THE ETHICS OF TRANSPARENCY IN THE PUBLIC SECTOR

by

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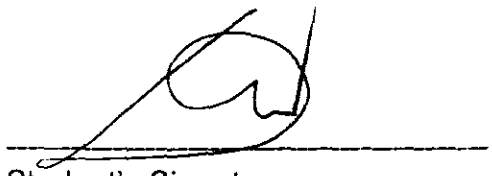
DECLARATION

I declare that the dissertation which I hereby submit for the degree of Master of Administration in the Discipline of Public Administration at the University of Zululand, is my work and has not previously been submitted by me for a degree at another University.



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SYNOPSIS

This dissertation focused on the ethics of transparency in the public sector. The study was inspired by various sets of circumstances in the Republic of South Africa in which corruption and secrecy in terms of the activities of the public sector played an important role.

In the study, consideration was given to the various definition of the concept of ethics, values and morals as well as how ethics, values and morals affect public officials in corruption. An objective of the study was to describe and analyse the special role played by ethical dimensions as a variable in establishing a framework within which openness and transparency have to take place in the public sector. If the public official accepts the code of ethics as the standard against which ethical behavior will be measured, it will ensure that the acts of public officials are at all times transparent and ethical and conforms to morality and values.

Clarification was given to the meaning, causes and manifestation of corruption, where corruption deemed to have taken place whenever a public official involve in corruptible behavior such as the misuse of his / her power in exercising his/her duties as well as deviating from prescribed rules and regulations, such behavior being to that person's benefit and detrimental to the public.

This study also centered around to the measures available to combat the manifestations of corruption. Possible remedies for unethical and untransparent conduct were discussed. The concept of accountability, the role of a free press and other formal measures deployed against corruption and transparent governance were also discussed.

Governments has an obligation to communicate with citizens and citizens have a right to be informed of Government's policy and actions to enable them to comply with the requirements arising from governments policies.

They also need information to be able to exercise their democratic rights to be able to decide on the basis of accurate information.

KEY TERMS

Transparency, Ethics, Values, Morality, Accountability, Information, Communication, Corruption, Greed, Patronage, Nepotism, Bribery, Graft, Ghosting, Code of ethics, Fraud, Governance , Rule of law.

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CHAPTER 1

GENERAL ORIENTATION

1.1 Introduction

The lack of accountability, transparency and financial discipline are the main and causes of the increasing incidents of corruption and abuse of state resources in South Africa. This study will focus on the ethics of transparency in the public sector. The introductory chapter will provide a background and rationale as well as a motivation for the study in order to put the problem in context. Since the study will be subject to limitations, the demarcation of the study will be set out briefly. The statement of the problem that arises, the research problems and objectives and the approach to the study are also provided. The research approach in this study is descriptive and analytical though sometimes interpretative. To clarify this approach, it has also been necessary to explain the manner in which information was gathered as a method of investigation. A concise description is given of terms frequently used in this dissertation to avoid misinterpretation. This chapter concludes with an overview of the chapters contained in the dissertation.

1.2 Background, Rationale and Motivation

The entrenchment of a constitutional right of access to information in State hands in the interim Constitution's Bill of Rights is an event of obvious significance. Section 23 of the interim Constitution provided as follows:

"23. Access to information

Every person shall have the right of access to all information held by the State or any of its organs at any level of government in so far as such information is requested for the exercise or protection of any of his or her rights".

The reversal of past practice brought about by the clause was dramatic. Access to information in the hands of the State was now a right rather than a privilege. The entrenchment of the right in the Bill of Right meant that legislation restricting access to official information was a limitation of that rights and would be unconstitutional and invalid unless justifiable in terms of the limitation clause in the Constitution.

In the current context of globalisation of the world economy, administrations in all countries are faced with a variety of issues including the ethical problems of transparent administration and good governance. Public administration in South Africa also has to overcome numerous difficulties caused largely by the following factors: the burden of history; unethical and corruptive constraints; and government secrecy. Faced with such difficulties, as a prerequisite for strengthening the rule of law and the credibility of the state, both internally and externally, is the setting up of 'an efficient administration at the service of citizens which is transparent, accountable, served by honest officials. Various writers argue that keeping public secret poses a danger to the preservation of what since the participation of the community is limited by such practice. Some writers argue that the community has a right to be informed regarding the activities of the public sector so that the actions of the sector can be evaluated without prejudice. Public administration writers are mostly against secrecy, but there is consensus that a measure of secrecy in pubic activities is essential.

One of the aspects necessitating secrecy is information that could jeopardize the *security of the State, such as information about certain defence and police* activities. The experts also agreed of the necessity to keep diplomatic activities secret.

There have been various situations within the public sectors of South Africa where secrecy played a role. Apparently the phenomenon of keeping the activities of the public sectors secret was not acceptable to the community. The hearing of the Truth and Reconciliation Commission brought to light that the circumstances and

implications of such secrecy were complicated and that reasons for secrecy could have been deep-seated. It seemed many of the adverse effects of secrecy could have been prevented if public officials and politicians acted in an ethical way throughout. It is possible that the lack of openness and transparency could have contributed to the fact that unethical behavior is so widespread.

Incidents of secrecy gave rise to all sorts of speculation and Government is fit to withhold information about public affairs. It appeared that the phenomenon of transparency in public activities and all the circumstances surrounding them could be subjected – and very fruitfully so – to scientific investigations, in order to analyse the implications thereof. This serves as a motivation for the study, in order to research the phenomenon of transparency within the context of ethics and corruption.

South Africa, like many other countries in the southern hemisphere, made its historic transition from authoritarian rule to democracy with the founding elections in 1994, when a democratic constitutional dispensation replaced the previous selective and undemocratic government. Consequently, it opened up new opportunities for transparency in government activities. Transparency can be regarded as one of the cornerstones of democratic government. Public calls by political office-bearers, the media and the public for greater transparency in matters of governance and politics currently reinforce ethical principle to a significant degree.

The Access to information Act further enlarged the scope of transparency through *provisions that give effect to the public's right of access to information from public* and private bodies, as contained in section 32 of the Constitution. Together with promotion of Administrative Justice Act and the Protected Disclosures Act, it constitutes a major advance in the development of good governance.

The three statutes create a framework for members of the public to play a crucial role as partners in fighting corruption and mismanagement in both the public and private sectors. There is an increasing focus on good (and bad) corporate

governance in South Africa and internationally, and institutions which are transparent and open will benefit from more favorable investor perceptions and improved relationships with the public show that a substantial effort has been made to endow the public administration with a legal framework that encourages the players involved to assume a greater sense of responsibility and develop practices to promote transparency.

Transparency refers to the availability of information to the public on the transactions of the government and decision-making processes. Transparency involves ready access to reliable, comprehensive, timely, understandable, and internationally comparable information on government activities and is necessary for sound government and good governance. Governance implicitly guarantees the civil and human rights needed for effective ethical government and the information flows that enable the members of society to be informed of government activities. Two interrelated issues are inherent in this phenomenon. The nature of information, and the use of that information. The latter is largely dependent on the former.

The general experience with regard to the nature of information is that much information is provided to the public and the legislature. Moreover, even when information is available and clear, members of the community may prefer not to voice their grievances and may prefer to exit because of uncertainty about alternatives.

According to Peter Richardson, a Board Member of Transparency International, a *corruption-fighting organization* (Johnson, 2002:3), "*high levels of corruption are* no longer regarded as inevitable" and there is now consensus "that corrupt behavior reduces economic growth and can destabilize governments."

Corruption erodes respect for the law and deters honest people from entering public service. It results in over-invoicing and substandard work by contractors and reduces tax revenues. Richardson adds that "corruption also undercuts environmental regulations and building code regulations, discourages foreign

direct investment in developing countries, and facilitates other crimes, such as drug trafficking" (Richardson, 2002: 6).

Non-transparent practices tend to be destabilizing, to create distortions and to exacerbate inequities. These adverse repercussions may not be apparent in the near term, but they may surface later in the form of a crisis, requiring much costlier remedial action. In recent years many International Monetary Fund countries have made major progress toward fiscal transparency. The economies in transition have made the greatest leap toward transparency, although some still have non-transparent fiscal systems.

Transparency and openness in governance is not a new phenomenon in the world. Fischer, (2000:2) noted that "corruption was particularly identified as contributing to the lack of transparency." It should also be noted that if there were more transparency there would be less corruption. Transparency International, a global organisation, builds anti-corruption coalitions with governments, business people, and representatives of civil society. The World Bank and the International Monetary Fund focus on introducing reforms in developing countries to address the demand side of bribery. In cases where a country has high levels of corruption and a government that is not instituting reforms, international financial institutions may reduce or eliminate aid. In 1996 the United Nations General Assembly approved a code of conduct for public officials and called on member states to make bribing public officials a crime. Nevertheless, considerable scope remains for eliminating non-transparent practices in most countries. It is important to keep in mind the distinction between unintended non-transparency (attributable to slow technical and institutional development) and deliberate misrepresentation or suppression of information.

In order for a democracy to function effectively, many individuals and groups within society should accept democracy's fundamental ideas and values. These ideas and values include an acceptance of majority rule, individual rights, minority protection, peaceful resolution of social problems, and tolerance for dissent.

Matthews (1978:1) remarks that in "Western democracies the right of the citizens to be informed does not mean that governments provide citizens with information, but rather the right to self-information, in other words, the right to acquire *information by access to documents or deliberations, exercised either personally* or through institutions such as the press."

The citizens of a state learn about their leaders and develop their opinions about government through the process known as political socialization. Family, schools, peer groups, the media, and general events are all important to this process. Furthermore, information affects whether citizens trust government and what control they have over government. It also influences employee morale and productivity and permeates all facets of government (Van Niekerk, 2001:167).

Media reports suggest that "government departments might sign commercial *contracts in an attempt to shield themselves from the public' right to know. If the* individual's constitutional right requires disclosure of a certain item of information held by a government department, it would be absurd if that department were able *to override that right by the simple device of entering into a contract that requires* such information to remain confidential" (Mail and Guardian, 1997:3).

The public's right to access to State-held information was introduced by the interim Constitution, Act 200 of 1993. While this right has existed on paper, many legal practitioners have found government departments to be uncooperative when information is claimed in practice, since disclosing information is a burdensome annoyance for administrators, and public scrutiny can make life difficult for government.

However, the inconvenience is far outweighed by the benefits of the individual's *right to access information as it guarantees open and accountable administration* (Van Niekerk, 2001:167). Corruption has been, and is still prevalent in the public sector of South Africa. The mismanagement of state money, or the money of the taxpayer, is a serious crime against the community in a democratic state and it is well known what the devastating implication of a corrupt government can have on

the inhabitants of state. The improper enrichment of officials is however, not the only concern regarding corruption – unlawful or unethical abuse of authority that goes hand in hand with it. This means that the act of bribery and misuse of money are an abuse of authority as well as the misuse of money
(Fox and Meyer, 1995:29).

Although it seems that measures might exist for the combating of corruption, little research has been undertaken to discover how effective these measures have been, especially when viewed against the ongoing presence of corruption in the public sector in South Africa. The process by which a politician or public official can clarify what activity is right or wrong must be highlighted to act as a code of ethics to these officials. It is therefore important to establish whether there is a code of ethics that is generally applied, or could be applied to diminish corruption in state departments. Also, declarations with an ethical nature, where in writing or verbally, which command or forbid certain behavior in specified circumstances, are important to evaluate or even to be created (Fox and Meyer, 1995:45).

1.3 Demarcation of the Study

This study is focused mainly on ethics and the right to access of information as variables that influence transparency. Although the investigation is not focused on a certain period, selected occurrences that took place in the previous couple of years, was researched and is demarcated by the coming into action of the Constitution of 1996 Act 108.

Research and resources regarding transparency in the public sector in South Africa is relatively rare in comparison to resources regarding the ethics. Resources about corruption were consequently used in order to obtain as much information as possible regarding the phenomenon of transparency.

1.4 Statement of the Problem

The contemporary call for fundamental reappraisal of openness and transparency in governmental institutions is a worldwide phenomenon as is evidenced by current literature as well as by the agendas of national and international conferences on the administrative sciences. The current emphasis on the need for transparency in government activities may be attributed to the problems arising from the detrimental effect of corruption and unethical conduct and practices, and also through the added process of current political and constitutional reform towards the establishment of the post-apartheid South Africa.

The interaction between public, and private sectors, political and administration institutions in the democratic South Africa takes a multiplicity of forms and aspects and is, in principle complicated. After all, the heterogeneous public, government, parliament, provincial and municipal authorities and administrations, business sector, unions, political parties and community organisation – each of these has its own function, and its own professional tendencies, which are often a source of controversy. They also often derive their power and authority from various different statutory and other sources. Transparency and openness offers a channel through which the public can have inputs into government activities in the ethical dimensions of transparency in the activities of the public sector cannot be qualified. There can only be referred to the phenomenon in relative terms and not in absolutely ones. Where references are made to the scope (quantity) of ethical variables in transparency; it must be interpreted relatively to certain circumstances.

This is all the more essential in South Africa's case, as the country emerges from apartheid rule during which the majority of South Africans were in the process of governing, actively turned away from and denied the right of access to information. The legacy of apartheid rule continues to haunt the implementation of transparent and open practices in the civil services. Often, the democratic

institutions of Government, as well as their concomitant processes and rules, to bring closer to the public, appear to them as something distant, alien, and perplexing. No reminder is needed of the inherent danger this poses for a healthy system of democracy. The public do not support democratic institutions that appear unethical, corrupt and incomprehensible to them.

The popular support for democracy and its institutions is not, as commonly assumed, expressed solely via the ballot box during elections, but is also dependent upon open transparent practices and policies.

Within the context of the strategies and legislation adopted to set up an efficient administration with regard to the elimination of corruption and the promotion of ethical standards in South Africa and the political desire for transparency, openness, accountability and services by honest officials, there is little doubt that this subject is both important and topical. By viewing of the background provided above, the main problem to be addressed this study will be:

What practical actions could be taken at institutional level to enable the South African public service to develop a sense of openness between government officials and the public to promote and increase ethical and transparent actions in the management of public assets, policies and services?

1.5 Research Problems

The need for such reflection as stated in the problem statement is important, because the determination of measures to combat corruption and promote ethical behavior within democratic institutions can serve as a useful benchmark whereby the progress of democratization in South Africa and the consolidation of our democratic gains can be assessed.

Through the application of primary and secondary source research methods, the following research questions, which could lead to the possible solution to the problem statement, were pursued:

- What is the nature of the interaction of ethics, corruption and openness in government and how can this interaction be strengthened and made more fluid by open and transparent governance?

- To what extent is the South African public entitled to its rights to access information on government activities, freedom and newly acquired opportunities of interaction in the process of openness and transparent government?

- How can ethical and uncorrupted behavior be effectively and efficiently integrated and encouraged in the process of legislative measures in the South African Government?

1.6 Aim of the Study

Given the absence of a known and proven system of norms for definitively setting the guidelines for transparency of the State, the need exists for the establishment to that end of an appropriate corpus of criteria which would be comprehensive enough to cover the entire field or ethical responsibility in governmental activity which would be as scientifically accountable in theory as it would be workable in practice, and which would be of enduring validity by being rooted in the fundamentals of the administrative sciences. To meet these requirements, it is also a purpose of the dissertation to investigate the seemingly high level of corruption and unethical practices prevalent in central government. Ethics takes on many manifestations and should not be regarded in a single form.

The aims of the study:

- To analyse and define ethics, values, morals and corruption as external variables influencing the promotion of transparency;

- To find out what values and morals are applicable so as to apply this knowledge to the question to how values influence the behavior of public officials regarding corruption;

- To get a clear picture of how corruption manifest itself in the public sector and the causes thereof and;

- To evaluate the efficiency of existing measures in combating corruption and promoting transparency.

1.7 Approach of the Study

Once the questions and uncertainties regarding transparent and open government integrated with each other, the research problem for the purpose was the selection of a frame work according to which the nature, role and functioning of the ethical are explained and valuated. The most useful theoretical approach to understand and explain the role of transparency was to isolate and to consider the variables that influence it-that goes to say that ethics, corruption, access to information and the freedom of the public – and to test these variables by analyzing the specific relationship between them.

These variables that form the greater part of this dissertation, helped define the parameters and limitations within which openness and transparency function, and from this developed the basis for the study. However, it obviously remains a mere framework and the influence of these respective variables, vary all the time, as they react to each other or are mobilized by the course of events.

The concluding part of this dissertation evaluates the role of the ethics of transparency in view of these variables. The purpose of this dissertation was not to become drawn into the fine details of the historic record, but to investigate the application of certain variables to open and transparent governance. Neither was it the purpose to make a value judgment regarding transparency. However, an effort is made to come to generalizations regarding transparency, and the

emphasis is placed on the relevance of studying the ethics in order to understand the role of this phenomenon. This dissertation is primarily intended to be an exploratory study on transparency. That is why the dissertation is essentially descriptive in nature.

1.8 Method of Investigation

The research methods to be adopted for the collection and interpretation of the data required for the study will be determined by the nature of the study. In the absence of a documented system of norms to guide the investigation, the principal means employed to do research work for this dissertation was done according to literature material and questions posed during informal interviews. Seeing that the activities of Government to Public Administration, the literature consulted covered a wide spectrum of themes – comprehensive literature on aspects such as ethics, responsibility, values, morality, corruption, secrecy and information that represents important literature sources of case studies and factual information regarding transparency.

The study is concerned mainly about offering representative examples, rather than merely including a variety of similar examples in historic-chronological order. This led to the regular inclusion of older sources, as well as sources in other fields of study, which gave greater insight that the most recent literature would have into the action taken within specific situations and the reasons specific customs originated.

The most important literature on the ethical considerations in public administration as an aid to gaining a better understanding of transparency and openness includes:

- Relevant books on ethical public administration
- Unpublished dissertations and theses

- The South African Constitution and other relevant legislation, white papers and statutes of the Republic of South Africa

- Official and unofficial documents and reports of Commissions of Inquiry and the Auditor-General of the Republic of South Africa.

- Research reports

- Political speeches

- Articles from journals and newspapers

The deductive nature of the study, its largely uncharted terrain, and the definitive role that particular points of departure played in the development of the various measures or guidelines and criteria called for conducting selective informal interviews as a supplementary and hence, secondary means towards that end.

Discussions with senior officials, specialists and experts from State institutions, academics, as well as with persons and associations of persons from other sectors verified, interpreted and clarified supplementary data or tested certain hypotheses or criteria.

In order to respond to the problem statement the study has also chosen to take a closer look at the field of public freedoms. The choice of institutional measures is guided by the political desire of the new government to institute a state of law in South Africa as well as by an understanding of the concept transparency in the South African civil service. A framework for the development of democracy through freedom of the press, opinion, expression and association is investigated to determine the extent of the guarantee of minimum freedoms thus favouring the creation of citizen's organizations to defend their interests.

1.9 Terminology

Comprehensive conceptual clarification of terms pertinent to the research occurs particularly in the appropriate chapters. The terms utilized throughout the research /study are concisely defined below:

1.9.1 **Corruption** can be defined as an inducement to wrong by improper or unlawful means. Corruption can be any form of dishonest practice, which can include fraud, nepotism, bribery, patronage, and influence peddling, committed by a public functionary. (Corruption (Fox and Meyer, 1995:29)

1.9.2 **Ethics** can be defined as being a system of moral principles (relating) to that branch of philosophy dealing with values relating to human conduct, with respect to rightness or wrongness of certain actions and to the goodness and badness of the motives and ends of such actions. It constitutes the basic principles of right action undertaken based on rules of conduct.(Fox and Meyer, 1995:55)

1.9.3 **Governance** refers to the function, action, process or qualities of government. It does not refer to government structures such as a cabinet or a local council, but to the policies made and the efficacy with which these are implemented.(Fox and Meyer, 1995 :55).

1.9.4 **Government** can be defined as the institutions responsible for making and carrying out the laws of a polity and for adjudicating disputes that arise under those laws. (Fox and Meyer, 1995:55)

1.9.5 **Rule of Law** is the principle that individuals should govern society according to recognized legal principles and not arbitrary decisions. It also recognizes that no one, neither citizen nor government official is above the law. (Fox and Meyer , 1995:115).

1.9.6 **Transparency** in government operations can be defined as openness toward the public at large about government structures and functions, policy intentions, public sector accounts and projections. (Hope, 1985:46).

1.10 Overview of Chapters

After completion of the research, the collected material was integrated and coordinated so that the facts and observations could speak for themselves. The results were divided into the following chapters forming a logical continuous unit:

Chapter One of the dissertation provide a general orientation to the entire study and method of investigation.

Chapter two describes the literature review for the promotion of transparency. The meaning of concept ethics, values, morality, and human rights as well as their influence on the public official is investigated. The context of the role of ethics as well as conformity is also clarified.

Attention is paid to an infrastructure for transparent and ethical governance, manifestation of unethical conduct as well as statutory guidelines and codes of conduct.

In **Chapter Three**, various definitions of corruption is provided and analyzed. Once a definition of corruption is established, the various causes, manifestations and conditions in society, which allow for the occurrence of corruption among public officials and political office-bearers, is dealt with. Finally, an explanation of the promotion of transparent and open governance is provided.

In **Chapter Four** attention has been given to the concept of accountability as a cornerstone to combat corruption as well as possible remedies for unethical and nontransparent conduct. This chapter focuses on legislative measures to control corruption and promote transparency as well as other formal mechanisms and judicial measures to ensure ethical and transparent governance.

In **Chapter Five** conclusions are drawn, based on the findings of the study. Possible recommendations are also made, which may encourage the support and practice of open and transparent governance.

Finally, the sources consulted are listed at the Bibliography.

CHAPTER TWO

LITERATURE REVIEW

2.1 Introduction

It is generally held in governments that aspire towards such democracy, that public administration ought to operate within democratic prescriptions that impact upon the execution of public sector activities, thus also the implementation of measures that promote transparency. When a government claims to accept the prescriptions of democracy, then it has to accept the selfsame prescriptions apply to the way in which policies that promote transparency are implemented.

Prescriptions of democracy can be identified as guidelines, principles or external variables that serve as the ambit within policies for the promotion of transparency through legislative implementation that ought to take place. The nature of these external variables refers to their normative character i.e. they serve as maxims that guide the action of public functionaries and serve as a means towards understanding the complexities of public administration activities, and in particular of transparency.

In this Literature Review, consideration will be given to various ethics dilemmas such as democratic values, prescribed guidelines, derived from community values and theoretical approaches to ethics. Definitions of the concept ethics, values and morals (morality) will also be discussed and what influences do ethics; values and morals (morality) exercise on the public official and on corruption in public administration in general. Furthermore, in the fulfillment of his/her duties, the public official is faced with other ethics dilemmas, which could influence transparency in the decision-making process; dilemmas such as behavior, ethical government, conformity could ultimately lead to corruption.

Government must ensure that standards are maintained in the public service, especially in the times of change. The chapter also identified some key elements

to provide a transparent and ethical infrastructure to regulate against undesirable behavior and to provide incentives to good conduct.

The chapter deals with the manifestation of unethical conduct through election fraud, official violence and institutional misconduct as a precursor to the following chapter, which focus on measures to combat corruption and unethical conduct. A general overview is given of remedies to combat the above-mentioned manifestations as well as formal mechanisms to ensure unethical governance.

As stated in the first chapter, there is an increasing focus on good (and bad) governance (including corporate governance) in South Africa and internationally and private and governmental institutions which are transparent and open will benefit from more favorable perceptions and improved relationships with the public.

In this chapter the relevance of statutory guidelines and a code of conduct as an essential remedy against unethical conduct by public officials will also be discussed. What is meant by a code of ethics in terms of being used as a measure to combat corruption and mal administration will also be discussed as well as what should be written into code of ethics. The code of ethics for the South African Public Service will also be discussed as to how a code of ethics can be enforced as a measure against corruption and maladministration. The prescriptions of code of conduct are an important measure to establish a spirit of co-operation where openness and transparency is cultivated.

Various external variables can be identified. To provide a background for later chapters this chapter reviews the variables that influence the milieu of transparent and open public administration. The chapter deals with the identification and a description of ethics as a variable that ought to guide the promotion of transparency and opens in the public sector.

The chapter lastly reviews and explores the ideological grounding of human rights while tracing its democratic roots. Other areas of enquiry that will be helpful in

understanding the milieu of human rights lie in the area of the obligations of Government's generation of rights, the Bill of Rights in South Africa within which transparency and open government exist. A final area of enquiry that will be helpful in understanding the milieu of ethical governance lie in the broad area of human rights within which transparency exists.

Public official must realize that he/she must fulfill his/her duties in terms of ethics, values, morals and norms which are essential to his/her community despite the existence of different cultures. No public official can function in isolation of his/her culture and his/her community, as the values and norms will have an influence on the way public officials fulfil their duties. It is thus essential that public officials follow ethical guidelines in the fulfillment of their duties believing in the virtues of morals and values. This is important in order to combat the causes of corruption that will be identified in Chapter Three.

2.2 Ethical Dilemmas

The reputation and success of a government depend upon the conduct of public functionaries and what the public believes about the conduct of the functionaries. It is therefore, of fundamental importance that public functionaries should act justly and fairly to one and all, not only paying lip service to transparency and openness, but also ensuring that these are manifestly and undoubtedly seen to be done. It is imperative that each public functionary, upon accepting government employment, takes cognizance of the fact that he has a special duty to be open, fair and impartial in his dealings with members of society. Personal self-interest should in all circumstances be subordinate to the public good, especially if circumstances arise where the possibility of a conflict of interest may become an ethical dilemma.

The private activities of public officials ought to be of such high standards that they should not bring discredit to their posts and disrepute to the government (Hanekom, Rowland and Bain, 1982:151).

In order to advance the public good, the actions of public functionaries – both elected and appointed – should always be in the public interest, i.e. their official conduct should always be good, right and positive. It should, however, be kept in mind that an incompatibility may exist between ethical prescriptions and legal and regulatory prescriptions. Public functionaries are expected to adhere at all times to the *intra vires* rule, and ethical conduct is, within the public service, always *subject to formal prescriptions based on the policy of the ruling party, as* expressed in terms of law. If public officials do not adhere to the intra *vires rule*, which entails acting in accordance with the formal prescriptions of the law, it could happen that conflicting actions might develop into ethical dilemmas.

Some of the most common ethical dilemmas with which public functionaries are confronted, revolve around aspects such as:

- administrative discretion
- corruption
- nepotism
- conformity
- administrative secrecy
- information leaks
- values
- impartiality
- professional ethics
- fairness
- public accountability
- policy dilemmas
- the relationship between appointed or non political and elected office bearers
- the influence of pressure groups on the ethical conduct of public administration
- the political activities of appointed public officials, and
- the interest revealed by the public in the behavior of public officials.

These aspects and how they relate to the ethical conduct of appointed public officials will be discussed in the following paragraphs.

Public employers and politicians exercise significant discretionary power in their everyday work – in their stewardship of public resources, at the interface with citizens, and in the context of policymaking. Ethical standards are a key check and balance against arbitrary use of that public power. As such they are a key factor in the quality of governance. Without some "ethical barometer" it is difficult, if not impossible, to measure changes in levels of corruption or misconduct in the public service. Unethical governance cost society much more than money; it also leads to a lack of trust and confidence in the government, ultimately resulting in a lack of participation or involvement in government affairs
(Van Niekerk, 2001:116). Although opinions differ on what constitutes ethical behavior, it usually refers to behavior that conforms to generally accepted social norms and values. Such norms and values could include:

- Humanness
- Honesty
- Justice
- Reasonableness
- Freedom
- Truth
- Decency
- Integrity
- Order
- Fairness
- Openness

These norms and values also provide the basis for sensitivity to responsibility and accountability. It can be argued that these norms and values determine how a

government will exercise authority in such a way that the interests and welfare of society are served.

In the public sector context, two dimensions can be differentiated, namely, an internal and an external dimension. An internal dimension is unique to individuals and is based on an individual's religious and other moral beliefs, values, and attitudes. On the other hand an external dimension refers to groups, societies, and/or institutions. This pertains to the collective consciousness of groups of people, and is based on their cultural beliefs, norms, values, and attitudes (Van Niekerk, 2001: 117).

Values, norms, and trends in society have a direct bearing on the way government is functioning. It is therefore important to consider the various guiding values from society, which ultimately influence ethical governance. Some of these guiding values include democratic value, prescribed guidelines, and guidelines derived from society. Each of these guiding values is discussed briefly below (Van Niekerk, 2001: 118).

2.1.1 Democratic Values

To achieve the objectives of democracy and create conditions under which each citizen will be able to achieve the greatest possible well being, government should be organized in a manner that will allow transparent deliberation, consultation, and the exercise of discipline.

In adhering to basic democratic values, government and political representatives will ensure that the views of different communities and role-players are considered in order to find fair solutions for conflicting viewpoints. Some of these democratic values are highlighted below (Van Niekerk ,2001: 119).

- Responsibility and responsiveness

Responsibility in its simplest form means the duty of a person to carry out a certain piece of work allocated to him or her. Responsibility can also mean the manner in which a person carries out tasks, the values he or she attaches to these tasks, and in what way he or she consider the values of other persons he or she comes in contact with while performing daily tasks (Van Niekerk , 2001: 119).

In democracies one of the purposes of government institutions are to improve the general welfare of the public. Therefore, the actions of political office-bearers and public servants must be to the advantage of the individual as well as the community. Tension can evolve because different values are held by different individuals and pressure groups (Henry, 1980:133). Non-political and political office bearers should therefore weigh these values against the possible outcomes of their actions before taking decisions. The general benefit to the community should be more important than individual or group values and interests.

- Openness and transparency

Openness and transparency concern the extent to which the functioning of government institutions is open to public scrutiny (Schwella, 1996:16). It requires mechanisms to ensure that all public processes and programmes are open to the public.

- Representation

From a South African perspective, the Constitution (Section 195 [1] stipulates that public institutions must reflect the composition of the population in management positions and in other occupational groups. Representation as a value requires that public institutions represent their clients (the public), empathise with them, and view problems from their perspectives (Van Niekerk, 2001:119).

- Legitimacy

According to Fox and Meyer (1996:73), legitimacy is the perception among citizens that the government and its actions are legally and morally correct and acceptable. It is important that the actions of political representatives and public officials contribute to the acceptance of government decisions, programmes, and policies.

- Accountability

In its broadest sense, accountability is an obligation to expose, explain, and justify actions. Public accountability demands that the actions of public institutions be publicized to encourage public debate and criticism.

2.2.2 Prescribed Guidelines

In terms of ethical governance the following prescribed guidelines can be identified:

- Legal rules: every action of public institutions must be within (*intra vires*) the limits of enabling acts and regulations as binding documents.

- Fundamental rights: Chapter 2 of the Constitution lists the fundamental rights that are binding on all public institutions.

- Codes of ethics: Chapter M of the Public Service Act, Act 103 of 1995, set out rules governing conduct. It reflects the honest desire of public employees to serve their respective clients with dignity and integrity.

- Administrative justice: apart from the normative guidelines of public management, Section 24 of the Constitution provides for specific guidelines in adherence to administrative justice (Van Niekerk ,2001:120).

2.2.3 Guidelines Derived from Community Values

Values and norms shape every community. In South Africa, with its complex social composition and different communities, It is necessary that government agencies and political office-bearers are sensitive to the various ethical and moral systems. To further complicate this matter, it is virtually impossible to quantify these values and they are also subject to change. These aspects make it very difficult to address societal problems with a specific policy directive. Other guidelines that could be derived from society include probity, religious doctrine and values systems, thoroughness, effectiveness and efficiency, and fairness and reasonableness.

As far as the last-mentioned guideline is concerned, government actions must always be fair and reasonable towards every citizen, irrespective of race, religion, or language group. Answers to the following questions could point out whether governmental action is fair and reasonable, or not:

- Is it in conflict with national or specific legislation?

- Did the office-bearer or civil servant responsible for the action act without the necessary authority?

- Did the office-bearer or civil servant act in a manner perceived as fair and reasonable by the community? (Van Niekerk , 2001:120).

2.3 Theoretical Approaches to Ethics

Theoretical approaches to ethics holds that ethics is not primarily concerned with getting people to do what they believe to be right by rather with helping them decide what is right (Jones, 1977:5). Four alternative approaches to reaching decision on what is right and what is wrong, what is ethical and what is not, have been developed which will now be discussed:

- Empirical theory
- Rational theory
- Intuitive theory
- Relevation theory

2.3.1 Empirical Theory

The word "empirical" refers to observations that are based upon sense experiences or the direct logical extensions of sense experiences (Fox, 1995:43). Empirical theory holds that all knowledge must derive from what can be seen quantified and measured. The followers of empirical theory will acknowledge that deed can be right or wrong but require actual verification before agreeing that a particular action is right or wrong.

Furthermore, the empiricist would translate an ordinary value judgment about right or wrong into tangible terms, thereby enabling a person to deal with it on a factual basis (Fulmer and Franklin, 1982:92). Empirical theory concerns itself with "relation to generalizations about observable reality (with this reality consisting primarily of phenomena which can be perceived by the senses)" (Hanekom, 1973:14). Thus, empirical theory is based on the premise that all human knowledge is gained through experience and that only true accurate knowledge of reality is gained through verifiable sensory experiences (Fox and Meyer, 1995:43). As such, a code of ethics would thus put into concrete terms what a public official can perceive through his/her senses to be incorrect, by the laying down of concrete guidelines.

2.3.1 Rational Theory

The occurrence of moral ambiguity or a conflict of moral principles encourages those who wish to do so to rationalize or justify unethical conduct (Gellerman, 1986:2).

- a belief that the activity is within reasonable ethical and legal limits;

- a belief that the activity is in the individual's or the institution's best interest;

- a belief that the activity is safe because it will never be discovered or published and

- a belief that, because the activity helps the institution, the institution will condone it and even protect the person who did it.

Followers of the rational theory believe that the individual should use his reasoning powers to determine what is right and what is wrong. However, these logical determinations will not necessarily conform to real life experience, as it is rare for any person to be entirely rational in his/her thoughts or actions. Furthermore, the rational approach can also be twisted and employed for distinctly unethical purposes (Franklin, 1982:2). A code of ethics would clearly provide the necessary guidelines which would neutralize to a certain extent, the occurrence of moral ambiguity or a conflict of moral principles. It is essential that a public official is capable of making rational decisions and that when public officials are faced with temptations and the prospect of immediate gain, a code of ethics would place the public official on the right track again.

2.3.2 Intuitive Theory

Fox and Meyer (1995:67) define intuitionism as "a philosophy, which holds that moral and practical dilemmas can be solved by means of intuitions or basic truths which are intuitively know".

The intuitive theory developed as a reaction to the rational theory and followed the viewpoint that one does not need to go through any logical or experiential process to discover what is right or wrong, as everyone has been born with a basic understanding of ethical truths. One's native intuition would inform one immediately when something is wrong but as a result of the corruption of our

natural moral law through outside influences such as bad environments, poor political institutions, inadequate education and misguided religions training, one has lost one's intuitive powers. This situation would only be reversible if one returned to living healthy lives in pleasant surroundings (Fulmer and Franklin, 1982:92). A code of ethics would be of great importance in the fight against corruption as soon as it becomes clear that the intuitive powers of the public official has become corrupt. A code of ethics would enable the public official to regain his/her correct intuitive powers (Bauer, 1997:203

2.3.3 Relevation Theory

Relevation theory derives from religion and is based on the idea that the divine perspective on right and wrong is the one a person was intended to follow. At the present moment, it is impossible to duplicate the perfection of the Bible's ethical dictates as many people are less confident that religious rules are infallible (Fulmer and Franklin, 1982:92-93). In everyday life situations that require an ethical choice, it is possible that the elements of these approaches will be used simultaneously. However, a code of ethics would enable the public official to at all time, remain on the right track and furthermore, follow the right perspective on what is right and what is wrong (Bauer, 1997:203).

2.4 The Concept Ethics

Ethics refers to morally correct action to rules of conduct and to the goodness or badness of the motives of particular actions
(Hanekom, Rowland and Bain 1986:152). Ethics can be used in a specific sense to refer to the standards characteristics of a profession, or, more generally "...any system of moral values held forth as meriting intrinsic obedience and not on account of some purpose which obedience might incidentally serve
(Fulmer & Franklin 1982:90). Ethics, however, does not concern itself only with the behavior and decisions of people but also with those things that they create such as institutions and policies, which form part of the network of society. In this sense not only the ethical conduct of public officials and political office bearers

have to be noted but also the importance of ethics for the institutions within which they act (Esterhuyse, 1991:11).

2.4.1 Definition of Ethics

Fulmer and Franklin (1982:90) define ethics as being a "system of moral principles (relating) to that branch of philosophy dealing with values relating to human conduct, with respect to rightness or wrongness of certain actions and to the goodness or badness of the motives and ends of such actions". Hanekom (1982:152) see ethics as being the basic principles of the right action undertaken based on rules of conduct. In Andrews (1988:34), ethics are defined as follows:

(a) "...the application of values to individual behavior and action. They provide the moral and legal basis for guiding personal conduct in different circumstances and situations. Ethics are reflected in law and regulations, codes or behavior and professional standards."

(b) "...the science of character, the science which deals with moral customs and habits of conducts. It deals with the character and conduct of man, in so far as it is good or bad, right or wrong. Ethics always approves or disapproves; it sets a value negative or positive, upon conduct. It reflects on conduct, and pronounces human action good or bad, with reference to some standard or criterion".

Ethics can be explained by referring to its teleological and deontological implications. The former refers to concepts such as the good. The desirable, and happiness or well being which concerns the ultimate and proper goals of human endeavor. The **telos,** in other word the goal or aim of government stands central to the attainment of such good and happiness. In Aristotle's **Politics** the **telos** democracy is described as liberty of oligarchy wealth aristocracy. Culture and right conduct, and of tyranny, self-preservation. Aristotle's rejected the dogma that changes and events occur in the world without any **telos** or overriding purpose although he did recognize that accidental events as a result of mechanistic

causation could occur. All changes except accidents, therefore, were, according to Aristotle natural (Day and Chambers, 1962:56,61). The latter (i.e. deontology) means that which is necessary which relate to the kinds of behavior that may properly elicit moral approval (Scruton, 1982:156). Ethical teleologists regard the deontological concepts as subordinate concepts in that no behavior may be considered right or worthy of moral approval unless it promotes the good or has desirable consequences. To justify a given act or behavior on moral grounds it must be shown that it is conducive to the good or promotes human well-being. To the teleologists an act is only right when it is conducive to the good. Because the terms "right conduct" means conduciveness to the good, in other words, the end must necessarily justify the means (Scruton, 1982:157).

Ethical deontologists on the other hand, hold that the concepts of correct conduct, duty and moral responsibility are logically independent of the teleological concepts. They maintain that an act or type of behavior could be correct even if it were opposed to human well-being. The deontologists believe that most correct, moral conduct leads to the good, but admit that this is a generalization to which there could be exceptions (Olsen, 1967:92).

It is therefore apparent that ethics points out the difference between right and wrong behaviour and this can be viewed as the standard against which the behaviour and actions of public officials and political office-bearers can be measured.

2.4.2 Values

A political system is a system for achieving the authoritative allocation of values for a community (Easton, 1967:21). The allocation of values has its foundation in political, cultural, demographic and welfare values and norms. According to Rip (1970:11-14) the culture anyone has as a member of a group he/she has acquired as a result of the process of socialization.

Values and norms are also part of this culture. As the person grows up in a specific society, certain values and norms that are institutionalized in that society, become internalized in that person i.e. they become part of his/her developing personality. In modern Western societies there are certain general beliefs, for example honesty, hard work, and the privacy and sanctity of the individual, i.e. imperatives dealing with what ought to be (Rip, 1970:11-14). When these general beliefs or imperatives (i.e. values) refer to specific situations with prescriptions and proscriptions as to how persons are expected to act, they become known as norms (Johnson, 1960:8). Thus the value of honesty, when coupled with specific situation of dealing with the property of others, becomes a norm that prescribes (ordains/order) that persons must care for it as if it were their own, and proscribes (forbids/prohibits) their stealing it (Rip, 1970:11-12).

Human existence on earth and as part of a community, is also governed by what he/she perceives to be his/her own values as well as values which form part of man's culture. This aspect also has a bearing on the role that the public official fulfils when serving the interest of his/her specific community as well as the country as a whole.

The human being is the only living creature that can distinguish between good and bad, and right and wrong. The word "values" therefore refers to the human being's idea of what is acceptable or unacceptable (Athos and Coffey 1968:100), virtuous or without virtue. Values thus indicate the importance allocated by the individual to activities experiences or phenomena and provide the individual with a guideline for his personal conduct. It should, however, be borne in mind that values represent personal judgments on qualities, experiences or phenomena and are, therefore, both subjective and objective. Furthermore, human beings distinguish not only between positive and negative aspects, but also between themselves and other individuals in that they may think, feel and react differently from others (Hanekom, 1977:10). Ehrenfehls in Hanekom (1989:120) perceives a value as personifying the relationship between any object – real or imagined – and a psychological subject.

However, it is apparent that values represent different concept to different people with values forming an important part in the culture of a public official. Values, for a public official, are the bases of his preferences and decisions, provide the standards by which the public official lives and may even give direction and meaning to everything that the public official believes in and undertakes (Hanekom, 1989:120).

Values thus represent the individual's perceptions of what is good or bad and right or wrong as well as fulfilling the function of guiding an individual in the fulfillment of his/her duties (Hanekom, 1977:10). The existence and importance of values must be recognized in public administration and as every public official reacts differently under different circumstances, it would be impossible to categorise their actions into specific categories. It suffices to state that values have different meanings and interpretations for every person including the public official in all political, economic, social and physical environments (Hanekom, 1989:121). Values represent ethical behavior and the presence of different values systems amongst public officials, will make the task of establishing a uniform code of conduct even more difficult.

The values held by public officials could be one of the causes of ethical dilemmas, especially because of the fallibility of man, his greed for power, personal aggrandizement, wealth and status, rather than his endeavor to render unbiased service and to adhere to professional norms. The fallibility of man can undermine the effective personal performance of the official duties of the public official and could have a spill-over effect in that the absence of moral leadership and public accountability could serve as an example to other groups and/or individuals also to indulge in unethical practices.

Owing to the presence of different cultures in a country, conflicting value judgments can be made which could affect the political activities of the government and the opposition, and also directly influence the quality of the administration of public affairs. Like anyone else, public officials are affected by value judgments and generally sympathize with the values held by groups and/or

individuals in society. The obligation faced by the official which may cause a dilemma is then not to substitute his personal values for societal or community values, but rather to put the values which will benefit the society and/or community at large as his first priority. It is unfortunately so that conflicting value judgments (often conflicting only in the view of the official) can lead to low morale among officials, resulting in different work performance and even, in extreme cases, in malicious obedience, i.e. executing polices without informing the policy-maker regarding negative aspects of the polices.

It is important to bear in mind that public officials either hold or aspire to leadership positions in their respective institutions and because they freely choose to become public officials the values of the regime are" normative"(Rohr, 1978:59) for them and are therefore also the "...starting point of their ethical reflections" (Rohr, 1978:60. Because of their different personal judgments, individual public officials may have different interpretations of the same societal value. This should not prove to be an embarrassment or an indication of unethical behavior, but should rather stress the point that it is important that public officials should endeavor to understand societal values through an interpretation of and reflection on the regime values (Rohr, 1978:75).

Public functionaries can never detach themselves from the values environment since they work within a society laden with values and norms. Decisions in the public sector require not only facts but also values and norms; in fact, the existence and presence of values must be recognized in public administration (Marais, 1979:6,7).

When attempting to identify norms for public sector activities, it will be difficult to identify basic truths that will have the same relevance under all circumstances and in all political, economic, social and even physical environment (Hanekom and Thornhill, 1983:121). Nevertheless the point remains that in order to serve the dictates of a democracy, respect for community values and norms is central to a consideration of guidelines within which public office-bearers will have to operate.

To conclude, it is essential that attention is paid to the value norms of public administration with regard to conduct of authorities, as such attention could prevent public officials from acting in a blind manner, and showing trends of inflexibility and an inhumane attitude while performing their official duties (Hanekom, 1973:23).

2.4.3 Definition of Morality

At the outset, there should be clarity on the meaning of the terms "morality" and "ethics". Morality has to do with the personal conduct of the individual – his moral duties and conformity to conventional rules. Ethics refers to the basic principles of the right action and to rules of conduct (Hanekom, Rowland and Bain, 1986:152).

The term ethics has a macro or comprehensive meaning which could be applied to all cultures at all times, but it also has micro or restrictive meaning related to a *specific society or societal group.*

The macro view pertains to good or evil, right or wrong, while the micro view refers to how good or evil, right or wrong is interpreted by a specific society, societal group or even an individual.

For the purpose of this chapter the term ethics deals with the character and conduct – the morals – of a human being as a public employee. Regarding the conduct of public affairs by the public official, it deals with whether the public's business was conducted rightly or wrong and whether the public official's behavior was good or bad when he executed his official duties. Ethics evaluates conduct against some supposedly absolute criteria and imposes negative or positive values upon it. These criteria can in writing (legislation) or merely the interpretation by an individual of what is acceptable and what is not.

Morality concerns the personal conduct of the individual and has been bearing on the individual's moral duties and how these duties conform to conventional rules such as a code of ethics (Hanekom,1989:152). Furthermore, morality can be

viewed as having a particular connotation attached to it, viz. Christian values as well as being adversative through their measurement of moral manifestations in accordance with a specific norm. Morality can also be prescriptive in nature in its attempts to prescribe between that which is considered good or bad as well as which norms must be accepted and how an individual must make use of these norms (Andrews, 1988:35).

Morality is dispositional, internal, subjective and informal and should be viewed in conjunction with the law, which tends to be official, external, objective and formal. Furthermore, morality operates through conscience and conviction
(Du Plessis, 1990:233). Morality thus concerns itself with the personal conduct of the individual, viewed against the background of an individual's moral responsibilities and uniformity to conventional rules or standards of good behavior. When viewed in terms of its public service aspect, morality "involves a willingness on the part of the public official that the public official would endeavor to serve the public justly, competently, fairly, accountably and without prejudice"
(Hanekom, 1989:2).

Morality concerns itself with the personal conduct of an individual viewed against laid down and acceptable standards both in the community of which the individual is a member, and as a public official serving the general public. A code of ethics comprising both morals and values is thus of importance to help in the combating of corruption among public officials.
Acceptance of a code of ethics by public officials is crucial if the cause of corruption is to be successfully combated, as will be discussed in Chapter Four.

2.5 Role of Ethics in Public Administration

A public official needs to ensure that behavior is ethical and needs to know what kind of work is required by organisation, what the organisation requires and what other people require It is also important that the acts of officials are ethical and conform to morality and values at all times.

2.5.1 Ethical Behavior by Public Officials

Does it mean to be ethical? According to Hummel (1989:885), it could mean any of the following:

- Being true to your job, i.e. doing your duty;
- Being true to your work, i.e. fulfilling your duty in accordance with the available relevant material; or
- Being true to others, i.e. that those people who are working with you have a right to expect you to fulfill your work obligations.

The public at large expects ethical behavior from its public officials in the fulfillment of their duties and also expects the actions of public officials in the performance of their duties to be ethically justifiable. This viewpoint is underlined by the assumption that public institutions exist to serve the interest of the public at large and as such the general behavior and actions of public officials are determined by specific codes of ethics. As soon as the personnel of public institutions engage in unethical behavior, this could lead to ineffective administration and unsatisfactory service.

This action in turn result in a violation of the specific right of members of the community, because public officials do not fulfill their obligations to the community in an ethically justifiable manner (Andrews, 1988:3).

It is of the utmost importance that the public official fulfill his/her duties in an ethical manner, as according to Max Weber in French (1983:133), "the behavior of the (pubic official) is vested in his ability to execute conscientiously the order of superior authorities, exactly as if the order agreed with his own conviction." Any public official should at all times show the utmost respect for, and trust in the truth; the law; the constitution and its conventions; the customers and clients of the

services provided; the management hierarchy; and each individual public official (Williams, 1980:63).

It is also important that attention be paid to the ethical problems, which occur as a result of the tensions which exist between politicians and the public services hierarchy. Undue pressures placed on public officials could result in unethical behavior on the part of the public official and could lead to a search for moral justification of their action. As soon as the public official is faced with a moral dilemma, it emphasizes "the lack of ethical subtlety that the public official was permitted in making decisions" (Henry, 1975:34). Furthermore, it is also important to remember that the public official is also a citizen, with the ethical identity of a public official being that of a citizen who is employed by the community to work for the community (Henry, 1975:34).

The behavior of public officials is always of interest to the community at large as the promotion of their general welfare depends to a large extent on the use or abuse of their administrative discretion. Any community expects their public officials to be honest, just, fair and professional in the fulfillment of their duties. Furthermore, public administration takes place in an environment in which values-political values, ideological values, social values, cultural values and historical values – shape public administration (Hanekom, 1989:3-6).

The following aspects comprise acceptable behavior on the part of the public officials:(Andrews, 1988:36-37)

- all dealings must be transparent and open;
- all dealings must be in the public interest;
- there must be no violation of the rights and privileges of individuals;
- there must be strict adherence to all legal prescriptions and regulations;

- discretionary powers must not be abused;

- no financial resources should be wasted, and effective work performance must be maintained at all times

- the actions of a public official may not benefit or wrong any individual; and

- the actions of public officials should be such that the effectiveness of public institutions is absolutely above suspicion
  (Andrews, 1988:36-37)

2.5.2 Public Officials and Government Ethics

It is important to remember that government office makes heavy demands upon the office incumbent as well as carrying with it the acceptance of a general moral duty. Government ethical behavior is derived from the purpose of the institution. The raison d'etre of government is to protect and preserve those conditions, which are necessary to ensure the continued existence of civil society in which individuals can lead a worthwhile existence. According to French (1983:12), "the preservation of that civil environment also may be the very reason morality was in vented. Hence, there is a commonality of purpose in the invention of morality and of government. Any other use of government office is a pervasion of office".

It is of utmost importance that ethical government remains the first priority of any public official and that politicians do not influence the functioning of the public official. If no balance exists between the two, then one has the situation currently prevailing in the Third World where emphasis is placed more on the sovereignty of politics than on the supremacy of administration (Hope, 1985:1). This political domination of the public service has led to highly politicized behavior on the part of public officials where in order to maintain their jobs, senior public officials need to become politically knowledgeable. This further brings about the situation of an

intense internal politicization of the public service whereby public officials line up beneath various political patrons to ensure advancement and recognition. This call all account to an undesirable state of affairs, which inevitably leads to administrative corruption as political corruption inevitably provides the guidelines for administrative corruption. This in turn leads to maladministration (Hope, 1985:1-2). This situation shows what can develop if public officials do not serve the interests of the community but those of politicians.

It is therefore essential that throughout public administration an effort should be made to ensure that effective government is being realized, and that attention should be given to those values, which are of importance to the community. Such an approach would ensure that the guidelines for effective public administration are kept in mind to ensure that the proper value system and norms are followed in all official duties. The acknowledgement of the existence of values and norms prevailing in public administration would ensure that public officials perform their duties in an ethical manner (Hanekom, 1977:11).

Three ethical ideals form an integral part of government ethics: (Hanekom, 1989:121-123).

- a higher form of society which entails that the efforts being undertaken to ensure happiness in society form the main basis of social organisation;

- services to the community as an ethical ideal entails that the public official's actions must be commensurate with the expectations of the community;

- the happiness and well-being of the worker as an ethical norm entails that the worker's interest is safeguarded against unlawful and unethical behavior through specific legal or other measures

In South Africa, there is a tendency that exists to try and regulate all types of behavior and reach ideals through laws and regulations. Such an approach is doomed to failure if it is not accompanied and supported by vital consensus on the types of values and norms that are prevalent in our society. According to Esterhuyse (1991:10-11), "without a moral consensus on the normal norms and values in which a society ...and the individual members of that society have an interest, it is meaningless to talk about responsibility and accountability".

Values as part of ethics determine how people will react to others, and values are also responsible for how one experience, accepts, or changes ideals. It is part of human nature to perceive people who have different ideals as a threat. As a result, different opposing groups with different ideals are formed whose interactions can only be interpreted in terms of conflict, victory or defeat. According to Lategan (Hanekom, 1989:16) "all our actions and attitudes are therefore value-laden and no social system is neutral from a moral perspective – it can only be more or less justifiable or legitimate in terms of a specific set of norms". Furthermore, public officials also in some cases have to make certain individual judgments about whether the emerging social values are right and acceptable and this responsibility cannot be underestimated. Specific values to which public servants should pay attention are equity, freedom, justice, fairness and various individual rights (Denhardt, 1988:126).

To conclude, every group of individuals develop norms and values pertaining to ethical behavior which enable the other members of the group to predict each other's behavior. Norms and values help make for more effective communications and also facilitate co-operation. Norms and values are a collective agreement about what is necessary to survive, what works and what needs to be done to ensure co-operation (Moeller, 1988:120). It is also important to establish how a public official interprets the role which ethical behavior should play in the execution of his/her duties.

2.6 Conformity and the Public Official

Although various examples of ethical dilemmas are to be found in the public service, Hanekom states that the concept of conformity is the most important one (1982:151).

Conformity can be defined as action or behavior in accordance with current customs, rules and standards as well as compliance with the usage of laid down rules and regulations of a particular establishment, for example the state or government, or public service (Tulloch, 1993:300).

In general, employees tend to behave in a certain way – either because of tradition, organizational structures, oaths of office, popularity, prestige or fear, or merely because the individual is drawn toward the ethical behavior of a group or person and strives to bring his actions into harmony with a specific model. The result of the sensitivity of individual to acceptable and unacceptable behavior (Armstrong and Graham, 1975:21) is that as an employee, he deliberately and often voluntarily tends to conform to the standards of the institution where he is employed. Public officials are probably in an even more difficult situation: political policy decisions and long-standing civil service traditions lead them to orientate in a specific way: everything must be put in writing and decision-making is referred to a higher authority (they either do not want to or are not allowed to act outside the boundaries of their authority, or they hide behind the politicians – they cannot do anything because the final decision-making power rests with the politicians (Hanekom, 1982:84).

Since public officials are the implementers of public policies, they ought to be accountable for their official actions to their superiors, the courts and the public. It is, nevertheless, possible for them to hide behind prescribed procedures, the cloak of professionalism (Fleishman and Payne, 1980:94) and even political office-bearers.

The aspect of conformity in public service is to ensure that public officials conform to the ideals of the public institution. As no one person is the same and public institutions employ people of various persuasions, the aspect of conformity is of great importance for the public institutions. A public official can be expected to conform to certain stated guidelines regarding his/her functional and administrative activities i.e. to conform to the rules, procedures and traditions of the public service (Hanekom, 1982:25-27).

However, according to Hanekom (1982:156) the ethical dilemma of conformity is to be found in "injudicious conformity or overindulgence in conformity, or conformity of officials merely in their own interests, all of which could lead to inflexibility, and stagnation in the administration of public affairs".

2.7 Infrastructure for Transparent and Ethical Governance

Governments must ensure that standards are maintained in the public service, especially in times of change. In practice, governments can employ a range of tools and processes to regulate against undesirable behavior and to provide incentives to good conduct.

To establish a transparent and "ethics infrastructure", basic elements should be in place. Some of these key elements include: (PUMA Policy Brief, 1998:24)

- Political commitment: politicians should emphasise the importance of transparency and ethics, set an example, and support good conduct with adequate resources.

- An effective legal framework: laws and regulations that set standards of behavior and enforce them.

- Efficient accountability mechanisms: administrative procedures, audits, agency performance evaluations, consultation and oversight mechanisms.

- Workable codes of conduct: statement of values, roles, responsibilities, obligations and restrictions.

- Professional socialization mechanisms: education and training.

- Supportive public service conditions: fair and equitable treatment, appropriate pay and security.

- A co-ordinating body

- An active civic society (including a probing media): to act as watchdog over government activities.

The relative synergy between the different components of the transparent and ethics infrastructure will depend on a country's cultural and political traditions, its overall approaches to pubic management, and its historical record in promoting ethical and transparent behavior. Like any other set of management tools, the effectiveness of infrastructure depends on whether it is implemented, understood, and applied consistently. Transparency should cease to be seen as separate and distinct activity, and more as an integral part of all management systems.

2.8 Manifestation of Unethical Conduct

If government fails to establish high ethical standards in its institutions, it may lead to an unfortunate situation where unethical conduct of public employees and political office-bearers become the order of the day. Some of the manifestations of unethical conduct include the following:

2.8.1 Election Fraud

Political parties and their supporters may use unethical tactics to secure an election victory. These may include tactics such as spreading false rumors, miscounting votes, declaring ballot papers invalid after defacing them, and adding pre-marked ballot papers for their candidates (Van Niekerk, 2001:123).

2.8.2 Official Violence

Official violence usually manifests itself during protest action, labour dispute, and demonstrations. This could also occur when citizens are deprived of their political and other rights and freedoms by way of legislation and other similar suppressing measures. Official violence can also be very subtle. For example, if pensioners have to wait in long queues in the sun to receive their allowances, it can also be regarded as official violence (Van Niekerk, 2001:123).

2.8.3 Institutional Misconduct

Misconduct and unethical behavior by public employees and political office-bearers can take on a variety of forms. Some of these are listed below
(Van Niekerk, 2001-123).

- Misuse of authority and the violation of public responsibility – usually for private gain.

- Protecting incompetent colleagues, managers and political heads.

- Nepotism (if relatives or friends are favored in awarding contracts or promotion).

- Bribery (if public employees accept improper gifts and entertainment in return for special favors such as privileged information).

- Misuse of inside knowledge and influence peddling

The perceived deterioration of government services and products is usually attributed to the corrupting influences of power, which may lead those who hold it to act their own self-interest rather than in the interest of the community. The historian Lord Acton (1834-1902) observed: "Power tends to corrupt, and absolute power corrupt absolutely' (Du Toit, 1998:156). The selfish tendency of human beings is a hard truth forms the starting point for much political thought. It is crucial for a state to devise remedies that would inhibit corrupting tendencies.

2.9 Statutory Guidelines and Codes of Conduct

Clear rules defining ethical standards should guide the behavior of public servant. In dealing with the private sector, for example, regarding public procurement an outsourcing or public employment conditions. Increasing interaction between the public and private sector demands that more emphasis be placed on service values and that external partners be required to respect those same values.

The statutory framework is the basis for communicating the minimum obligatory standards and principles of behavior for every public employee and politician. Laws and regulations could state the fundamental values of public service and should provide the framework for guidance, investigation, disciplinary action, and prosecution.

The Executive Members' Ethics Bill 64 of 1998 was drafted to provide for a code of ethics governing the conduct of members of the cabinet, deputy ministers, and members of provincial executive councils. The bill is also intended to provide for matters such as the investigation of possible breaches by the public protector.

In short, the code of conduct for executive members requires cabinet members, deputy ministers, and MECs to act in good faith and in the best interest of the government at all times, and to meet all the obligations imposed on them by law. It also prohibits them from: (Van Niekerk, 2001-124).

- undertaking any other paid work;
- acting in a way that is inconsistent with their office.
- exposing themselves to any situation involving the risk of conflict between their official responsibilities and their private interests;
- using their position or any information entrusted to them to enrich themselves or improperly benefit any other person; and
- acting in a way that may compromise the credibility or integrity of the government.

Chapter M of the Public Service Act 102 of 1994 includes a code that contains Guidelines for employees as to what is expected of them from an ethical point of view, both in their individual conduct and in the relationship with others.
Compliance with the code can be expected to enhance professionalism and help to ensure confidence in the public service. This code of conduct covers the following: (Van Niekerk, 2001:125).

- Relationship with the legislature and the executive (M4.1).
- Relationship with the public (M4.2).
- Relationships among employees (M4.3).
- Performance of duties (M4.4).
- Personal conduct and private interests (M4.4).

Most institutions have internal ethics codes and guidelines, which establish the norms for acceptable behavior. These guidelines vary from institution to institution, but may not be in conflict with those promulgated by higher authorities.

2.9.1 Code of Ethics in Public Administration

What is meant by a code of ethics? A code of ethics can be described as a set of rules set out by a higher authority for a specific group of employees to ensure that these people behave in an acceptable and justifiable manner
(Hanekom, 1982:162-163). A code of ethics can be defined as being "an instrument which not only identifies unacceptable conduct but also identifies and encourages conduct. The objective of a code of ethics is to show officials and the public in unambiguous terms what is regarded as acceptable"
(Barrie, 1994:75). Craythorne sees a code of ethics as being a "set of ethical rules" (Barrie 1994:75).
The need for a code of ethics can be regarded as two fold, viz. Firstly to combat corruption and secondly, to prevent corruption and can be used to combat the following activities which are generally regarded as unethical in public administration: (De Barros, 1990:6-7).

- bribery, favoring, nepotism, influencing, graft;
- conflict of interests;
- protection or covering up of incompetence;
- regulation of trade practices or the lowering of standards with an eye to personal gain; and
- the use or misuse of official and confidential information for private purposes

A code of ethics is a measure to control and minimize indiscretions and corruptible behavior and the primary aim of ethics is to channel the public official's "personal morality and technical skills. A code of ethics furthermore, steers the personal morality and competence of the public official into Public Service goal oriented

direction. A code of ethics serves to harness and steer the judgment or discretion of the public official in an effort to ensure efficient service delivery" (Clapper, 1996:23).

A code of ethics has to define what constitutes decent behavior or integrity and the public service code of ethics must be "acceptable as sensible guide to good behavior by the vast majority of officials...it will give them the conscience that sometimes seems lacking, the mechanism by which morality can be internalized and thereby enforced by the individual" (Williams, 1985:62). However, it is also important that a code of ethics is imposed; it should not just be seen as something produced on paper. It should be viewed by officials as a condition for employment in order to work effectively and to ensure that everyone follows the stipulated guidelines (Williams, 1985:63).

Four major objectives can be achieved through a code of ethics (Hanekom, 1982:163)

- the promotion and maintenance of responsible conduct by pubic officials;

- the promotion of public confidence in the integrity of public officials;

- the provision of guidelines for public officials regarding their relationship with fellow public officials, elected public office-bearers and members of the public; and

- providing public officials with guidelines on how to exercise their discretionary powers

The following ethical principles can according to Thakathi (1995:14) serve as ethical guidelines to help in the combating of corruption:

- a dedication to the concept of effective and democratic government composed of responsible elected office-bearers and the belief that it is essential that professional general management is necessary to achieve the service objectives

- an affirmation of the dignity and worth of the services rendered by government and maintenance of constructive, creative and practical attitudes towards effective delivery of services and a deep sense of social responsibility as a trusted public official;

- the recognition of the fact that the primary function of government at all times is to serve the best interests of all the people of South Africa;

- a reminder to adhere to the highest standards of personal integrity, truthfulness, honesty and fortitude in all public activities at all times so as to inspire public confidence and trust in public institutions; and

- a reminder to serve the public with respect, concern, courtesy and responsiveness as well as recognizing that service to the public is beyond service to oneself.

A code of ethics can be closely associated with the role of morals and values and could lead to a better standard of ethical principles and values (De Barros, 1990:19). A code of ethics can ensure that a public official does his/her work technically and morally right. However, it is essential to remember that a code of ethics cannot serve as a substitute for personal morality, integrity and skill or teach virtue; rather "they can teach rules and regulate types of virtue that needs to manifest in a particular environment. Codes of ethics supplemented by personal morality and expertise are needed to ensure, maintain and promote a public service characterized by a high standard of professional ethics" (Clapper, 1996:23).

A code of ethics also has to define what constitutes decent behavior or integrity. Integrity involves a willingness not only to obey the code of ethics by also to a wider morality involving some consideration of the public interest. A code of ethics needs to be accepted as a workable and sensible guide to good behavior on the part of the majority of public officials, thereby giving them "the conscience that now sometimes seems lacking, the mechanism by which morality can be internalized and thereby enforced by the individual" (Williams, 1985:62).

A code of ethics has to do with behavior and more specifically behavior, which relates to duty, self-control, equal treatment and the absence of favoritism. A code of ethics also has a role to play in enduring uniform conduct in accordance with community values as well as being a means of upholding existing community values and norms.

A code of ethics should also emphasise the positive and not only the negative be able to serve as a criterion against which improper conduct can be measured; and serve as a guideline for the observance of acceptable norms

(Barrie and Carpenter, 1994:75). The behavior of public officials are often directed by defined basic principles, which are referred to as moral laws with these moral laws being based on doctrines, which are endorsed by the relevant community (Andrews, 1988:41). A code of ethics serves as an indication of which values are accepted by the majority of society as being more important than others (Hanekom, 1982:163).

2.9.2 Contents Contained in a Code of Ethics

Various codes of ethics can be formulated. They may be arbitrary, legislative or vague; they may be reasonable, clear and concise; they may be specific or general, they may truly confront problems experienced by public officials or they may simply make impressive wall plagues. For the new public official, a written code eliminates a great deal of uncertainty, which is often associated with learning a job. The public, on the other hand, will have reason to feel assured that they will be treated in an ethical fashion (Fulmer and Franklin, 1982:99).

In South Africa, a number of codes of ethics exist in the local government sector but are prescriptive and not punitive in nature and only lay down general guidelines. These are the Code of Conduct (Ethics) for Local Authorities, compiled by the former Natal Provincial Administration, the Ethical Code of the Institute of Town Clerks in Southern Africa, for the use of all its members; and the Code of Conduct for Local Authorities compiled by the United Municipal Executive, for the use of local authorities in the Republic of South Africa. Section 24 of the Profession of Town Clerks Act, Act 75 of 1988, defines improper conduct pertaining to town clerks (Hanekom, 1982:166-167). A code of ethics is contained in the Local Government Transition Act, Act 209 of 1993
(Cameron and Stone 1995:4).

A code of ethics as mentioned, should not only be regarded in a negative fashion but should serve as a criterion against which improper behavior can be measured. As such, a code of ethics should consist of conventions, legal principles, regulations and codes all drawn together. Through this, the public official would have been provided with information about the following (De Barros, 1990:7):

- the relationships between officials;
- government and parliament;
- financial and other private concerns and official information;
- secrecy and just decisions; and
- personal behavior

Furthermore, any public official should be required at all times to show the utmost respect for and trust in (Williams, 1982:63).

- the truth;

- the law;
- the constitution and its conventions;
- the customers and clients in terms of the services provided;
- the management; and
- each individual public official

The office of the Public Service Commission has a code of conduct/ethics for public officials and provides guidelines to both public officials and employers of what type of ethical behavior is expected of them. The code of conduct/ethics also gives an indication of the spirit in which public officials should perform their duties; the action to take to avoid conflict of interest; and the terms of public official's personal conduct and private interest (Cameron and Stone, 1995:80).

Cameron and Stone (1995:80-83) provide the following summary of the guidelines contained in the code of conduct/ethics:

- **Relationship with legislative and executive authorities**

An officer or employee (Cameron and Stone, 1995:80).

- honors the Constitution and accepts it as a guide in the execution of his/her daily tasks;
- is familiar with and advises by all statutory and other instructions applicable to his/her conduct and duties;
- is bound to execute the policies of the government of the day loyally in the performance of his/her administrative functions; and

- puts the interest of the State first in the execution of his/her duties.

- **Relationship with the community**

An officer or employee (Cameron and Stone, 1995:81).

- foster the unity of the South African nation in his/her official actions;

- always acts in a manner that will promote the trust of the public in the public service;

- is open and fully accountable to the public regarding his/her official actions by way of the appropriate statutory bodies and elected political office-bearers;

- has regard for the circumstances and concerns of communities in dealing with administrative actions affecting them;

- is committed to the development and upliftment of all South African citizens;

- is honest in dealing with public funds and uses State property economically and only for official purposes;

- does not take in and will expose maladministration, corruption and any other act which constitutes an offence or which is prejudicial to the State;

- does not discriminate unfairly against any member of the community on account of race, gender, religion, convection or any other arbitrary reason;

- is non-partisan and unbiased in rendering services to members of the public;

- does not use his/her position in the public service to promote or prejudice the interests of any political party or interest group;

- is always polite and helpful when dealing with the public;

- recognizes every citizen's right of access to all information insofar as such information is required for the exercise or protection of any citizen's rights; and

- is committed to lawful, justifiable and procedurally fair administrative action

- **Relationships between officials**

An official or employee (Cameron & Stone 1995:82).

- co-operates fully with other officials to advance the public interest;

- obeys and executes all lawful instructions by persons competent to give them;

- replies explicitly and fully to a lawful question put to him/her by person competent to put such a question, except where such a reply may incriminate him/her;

- never misuse his/her authority;

- uses the appropriate statutory or other prescribed channels to air his/her grievances or to direct representations; and

- applies human resources and labour relations practices in an objective, fair and equitable fashion and is committed to the optimal development and utilization of his/her subordinates

- **Performance of duties**

An officer or employee (Cameron and Stone, 1995:82).

- directs his/her actions and decisions to achieve the objectives of his/her organisation in the public interest;

- devotes his/her undivided attention to his/her daily task and places the all of his/her at time at the disposal of the State;

- uses the resources at his/her disposal efficiently and effectively;

- is punctual in the performance of his/her duties and is never absent from his/her workplace without permission or a valid reason;

- executes his/her duties in a competent manner and respects as well as protects the human dignity of everybody with whom he/she has contact;

- does not get involved in any transaction or action that is in conflict with or in any way infringes upon the execution of his/her official duties;

- willingly declares his/her interests and excuses himself/herself from any official action or decision-making process that may affect his/her interests; and

- accepts the responsibility of equipping himself/herself for his/her career through further and persistent training and self-development

- **Personal conduct and private interests**

An officer or employee (Cameron and Stone, 1995:82-83).

- is concerned with his/her dress and appearance and ensures that these are in accordance with the standards appropriate to his/her duties;

- at all times acts responsibly as far as the use of alcoholic beverages or any other substance with an intoxicating effect is concerned;

- does not without approval accept, and never demands, gifts or benefits related to the performance of his/her official duties;

- does not use or disclose any official information for personal gain or the gain of others or publicly comment to the prejudice of his/her department;

- arranges his/her private activities so that they do not clash with his/her official duties and does not without approval undertake remunerative work outside his/her official duties;

- does not use his/her official position to seek or obtain any financial or other advantage for himself/herself, his/her family or any other person or organisation;

- is prepared to fully reveal his/her business or financial interests when required to do so in the official interest; and

- ensures that his/her personal financial affairs are essentially sound and does not without approval cede the right to the whole or any part of his/her salary or any allowance payable to him/her .

2.9.3. Enforcing a Code of Ethics

The code of conduct/ethics for public officials in the South African pubic service is an indication of how important which the government rates the role which such a code can play as a measure against unethical behavior and corruption on the part of the public official. A code of ethics will not eradicate corruption; however, it should encourage public officials to base their actions on sound moral groups (Cameron and Stone, 1995:85). In addition to a code of ethics, provision is also made among the doctrines of democracy for the conduct of public officials (Cloete 1995:187-188).:

- it is generally accepted that public officials must promote the general welfare of the public in accordance with the policy determined by the legislator;

- public officials, according to the doctrine of democracy, must in performing their duties, respect the rights and freedom of the population, whose rights and freedom can only be infringed upon directly by the legislator;

- the public should always be able to demand public officials to give account of their activities;

- in a democratic state, every member of the population has the right to insist on fair and reasonable treatment; and

- the activities of public officials can meet the ethical norms only if they fulfill their activities effectively without wasting the resources of the community

2.10 Human Rights

Due to the penetration of government activities into almost every sphere of life, public officials are endowed with broad discretionary powers, which enable them to take decisions on matters that may adversely affect lives of citizens. It is possible for public officials to abuse their power or to exercise it in an arbitrary fashion, infringing on the fundamental rights and freedoms of citizens. Given the past of apartheid in South Africa and subsequent emphasis on the protection of rights and freedoms of individuals, control over public officials is vital in order to prevent infringement of such basic rights and freedoms. In a constitutional state such as South Africa, a Bill of Rights and institutions created in terms of the Constitution can be regarded as control mechanisms to limit the abuse of powers by public officials (Van Niekerk, 2001:127).

Political philosopher John Locke (1924:180) raised the central question: Under what circumstances and for what reasons should men obey the commands of government? The answer, he argued, must be biased on the fact that men join together in civil societies and establish governments for only one reason: to secure more firmly the personal rights to life, liberty, and property that naturally belong equally to all men simply because they are human beings. When a government fails to preserve these rights and thus ceases to serve the end for which it was created, Locke argued, the citizens have the right – indeed, the duty to overthrow it. Van Niekerk, (2001:180) put it as follows: 'Whenever the legislators endeavor to take away and destroy the rights of people. They put themselves into a state of war with the people, who are thereupon absolved from any farther obedience, and ...have a right to resume their original liberty, and by the establishment of a new legislative provide for their own safety and security, which is the end for which they are in society'. These rights are still commemorated annually on 10 December-International Human Rights Day (Van Niekerk, 2001:128).

Human rights (fundamental rights) primarily protect individuals from state power. They are derived from each human being's inborn dignity. Every person is born with these rights – hence human rights (Kleyn and Viljoen, 1995:236). Civil liberties guarantee individual freedoms of speech, religion, press, assembly, and petition against governmental interference. Government can limit human rights. Civil rights involve the protection of both groups and individuals against state discrimination based on the suspect criteria of race, national origin, or sex (Van Niekerk, 2001:128).

On the basis of inherent dignity, citizens have a basic claim that government should treat them with respect and concern. Human rights are the means through which the goal of human dignity is attained. These rights can only be guaranteed fully under a democratic government. Modern democracies function through chosen representatives who govern the state on behalf and in the interest of citizens who have voted them into power.

Even a democratically elected government has to respect the individual's humanity. This core of human rights, also referred to as fundamental rights, may not be infringed. These rights are inalienable and inviolable. The philosophical basis of human rights is found in natural law. This means that these fundamental rights are believed to be part of a higher set of norms, on which the validity of man-made laws depends (Van Niekerk,2001:128).

2.10.1 Obligations of Government

What are the rights of a person? What specific areas of individual freedom are defined and guaranteed by the various constitutions of modern nations? One may begin to answer these questions by noting that every modern constitution contains at least some formal guarantees of civil rights. A survey of the various constitutions of nations resulted in the following list of general obligations resting on government:

- Protection of belief and expression;
- Protection of action (e.g. assembly, strikes, movement, etc.);
- Protection for those accused of crime (e.g. against capital punishment and trial without indictment);
- Guarantee of due process of law (e.g. equality before the law and public trails); and
- Protection of property rights.

Furthermore, governments should provide economic assistance, including equal pay for equal work, regardless of sex, age or nationality; minimum wages; maximum hours; unemployment assistance; and social security. Apart from economic assistance, governments should provide social assistance, including education; prohibition of child labour; protection of families, children, and motherhood; preservation of historical monuments; recreation; and culture (Van Niekerk, 2001:128).

2.10.2 Generations of Rights

Human rights are usually divided into three categories or generations. First-generation rights provide a shield for individuals to protect themselves against state authority. These rights guarantee freedom from unlawful interference by the state. These rights are political and civil rights, including the right to life, freedom of speech and of association, and religious freedom (Van Niekerk, 2001:129).

Second-generation rights are socio-economic rights. In general these rights do not require the state to refrain from doing something specific, but to take positive action. An individual's claim to the socio-economic resources may include the right to reasonable housing, medical service, education, and work.

Claims to these rights are frequently met with the argument that they are unenforceable in a state where insufficient means exist to give them effect (Van Niekerk, 2001:129).

Third generation rights have been identified more recently. These are rights that in general pertain to groups. They include the right to a healthy living environment, the right to development, and the right to self-determination. These rights are sometimes referred to as 'green' rights (Van Niekerk, 2001:129).

A coherent and human rights based legal system of the Department of Justice includes the following:

- Harmonization of all laws with one another and the Constitution, including religions and customary laws.

- Implementing Section 8 of the Constitution, the equality provision, in all areas of social justice. Attention will be given to the issues of human rights legislation forbidding discrimination in aspects of life, offering recourse to victims, and contributing to employment equity legislation.

- Auditing all existing and intended statutes to ensure compliance with the Constitution – in particular regarding racial segregation and disparities, and gender discrimination.

- Giving effect to Constitutional Court decisions with regard to constitutionality of legislation.

- Legislation to implement ratified international conventions, such as the Women (CEDAW) and the Child Convention.

- Establishment of a central legal drafting component.

As in the case of ethics, the application of human rights involves moral and values judgments. Government is often confronted by different sets of values from different communities in society, in which may be in conflict with national legislation and policy direction. An example in this regard was the announcement by former Minister of Health, Dr Nkosazana Zuma that people who are HIV positive are to be forced by law to disclose their status to close relatives and sexual partners (Sunday Times, 18 April, 1999:1). Dr Zuma said: "We can't afford to be dictated to by human rights or Aids activists. We need to do what is right. We want to know who is dying of Aids, and relatives and partners must be notified. It is time we treated Aids as a public health issue like TB. We don't go about treating that with secrecy". The National Association of People Living with HIV/Aids said that Dr Zuma's proposal was 'an outrageous suggestion'. They argued that Aids cannot be regarded the same as other diseases because with other diseases people are not denied employment, are not evicted from family home, nor killed for revealing that they are infected. It is an invasion of privacy that could be challenged constitutionally (Sunday Times, 18 April, 1999:1).

According to Human Rights Commission, 'choices should not be made between human rights and public policy. Both make their own legitimate demands and one cannot ignore the prejudice and levels of discrimination directed at people who are HIV positive'. Currently one out of five South Africans between the ages of twenty and forty are HIV positive (Institute of Life and Pension Advisers, 1999:41).

However, one should keep in mind that human rights in return could hamper government actions. In a country like South Africa, where there is currently a debate that human rights provide more rights for the criminal than for the victim of criminal activities, the criminal justice system and the South African Police Service are arguably hampered by the vast array of human rights.

2.10.3 The Bill of Rights

In South Africa the interim Constitution, Act 200 of 1993, included a Bill of Rights, which was adopted by the multi-party negotiating council (CODESA) at Kempton

Park. A technical committee compiled the chapter on fundamental rights. These rights must be understood in the context of the constitution as a whole. The Bill of Rights was subsequently revised and included in a separate chapter of the Constitution of the Republic of South Africa, Act 108 of 1996. A total of thirty-two rights are listed in Chapter 2. All three generations of rights are contained in the Bill of Rights. The Bill of Rights is to a large extent the result of comparative legal research. Its drafters studied several international human-rights documents and the constitutions of other countries. Therefore, many of the clauses in the bill correspond to similar provisions elsewhere in the world. The Bill of Rights is the cornerstone of democracy in South Africa, since it safeguards the rights of all people in our country and affirms the democratic values of human dignity, equality, and freedom. The state must protect, promote, and fulfill the rights in the Bill of Rights (Van Niekerk, 2001:130).

Any legislation passed or administrative action exercised which is contrary to the provisions of the Bill of Rights can be declared invalid by South African courts and, furthermore, the courts can make an appropriate order to rectify' the damage done to the person whose rights were affected.

Rights contained in the Bill of Rights (Constitution of the Republic of South Africa, Chapter 2).

The following rights are protected by the Bill of Rights

- Right
- Equality
- Human dignity
- Life
- Freedom and security of the person
- Slavery, servitude, and forced labour
- Privacy
- Freedom of religion, belief, and opinion
- Freedom of expression

- Assembly, demonstration, picket, and petition
- Freedom of association
- Political rights
- Citizenship
- Freedom of movement and residence
- Freedom of trade, occupation and profession
- Labour relations
- Environment
- Property
- Housing
- Health care, food, water, and social security
- Children
- Education
- Language and culture
- Cultural, religious, and linguistics communities
- Access to information
- Just administrative action
- Access to courts
- Arrested, detained, and accused persons

The Bill of Rights applies to all laws and binds the legislature, the executive, the judiciary, and all organs of the state.

Growing internationalism is advanced by common problems, which threaten the world as a whole. Internationally accepted ideologist, such as the protection of human rights, encourage countries to conform to or move closer to international norms. The eventual acceptance in South Africa of a bill of human rights was largely influenced by the existence of an international human-rights culture. Legal comparison is necessary for the development of one's own legal system. It is unnecessary to reinvent the wheel over and over again. Relevant international law on human rights must be taken into account, since it consists of rules and norms in force between states on the international level.

2.11 Conclusion

Public officials must realize that they occupy a unique position in society and that the promotion of the general welfare of the community must be their first priority. Their unique position must not be used for the furtherance of their ideas and public officials must adhere to ethics, which are seen as a system of moral principles. The values and morals by which the public official lives as an individual in a community has a direct influence on his/her position as a public official as it should never be forgotten that the public official is first and foremost an individual of a particular community.

Consideration must continually be given to the existence of values and morals deemed by the public to be sound and desirable as well as providing the background for sound transparent administration. Acknowledgment and manifestation of the values norms of public administration in the conduct of the authorities would also serve as a guideline for public officials in the performance of their official duties. As soon as the public official takes a serious interest in his/her ethical behavior and is not to be confronted by ethical dilemmas, the cornerstone of good government has been laid in which sound public administration is possibly enjoying the trust of the community it serves. Ethics are essential for sound transparent public administration and when viewed in conjunction with values and morals, serve as the cornerstone of transparent public administration.

The presence of ethical dilemmas is something, which occurs in most public services and is something which public officials will be confronted with whilst employed in the public service. Although it is essential that corruption – in what form it might appear – have to be dealt with swiftly it is not always easy for public officials to become whistle blowers. Public officials must be fully aware of the risks, which they are undertaking when informing on the occurrence of corruptible behavior; the failure to provide sufficient proof for the allegations could hold in serious consequences for the public official. It is essential that any public official

should embark on such a course of action if the public official is of the opinion that the values and morals of society of which the public officials is also member, are been seriously harmed by the presence of unethical and corruptible behavior.

It is clear that a code of ethics of some form is of importance to ensure that the public official fulfills his duties in an ethical manner and that the values and norms of the community are protected by the code of ethics against possible immoral and unethical behavior. The necessity exists for the presence of guidelines against which public officials can measure their behavior. To ensure honest government, it is essential that a code of ethics exist whereby the actions of public officials are led, directed and guided; otherwise it would be virtually impossible to define what constitutes unethical behavior. As soon as public officials take a serious interest in their ethical behavior and are not confronted by ethical dilemmas, the cornerstone of good government has been laid in which sound public administration is possible, which also enjoys the trust of the community it serves.

The drawing up of code of ethics for the South African Public Service is an indication of the seriousness of the South African government to combat unethical and unacceptable behavior by public officials. The measures contained in this code of ethics covers the majority of the causes of corruptible behavior covered in the previous chapters and such, should go a long way towards establishing the right ethical climate and promoting sound public administration. The presence of a code of ethics for the South African public service is also an indication of the importance being attached to correct ethical and moral behavior on the part of public officials. The divergent nature of South African society which is also depicted in its public service and the influence of the different cultures, values and norms on the public officials coming from this divergent society, emphasizes the crucial importance of the development of an uniform set of ethical guidelines applicable throughout the entire public service spectrum against which the actions and behavior of public officials can be measured. It is crucial that public officials through training and education are made aware of unethical and corruptible behavior if the fight against corruption is to have some success.

In this chapter ethical governance and human rights were discussed. It was found that governments must promote ethical conduct by adhering to guiding values and by establishing infrastructure to manage the process. It was furthermore established that unethical conduct manifests itself through election fraud, official violence, and institutional misconduct. To combat such manifestations, it is important that remedies are utilized. Possible remedies include the use of whistle-blowers, monitoring and investigation, transparency, clear rule and guidelines, political leadership, statutory guidelines, accountability, incentives, and training. Apart from these remedies, government should furthermore establish formal mechanisms to ensure ethical governance. In the South African context some of these formal mechanisms include the Auditor-General, Standing Committees of Parliament, the Public protector, and the Human Rights Commission.

Lastly, the issue of human rights was discussed. It was found that the adherence to human rights is closely related to ethical governance. Governments have certain obligations and must ensure that these rights are contained in formal documentation. In South Africa basic human rights are contained in the Bill of Rights (Chapter 2 of the Constitution). The Bill of Rights was compiled with due consideration to international human rights and humanitarian law. Current and future demands on transparency in Government will place increasing emphasis on ethical behavior and professional competence. Public officials and political office-bearers should serve society and all their actions must be directed at promoting the public interest.

CHAPTER THREE

BLOW AGAINST CORRUPTION AS AN EXTERNAL VARIABLE INFLUENCING TRANSPARENCY

3.1 Introduction

In chapter two ethics, morality and human rights have been identified which serve as framework within which transparency and openness has to take place.

The external variable that will be taken as ethics dilemma for the purposes of this dissertation in this chapter is corruption as an area for potential conflict to promote transparency and openness.

Traditionally the problem of corruption in the public sector was left largely to law enforcement officials. According to a survey conducted by the OECD countries in 1999, areas of most concern to governments appear to be those that involve interaction between the private sector and public officials. The most common measures being used against corruption in the public sector are criminal and other legal sanctions, supplemented by increased transparency and decentralized management responsibility and control. Methods for evaluating the effectiveness of anti-corruption measures are less well defined and largely take the form of reporting or periodic inspection. (Van Niekerk, 2001:122).

In the South African context many examples of corruption in its various forms can be provided. The North West provincial legislature, for example, uncovered serious financial bungling in nine provincial departments and the loss of millions of Rands of taxpayers' money in its 1997/1998 financial report.

Loans, totaling R56 million, were granted, for which loan agreements were not in place and for which no repayments have been received. It was also found that in

departmental budgets these amounts were not audited and authorized. The need for transparency in this example is obvious (Van Niekerk, 2001:122).

The primary task of public officials is the promotion of the general welfare of the community, a task that should be performed in such a way that the public official is able to account in public for his actions. The public official needs to remember at all times, that public money is being used and that both the public official and political office-bearers are in service of the public and not in the service of a government. However, as soon as public officials forsake the public interest for personal interest or gain, then corruption is said to have taken place, which can take on various forms, depending on the situation in which public officials partakes in corruptible behavior.

Corruption occurs therefore wherever a person misuses his/her power in the exercise of his/her duties and makes himself/herself guilty of behavior deviant from prescribed rules and regulations, such deviant behavior being to that person's benefit and detrimental to a third part or general public
(Du Plessis, 1989:552). Corruption can also be defined in terms of the conflict of values as norms differ from culture to culture, when viewed against the background of Western and African cultures.

In this chapter, various definitions of corruption will be provided and analysed. Once a definition of corruption has been established, the various causes, manifestations and conditions in society, which allow for the occurrence of corruption amongst public officials and political office-bearers, will be discussed.

The causes and conditions in society conducive to the occurrence of corruption amongst public officials include greed, patronage, nepotism, bribery, ghosting, bid rigging, graft, kickbacks, policy dilemmas, information leaks, and pressure group influence. Conditions and causes of corruption conducive to corruption amongst political office-bearers will be discussed.

These include the relationship between appointed public officials and elected political office bearers, conflict of interest, lack of public interest, inequality prevalent in society, politicization of public service and political interference, excessive administration secrecy, administrative discretion and vote-buying.

Other areas of enquiry included high-level and low level corruption. Consequently a general overview of the concepts the spillover effect is the leader follower spillover, the dimensions of the corruption spillover effect and institutional spillover" is provided. The chapter also focuses on the issue of political corruption by providing examples of manifestations of corruption and unethical behavior in South Africa. Finally an overview of the promotion of transparent and open governance as precursor to the following chapter, which focuses on measures to control corruption, will be provided.

The acts of corruption associated with public officials and the acts of corruption associated with political office-bearers is not always associated only amongst the groups mentioned. Acts of corruption, which are associated with public officials, can also be associated with political office-bearers and vice versa.

3.2 Definition of Corruption

The statutory definition of corruption in South Africa is found in section 1 of the Prevention of Corruption Acts, 1992 (Act 94 of 1992).

- any person shall be deemed guilty of a corruptible offence whenever such a person corruptly accepts, obtains, or agrees to accept any gift as an inducement or reward for himself/herself or any other, person the result of such an action leading to favor or disfavor being shown to the party offering the inducement; and

- any person who corruptly gives or accepts any gift from a party as an inducement or reward for rendering services on behalf and in favor of the designated party shall be deemed guilty of a corruptible offence .

The word "corruption' has a variety of meaning and beliefs and besides including crimes and felonies, it can also be related to administrative misdemeanors such as bribery, deceit, falsification, embezzlement, forgery, theft, graft, patronage, nepotism and influence peddling (Joubert, 1979:2). Klitgaard (1992: 39) supports this viewpoint in saying that "virtually all countries have laws that condemn extortion bribery speed money, fraud and embezzlement, kickbacks, nepotism and other forms corruption".

Heidenheimer (1978:21-22) views the following behavior as comprising corruption: Bribery (use of a reward to pervert the judgment of a person in a position of trust): nepotism (bestowal of patronage be reason of prescriptive relationship rather than merit): and misappropriation (illegal appropriation of public resources for private uses) Whatever form corruption takes on, in any form of government or political system. It still remains corruption as Joubert (1979:12) view corruption as being "not only harmful to the state and the government involved but detrimental and injurious to that most important ingredient of state existence, the people".

Heidenheimer (1978): defines corruption as follows... "corruption, while being tied particularly to the act of bribery, is a general term covering misuses of authority as a result of consideration of personal gain which need not be monetary".

Joubert (1979:16) in turn sees corruption as being "behavior which deviates from the formal duties of public role because of private gain-regarding pecuniary or state gain, or violates rules against the exercise of certain types of behavior. This includes such behavior as bribery, nepotism and misappropriation" The definitions of both Heidenheimer and Joubert relate to corruption occurring whenever the public official abuses his/her position for own personal gain, something which is out of context in relation to his/her duties.

Heidenheimer (1978:21) sees corruption as being "behavior which deviates from the formal duties of public role because of private-rendering pecuniary or status gains; or violates against the exercise of type of private-rendering influence".

Wronsley (1994:39) underlines this viewpoint by stating "corruption is the abuse by the incumbent of a public office or position of his statutory or regulatory authority or discretionary power, whether by commission or omission, so as to improperly benefit and/or other".

The Santhana Commission on Prevention of Corruption In India defined corruption as the "improper or selfish exercise of power and influence attached to a public office or to the special position one occupies in public life" (Hager, 1973: 199).

The benefit from corruptible behaviour by public officials does not necessarily have to be of a financial nature but can be related to irregular advancement of the individual, family members or friends. Examples of such deviant behaviour are promotions (one's own or a third party), preference given to certain tenders, improvements to buildings, irregular granting of contracts and deviations from laid down rules and procedures (Du Plessis, 1989:551-552). The most important aspect of corruptible behaviour is that private gain was secured at public expense with the private gain not necessarily being of a monetary nature but can take on any other form.

The public officials may arrange for advancement through a variety of corrupt practices, which include contributions to party chests, flattery of a superior or his relatives, or catering to his personal hobbies. According to Friedrich (1972:120)."it is deviant behaviour associated with a particular motivation, namely of private gain at public expense it may be a rapid promotion, an order, decorations and the gain may not be personal but benefit a family or other group... a responsible functionary or office holder, is by monetary or other rewards, such as the expectations of a job in the future, induced to take actions which favour whoever provides the reward."

3.3 Corruptions and the Interpretation of Values and Norms

Corruption can also be defined in terms of the conflict of values and norms as they differ from culture. Behaviour regarded as deviant in terms of Western democratic

values and norms may be regarded as acceptable behaviour in a developing African state (Malan, 1980:16). Against the Western, impersonal and universalistic practice of public service, one will find the values and norms of kinship and reciprocity. Are these to be denied validity and the public official who fulfils their expectations to be considered as corrupt? After all, "...in a given society, various kinds of norms may conflict with moral, religious and cultural norms, so that a sample of behaviour defined as illegal may be acceptable using cultural standards" (Caide, 1977:302).

It can happen that tradition bound Black public officials in South Africa, are according to their values and norms of the opinion that they are entitled to receive gifts or compensation for services rendered as they would have been entitled to such gifts or compensation when viewed in terms of the practice of their traditional cultures. However, in terms of Western style bureaucratic practice based of Western values and norms, if a member of the public wants to offer a public official a gift or compensation if a certain function was to be fulfilled, it would entail bribery (Labuschagne 1991:61).

Thus, corruption in terms of African culture can appear to be consistent with customs, traditions, values and norms whereas the laws and ethics that made it illegal and immoral are alien, imported or super-imposed. The individual who assumes a public role is torn between two social forces and values and norms in his/her world. The rational, impersonal and universalistic values and norms of the bureaucracy mean that a public official must accept that a public official to place national and community's needs ahead of his/her personal and family interests, values and norms. However, the presence of strong kinship bonds will compel the public official to look after the needs of not only immediate family members but also even an extended family system (Caiden, 1977: 303).

3.4 Causes and Conditions Conducive to Corruption

Administrative corruption can take on many forms and can comprise amongst others, the misappropriation of public money/stores: acceptance of illegal

gratifications in recruitment, transfers, promotions, irregularity in the granting of import/export licenses; under-assessment of income tax, estate duty for pecuniary gain, and intentional delay in the supply of tender forms to favour certain firms. Above all, corruption would entail the actual and unauthorized diversion of government funds to private hands (Hager, 1973:201).

As mentioned, corruption is deemed to have taken place if public official deviates from his/her public duties, and that deviation is contrary to the interest of the public. The situation is furthermore complicated by the presence of different values and norms prevalent in the society in which the public official makes use of the powers of office for pure personal ends. Thus, corruptible or deviant behaviour is deemed to have taken place whenever a public official abuses his/her position for own personal gain

3.4.1 Causes of Corruption

Corruption, according to Werner (1983:14) can be caused by the following aspects:

- the presence of networks in society, which thrive at any level of political development or institutionalization. In some African states, political leaders-soldiers, politicians and public officials-rely on clientelistic relationships to hold on to power and these relationships are held together by payoffs;

- too little or too much government control tends to enhance corruption. Reports by the Auditor-General in South Africa, has remarked on the lack of adequate control measures in the former homelands, resulting in the deviant behaviour of certain public officials;

- the universal appearance of a consumer-orientated society and the gap between desire and the means of fulfillment. One does not always want to wait for a certain object, so the desire to possess a certain object

can be of such magnitude that one goes over deviant behaviour to achieve ones objectives;

- Cultural attitudes prevalent in a society could also be conducive to corruption where, if a person obtains rank and a good income and if this person does not want to lose face and clients, it must be demonstrated continuously.

  Once having obtained public office, the public official adopts a life style manifestly different from that of an average person, for example, buying an expensive car and wearing tailor-made clothes
  (Klitgaard, 1992 : 81); and

- Corruption can also be related to the presence of inadequate political channels and is viewed as being nothing more than a special case of political influence. Poor countries are good candidates for corruption because of disproportionate impact of government of society, bureaucratic dominance, a weak sense of nation with greater emphasis being placed on kinship, and a distinct gap between citizen and government. These factors place a heavy burden for political institutions to carry in terms of capacity and legitimacy, and corruption fills this gap (Caiden, 1977:303).

- lack of leadership and discipline shown by the politicians tends to be more widespread where one has the existence of significant political corruption and/or where the ideal of the national interest remains weak;

- the expanding role of state activity in the developing countries has resulted in an expanding public service with increasing discretionary power which is abused for personal gain. For example, the increased number of regulations coupled with greater administrative discretion, provides the public official with an ideal tool to engage in deviant

behaviour as these regulations can be used to frustrate the public and result in bribery to avoid such frustration; and

- the absence of a public service work ethic. Public officials in the developing countries lack a sense of purpose and commitment to their responsibilities. They do not believe that they are serving anyone but themselves and exploit their position for personal gain. As example can serve the Congo, where "...projects are overcharged. The total cost of a project is a nominal cost plus extra charges which are paid in bribes to all those who helped to ensure that the project was accepted. Another problem is reporting late for work. In the Congo, public officials are generally late to their offices and they always leave their offices 10 to 15 minutes early in addition to many unauthorized pauses and loitering. In the Congo, when one has submitted a dossier, one must intervene many times at every administrative step: "(Oiowu, 1989:217).

Corruption can also be caused by the divergence that exist between government and society, where citizens of a country can find government threatening and incalculable either as a result of not being familiar with government norms and work methods or because certain laws are in conflict with popular perceptions. For example, a night-club owner might in order to continue in business buy the right to continue a lucrative business, knowing full well that to continue in business would be contrary to prescribes laws are in conflict with popular perceptions. Furthermore, prohibition, vice and illegal gambling have become associated with the prevalence of police corruption with McMullen being of the option that bribery and official extortion are fostered by this government /societal divergence (Klitgaard, 1992 : 87).

With the before mentioned as background as background, a look will now be taken at some individual causes of corruption, viz, poor remuneration of public officials and power and corruption.

3.4.1.1 Poor Remuneration of Public Officials

A corruption syndrome can also develop in situation where public officials become part of corruption either due to sheer ignorance or because they are poorly remunerated. Public officials are quite often placed in situations where ethical choices have to be made - situations in which public officials could easily succumb to enticing propositions. The corruption syndrome could develop if government regards corruption as being exceptional aberrations in their system as well as refusing to accept that corruption is universally endemic. As a result, this could lead to the development of a situation where bureaucratic wrongdoing could become the norm instead of the exception to the rule. In terms of such a scenario, public officials when confronted with value choices, could find themselves applying double standards – condoning unethical conduct whilst always operating within the letter of the law thereby doing nothing for which public officials could criminally be prosecuted for (Hilliard, 1992:10).

In most of the developing world, politicians and law enforcement officers will turn a blind eye to corruption as they see this practice as being the only means by which public officials can supplement their income, depending also whether the leaders themselves are not involved. In one African country, it was found that health officials through illegal channels were selling more than 95 percent of all the hospital drugs. When the attention of the authorities were drawn to this practice and action was demanded against the officials, the argument of the authorities was that if they were to stop this practice, the end result would be collapse of the health system as that was the only way through which health workers could top up their meagre salaries. Excessive state intervention in all spheres of economic and social life in Africa has also been blamed for the prevalence of corruption in Africa, resulting in excessive red tape, inefficiency, low productivity and lower wages. As a result of his/her wages not being sufficient, the public official thus has to seek alternative sources of income and on the other hand, individuals seeking bureaucratic and inefficiency ridden services will rather pay bribes to get them than wait indefinitely.

3.4.1.2 Power and Corruption

Another cause of corruption can be found in the aspirations of individuals for high office and to be in control of power (Friedrich, 1972:159). People, who control or have power, usually act in a pragmatic way to ensure the retention of their own political power (Du Plessis, 1989:51). Once the exercise of political power is left unchecked, self-enrichment could become the order of the day (Hillard, 1992:10). The type of political system prevalent in states could also be conducive to corruption, especially government found in totalitarian or one – party states. The ideology prevalent in such states could become all pervasive, leading to a disintegration of the belief system on which a particular political system rests and resulting in the perversion of legal rules by misinterpretation, becoming the rule (Friedrich, 1972:130). Such a situation could lead to party members abusing their position of public trust as it becomes difficult to oust from office a government that has firmly entrenched itself (Hillard, 1992:11).

Friedrich (1972:16) regards the competition that exists between people fighting over the same scarce but necessary commodities, as a condition for corruption: "wherever men compete for valuable but limited commodities, whether they are licenses to operate taxi cabs, franchises to sell goods to the government or freedom to operate a number game, there will be a temptation to secure these commodities through corrupt inducement if other efforts fail."

3.5 Conditions and Causes of Corruption among Public Officials

The following conditions and causes are deemed to be associated with the occurrence of corruption amongst public officials: greed; patronage; nepotism; bribery; ghosting; graft; and kickbacks. Each of these conditions will now be discussed and practical examples will be given of the most common conditions of corruptions of corruption.

3.5.1 Greed

Greed can be defined as the striving for personal gain – seeking private gain at public expense – by public officials and an obsession with material gains. Greed could seriously undermine efficient and effective public officials in senior positions abuse their authority to their own advantage. This form of self-enrichment could be exacerbated by the following factors: (Hillard, 1994:217).

- impatient ambition by which is meant a public official who always wants promotion and other rewards immediately;

- exploitation of political status in the hierarchy;

- ignorable expectation where results are accentuated despite usage of devious means in obtaining these results; and

- unguarded trust where the lack of sufficient supervision provides public officials with ample opportunities to engage in corruptible deeds.

The corruption of public officials by private interests is usually very subtle: favours by the public to the official put the official under obligation and he gradually substitutes his public loyalties for loyalties to those doing him favours. It is quite possible that the official believes and claims that his decisions are not influenced by his benefactors (Douglas, 1953:44).

The ethical dilemma that faces the public functionary with regard to corrupt practices as a result of private interests primarily concerns his reaction to the situation. If a corrupt practice or an attempt to corruption is discovered, it is quite possible that the functionary's personal loyalties or party political affiliations may be in conflict with his official duties. Should he sacrifice the public interest or try to end the corrupt practice by direct personal confrontation, or should he blow the whistle on the practitioner of the corrupt practice?
(Fleishman & Payne 1980:42-43).

3.5.2 Patronage

Patronage basically entails the assignment of government positions to political supporters. Martin and Susan Tolchin in Benson (1978:222), define patronage to "include political appointments not only to full-time jobs but also to prestigious boards; contracting of government for architectural or legal services; or if more competitive bids are possible, for regular contractual services; executive action in easing regulations on taxes; and other practices of aid to political supporters".
Patronage is a process whereby employment or contracts are rewarded by the government on the basis of partisan support and not on the basis of merit and has the following characteristics (Gibbons, 1976:9)

- it is a broad scope activity as the achievement of results depend largely on the number of people who are indebted to government for jobs or contracts;

- patronage can be administered selectively, that is to say on a case to case basis;

- for the political actor the rewards are power and the retention of office whilst the non-political actor will enjoy money in the form of contracts or jobs; and

- patronage can be carried out both by the political actor and the non-political actor who possess official status and adequate resources.

In the United States of America, despite the usage of the merit system in the federal public service, more than 2 500 purely patronage positions are the prerogative of the President for controlling the executive branch and as rewards for friends (Lorch, 1978:15). As such, under patronage, staffing of the public service does not take place in accordance to a merit system but by a patronage process in which kinship and client's ties were more important than the ability to

perform the job (Lorch, 1978:37). Army and police jobs continue to be a source of patronage in Africa, as for example, in Uganda, Idi Amin had stayed in power by giving army and secret police appointments to members of groups which formerly enjoyed little access to such jobs-such as his own Kakwa tribe to the detriment of the Ancholis and Langis tribes, who up to that point has formed the traditional backbone of the Ugandan army (Joubert, 1979:77). By making use of public funds to staff the public service, the party machine gains a staple means of maintaining internal discipline and cohesion (Scott, 1972:121). In terms of patronage system, government jobs can be a source of long terms stable employment especially when the party to which the public official owes loyalty, can maintain itself in office (Sylvia, 1989:12). In some countries such as in Japan and Mexico, the relationship between patron and client (oyabun-kobun in Japan and patronal - onrero in Mexico) still exists. The patrons will be the government officials who hand out jobs, services and even cash to particular groups.

Undue preferment of friends as well as the conferring of office on relatives, who do not qualify for these offices on merit, could result in the selection and appointment of poorly quality public officials combined with a downgrading in the quality of service offered by the public service. It would result in the selection and appointment of poor quality public officials combined with a downgrading in the quality of service offered by the public service. It would be unwise if too much emphasis was placed on family ties and political affiliation when appointments to public office, are being considered. Merit should be the only criterion for appointment and retention of qualified public officials (Sylvia, 1994:219). Furthermore, unqualified political patronage employees lack a sense of duty and turn to extortion and bribes rather than performing a professional public service (Benson, 1978:223).

Finally, patronage can also be regarded as being a display of power on the part of the person dispensing patronage as well as being a method whereby the power of the patronage dispenser could be advanced. Patronage becomes of importance to a political party is in power; it is able to dispense patronage to achieve its political objectives (Marais, 1990 : 111).

3.5.3 Nepotism

Nepotism is derived from the Italian word "nepoli' which means nephew or even more broadly, family. Nepotism is the principle of personnel selection based on subjective criteria (relatives), ignoring the merit principle. As a result, preferential treatment is given to one individual thereby resulting in the victimization of another party without taking cognizance of the relative merit of the respective individuals. Nepotism is an irregular and unethical practice and as such can be viewed as a manifestation of corruptible behaviour as the misuses of authority can lead to unjustifiable benefits accruing to a specific individual relative or even a member belonging to the same club (Hanekom, 1989:31)

Nepotism thus entails the practice of giving undue preference to a relative in situations where other criteria than kinship – merit, seniority or certain qualification - are supposed to apply. In Africa, nepotism and kinship form an integral part and according to Meister (1981:11-12), tribally inspired nepotism promotes corruption.

3.5.4 Bribery

San Pasha, the Ottoman treasure in 1717, had the following to say about bribery (Alatas 1990:1993).

"bribery is the beginning and root of all illegality and tyranny, the source and foundation of every sort of disturbance and sedition, the most vast of all evils and greatest of all calamities... for bribery destroys both faith and state"

Bribery concerns the offering of money or other inducements to secure the desired action from public officials. Bribes can be paid out before the public official has to perform the desired action or after it has been performed; it can also happen that public officials receive part of the inducement before and the balance after the completion of the intended action (Benson, 1978:4).

Bribery can also be interpreted as an economic phenomenon whereby public officials decide to accept bribes for the following reasons: for monetary gain; insufficient remuneration; as well as immediate benefits which can accrue as a result of authority to manipulate the system. Bribes will be accepted it salaries are low and even in some cases if they are high furthermore the risk might be worth taken despite running the risk of being caught. Furthermore, the strength of the country's political institutions could determine whether corruption will fail to develop (if the political institutions are strong and well respected) or develop and flourish (if the political institutions are weak and despised) (Harris, 1990:97-98).

Protection becomes nepotism. Presidents and ministers fill their cabinets and offices with officials from their own tribes. They feel obliged; they owe this to the tribe, which provides their personal power base. And power is something one can keep only so long as you are in a position to hand out power and money to others. This naturally promotes corruption, since no one earns enough legally to satisfy the insatiable demands of relatives and fellow tribesmen for gifts, education, credits, school buildings and other projects.

It was primary the Popes that made use of the practice of nepotism by appointing relatives to senior positions such as bishops, cardinals and princes
(Marais, 1990: 86). The prevalence of nepotism in the public service could result in qualified and ambitious public officials leaving the service because they feel that their chances of advancement in the public service are limited through a lack of family ties with role-playing officials. As such, nepotism can easily result in a reduction in the quality of services provided by the public service
(Malan, 1981:6-7).

The practice of nepotism (the appointment of relations and /or friends to public positions, thereby ignoring the merit principle) may lead to the downgrading of the quality of public service, disrupting the esprit de corps and trust and resulting in corrupt administration, owing to the ability of a select few to impair control measures on account of their personal relationship with the policy-maker, and by reason of their not being easily dismissed or replaced by other

(Hanekom, 1984:31-6). In other words, those who are appointed with the view that they will conform to the standards and views of their appointer could prove to be problematic.

The preferential treatment of one individual over another, without taking into account the relative merit of the respective individuals, represents nothing but Bribery entails the most frequent form of corruption. Other kinds of corrupt political exchange agreements are based on obligations whereby public officials agree to extend unspecified forms of future preferment to certain individuals in return for certain service/rewards that have a large and deliberately unspecified value (Heidenheimer, 1990:149).

Bribery appears to have taken place in the Department of public works in Mmabatho where a public official stand s accused of taking bribes before the approval of contracts. It was alleged that a public official was demanding R6000, 00 before awarding the contract of the supply of gas heaters to certain hospitals in the area (Mail and Guardian :12-18 November 1996) At Lagos Murtala Mohammed international airport in Nigeria, visitors are informed by immigration officials that one page of their passport is missing – the missing page being a 20 US dollar bill. In Mozambique, if one is involved in a road accident, it is necessary to offer the traffic officers a bribe if you wish to obtain the necessary police report needed by your insurance company. Although the 5 US dollar bribe might seem insignificant, for the receiver it is crucial, as salaries in the police force are so low that police officers cannot survive without taking bribes. One can also expect to be ambushed by traffic officers and fined for non-existent offences with the fine being instant with no receipt (SAPEM June 1995:5).

Bribery and nepotism are often combined whereby a person in the position to decide whom to employ, will give preference to his/her kinsman but only after they have agreed to hand over a part of his/her pay (Bekker, 1991:58-59). Another form of bribery used in place of direct bribes, is the principle of kickbacks. An engineering firm, for example, may be given contracts for rendering services to

the government upon the condition that a certain percentage is paid by the firm to the politician who made the awarding of the contract possible (Benson, 1978:5).

3.5.5 Ghosting

This manifestation of corruption occurs wherever payment is received for services not actually delivered; it can also be referred to as theft through phantom resources. Ghosting can take on the following forms (Gildenhuys, 1993:497).

- the "presence" of a ghost employee on the payroll of the employer (literally, the employee does not exist but receives payment, meaning that the paymaster Pokers the money as the paymaster was responsible for the action in the first place);

- double payment for services and goods already received or delivered whereby a second account is sent deliberately after a certain period has elapsed, for the second payment (Gildenhuys, 1991:46); and

- the payment of accounts for goods and services which are not actually received. Invoices that confirm delivery are placed on record, but the goods and services are never delivered by the supplier (Gildenhuys 1993:497).

The De Meyer Commission of Inquiry into alleged maladministration in Lebowa has revealed that departments were created that did no work and salaries were paid to non-existent employees. Furthermore, public officials claimed overtime for time and work they did not do.(Bauer, 1997:46).

3.5.6 Bid Rigging

Big rigging involves the rigging of bids on supply contracts. Bid rigging entails the pre-determining of the bid winner and the bid price among potential buyers. Other firms, in turn, would submit non-competitive tenders at much higher prices for the

show. This practice would result in an increase in the profits of the firms to the detriment of government. Public officials could be involved and bribery could be used to enlist their co-operation (Gildenhuys, 1991:48). Another example can be the situation where the prices of lower quality stores, equipment and services are usually much lower than those of a higher quality. When goods, equipment and services of a lower quality than that prescribed in the tender conditions are delivered at the same price, the end result would be that larger profits are made by the supplier at the expense of government - in the end, the public would suffer (Gildenhuys, 1993:498). An example of bid rigging was when the Pickard Commission into Department of Development Aid found that a public official had lent earthmoving equipment to a women friend who in turn "lent" the equipment back to the department and charged for it. In another case, four tenders for earthworks were received, of which three were found to have been fictitious. The successful tenderer turned out to be the wife of the public of the public official in charge of the tendering process (Pickard Report,1991:46).

3.5.7 Graft

Graft occurs whenever a public official demands payment for rendering a public service, which the public official had to perform as part of his/her duty. In case of graft, the public official is the initiator and not the target of demand for illegal rewards (Gibbons and Rowal, 1976:10-11).

This manifestation of corruption occurs when a public official makes use of advance and confidential information for his/her own benefit
(Gildenhuys, 1991:46). Abueva (1978:534) sees graft as being the misappropriation of public resources – money, property or opportunities – for personal enrichment. The following can serve as an example of how grafts work: a political party, of which the public official is a supporter, enjoys powering a city and has decided to undertake a series of public improvements. The public official receives advance information that the city council intends erecting an amusement center in a certain area. The public official locates the designated area and buys up all the land in the neighborhood. The city council makes public its plan to erect

an amusement center and consequently there is a rush to obtain the land recently purchased by the public official. The public official then in turn, sells the land at good price and makes a profit on his/her investment (Riordon, 1990:95). Another example could be the establishment of a company whose directors are members of the pubic official's family. Tender specifications could be set out in such a way so as to ensure that this company would be the only one qualified to meet the requirements of the tender; prices, in turn, would be artificially inflated leading to the enrichment of the public official and his/her family at the expense of the taxpayer (Gildenhuys, 1991:46). Another example of outright graft is what has happened in the flight of capital from Mexico as according to Pomeranz in The South African Treasurer (1991:160). "there is ...plenty of outright graft in converting dollars borrowed by government projects into private wealth. The actual pathways are endless; phoney intermediary companies that recontract with foreign supplies on public projects and take a hefty spread; importers who get permits to purchase foreign exchange for imports that either never get bought or are wildly over-invoiced; developers who get public loans for projects that do not exist; local consultants who are paid by US suppliers in New York dollar accounts, and so on".

3.5.8 Kickbacks

It is difficult to envisage any manifestations of corruption to take place without the co-operation of a public official who will receive compensation in the form of cash kickbacks thereby profiting at the expense of the taxpayer (Gildenhuys, 1991: 47). Mikesell (1982:64) sees this manifestation of corruption occurring as follows: public officials who posses the necessity authority to decide who will receive the necessary government contracts and which banks will benefit from receiving public deposits, could arrange for artificially high contract awards or artificial wage payments, a portion of that payment being kicked back to the public official. The practice of getting cuts on government contracts constitutes the main example of illegal gains with the customary cut usually being 10%, giving rise to the expression "**ten percenter**" (Andreski, 1978:346). In the fourth and final report of the Van den Heever Commission of Inquiry into irregularities in the Department of

Education and Training 1992, a publishing house called Qualities Publishers was favored by senior officials of the Department of Education and Training (DET) and placed orders of several million Rands with this form whilst at the same time, there was at least one case of a **"kick back"** given to a DET official. This amounted to about R12 000, which was to have been distributed amongst the department's personnel.

3.5.9 Policy Dilemmas

Policy-makers are often confronted by conflicting responsibilities. They have specific loyalties to their superiors, but also to society. They have freedom to act on behalf and in the interest of others, but they must also answer to others – their superiors and society – for their actions (Fleishman and Payne, 1980:17). The official's obligation to respect the political process may conflict with his view on how the objects of policy-making are treated (Fleishman and Payne, 1980:37). In other words, the dilemma of the public official is the clash between his view of the pubic interest and the requirements of law (Fleishman and Payne, 1980:19).

Public officials are the primary interpreters and executors of public policies. The terms of legislation provide numerous points for conflict of interest and pubic officials can play a positive or negative role in the execution of policies.

They can negate the effectiveness of a policy if they delay, obstruct or subvert implementation. If they set strategies for execution, determine priorities, establish organizational structures, provide adequate and appropriately trained personnel, select target groups, press for results and maintain safeguards; they positively influence the execution of public policy (Fleishman and Payne 1980:10). The new political dispensation in South Africa, for example, has elicited different views from leading pubic officials. One leading official sees the implementation of the proposed reforms as problematical regarding the availability of finances (Croeser, 1983:90), whilst another sees it as implementable especially regarding personnel provision and utilization (De Beer, 1983:106.).

It should also be borne in mind that public officials can influence the outcome of an evaluation by selecting specific evaluators, and by interpreting and reporting on the findings in a specific way (Liebman and Moore, 1981:109).

Because public officials are expected to save their political masters (the ministers of state) without fear or favour when tendering advice or when discharging their official duties, it implies that their actions are supposedly guided only by a disinterested pursuit of the general good. In practice this could be an ethical dilemma. Public officials are not immune to pressure by political decision-makers, especially because they have to explain the work of the various public institutions to the politicians (Cloete, 1981:23). Thus on the one hand they could bend backwards to tender advice or take administrative decisions to please their political superiors and if they merely try to accept responsibility for their official actions. On the other hand, public officials could become so powerful that they may "describe" policy to the political office-bearer.

It should, however, be pointed out that public officials are expected to conform to the principles of public administration, i.e. taking into account the political ideology of the government of the day, community values and norms and the prescriptions of administrative law (Hanekom, 1984:25-31). These principles represent the minimum standards of official conduct to which the public official has to conform. The ethical dilemma of conformism lies in injudicious conformity, over – indulgence in conformity, or conformity of officials merely in their own interests – all of which could lead to inflexibility and stagnation in the administration of public affairs.

3.5.10 Information Leaks

Official information is often such a sensitive nature (e.g. pending tax increases, rezoning of land, retrenchment of staff) that disclosure of the information can lead to chaos, corrupt practices or, for some individuals, improper monetary gains. Leaking official information at a date prior to the public announcement thereof is a violation of procedural prescriptions and can be an ethical dilemma: the official's

personal conception of what is in the public interest may vie with his official obligations (Liebman and Moore, 1980:27-28).

Personal views of the public good may be directly opposed to judgments on the public interest based on a democratic view. The result is that public officials may come to the conclusion that official obligations require them to act against their consciences (Fleishman and Payne, 1980:39), i.e. a clash of values.

3.5.11 Pressure Group Influence

The demands of pressure groups (such as trade unions) usually place personal interests above national interests. In times of poor economic conditions (recession, abnormal inflation) it could well happen that pressure groups, in their endeavor to promote the well-being (salaries, promotion, prevention of retrenchment) of their members, ignore the short or long-term economic consequences of their demands, or both. Demands for substantial salary increases by a section or division of the public service (for example, the professional division) may lead to similar demands by other sections or divisions of the public service, followed by demands of quasi-governmental institutions, followed by one section after the other of the private sector until the circle is complete - resulting in economic chaos and disaster.
(Rowland and Bain, 1986:159).

3.5.12 Other Problem Areas

Apart from the areas of possible conflict referred to above, other problem areas from which ethical dilemmas may arise can be identified; inter alia:

- The political activity of public servants resulting in divided loyalty on the part of those officials who sympathise with the views of a specific political party, or who belong to a society which fosters the political ideology of a specific political party, and which is also bound by the code of the specific political party, of by the code of the society. (Rowland and Bain, 1986:159).

- The weaning away of public officials from adhering to high ethical standards and making decisions on considerations not really salient to the case they are dealing with. One of the most important ways in which the weaning away can be accomplished can be linked to poor salaries in the public sector, i.e. the acceptance of gifts or the opportunity to supplement incomes by picking up "extras" on the side (Douglas, 1953:45,58); and

- Other more subtle ethical problems, such as the abuse of sick leaves privileges, extended tea breaks and the violation of office rules in general.

3.6 Conditions and Causes of Corruption among Political Office-Bearers

The following causes and conditions which are different from those of the public officials, are associated with the occurrence of corruption among political office-bearers; conflict of interests; lack of public interest; inequality prevalent in society; politicization of the public service and political interference; excessive administrative secrecy; and vote-buying. It is essential to show these causes and conditions of corruption amongst political office-bearers, so as to indicate that corruption is not limited only to public officials but that certain forms of corruption can be associated with political office-bearers. However, of these conditions discussed in the followed pages, can also be associated with public officials. Each of these conditions will now be discussed and practical examples will be given at the more common conditions of corruption.

3.6.1 Relationship between Appointed Public Officials and Elected Political Office-Bearers

It is important to take cognisance of the fact that in the view of the public every appointed public official represents the government to the day; not only the department or office where he is employed, but the government at large. This view places a strain on appointed public officials in that while they have to perform their official duties without bias, their official actions are viewed with bias by

sections or members of the community. The relationship between appointed officials and elected political office-bearers, if not conducted in a professional manner, could prove to be an area where ethical dilemmas may develop as a cause of corruption.

3.6.2 Conflict of Interest

Kernagham (Gibbons, 1976:11) defines conflict of interests as "a situation in which a public employee has a private or personal interest sufficient to influence or appear to influence to objective exercise of his/her official duties". Conflict of interests occurs between the political actor and the pubic interest with the rewards for such behavior accruing only to one person or group. A conflict of interests is said to have taken place when, for example, a public official votes for the purchase of computer equipment from a company in which the public official has vested financial interests. As a result, the public official will benefit privately from his/her public role. Other characteristics of conflict or interests include its narrow scope of involvement (individual involvement) the selective nature of inducements, the rewards in monetary form, the official status of the political actors and although conflict of interests of this type can occur in any political arena, they are usually to be found in the legislative and electoral arena (Gibbons, 1976:11). Conflict of interests are particularly accentuated in public administration especially as the manifestation of public trust is or importance. As such, it is possible for public officials to find themselves constantly in situations in which public objectives and private goals as well as the means to attain them are in conflict (Gibbons, 1976:112).

3.6.3 Lack of Public Interest

It is part of human nature that, as needs and interests are looked after and provided for, little interest is taken in government activities or actions of political office-bearers. This lack of interest could lead to ineffective scrutiny of executive action thereby giving public officials and political office-bearers, the impression that as the public shows little in their activities, they can partake in corrupt

activities and that nobody will want to become involved in exposing their corruption. This impression could have a detrimental effect on the honesty and integrity of public officials and political office-bearers (Hanekom, 1989:103). It should form part of the function of the press to closely monitor the action of government and to bring to the attention of the general public, all incidents of deviant behaviour on the part of government. Unless the press fulfills the function as a watchdog over society, public officials and office-bearers will operate without fear of detection and embark on deviant behavior at the expense of society. However, the press can only be successful in its function of watchdog for society, if it enjoys the freedom to operate. As soon as restrictions are placed on its behavior, the press will not be able to successfully expose corrupt behavior by public officials and political office-bearers.

Since public officials occupy positions of trust, it is only natural that the public should be interested in their ethical behavior and official conduct. It is, however, also true that the interest of the public waxes and wanes
(Armstrong and Graham, 1975:5) depending upon whether there is a greater or lesser occurrence of misconduct by public officials and upon the information released to the public by the media. It seldom happens that the public itself actively probes into the official behavior of appointed public officials. When it becomes general knowledge that public officials have acted unethically, for example in the utilization of state monies, there is usually an outcry for matters to be rectified, but in time the outcry subsides and only sporadic references to the misconduct are made. Compare, for example, the outcry over the so-called information Affair in the late 1970s with public reticence during the same scandal in 1984. Or compare the outcry over the information Affair with that in the case of a single prison warden accused of accepting bribe money
(Beeld, 23 October 1984:10).

In spite of the improvement over the years in the ethical standards of public officials, the public and press are not necessarily trustful of the public service
(Amstrong and Graham, 1975:5).

Ethical behavior and professional competence cannot be divorced (Armstrong and Graham, 1975:6). Adhering to higher ethical standards of behavior, but conducting the public's business in an incompetent manner, will definitely not satisfy the public or promote the general welfare, and could prove to be just as disastrous as unethical conduct. There are, therefore, various areas for potential conflict, which ought to be more closely examined.

3.6.4 Inequality Prevalent in Society

Corruption is also said to be caused as a result of the existence of systematic and enduring inequality in wealth, power and status. However, it could be stated that all corruption does not necessarily occur as a result of inequality and that the elimination of corruption would not necessarily be achieved, if all inequality was done away with. The relation between inequality and corruption can be linked to the moral relations of people in an unequal state and the patterns, which they practice. It becomes the norm to protect one's own position by subverting the government thereby ensuring that no one can use the government against one's wealth. Exclusionary inequality in political power and authority exists whenever citizens are denied participation in government and authority on the basis of such criteria as land, title or party (Dobel, 1978:961-963). For example, in the pre-1994 South Africa, inequality in political and economic power was prevalent with the White community possessing the majority of political/economic power to the detriment of the Black majority.

3.6.5 Politicisation of the Public Service and Political Interference

Especially in the developing countries, it has been found that on gaining political independence, the colonial public service and administration was trans formed from a public service, which had emphasised the sovereignty of politics over public administration. Political dominance over administrative values resulted in a style of political behavior that was highly politicized – a clear indication that governments of developing countries preferred a politically committed public service. The expanded role of state activity in a country's public service has

resulted in an expanding public service with increasing discretionary authority, which is abused for personal gain (Hope, 1985:1-4). Politicisation of the public service can lead to the appointment of incompetent officials with Marais (1990: 297) stating that politicisation of the public service has come to stay and moreover it will increase in intensity. No political party that may take over the government in future is going to revert to a non-politicised public service. It is simply too convenient an instrument of political control in the hands of the government".

Government, whereby political power is either highly centralized or vested in one leader or a small group of people, could result in an increase in corruption. Career public officials are usually put under the control of appointed political officials who demand that the objectives of the leadership elite are carried out without dissent. Absolute loyalty to the power elite is demanded resulting in official action being undertaked to satisfy the needs of the power elite and not the public. Under such circumstances, the public official would find it increasingly difficult to remain neutral and objective, resulting in public goods and services being provided in a corrupt way to those who are in favour of the holder of power (Gildenhuys, 1991:55). Public stores and assets and the services of officials could be used illegally for private purposes. This could entail the utilization of public resources (stores and labour) for maintaining the private property of official office-bearers could make use of officials in political campaigns during working hours and according to Mikesell ...these activities involve straightforward stealing as individuals use assets owned by government without payment" (Gildenhuys, 1993:498).

3.6.6 Excessive Administrative Secrecy

An area which lends to the creation of situations and actions which could prove to become major ethical dilemma, is the secret conduct of public business. This is especially so because secrecy can provide an opportunity to cover up unethical conduct (Rourke, 1975:1). It is generally accepted that in a democracy the people have a right to know with the government intends to do (Rowat, 1982:59) and it

would be in the interest of the public for the administration of public affairs to be conducted openly (Fulton Report, 1968:91).

In South Africa it is accepted that society has a right to know what the government intends to do with the community. It is no wonder that in 1975 part of the South African Press expressed its concern in no uncertain terms over government secrecy regarding the presence of South African troops in Angola (Sunday Times, 21 December 1975:1). This concern was reiterated by the then leader of the official opposition (Hansard, 1976 Vol. 60 cols 30 & 31). At a later stage, in a somewhat different manner, the Prime Minister then said in the House of Assembly that secrecy for the sake of secrecy or to cover up incompetence or corruption would not be tolerated by the Government
(Hansard, 1979 Vol. 80 col. 4555).

Political and government secrecy consists of the process of secreting information about political matters especially when that information has significant implications for rival parties of the general public. When it comes to foreign and military matters, governments usually refuse to divulge at how decisions relating to such matters had been arrived at, subjecting them to the strictest secrecy. Be it as it may, secrecy conflicts with the principle of power control as well as going against the basic principles of freedom of the press and expression (Friedrich, 1972:177). It is important that the public knows what governments do, otherwise public officials cannot be held accountable for their action. Secrecy with regard to the action of public officials does not have to be excessive as even partial secrecy inhibits public accountability (Caiden, 1988:29).

Secrecy provides an opportunity to cover unethical conduct and secrecy could be regarded as an ally of corruption. Increased secrecy could serve as a smoke screen for the concealment of dishonest and corrupt practices. A significant correlation exists between excessive secrecy, confidentiality and an increase in the incidents of corruption and maladministration. This state of affairs is deemed to have been the case in South Africa where "...a general climate of secrecy

existed especially when ministers and officials are given wide discretionary powers to administer complex regulatory mechanism"
(Financial Mail, 3 February 1989:29). A veil of secrecy could indeed open the doors to possible malpractice which in turn could promote corruption. However, it is in the interest of society as a whole that minimal usage is made of official secrecy so as to reduce the conditions for possible malpractice and corrupt policies (Hilliard, 1994:221-222).

Public accountability, secrecy and confidentiality, restrictions on the role of the press to distribute information about public sector action, the restrictions of the role of representative institutions and the extent of the control authority of the courts, could all create or lead to the creation of conditions conducive to corruptible behavior. A country troubled by economic boycotts, an unrest situation and a state of emergency could engage in increased secrecy to protect the national interest; however, this secrecy could also serve as a smoke screen behind which dishonest and corrupt practices could be hidden
(Gildenhuys, 1991:60-61).

3.6.7 Administrative Discretion

Public officials and political office bearers are not merely executors of public policy. They make decisions pertaining to the lives of people: for example, about taxes, survival, and the removal of people. In doing so they exercise discretion. The question is then how decisions are to be made to avoid ethical dilemmas (Fleishman and Payne 1980:36). In other words, the promotion of the general welfare depends to a large extent on the use or abuse of administrative discretion (Rohr, 1978:399). Furthermore, "...he who has the state of another in his hands ought never to think of himself..."(Rohr, 1978:129), but ought to put the promotion of the general welfare above his own interest. It is true that within the rules and regulations laid down by legislation and within the prescribed procedures, there is ample opportunity for the public official to use his discretion. When faced with alternatives the choice of the public official poses an ethical problem: the choice made may be acceptable to only a minute section of society. The problem is that

the selection of one path of action from among several alternatives is often made on the basis of personal preference, political or other affiliations, or even personal aggrandizement, thereby disregarding known facts and thus the possibility of rational decision-making. It could well be that all the prescribed rules, regulations and procedures are adhered to but that the discretionary choice may be viewed as unethical or even corrupt.

3.6.8 Vote Buying

Vote buying is an act of solicitation of a citizen's vote in exchange or some reward of monetary value. Most of the characteristics associated with patronage also have a bearing on vote buying but with the following distinctions:
(Gibbons and Rowal, 1976:9).

- vote buying only takes place during the electoral process; and

- vote buying is initiated more often than not by a party than through a political competitor

Election fraud can also occur during an election when usage is made of illegal voting, fake registration of voters and bribery so as to produce a winner in the election. An electoral officer to influence results can use the following means:
(Thio, 1983:44)

- miscounting of votes;

- destroying ballot papers of the opposition;

- adding pre-marked ballots for their candidates into ballot boxes;

- completing ballots in cases where a voter has failed to vote for a particular office; and

- declaring ballots invalid after defacing them

Corrupt public officials can also trade votes for support of new programmes or high departmental budgets. However, whatever surplus funds the public official has managed to generate, it is not possible for direct payment to be to representatives. As such, other benefits will have to be provided for a substitute for monetary transfers. In such cases, the public official could make use of discretionary powers to favour firms in which a political office-bearer has an interest or devise more complex tripartite schemes in which the government department favours suppliers who in turn provide monetary or political support to the political office-bearer (Rohr, 1978:74-75).

3.7 High-level and Low-level Corruption

The above-mentioned causes and manifestations of corruption can occur at a higher and lower level of government. The main difference between high and low-level corruption can be traced to the greater visibility of decisions taken at higher levels of government, as for example, the decisions taken by a cabinet minister is of much more importance than that taken by a lower-level public official (Rohr, 1978:175-176).

Corruption at the higher levels of government can involve corrupt behavior by cabinet ministers, judges and ambassadors. Such corrupt behavior could lead to a reduction of public confidence in government action and of public willingness to trust government department with substantial authority or funding (Nice, 1986:287). In Zimbabwe, a high-level corruption racket was recently discovered where top public officials allegedly used influence to buy trucks and cars at the official price from the state owned vehicle assembly company. They were then sold by these government officials on the black market at enormous profit thereby chasing in on the shortage of vehicles prevailing in Zimbabwe (Meldrum, 1989:37).

Public officials at the higher strata in the public service are usually in a position to determine the cost of producing any level of public services and their bargaining power with the contractors could be high enough for them to appreciate any excess over costs in the form of bribes. Approval of the budgets and output level that maximize the difference between total budgets and contractors' costs would then be sought from the legislature. Once approval is obtained, the difference between the actual cost and the contractors cost will be kick backed to the public official(s) involved (Rohr, 1978:67-69).

Senior public officials can also stress that loyalty to superiors is of more importance than competence, efficiency or honesty. If delays produce corruption, than efficiency would be viewed in a positive light and where the corrupt service is illegal, low scruples will be a strong recommendation. It is thus possible for senior public officials to distort their departments' purposes through the allocation of benefits and services with a price tag attached; senior public officials could also organize their departments so as to function inefficiently thereby ensuring their own income – more money, more efficiency (Rohr, 1978:179-180).

Public officials at the lower strata of the public service pass data and information upwards without attempting to evaluate the information in comparison to public officials at a higher level who have to make a choice between a speedy decision and an informed one (Rohr, 1978:175-176). Corruption, occurring at the lower levels of the government involves those officials who have to enforce the laws of the community. At this level, bribes play a decisive role in determining the work of a corrupt public official (McMillan, 1978:326). If corruption at both the higher and lower levels of government is not combated restlessly and effective programmes developed to end the occurrence of corruption, it will inevitably spillover to the other spheres of society.

3.7.1 Spillover Effect

If corruption is not redressed or checked, it would inevitably "spill over" to other spheres and affect increasing portions of a given organisation or society. The effect of systemic corruption includes the following (Caiden, 1977:307-308)

- a perpetuation of closed politics and the restriction of access, thereby preventing social change in political institutions;

- suppression of the oppositions could contribute to increasing resentment. This could entail that corruption far from being an alternative to violence is in most cases, accompanied by more violence;

- the perpetuation and widening of class, economic and social divisions which contributes to societal strain and the prevention of cohesion;

- prevention of policy changes, particularly where this works against immediate market consideration;

- blocking administrative reform, thereby making deleterious administrative practices such as induced delays, profitable;

- the diversion of public resources as well as contributing to a situation of private affluence, public squalor, especially serious where affluence in confined to the few;

- systemic corruption is not limited to a special case. It has a accumulative effect upon public perceptions and expectations which subverts trust and co-operation far beyond the impact upon the individuals immediately concerned; and

- systemic corruption is not confined to poor, developing or modernizing counties but is to be found in all organizational societies

The following three spillover forms exist:

3.7.1.1 Leader-follower Spillover

Leaders of society play a major and permanent role in shaping public opinions and societal behavior and whenever corruption manifests itself amongst the leaders, it is sending out a wrong message to society which could affect the trust, loyalty and personal integrity of their followers. Whenever leaders misuse their leadership positions in society, they establish an example which tends to erode the moral base of law and can provide an ideal opportunity for other kinds of offenders to rationalize their conduct. It is thus clear that manifestations of corrupt behavior amongst leaders – whether by excessive use of reward or by massive abuse of the system - will inevitable filter down and be emulated by members of the leaders' organisation or department (Werner, 1983:149-150).

3.7.1.2 Dimensions of Corruption Spillover Effect

Manifestations of corrupt behavior amongst the upper strata of public officials are the most difficult to detect because it is a petty and borderline type of corruption as neither the public nor public officials regard it as being punishable. Although every code of law contains definitions of corruption, it also makes provision for extenuating circumstance. If left unchecked, this form of corruption could become a destructive force in society especially if it achieves legitimate status which could contribute to the legitimization of other types of corruption. As such, it would become more difficult to define what constitutes corruptible behavior resulting in a further momentum of spilling over being established as "while corruption is psychologically condoned or rationalized because it is so prevalent. By attributing little or no importance to a corrupt act, trivialization and retionalisation function as a self-perpetrating mechanism" (Werner, 1983:158).

3.7.1.3 Institutional Spillover

Effective institutional corruption will reproduce itself when for example, aircraft manufacturer A continuously loses tenders/contracts to aircraft manufacture B because of an unwritten agreement with influential public officials and is thereby forced to follow suits if the aircraft manufacture intends staying in business. Corrupt leaders could allow their corrupt behavior to spread from institution to institution with corruption even spreading from family to school and from organized religion to voluntary social organisations (Werner, 1983:150). Effective institutional corruption can become so regularized and institutionalized that organizational structures actually protect the perpetrators of corruption whilst at the same time penalizing those who live up to the old norms. Employees thus protect and cover up for each other and eventually everybody is engulfed in an administrative culture that tolerates the fruits of corruption (Carina, 1995:15).

3.8 Manifestations of Political Corruption and Unethical Conduct

If government fails to establish high ethical standards in its institutions, it may lead to an unfortunate situation where unethical conduct of public employees and political office-bearers becomes the order of the day. Some of the manifestations of unethical conduct include the following.

3.8.1 Political Corruption

Political corruption has been a persistent phenomenon throughout history. Numerous scholars concur that it has afflicted all form of government and remains one of the most important challenges to the moral basis of modem states. Corruption is an ethical issue, based in the values system of a nation, and its eradication requires total commitment and concerted efforts by government and civil society to change a polluted moral culture. There is no doubt that political corruption poses a particularly serious danger for newly democratized countries such as South Africa. In democracies corruption is more likely to be exposed under conditions of constitutionalism an press freedom. In fragile new

democracies this exposure can, however, do great damage to the political legitimacy on which democracies depend for their survival.

Until recently, political corruption has not received much attention in South Africa. Governance during the apartheid era was characterized by a high level of political corruption extremely difficult, if not impossible for what The previous regime's restriction of vigilant newspapers and the co-operation of others aggravated this situation. It can, therefore, be argued that may political scandals were swept under the carpet during this era.

The penetration of public administration into almost every sphere of life means that public officials, endowed with wide discretionary powers, take decisions each day which may adversely affect the lives of citizens. Within this context, it is possible for public officials to abuse their powers or to exercise them in an arbitrary fashion, thereby infringing on the interests and fundamental rights and freedoms of individuals. In order for citizens to be able to hold public officials accountable for their actions and decisions, greater openness and transparency are necessary in the day-to-day activities of public officials. The notion is that openness and transparency, unlike secrecy, are not conducive to the abuse of authority and arbitrary decision-making, and that they afford the citizen the opportunity to ensure that the fair and equitable treatment prevails in all dealings with public officials. However, an open transparent system presupposes that the information required holding public officials accountable and to enforce the individual's fundamental rights should be readily accessible. It is therefore possible to establish a direct link between transparent and accountable public administration and access to information. This link explicitly recognized in section 195(11)(g) provides as follows. Transparency must be fostered by providing the public with timely, accessible and accurate information.

Before attention is devoted to the proposed legislation, which aims to give effect to this principle, which is enshrined in the Constitution, a brief background sketch on the South African situation is necessary. Traditionally the problem of corruption in the public sector was left largely to law enforcement officials. More recently high-

level action has been taken against corruption. According to a survey conducted by the OECD countries in 1999, areas of most concern to governments appear to be those that involve interaction between the private sector and public officials. The most common measures being used against corruption in the public sector are criminal and other legal sanctions, supplemented by increased transparency and decentralized management responsibility and control. Methods for evaluating the effectiveness of anti-corruption measures are less well defined and largely take the form of reporting or periodic inspection.

3.8.2 Background to the South African Situation

The apartheid regime and its public administration were characterized by secrecy and restrictive measures to prevent the public and the media from gaining access to and disseminating information held by government institutions. Such restrictions were contained in numerous acts of Parliament and in regulations promulgated by the executive. The Protection of Information Act, 84 of 1982, provides the best example of legislation in terms of which several restrictions were placed on the publics right to information. This Act, along with numerous other pieces of legislation (including the emergency regulations) for example prohibited publication of information regarding prison administration and police and defence force action (Schwella, 1989:41). These and other measures created the ideal climate for abuse of powers and gross human rights violations in these three government spheres – as is evident from testimonies and revelations delivered before the Truth and Reconciliation Commission.

In the light of past events it is not surprising that in the new dispensation great emphasis is placed on openness and transparency. The groundwork to accomplish this was laid with the inclusion in the Interim Constitution of various provisions, of which the rights to freedom of information, freedom of the press and administrative justice are most important. Section 23 made provision for the right to access to all information held by the state to the extent that such information is required for exercising or protecting any of an individual's rights. This qualification was removed, so that section 32 of the Constitution Act, 108 of 1996 (referred to

below as the '1996 Constitution') provides merely for the right of access to any information held by the state. Whereas the right to freedom of information in terms of the Interim Constitution also makes provision for the horizontal application of this right (between individuals and private persons, including legal persons) (Lotz, 1997:274). In accordance with section 32(2) of the 1996 Constitution, national legislation must be enacted to give effect to this right. Such legislation must be enacted within three years of the date on which the Constitution came into effect (that is, before 4 February 2000). Until the envisaged legislation is enacted, section 32 is to be regarded as to read essentially as section 23 of the Interim Constitution.

In 1994, even prior to the coming into effect of the 1996 Constitution, a task group under the auspices of the Office of Deputy President Thabo Mbeki was appointed to draft such legislation. The word of the task group (which included a series of public consultations) culminated in the Open Democracy Bill (ODB), which was approved by Cabinet in June 1997. After Cabinet approval however, it was realized that since the Bill would also apply to local government, it had to be published for public comment (a process which had to be completed before submission to Cabinet) (Van Schoor, 1998). This is in accordance with section 1 54(2) of the 1996 Constitution which stipulates that draft national or provincial legislation that affects the status, institutions, powers or functions of local government must be published so as to enable local government and other interested persons to make presentations about the proposed legislation. The Bill was published in the Government Gazette of 18 October 1997 and, after bringing about amendments based on comments received, was once again submitted to Cabinet (Calland, 1998). After Cabinet approval the Bill was finally tabled in the National Council of Provinces in July 1998 – just to be withdrawn again. It was decided that certain parts of the Bill required more work in order to ensure its effective application once it became law (Calland, 1998:2,6).

Divergent sentiments have been expressed with regard to the prevalence of political corruption in post-apartheid South Africa. One study shows that the state may have been penalized by as much as R25-billion a year

(Mail and Guardian, 1-7 March 1996). This sentiment is echoed by the findings of a survey done by the Institute for Democracy in South Africa (IDASA, 1996) which shows that the new government is perceived by the general public as more corrupt than its predecessor (Cape Times, 15 February 1996). In the 1995 Survey 46% of the public indicated that 'almost all' or 'most' public officials were involved in corruption. In 1998 this figure increased to 55%. In March 1998 a "national victim survey" reported that 3% of the respondents had "experienced" corruption. More recently a Human Sciences Research Council (HSRC) survey also reported an 80% concurrence with the view that "corruption exists in the civil services" (Camerer, 2000:9). There is, however, also good news. The HSRC reported "more respondents felt that government was placing sufficient priority on ensuring clean and hones government in 1999 (34%) than did respondents in 1998 (29%)" (HSRC 2000:9).

It is nevertheless very difficult to determine to what extent these opinions are reflective of reality. A study done by Transparency International revealed that the situation regarding corruption in South Africa has not reached alarming proportions yet. In the past few years South Africa remained on the "middle level" ranking. It moved from being 21 out of 54 countries in 1995 to number 34 out of 90 in 2000. On a ten-point scale where 10 ranked the highest level, South Africa scored 5.68 in 1996 and dropped down to 5.0 in 2000. A score of 5.0 places South Africa on the same level as Greece and Hungary, with Botswana and Namibia faring a little better, while most other ranked countries in Africa fared much worse (http://ww.transparency.de/index/html - 22 March 2001).

Despite efforts by the Government to uphold openness and accountability, reports of political corruption have persisted in recent years. Soon after the democratic government was inaugurated, reports of financial maladministration in the departments of health, welfare, and justice had been particularly prominent in the media. Provincial governments did not escape the scourge either. Example include the failure of the President's school feeding scheme in the Eastern Cape, the Eugene Nyathi scandal in Mpumalanga, the Malebana-Metsing scandal in North-West Province, and the alleged R1-million house schemes for members of

the legislative assembly in the Northern Province. Since 1996 many more cases of corruption were unearthed as will be described in section four of this article.

In the South African context many examples of corruption in its various forms can be provided. The North West provincial legislature, for example, uncovered serious financial bungling in nine provincial departments and the loss of millions of rands of taxpayers' money in its 1997/1998 financial report. Loans, totaling R56 million, were granted, for which loan agreements were not in place and for which no repayments have been received. It was also found that in most departments budgets were exceeded, with the Education Department spending R304 million with no unauthorisation. Tender board regulations were violated, resulting in unauthorized expenditure (Sunday Times, 11 April 1999:2). This example is unfortunately just the proverbial tip of the Gildenhuys (1991:47) summarizes political corruption as 'government crimes', and identifies three forms of such crimes, namely, election fraud, official violence, and institutional misconduct.

3.9 The Promotion of Transparency and Open Governance

The public has a right to know how public institutions apply the power and resources entrusted to them. Public scrutiny should be facilitated by transparent and democratic processes, oversight by the legislature; and access to public information. Transparency should be further enhanced by measures such as disclosure system and recognition of the role of an active and independent media.

In South Africa, for example, the Harms Commission found in 1990 that the Civil Co-operation Bureau operated on an annual budget of some R27 million without any documentation or written authority. Where did the money come from? Who were exceeded, with the Education Department spending R 304 million with no authorization. Tender board regulations were violated, resulting in unauthorized expenditure (Sunday Times, 11 April 1999:2). This example is unfortunately just the proverbial tip of the iceberg. Gildenhuys (1991:47) defines political corruption as 'government crimes', and identifies three forms of such crimes, namely, election fraud, official violence, and institutional misconduct.

Critical issues in government and politics ultimately involve moral choices and value judgments. Since government functions in a political context it must act in a way consistent with democratic and other values. In a democracy every individual has certain rights and freedoms. These rights and freedoms are incorporated in the constitutions of countries. There are, however, some common rights and freedoms that are necessary to uphold any democracy. These include the following:

- Every governmental action must at any time be open to observation and investigation in order to judge these actions. Governmental actions should not be secretive but carried out in public.

- The individuals or groups who observe or investigate governmental 'actions should be free to comment thereon. Freedom of speech and of the media plays an important role in this regard.

- Freedom of speech and mobility ensure freedom of gatherings (e.g., political meetings) and association.

We can contend that in a democratic state certain ethical norms have to be adhered to, and those invested with power must keep this power in trust for the community. Such power should be used only to satisfy community needs that are important enough to be recognized and satisfied by government institutions. The administration of the country must be of such a nature that rule of law is always maintained for the purpose of good public management. This means that:

- The executive branches must not be allowed too wide and uncontrolled discretion, nor be able to act in an arbitrary way.

- All citizens are equal before the law and must be treated according to legislation.

- All courts of law must function independently from the legislative and executive institutions.

Action is necessary to ensure well-functioning public institutions and systems for promoting ethical and transparent conduct in the government. The public Management Service (PUMA 1998) proposed the following actions:

- Developing and regularly reviewing policies, procedures, practices, and institutions influencing ethical conduct in government.

- Promoting government action to maintain high standards of conduct and counter corruption in the public sector.

- Incorporating the ethical dimension into management frameworks to ensure that management practices are consistent with the values and principles of government.

- Combining judiciously those aspects of ethics management systems based on ideals with who's based on the respect for rules and regulations.

- Assessing the effects of public management reforms on government ethical conduct.

Furthermore, in terms of section 234 of the Constitution of 1996, Parliament may adopt charters of rights in order to deepen the culture of democracy.

A changing public/private sector interface, and changing accountability arrangements. In short, they have to adopt new ways of carrying out the business of government. In Chapter 12 of the White Paper on the Transformation of the Public Service (Notice 376 of 1995), for example, guidelines are set out to enhance internal and external accountability. Steps are needed to ensure that more effective internal and external scrutiny is exercised. While public management reforms have realized important returns in terms of efficiency and

effectiveness, some of the adjustments may have had unintended effects on ethics and standards of conducts. Causes of conflict include:

- Changing relationships between public servants and citizens;
- Downsizing;
- Restructuring;
- Limited resources;
- Changing societal norms;
- Contracting out government activities;
- A developed and discretionary management environment;
- Increased recruitment from the private sector, including into management positions; and
- Globalisation and contact with other ethical and cultural norms.

High standards of conduct in the public sector have become a critical issue for government. Preventing misconduct is as complex as the phenomenon of misconduct itself and range of integrated mechanisms are needed for success, including sound ethics management systems. Public management reforms involving greater devotion of responsibility and discretion for public servants, budgetary pressures, and new forms of delivery of public services have challenged traditional values in the public service.

In addition, governments should make all efforts possible to eliminate possible causes of unethical and corrupt behavior. Some of these causes could include deficient control and accountability complex legislation, and inadequate procedures and manuals.

There seems to be conflict between traditional values and the systems governing the behavior of public servants, and the modern roles they are expected to fulfill. Public servants try to meet these standards, but there are weaknesses in the procedures for maintaining and enforcing them. As a result, people in public life conduct. Public employees operate in a changing world. They are subject to greater public scrutiny and increased demands from citizens. As a result they

have to provide better and more responsive services, but within a context of stricter limits on resources. They also have to assume new functions and responsibilities as a result of devolution and greater managerial discretion increased commercialization of the public sector.

In South Africa the Constitution is the supreme authority that provides for the basic values, rights, and obligations of all citizens, the state, and all public officials. It attempts to protect human rights, entrench democratic principles for governance, and ensure ethical conduct in public institutions.

In terms of constitutionalism there are basically three important principles, namely, political supremacy, public accountability, and tenets of democracy. These principles imply that government officials will not abuse their authority and that there will be joint consultation and deliberation with society.

3.10 Conclusion

In this chapter, consideration has been given to defining the concept of corruption as well as the various causes, manifestations and conditions that exist for the occurrence of corruption.

Public officials should always have the public interest in mind whenever they are fulfilling their duties; furthermore, taxpayer's money is involved for which proper account should be provided, in public, at any time. However, as soon as a public official uses his/her public office for private enrichment, this immediately constitutes corrupt behavior. Corruption is an international act with the public official knowing what his/her duties are but prefers or misperform them in order to attain some personal gain. Furthermore, corruption is deemed to have occurred if a public official acts beyond his/her duties in an unethical and immoral manner thereby displaying a lack of host and integrity – the latter two being the essential elements of any public official serving the public. The common denominator of corruptible behavior I whenever the public official makes use of his/her office or personal gain to the detriment of another person or society. Corrupt pubic officials

serve themselves first and care little for the public and public interest. They regard the public office as a business opportunity.

This corrupt behavior as shown in the chapter, can take on various forms and can also differ from high-level corruption by political officials and senior public officials to low-level corruption as practiced by public officials lower down in the hierarchy. Bribery appears to be the most common from of corruption whereby the public official abuse his/her position for material/financial rewards. Patronage as a manifestation of corrupt behavior is only of benefit to the public official. If a political party remains in power for a considerable period of time, then a public official could look forward to a long and stable career in the public service.

Ghosting is not an unusual manifestation of corruption and it would be quite possible for public officials who know how to circumvent the system, to make them guilty of this type of corruptible behavior. The report of the De Meyer Commission of Inquiry contains examples of ghosting having taken place in the former Lebowa. However, the practice of kickbacks remains the most common manifestation of corruption with both the political office-bearer and public official making them guilty of this practice. Finally, it must be realized that if leaders of society participate in corrupt activities, then it will in most cases be inevitable for this behavior to eventually spillover to public officials and other members of the leader's organisation as everybody wants to have a part of the action.

A lack of moral and political consensus could result in inefficient government and if the community places little importance on the maintenance of central moral-ethical norms and values, the net result will be political office bearers with a low sense of responsibility and integrity. This situation could result in public officials indulging in corrupt activities and practices, a situation, which will be discussed in the next chapter.

Although in South Africa disclosures of unethical and corrupt conduct by public officials are made from time to time, the general level of conduct of public officials is of a high standard. The majority of officials uphold the high standards required

by public office and are devoted to promoting the general welfare. The ethical standards of public officials are, however, directly related to society as a whole. If the public accepts that in order to secure an expeditious response from a public official some pecuniary or other incentive is necessary, and the official accepts the incentive, then the standards of ethical conduct of officials and the public are in fact in harmony from the point of view of the public. However, this may not necessarily be the case as viewed by officialdom.

CHAPTER FOUR

MEASURES TO CONTROL CORRUPTION AND PROMOTE TRANSPARENCY AND OPENNESS

4.1 Introduction

Governments have a duty to communicate with citizens. Citizens have the right to be informed of government's policy, actions, and views, to enable them to comply with the requirement's arising from government policy, such as taxation and legislation . They also need information to be able to exercise their democratic right to decide, on the basis of accurate information, whether they approve or disapprove of government's policies and decisions. Citizens also have the right to be forwarned of possible threats, disasters, or danger.

Government policy and actions are judged according to public opinion and perceptions. Such opinions and perceptions are determined not only by government actions but also by the manner in which government communicates. If government tries to control information to favourably influence such opinions and perceptions, communication turn into propaganda

In this chapter the measures that are available to combat the manifestations of corruption, as had been discussed in the previous chapters, will now be analysed. It is essential that measures exist, even if they cannot eradicate corruption completely, at least they can and do play an effective role in controlling corruption or the occurrence of corruption. It is essential to remember that corruption pervades the entire environment and does not necessarily just focus on a particular area and that whatever measures that will be implemented, needs to look broad spectrum of the occurrence of corruption.

The measures to control corruption that are discussed in this chapter, are not going to be discussed in detail but will be discussed generally as these measures when viewed in broad terms can be implemented to control the cases of

corruption and unethical behaviour mentioned in the previous chapters. No specific measure to combat a specific case of corruption will be provided merely a general discussion of available measures that can be employed by the public sector to combat corruption. The concept of accountability will be discussed and the difference between traditional, managerial/political, programme and process accountability as well as how these types of accountability can be brought about. The concept of moral accountability and the demand of greater accountability by the public will also be discussed. Possible remedies for unethical and untransparent conduct such as whistle blowers, monitoring and investigation, training and internal guidelines, political leadership as well as organisational arrangements, the press and public awareness as measures will also be discussed.

The role of a free press cannot be stressed often enough as an essential measure in the fight against corruption especially when viewed in conjunction with public awareness and or alert public. Adverse publicity is an essential ingredient in the fight against corruption. The role of Commissions Of Inquiry, Standing Committee of Parliament and the Human Rights Commission into case of irregularities and maladministation are also means to combat corruption if used for the proper purposes. Legislative measures have also been devised as an attempt to bring about end to corruption and maladministration, *viz,* the investigation into Serious Economic Offences Act. no. 117 of 1991; Reporting on Public Entities Act, no. 93 of 1992; Audit Act, no. 122 of 1992; Corruption Act no. 94 of 1992; and the Public Service Act, no. 103 of 1994.

Another measures that can be deployed against corruption, is to create the office of an Ombudsman/Advocate General/Public Protector who would be able to investigate complaints made by the public against unethical behavior on the part of the public officials. Government sector auditing and Auditor General form another important component of any Governments campaign against corruption and the function of the Auditor-General in exercising control over Government sector spending is of crucial importance

Other institution such as the Commission for the Promotion and Protection of the Rights Of Cultural, Religious and Linguistic Communities, the Commission for Gender Equality, the Electoral Commission, the Independent Authority to Regulate Broadcasting, the Commission in Remuneration of Representative:' and the Financial and Fiscal Commission that forms an integral part of transparent and open government is also highlighted.

Finally, a brief discussion of the judicial measures to ensure ethical and transparent government such as the Constitutional Court, the Supreme Court of Appeal, the High Courts, Magistrates' Courts and other relevant courts is provided.

4.2 Accountability as a Cornerstone to Combat Corruption and Promote Transparency

A variety of remedies can be implemented to combat unethical conduct and promote transparency in institutions. Accountability as common remedy will be highlighted in this section.

Jabbra (in Dwivedi, 1988:9) defines accountability as being "the fundamental prerequisites for preventing the abuse of delegated power and for ensuring instead that power is directed toward the achievement of broadly accepted national goals, with the greatest possible degree of efficiency, effectiveness, probity and prudence." Public service accountability can also be defined as "involving and the methods by which a public agency or public official fulfils its duties and obligations and the process by which that agency or the public official is required to account for such action" (Dwivedi and Jabbra, 1988:37).

Fox and Meyer (1995:1) state that accountability can be approached from three different viewpoints which can all be implemented either simultaneously or as separate viewpoints:

- The responsibility of a government and its official towards the general public in the realization of previously set objectives and to account for them in public;

- It is the commitment required from public officials to accept public responsibility for their actions or inaction; and

- It is also obligation placed on a subordinate whereby he/she has to keep his/her superior informed of the execution of responsibility.

Accountability by both the public official and the political office –bearer can be regarded as forming the *"cornerstone of democracy and civilization"* (Caiden, 1988:17). It is essential for any government that public officials should be held answerable and ultimately removable for their conduct of public business. If all communal sanction, this could *"risk social well-being with human frailties and personal idiosyncrasies writ large. Once freed of public censure, irresponsible officials have abused their position and power to enhance their own interests at the expense of everybody else; they have acted imperiously and belittled their fellow humans, often perpetrating terrible atrocities and other wicked deeds detrimental to the common interests"* (Caiden, 1988:17).

4.2.1 Types of Accountability

There are inter alia, four types of accountability which will now be discussed:

4.2.1.1 Traditional Accountability

This type of accountability focuses on the regularity of fiscal transaction and faithful compliance as well as adherence to legal requirements and administrative policies (Carina, 1995:120). Any government department requires a clear-cut hierarchical relationship between the centres of responsibility and the people who have to implement policy decisions. The hierarchical relationships is usually quite clearly demarcated in the informal network or relationships. Priorities are

established by the supervisors with supervisory control being exercised intensively with a clear understanding for the need to follow orders. Any disregard of orders can be dealt with by the implementation of measures ranging from informal reprimand to eventual dismissal (Dwivedi and Jabbra, 1988:5-6).

4.2.1.2Managerial/Political Accountability

Managerial accountability is concerned with efficiency and economy in the use of funds , property, manpower and other resources, The Head of Department, *viz*, the administrative head which is usually the Director-General or lower, is usually the person who is accountable as well as being responsible to his superiors in the public service. These superiors are the President /Premiers and external controllers such as the Legislature which in the first place, had provided the necessary resources for the creation of the department (Carina, 1995:122).

Durell sees the function of the Head of Department or Director –General pertaining to accountability as follows : "...any view of the functions of the accounting officer which makes him a mere bookkeeper is entirely wrong: he is permanent officer in whom finance centres... He is the officer in the Department which administers the service provided for in the Vote, on whom the duty is imposed of rendering the appropriation account of that Vote... and he is responsible for seeing that the expenditure corresponds with the Vote and is spent in proper fashion. So far as his/her responsibility goes, it must be sole and *undivided. It cannot be delegated.*

Responsibility is null when nobody knows who is responsible
(Wronsley, 1986:166). Thus, it is apparent that public officials, especially the Head of Department or Director-General should be accountable for their actions to Parliament and ultimately, to the electorate. It is also essential that lines of accountability need to be clarified. In theory, it is stated that ministers set the objectives and head of the government departments set them out. However, in practice this is not the case as ministers meddle and rules set by government, prevent Heads of Departments from answering freely to Parliament
(Economist, 19 March, 1996:16).

Political accountability concerns itself with the legitimacy of a public programme and eventually the survival of the organisation responsible for it. Administrators are duty bound to the power of the political authority to regulate, set priorities, and redistribute resources and to ensure compliance with orders. Political accountability in many cases subsumes administrative or organizational accountability as elected politicians assume responsibility for getting the job done. However, politicians are eager to accept credit but show great reluctance to acknowledge blame, deflecting such responsibility onto administrators (Dwivedi and Jabbra, 1988:6).

Responsibility for action is the foundation of accountability and the personal intergrity and public accountability of each and every political office-bearer, even that of the President/Premier is essential to ensure clean government (Wronsley, 1986:164-166). Klitgaard sums it up colloquially by stating that "*the first step to combat corruption is to fry the big fish*" (Wronsley, 1993:14). As a measure to combat corruption, it is essential that the President/Premier should appoint to any ministry only persons of the highest professional standing and proven records of competence and integrity. Thereafter, it would be possible to ruthlessly discharge them if it becomes evident their accountability to the President/Premier and the legislature is unacceptable in relation to poor performance or corruption by officials under their control (Wronsley, 1993:14).

Political office-bearers should be forced to resign if found guilty of committing an offence. The policy of transferring ministers from one portfolio to another without demanding their resigning is usually inadequate in combating corruption. Gildenhuys (1991:76) states that '*some politicians have even made a mockery of the principle of public accountability because a heavy prison sentence linked to the option of a fine does not unseat a member of Parliament*". The case studies discussed in the previous chapter have indicated the lack of political accountability prevalent amongst the political office –bearers in South Africa. Despite serious incident of maladministration and corruption in the Departments of Education and Training and Development aid, the responsible Ministers did not resign but were

redeployed to other portfolio; at the same time, the Ministers did not accept responsibility for the actions of public officials deployed in their departments, resulting in the all pervasive culture of corruption as shown in the subsequent Commissions of Inquiry.

In Zambia, there is adherence to the rule of accepting political accountability and that responsible people will be dismissed if found accountable for unethical behaviour. In Zambia, political office bearers had resigned since the MMD (Mass Movement Democratic) had come to power in 1991. Some twenty government ministers and deputy ministers had resigned or been sacked either after having accused their colleagues or themselves being accused of corruption. In January 1994, two senior cabinet ministers and the deputy speaker of parliament were forced to resign following allegations of their involvement in drug trafficking . The Vice President suffered the same fate in July 1994, following the allegations of widespread corruption (SAPEM, June, 1995:11).

4.2.1.3Program Accountability

Here attention is paid to the results of government operations with the focus of this type of accountability being the Head of Department as Manager of its programmes. Methods that can be used for attaining programme accountability include:-

- performance audit which entails an independent and objective evaluation of the financial and operational performance of the departments as well as an examination of control measures so as to determine the economical, effective and efficient utilization of resources (Gildenhuys, 1993:502);

- programme evaluation and cost-benefit analysis which can be used to evaluate whether a programme will render a beneficial return from the investment of public resources (Fox and Meyer, 1995:29); and

- broad-based organisation changes like Management by Objectives (MBO) and Organisational Development (OD) which is aimed at improving managerial planning and control by setting specific measurable goals with each employee and then periodically reviewing them as well as establishing clear and measurable objectives throughout the entire organisation (Fox and Meyer 1995 : 77-78).

4.2.1.4Process Accountability

Process accountability places the emphasis on procedures and methods of operations. Through this form of accountability, both the provider and receipient could be held accountable with standards of judgement being products of the mutual agreement. Each side may withhold its part of the bargain when the other fails the accountability test (Carina, 1995:123-124).

To include, it is accepted that governments are, and might be legally and morally accountable for their actions. The root of any activity by a public official has to be based on moral and ethical principles, acknowledged as such through constitutional and legal documents and accepted by the public through established societal norms and behaviour. Therefore, all governmental actions from its political office –bearers and appointed public officials. However, the corruptibility of political and administrative systems and the individuals who hold power and authority, has led to an increase by the public for greater moral accountability in the state (Dwivedi, 1988:7). A moral public official is not simply one who obeys the laws and behaves within the confines of bureaucratic norms *"but also one who strives for moral government ... Only by demonstrating the highest standards of personal integrity, honesty, fairness, justice and by considering their work as vocation, can public officials inspire public confidence and trust, the true hallmarks of a moral government"* (Dwivediand Jabbra, 1988:7). Thus, accountability forms the foundation of any governing process but accountability as a control instrument it can only be successful and viable if public officials understand and accept their assigned responsibility for the result expected of them; authority commensurate with their responsibility is given to public officials;

the utilization of acceptable and effective measures of performance evaluation in conjunction with the communication of results back to superiors and to the individuals concerned; that appropriate, equitable and timely measures are taken in response to results achieved and the manner in which they are achieved; and that a commitment is required from political leaders and ministers, not only to know these accountability mechanism and procedures but more specifically to refrain from using their position of authority to influence the normal functioning of the public service.

It is crucial to realise that accountability mirrors the moral and responsible behavior shown by the political office –bearers (Dwivedi, 1988:9-10).

4.3 Possible Remedies for Unethical and Untransparent Conduct

Governments can implement a variety of remedies to combat unethical and corrupt conduct in their institutions. Some of the most common remedies are highlighted below.

4.3.1 Whistle Blowers

In the context if government service, a whistle blower is a public official who on his/her own accord, informs a relevant authorities regarding acts which either the same or another public official " *was asked to perform specific activities likely to cause harm to the public welfare or individual citizens or specific activities that are likely to defeat the stated purpose of that government office" (French, 1983:138).*

Whistle blowing is an overt operation and concerns making public, certain issues by a public official acting on his/ her own accord, who believes that his/her motives will stand up to public investigation - thus, whistle blowing concerns complaining about other public officials. Four components of whistle blowing can be identified: (Johnson and Kraft, 1990:850-851):

- an individual performs an action or series of actions intended to make information public, although there may be a variety of motives for taking the action;

- the information in fact becomes a matter of public record. Successful whistle blowing requires that the information becomes public and that it is accessible to others as part of a formal or open record :

- the information is about possible or actual, important wrongdoing in an organisation, *viz*, illegal, dangerous or unethical activity in the organisation; and

- the individual who makes the information public is not a journalist or an ordinary citizen but is a member or former member of the organisation

Whistle blowers sound an alarm from within the very organisation within which they work, aiming to spotlight neglect or abuses that threaten the public interest (Bok, 1981 :204).

Whistle blowing in the public service can be related to three aspects (Williams, 1985:15-18):

- as the government is entrusted with certain responsibilities such as national security and public order, confidentiality would be of utmost importance and a breach of confidentiality could have detrimental effects for everyone;

- a public official may resort to whistle blowing of the conduct of a public official is seriously offensive to the standing and fundamental interests of the public;

- the changing character of political masters could lead to conflict of interests occurring between the public service and the government

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Whistle blowing occurs, therefore, whenever an individual takes it upon him/herself to point out what he/she believes to be unethical or inappropriate behaviour. However, such an action is often met with a great deal of resistance from others in the organisation. Superiors view such actions as being an affront to their authority or as a challenge to the organisational imperative which they find useful to protect. Colleagues and subordinates are often unwilling to express their support either for fear of their own jobs or because of fear for the future of the organisation (Denhardt, 1988:149). If the correct ethical values and behaviour had been enshrined into the public official, then whistle blowing a useful measure that used by the government in its campaign against corruption.

Whistle blowing, however, is an extreme measure and has a moral price attached to it, as according to French (1983:136), "it violates the *(public official's) regular obligation to be loyal to his or her superiors, office and department* ". As an example of whistle blowing can serve Dr Christopher Chapman's fight against colleagues ' bad practices in an area notorious for ethical difficulties, *viz,* the National Health Service (NHS) in England. The first case of whistle blowing occurred when Dr Chapman exposed financial essays carried out on a supposed ILB (Inteleukin 6), a biochemical drug while in actual fact it was a completely different biochemical matter (*Guardian, 5 May, 1992:5).*

4.3.2 Monitoring and Investigation

Ethical remedies include mechanisms for the detection and independent investigation of wrongdoing such as corruption. It is necessary to have reliable procedures and resources for monitoring, reporting, and investigating breaches of public service rules, as well as commensurate administrative or disciplinary sanctions to discourage misconduct. Public managers should exercise appropriate judgement in using these mechanisms when actions need to be taken.

For a code of ethics to be effective, it is necessary for there to be a monitoring body with the best monitoring body being the public (De Barros, 1990:19). One of the major criticism of a code of ethics has been that they are not adequately enforced and are viewed as being symbolic of nature and a means of persuading citizens that the government is concerned about the ethics of public officials (Moore, 1985:303). A free press plays a vital role in *"acting as a watchdog for public morals and the public has the right to know what the code is, and if the code is broken and the public places a high value on moral ethical standards, it must then register a public moral protest"* (De Barros, 1990:19). In 1979, at the time of the information Scandal, more than 6 398 reports published pertaining to public opinion as mirrored in the media, can be viewed as a formidable opinion former with regards to ethical conduct in public administration (De Barros, 1990:19). As such, "clean administration can only exist where there is open government and this requires a free press and the right of the public to know"
(Rand Daily Mail, 23 May, 1979: 3)

Public officials as whistleblowers need to know what their rights and obligations are in terms of exposing actual or suspected wrongdoing within the public sector. These should include clear rules and procedures for officials to follow, and a formal chain of responsibility. Public officials also need to know what protection will be available to them in cases of exposing wrongdoing.

New legislation in Britain will protect corporate whistle-blowers , but lip service to the law is not enough. Paul van Buitenen, the Dutch auditor who blew the whistle on corruption in the European Parliament, was suspended. Andrew Millar was dismissed from his post as head of research at British Biotech when he allegedly disclosed confidential information about drug trials to a shareholder, The message is clear:' if you want to keep you head down and your mouth shut'. But things are changing for employees and their bosses. Soon a new law to be passed in Britain, the Public Interest Disclosure Act, will provide protection from recrimination for employees who speak out about their concerns. It will also protect the interests of employers, encouraging them to create an open culture where concerns can be

raised and dealt with internally at an early stage. Whistle-blowing policy emphasizes that it is good practice to expose bad practice
(Sunday Times, 7 February, 1999:3). In South Africa a statutory reward for example, 20 percent of the money saved by disclosing fraudulent activities can turn a single phone call into a substantial amount of money for the whistle –blower. The danger, however, is that someone might be encouraged to blow whistle solely for financial gain.

4.3.3 Training and Internal Guidelines

In-service training is an effective mechanism to institutionalize ethical behaviour such training, according to Andrews (1989:42), has to include the legal basis for public sector ethics, prohibitions and /or limitations of certain behaviours. Measures restricting the leaking of information that could lead to illegal self-enrichment, and prescriptions with regard to reasonable behavior towards colleagues and the public. Apart from training, institutions should have clear guidelines and codes of conduct..

Viewed in conjunction with a code of ethics as a measure against corruption, could be the holding of training sessions to public officials pertaining to the conduct of public officials as well as effectively communicating the contents of a code of ethics to public officials as *"developing a code of ethics means not only enforcing it when violation occur but also by continually communicating its meaning and updating its contents as new concerns develop"* (Bonzcek, 1992: 83) .

Furthermore, a code of ethics needs to be institutionalized in government and this can be achieved through the implementation of a comprehensive ethics programme that addresses the basic personal and situational concerns of unethical behavior (Brumbeck, 1991:362-363).

To conclude, it is essential that fixed guidelines are in place according to which public officials must operate and the placed on the right track to prevent corruption and eliminate maladministration . To ensure that public officials remain on the

right track pertaining to sound ethical behaviour, it is essential that a code of ethics exist- of whose existence the public official is made aware through training, *guidance and sound management -to ensure that remaining on the right track is* not a matter of trial and error and that public officials in the service of the public will now correct ethical behaviour entails. It is essential that a set of fixed general guidelines for ethical conduct exists for public officials which can be adapted to suit the needs of each departments and whilst "this does not imply that a code of ethics is the final answer in combating corruption and maladministration , it has become essential in a sophisticated public administration system to provide information in a deliberate and orderly way about what may be expected of a public official " (Gildenhuys, 1991:72-73).

4.3.4. Political Leadership

Political leadership are responsible for maintaining a high standard of propriety in the discharge of their official duties. Their commitment is demonstrated by example and by taking action that is only available at the political level, for instance by:

- Creating legislative and institutional arrangements that reinforce ethical behaviour and create sanctions against wrongdoing.

- Providing adequate support and resources for ethic-related activities throughout government.

- Avoiding the exploitation of ethics rules and laws for political purposes.

4.3.5 Organisational Arrangement

An organisational environment where high standards of conduct are encouraged by providing appropriate incentives for ethical behaviour, such as adequate working conditions and effective performance assessment, has a direct impact on the daily practice of public service values and ethical standards. Public managers

have an important role in this regard by providing consistent leadership and serving as role models in terms of ethics and conduct in their professional relationship with political leaders, other public servants, and the community.

4.3.6 Press and Public Awareness

A free press and public awareness on the part of the public are essential measures for combating corruption, a and promoting transparency and openness as Caiden stated up this point best by stating that "*people get the government they deserve. If they are diligent, demanding, inquisitive and caring, they will get good government. If they allow themselves to be intimidated, bullied, deceived and ignored , they will get bad government*" (Aina, 1982:75-76).

The greatest enemy of corruption is people as *"people despise corruption and understand the erosion of incentives that it entails"* (Klitgaard, 1992:15). People can be an in valuable source of information about where corruption and inefficiency occur. People can be used for drawing up reports of isolated cases as well as chronic problems as they, in most cases, have a clear indication of where government is working and where it is not. Use should also be made of civic associations, professionals bodies of lawyers and accountants, local councils and trade unions in the campaign against corruption (Klitgaard, 1992:16).

Seen in conjunction with public awareness, is the role which the media can play in bringing cases of corruption to the forefront and by bringing corrupt practices to the attention of the public, they fulfill a two–way function, viz. deterring the officials concerned and educating the public (Cloete, 1995:144). Freedom of the openness, should be promoted at all times (Newton, 1961:5). The mass media serves as the watchdog of public morals , as the mouthpiece of the public at large and can serve as the catalyst in the exposition of corruption or other kinds of public service malpractices (Hilliard, 1994:224). The media, through the accompanying fear of publicity, serves as a deterrent to unethical conduct. The media also fulfills the role to ensure the maintenance of ethical behavior by questioning activities and actions of governments and other officials (Van der Walt and Helmbold 1995:105).

However, the more the media is free from external control, the greater the contribution which the media can make towards clean government. It is thus essential that the independence of the media be maintained at all times. Freedom of the media is also determined to a large extent by the type of government prevalent in society at any given time. The more democratic society is an the more vested the principles or morals, values and beliefs are in society, the greater are the chances for having a truly free media.

Like the judiciary, the media plays a very important role in the fight against corruption. Theirs is a "watchdog" rather than a penalizing role. Media investigations towards the end of 2000 and early 2001 regarding the R43, 8 billion arms procurement deal clearly illustrates the important role of the media. In particular the media can be instrumental in informing the public about those who are involved in corruption activities. Klitgaard (1992:36) calls this 'frying big fish' and maintains "leading figures involved in corruption must be publicly named and punished before a cynical public believes that ant-corruption effort is no more than words" (Klitgaard, 1992:41). In agreement with this argument, Singh and Wallis (1995:145) add that by exposing corruption the media plays tow roles: it deters the officials concerned and educates the public. Any attempt to water down the independence of the media should therefore be strongly opposed.

4.4 Legislative Measures to Ensure Transparent Governance and combat Corruption

An important measure in the promotion of transparency and openness and the fight against corruption is appropriate legislation which not only deals with corruption but also contain the necessary penalties and fines to serve as deterrent. Legislative measures should not be drawn up in such manner that leaves the impression that public officials have a tendency toward unethical and corrupt behavior. Measures should rather be drawn up which would prevent officials from being guilty of unethical and corrupt behaviour (Andrews 1994L39). The legislation that will be discussed, serves as an indication that the necessary

legislative measures exist to combat ant-corruption; however , the implementation is only going to gather dust.

4.4.1. Legislative Measures

The following legislative measures will now be discussed:

Investigation into Serious Economic Offences Act, no. 117 of 1991
Reporting on Public Entities Act, no 93 of 1992
Corruption Act, no. 94 of 1992
The Audit Act, no 122 of 1992
Public Service Act, no 1994 (Promulgated under Proclamation 103 of 1994).

4.4.1.1Investigation into Serious Economic Offences Act, Act 117 of 1991

The investigation into Serious Offences Act, Act 117 of 1991, makes provision for the establishment of an Office for Serious Economic Offences headed by a Director appointed by the Minister of Justice. Any member of the public who suspects that a serious economic misdeed is being perpetrated can through an affidavit, provide details of the nature of their suspicions, reasons for these suspicions and other relevant information to the director. The director can also on his/her own initiative , start and investigation will be held in camera, witnesses can be subpoenaed and evidence that had been presented cannot be used later on in a criminal case. If the director is of the opinion that the laid down facts constitute an offence, the necessary information can be laid before the relevant Attorney General. After the conclusion of the investigation, a report will be drawn up and handed to the Minister of Justice (Du Plessis, 1993:241-242).

4.4.1.2 Reporting on Public Entities Act, 93 of 1992

The Reporting of Public Entities Act, Act 93 of 1992, makes provision for certain public entities which had obtained funds from parliament or funds from a trust that is administered on behalf of the public of the country, to report on its activities an

financial transactions on a yearly basis to Parliament. The chief executive officer of a listed public enterprise is responsible for keeping records up to date in a written format. The Board of Directors has to ensure that auditors' report are drawn up yearly and made available to the Minister and Auditor-General after six months (Du Plessis, 1993:243).

4.4.1.3 Corruption Act, Act 94 of 1992

The Corruption Act, Act 94 of 1992 came about as a result of an investigation conducted by the South African Law Commission in 1989 at the request of the Minister of Justice, into the state of South African law relating to bribery and corruption. The Commission came to the conclusion that the law was in need of substantial reform and amongst its recommendations, was a proposal for a new start in the matter of the criminalisation of corruption which up to then, had been dealt mainly under the common law bribery and the related Prevention of Corruption Act, Act 6 of 1958. This resulted in the promulgation of the Corruption Act , Act 94 of 1992.

In terms of 51(1) (a) of the Corruption Act, 1992, the corruptible offence is committed in respect of

- "any person upon whom

  (i) *any power has been conferred or*

  (ii) *who has been charged with any duty by virtue of any employment or that holding of any office or any relationship of agency or any law , or*

  (iii) *anyone else".*

Offences which had taken place outside the Republic would be considered to have taken place within South Africa and the person or institution would fall under the

jurisdiction of the magistrate, regional of Supreme Court of the place of the residence. The relevant court can pass its own sentence (Du Plessis, 1993:243)/

4.4.1.4 The Audit Act, Act 122 of 1992

The aim of the Audit Act, Act 122 of 1992 is to allow the Office of the Auditor-General to function independently from government administration. the Act determines amongst others that ownership regarding movable and immovable goods in future would pertain to the Office of the Auditor-General while specific rulings have also been made with regard to appointments, promotions, transfers , retirements, discharge and misbehaviour. Article 46 of the Act prohibits any employer or employee to be active in party policies which could compromise the independence of the office of the Auditor-General. This does not include attendance of a public gathering in ones personal/private capacity, Article 41 states that no official employed in the office of the Auditor-General is entitled to unauthorized payment and that such payments must be deducted from his/her salary. The money can also be retrieved from that institution where it had been deposited (Du Plessis, 1993:244).

4.4.1.5 Public Service Act, Act 103 of 1994

The Public Service Act, No 103 of 1994 must be regarded as the most important of all legal stipulations pertaining to the behavior of public officials and Section 20 which deals with misconduct, is a prime example of the effort being made to limit corruption and maladministration by means of legislation.

Section 20 of the Public Service act deals with misconduct on the part of the public official and the following is a list of the misdemeanours for which the official can be tried for in accordance with section 21.

- contravenes any provisions of this Act or fails to comply with any provisions thereof;

- is negligent or indolent in the carrying out of his or her duties;

- undertakes, without permission of a relevant executing authority, any private agency or private work in any matter connected with the performance of his or her official function or the carrying out of his or her official duties;

- makes use of his or her position in the public service to promote or to prejudice the interest of any political party;

- attempts to secure intervention from political or outside sources in relation to his or her position and conditions of service in the public sector , unless it occurs in an endeavour to obtain redress of any grievance through Parliament or a provincial legislature;

- *misappropriates or makes improper use of any property of the State under* circumstances not amounting to an offence;

- commits and offence ; and

- without first having obtained the permission of his or her head of the department, discloses, otherwise than in carrying out his or her official duties , information gained by or conveyed to him or her through his or her employment in the public service, or uses that information for any purpose other than for carrying out his or her duties , whether or not he or she discloses that information.

Section 21 deals with the investigation of a charge of misconduct; section 22 deals with the steps that are taken after the investigation by the investigating officer; and in section 23,m procedures are laid down for the hearing of the charge of misconduct (Public Service Act Proclamation: Proclamation 103 of 1994).

4.5 Other Formal Mechanism to Ensure Ethical and Transparent Governance.

Governments should utilize specific formal mechanism to officially combat corruption. In South African context the standing committees of Parliament, and the Human Rights Commission are some of the formal mechanism in place to ensure ethical governance.

4.5.1 Commission of Inquiry

Commissions of inquiry into alleged maladministration can play a useful function if the appointments to such commission of inquiry is made with the minimum of government interference. It would be best if the commission of inquiry was made up from independent jurists as this would make it clear to interested parties that the commission was impartial and not government rigged or merely brought about to placate interested parties. Reports published by commissions of inquiry, whether negative or not, should be released to the public without delay (Hilliard,1994:22). In South Africa, the judiciary has been used in a number of commission of inquiry, for example, the Van der Heever and Pickard Commission of Inquiry. Judge Hiemstra had stated that the efficacy of commission of inquiry in fighting corruption depended *'upon the commissioner and in particular, the advocate of the commission who was the axis around which everything turned" (Financial Mail,* 6 October, 1989:50).

South Africa has experienced a number of commissions of inquiry since 1948 but instead of serving the purpose for which they had been established, they have in most cases, gathered dust on government shelves for the simple reason that the then government of the day - National Party - had not agreed with recommendation contained in the reports. The following factors can be given as to why the reports of commissions of inquiry had become mere dust collectors:

- the most important factor is, whenever a commission of inquiry is established not to determine but to justify an already established ideological

policy and then having the government rejecting the report. For example, the Tomlison Commission of the 1950s had shown that the policy of independent homelands would be irresponsible, catastrophic and impossible; however, the report was rejected in favour of a policy of grand apartheid (February ,993 :16).

- Commission of enquiry is sometimes established not to investigate large scale maladministration but rather to "attack" certain people. Although the Erasmus Commission of Inquiry of 1978 was responsible for disclosing the Information scandal, the report had also provided sufficient ammunition that could be used later on by ambitious politicians to "attach" Rhoodie, Mulder and eventually Vorster. The real heart of the problem *viz,* the usage of bribery and corruption to sell a policy by any means available, was never disclosed (February,1993: 16).

- the government and its official have also shown their unwillingness to implement the recommendations contained in the commission 's report. As such, a commission can be viewed as being nothing more than a grotesque electricity conductor. This type of attitude was mainly responsible for the bureaucratic wrecking of the 1975 De Lange Commission of Inquiry pertaining to education (February, 1993:16).

- In South Africa, it has happened that despite a Commission of Inquiry establishing beyond any doubt, departmental inadequacies and evendeliberate maladministration , no sign of the required ministerial action ever occurs as had been the case with regard to the Pickard Commission of Inquiry into the Department of Development Aid in 1991 , and

- Commission of Inquiry also enjoy a bad reputation because in most cases, its panel consists of retired officials or party political associates, to ensure in a certain manner that the result of the commission 's work would not place the government in an embarrassed light (February, 1993:17).

According to Wiechers (Niekerk, 1001:228). *"the findings of commissions of inquiry in most instances have become mere dust collectors and are therefore only of limited value.* The government seldom take notice of the findings and recommendations of these commissions". Commissions of inquiry do fulfil a function as a means to combat corruption, especially it operates as had been the case with the Goldstone Commission would quite definitely be of great help in combating the current wave of corruption and maladministration
(February, 1993:17). The success of the Goldstone Commission can be attributed **mainly to the** and his unflinching search/quest for the truth. Furthermore, the government who had appointed the Commission of Inquiry ensured that the Commission would be able to operate without any insurmountable obstacles placed in its path.

Commissions of inquiry should be an effective instrument to combat corruption as they bring corruption to light where ordinary police methods might have been inadequate. However, their success depends on how efficiently the investigation was concluded. With regard to corruption, they can be a massive aid to criminal justice (Hiemstra, 1991:94-94).

4.5.2 Standing Committee of Parliament

An effective system of accountability is at the very heart of an open and transparent democracy. To achieve accountability a clear division of power between the legislative, executive, and judicial arms of government is essential. Ideally, this could lead to a Parliament that demands accountability of the executive, and consequently has a strong interest in financial matters and active committees of finance and public accounts. The media should have free access to the working sessions of the committees to keep the public fully informed about important issues and the accountability process. Parliamentary committees that investigate the conduct of Minister of Parliament from an ethical perspective (ethics) and that investigate whether state funds are in fact spent lawfully and on the items budgeted for public accounts) play an important role to ensure openness and transparency of government actions.

4.5.3 Human Rights commission

In terms of Section 184 of the Constitution The Human Rights Commission must promote ethics by monitoring and assessing the observance of human rights in South Africa. The Commission has the authority to require relevant organs of the state to provide it with information on the measures that they have taken towards the realization of the rights specified in the Bill of Rights (Du Toit, 1998:160).

Apart from the Human Rights Commission, there are other commissions to oversee ethical conduct in government. Some of these commissions include the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, the Commission for Gender Equality, and the Electoral Commission, Furthermore, law courts, regular elections, and the media could be useful in ensuring ethical behaviour. The media, in particular, play an important role by scrutinizing the behaviour of public employees and political office-bearers through investigative reporting.

An aspect that is closely related to ethical governance is the issue of human rights. Since government must adhere to and promote basic human rights, it is important to have a clear understanding of what it entails. Human rights are discussed in the following section.

4.5.4 The Public Service Commission

The Public Service Commission consists of not fewer than three members and not more than five members appointed by the President. The Commission is responsible to Parliament with regard to the exercising and performance of its powers and functions.

In terms of section 210 of the Constitution, the Commission is competent to make recommendations, give directions and conduct enquiries with regard to:

- the organisation and administration of departments and the public service

- the conditions of service of members of the public service and matters related thereto.

- personnel practices in the public service, appointments, promotion, transfers, discharge and other career incidents of members of the public service and promotion of efficiency and effectiveness in departments of the public service

- a code of conduct applicable to members of the public service.

4.5.5 Public Protector (Ombudsman)

Frank (1976:132) perceives the function of the ombudsman being an office to prevent "*injustice, failure to carry out legislative intent, unreasonableness*, administrative error; abuse of discretion, lack of courtesy clerical error , oppression, oversight, negligence, inadequate investigation, unfair policy, partiality, failure to communicate, rudeness, maladministration, unfairness, unreasonableness, arbitrariness, arrogance, inefficiency, violation of law or regulation, abuse of authority, discrimination, errors, mistakes, carelessness, disagreement with discretionary decisions, improper motivation, irrelevant consideration, inadequate or obscure explanation, and all the other acts that are frequently inflicted upon the public by those who govern, intentionally or unintentionally."

The function of an ombudsman is therefore, to improve relations between the state and the citizen; reduce hostility between public and officials and their clients; rectify serious administrative shortcomings such as corruption; and also sensitise officials to clientele norms and clients to administrative norms.

The essence of the office regarding corruption, is "an independent high level officer who receives complaints, who pursues inquiries into the matters involved

and who makes recommendations for suitable action, He may also investigate on his own notion. He makes periodic reports. His remedial weapons are persuasion, criticism and publicity. He cannot, as a matter of law, reverse administrative action" (Caiden, 1988:6). The Ombudsman's office deals mainly with singular rather than institutionalized instances of maladministration, Cases committed by people in organisations on their own behalf against organizational norms (theft, violation of trust, fraud, tax evasion, embezzlement) or at the behest of their organisation (genocide, torture, murder, robbery, coercion, terror, intimidation, crimes against humanity) (Caiden ,1991:489).

An ombudsman replaces the traditional function of the courts, so as to independently investigate the action of government departments. The aim behind an office of the ombudsman is to identify problem areas, make recommendations and to eliminate unauthorized practices such as corruption and maladministration (Du Plessis, 1989 :363). The office of the ombudsman is seen as a symbol of what government ought to do , viz, the cultivation of the well being of the public; the preservation of individual freedom; and the equitable treatment of all members of the public by the public service. The ombudsman can be considered to be a depoliticised independent check on public administration with less corruption and pushing for administrative reforms.

It promises additional avenues of redress in that *"gives the citizen an expert and important agent without personal costs to the complaint , without time delay, without the tension of adversary litigation, and without requirement of counsel or the intervention of those highly placed"* (Caiden,1986:7). An ombudsman would be able to deal with complaints of discrimination and nepotism (Bekker, 1991:65).

In South Africa, an office of the ombudsman/advocate-general was created as a result of the public outcry pertaining to the Information Scandal of 1977 where unethical behaviour on the part of public officials and political office-bearers was brought to the forefront.

4.5.5.1 The Situation in South Africa Regarding the Ombudsman

In 1979, as a result of the so-called Information Scandal, the Office of Advocate-General was created through the promulgation of the Advocate –General act of 1979, amended by Act 55 of 1983. In 1991, the office of Advocate –General was changed to that of Ombudsman. The head of state appoint the Ombudsman, is accountable to the head of the state but reports directly to Parliament on his inquiries. The South African Ombudsman enjoyed unrestricted authority to investigate the misappropriation of state funds and, in his own sphere, had wider powers than any other Ombudsman.

The South African Ombudsman possessed the authority to initiate an investigation himself if he suspected any maladministration of public funds; determined the procedures of his investigation; and could command any person to appear before him to testify on the matter currently being investigated. The South African Ombudsman was also empowered to demand that all related documents were handed over to his personal inspection and investigation. It was the task of the Ombudsman to report directly to the legislature and to make recommendations on any necessary action (Gildenhuys,1993:98-99).

Despite these posers, the Ombudsman had in the past never investigated any of the departments in which corruption had occurred-this can be regarded as a serious failing against the Office of the Ombudsman in the fight against corruption as once again, a measure to combat corruption was not implemented.

A complaint can be lodged by any member of the public who is of the opinion that he/she has been improperly prejudiced by the arbitrary action of a public official/institution (Van der Walt, 1991:8). It is the duty of every member of the public to report immediately any incivility, irregularity or other misconduct committed by a public official so that the complaint can be investigated (Hilliard, 1994:221). Examples of the type of complaint s which the public can submit, includes someone who meets with all the requirements for a post or a

licence but does not get it, or residents who are detrimentally affected by the closing of a street. Members of the public can even complain about a traffic fine with the proviso that first, all other channels have been followed (Van der Walt, 1991:9).

Van der Walt (1991:9) gives the following advantages which an ombudsman's office can hold in for the general public to combat corruption:

- no fees are charged when the general public makes use of the service of the ombudsman;

- the accessibility of the ombudsman to the general public is made easier by the fact that a complaint can be lodged through a telephonic conversation, followed up by an affidavit with the ombudsman being able to conduct an investigation simple by using the telephone;

- as far as possible, the identity of the complainant is kept confidential but in some cases it will, through necessity, have to be revealed in the course of the investigation; and

- the complainant is not complaining to another government body. The ombudsman is not a public official as he functions outside the public service and the State is only responsible for his remuneration.

Van der Walt (1991:10) provides the following procedure that will be followed once a complaint has been lodged:

- after establishing the validity of the complaint, the ombudsman will proceed to investigate the case in a formal or other suitable manner;

- the complainant and others involved will then be called to testify;

- if necessary, for example where a crime had been committed, the case will be referred to the police. The ombudsman is also entitled to make recommendations in order to rectify the matter; and

- after completion of the investigation, the ombudsman reports to parliament.

In his report to Parliament, Report No 13 of the Advocate –General dated 1989-03-03, the former South African Ombudsman P J van der Walt made, for example, mention of certain aspects of unethical conduct of public officials which can result in the occurrence of corruption:

It is important for relative of an official in the State sector or companies in which such relatives have a significant interest to conclude contracts with a Government institution in which that official has a political of executive post which carries the possibility that the official has or may have decision-making power in respect of that particular agreement, or is in a position that could influence decision-making in respect of that agreement, In those cases where the impression may be created to the public that such an influence may exist, the conclusion of such an agreement would also be improper.

Even should such an agreement be to be the advantage of the State, the image of proper and impartial decision –making and consideration must be maintained. Where such an agreement ought to be concluded in the public interest, the official in the State sector should declare his interest or relationship openly and dissociate himself publicly from decision –making together with the necessary steps to ensure impartial decision-making. In this regard, tender procedures have always been desirable protective measure.

A question that should be discussed, is whether political parties represented in Parliament should not be obliged to publish an annual list of donations to the party, emanating from a single source that exceed a determined amount, for instance R1000, R5000 or R10 000. It has happened in the past that such donations are made with a view to obtaining certain favours or concessions.

...is it not improper for a Member of Parliament who also practices a profession, such as an attorney or an advocate, to deal with any Government institution on behalf of any person in his professional capacity for reward. In my view, this is improper and such negotiations should only take place in his capacity as a Member of Parliament without any remuneration because he does not act in his professional capacity only

...is it proper for an official in the State sector, while still occupying his official position, to become involved in his private capacity in a business that does business with the State finances or concessions? This would be improper because once again the possibility of the abuse of influence is not excluded in the eyes of the public?

In terms of Section 182 of the Constitution of South Africa, Act 108 of 1996, the office of ombudsman was replaced by the office of the Public Protector who will inf future, investigate all cases of corruption and maladministration. The importance of this office cannot be underestimated and the public protector will fulfill the following functions

a) to investigate any conduct in state affairs, or in the public administration in any sphere government, that is alleged or suspected to be improper or to result in any impropriety or prejudice;

b) to report on that condition; and

c) to take appropriate action.

The public protector must be to accessible all citizens or groups in South African society and can take corrective measures to limit unethical conduct. The public protector can furthermore report on improper conduct. Such reports must be opened to the public unless prohibited by national legislation.

However, it is always of importance to remember that the person who fulfills the function of the ombudsman must be a non-partisan appointment and conduct his investigation independently in his endeavour to root out abuses of power.

4.5.5.2 Disadvantages of an Office of the Ombudsman/Advocate -General

The creation of the Office of the Public Protector can be attributed to the failure of the office of the ombudsman/advocate-general in the fight against corruption. The following disadvantages can be associated with having an office of the ombudsman/advocate-general as a measure to combat corruption:

- it is impossible for a handful of overworked ombudsman office to being a position to provide full redress for citizen grievances;

- public officials are aware that only a small fraction of maladministration of their part comes to the attention of the relevant authorities. If the initiative is left largely to aggrieved citizens, even less maladministration would come to the forefront;

- the righting of wrong is left to the absolute discretion of the original offenders. They are free to deny redress, stall, set their own remedy and discriminate between individuals in their remedial action. No authority over them can be exercised by the office of the ombudsman and the efficacy of public structures depends on publicity from the mass media, genuine public concern and sensitivity to outside criticism by the public bureaucracy;

- underlying causes that are responsible for continuous wrongdoing are not exposed. It is considered more important to prevent wrong from occurring in the first place by ensuring a workable constitution, and adaptive political system and a streamlined governmental apparatus than to undertake an investigation (Caiden, 1968:8); and

- the ombudsman/advocate-general usurps the functions of parliament.

An ombudsman may even weaken the role of the opposition because he takes over its role of investigation and public debate in parliament (Bekker, 1991:65-66).

4.5.6 Auditing and the Auditor –General

In this section, the role of the Auditor-General in terms of public sector auditing will be discussed as well as the types of auditing systems available that can serve as control measures to combat corruption and maladministration.

4.5.6.1 Function of Public Sector Auditing

The main function of public sector auditing is to ensure what after the closure of books for a financial year. The regularity and accuracy of the transactions *recorded in the books as well as measuring performance of value for money*, thereby implying its functions as a measure to combat corruption.

This function constitutes comprehensive auditing with its focus falling on system and transactions as well as being concerned mainly to aspects material in terms of scope and gravity. As a result of formal auditing, corruption to the value of R6 million performed by public officials and the public was made public (Wronsley, 1994:15-16). A former Auditor-General Joop de Loor in Gildenhuys (1991:812) provides the following description of public sector Auditing:..."(*it is*) *an independent investigation and evaluation of, as well as public reporting on, the financial administration of the Executive Authority in the public sector in order to enable the Legislative Authority on all levels- and thus the electorate – to exercise control over, and demand public accountability from those to whom the collection, protection and expenditure of public funds has been entrusted.*"

The following types of public sector auditing can be used either independently or simultaneously as measure to combat corruption.

4.5.6.2 Types of Public Sector Auditing

The following types of public sector auditing will now be discussed:

- regulatory auditing
- performance auditing

4.5.6.2.1 Regularity Auditing

Regularity auditing consists of two elements, *viz* compliance auditing is an independent, external evaluation to establish whether the 'auditees' activities revenues and expenditure are in compliance with statutes – to establish whether everything collected, done and spent was within law (Wronsley, 1990:150). The second component concerns financial auditing which is also independent, external *evaluation of financial transactions to enable the auditor to obtain an objective* opinion whether income , expenditure, assets and liabilities have been properly corroborated and recorded and whether all relevant financial statements fairly represent the financial position and result of the year's activities
(De Loor, 1991:827).

4.5.6.2.2 Performance Auditing

De Loor (1991:83) defines performance auditing as being and "independent objective review of the financial and operational achievements of a department, local authority or statutory body carried out by the Auditor –General to determine whether the control measures instituted ensure that allotted resources are used economically, efficiently and effectively, and if necessary, to report on the matter to the legislature or commissioning authority concerned."

Performance auditing is primarily concerned with the evaluation of economy, the efficiency and the affectivity of a department's activities. Economy is concerned with the conditions and circumstances under which a government department had

acquired its resources, such as personnel, stores and equipment. Efficiency is concerned with the economic utilization of resources. Effectivity is to ensure that *the results of the government programmes are realizing the predetermined goals* and objectives within the framework of certain standards of time, cost quality and acceptability (Gildenshuys, 1991:581-582). In this respect, three possibilities exist, *viz,* maximization of output, and the optimization of the input/output relation at any level (De Loor, 1991:83).

Falling part of the public sector auditing function as a measure to combat corruption, is the office of the Auditor-General which will now be discussed.

4.5.6.2.3 Duties and Responsibilities of the Auditor –General

The principle functions and responsibilities of the Auditor-General of South Africa are set out in the Constitution (Act 108 of 1996), as well as the Auditor-General Act 12 of 1995. The Office Auditor- General would be completely independent of the Executive Authority appointed by government to curb corruption and maladministration. South Africa's current Auditor-General has stated that "*independence has already led to a more efficient Auditor-General's Office. The better and more thorough the audit carried out, the bigger the possibility that corruption and maladministration can be curbed*" (RSA Policy Review, 1993:13).

The Auditor-General 's duty is to audit and report on the accounts of government at all levels and thus provide that essential, independent link in the whole process of legislative control over the financial activities of the executive arm of the government. In the course of performing these duties, some 1 400 audit reports are compiled annually and submitted to the various legislative institutions concerned. At the local government level these audit reports are submitted to the relevant council, at provincial level to the provincial legislature, and at national level to the Parliament .

Former Auditor-General de Loor states that the function of the Auditor-General as stated is to ensure that money is used for the purpose for which it had been

approved by Parliament and to ensure that systems are in place to act as a check against corruption (Financial Mail, 21 April, 1989:49). In his fight against corruption, the Auditor-General must be allowed to have free access to all books of account and any other supporting or even incriminating documents (Hilliard, 1994:210). The Auditor-General demands final accountability from the executive office and his audit forms the basis on which the legislative branch can demand accountability from the executive authority. The legislature, after perusing the Auditor –General's report must be satisfactorily. Amongst the duties of the Auditor-General, is to ensure honesty in public financial management and to guarantee the sovereignty and political supremacy of the legislature over the executive authority in public financial matters. The Auditor-General has to provide the legislature with factual information pertaining to the image of government money and has to draw the attention of the legislature to any deviations from official policies and other officially prescribed procedures and requirements which could be viewed as corruption, viz (Gildenhuys, 1995:92-93).

- cases where the specific budget appropriations of the legislature have been exceeded;
- cases where the specific appropriation have been used for some other unapproved purposes;
- cases where public funds have been wasted;
- the ineffective use of stock and equipment; and
- any other matters which in the Auditor-General's opinion require the attention of the legislature (Gildenhuys, 1995 :92-93).

It is apparent that the Auditor –General occupies a unique position in the government hierarchy, with his main function being to ascertain on behalf of Parliament, whether public funds have been used, obtained and used according to stipulations and whether reporting has been done on this usage of public funding.

To enable the Auditor –General to establish whether there had been any corruption, the necessary legislative authority was given to launch independent investigations concerning public sector activities and to objectively report back to parliament regarding his investigation. The Auditor –General and his Office form an important link in the final stadium of the democratic public accountability process (*The South African Treasurer,* April, 1991:65).

The Auditor-General's certificate of examination and report must be submitted every year to Parliament, who will refer it to the Standing Committee on Public Accounts. Members and public officials can be called to appear before the Standing Committee, to produce papers and generally to account for their actions to which the Auditor-General's report has directed attention or criticism. Proceedings are then printed in the Hansard thereby making it available for public scrutiny (Wronsley, 1986:169).

Although the Auditor-General is not a member of the Standing Committee, his relationship to the Standing Committee is described as follows in Notes on Select Committee Procedure, 1983: *"the ... Auditor-General has been described as ... the active hand of the committee. A committee would probably never be able to detect any official extravagances or scandals unless guided by an efficient bloodhound who is in their service, and with such powers as the ... Auditor-General possess..."* (Gildenhuys, 1991:84). The Standing Committee's resolution can vary from forgiveness of sins to censure and suggested penalties and action will be undertaken in terms of the exchequer and Audit Act. 1975 , to recover unauthorized expenditure from the guilty party (Wronsely, 1986:169).

It is important to remember that the Auditor-General is not a policeman but rather fulfils the function of being a watchdog of Parliament (Wronsley, 1993:17). The office of the Auditor-General is an effective mechanism for ensuring that corrupt practices and the abuse of funds by public officials came to the notice of the legislature (Cloete, 1995:24). The fact that an outside body will at regular intervals, audit the books of government departments and present a report to parliament on their investigations, contribute *" a powerful deterrent to those*

contemplating corruption involving creative bookkeeping or other irregularities leaving which is known as an audit base or verifiable path, what money and goods follow from receipt to disposal" (Wronsely, 1993:18). To further strengthen the fight against corruption and to ensure that the reports of the Auditor-General are acted upon, could be brought about by simultaneously releasing the reports of the Auditor-General to Parliament and the media (Cloete, 1995:24).

Former Auditor-General Peter Wronsley stated on how the observation of certain basic criteria could result in the improvement of service as:
"legislation must be absolutely clear and unambiguous . Practitioners must know and understand the law to be able to carry it out properly. Every practitioner ...must also be aware of the penalties under administrative and criminal law for irregular and corrupt practices. The public, on the other hand, should also know enough about the services to which they are entitled to expect from political office –bearers and officials alike to be critical of shortcomings flowing from either incompetence or dishonesty. In free society there should exist a mutual anxiety between politicians and officials on the one hand and the public on the other hand that each should meet his obligations and exercise rights within the law. It is the job of the (Auditor-General) in an imperfect world to sustain this mutual anxiety whilst offering pervasive assessments of the results" (Publico February 1996:5)

4.5.7 Commission for the Promotion and Protection of the Rights of Cultural Religious and Linguistic Communities.

In terms of Section 185 of the Constitution the primary objects and functions of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities are:

- To promote for respect for the rights of cultural, religious and linguistic communities.

- To promote and develop peace, friendship, humanity, tolerance, and national unity among cultural , religious, and linguistic communities, on the basis of equality, non-discrimination , and free association.

- To recommend the establishment or recognition, in accordance with national legislation, of a cultural or other council or councils for community or communities in South Africa.

The Commission has the power, as regulated by national legislation, necessary to achieve its primary objectives, including the power to monitor, investigate, research, educate, lobby, advise, and report on issues concerning the rights of cultural, religious, and linguistic communities. The Commission may report any matter that falls within its powers and functions to the Human Rights Commission for investigation. Furthermore, the commission has the additional powers and functions prescribed by national legislation. Section 186 of the Constitution stipulates that the composition of the Commission must be broadly representative of the main cultural, religious, and linguistic communities in South Africa and should broadly reflect the gender composition of South Africa.

4.5.8 Commission for Gender Equality

The Commission for Gender Equality must promote respect for gender equality and the protection, development, and attainment of gender equality. This Commission has the power, as regulated by national legislation, necessary to perform its functions, including the power to monitor, investigate, research, educate, lobby, advise, and report on issues concerning gender equality. Additional powers and functions are prescribed for this Commission in terms of national legislation (Section 187).

4.5.9 Electoral Commission

The Electoral Commission must:

- Manage elections of national , provincial, and municipal legislative bodies in accordance with national legislation.

- Ensure that those elections being held are free and fair.

- Declare the results of those elections within a period that must be prescribed by national legislation and that is a short as reasonably possible (Section 190).

The Electoral Commission has the additional powers and functions prescribed by national legislation and must be composed of at least three persons. The number of members and their terms of office must be prescribed by national legislation.

4.5.10 Independent Authority to Regulate Broadcasting

In terms of Section 192 of the Constitution national legislation must establish an independent authority to regulate broadcasting in the public interest and to ensure fairness and a diversity of views broadly representing South African society.

4.5.11 Commission on the Remuneration of Representative

This commission has been established in terms of the commission on the Remuneration of Representatives Act 37 of 1994. In terms of section 2(2) of this act its objects are to make recommendation regarding the remuneration, allowance, and other benefits, including pension and medical aid benefits, of representatives. A representative include a member of any elected local government body or municipality. An act of Parliament must, in terms of section 219 of the constitution, establish the framework for determining:

- The salaries, allowance, and benefits of members of the National Assembly, permanent delegates to the national council of provinces, members of the cabinet, deputy ministers, traditional leaders and members of any councils of traditional leaders.

- The outer limit of salaries, allowances, and benefits of, amongst others, members of municipal councils of different categories.

The framework for establishing remuneration structures can be achieved by means of an independent commission to make recommendations concerning such salaries, allowances, and benefits.

4.5.12 Financial and Fiscal Commission

Section 220 (Chapter 13) of the Constitution establishes a Financial and Fiscal Commission for the Republic. The Commission is an independent body, subject only to the Constitution and the law, and it must be impartial.

The Financial and Fiscal Commission is a statutory institution, It is a permanent, expert commission with a constitutionally defined structure, set of generic. responsibilities, and institutional processes, and deals with inter-governmental fiscal relations in South Africa.

The Financial and Fiscal Commission has the responsibility to make recommendations to all relevant legislative authorities regarding the financial and fiscal requirements of all three spheres of government. The recommendations, which it is constitutionally required to make, or may make of its own volition within its generic responsibilities, concern such matters as:

- Revenue sharing;

- Financial allocations;

- Taxation;
- Borrowing ; and
- Criteria used in the determination of matters of general financial and fiscal policies of government.

The Commission's role is to ensure the creation and maintenance of an effective equitable, and sustainable system of inter-governmental fiscal relations. The advice of and recommendations made by the Financial and Fiscal Commission concern issues such as:

- Fiscal policies of all spheres of government
- The fiscal allocations to governments; and
- Taxes which provinces intend to impose;
- Borrowing by local and provincial governments; and
- Criteria to be considered in determining fiscal allocations.

The first point of contact with the legislatures will generally appear to be the standing committees on finance, at both provincial and national levels.

4.6 Judicial Measures to Ensure Ethical and Transparent Governance

The judiciary is independent from all other spheres of government and is structured to ensure that principles of ethical and transparent are upheld. Courts include the following:

4.6.1 Constitutional Court

The Constitutional Court is an addition to the judicial authority in terms of Section 167 of the Constitution. The Constitutional Court consists of eleven members, comprising one president, one deputy president, and nine other judges. The Constitutional Court is the highest court in all-constitutional matters relating to the interpretation, protection, and enforcement of the provisions of the Constitution of the Republic of South Africa (Act 108 of 1996). Its jurisdiction includes the following:

- Any alleged violation or threatened violation of any fundamental right entrenched in the Constitution;
- Any dispute over the constitutionality of any executive or administrative act or conduct, or threatened executive or administrative act or conduct, of any organ of state;
- Any inquiry into the constitutionality of any law, including an act of Parliament, irrespective of whether such law was passed or made before or after the commencement of the Constitution of Republic of South Africa;
- Any dispute over the constitutionality of any bill of Parliament or a provincial legislature;
- Any dispute of a constitutional nature between organs of state in any sphere of government;
- The determination of questions as to whether any matter falls within its jurisdiction; and
- The determination of any other matters as may be entrusted to the Court.

It is clear, therefore, that the independence of the Constitutional Court is beyond question and ensures that the tenets of democracy and the principles contained in the Constitution are upheld in the best interests of the citizens.

4.6.2 Supreme Court of Appeal

The Supreme Court of Appeal consists of a Justice, a Deputy Chief Justice and the number of Judges of Appeal determined by an act of Parliament. A matter before the Supreme Court of Appeal must be decided by the number of judges determined by an Act of Parliament. The Supreme Court of Appeal may decide appeal to any matter. It is the highest court of appeal except in constitutional matters and decide only.

- Appeals;
- Issues connected with appeals; and
- Any other matter that is referred to it in circumstances defined by an act of Parliament.

4.6.3 High Courts

A high court may decide any constitutional matter, except a matter that only the Constitutional Court may decide, or which is assigned by an act of Parliament to another court of a status similar to a high court. It can also decide on any other matter not assigned to another court by an act of Parliament.

4.6.4 Magistrates' Courts and other Courts

Magistrates' Courts and all other courts may decide any matter determined by an Act of Parliament, but a court of a status lower than a high court may not inquire

into or rule on the constitutionality of any legislation or any conduct of the President.

- Other courts include the following:
- Small claims court.
- Labour courts.
- Electoral court.
- Land claims court.

The establishment of this wide array of judicial authorities that are independent from the state undoubtedly contribute towards ensuring that the rights of individuals are maintained in ensuring the supremacy of law and the ultimate abuse of power. Each branch of the judiciary has clearly defined areas of democracy and freedom for all.

4.7 Conclusion

In this chapter the measures that are available to combat the manifestations of corruption have been dealt with. It is essential that measures exist, even if they cannot eradicate corruption completely, at least they can and do play an effective role in controlling corruption and unethical behaviour. Possible remedies for unethical and untransparent conduct were also discussed.

The concept of accountability as well as the role of a free press, commissions of inquiry, legislative measures, standing committees of Parliament, the Public Protector, the Human Rights Commission and other formal commissions and institutions. Once there is a clear understanding of the complementarily of the institutions and measures described in this chapter, accountability, ethics and transparency there is no reason to expect any one institution to fulfill all the

functions of open, ethical and sound and accountable public administration. The supposed ineffectiveness of measures and remedies for ethical conduct and accountability is not the issue. Rather, the need is to take a wide view, to ethical remedies can make to the overall goal of sound, transparent and ethical public administration.

This chapter clearly reveals the need of judiciary that is independent from all other spheres of government and is structured to ensure that the principles of a democracy are upheld and that the rights and freedom of individuals are maintained. Specific reference is made to the Constitutional Court and its role. The existence of independent statutory institutions that support constitutional democracy is a key feature of the Constitution. These institutions ensure, amongst other things, that human rights are observed and create answerable and accountable structures to ensure that public resources are utilized efficiently and effectively. Their independence in the execution of their activities and their requirement to report directly to Parliament is a clear indication of the open and transparent manner in which they execute their functions. Furthermore, these institutions are open to the public in ensuring a process of redress relating to matters that are brought to their attention.

In an attempt to contextualise the role of information as a influencing transparency, the next chapter will focus on matters relating to information, communication, sources of political information, propaganda and the media as well as The Promotion of Access to Information Act, which is considered to be the primary legislative contribution to transparent and open government. Information legislation ultimately pave the way for executive functionaries to perform their activities in the best interest of the communities being served.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.1 Introduction

In South Africa, the Truth and Reconciliation Commission hearings showed clearly that where there were limitations on the access to information about public affairs, irregularities were the order of the day and that secrecy destroys democracy in the sense that the public is excluded from active participation in the decision-making process. For the public to participate in the decision-making process, information on the activities of the public sector should be freely available.

This study was inspired by various sets of circumstances in the Republic of South Africa in which corruption and secrecy in terms of the activities of the public sector played an important role. One objectives of the study was to mainly describe and analyse the special role played by the ethics as a variable in establishing openness and transparency in the public sector. Because corruption and unethical practices have been and still prevalent in the public sector of South Africa, the mismanagement of estate money has serious implication for the community in democratic estate. This study also paid attention to the presence of corruption and unethical behaviour in the public sector, with corruption being viewed as the abuse of either an office or a position of authority, resulting in the improper enrichment of oneself or others.

The question on what practical actions could be taken at institutional level to enable the South African civil service to develop openness and transparency by increasing ethical and uncorrupt behaviour and action in the management of public assets, policies and services, formed the core of the problem statement of the

dissertation. From the problem statement, set out in Chapter One, the study follows the research problems to determine:

What the nature of the interaction of ethics, corruption and information in the public sector is now and how this interaction can b e strengthened and be made more fluid by open and transparent governance;

To what extent South African legislation and institutions are developed and the public protected to promote access to information, democratic freedoms and ethics and uncorrupt public service; and

How ethics and uncorrupt behaviour in the process of legislative measures in the South African Government could be effectively and efficiently intergrated and encouraged.

To ensure that this study is also seen as an appraisal of a process and not only as a description of the role of ethics and corruption, it was necessary to consider the above research problems and weigh them against the accumulated evidence drawn from the examination of the other aims and objectives of the study.

The recommendations made in the following section are linked to the information obtained in the light of the previous chapters. Being a concluding chapter, it offers a brief but analytical presentation of the important aspects covered in the previous chapters

5.2 Conclusions

The citizens tend to mistrust government if little or no information on government activities and policies is available . The relationships among supporters of different political groupings can also become unstable. People fear the unknown and information and communication are of the utmost importance if human beings are to understand and tolerate each other.

5.2.1 Limitations of the Study

The transparency and accountability in the government is non-existence. As discussed in **Chapter One,** *a focus of the research aims and objectives of the* study was to analyse and define ethics, values and moral as external variables influencing the promotion of transparency and to determine what values and morals are applicable to sound transparent administration.

In **Chapter Two** consideration was given to the various definitions of the concept of the ethics, values and morals as well as how ethics, values and morals affect *public officials and corruption in general.* Ethics points out the difference between right and wrong behaviour and can be used as a standard against which the behaviour and actions of public officials can be measured. Values in turn , represent the individual's perceptions of what is good and bad as well as representing ethical behaviour. The values represented in the community which the public official (as an individual) lives, has a direct influence on that person's position as a public official. *Values have different meaning for every person, including public official,* and as such as it is difficult to formulate a correct code of behaviour that will be applicable to the values and morals of public officials. If the correct ethics, values and morals form part of the person conduct of the public it would go a long way towards sound and transparent public administration.

There are ethics behaviour in most public services and public officials will be confronted with ethics while *employed in the public service. Although it is essential* that corruption, in what ever form it may appear, has to be dealt with swiftly, it is not always easy for public officials to become whistle –blowers. Public officials must be fully aware of the risks reporting the occurrence of corruptible behaviour. The failure to provide sufficient proof for the allegations could have serious consequences for a public official. It remains essential, however, for any public official to embark on such a course of action if he/she is of the opinion that the values and morals of society (of which the public official is also a member), are being seriously harmed by the presence of unethical and corruptible behaviour.

A code of ethics that comprises both values and morals, is of importance in combating corruption among officials. If the public official accepts the code of ethics as the standard against which ethical behaviour will be measured, it will ensure that the acts of public officials are at all times transparent and ethical and conform to morality and values. The right ethical behaviour based on accepted values, morals and norms would ensure that the public official realises that his/her first duty is towards the community of which he/she is a member and would be a great help in combating unethical and corruptible behaviour. The presence of conflicting values in society will have an effect on how to draw up a code of ethics that makes provisions for the conflicting values among public officials.

Measures to combat corruption will only be successful if the right ethics climate has been established in the public service in terms of which the ethics behaviour of public officials can be measured. However, unless public officials are informed about what is meant by ethics behaviour and what constitutes corruption or maladministration, any campaigns to combat them will be unsuccessful. Furthermore, it is no use having a code of ethic for public officials. It is crucial to draw up a code of ethics against which the public official plays so that ethical behaviour can be eliminated. The following should form part of any ethics-training programme: accountability, ethics, auditing and control.

The South African Public Service code of ethics is a clear indication of the intention of the South African government to do something about the ethical behaviour of public officials. The code of ethics provides clear ethical guidelines concerning what is viewed as ethical and correct behavior. If the campaign for open and transparent governance is to be successful, unethical and corruptible behavior must be rooted out immediately upon discovered.

It will only be after strong measures have been taken by the relevant role players, that sound transparent public administration based on ethical behaviour which in turn is based on acceptable values, morals and norms will be possible.

Ethical governance and human rights were also discussed and it was found that governments must set an example of ethical conduct by adhering to guiding values and by establishing infrastructure to manage the process. it was further established that unethical conduct manifests itself through election fraud, official violence, and institutional misconduct. To combat these, it is important to utilize remedies. Possible remedies include the use of whistle-blowers, monitoring and investigation, transparency, clear rules and guidelines, political leadership, statutory guidelines, accountability, incentives, and training. Apart from these, government in the form of the Auditor-General, standing committee of Parliament, the public protector, and the Human Rights Commission should also establish formal mechanism to ensure ethical governance.

Finally it was found that an adherence to human rights is closely related to ethical governance. Governments have certain obligations and must ensure that such rights are contained in the Bill of Rights, which was compiled with due consideration to international human rights and humanitarian law of the society.

A further objective of the study was to apply the information gathered to the question of how values influence the behaviour of public officials regarding corruption, and to get a clear picture of how corruption manifests itself in the public sector what causes it in the first place, In **Chapter three,** consideration was given to the meaning, causes and manifestation of corruption, where corruption was deemed to have taken place whenever a public official partook in corruptible behaviour such as the misuse of his/her power in exercising his/her duties as well as deviating from prescribed rules and regulations, such deviant behaviour being to that person's benefit and detrimental to a third party or the general public.

It is found that the term corruption has a number of meanings and can be associated with acts of bribery, deceit, falsification, embezzlement, forgery, theft, graft, patronage, nepotism and influence peddling. It was found that the corruption associated with public officials takes in the form of greed, patronage, bribery, ghosting, bid-rigging, graft and kickbacks, policy dilemmas and information leaks and pressure group influence, secrecy, vote-buying and conflict of interests.

However, these distinctions are not concrete and acts of corruption associated with public officials and also can be associated with found that bribery appeared to be the most common form of corruption whereby public officials abuse their position for material/financial rewards. It was found that the practice of kickbacks remains the most common manifestation of corruption among public officials and political office –bearers alike. Furthermore, the spillover effect was also discussed, indicating that if leaders of society participate in corruptible and unethical behaviour, such behaviour would mostly inevitably spillover to the public officials and other members of the affected organisations, as everybody wants a part of the action.

In the South African context, there were many examples of corruption in its various forms. It was found that although in South Africa disclosures of unethical and corrupt conduct by public officials are made from time to time, the general level of conduct of standard. The majority of officials uphold the high standards required by public office and are devoted to promoting the general welfare. The ethics standards of public office and are, however, directly related to society as a whole. If the public accepts that in order to secure an expeditious response from a public official some pecuniary or other incentive is necessary, and the official accepts the incentive, the standards of ethics conduct of officials and of the public are in fact in harmony from the point of view of the public.

In **Chapter Four**, the discussion centred around the measures available to combat the manifestations of corruption as discussed in previous chapters. Possible remedies for unethical and untransparent conduct such as whistle blowing, monitoring and investigation, training and intern guidelines, political leadership and organizational arrangements were discussed. It is essential to have measures by which it would be possible to combat unethical behaviour on the part of public officials; however, it is impossible to devise one measure that would be totally successful in eradicating corruption. Rather, it essential that the public sector employ all measures identified as cohesive agency to drive all anti –corruption efforts. Available measures should not be used in isolation but should, where possible, be implemented as a corruption agency so that the full force of the law

can be applied against public officials engaged in unethical and unauthorized behaviour. The concept of accountability the concept of moral accountability and the public demand for greater accountability were also discussed, as well as how accountability can be brought about. Again, if measure to combat corruption are to have any success, it is essential that accountability start at the top, viz. with political office – bearers, who should accept accountability for their own actions, in order to send the right message to public officials. Unless it is made abundantly clear that accountability starts at the top, any campaign against corruption will be unsuccessful

The role of a free press was stressed as an essential measure in the campaign against corruption, especially when viewed in conjunction with public awareness. Adverse publicity is an essential ingredient in the fight against corruption. Commissions of inquiry, standing committees of Parliament and the Human Rights Commission into irregularities and maladministration are also a means of combating corruption if used for the proper purposes. Legislative measures have also been identified as an attempt to bring an end to corruption and maladministration.

Another measure deployed against corruption and transparent governance, is the office of the Public Protector whose members are able to investigate complaints by the public regarding unethical behaviour on the part of the public officials. Such behaviour should be referred immediately to the Public Protector for investigation. Government sector auditing and the Auditor –General form another important component of any government's campaign against corruption, and the function of the Auditor-General in exercising control over government spending is of crucial importance. Other institutions such as the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linquistic Communities, the Commission for Gender Equality, the Electroral Commission the Independent Authority to Regulate Broadcasting, the Commission of the Remuneration of Representatives and the Financial and Fiscal Commission are all institutional measures to combat corruption and to promote transparency.

The judiciary as an independent sphere of government structured to ensure that the principles of a democracy are upheld and that the rights and freedom of individual are maintained was also discussed. Specific reference was made to the Constitutional Court. The existence of independent statutory institutions that support constitutional democracy is a key feature of the Constitution. Such institutions ensure, among other things, that human rights are observed and create answerable and accountable structures to ensure that public resources are utilized efficiently and effectively, and their independence in the execution of the activities and the requirement to report directly to Parliament is a clear indication of the open and transparent manner in which such institutions execute their functions. Furthermore, such institutions are open to the public to ensure a process of redress relating to matters brought to their attention. In the previous chapter, measures to control corruption and promote transparency were discussed, and it was indicated that citizens tend to mistrust government if there is little or not information on its activities and policies. The relationships among supporters of different political groupings can also become unstable.

5.3 Recommendations

The Promotion of Access to Information Act shows that a policy of transparent and open government, which leads to the activities of the public sector being opened up to public scrutiny, is the ideal.

The right to information rests on the principle that an uninformed community cannot participate meaningfully in the decision-making process within a democracy. The media, particularly the printed media, fulfils a need by making known information regarding the public sector. It appears that secrecy regarding public activities has more negative characteristics than positive ones and gives the public and detracts from avoids ethics values and norms that apply to the civil service.

5.3.1 Suggestion for further Research

- The governments should not put more emphasis on protecting and withholding public information than on disseminating it and making it known to public. There is always tension between the press and government regarding the availability of information with regards public sector activities. Government ought to change this attitude, should rather aim at cultivating an alliance with members of the press, in order to publicise much information to public.

- Fighting corruption should become one of the top priorities of African Public institutions as a G8 requirement. plans for major anti-corruption drive agency should be put in place in public sector. Zero tolerance for waste and corruption in the public sector should be declared in public sector.

- The press should not be intimidated into withholding criticism or keep quiet about public affairs either by limiting the access to information or by allowing eminent public officials to have negative attitudes regarding the publication of information. In addition, care should be taken that procedures help strengthened national security rather than undermining it by keeping the public uninformed and not allowing open discussion between those who govern and those who are governed. In a democracy, the communication between subject and ruler is important. In order to exercise their vote, members of the public must know about public affairs if they are to make informed choices. The news media plays an important role in these discussions between the authorities and the community.

- There should be way to reconcile the conflicting demands of transparency and secrecy. Both the community and the public sector will have to allow themselves to be lead by those values that are important to them in the execution of the activities of the public sector in the democratic society. Those members of the public that show a true interest in public affairs, are

probably relatively few compared to the total population, but the contributions of such an interested group to the process of decisions of public interest, which are of concern to the whole population, are taken by a small number of individual who act on information which is available information not been kept secret, but had been made known to the community been given the opportunity to contribute to whatever knowledge was available on the topic concerned.

- In addition, it is crucially important that there should be a political will to combat corruption in place and that moral and ethical government should be high on the list of priorities of the government should be high on the list of priorities of the government of the day. This type of scenario has not always been the case in South Africa, as has been shown in the case studies dicussed, where a lack of political accountability was detrimental to the moral and ethical conduct of the public officials which affected government departments. Of all the measures discussed in the dissertation, the most important one is the code of ethics in Chapter Two, which should form the cornerstone of any anti-corruption campaign. Corruption in all forms, constitute a violation or the Human Rights of the people who experience it and is painly and invasive and insidious evil.

- Bribery and corruption in order to secure benefit for individual business or to satisfy individual greed public officials will not be tolerated by the taxpayer. To blow against corruption is needed hence it is clear that high ideals of the freedom charter and the constitution of South Africa and code of ethics have been dishonoured and subverted by involvement of public officials in corruption.

- The overall objective of the zero tolerance on corruption should be put in place to re-inforce efforts to arrest the growing corruption in public institution that is being registered by key stakeholders in government as well as the private sector and civil society.

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