Misconduct.pdf](http://www.corruptionwatch.org.za/sites/default/files/Report%20on%20the%20Financial%20Misconduct.pdf) (accessed 21 November 2013).

<sup>4</sup> ‘Local government the weakest link’ available at <http://www.corruptionwatch.org.za/content/%E2%80%98local-government-weakest-link%E2%80%99> (accessed 21 November 2013).

<sup>5</sup> ‘Transparency International’ available at <http://www.transparency.org/whatwedo/publications> (accessed 21 November 2013).

<sup>6</sup> Maswanganyi N ‘Officials ‘let off’ as public service theft nears R1bn’ *Business Day* 2 May 2013 available at <http://www.bdlive.co.za/national/2013/05/02/officials-let-off-as-public-service-theft-nears-r1bn> (accessed 21 November 2013).

indicated instances of highly irregular spending and maladministration,<sup>7</sup> public officials being charged with several counts of corruption and fraud,<sup>8</sup> and considerable financial loss being suffered by the people of South Africa as a result of this.

Under these circumstances the South African Government has attempted the implementation of various measures dedicated towards combating corruption. This includes the ratification of the United Nations Convention Against Corruption on the 22<sup>nd</sup> of November 2004, protecting whistle-blowers by means of the Protected Disclosures Act 26 of 2000 (PDA), preventing monetary fraud by means of the Financial Intelligence Centre Act 38 of 2001 (FICA), and fighting corruption by means of the Prevention and Combating of Corrupt Activities Act 12 of 2004 (PRECCA). However, these measures taken by Government have had very little impact on the eradication of corruption within the public sector. Public sector corruption is increasing.

According to a ten-year analysis on South African corruption, the Corruption Perceptions Index indicates that the State has obtained an average score of forty-six out of a hundred (46 out of 100), never exceeding fifty-one (51).<sup>9</sup> Thus, it can be deduced that regardless of the various anti-corruption initiatives in place since the country's democratic era, Government is not winning the fight against corruption and its anti-corruption policies, laws and strategies are not evolving fast enough to effectively combat corruption.

The National Development Plan has noted that public sector corruption undermines good governance practices, thereby hindering development and socio-economic transformation which is much needed, given the South African context.<sup>10</sup> Public officials need to account to the people and maintain high standards of professional ethics so that the poorest people in the country do not have to suffer due to corrupt activities that result in non-delivery of services. Perceived corruption has resulted in strike action taken by citizens to demand that the

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<sup>7</sup> 'Probe into eThekweni a wake-up call – Mayor' *News 24* 8 February 2012 available at <http://www.news24.com/SouthAfrica/Politics/Probe-into-eThekweni-a-wake-up-call-mayor-20120208> (accessed 21 November 2013).

<sup>8</sup> Evans S 'ANC says it won't suspend John Block' *Mail & Guardian* 27 April 2013 available at <http://mg.co.za/article/2013-04-21-anc-says-it-wont-suspend-john-block> (accessed 21 November 2013).

<sup>9</sup> Corruption Perceptions Index, 2003 – 2012 available at <http://www.transparency.org/research/cpi/overview> (accessed 21 November 2013).

<sup>10</sup> National Planning Commission *National Development Plan – Vision 2030* (2012).

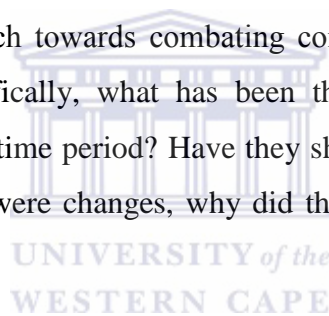
government carry out its mandate as a provider of services.<sup>11</sup> Some of these strikes have turned violent with potential harm to innocent bystanders.<sup>12</sup>

Given this information, it becomes clearer as to why South Africa has needed constant evolution in combating corruption. Such evolution would be achieved most effectively through first understanding why past anti-corruption initiatives have fallen short in achieving their goals. The problem the country faces and which this research seeks to address is that despite all these initiatives, corruption has continued to rise.

## 2. RESEARCH QUESTION

This research paper seeks to answer the following questions with regard to South African anti-corruption initiatives.

How has South Africa's approach towards combating corruption been developed over the past twenty years? More specifically, what has been the character of the various anti-corruption initiatives within this time period? Have they shown tendencies of consistency or evolution in approach? If there were changes, why did the system evolve in this particular way?



## 3. ARGUMENT

As corruption became more prevalent throughout organs of the public sector, such as the South African Police Service (SAPS),<sup>13</sup> Government developed three approaches to combating this scourge within its first four democratic presidencies. First, anti-corruption initiatives were based on the criminal justice system. Thus, corrupt acts could result in the prosecution of the accused. Second, agencies like the Special Investigating Unit (SIU) provided the State with civil law means of recovering assets lost due to corrupt activity.<sup>14</sup> The Anti-Corruption Task Team (ACTT) and the Special Anti-Corruption Unit (SACU) are examples of governmental agencies which were designed to support the corruption

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<sup>11</sup> Bauer N 'Zamdela residents vow to fight on in Sasolburg' *Mail & Guardian* available at <http://mg.co.za/article/2013-01-23-00-zamdela-residents-vow-to-fight-on> (accessed 21 November 2013).

<sup>12</sup> 'DA youth leader's shack torched' *ENCA* 1 July 2013 available at <http://www.enca.com/south-africa/da-youth-leader-goes-hiding> (accessed 21 November 2013).

<sup>13</sup> Newham (2002) 3.

<sup>14</sup> Special Investigating Unit and Special Tribunals Act 74 of 1996.

combating mandate of the SIU.<sup>15</sup> Third, Government sought to eradicate corruption by instituting internal policies which created penalties for the corrupt. Disclosing the names of the corrupt became a means of deterring future acts of corruption.<sup>16</sup>

Despite these efforts by the State it becomes noticeable how these various anti-corruption measures were implemented selectively and inconsistently.<sup>17</sup> Such selective enforcement of anti-corruption law would do little for Government's efforts towards realising a resilient anti-corruption system based on accountability and transparency.<sup>18</sup> This dissertation will periodically track the development of South Africa's anti-corruption initiatives. It will be argued that despite the current extensive framework in place that corruption has thrived due to a lack of effective implementation of anti-corruption initiatives, and the lack of political will to ensure the elimination of corruption.

#### 4. LITERATURE REVIEW

In accounting for the published works on corruption within South Africa this literature review will categorise the writings of other authors on this subject under particular prevailing themes.

##### *Causes of Corruption*

In assessing the causes of corruption, argument exists which alleges that corruption is entrenched within South Africa, and is inherited from the previous, oppressive apartheid system. In a historical context, Ellis notes South Africa has a history of corruption which precedes its democratic era, as evidenced by the 'Muldergate' scandal.<sup>19</sup> However, Lodge finds the apartheid system to have been too industrialised and coercive to make it susceptible to political corruption.<sup>20</sup> Arguably, the democratisation of South Africa introduced the State's susceptibility to corruption which prompted the need to institutionalise bodies charged with combating corruption, such as the Public Protector, the Office of Serious Economic Offences

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<sup>15</sup> Special Investigating Unit 'What do we do' available at <http://www.siu.org.za/what-do-we-do> (accessed 21 November 2013).

<sup>16</sup> Davies R 'Government to name and shame corrupt officials' *Mail & Guardian* 24 February 2013 available at <http://mg.co.za/article/2013-02-24-government-to-name-and-shame-corrupt-officials> (accessed 21 November 2013).

<sup>17</sup> Basdeo (2010) 389-390.

<sup>18</sup> Chapter 14 National Planning Commission 'National Development Plan – Vision 2030' (2012).

<sup>19</sup> Ellis (1996) 171-172.

<sup>20</sup> Lodge T (1998) 157.

(OSEO) and inter-departmental investigative units.<sup>21</sup> Others may conclude that corruption exists within the public sector because of the symbiotic relationship it has with organised crime. This relationship, according to Minaar, notes the need for further anti-corruption units such as the Investigative Directorate for Organised Crime to be put in place and for provision of toll-free hotlines for whistle blowers to disclose acts of corruption in confidence.<sup>22</sup>

The new democratic South Africa also introduced great potential for corruption within governmental departments. Hyslop's approach in this regard is to analyse the administrative and political legacies which resulted in corruption taking place.<sup>23</sup> Thus, he concludes that nepotism, favouritism, and appointments based on political party loyalty created a platform for corruption within various governmental departments. Others, such as Fraser-Moleketi, consider the context of corruption in Africa and note corruption as being ingrained within the psyche of the public sector, beyond the individual, creating the breeding ground for corrupt activity.<sup>24</sup> In discussing the social causes of corruption it becomes evident that many writers do not question the evolution of anti-corruption initiatives, and only vaguely discuss the means used in attempting to eradicate public sector corruption.

#### *Anti-Corruption Initiatives*

Joint ventures geared towards combating corruption saw the emergence of the National Anti-Corruption Forum (NACF).<sup>25</sup> Ramsingh writes on how corruption is a societal problem which needs to be addressed by all members of society.<sup>26</sup> This has led to the establishment of the national anti-corruption hotline and the formation of the National Coordinating Structure with the authority to effectively lead, coordinate and monitor the National Anti-Corruption Programme. However, this article is limited to a discussion on the research on the causes of corruption and the factors contributing to its prevalence within the public sector. There is inadequate comprehensive insight into what other anti-corruption initiatives were in place at the time of the establishment of the NACF, and what prompted the evolution of anti-corruption initiatives within this period.

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<sup>21</sup> Lodge T (1998) 187.

<sup>22</sup> Minaar (1999) 1 – Private sector crime such as drug smuggling, dealing in legal firearms and stolen vehicles is made possible by cooperation from actors within the public sector.

<sup>23</sup> Hyslop (2005) 773-785.

<sup>24</sup> Fraser-Moleketi (2009) 331.

<sup>25</sup> The National Anti-Corruption Forum comprises of three sectors; namely civil society, business and government available at <http://www.nacf.org.za/> (accessed 21 November 2013).

<sup>26</sup> Ramsingh (2006) 1.

As corruption can take place in the workplace, various writers have commented on how employees are to be protected when making disclosures on perceived or real corrupt activity. Le Roux puts forth the theory that employees could be useful in uncovering corrupt activities. Here, the feasibility of the Protected Disclosure Act (PDA) is discussed in relation to the then Prevention of Corruption Bill of 2002, and the Labour Relations Act.<sup>27</sup> The PDA, in its objectives, provisions and practicality, is discussed in detail by Vettori who expands on how the Act could be used to counter corruption.<sup>28</sup> However, neither of these writers have a broad scope in discussing how the means of combating corruption have evolved or developed since democracy, and the motivations for that change.

### *Sector Corruption*

Public procurement refers to a government purchasing goods and services which it requires to function and meet its service delivery obligations. Williams notes the need to eradicate corruption from public procurement and puts forth the measure to address this as being administrative in the exercise of discretion, regulatory in the provision for legislation, and social in the shaming of the corrupt.<sup>29</sup> Excluding people previously convicted of corruption from public procurement processes is also seen as a viable means of combating corruption within this sector.<sup>30</sup> Authors have relied primarily on the Prevention and Combating of Corrupt Activities Act (PRECCA) and the Public Finance Management Act (PFMA) in their writings. This limitation excludes the consideration as to how administrative, legislative and societal means have developed within this anti-corruption initiative framework.

Corruption within the South African Police Service (SAPS) is not without controversy as it has been found to be the second most corrupt department in the public sector.<sup>31</sup> Newham focuses on the SAPS Anti-Corruption Unit from 1996 to 2001, which was an internal unit geared towards the effective prevention and investigation of corruption within the SAPS. Despite its resounding success at combating the widespread corruption within the SAPS, it was disbanded and its functions were absorbed into the Organised Crime Unit (OCU).<sup>32</sup> While SAPS corruption plagues the public sector, writings on this topic provide insight

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<sup>27</sup> Le Roux (2004) 159.

<sup>28</sup> Vettori (2009)292-304.

<sup>29</sup> Williams et al (2007) 342.

<sup>30</sup> Williams (2007) 1.

<sup>31</sup> Masiloane (2007) 47.

<sup>32</sup> Basdeo (2010) 394-395. Further attempts at utilising bodies such, as the Independent Complaints Directorate (ICD), and Community Police Forums (CPFs) was not an overall success at curbing corruption within the SAPS.

primarily into the anti-corruption initiatives which affect the running of the SAPS, excluding a more developmental evaluation of anti-corruption initiatives within South Africa.

The Government of South Africa has promised the people access to housing on various occasions. However, the roll-out of these houses is not without high levels of bureaucracy and corruption. Rubin notes that a sector of the population categorises government housing delivery programmes as being corrupt and prone to maladministration.<sup>33</sup> Thus, despite the amount of time and funding fed into anti-corruption initiatives, the public sector is deemed by some to be rife with nepotism, fraud, bribery and corruption with regard to housing delivery.<sup>34</sup> Consideration on how legislation, policies, and strategies were used to combat corruption and how these three means have had to evolve to fit the climate of corruption prevalent at a particular period in contemporary South Africa is research not yet thoroughly conducted within the context of South African jurisprudence.

This research is unique in that instead of having a limited view on the causes of, joint programmes for, remedies for, or sectorial forms of corruption, it embarks on a broader study which considers the nature of the various South African anti-corruption initiatives for the past twenty years. It encompasses a study into how these initiatives have evolved over this period, and the reasons therefor. This approach has not been explored before and the author submits that this constitutes new knowledge on the subject matter of combating corruption within the South African public sector.

## **5. METHODOLOGY**

In answering the question in each chapter, various sources will be consulted in compiling a comprehensive study.

As the question presupposes the review of policy and legislation, the primary source of information for these reviews will be policy documents, legislation, and published strategy documents on anti-corruption from 1994 to 2013.

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<sup>33</sup> Rubin (2011) 479.

<sup>34</sup> Rubin (2011) 483.

In addition, the writings by scholars who have contributed to combating corruption within South Africa, and various, reputable international opinions on corruption within South Africa will be considered.

Furthermore, the author will consider the positions of various South African independent bodies on corruption within South Africa as well as newspaper articles. Examples of these independent bodies include the Independent Complaints Directorate, the Office of the Public Protector and the Public Service Commission.

## **6. CHAPTER OUTLINE**

Chapter 2: 1994 – 1998 – The development of anti-corruption initiatives within the Mandela administration will be considered. An evaluation on the nature of these initiatives and the reasons for its evolution will be uncovered and explored.

Chapter 3: 1999 – 2003 – The Mbeki Administration saw great development in terms of anti-corruption policy, strategy and legislation. This will be unravelled when discussing how these measures were implemented, and what prompted the further development of anti-corruption measures by Government.

Chapter 4: 2004 – 2008 – The Mbeki/Motlanthe presidency noted great efforts by various organs of the State in combating corruption. Within this period political corruption will be explored as a matter of substantial concern.

Chapter 5: 2009 – 2013 – The Zuma administration period has been under scrutiny with regard to the increase in perceived public sector corruption. Nonetheless, important developments within the public service in fighting corruption have been implemented during this time. These developments will be explored in answering this research question.

Chapter 6: Conclusion – Herein, the research question be answered by taking cognisance of the findings of the preceding chapters.

## **CHAPTER 2: The Democratic Government: The Mandela Presidency – 1994 to 1998**

### **1. INTRODUCTION**

The Presidency of Nelson Mandela represented a unique period in South African history where black members of society were granted a platform to engage freely in all areas of the State without the risk of arbitrary exclusion. Within this period the new, democratically elected government took its first steps towards combating corruption by establishing certain safeguards against this scourge within the public sector.

Three aspects of corruption will be analysed in each of the four presidencies; namely, what the perception was of corruption; whether there were policy initiatives geared towards combating corruption, and whether those policy initiatives resulted in anti-corruption legislation. Overall, this chapter will explore the character of the anti-corruption measures within this period, and how those measures approached this topic within the Mandela era.

### **2. PERCEPTIONS OF CORRUPTION**

Corruption may not have been categorised as an urgent matter during this period, but that does not indicate that it was not an issue which warranted attention by the various public sector role players. Perceived corruption within the former Transkei and Ciskei, now Eastern Cape Province, saw the formation of the Heath Commission which was charged with combating corruption. Writers submitted that three political developments seemingly promoted corruption within this period; namely, the decentralisation of State administration, the introduction of market values into the public administration, and the growing cost of political competition.<sup>35</sup> The truth of these assumptions will not be explored within this chapter. Instead, the perception of corruption within this period will be explored.

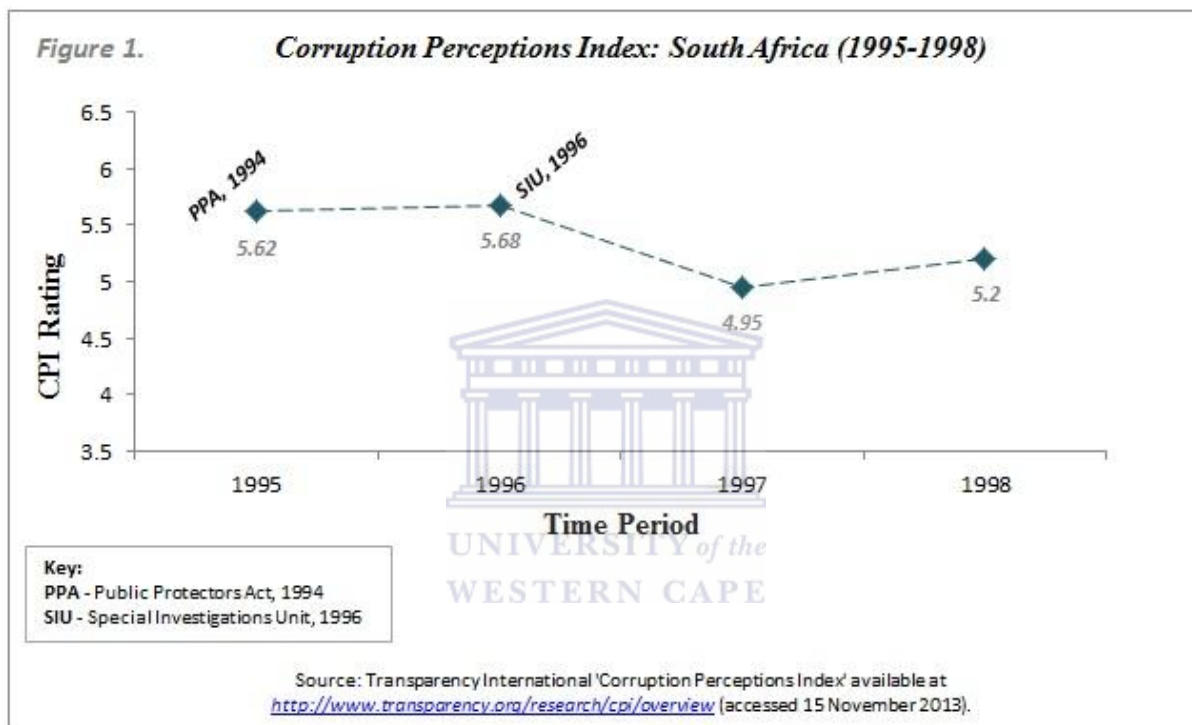
A study of the earliest findings of the Corruption Perceptions Index (CPI) between the years 1995 and 1998 shows that the global perceptions of corruption in South Africa favoured the view that public sector corruption was high but able to be managed and eradicated by the implementation of sound anti-corruption policies and strategies. As shown in Figure 1, the State scored an average of 5.36 points out of 10, and only once did South Africa's score dip to below five points. Scores above five points indicate that while the perception of corruption

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<sup>35</sup> Lodge T (1998) 161.

may be high there exist certain levels, albeit not high levels, of public sector accountability and transparency. Within this period the CPI placed South Africa in the same category of perceived corruption as Malaysia, Taiwan, South Korea and Poland. This perception of corruption is further substantiated by Statistics South Africa's Victims of Crime Survey (VOCS) of 1997 which noted that only two per cent of the participants to the study had been victimised by some form of corruption in the country.<sup>36</sup>

Figure 1.



While the rising issue of corruption is identified within this period, it would not appear to be a concern expressed within all organs of the State. The way in which governmental policy addresses corruption in a minimalistic manner supports this point. The role of governmental policy in the fight against corruption will now be discussed.

### 3. ANTI-CORRUPTION POLICY

Policy initiatives within this period seemed to coincide with Government's overall focus on restructuring the public sector. Combating corruption and the promotion of accountability and

<sup>36</sup> Statistics South Africa 'Victims of Crime Survey' (1998).

transparency were notions raised within governmental policy in brief and vague terms which did not comprehensively provide a framework on how Government resolved to tackle public sector corruption. This will be illustrated by reference to three unique policy documents researched and released between 1994 and 1998; namely, the White Paper on Transforming the Public Service, 1995,<sup>37</sup> the White Paper on Human Resource Management in the Public Sector, 1997,<sup>38</sup> and the White Paper on Local Government, 1998.<sup>39</sup>

### *The Public Sector*

The White Paper on Transforming the Public Service was a framework document which highlighted that the public sector was in need of administrative reform. The objectives of this White Paper were to identify the weaknesses and challenges within the public service, to provide broad solutions to these issues, and to provide a framework which Government would use to base future legislation on. Two chapters within this document – chapters 12 and 15 – are relevant for the purposes of this discussion.

Chapter 12 of this White Paper focused on the means of enhancing accountability within the public sector, both internally and externally. Internal measures towards improving accountability were noted within the paper as catering for more participatory approaches to decision making within the government, in line with delivery of services. External means of improving accountability were noted as taking necessary steps to ensure that parliamentary scrutiny, by means of a relevant portfolio committee, be provided for. External measures may also be enhanced by collaborating with governmental agencies such as the Auditor General and the Public Protector. All members of the public were to have easy access to information, irrespective of their levels of literacy. The document went further and advocated for the establishment of monitoring and evaluation processes within the public service, thereby ensuring that decisions would not be taken without due regard to their. Legislation was to stress that public officials were to uphold the expressly required levels of accountability to the State. Such focus on accountability has the potential of preventing corruption by instilling good governance within the public sector.

Chapter 15 was concerned specifically with tackling corruption in the public sector. Here the government expressed brief concern over public sector corruption. To deal with the matter, a systematic programme was proposed to prevent corruption and punish the offenders. This

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<sup>37</sup> *White Paper on Transforming the Public Service* (GN 1227 in GG 16838 of 15 November 1995).

<sup>38</sup> *White Paper on Human Resource Management in the Public Sector* (3 December 1997).

<sup>39</sup> *White Paper on Local Government* (9 March 1998).

was termed to be the Anti-Corruption Arm (ACA). The ACA was a programme to be managed by the Public Service Commission, the Public Protector and the South African Police Service (SAPS) and to use these structures to tackle corruption. However, the paper did not go further in explaining just how the ACA would execute its mandate, nor did the authors use this space to advocate for new legislation to give effect to the proposed anti-corruption initiative. It has also become necessary to note within this discussion that, as time progressed, Government did not implement a systematic anti-corruption programme. The question of the efficacy of this programme will be analysed in the forthcoming chapters.

### *Human Resource Management*

Human resource management within the public sector was an important factor in combating corruption. The absence of a dedicated focus on human resource management made it increasingly necessary to ensure that those who formed a part of the public service possessed the necessary capacity to hold a particular position and had previously not committed acts of corruption. The White Paper on Human Resource Management in the Public Sector focused on enhancing the future of human resource management within the public sector. Amongst the identified key areas for improvement were two areas which are relevant for this discussion; namely, holding public servants accountable for their actions, and the need for the public sector to conduct its business professionally, transparently and ethically.

These objectives of the White Paper were based on the principles of fairness,<sup>40</sup> equity, accessibility,<sup>41</sup> transparency,<sup>42</sup> accountability, participation and professionalisation. Special emphasis was placed upon greater accountability and more competent human resource management within the public sector. The White Paper advocated for there to be no manipulation of the prescribed criteria for employment of public officials.<sup>43</sup> Theoretically, by adhering to these principles, both poor and corrupt performers would be excluded from the public service.

### *Local Government*

The White Paper on Local Government made reference to the ways in which corruption was to be curbed specifically within local government. In identifying that local government has a developmental role to play within South Africa, the paper argued that this role was to be

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<sup>40</sup> Section 9(1) Constitution of South Africa.

<sup>41</sup> Section 32 Constitution of South Africa.

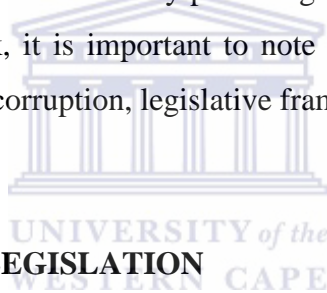
<sup>42</sup> Section 216 Constitution of South Africa.

<sup>43</sup> *White Paper on Human Resource Management in the Public Sector* (1997) 12-15.

monitored and supported by provincial government. This notion was based on section 139 of the Constitution which permitted provincial government to intervene in the affairs of local government where, amongst other matters, it lacked the capacity to carry out its duties. These powers of intervention were noted as a means of providing a safeguard against corruption and maladministration within local government, where local government failed to prevent these social ills.

This White Paper further argues that the codes of conduct which bind the actors within local government were to be developed and/or revised to prohibit corruption and financial and ethical misconduct. Furthermore, local government was to enhance its levels of accountability, transparency and good governance and, by so doing, enhance the accounting and financial reporting procedures within municipalities in order to minimise opportunities for corruption and malpractice.

As policy initiatives were limited in effectively providing for the establishment of a national anti-corruption policy framework, it is important to note whether legislation has filled this gap. The development of an anti-corruption, legislative framework will now be unravelled.



#### **4. ANTI-CORRUPTION LEGISLATION**

Against the background provided with regard to governmental policy writings, and the vague petitions by various governmental departments on combating corruption, legislation will now be analysed.

Within the five-year presidency of Nelson Mandela, the South African Parliament enacted more legislative measures which were indirectly intended for the elimination of public sector corruption than measures expressly designed as an anti-corruption initiative.

##### *Public Protector Act*

The Interim Constitution of 1993 introduced the office of the Public Protector as a means of strengthening constitutional democracy and of maintaining an efficient and proper public service.<sup>44</sup> The office came into being on 1 October 1995. The Constitution of 1996 described this office as having the power to investigate State affairs on the public administration, to report on these affairs, and thereafter to take appropriate remedial action where it was

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<sup>44</sup> Chapter 8 Constitution of the Republic of South Africa Act 200 of 1993.

deemed necessary.<sup>45</sup> The Public Protector Act of 1994<sup>46</sup> (PPA) gave legislative effect to the already established office, and placed a duty on the public protector to investigate matters of, and protect the public against, intergovernmental maladministration and various other unlawful acts performed by those within the public sector.<sup>47</sup> This was, arguably, an indirect means to combat corruption within the new democratic South Africa, by providing the State with an office designed to uphold notions of good governance as well as an accountable and transparent public sector. However, the functions of the public protector were to be deemed broad enough to encompass investigation into the commission of acts of corruption within the public sector, as this office has played a significant role in the fight against corruption.

The Public Protector Act described this governmental agency as being an investigative body geared towards uncovering the truth in matters of alleged corruption and maladministration within the government or any institution where the State is the majority or controlling shareholder.<sup>48</sup> This office would have wide powers of investigation in order to obtain evidence which would be necessary to determine whether the allegations with regard to corrupt activity were true or not. Such evidence includes the collection of documentation, and even the calling of witnesses to present evidence within a particular setting.

The public protector reports its findings to a designated parliamentary committee bi-annually.<sup>49</sup> Thereafter, depending upon the seriousness of the findings, Parliament may decide on the appropriate steps to take with regard to proven findings of corruption.

While this office has been groomed to play an important role in ensuring that the governance of the State is not without independent scrutiny, it cannot be argued that this office may be deemed to be a direct anti-corruption vehicle. While investigating allegations of corruption may well be within its mandate, the public protector's functions were not singularly geared towards the eradication of corruption from within the public sector. However, this office was effective in facilitating Government realising its desire for a public sector where good governance practices are realised.

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<sup>45</sup> Sections 182-183 Constitution of South Africa (1996).

<sup>46</sup> Public Protector Act 23 of 1994.

<sup>47</sup> Preamble Public Protector Act.

<sup>48</sup> Section 7 Public Protector Act.

<sup>49</sup> Section 8 Public Protector Act.

### *Special Investigating Unit and Special Tribunals Act*

The South African Government took a proactive stance against corruption when enacting the Special Investigating Units and Special Tribunals Act of 1996.<sup>50</sup> The Special Investigating Unit (SIU) was created for the purpose of investigating serious malpractices or maladministration within the public sector. The Tribunals were to be charged with adjudicating the civil matters emanating from these investigations. In this regard, the SIU became the custodian of good governance principals within the public sector. This was the first notable, governmental, anti-corruption initiative within South Africa which would operate within every sphere of the public sector.

The SIU was the successor to the Heath Commission which was established in 1995 to investigate corruption and maladministration in the Eastern Cape Province<sup>51</sup> and was headed by the then Judge Willem Heath.<sup>52</sup> The Heath Special Investigating Unit was appointed in terms of the Act in order to provide the machinery to tackle maladministration and corruption within the public sector in a responsive manner. The Unit would investigate matters from a civil perspective and institute action in the Special Tribunal. Criminal matters which arose out of these investigations would still have to be handled by the National Prosecuting Authority as the Act which created the SIU made no provision for the SIU to investigate crime or prosecute suspects.

Section 4 of the Act spells out the functions of the Unit more comprehensively. These functions included the investigation of alleged corrupt activity, to collect evidence regarding the matters of the investigation and to present such evidence to a Special Tribunal. Furthermore, if such evidence related to the commission of a criminal offence then it was to be referred to the relevant prosecuting authority. Thus, it is important to note that this Act makes reference to both civil and criminal procedures as a means of combating corruption within the public sector. However, the SIU only come into operation in 1998.

When the Heath SIU came into effect it used various tools in combating corruption. This included the use of internal controls and audits, linking with banks in order to trace funds,

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<sup>50</sup> Special Investigating Units and Special Tribunals Act 74 of 1996.

<sup>51</sup> Heath Special Investigating Unit: Annual Report (1998) Annexure 1, 'Cases successfully completed or in respect of which orders were granted'.

<sup>52</sup> Heath Special Investigating Unit 'Annual Report' (1998) 6: 'Based on the experience of the Heath Commission, the predecessor to the Heath Special Investigating Unit and the Special Tribunal, which was established during 1995 in the Eastern Cape Province to investigate corruption, maladministration, etc. and also based on the need for such a public service on a national basis, Act 74 of 1996 was legislated by Parliament during November 1996.'

and gathering evidence from informers.<sup>53</sup> While the methods used by the Unit were not fool proof, they certainly provided the initial means for corruption eradication.

#### *Witness Protection Act*

The Witness Protection Act of 1998 was not a direct anti-corruption initiative but it provided protection to witnesses to a criminal offence, where they believed that their safety or the safety of relatives was threatened by another known or unknown individual, or a group of people.<sup>54</sup> The same applied with regard to civil proceedings in which a protected person was a party or witness. Item 14 of the Schedule to the Act offered protection to an individual for any offence relating to exchange control, corruption, extortion, fraud, forgery, uttering or theft. However, the Act itself was not centred on combating corruption, but on protecting all witnesses to crimes.

#### *Public Protector Amendment Act*

The Public Protector Amendment Act of 1998 created a more direct approach which was taken by the public protector in investigating public sector corruption and maladministration.<sup>55</sup> The amendment to Section 6 of the principal Act granted the public protector the discretion to resolve any dispute within its mandate or rectify an omission by means of mediation, conciliation, negotiation, advising the complainant, or by any other means which may be expedient within the circumstances. Furthermore, should the investigation reveal evidence with regard to the commission of an offence, and then the public protector was to bring this to the attention of the relevant prosecuting authority within the Republic. This approach goes beyond merely investigating corrupt activity, as was the status quo before the amendment. The office of the public protector would now have the ability to resolve matters of corruption within the public sector; and where the matter was of a criminal nature it would then be handled in terms of the criminal justice system of that time. This indirect means of combating would have the effect of advancing the South African jurisprudence on fighting corruption.

With regard what is noted above, it may be concluded that the main and only direct anti-corruption initiative instituted by Government within the Mandela Administration was the establishment of the Heath Special Investigating Unit and the Special Tribunal. Here, Government took an active and deliberate stance against public sector corruption. Upon

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<sup>53</sup> Heath Special Investigating Unit 'Annual Report' (1998) 1-7.

<sup>54</sup> Witness Protection Act 112 of 1998.

<sup>55</sup> Public Protector Amendment Act 113 of 1998.

coming into power in 1998, the Heath SIU investigated each province within the Republic and recovered R6 258 010, 00 worth of funds which would otherwise have been lost due to corruption and maladministration.<sup>56</sup> However, what is not evident from the reports made to Parliament by the Unit is how much money was suspected to have been lost to corrupt activities.

During the first five years of the new democratic South Africa certain steps were taken to combat corruption. However, despite all of the preparation and thought that went into the planning of the aforementioned pieces of legislation for eradicating corruption from within the public sector, they lacked instruction on the manner of implementation. Thus, the absence of an official anti-corruption strategy which would have informed citizens on how to make use of the legislation set in place, could have contributed to a decrease in levels of perceived corruption within South Africa. While this may have had a negative impact on laws such as the Witness Protection Act, as individuals would not have been sure of how the Act would be implemented, other Acts which were not reliant on citizens as primary enforcers of anti-corruption law would not have laboured under such hindrances as Government would have been directly responsible for their implementation. This does not, however, indicate that the government had not encountered its own hindrances in implementation of legislation.

The strategy implemented by the public protector affords the office investigatory powers, and powers of adjudication. The Special Investigations Units and Special Tribunals maintain similar powers as well. The SAPS maintains its investigatory powers, but may not, as yet, internally adjudicate matters of corruption as the evidence of this could be used in the criminal prosecution of the perpetrator of the crime.

While civil liability may befall the perpetrator of corrupt activity it is important to note that corruption is a criminal offence in terms of the Corruption Act of 1992<sup>57</sup> and the Prevention of Organised Crime Act of 1998<sup>58</sup>. Thus, the collection of evidence of corrupt activity would result in the criminal prosecution of the alleged perpetrator in terms of South African Criminal Procedure. However, the SIU maintains its power to implement civil action with regard to the recovery of assets lost due to corrupt activity.

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<sup>56</sup> Heath Special Investigating Unit 'Annual Report' (1998) 13.

<sup>57</sup> Preamble Corruption Act 94 of 1992 'To provide anew for the criminalization of corruption and for matters connected therewith'.

<sup>58</sup> Item (14) Schedule 1 Prevention of Organised Crime Act 121 of 1998.

Therefore, the indirect strategies implemented by Government to combat corruption were premised, if not reliant, upon the criminal justice system. The SIU, as a direct anti-corruption initiative, called for the investigation of corrupt activity to be followed by civil liability for the perpetrator. As the SIU had no criminal jurisdiction to base its investigations on, any criminal prosecution would have to be instituted by the National Prosecution Authority of South Africa.

## **5. CONCLUSION**

South Africa's initial approach to combating corruption within the Mandela era incorporated minimal anti-corruption policy development but saw various attempts being made by the legislature to form the beginning of what would later be known as the multi-agency anti-corruption system of South Africa. With South Africa's average CPI score being above five points during this period it may be argued that while perceptions of corruption were not necessarily too low, there still existed a duty for anti-corruption initiatives to take effect so as to guard against the increase in the perception of corruption. Whether these initiatives had the effect of improving these perceptions will be considered in the next chapter. However, it is accurate to say that anti-corruption initiatives within this period incorporated elements of criminal justice, civil liability, and governmental agency investigation.

## CHAPTER 3

### The Second Democratic Government: The First Mbeki Presidency – 1999 to 2004

#### 1. INTRODUCTION

When President Nelson Mandela declined to run for a second term of office, he was succeeded by Thabo Mbeki. It was soon realised by the Mbeki government that corruption was becoming increasingly present within the broader public sector. Government's policies thus became more focused on the goal of curbing corruption, and anti-corruption legislation bolstered the legal support system in eradicating public sector corruption. However, consideration must be given as to whether these efforts had the effect of improving perceptions of public sector corruption or not. Police corruption became a matter of particular concern during this period,<sup>59</sup> and this chapter will explore how Government resolved to deal with the matter.

This chapter illustrates and compares perceptions on corruption, noting how they changed from the Mandela to the Mbeki presidencies. Analysis is provided on how governmental policy was designed to provide instruction on giving effect to anti-corruption efforts. Finally, consideration will be given to the manner in which legislation sought to address the desire for a cleaner public sector. In so doing, the author seeks to identify the types of anti-corruption initiatives which were given effect during this period.

#### 2. PERCEPTIONS OF CORRUPTION

At the beginning of this era, corruption was recognised as a threat to the credibility and effectiveness of the public sector. Thus, government departments began to engage in dialogue on how public sector corruption was to be combatted, and how the various actors within the public sector were to act in combating corruption. Noticeably, political corruption also became a matter of concern when the then deputy president, Jacob Zuma, was implicated as being involved in a case of corruption.<sup>60</sup>

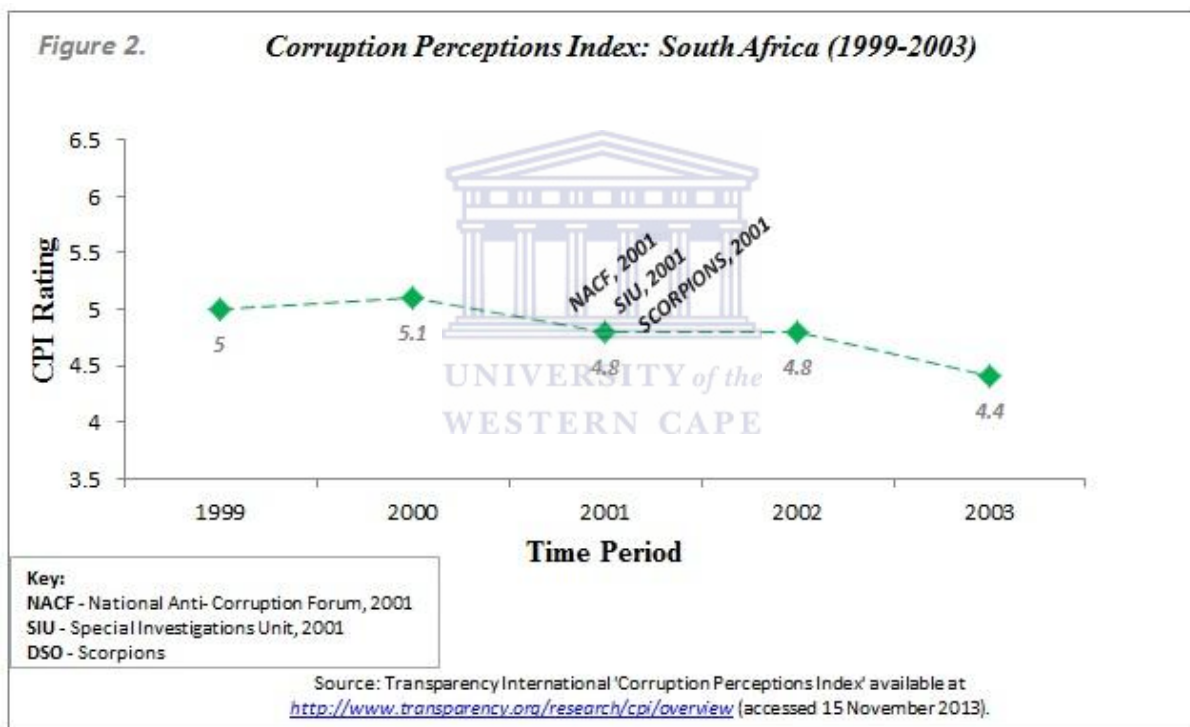
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<sup>59</sup> Newham (2002) 2-4.

<sup>60</sup> South African History Online 'Jacob Gedleyihlekisa Zuma' available at <http://www.sahistory.org.za/people/jacob-gedleyihlekisa-zuma> (accessed 21 November 2013).

Transparency International's CPI depicted a change in the international perception of corruption in South Africa. During the first two years of the Mbeki presidency South Africa maintained a score of five (5) points out of 10.<sup>61</sup> As indicated before, a score above five points is not necessarily a depiction of unmanageable corruption within a state. However, it became evident that South Africa was on a slippery slope in terms of perceived public sector corruption.<sup>62</sup> The CPI surveys from 2001 to 2003 provide substance to this concern. States which shared similar CPI results with South Africa include Malaysia, Costa Rica, Tunisia, Hungary and Greece. These surveys note how corruption perceptions increased as the State's score dropped to a low of 4.4 points out of 10 in 2003, as illustrated in Figure 2.

Figure 2.



Transparency International was not the only organisation to recognise this concern. The Independent Complaints Directorate (ICD), which was renamed the Independent Police Investigative Directorate (IPID) on 1 April 2012, maintained its oversight function of the South African Police Services (SAPS) and the Municipal Police Services (MPS). In its annual reports which were submitted to Parliament between 1999 and 2003, the directorate noted the

<sup>61</sup> Transparency International 'Corruption Perceptions Index' available at <http://www.transparency.org/research/cpi/overview> (accessed 21 November 2013).

<sup>62</sup> CPI (1999 – 2000).

growing concern of corruption within the police. The report showed that a lack of capacity and resources hampered the effectiveness of the directorate in investigating corruption.<sup>63</sup> Thus, it endeavoured to capacitate its actors by making provision for employees to attend courses on combating fraud and other acts of corruption.<sup>64</sup> For the remainder of the Mbeki era the ICD held the issue of corruption as an investigative priority and sought to use the South African criminal justice system as a means of combating this scourge. By 2003 corruption within the police service constituted 10.5 per cent of all criminal activity alleged to have been committed by the police.<sup>65</sup>

Various anti-corruption policy developments emerged during the second half of the Mbeki era. The departments of Public Service and Administration, and Justice and Constitutional Development were recognised as having made significant policy contributions within this period. The abovementioned developments by Government indicated one of two possibilities regarding perceptions of corruption in South Africa. The first possibility is that the emergence of a more direct and focused anti-corruption policy indicated the government's natural progression towards achieving a cleaner public service. The second one is that Government recognised the increased perception of corruption and used policy development to counteract this increase.

In light of these perceptions, a discussion will follow on how policy and legislation attempted to combat the growing threat of corruption within the public sector, and how the anti-corruption initiatives of this era sought to deal with this dilemma.

### **3. ANTI-CORRUPTION POLICY**

The beginning of the Mbeki administration was greeted with significant policy developments geared towards combating corruption. These developments, such as the Anti-Corruption and Fraud Policy by the Department of Justice and Constitutional Development would be considered vague in comparison to the Public Service Anti-Corruption Strategy by the Department of Public Service and Administration. However, these variants illustrated how perceptions of public sector corruption had contributed to the need to ensure that greater

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<sup>63</sup> Independent Complaints Directorate 'Annual Report' (1998/1999) 4-8; 'Annual Report' (1999/2000) 3-10.

<sup>64</sup> ICD 'Annual Report' (1999/2000) 3-10.

<sup>65</sup> ICD 'Annual Report' (2002/2003) 50.

safeguards are set in place. Three significant policy initiatives emerged within this period, and they will be discussed below in chronological order.

### *Anti-Corruption and Fraud Policy of 2000*

It may be expected that an anti-corruption policy would be in line with the mandate of the Department of Justice and Constitutional Development (DOJ).<sup>66</sup> However, this document did not provide clear solutions on how corruption, fraud, theft, and maladministration were to be eradicated from within the department and other branches of Government.<sup>67</sup>

The two-paged policy expressed the department's zero tolerance stance toward acts of corruption or any dishonest activity. In terms of the policy, suspected corruption was to be pursued with an investigation in terms of the law. Furthermore, preventative measures and detection controls were to be implemented to the full extent of the law. The course of action adopted by the department was to make all of its employees responsible for reporting corrupt activity, placing particular emphasis on this role being fulfilled by the management within the department and its associated entities.

The policy took a proactive step in defining what acts were to be considered acts of corruption, theft, fraud and maladministration. These briefly listed acts provided considerably more insight into what constituted corruption and superseded the explanations found within the Corruption Act of 1992.<sup>68</sup>

The topic of ethics was of particular concern. Setting standards of ethics with regard to what was expected in terms of business conduct was seen as a tool to be used in combating corruption. This expected code of ethics was set out in the policy document.<sup>69</sup> Furthermore, the protection of whistle blowers needed to be addressed. However, this was done vaguely with a primary focus on these disclosures being made in anonymity. Thus, a proper framework on the protection of whistle-blowers is found to be lacking at this time.

As vague as these principles might have been, they was a noticeable improvement in how Government prioritised combating corruption within the public sector. Although the sentiments were inspiring, little was done with regard to providing a much needed framework as to how these principles were to be implemented.

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<sup>66</sup> Department of Justice and Constitutional Development 'Anti-Corruption and Fraud Policy' (2000).

<sup>67</sup> DOJ 'Anti-Corruption and Fraud Policy' (2000) 1.

<sup>68</sup> Section 1 Corruption Act of 1992.

<sup>69</sup> DOJ 'Anti-Corruption and Fraud Policy' (2000) 2.

### *The National Anti-Corruption Forum (NACF)*

Nevertheless, 2001 was the year in which the government partnered with the private sector and civil society to combat corruption in a much broader sense. These developments in policy led to the formation of the National Anti-Corruption Forum (NACF).

The formation of the NACF came as a result of a series of conferences<sup>70</sup> where Government engaged in dialogue regarding the elimination of corruption from the public sector. It was a resolution that came from the National Anti-Corruption Summit of 1999 that led to the establishment of the forum.<sup>71</sup> Furthermore, business and civil society were invited by Government to make the NACF a collective action against corruption by all stakeholders.

The forum was launched in 2001 and was meant to create national consensus on combating corruption by advising the government and other sectors on anti-corruption strategies.<sup>72</sup> However, this anti-corruption initiative suffered from complications that limited its ability to carry out its mandate. Business and civil society found it particularly challenging to coordinate its efforts with those ideals of Government. The forum as a whole experienced many delays with regard to how its initiatives could be streamlined.

By the end of the first Mbeki administration in 2004, it was clear that the NACF was unable to play its role due to its limited budget and capacity.<sup>73</sup> In effect, this unified stance against corruption by the government, business and civil society was unable to improve perceptions of corruption, as the CPI records an increase in levels of perceived public sector corruption.<sup>74</sup> The commitments made by these three stakeholders to stamp out corruption, and educate all persons in South Africa on how to deal with corruption, were not met. Positive results of the actions of the forum would only be seen from 2006.<sup>75</sup>

This stagnation in South Africa's progress toward realising a public sector based on clean governance did not necessarily indicate that other actors within the public sector would not maintain the momentum needed to combat corruption. The emergence of the Public Service Anti-Corruption Strategy also came as a result of the 1999 National Anti-Corruption Summit

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<sup>70</sup> Ramsingh (2006) 3-5.

<sup>71</sup> Ramsingh (2006) 5-6: 'One of the resolutions adopted under the theme of combating corruption called for the establishment of 'a cross sectoral task team to look into the establishment of a National Coordinating Structure with the authority to effectively lead, coordinate and monitor the national Anti-Corruption Programme.'

<sup>72</sup> Ramsingh (2006) 7.

<sup>73</sup> Ramsingh (2006) 8.

<sup>74</sup> CPI (2002 – 2003).

<sup>75</sup> Ramsingh (2006) 7.

which formed the NACF. The Department of Public Service and Administration (DPSA) thus took up the responsibility of ensuring that every public sector department was provided with a strategy on how to tackle corruption. This strategy brought forth a recognisable change in Government's stance towards corruption, hence, giving effect to the abovementioned role of the NACF.

### *The Public Service Anti-Corruption Strategy 2002*

The strategy designed by the DPSA came about at the time when CPI perceptions of public sector corruption indicated the growing problem that corruption posed to the public sector. Consequently, the department took to broadening the definition of corruption to include less obvious factors.<sup>76</sup> This definition now included acts such as the abuse of privileged information, favouritism and nepotism, illustrating acceptance of the fact that corruption occurred within the public, private and non-governmental sectors.<sup>77</sup> However, the policy noted these instances as not being a *numerus clausus* of suspected acts of corruption which may be investigated.

The strategy proposed by the department comprised nine components, each one of which introduced a particular shortcoming of the public service, which created a breeding ground for corrupt activities. Solutions to these issues were presented by the department. The first component of the strategy proposed a review of anti-corruption legislation which needed to be strengthened so as to be relevant to the evolving public sector. The second proposition called for an increase in the capacity of existing institutions of justice, such as courts and the SIU, so as to ensure that these entities are in possession of the required tools to be effective in carrying out their respective mandates. Third, the protection of whistle blowers was to be catered for, and mechanisms for reporting corrupt activities needed to be made clear. Noticeably, the Protected Disclosures Act<sup>78</sup> had been in existence for approximately two years by the time this policy was released. Yet, the public service still found that a more consolidated effort was necessary for protecting whistle blowers. The fourth element of the strategy called for the exclusion from employment of those found criminally guilty of corruption. It also called for the exclusion of the criminally convicted from contracting with the public sector so as to eliminate any potential future acts of corruption by these individuals. The fifth component called for the improvement of management policies and

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<sup>76</sup> DPSA 'Public Service Anti-Corruption Strategy' (2002) 7.

<sup>77</sup> DPSA 'Public Service Anti-Corruption Strategy' (2002) 11.

<sup>78</sup> Protected Disclosures Act 26 of 2000.

practices within the public sector, and for ensuring that management at different levels was held accountable for failing to prevent corruption. The sixth component of the strategy was a call for the public sector to have coherent processes and mechanisms to manage professional ethics. This was seen as the key to combating individual intention to commit acts of corruption before they were committed. The seventh component called for a partnership with business and civil society in combating corruption. There existed a general agreement for Government to work with these stakeholders in this matter, as was agreed in terms of the NACF. However, this relationship needed to be strengthened in order for a joint anti-corruption effort to be successful. The eighth leg of the policy was to have the public play a part in combating corruption. This was to be achieved by means of social analysis, research and public advocacy. By doing so, more insight was gained on how vast an issue corruption was and this informed any action taken by stakeholders in response to corruption. The final component to the strategy was centred on the ordinary citizens of the State. The strategy advocated for public awareness on the matter, and for the public to be educated on what corruption was and how they might play a role in creating a cleaner government.

However, policy only provided Government with ethical guidelines on how to avoid and combat corruption. What becomes important in the efforts to meeting this mandate is for the law to place a national imperative on all three spheres of government, and the public sector in general, to ensure cleaner governance. Without such an imperative, any action taken by various actors within the public sector would lack the need to comply with this national anti-corruption agenda.

What follows the aforementioned discussion on anti-corruption policy will be a consideration on how legislation adapted to this changing climate of the public sector.

#### **4. ANTI-CORRUPTION LEGISLATION**

The new millennium saw the promulgation of three pieces of legislation which could have an indirect impact on combating corruption within the public sector. On 3 February 2000 the Promotion of Access to Information Act<sup>79</sup> (PAIA) and the Promotion of Administrative Justice Act<sup>80</sup> (PAJA) were adopted. These gave effect to Section 32 and 33 of the Constitution. The PAIA was enacted to grant access to State information to the people of the

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<sup>79</sup> Promotion of Access to Information Act 2 of 2000.

<sup>80</sup> Promotion of Administrative Justice Act 3 of 2000.

country. The Act provided guidelines of how this right was to be accessed. The PAJA sought to ensure that administrative actions taken by the State were lawful, reasonable and procedurally fair. Furthermore, the Act provided all people with various remedies when faced with an unjust administrative action.

Each of these Acts provided a means of promoting good governance within the public sector. However, while notions of transparency and accountability were catered for within these Acts, the levels of bureaucracy involved reduced the possibility of receiving immediate results on requests, consequently deeming the Acts to be less effective than ideally preferred. These laws provided an indirect means for all citizens to take part in combating corruption and maladministration within the public sector by granting the people means with which to hold the State to account.

#### *Financial Intelligence Centre Act*

Another indirect anti-corruption effort by Government took the form of the Financial Intelligence Centre Act (FICA).<sup>81</sup> The aim of the Act was to combat money laundering activities within the State and to provide the framework for the establishment of a Financial Intelligence Centre and a Money Laundering Advisory Council. The Act provided these agencies with broad powers in carrying out their mandates. Thus, any money laundering activities within the public sector may be processed, analysed and interpreted.<sup>82</sup> Furthermore, the agency was to inform, advise and cooperate with investigating authorities, supervisory bodies, the South African Revenue Service and the intelligence services in carrying out its mandate.<sup>83</sup>

#### *Special Investigating Unit and Special Tribunals Amendment Act*

The Heath SIU faced substantial challenges within this period, which resulted in the amendment of the original Act. Around the end of 2000, the Constitutional Court passed judgement on a matter which concerned the validity of the appointment of a judge to head the SIU. In the case of *South African Association of Personal Injury Lawyers v President of the Republic of South Africa*<sup>84</sup> the court unanimously ruled that the appointment of a judge to head the SIU violated the doctrine of the separation of powers. Thus, a judge, as a representative of the judiciary, was not to be allowed to head an agency which exercises an

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<sup>81</sup> Financial Intelligence Centre Act 38 of 2001.

<sup>82</sup> Section 4(a) FICA.

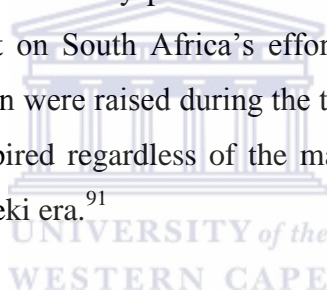
<sup>83</sup> Section 4(b) FICA.

<sup>84</sup> *South African Association of Personal Injury Lawyers v President of the RSA and Another* Case CCT 27/00, 28 November 2000.

executive function. Maintaining a role in both branches of Government would create disparity with regard to the independence of the judiciary, and could not be tolerated.<sup>85</sup> Thus, Section 3(1) which demanded that the president of the State appoint a judge of the SIU was declared invalid. However, this declaration of invalidity was suspended for one year.<sup>86</sup>

Thus, despite the investigations the SIU was involved in with regard to serious malpractices and maladministration within local government, the provinces, national government, and State institutions, the agency found itself without leadership, which led to its ceasing to exist.

However, this would not signify the end of the SIU as 2001 saw legislation being enacted to cater for the constitutional invalidity of the noted section of the principal Act. The Special Investigating Units and Special Tribunals Amendment Act<sup>87</sup> amended Section 3 of the Special Investigating Unit and Special Tribunals Act of 1996 by removing the requirement for the president of the State to have to appoint a judge to head the SIU.<sup>88</sup> Hereafter, President Mbeki established a new SIU by proclamation on the 31<sup>st</sup> of July 2001.<sup>89</sup> These disruptions had a negative effect on South Africa's efforts towards combating corruption. Negative perceptions of corruption were raised during the time it took for the SIU's activities to gain momentum.<sup>90</sup> This transpired regardless of the many investigations pursued by the agency by the end of the first Mbeki era.<sup>91</sup>



## 5. CONCLUSION

Within the first Mbeki presidency, criminal liability for the perpetrator of corrupt activities was a prevailing measure which remained in force. The continued presence of the SIU in the public sector meant that civil corruption investigation remained an anti-corruption measure of retrieving public assets which were lost due to corrupt activities. In recognising the threat against the security of public monies the FICA provided Government with more means of securing public funds and preventing corruption from depleting State resources.

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<sup>85</sup> *South African Association of Personal Injury Lawyers v President of the RSA and Another*, para 47.

<sup>86</sup> *South African Association of Personal Injury Lawyers v President of the RSA and Another*, para 71.

<sup>87</sup> Special Investigating Units and Special Tribunals Amendment Act 2 of 2001.

<sup>88</sup> Section 3 Special Investigating Units and Special Tribunals Amendment Act: 'Composition of Special Investigating Unit. (1)(a) The President must appoint a person who is a South African citizen and who, with due regard to his or her experience, conscientiousness and integrity, is a fit and proper person to be entrusted with the responsibilities of that office, as the head of a Special Investigating Unit established by the President.'

<sup>89</sup> 'Special Investigating Unit' available at <http://www.siu.org.za/> (accessed 21 November 2013).

<sup>90</sup> CPI (2003).

<sup>91</sup> Special Investigating Unit: Annual Report (2003/2004) 6-25.

However, despite these developments, the character of these aforementioned anti-corruption initiatives did not substantially differ from the manner in which corruption was tackled in the Mandela era. The system remained premised on criminal justice and civil liability being used as a means of combating corruption. The protection of State funds, the promotion of transparency and the administration of justice initiatives, however, provided welcome additions to the fight against corruption. The State's CPI score reached a low of 4.4 points at the end of this period, depicting a greater perception of corruption when compared to the lowest point of the Mandela era of 4.95 in 1997. How Government responded to this perception will be explored in the following chapter.



## **CHAPTER 4**

### **The Third Democratic Government – Mbeki/Motlanthe: 2004 to 2008**

#### **1. INTRODUCTION**

The second term of office for Thabo Mbeki saw many developments in the realm of public sector corruption. The policy and legislative frameworks were further supplemented with the means of addressing corrupt activity. However, there is an element of doubt as to whether the public sector is capable of combating corruption when high ranking political officials within Government are implicated in corruption investigations. A more enthusiastic effort is noted by local government which began to design its own means for combating corruption by catering to a municipality's individual needs. This period is also unique in that Thabo Mbeki would resign from being the president in 2008. The factors which surrounded his resignation are particularly relevant to questions regarding public sector corruption, and will be explored within this chapter.

This chapter will provide insight into what the perceptions of corruption were, and whether these perceptions may have motivated the development of further policy initiatives. Thereafter the chapter will analyse how legislation reacted to perceptions of corruption, and whether this provided the public sector with further initiatives for combating corruption.

#### **2. PERCEPTIONS OF CORRUPTION**

The fight against corruption became a matter of particular concern within the second Mbeki presidency, as perceptions of corruption showed the vulnerability of the public sector. From 2004 to 2006, South Africa's score on the CPI averaged 4.6 points out of 10.<sup>92</sup> Thus, regardless of the anti-corruption policies and laws set in place in the first Mbeki administration, perceptions of corruption demonstrated that these efforts by Government had not necessarily resulted in a cleaner public sector.

The year 2007 brought forth a more positive result in terms of the CPI. South Africa obtained a score of 5.1 points out of 10.<sup>93</sup> Thus, while corruption remained high, the proper

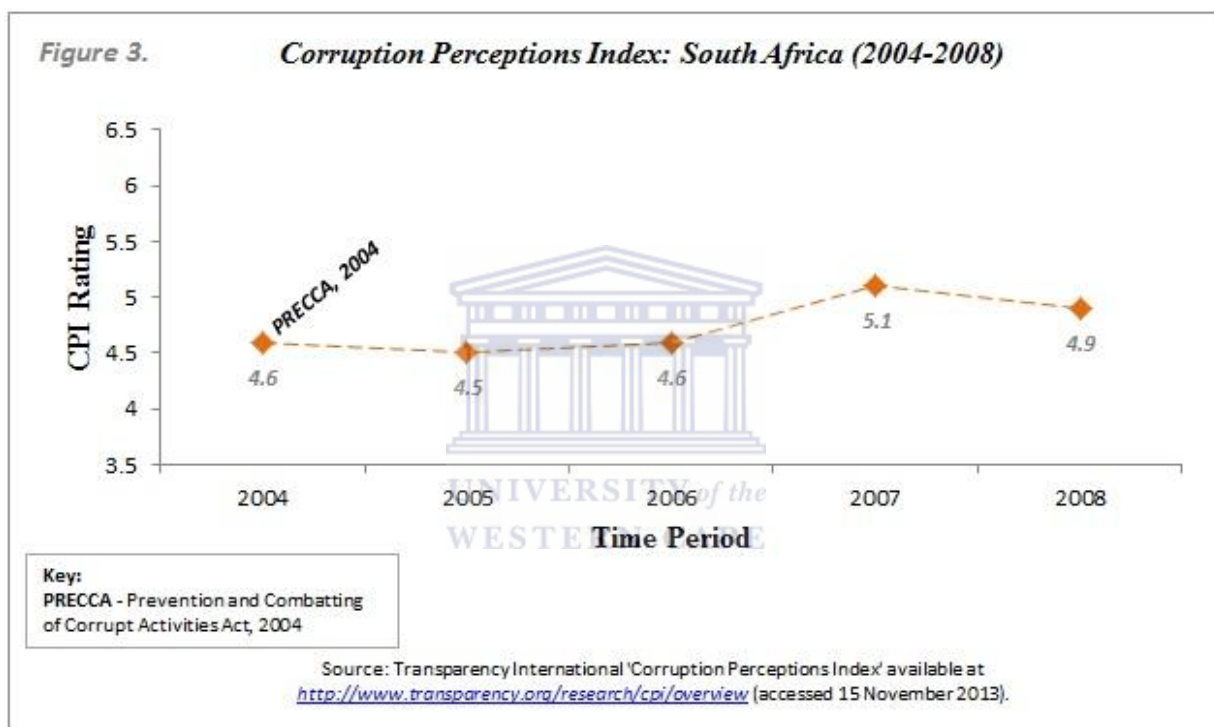
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<sup>92</sup> CPI (2004 – 2006).

<sup>93</sup> CPI (2007).

enforcement of anti-corruption strategy already set in place could have encouraged a more positive result. This victory would be short-lived as the State's corruption perceptions score dropped to 4.9 points in 2008.<sup>94</sup> Within this period South Africa rubs shoulders with other states such as Lithuania, Kuwait, Tunisia, South Korea and Italy with regard to its CPI ranking. Figure 3 gives the State's CPI ranking over this period. The graph also provides information as to what these perceptions were when certain direct anti-corruption initiatives came into effect.

Figure 3.



In the Public Service Commission's (PSC) Annual Report in 2004 the agency noted how corruption was a problem at all levels of government; particularly in the areas of procurement and the management of conflicts of interest.<sup>95</sup> The PSC was of the opinion that in order to combat the high levels of perceived public sector corruption, the various role players within Government were to be properly trained and informed of the standards of ethics required within the public service. Thus, there existed a shared perception that levels of perceived

<sup>94</sup> CPI (2008).

<sup>95</sup> Public Service Commission 'Annual Report' (2003/2004) 34.

corruption necessitated an urgent requirement for all spheres of government to be proactive in combating corruption.<sup>96</sup>

Within this period, the then Department of Provincial and Local Government (DPLG) recognised that local government was particularly vulnerable to maladministration and corruption. The department hence launched the Local Government Anti-Corruption Strategy in 2006 as a means of providing local government with a framework policy on how to minimise the risk of corruption taking place at a municipal level.<sup>97</sup> Various municipalities acknowledged this risk and sought to implement their own, individualised anti-corruption strategies.

Political corruption gained much media attention within this period. The then deputy president of the country, Jacob Zuma, was dismissed by President Mbeki in 2005 after he had been implicated in the corruption conviction of Shabir Shaik.<sup>98</sup> The State, in the case of *Shaik v S*, claimed that the relationship between Mr Zuma and Mr Shaik could be described as generally corrupt owing to mutually beneficial symbiosis, and that the evidence which linked these two parties to each other was overwhelming.<sup>99</sup> These charges related to payments made by Mr Shaik to the then deputy president in order to secure his political influence for the purpose of financial benefit. Zuma's dismissal would affirm the government's position of taking swift action to guard against cases where its officials are implicated in corruption matters.

This victory by Thabo Mbeki was short lived as the 52<sup>nd</sup> ANC National Conference at Polokwane in 2007 saw Mbeki being ousted as the leader of the ANC, only for him to be replaced by Jacob Zuma. Thereafter, Thabo Mbeki became the first president of South Africa to resign from his post after being recalled by the ANC in 2008. Kgalema Motlanthe maintained the seat as president of the State for the remainder of this term.

It was also during this period that Zuma was being investigated by the Directorate of Special Operations (Scorpions) on charges of corruption. The ANC expressed its intent of disbanding the Scorpions at the National Conference, which led to the closing of this elite crime

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<sup>96</sup> Hamlyn M 'ANC to tackle corruption – Phosa' *News 24* 10 October 2008 available at <http://www.news24.com/SouthAfrica/Politics/ANC-to-tackle-corruption-Phosa-20081010> (accessed 21 November 2013).

<sup>97</sup> Staff Reporter 'Mufamadi launches anti-corruption campaign' *Mail & Guardian* 23 October 2006 available at <http://mg.co.za/article/2006-10-23-mufamadi-launches-anticorruption-campaign> (accessed 21 November 2013).

<sup>98</sup> 'A fall from grace: 2007 – 2008' *The Herald* 2 December 2011 available at <http://www.peherald.com/blog/ANC---100-years/article/192> (accessed 21 November 2013).

<sup>99</sup> *Shaik and others v The State* [2006] SCA 134(1) (RSA), para 16.

fighting Unit by Parliament in 2008.<sup>100</sup> The fact that the Scorpions were investigating Zuma's alleged corruption may have been a factor which motivated the disbanding of the Unit.

The NPA took a peculiar stance towards the new ANC president's pending charges on corruption, which came as a result of the investigations by the Scorpions. After eight years of investigation into allegations of corrupt activity by Jacob Zuma, all charges against him were dropped two weeks before the next national elections of the country in 2009.<sup>101</sup> Thus, there existed no further hindrances to prevent Jacob Zuma from being elected as the president in 2009.

This scenario depicts the notion that corruption exists at all spheres of government, and even within its highest ranks. This may be termed as the 'rot from the top'. It would also appear that while the ANC may have taken resolutions against corruption at its 52<sup>nd</sup> ANC National Conference, encouraging ANC members and leaders to promote ethical leadership and democratic values, to avoid conflicts of interest, and to provide sound leadership to society in fighting corruption, that hypocrisy has limited the implementation of these standards among its national leadership.<sup>102</sup>

The South African Police Service (SAPS) has also been affected by this so called 'rot from the top' syndrome, as is evidenced by the conviction of Jacob 'Jackie' Selebi. In 2009 Jackie Selebi, the former permanent South African representative to the United Nations, former Director General of Foreign Affairs, former National Police Commissioner, and former president of Interpol was found guilty of corruption as defined in section 4(1) of the Prevention and Combating of Corrupt Activities Act of 2004 (PRECCA).<sup>103</sup> This came as a result of Selebi accepting R1, 2 million in return for certain favours.<sup>104</sup> It has previously been noted that there existed high levels of perceived corruption within the SAPS, and this case illustrated how far up in the ranks this corruption was located. South Africa's internationally high ranking police commissioner being involved in corruption of this level could do nothing but to cast a glum light on the type of service provided by the police. The Global Corruption

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<sup>100</sup> De Waal M 'Jacob Zuma – from Polokwane to Mangaung' *Daily Maverick* 18 December 2012 available at <http://www.dailymaverick.co.za/article/2012-12-18-jacob-zuma-from-polokwane-to-mangaung/#.UoCTxVe9LkI> (accessed 21 November 2013).

<sup>101</sup> Staff Reporter 'NPA drops corruption charges against Zuma' *Mail & Guardian* 6 April 2009 available at <http://mg.co.za/article/2009-04-06-npa-drops-corruption-charges-against-zuma> (accessed 21 November 2013).

<sup>102</sup> African National Congress '52<sup>nd</sup> National Conference: Resolutions' available at <http://www.anc.org.za/show.php?id=2536> (accessed 21 November 2013).

<sup>103</sup> *Selebi v The State* 2012 (1) SA 487 (SCA), Para 1.

<sup>104</sup> Evan S 'Selebi guilty of corruption' (2010).

Barometer (GCB) reinforced this stance by indicating that between 2004 and 2007, when surveyed; South Africans consecutively found the SAPS to be the most corrupt institution within the public sector.<sup>105</sup> Thus, with the credibility of the executive of the State in question, South Africa ended this era with higher levels of perceived corruption at a national level, and an apparent lack of enthusiasm for applying anti-corruption laws holistically and without fear of favour.

Given these perceptions it becomes important to analyse how Government responded to dealing with this issue within all spheres. What will follow this discussion is a review of the various policy and legislative developments within South Africa that are geared towards combating corruption, with particular attention being paid to the steps taken by local government to deal with this pressing issue.

### 3. ANTI-CORRUPTION POLICY

Within the dimension of combating corruption, the national government and its various departments were at the forefront of policy design and implementation of legislation. It became necessary for those policy and legislative initiatives to find application within all spheres of government. Local government also joined the anti-corruption pursuit within this period.

#### *Local Government Anti-Corruption Strategy*

Various municipalities in different provinces of the Republic took to designing anti-corruption policies more tailored to the good governance needs of that specific municipality. The Nelson Mandela Metropolitan Municipality,<sup>106</sup> Frances Baard District Municipality,<sup>107</sup> eThekweni Local Municipality,<sup>108</sup> and Ubuntu Local Municipality provide examples of how local government has attempted to incorporate national anti-corruption policy into its own domain. Furthermore, within this period, the DPLG launched its own Local Government Anti-Corruption Strategy in an attempt at promoting good governance and accountability

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<sup>105</sup> Global Corruption Barometer: 2004 – 2007 available at <http://www.transparency.org/research/gcb/overview> (accessed 11 November 2013).

<sup>106</sup> Nelson Mandela Metropolitan Municipality 'Anti-Fraud and Anti-Corruption Policy and Response Plan for the Nelson Mandela Metropolitan Municipality' (2004); Nelson Mandela Metropolitan Municipality 'Policy for the Investigations of Fraud and Corruption for the Nelson Mandela Metropolitan Municipality' (2004); Nelson Mandela Metropolitan Municipality 'Whistle Blowing Policy for the Nelson Mandela Metropolitan Municipality' (2004).

<sup>107</sup> Frances Baard District Municipality 'Frances Baard District Municipality Fraud Policy' (2006).

<sup>108</sup> eThekweni Municipality 'Anti-fraud and Anti-Corruption Policy' (2007).

within provincial and local government.<sup>109</sup> The point of departure for this discussion will be an analysis of the strategy by the DPLG; thereafter, the discussion will progress to how local government sought to localise strategy and other policies and laws for combating corruption.

In recognising that municipalities had anti-corruption and fraud policies in place, the then DPLG realised that these local government initiatives had proven to be inadequate in effectively combating corruption.<sup>110</sup> In that light, the department designed its strategy as a means of providing local government with holistic guidelines for procedures and mechanisms to be set in place in the promotion of good governance and accountability. This initiative came as a result of Government's recognition of actual and perceived corruption within the public sector.

The strategy had three particular areas of focus; namely, a focus on the local government as the primary organisation, a focus on the employees within local government, and a focus on the various stakeholders. With regard to the organisation of local government, the strategy sought to provide guidance on the effective implementation of the code of conduct for councillors and employees, as may be found within Schedules 1 and 2 of the Systems Act.<sup>111</sup> Furthermore the strategy sought the proper implementation of local government's financial policy requirements, and sound internal controls against the commission of corrupt activity.<sup>112</sup> With regard to the employees within local government, the strategy called for employment vetting procedures to be stricter and for employee induction programmes to be used as a means of promoting good governance within the municipality. The success of this strategy was also dependent upon all stakeholders to this sphere of government joining Government's collective effort to combat corruption.<sup>113</sup>

There existed two noticeable shortfalls of this strategy which may have contributed to a lax effort by local government in combating corruption. First, the national government did not make this national strategy binding upon local government, and in not doing so it had also

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<sup>109</sup> Department of Provincial and Local Government 'Local Government Anti-Corruption Strategy' available at [http://www.cogta.gov.za/index.php/documents/doc\\_download/35-local-government-anti-corruption-strategy.html](http://www.cogta.gov.za/index.php/documents/doc_download/35-local-government-anti-corruption-strategy.html) (accessed 21 November 2013).

<sup>110</sup> DPLG 'Local Government Anti-Corruption Strategy' 2.

<sup>111</sup> Local Government: Municipal Systems Act 32 of 2000.

<sup>112</sup> DPLG 'Local Government Anti-Corruption Strategy' 4.

<sup>113</sup> DPLG 'Local Government Anti-Corruption Strategy' 5 '*Focus on other Stakeholders* –

- *The councillors;*
- *The community;*
- *Trading partners;*
- *Employee representative organisations; and*
- *SALGA.'*

failed to put in place sanctions on municipalities who deviated from the national standard. Second, there was no express intergovernmental supervision designed to ensure the implementation of the strategy.

Local government was left with the options of either interpreting these provisions in its own unique manner, or of not implementing anti-corruption measures at all. The strategy sought to encourage actors within local government to report fraud and corruption in exchange for security from victimisation. However, apart from the Protected Disclosures Act and the National Anti-Corruption Hotline of the NACF, there was limited application of these national standards into the realm of local government. Remarkably, since coming into being in 2004, this anti-corruption initiative has been an excellent tool used in the recovery of millions of rands, which may otherwise have been lost due to corruption.<sup>114</sup>

Local government maintained a few primary themes in its attempt at dealing with corruption internally. Certain municipalities based their policies on five recognisable themes. First, these municipalities would take a *zero-tolerance* stance to all forms of corruption within local government. Second, these policies included frameworks for the investigation of alleged corruption, and for all investigations to be in line with anti-corruption law. Third, these policies contained procedures on the reporting of corrupt activity and for the protection of whistle blowers. Fourth, raising awareness on the topic of corruption was prioritised within these policies. Finally, these policies also called for the proper enforcement of the codes of conduct for employees and councillors within local government.

Whether or not these policies achieved their mandates cannot be said for certain, but the anti-corruption policy by the Nelson Mandela Metropolitan Municipality was negated by strong perceptions of corruption and maladministration which transpired after the implementation of its policy.<sup>115</sup> However, what can be noted is that an average CPI score of 4.7 points, between 2004 and 2008 indicates a potential inefficacy of the strategies implemented thus far by Government. What is noticeable with regard to anti-corruption law at this time is that South Africa saw a significant contribution being made by the legislature with regard to the legal framework for combating corruption. This will now be explored.

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<sup>114</sup> 'Anti-corruption hotline makes its mark' available at <http://www.southafrica.info/news/corruption-040913.htm#UoUx21e9Lk0> (accessed 21 November 2013).

<sup>115</sup> SABC 'E Cape ANC sets March deadline to deal with municipalities' available at <http://www.sabc.co.za/news/a/31216a004e7e5b83b0f8fa7da4cd6ad7/E-Cape-ANC-sets-March-deadline-to-deal-with-municipalities-20130209> (accessed 21 November 2013).

#### 4. ANTI-CORRUPTION LEGISLATION

The second Mbeki era saw remarkable developments in the legal framework regarding combating corruption. No longer was the public sector to be bound by the outdated guidelines on combating corruption as was found within the Corruption Act of 1992. Instead, Government introduced stronger sanctions against the convicted with far reaching effects into their livelihood.

##### *Prevention and Combating of Corrupt Activities Act*

Section 36 of the Prevention and Combating of Corrupt Activities Act of 2004 (PRECCA) repealed the Corruption Act of 1992.<sup>116</sup> The PRECCA sought to provide for the strengthening of anti-corruption measures, to provide for the criminalisation of corrupt activities, to provide for the investigation of matters of corruption, and to provide for the extraterritorial application of the Act in combating corruption. A significant addition to the anti-corruption legal framework was the duty to report corrupt activities, placed upon particular individuals.<sup>117</sup>

Chapter 2 of the Act provides a broad definition of what constitutes an offence of corruption. This definition takes into consideration the direct and indirect actions of an individual which constitute corrupt activities,<sup>118</sup> and the levels of differentiation with regard to how the Act would apply to certain individuals based on the office, or status which that person holds. Examples of this include public officers, foreign public officials, agents of the State, legislative organs, judicial officers, and members of the prosecuting authority.<sup>119</sup>

It would appear that the Act has specific application to the public sector, with little inference to the Act's application to private sector corruptors. However, it is clear that all acts of corruption are to incur criminal liability regardless of whether the perpetrator is within the private or public sector.<sup>120</sup>

One significant anti-corruption initiative comes as a result of this Act; that is the requirement for the Minister of Finance of South Africa to establish a register for tender defaulters within the Office of the National Treasury.<sup>121</sup> This register was to remain open to the public so as to

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<sup>116</sup> Prevention and Combating of Corrupt Activities Act 12 of 2004.

<sup>117</sup> Chapter 7 PRECCA.

<sup>118</sup> Section 3 PRECCA.

<sup>119</sup> Sections 4-9 PRECCA.

<sup>120</sup> Section 24 PRECCA.

<sup>121</sup> Section 29 PRECCA.

supply the people with information regarding those found guilty of some form of corrupt activity.<sup>122</sup> In so doing Government took greater strides towards ensuring that a notion of transparency was catered for within the public sector. Those whose names were placed on the list could not have their names removed for a period of five to ten years. Once a name appeared on this list that individual was to be excluded from any contractual agreement between itself and Government.<sup>123</sup>

This initiative had the potential to bring greater levels of transparency to the public sector. However, due to failure of maintenance, such a positive result was not realised. Only two names of those found guilty of corrupt activity had been placed on the register. Furthermore, the register had not been updated since 2010.<sup>124</sup> This shows a failure by this initiative's Registrar with regard to exercising its powers.<sup>125</sup> Apart from the aforementioned shortcomings of only listing two names of corrupt individuals it, must be noted that access to this register is dependent upon one's personal internet connection. Those municipalities who operated under infrastructural constraints may thus not have been able to access this database.<sup>126</sup>

Thus, the initiative fell short with regard to being an effective means of combating corruption. However, it is theoretically efficient in that if it had been implemented, the various spheres of government would have been supplied with the necessary information to ensure that those previously found guilty of corruption would be barred from doing business with Government.

This time period saw only two other significant national legislative developments which had an indirect effect of combating corruption and promoting good governance within the public sector. These developments will now be explored.

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<sup>122</sup> Section 32 PRECCA.

<sup>123</sup> NACF 'Tender Defaulters' available at [http://www.nacf.org.za/guide-prevention-combating-corrupt-activities/register\\_tender\\_defaulters.html](http://www.nacf.org.za/guide-prevention-combating-corrupt-activities/register_tender_defaulters.html) (accessed 21 November 2013).

<sup>124</sup> National Treasury 'Register for Tender Defaulters' (2004).

<sup>125</sup> Section 33 PRECCA.

<sup>126</sup> COGTA 'State of Local Government in South Africa: Overview Report' (2009).

### *Public Audit Act*

First, the Public Audit Act of 2004 was enacted to give legislative effect to the provisions of the Constitution which provided for the establishment of the Office of the Auditor General.<sup>127</sup> While the office had already been in operation before the Act came into effect, this piece of legislation further provided for clarity on who the Auditor General may audit and the various audit procedures to be used by this office.

It is self-evident that the auditing of Government and governmental institutions is a pivotal means of bolstering good governance. However, these refreshed measures of the auditor general could not be viewed as a direct anti-corruption initiative, but as an indirect measure of combating corruption. These measures ensure that irregularities with regard to expenditure are detected and taken cognisance of by Government.

### *Financial Intelligence Centre Amendment Act*

Second, the Financial Intelligence Centre Amendment Act of 2008 further supplemented the FICA by affording greater means of inspection and investigation by the Centre into a public sector institution's affairs.<sup>128</sup> However, these means of investigation were not directly geared towards combating public sector corruption but they would be effective in providing greater means within this system of law which prevents and combats various forms of malpractice.

### *National Prosecuting Authority Amendment Act*

As was noted before, the governmental agency known as the Scorpions ceased to exist as a public sector anti-corruption measure. President Motlanthe signed two Acts into law which repealed the various provisions which gave effect to the Scorpions. The enactment of the National Prosecuting Authority Amendment Act<sup>129</sup> and the South African Police Service Amendment Act saw the end to the Scorpions in 2008. The amendment to the Police Act also had the effect of replacing the Directorate for Special Investigations with the Directorate for Priority Crime Investigation, known later as the Hawks. Government also received much opposition from political parties for having taken this action,<sup>130</sup> as well as from members of the public. These actions led to the Constitutional Court later declaring that the Act which disbanded the Scorpions and replaced this institution with the Hawks was inconsistent with

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<sup>127</sup> Public Audit Act 25 of 2004.

<sup>128</sup> Section 45B Financial Intelligence Centre Amendment Act 11 of 2008.

<sup>129</sup> National Prosecuting Authority Amendment Act 56 of 2008.

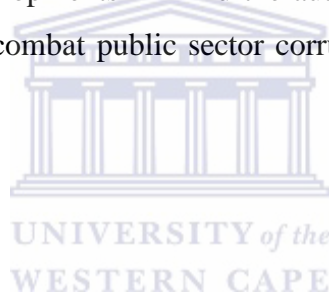
<sup>130</sup> Staff Reporter 'Zille takes Scorpions battle to Zuma' *Mail & Guardian* 14 February 2008 available at <http://www.mg.co.za/article/2008-02-14-zille-takes-scorpions-battle-to-zuma> (accessed 21 November 2013).

the Constitution,<sup>131</sup> and Parliament was to be afforded eighteen months to rectify this situation.<sup>132</sup> These developments transpired when the CPI recorded an increase in public sector corruption.<sup>133</sup>

## 5. CONCLUSION

It is noted that while legislation and policy has reshaped the manner in which the public sector is to manage its affairs so as to promote good governance, the will of the political forces is not necessarily geared towards the same objective. Institutions purposed for the eradication of crime, such as the Scorpions, are disbanded, the SAPS are perceived as the most corrupt institution, and legislation fails at providing effective relief to deal with those suspected of being corrupt.

Bearing the aforementioned developments in mind the author will venture into a discussion on how the State has sought to combat public sector corruption within the era of President Jacob Zuma, from 2009 to 2013.



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<sup>131</sup> Mataboge M 'Scorpions disbanding unconstitutional' *Mail & Guardian* 11 March 2011 available at <http://mg.co.za/article/2011-03-18-scorpions-disbanding-unconstitutional> (accessed 21 November 2013).

<sup>132</sup> *Glenister v The President of the Republic of South Africa and Others* CCT 48/10 [2011] ZACC 6.

<sup>133</sup> CPI (2008).

## CHAPTER 5

### **The Democratic Fourth Government: The Zuma Presidency – 2009 to 2013**

#### **1. INTRODUCTION**

The levels of perceived and actual corruption within the Zuma presidency created an atmosphere which would almost demand that Government exceed all of its previous attempts at creating a cleaner, more legally compliant public sector. The previous presidencies saw various attempts by the legislature at supplementing South Africa's legal framework with means of counteracting corrupt activity. However, despite these implemented means, reports by the media suggest that Government had not yet been able to provide the country with evidence to support the notion of it having had much success in ensuring that democracy is protected from the abuse of power.

This chapter will analyse the character of the anti-corruption initiatives established during this period, and will consider whether these initiatives differed from previous anti-corruption attempts by Government. This analysis will also take cognisance of what the perceptions of corruption were, and whether the anti-corruption measures of this period provided the public sector with some form of relief.

  
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#### **2. PERCEPTIONS OF CORRUPTION**

The era of Jacob Zuma being president of the State ushered in a different and potentially harmful perception on corruption within South Africa. With the president being perceived as corrupt, having been previously implicated as such in judicial proceedings, it comes as no surprise that the CPI shows grim results with regard to perceived corruption within South Africa.

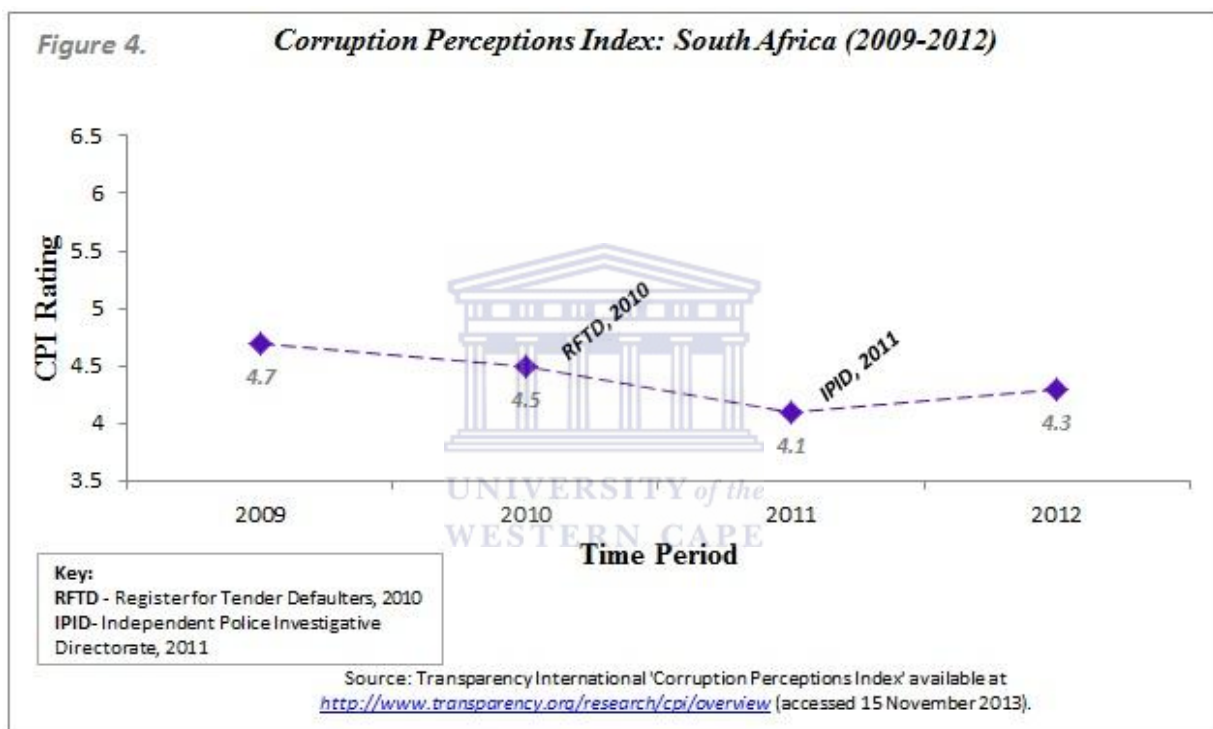
Not once does South Africa score above five points on the Corruption Perceptions Index (CPI) within the Zuma era; instead, this survey indicates a progressive increase in the perceptions in corruption between 2009 and 2011. In 2009 the State scored 4.7 points, followed by 4.5 points in 2010, and an even lower score of 4.1 points out of 10 in 2011.<sup>134</sup> Only in 2012 does the CPI depict some form of improvement in perceived levels of

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<sup>134</sup> CPI (2009 – 2011).

corruption when the State scores 4.3 points out of ten.<sup>135</sup> However, the score in 2012 still depicted the dire state of corruption levels in South Africa. South Africa's CPI scores within this period placed it in the company of countries such as Lithuania, Malaysia, Namibia, the Czech Republic, Saudi Arabia, Croatia, Montenegro and Kuwait. With an average score of 4.4 points, this period is to be recognised as one with the highest levels of perceived public sector corruption. The figure below depicts these results as well as when particular direct anti-corruption initiatives came into effect within this period.

Figure 4.



The Department of Justice and Constitutional Development noted the urgency in combating corruption, as it hampered the good governance of the department.<sup>136</sup> The perception of corruption within the department inspired the development of a three-pronged approach to combating this scourge. This comprised of bolstering staff awareness on the various developments within the realm of combating corruption, improving the finalisation of all internal corruption cases, and taking greater strides in vetting key members of staff.<sup>137</sup>

<sup>135</sup> CPI (2012).

<sup>136</sup> Department of Justice and Constitutional Development 'Annual Report' (2011/2012) 13-27.

<sup>137</sup> Department of Justice and Constitutional Development 'Annual Report' (2011/2012) 33.

The various reports by the Independent Complaints Directorate (ICD) indicated an increase in cases of corruption within this period. Given the increase in corruption within the SAPS the ICD took a proactive stance to combating corruption and cultivating a culture of human rights and community-centred policing.<sup>138</sup> The investigations by the ICD sought to probe various types of police corruption such as the abuse of informer fees, aiding the escape of an individual from police custody, the destruction, sale and/or theft of police dockets, issuing fraudulent vehicle certificates, and the sale, theft and/or disposal of exhibits.<sup>139</sup> The commission of these acts of corruption had a substantially negative impact on the administration of the criminal justice system. Thus, the SAPS continued to be an area of particular concern within the public sector given that the continued increase in corruption limited the effective performance of the police, and the desire for a system where the law was adequately enforced by those commissioned with that duty. The Victims of Crime Surveys of 2011 and 2012 continually indicated that corruption remained most rife at the level of law enforcement.<sup>140</sup>

The Department of Public Service and Administration (DPSA) took cognisance of corruption within the public service. The department noted that the public service was very corrupt, and lacked those effective measures necessary to combat and prevent corruption.<sup>141</sup> In recognising the increase in levels of corruption the department resolved to tackle internal corruption effectively in its 2012 financial year.<sup>142</sup>

The media also reported on the perception of corruption within provincial and local government levels. The high level of reported corruption within the Eastern Cape Province's health department was a further indication of how corruption could lead to a vulnerable public sector.<sup>143</sup> Corrupt activity which totalled R300 million within the Kwa-Zulu Natal Social Development Department exacerbated these perceptions.<sup>144</sup> The reported corruption within eThekweni Municipality further added to perceived corruption within local

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<sup>138</sup> ICD 'Annual Report' (2011/2012) 9.

<sup>139</sup> ICD 'Annual Report' (2009/2010) 101-102.

<sup>140</sup> Statistics South Africa 'Victims of Crime Survey' (2011) 4-7; Statistics South Africa 'Victims of Crime Survey' (2012), 3-4.

<sup>141</sup> DPSA 'Annual Report' (2009/2010) 5.

<sup>142</sup> DPSA 'Annual Report' (2012/2013) 21.

<sup>143</sup> SAPA 'Eastern Cape health department reveals 'devastating' corruption' *Times Live* available at <http://www.timeslive.co.za/politics/2013/02/03/eastern-cape-health-department-reveals-devastating-corruption> (accessed 21 November 2013).

<sup>144</sup> Staff Reporter 'R300m corruption in KZN social department' *Mail & Guardian* 20 January 2010 available at <http://mg.co.za/article/2010-01-20-r300m-corruption-in-kzn-social-department> (accessed 21 November 2013).

government.<sup>145</sup> John Block's re-election as the chairman of the ANC in the Northern Cape, despite facing charges of fraud and corruption did little to improve perceptions of corruption.<sup>146</sup>

The name John Block becomes synonymous with notions of fraud and corruption throughout this period. Block was the Chairperson of the ANC in the Northern Cape Province when he was arrested on charges of fraud, corruption and money laundering in 2010. The charges related to procuring water purification equipment for Kimberley Hospital from Intaka Holdings at inflated prices during 2005 and 2006.<sup>147</sup> He also faced charges of fraud, corruption and money laundering relating to government leases awarded to a company called Trifecta which paid Block and others to secure lease agreements in favour of the company.<sup>148</sup> Despite facing these charges John Block continued to operate as the finance MEC for the Northern Cape Province, regardless of opposition parties calling for his suspension from office.<sup>149</sup> Furthermore, the ANC's refusal to suspend John Block at this time, due to the allegations of corruption against him, could indicate a lack of political will to have high ranking members of the ruling party sanctioned based on serious allegations of corruption.<sup>150</sup> This creates a negative perception regarding Government's desire for clean governance within the public sector.

With perceptions of corruption on the increase, and with various anti-corruption plans being formulated by organs of the public sector it begs the question as to whether this would prompt the effective implementation of previous anti-corruption initiatives, or the development of new initiatives which deal more effectively with the issue. Thus, the policy and legislative anti-corruption developments which transpired within this period will now be analysed, with particular attention paid to whether these policies and laws provide the State with the tools it needs to effectively combat corruption.

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<sup>145</sup> SAPA, 'KZN eThekweni corruption report released' *Times Live* 23 July 2013 available at <http://www.timeslive.co.za/politics/2013/07/23/kzn-ethekweni-corruption-report-released> (accessed 21 November 2013).

<sup>146</sup> Hlongwane S 'The ANC's John Block problem' (2012).

<sup>147</sup> SAPA 'Block not humiliated – supporters' (2010).

<sup>148</sup> Faull L 'Trifecta's kickback circle extends beyond Northern Cape' (2011).

<sup>149</sup> SAPA 'Opposition parties protest against Block' (2012).

<sup>150</sup> Evan S 'ANC says it won't suspend John Block' (2013).

### 3. ANTI-CORRUPTION POLICY

In line with combating corruption, national government's policy developments within this period resulted in the formulation of the National Planning Commission (NPC). The NPC published its Diagnostic Overview in 2011, wherein it outlined various factors on the need to eradicate corruption from all spheres of the State.<sup>151</sup> This publication noted corruption as being a factor which undermines state legitimacy and service delivery throughout the State. This arises from weak good governance and anti-corruption systems and institutions within Government which are under capacitated, having insufficient oversight mechanisms and lacking true accountability. Furthermore, corruption is viewed as more than an institutional problem, but also a political and moral problem. Thus, the focus on combating corruption should include consideration on how to ensure that the actors within the public sector have express intentions to maintain a public service which promotes transparency and accountability. This desire triggered the need for Government to expand its views on corruption, and the need to formulate a plan which would provide the public sector with more certainty in its pursuit of cleaner governance.

In 2012 the NPC drafted the National Development Plan, which provided the State with an analysis on how great a problem corruption within the public sector was.<sup>152</sup> The NPC realised that the eradication of corruption and providing effective governance required all forms of short-term thinking to be in line with a singular mandate. This mandate should have considered more than how a particular ill was to be cured, but should also have given consideration to how an ill came into existence, the factors which informed the ill's resilience despite various efforts towards its eradication, and the provision of means to address every facet of this particular ill in order to ensure that the proposed solution deals holistically with the issue at hand. The NDP recognised the need to fight corruption owing to the perception that it frustrates society's ability to operate fairly and efficiently, thus limiting the prosperity of the economy and the economic emancipation of the people.<sup>153</sup> This strategic plan by Government is unique in noting how the desire towards a system of governance which is free of corruption would be an unattainable dream without the political will to support the stance.<sup>154</sup>

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<sup>151</sup> National Planning Commission 'Diagnostic Overview' (2011) 25-26.

<sup>152</sup> National Planning Commission 'National Development Plan – Vision 2030' 24.

<sup>153</sup> NDP (2012) 56.

<sup>154</sup> NDP (2012) 56-57.

The NDP's vision was for the State to have a zero-tolerance attitude towards corruption, which was premised on four policies. First, there existed the call to build a resilient anti-corruption system. This system was to operate freely and without political interference. Further, the NDP proposed that this goal would be achieved by the strengthening of the present multi-agency anti-corruption system, increased protection of whistle blowers, greater central oversight with regard to procurement contracts, and empowering the government procurement system.<sup>155</sup> Second, the NDP called for greater accountability and responsibility to be portrayed by public servants. This required the proper implementation of the various mechanisms of managing integrity such as the codes of conduct of councillors and governmental staff, a financial disclosure framework, and supply chain management regulation.<sup>156</sup> Furthermore, accountability is to be mustered by means of linking the liability of public servants to their responsibilities, and for corrupt officials to be made directly liable for the loss they have caused the public sector.<sup>157</sup> Third, there was the call to create a transparent, responsive and accountable public service where information on the affairs of the State was available to the people, in order to provide the means for the public to hold Government to account.<sup>158</sup> Fourth, the NDP called for the strengthening of judicial governance and the rule of law.<sup>159</sup> This called for the law to be able to change and progressively adapt to the needs of society. Thus, court processes were to be simplified and made to be more accessible to all people so as to create a system which was deemed to be just by all people within the society.

The National Development Plan has provided Government with anti-corruption goals which are to be reached by 2030. All spheres and departments of Government are mandated to implement policies which would see the desired success of the NDP being realised on a progressive basis. Thus, the only means of determining whether these individualised policies will bear fruit by 2030 is to track their progress, and evaluate whether the public sector does indeed see positive results coming from this national vision. However, the manner in which the NDP has dealt with corruption within this period is no different from previous policy attempts. Yet again, Government outlined the difficulties in combating corruption, and provided no implementable directive on how to achieve cleaner governance.

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<sup>155</sup> NDP (2012) 447.

<sup>156</sup> NDP (2012) 451.

<sup>157</sup> NDP (2012) 452.

<sup>158</sup> NDP (2012) 452-453.

<sup>159</sup> NDP (2012) 453.

Local government continued in its effort towards cleaner governance by implementing customised policies geared towards combating corruption, fraud and maladministration whilst also providing municipalities with a framework with regard to how the policies are to be implemented.

The Sol Plaatje Municipality,<sup>160</sup> the Mafikeng Local Municipality,<sup>161</sup> and the Lesedi Local Municipality are examples of municipalities which have designed their own internal anti-corruption policies.<sup>162</sup> Each of these institutions placed particular emphasis on defining what corruption is. Bearing in mind that the PRECCA has made provision for a broad definition of what constitutes corruption; these municipalities adopted even broader definitions on what constitutes corruption and corrupt activity.<sup>163</sup> These expansions on the set definition for corruption are arguably designed to give effect to the context and environment in which these municipalities carry out their functions.

Local government continued to note that corruption and corrupt practices have the effect of undermining the values and principles of efficiency and effectiveness governing the public administration. This has inspired the need for local government to provide employees and councillors with the means of preventing corrupt activity from within individual municipalities.<sup>164</sup> Whistle-blowing was encouraged with provision being made to ensuring that staff and councillors were able to make protected disclosures without the fear of being targeted or victimised by those who would choose to have their corrupt activity remain a secret crime. Thus, these policies were designed with the intention of reinforcing existing legislation for it to have practical application in preventing and reacting to allegations of corruption at local government level. In maintaining the prevalent theme of zero-tolerance toward acts of corruption, local government has had various, individualised attempts at instilling practices which could protect the good administration of this sphere of government. However, designing and instituting policy which would not be strictly implemented would vitiate these efforts by local government.

These assertions substantiate the notion that any policy, regardless of how well it is drafted, would be rendered irrelevant when not supported by a will to combat corruption within the public sector, by the actors within local government. Government also sought to supplement

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<sup>160</sup> Sol Plaatje Municipality 'Fraud Prevention and Anti-Corruption Policy' (2010).

<sup>161</sup> Mafikeng Local Municipality 'Fraud & Corruption Policy' (2012).

<sup>162</sup> Lesedi Local Municipality 'Anti-Fraud and Corruption Strategy and Prevention Plan' (2013).

<sup>163</sup> Sol Plaatje (2010) 3; Mafikeng (2012) 3-5; and Lesedi (2013) 3-4.

<sup>164</sup> Sol Plaatje (2010) 1.

its legislative strategic framework within this period. However, these legislative developments were minimal and provided little differentiation from past anti-corruption initiatives. These developments will now be discussed.

#### 4. ANTI-CORRUPTION LEGISLATION

The year 2011 saw yet another attempt by the legislature at providing further means of addressing the urgency to fight corruption. However, this initiative was one based merely upon the successes of a structure which had by that time already been established.

##### *Independent Police Investigative Directorate*

The Independent Police Investigative Directorate (IPID) Act of 2011 came into existence based on section 206(6) of the Constitution which sought to provide for the effective and independent oversight of the South African Police Service (SAPS) and Municipal Police Service (MPS).<sup>165</sup> Another significant function which was to be performed by this directorate was to launch independent and impartial investigations into identified criminal offences allegedly committed by the SAPS or the MPS, and to make certain disciplinary recommendations in respect of such investigations.<sup>166</sup> Furthermore, the IPID was commissioned to investigate any corruption matter within the police, and matters relating to systematic corruption within the police.<sup>167</sup>

Regardless of what this Act provided for, these functions had been performed by the predecessor to the IPID; namely, the Independent Complaints Directorate (ICD). Thus, this new directorate was empowered to perform nearly the exact same functions as the replaced ICD,<sup>168</sup> supplemented by greater legislative certainty on matters such as the types of penalties for offences committed by police officers.<sup>169</sup> Ultimately, this Act provided the State with no new means of combating corruption within the police; which was substantially necessary when considering that South Africans maintained the view that the police was one of the most corrupt components of the public sector.<sup>170</sup> Here, Government was presented with an opportunity to provide a strong, active, and efficient means of fighting corruption within the

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<sup>165</sup> Section 2(a) and (b) Independent Police Investigative Directorate Act 1 of 2011.

<sup>166</sup> Section 2(d) and 2(e) IPID Act.

<sup>167</sup> Section 28 (1)(d) IPID Act.

<sup>168</sup> Section 35(1) IPID Act.

<sup>169</sup> Section 33 IPID Act.

<sup>170</sup> Transparency International 'Global Corruption Barometer (2010/2011)' available at <http://www.transparency.org/gcb201011/infographic> (accessed 21 November 2013).

police. Instead, it opted to merely rename the ICD and repeat the functions of this already established directorate within the country.

### *Judicial Matters Amendment Act*

The legislature continued along the path of reaffirming past anti-corruption initiatives in 2012 by means of the Judicial Matters Amendment Act of 2012.<sup>171</sup> Herein, the Special Investigating Unit and Special Tribunals Act of 1996 was supplemented with regulations on the litigation function to be played by the SIU. The third amendment grants the SIU the power to institute proceedings in a Special Tribunal against a particular party, and to present evidence in such proceedings.<sup>172</sup> While the Act submitted other amendments to the SIU's legislative framework it must be noted that these amendments have provided this initiative with no additional means of combating corruption. The SIU had been identified as a means of Government reaching its desires for clean governance, and it has functioned alongside various other anti-corruption initiatives since its establishment. While legislation has not provided for the greater empowerment of the SIU, it must be noted that the SIU has broadened its reach in the pursuit of combating corruption by incorporating the Anti-Corruption Task Team (ACTT) and the Special Anti-Corruption Unit (SACU) into its framework.

The ACTT was established by the Justice, Crime Prevention and Security Cluster to work in collaboration with other government agencies, such as the Hawks, NPA and Asset Forfeiture Unit in fighting corruption.<sup>173</sup> This Unit would come into operation in 2010 and would investigate high priority corruption cases when more than R5 million in assets would be seized. The SACU was commissioned to investigate and prosecute senior public servants involved in corruption. Examples of these types of investigations included inquiring into undeclared business interests, officials performing remunerative work outside of the public service, and solicitation or receipt of bribes by officials.<sup>174</sup> However, the efforts by these anti-corruption initiatives have not been without fault. Parliament had offered criticism on the efficiency of the ACTT in investigation. Failure to speed up investigations and prosecute those found to be corrupt within the public sector, negatively affected the State's efforts at

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<sup>171</sup> Judicial Matters Amendment Act 11 of 2012.

<sup>172</sup> Section 4 Judicial Matters Amendment Act.

<sup>173</sup> Department of Justice and Constitutional Development 'Strategic Plan 2013-2018' 13-14.

<sup>174</sup> DPSA 'Launch of the Special Anti Corruption Unit' available at <http://www.dpsa.gov.za/article.php?id=11> (accessed 21 November 2013).

fighting corruption and cast a dull light on the effectiveness of the ACTT.<sup>175</sup> The failure of these bodies in carrying out their mandate potentially weakened the State further by allowing the corrupt to continue to be active in the public sector, pending the possibility of investigations. What is evident is that the mandates of the ACTT or the SACU are similar, if not identical to that of the SIU; thus, the formation of these units within the SIU would prove to be no more than a bureaucratic means of a government agency redefining its duties in combating corruption by assigning some of its function to an associated body.

Ultimately, the public sector did not receive any new type of anti-corruption initiative which had been tailored to fit the climate of corruption within South Africa during the Zuma era. Instead, legislation merely clarified, and reclassified the status quo with regard to South Africa's stance on fighting corruption; namely, the criminalisation of corrupt activity while affording government institutions the right to deal with corruption internally.

#### *Public Administration Management Bill*

On 5 June 2013 the DPSA announced its intention to launch the Anti-Corruption Bureau as a single anti-corruption agency within the Republic. The Bureau would be established in terms of Chapter 6 of the Public Administration Management (PAM) Bill.<sup>176</sup> The Bill noted that the Bureau would investigate corruption within the public service, protect whistle-blowers, capacitate internal disciplinary proceedings, and cooperate with other institutions and organs of state to fulfil its functions.<sup>177</sup> The Bureau would cooperate with government bodies such as the ACTT, NPA, SIU, FIC and DPCI in carrying out its functions as well. While the Bill noted that the Bureau would perform the function of investigating corruption, the independence of such investigation remained in question owing to the notion in the Bill that the Bureau would be accountable to the Minister and not to Parliament.<sup>178</sup> Regardless of the various factors which contributed to the desire to create the Anti-Corruption Bureau, it must be noted that the second draft of the PAM Bill excluded provision being made for the formation of the Bureau.<sup>179</sup> Thus, the department appears to have abandoned its desire of creating a single and all-encompassing anti-corruption agency. Regardless of the good intentions of the department it cannot be ignored that if the Bureau came into existence that it would be yet another anti-corruption structure providing no guarantees of success.

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<sup>175</sup> Mkhwanazi S 'Anti-corruption team blasted' *The New Age* 9 October 2013 available at [http://www.thenewage.co.za/108945-1007-53-Anticorruption\\_team\\_blasted](http://www.thenewage.co.za/108945-1007-53-Anticorruption_team_blasted) (accessed 21 November 2013).

<sup>176</sup> Public Administration Management Bill – 2013.

<sup>177</sup> Section 12(1) PAM Bill.

<sup>178</sup> Section 12(5) PAM Bill.

<sup>179</sup> Public Administration Management Bill 48 of 2013.

## 5. CONCLUSION

Within this period there existed a continued sense that while anti-corruption policy and legislation bolstered those anti-corruption initiatives which had previously been set in place, the absence of political will in combating corruption may have contributed to an overall negative perception of high levels of public sector corruption within the State. Regardless of the many strategies which were formed from the inception of democracy into South African jurisprudence, perceptions of public sector corruption within the Zuma era do not improve, nor indicate a potential improvement as South Africa gears towards its fifth democratic elections in 2014. What may be deduced is that the State failed to effectively initiate a focused attempt at ensuring that the actors within the public sector were fully committed to creating a state within which good governance principles were promoted above one's private interests.



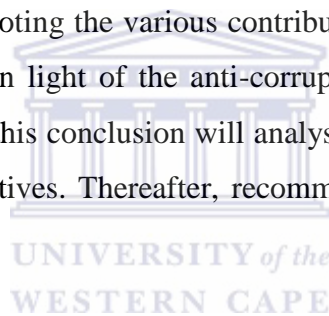
## **CHAPTER 6**

### **Conclusion**

#### **1. INTRODUCTION**

Over the past two decades South Africa periodically sought to combat corruption by means of policy and legislation. The State established centralised governmental agencies charged with this mandate. The media played the important role of informing the public of suspected corruption, and society campaigned for the true promotion of good governance. With all of these positive anti-corruption measures set in place it is of great concern that the perceptions of corruption steadily increased between the Mandela and the Zuma presidencies.

The object of this dissertation was to examine how South Africa's anti-corruption efforts had developed over the past twenty years. This has included consideration of the character of these anti-corruption measures, noting the various contributions made by Government in the form of policy and legislation. In light of the anti-corruption policy and legislation which have been previously discussed, this conclusion will analyse the character of these measures, and the efficiency of these initiatives. Thereafter, recommendations will be made based on the aforementioned findings.



#### **2. CHARACTERISTICS OF ANTI-CORRUPTION INITIATIVES**

Government's anti-corruption efforts which came into effect during the four presidencies were unique in character. At the start of the Mandela Presidency the Corruption Act of 1992 already criminalised acts of corruption. Until the institution of the Special Investigating Unit (SIU) in 1996, criminal prosecution of the corrupt was the main measure used by the State to combat corruption. The SIU introduced a different kind of means (civil forfeiture) to combating corruption within this period. The recovery of assets lost due to corruption played an important role in government's initial anti-corruption movement. Despite the contributions made by the public protector it must be noted that the combination of criminal prosecution and civil investigation framed the character of the anti-corruption initiatives of this period.

The anti-corruption initiatives of the Mandela Presidency were carried over to the first presidency of Thabo Mbeki (1999-2004). Within this period political corruption started to

become a matter of concern as the then deputy president of the country, Jacob Zuma, was implicated in the corruption investigations of Shabir Shaik. As a counteractive measure to the increase in perceived corruption, Government took to supplementing its policy framework with greater anti-corruption effort throughout this period. The formation of the National Anti-Corruption Forum (NACF) represented a more evolved stance in fighting corruption with its attempt at unifying government, business and civil society in the pursuit of cleaner governance. However, the constant delays of this initiative coming into full operation also delayed potential positive results in combating corruption. Nonetheless, criminal justice means of combating corruption were bolstered with the establishment of the Directorate of Special Operations (the Scorpions) in 2001 which provided a more focused approach to combating corruption. The re-establishment of the SIU in 2001, due to the closing of the Heath SIU in 2000, merely reaffirmed the element of civil liability within the State's anti-corruption system.

While these measures were applicable nationally it must be noted that local government also designed internal anti-corruption measures within this period. The provisions made for the adjudication of corruption matters within local government showed a shift in the character of anti-corruption initiatives where organs of state took a more localised stance to rooting out corruption internally.

The Mbeki presidency (2004-2008) was marked by the dismissal of Deputy President Zuma, and the latter's victorious return to power by ousting Mbeki as the president of the ANC. At first the firing of deputy president Zuma for his corrupt relationship with the convicted Shabir Shaik sent the signal that Government was serious about corruption in the highest places. However, Zuma's election as president of the ANC, while a corruption charge was pending, cast a negative light on Government's attempts at combating corruption.

On the legislative front the Prevention and Combating of Corrupt Activities Act (PRECCA) provided extensive definitions on what corruption was, and restructured the State's anti-corruption framework. This Act enhanced the criminal and civil character of the system, and provided support for internal anti-corruption measures. Thus, the character of anti-corruption initiatives did not change. However, the framework for making protected disclosures on corrupt activity received necessary support from the NACF. Further, more municipalities took to designing internal anti-corruption policies despite reported corruption at local government level. Overall, anti-corruption measures within this period showed little change

when compared to the first Mbeki administration. Furthermore, the disbanding of the Scorpions may be viewed as a regressed stance taken in combatting corruption.

The Zuma Presidency marked an increase in perceptions of corruption, despite some effort geared towards improving this perception. The National Development Plan (NDP) redefined how crucial combating corruption was, but did not contribute to the system of anti-corruption initiatives besides providing deeper analysis on the issue. Legislation provided greater theoretical support for the anti-corruption framework, but these measures did little in combating corruption effectively. An example of this would be Government's stance in disbanding a very effective Scorpions unit and replacing it with a less effective Hawks agency. Arguably, the institution of the Independent Police Directorate was a measure of improving perceptions of corruption after the prosecution of the former national police commissioner, Jackie Selebi. However, the progress of the directorate is yet to be seen as the police have been reported as one of the primary corrupt organs of state. This period may also be known for the 'start-stop' character of its anti-corruption efforts. The Register for Tender Defaulters was intended to be a means of increasing transparency within the public sector, and ensuring that those previously convicted of procurement related corruption were barred from doing business with government. However, the failure to add no more than two names onto this list since 2010 limited the effectiveness of this initiative.

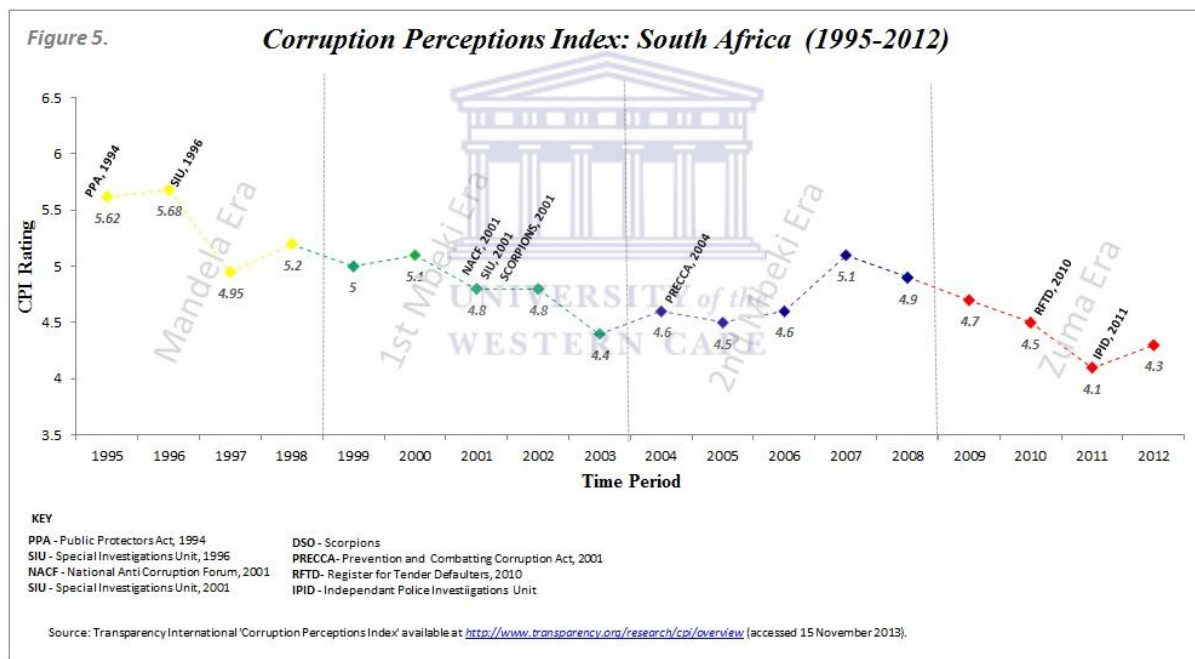
The promise of creating an Anti-Corruption Bureau in terms of the first Public Administration Management (PAM) Bill of 2013 petered out when the second Bill eliminated the creation of this Bureau from its framework. The Department of Public Service and Administration (DPSA) expressed great desire in creating this single anti-corruption agency. However, this desire failed to result in the materialisation of this Bureau.

The character of South Africa's anti-corruption initiatives remained based upon the following factors. First, criminal justice was the prime composite of the anti-corruption system. Second, civil measures created the means for retrieving assets lost in corrupt activity. Third, organs of state localised anti-corruption law and provided internal means of combating corruption. This included the ability for these organs to initiate their own administrative and disciplinary anti-corruption procedures.

### 3. EFFICIENCY OF MEASURES

One primary question begs consideration throughout this period; namely, whether these anti-corruption measures were effective in achieving their mandate of combating corruption. The continued increase in perception of corruption reported in the CPI between 1995 and 2012, including Government's own recognition of how prevalent corruption was within the public sector, would suggest that these anti-corruption measures were not successful in their mandate. When comparing the perceptions of corruption within the Mandela presidency to that of the perception within the Zuma presidency it cannot be claimed that the State's efforts showed an overall progress in combating corruption, as is depicted in Figure 5. The efficiency of these measures will now be explored.

Figure 5.



Since the first democratic government of South Africa the State took to constantly supplementing its legal framework with various anti-corruption initiatives. Legal measures had provided the State with multi-pronged anti-corruption powers. These measures ensured that the criminal justice system was provided with the means it needed to effectively prosecute those suspected of corruption. The civil law means of combating corruption further supplemented the criminal anti-corruption framework. Therefore, it cannot be argued that South Africa's anti-corruption initiatives were insufficient for combating corruption as there

were so many avenues which government could have taken in eliminating corruption from the public sector.

If these measures were deemed efficient in being able to combat corruption then the concern is why they have been unable to ensure that corruption is counteracted effectively. Arguably, a lack of administrative control by the State over these initiatives was a factor which hampered the efficient performance of national anti-corruption initiatives. An example of such failure would be with regard to the Register for Tender Defaulters which had not been updated since 2010, thus limiting its ability to be an effective anti-corruption initiative. Thus, any anti-corruption system which lacks effective administration cannot be expected to produce results.

Another factor which continually thwarted government's anti-corruption attempts was the lack of political will in combating corruption. Without politicians within the highest ranks of government dedicating their efforts towards the objective combating of corruption it cannot be expected that anti-corruption initiatives will be effective in fighting corruption. Thus, Government would be required to practise what it preaches by ensuring that those within the public sector, who are suspected of being corrupt, face justice. In so doing, the public may show greater confidence in Government's ability to combat corruption, which may have the effect of improving perceptions of corruption within the public sector.

#### **4. RECOMMENDATIONS**

In order for South Africa to move beyond the present negative perceptions of public sector corruption a number of shifts must take place. First, the State must be given recognition for constantly having improved its anti-corruption legal framework which binds the entire country. Supplementing this framework with more measures is not likely to have any significant impact. Second, Government is to comprehensively implement those anti-corruption measures which have already been set in place.

Third, in order for the implementation of these measures to be effective they need to be supported by political will within each sphere of government, and within every government department. Fourth, the public should consider whether those elected into power possess the required desire to promote the good governance of the State, and the will to pursue such an

agenda. Fifth, it is further recommended that Government must remove politicians who have placed personal gain above the duty to serve the people.

Sixth, anti-corruption bodies should be strengthened. In this regard the independence of the Hawks must be strengthened, and the National Department of Public Prosecutions must be further capacitated so as to be more effective in its mandate.

Finally, the public must take a more proactive stance in combating corruption. It is not only government who should be responsible for combating corruption, but the ordinary people should play their part by, for example, not paying bribes and not seeking to corrupt those within the public sector. A general public which is more geared towards the cleaner governance of the State would possess the means of ensuring that Government is held accountable for every act of corruption. No other stakeholder to the public sector has this much power to curb corruption, and this power should be exercised to its full extent in order to realise the goal of having a system of governance based on notions of transparency and accountability.

The realisation of good governance practices within the public sector is not an unattainable goal. It requires a collective effort towards combating corruption. Thus, it is for all South Africans to accept that the stability of the State, the provision of services to all, selfless government, and the enhancement of the livelihoods of all South Africans is an objective worth fighting for. Accepting this may greatly advance South Africa's fight against corruption.

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