

THE ETHICAL DILEMMAS OF
WHISTLE-BLOWING AND
CORRUPTION IN THE
SOUTH AFRICAN
PUBLIC SECTOR

JOEL SIFISO MBATHA

JULY 2005

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**THE ETHICAL DILEMMAS OF WHISTLE-BLOWING AND
CORRUPTION IN THE SOUTH AFRICAN PUBLIC SECTOR**

BY

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SUMMARY

This thesis focussed on three key concepts: ethics, corruption and whistle-blowing. These concepts are examined within the context of the South African public sector. The meanings of the concepts corruption, ethics, values, morality and human rights, as well as their influence on the public official were investigated. The context of the role of ethics, conformity, as well as the various causes, manifestations and conditions in society that allow corruption to occur among public officials and political office bearers were also clarified.

By drawing upon relevant theories in literature that concern the ethical dilemmas of the prospective whistle-blower, the thesis also attempted to determine how heterogeneous employees of different cultures, backgrounds and education, perceived ethics, corruption and whistle-blowing. It was also an aim of the thesis to investigate and expand upon the important ideas advanced by the documented literature and legislation in order to investigate employees' perceptions with regard to ethics and corruption.

Attention was paid to an infrastructure for transparent and ethical governance, manifestation of unethical conduct, as well as statutory guidelines and codes of conduct. A variety of measures and instruments, both nationally and internationally were discussed. Specific attention is paid to national integrity systems, legislative measures to control corruption and promote the disclosure of malpractice, as well as other formal mechanisms and judicial measures to protect whistle blowers. The importance of the Protected Disclosures Act of 2000 as a prerequisite for democracy was highlighted.

Attention was given to whistle-blowing as an internal control mechanism by providing definitions, investigating the characteristics of prospective whistle blowers and examining the process of whistle-blowing. The context within which whistle-blowing occurs was scrutinised and responses by organisations were discussed.

The findings of research into official, primary and secondary sources are integrated with the existing legislation and presented in the context of the specific problems associated with the ethical dilemmas of whistle-blowing in the South African public sector. The thesis also attempted to present some indicators and potential predictors of whistle-blowing.

It was established that, despite the clear emphasis on whistle-blowing as an internal mechanism to combat corruption and new legislative protection in terms of protected disclosures, corruption has not been eliminated from public institutions. It was also evident that the fear of reprisals as a result of a disclosure is still a factor that negatively impacts on effective whistle-blowing. Indeed, the fear of retaliation after blowing the whistle, may have more effect on some employees than the actual fear of the detrimental effect of being a victim of corruption as such. The thesis hypothesised that public sector employees' perceptions and the government's understanding of ethical behaviour and corruption are important, as they can serve as useful indicators and yardsticks to measure the progress in disclosing and managing corruption.

KEY TERMS

Whistle-blowing; Ethics; Values; Morality; Information; Disclosures; Corruption; Greed; Patronage; Nepotism; Bribery; Graft; Ghosting; Code of Ethics; Fraud; Governance; Government.

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CHAPTER 1

INTRODUCTION, BACKGROUND AND RESEARCH DESIGN

1.1 Introduction

This study focuses on three key concepts: ethics, corruption and whistleblowing. These concepts are examined within the context of the South African public sector. This first chapter provides a general overview to introduce the study. Subsequently, the research problem that the study will address is identified, accompanied by the specific research questions whose answers aim to throw light on the research problem. The broad purpose of the study is defined and broken down into specific research objectives. The potential value of the study is examined before identifying the hypothesis that has guided the research. Key concepts used throughout the study are defined and an explanation is given of the research methods used. The chapter concludes with details about the organisation of the rest of the thesis.

1.2 General overview

This general overview provides a background and rationale for the study that aim to put the problem in context. Public administration in South Africa has to overcome numerous difficulties caused largely by three factors:

- the burden of history;
- unethical and corruptive constraints; and
- government secrecy.

Faced with these difficulties, one prerequisite for strengthening the rule of law and the credibility of the state, both internally and externally, is an efficient administration that serves the needs of all citizens. It must be transparent, responsible and accountable, and served by honest officials. In the current context of the globalisation of the world economy and the fluidity of cultural

boundaries, administrations in all countries also face a variety of issues, including the ethical problems concerned with the protection of employees who expose malpractice or misconduct in the workplace, transparent administration and good governance.

Transparency refers to the availability of information to the public on the transactions of the government and the transparency of 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 on government activities. Two interrelated issues are inherent in this phenomenon. One is the nature of information and the other is the use of such 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. However, even when information is available and clear, members of the community may prefer not to voice their grievances and may "exit" because of their uncertainty about alternatives.

Whistle-blowing is understood to mean the act of disclosing information in the public interest. It is increasingly recognised that whistle blowers have an important role to play in combating wrongdoing, including corruption. As a result, national and international anti-corruption policy agendas have begun to incorporate measures aimed at encouraging and protecting whistle blowers in recent years.

Because of some confusion about the meaning of the term, whistle blowers have unfairly acquired a bad reputation as being trouble makers, busy bodies and disloyal employees. A major cause of this negative perception in South Africa is the unfair confusion of whistle blowers with apartheid-era informants who betrayed their comrades. This historical context – not dissimilar to former Soviet bloc countries, as well as societies in some European countries such

as France that were deeply scarred by World War II – has unfortunately allowed the stigmatisation of whistle-blowing as an activity to be despised rather than to be encouraged. Hence, one of the purposes of this study is to provide information on who whistle blowers are and what the process of whistle-blowing entails in an attempt to support its de-stigmatisation.

If understood correctly, whistle-blowing is not about informing in a negative, anonymous sense. Rather, it is a key tool in promoting individual responsibility and organisational accountability. The bravery of being prepared to blow the whistle is seemingly directly related to cultural resistance to the promotion of transparency and accountability in many organisations. The reality is that, in sticking their necks out to raise concerns within their place of employment, people more often than not risk victimisation, recrimination and sometimes dismissal as it is often the case that the messenger, rather than the important message that is conveyed, is attacked. Within this context, whistle blowers acting in good faith and in the public interest may be the bravest of citizens. In refusing to turn a blind eye to suspected impropriety in the workplace and as such preventing possible harm, they deserve society's support, if not praise.

Many changes have occurred since 1994, aimed at the institutionalisation of formal structures for openness, the disclosure of malpractice and transparency. The Constitution of 1996 (Act 108 of 1996), the Public Service Act Promulgated under Proclamation 103 of 1994 and the Promotion of Access to Information Act of 2001 (Act 2 of 2001) enlarged the scope of transparency in the affairs of the public sector. For instance, the Access to Information Act of 2001 further enlarged the scope of transparency through provisions that give effect to the public's right of access to information from public and private institutions, as contained in section 32 of the Constitution. Together with the Promotion of Administrative Justice Act of 2000 (Act 3 of 2000) and the Protected Disclosures Act of 2000 (Act 26 of 2000), it constitutes a major advance in the development of good governance. These three Acts 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. All these changes indicate the public sector becoming more

corruption resistant than it was before 1994. There is an increasing focus on good (and bad) corporate governance in South Africa and internationally, and institutions that are transparent and open will benefit from more favourable investor perceptions. 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 and to protect whistle blowers.

South Africa's transition to democratic rule has been characterised by high levels of crime, including widespread corruption. Apart from the legislative measures mentioned above, several initiatives have been undertaken in recent years to promote accountability and fight corruption. These efforts include establishing specialised bodies such as the Special Investigating Unit and hosting anti-corruption conferences (November 1998, April 1999 and November 1999).

According to Richardson, a board member of Transparency International (in Johnson 2004:3), "High levels of corruption are no longer regarded as inevitable. Consensus now exist that corrupt behaviour reduces economic growth and can be destabilise 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. 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 in Johnson 2004:3). Non-transparent practices tend to be destabilising, 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 countries receiving assistance from the International Monetary Fund have made significant progress towards 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 are not new phenomena. Fischer (2000:2) notes that corruption is particularly identified as contributing to the lack of transparency and if there were more transparency there would be less corruption. Transparency International formed 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.

Corruption has been and still is 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. It is well-known how devastating the impact can be of a corrupt government on the citizens of a state.

The improper enrichment of officials, however, is not the only concern regarding blowing the whistle on corruption, but the unlawful or unethical abuse of authority that goes 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 & Meyer 1995:29).

Although it seems that measures might exist to combat 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 service 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 that is generally applied, or could be applied to diminish corruption in state departments. Also, declarations with an ethical nature, whether in writing or verbally, which command or forbid certain behaviour in specified circumstances, are important to evaluate and even to create (Fox & Meyer 1995:45).

One of the key obstacles in the fight against corruption is the fact that, without legal protection, individuals are often too intimidated to speak out or “blow the whistle” on corrupt activities they observe in the workplace. Although they may have a duty to report misconduct in terms of their conditions of employment, those who do stick their necks out and raise concerns are often victimised, intimidated and, until recently, would have little recourse to legal remedies.

In South Africa, the passed Protected Disclosures Act of 2000 makes provision for procedures in terms of which employees in both the public and private sector who disclose information of unlawful or corrupt conduct by their employers or fellow employees, are protected from occupational detriment. This law is therefore an important weapon in the armoury of anti-corruption efforts to encourage honest employees to report wrongdoing. As such, this law should be welcomed as a crucial corporate governance tool to promote safe, accountable and responsive work environments in both the public and private sector.

The contemporary call for a fundamental reappraisal of openness and transparency, and the exposure of malpractice in government institutions is a world-wide phenomenon as is clear in current literature, as well as in the agendas of, among others, both national and international conferences on the administrative sciences. The current emphasis on the need for whistle-blowing in government spheres may be attributed to the problems that arise from the detrimental effect of corruption and unethical conduct and practices. The added process of the current political and constitutional reform towards the

establishment of post-apartheid democracy in South Africa may also have attributed to this emphasis.

The interaction between the organisation and the public, the private sector and political and administrative institutions in the South African democracy takes a multiplicity of forms 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 organisations, each has its own function and its own professional tendencies that sometimes become the source of controversy. They also often derive their power and authority from different statutory and other sources. Transparency, openness and the disclosure of malpractice through whistle-blowing offer channels through which the public can have input into government activities in the provision of services to the public. The ethical dilemmas of whistle-blowing in disclosing malpractices in organisations of the public sector cannot be quantified. Naturally, the phenomenon can only be discussed in relative, and not in absolute terms. Thus, where reference is made to the scope (quantity) of ethical variables within whistle-blowing, this must be interpreted relative to certain circumstances.

This is all the more essential in South Africa's case, as the country emerges from apartheid rule when the majority of South Africans were actively denied the right to have access to information on the process of governing. The legacy of apartheid rule continues to haunt the implementation of transparent and open practices in the public service. Often, the democratic institutions of Government, as well as their concomitant processes and rules, which aim to get closer to the public, appear to the public as something distant, alien and perplexing. No reminder is needed of the inherent danger this poses for a healthy system of democracy. The public will not support democratic institutions that appear unethical, corrupt and incomprehensible to them.

However, popular support for democracy and its institutions is not, as is commonly assumed, expressed solely through the ballot box during elections. It also depends upon open and transparent practices and policies, as well as

legislation to protect employees who disclose malpractice or misconduct in the workplace.

The strategies and legislation adopted to set up an efficient administration and to eliminate corruption and promote ethical standards in South Africa are indicators that the subject of this study is both important and topical.

1.3 Statement of the problem

In order to explore, describe, analyse and explain the ethical dilemmas of whistle-blowing and corruption in the public sector, a literature study was undertaken. It was established that, despite the clear emphasis on whistle-blowing as an internal mechanism to combat corruption and new legislative protection in terms of protected disclosures, corruption has not been eliminated from public institutions. It is also evident that the fear of reprisals as a result of a disclosure is still a factor that negatively impacts on effective whistle-blowing. Indeed, the fear of retaliation after blowing the whistle, may have more effect on some employees than the actual fear of the detrimental effect of being a victim of corruption as such.

Public sector employees are in a key position both to observe any workplace corruption and to take action about it. Their attitudes and beliefs have a direct impact on the perpetuation or prevention of public sector corruption.

Problems identified from this research as the most significant potential barriers stopping employees from taking action about workplace misconduct are:

- conduct being seen as justified and correct when it should not be, resulting in an ethical dilemma for the public official;
- the attitude that “there is no point in reporting corruption as nothing will be done about it”;

- concern about personal and professional retaliation; and
- not knowing how and where to report corruption.

By drawing upon relevant theories in literature that concern the ethical dilemmas of the prospective whistle blower, the main problem to be theoretically researched is to determine how heterogeneous employees of different cultures, backgrounds and education, perceive ethics, corruption and whistle-blowing.

Some authors have assumed that whistle-blowing either will or should increase (Ewing 1983, Near, Dworkin & Miceli 1993), because of the presumed benefits of whistle-blowing to society at large. In fact, there may be negative consequences of whistle-blowing to managers, their organisations, and, in some instances, to society. As potential recipients of whistle-blowing reports, managers and administrators sometimes argue that their organisation's authority structures should protect them from the harassment of potential false, bothersome, or even violent confrontations by employees.

Whistle blowers, of course, are both citizens and managers, thus exposing them to conflicts on both sides. As citizens and as potential whistle blowers, they want to see rapid and conscientious organisational termination of reported wrongdoing. As managers, they prefer to see whistle-blowing about obviously valid allegations pressed through internal channels only, so that the institution's dirty linen is not aired in public. Research thus far has provided little direction in this regard, however. Evidence exists in literature about the characteristics of people who blow the whistle and the conditions under which they do so (e.g. Miceli & Near 1985, 1988; Trevino & Victor 1992). There is some information available about retaliation and who would be most likely to suffer it (Miceli & Near 1985; Near & Miceli 1986). Ineffective whistle-blowing benefits no one; obviously, it is critical to determine those predictors that increase the likelihood of effective whistle-blowing.

It is therefore necessary to investigate the negative perception of blowing the whistle on wrongdoing and to understand the measures and efforts on national and international levels to combat corruption. It is further necessary to determine which legislative measures and internal procedures to protect South African whistle blowers are in place as internal control mechanisms in the public sector.

1.4 Research questions

The need for the reflection as stated above is important, because the determination of measures to combat corruption and promote ethical behaviour within democratic institutions can serve as useful benchmarks whereby the progress of democratisation in South Africa and the consolidation of our democratic gains can be assessed.

Researchers are generally prompted to ask questions that may help to answer and provide possible solutions to the research problem under study. Through the application of primary and secondary literature research, the following questions, which could lead to the possible solution of the problem statement, were pursued:

- To what extent does the fear of blowing the whistle affect the disclosure of corruption in the South African public service?
- What are the variables that increase the likelihood that whistle-blowing will be effective?
- What is the nature of the interaction of ethics, corruption and whistle-blowing in government and how can this interaction be strengthened and made more fluid by legislation that protects, and therefore encourages, whistle blowers?

- To what extent is the South African public aware of its democratic rights and freedom and newly acquired opportunities to disclose information regarding corruption and unethical practices?
- To what extent is the South African public aware of where and how to report corruption?
- How can whistle-blowing be effectively and efficiently integrated and encouraged in the process of legislative measures in South African Government to address the concern about personal and professional retaliation?

1.5 Purpose of the study

The aim of this study is to investigate and expand upon the important ideas advanced by the documented literature and legislation in order to investigate employees' perceptions with regard to ethics and corruption. Because of their fear of disclosing corruption, many employees prefer to stay silent. Being fearful of disclosing corruption can be as problematic for an employee as being a victim of or witness to corruption.

The findings of research into official, primary and secondary sources are integrated with the existing legislation in the following chapters and presented in the context of the specific problems associated with the ethical dilemmas of whistle-blowing in the South African public sector.

Given the absence of a known and proven system of norms for definitively settling the guidelines for whistle-blowing in the public sector, the need exists for the establishment of an appropriate corpus of criteria that would be comprehensive enough to cover the entire field of ethical responsibility to accommodate whistle-blowing. It should also consider the protection of whistle blowers in government activity and be as scientifically accountable in theory as it would be workable in practice. To meet these requirements, it is also

important in this thesis to investigate the ethical dilemmas and differing perceptions of the role of whistle-blowing and corruption, as well as the whistle-blowing practices prevalent in the public sector. Ethics and whistle-blowing take on many manifestations and should not be regarded as having a single form.

More generally, the study will attempt to present some indicators and potential predictors of whistle-blowing. This is based on theory and research in the area of the problem statement.

1.6 Objectives of the study

In order to achieve the aim and purposes of the study, the objectives of the study are as follows:

- to compile a systematic exploration of conceptual knowledge about ethics, values and morals and to analyse these concepts as important external variables that influence the process of whistle-blowing;
- to compile a systematic exploration of conceptual knowledge about corruption, its different forms and the manner in which it manifests itself and to analyse these as important external variables that influence the process of whistle-blowing;
- to examine and analyse strategies and instruments, both national and international, to combat corruption and promote the whistle-blowing process;
- to describe and analyse the whistle-blowing process, with the aim of identifying potential predictors; and

- to identify further steps that have to be taken to ensure the successful implementation of whistle-blowing measures with their potential positive impact on the fight against corruption.

1.7 Significance of the study

While it is acknowledged that the results of this study do not aim be entirely or finally conclusive, it is hoped that this research on the ethical dilemmas in whistle-blowing will provide valuable and useful indicators of the levels of general knowledge among South African citizens about the process of interaction between employers and employees, their intentions to blow the whistle and the kind of issues they would raise. The notion of institutionalised, encompassing protection for prospective whistle blowers on corruption in the governance process in the country is a key component of the democratic order that was introduced subsequent to the 1994 elections.

The potential value of the study lies in the following:

- Foster a common definition of what is corrupt in order to address the current lack of shared understanding by:
 - identifying and addressing “grey” areas where employees are unsure of the appropriate behaviour;
 - focusing on the consequences or harmfulness of behaviour as a useful strategy of communication messages about corruption;
 - identifying and challenging explanations used to excuse or ignore corrupt behaviour;
 - focusing on public duty principles; and

- addressing educational messages across all subgroups of public sector employees.
- Equip employees with a capacity to act if they witness workplace misconduct by ensuring that:
 - individual public sector institutions have reporting mechanisms in place;
 - these reporting mechanisms include protection for those who use them; and
 - all employees are informed about the existence of these internal mechanisms and how they work, external reporting channels available to employees, and the Protected Disclosures Act of 2000
- Incorporate information about how and where to report corruption and other forms of workplace misconduct into induction training.
- Provide information to the management of organisations that need to take, and be seen to take, effective action against corrupt behaviour in order to convince employees of the value of reporting corruption.
- Inform the creation of organisational cultures where employees feel safe to report corruption.

1.8 Hypothesis

Although it may be a simplification of the role of the whistle-blowing in the disclosure of corruption, the following hypothesis may be formulated:

Public sector employees' perceptions and the government's understanding of ethical behaviour and corruption are important, as they can serve as useful

indicators and yardsticks to measure the progress in disclosing and managing corruption.

1.9 Definitions of key concepts

Comprehensive conceptual clarification of terms pertinent to the research occurs in the appropriate chapters. Terms utilised throughout the thesis are concisely defined below.

1.9.1 Whistle-blowing

Raising a concern about a malpractice within an organisation or through an independent structure associated with it.

1.9.2 Transparency

In government operations, transparency can be defined as openness towards the public about government structures and functions, policy intentions, public sector accounts and projections.

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.

1.9.4 Government

The institutions responsible for making and carrying out the laws supporting a particular policy and for adjudicating disputes that arise under those laws.

1.9.5 Corruption

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 official.

1.9.6 Ethics

A system of moral principles. This is based on 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 undertaking the right action based on written and unwritten rules of conduct.

1.10 Information gathering and literature research method

1.10.1 Approach to the study

The study methodology included an extensive review of the literature dealing with whistle-blowing from a number of points of view. This included a historical perspective, a synthesis approach to ethical dilemmas, a consideration of the individual elements of the whistle blower, and an examination of the effects of ethics and corruption on whistle-blowing behaviour. Also included was an extensive review of the concepts of ethics and corruption themselves, and a presentation of some of the literature, both for and against, that have been published on the process of whistle-blowing. This review was conducted to determine the nature and extent to which previous research had dealt with and defined the whistle-blowing phenomenon. The chapters that examined the writings of authors who focused on public service ethics and corruption were used as the basic touchstone for the development of the practice to make disclosures through effective whistle-blowing. This was based on the hypothesis that a relationship exists between the different perceptions of corruption and the fear of blowing the whistle on corruption.

Comprehensive literature on ethics, responsibility, whistle-blowing, values, morality, corruption, secrecy and information that represents sources of case studies and factual information regarding whistle-blowing was also studied.

When the final choice had to be made, the concern was mainly to offer representative examples, rather than merely including a variety of similar examples in historical or chronological order. This led to the inclusion of older sources, as well as sources in other fields of study, which gave greater insight into the actions taken within specific situations. Furthermore, regular new publications on this topic do not exist, since it is a field where, over the longer term, there are often no changes worth mentioning.

The first step in any research process involves a careful examination of the problem and, “We reconsider what we know about the problem and what other scholars studying it have learned. A systematic review of the literature will unearth different answers, conflicting results and multiple opinions” (Manheim & Rich 1981:191).

The deductive manner 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 selecting information as a supplementary and hence, secondary means towards an 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.

“No piece of research stands alone. Research problems emerge as part of ongoing work ... ; one research project (or question) may easily lead to another because it raises issues that was not previously considered” (Cf. Giddens 2001:642).

The choice was made not to do an evaluation of the whistle-blowing legislation and process in South Africa as such. There are two reasons for this. It is argued that it is too early to embark on such an empirical evaluation.

Secondly, in so far as theorists thought it possible to do so within the time limits of contemporary legal and social science approaches, some good publications by single authors, collated readers and reports and articles appeared on the shelves during the last few years.

The aim is much more limited but conceivably of practical value. The aim relates to the assumption that the area that received the least attention from scholars in South Africa, namely the possible impact and outcomes (or non-outcomes) of the Public Protection Disclosures Act and other legislation in terms of the interface between human rights and internal control (or at least monitoring) of corruption and unethical conduct – and thus, the enhancement of sound whistle-blowing information, transparency, procedures and actions – could and should be a major focus of theoretical work with the view of arriving at practical outcomes.

The literature study was supplemented by informal interviews and discussions. There were mainly two problems with conducting interviews on a topic of this nature. The situations in which observation would take place and the persons with whom the interviews were to be conducted were chosen, and the kind of questions to be asked were designed to forestall these problems.

Firstly, there was the question of finding the most ideal touchstone with which to assess the validity and reliability of the information provided. The truth can be distorted in various ways during an interview. Sometimes this is done deliberately, by people wanting to blow their own horns, or justify their actions, or defend their own point of view (or that of their institutions). Sometimes a false picture is given, often unconsciously, or sometimes certain facts have simply been forgotten. Sometimes certain actions are rationalised in order to please the interviewer.

1.10.2 Literature study

As an aid to gain a better understanding of whistle-blowing, the material consulted in the review reveals the most important literature on the whistle-blowing process in the following categories:

- Relevant books and published materials on corruption, whistle-blowing and ethical public administration: these include a host of publications related to the historical, philosophical and legal appreciation and related debates on whistle-blowing in South Africa and elsewhere. Descriptive works that attempted to describe and outline whistle-blowing were mostly academic, but also included publications of a more popular nature, in other words, articles from journals and newspaper reports.
- Unpublished dissertations and theses were consulted.
- Relevant legislation, white papers and statutes of the Republic of South Africa were examined.
- Official and unofficial documents and reports of commissions of inquiry and the Auditor-General of the Republic of South Africa were used.
- Research reports were studied.
- Political speeches were utilised where appropriate.
- Electronic information available on the Internet was consulted to examine the benefits and disadvantages of the whistle-blowing process. Works in this genre represent publications that became available in the period 1992 to 2004.

1.11 Organisation and frame of reference of the study

As may be expected, 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 in this thesis were derived from primary and secondary resources including a comprehensive literature study of literature material and theoretical models, a study of survey questionnaires and of existing empirical studies, and questions posed during informal and structured interviews.

Seeing that the activities of government to achieve ethical public administration today are concerned with practically many aspects of Public Administration the study rests on a variety of sources and the literature consulted covered a wide spectrum of themes.

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 thesis provides the general introduction and background of the entire study.

Chapter two provides a review of the ethical dilemmas as external variables influencing the promotion of whistle-blowing. The meanings of the concepts ethics, values, morality and human rights, as well as their influence on the public official are 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.

Chapter three provides a literature review of various definitions of the concept of corruption. Once a definition of corruption for the purposes of this study has been established, the various causes, manifestations and

conditions in society that allow corruption to occur among public officials and political office bearers are dealt with.

In **chapter four**, the variety of measures and instruments, both nationally and internationally, are discussed. Specific attention is paid to national integrity systems. The chapter also explains the legislative measures to control corruption and promote the disclosure of malpractice, as well as other formal mechanisms and judicial measures to protect whistle blowers. The importance of the Protected Disclosures Act as a prerequisite for democracy is highlighted.

In **chapter five**, attention is given to whistle-blowing as an internal control mechanism by providing definitions, investigating the characteristics of prospective whistle blowers and examining the process of whistle-blowing. The context within which whistle-blowing occurs is scrutinised and responses by organisations are discussed.

In **chapter six**, the findings of the study are presented and conclusions are drawn. Recommendations are made for further investigations into this topic.

CHAPTER 2

LITERATURE STUDY: ETHICAL DILEMMAS AS EXTERNAL VARIABLES INFLUENCING THE WHISTLE-BLOWING PROCESS

2.1 Introduction

This chapter sets out to compile a systematic exploration of conceptual knowledge about ethics, values and morals and to analyse these concepts as important external variables that influence the process of whistle-blowing.

In this chapter, several ethical dilemmas such as democratic values, prescribed guidelines and guidelines derived from community values, as well as theoretical approaches to ethics are considered. Definitions of the concept ethics, values and morals (morality) are provided, and the influences of ethics, values and morals (morality) on the public official and on corruption in public administration, in general, are identified.

The relevance of statutory guidelines and a code of conduct as an essential remedy against unethical conduct by public officials are indicated. The meaning of the concept a code of ethics when used as a measure to combat corruption and maladministration is examined, as well as the content that should be included in codes of ethics. The code of ethics for the South African public service is explored and attention is given to how a code of ethics can be enforced as a measure against corruption and maladministration. The perceptions of codes of conduct are important measures in establishing a spirit of cooperation where good ethical conduct is cultivated.

To provide a background for later chapters, this chapter reviews the variables that influence the milieu of the whistle blower. The chapter deals with the identification and a description of ethics as a variable that ought to guide the promotion of ethical conduct in the public sector.

The chapter finally 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 the government's first generation of rights, the Bill of Rights, within which transparency and open government are situated. A final area of enquiry that will be helpful in understanding the milieu of ethical governance lies in the broad area of human rights within which the phenomenon of whistle-blowing exists.

It is increasingly important to recognise that successfully addressing corruption is directly linked to the issue of values. The value system underpinning the public sector needs to be resistant to corruption, since managerial and technical solutions, while important, cannot succeed alone. Leadership by politicians and public officials needs to demonstrate clearly a commitment to a value system that is based on the fundamental values of honesty and integrity.

Public officials must realise that they must fulfil their duties in terms of those ethics, values, morals and norms that are essential to their community despite the existence of different cultures. Public officials cannot function in isolation from their culture and their communities, as these values and norms will have an influence on the way they fulfil their duties. It is thus essential that public officials follow ethical guidelines in the fulfilment of their duties, as well as believe in the virtues of morals and values. This is important when blowing the whistle to combat corruption as identified in chapter three.

2.2 Ethical dilemmas

The reputation and success of governance depend upon the conduct of public functionaries and what the public believe about their conduct. It is therefore of fundamental importance that public functionaries should act justly and fairly to one and all, not only paying lip service to ethical conduct, but also ensuring that these are manifestly and undoubtedly seen to be done. It is imperative that all public functionaries, upon accepting government employment,

recognise the fact that they have a special duty to be open, fair and impartial in their dealings with any member of society. Personal self-interest should be subordinate to the public good in all circumstances, 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 in Hanekom et al 1986:151).

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 be kept in mind, however, that an incompatibility may exist between ethical prescriptions and legal and regulatory prescriptions. Public functionaries are expected to adhere to the *intra vires* rule at all times, and ethical conduct, in the public service, is 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 officials and elected political office bearers;
- the influence of pressure groups on the ethical conduct of public administration;
- the political activities of appointed officials; and
- the interest revealed by the public in the behaviour 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 policy-making. Ethical standards are key checks and balances against the arbitrary use of this public power. As such they are key factors in the quality of governance. Without some “ethical barometer” it is difficult, if not impossible, to measure changes in the levels of corruption or misconduct in the public service. Unethical governance costs society significant amounts of 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 et al 2001:116).

Although opinions differ on what constitutes ethical behaviour, the concept usually refers to behaviour that conforms to generally accepted social norms and values. Such norms and values could include:

- humaneness;
- honesty;
- justice;
- reasonableness;
- freedom;
- truth;

- decency;
- integrity;
- order;
- fairness; and
- 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 to ensure that the interests and welfare of society are served.

In the public sector context, two dimensions can be differentiated: 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, the external dimension is found within groups, societies and/or institutions, and refers to the collective consciousness of groups of people, which is based on their cultural beliefs, norms, values and attitudes (Van Niekerk et al 2001:117).

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

2.2.1 Democratic values

To achieve the objectives of democracy and create conditions within which each citizen will be able to achieve the greatest possible well-being, a government should be organised in a manner that will allow transparent deliberation, consultation, and the exercise of discipline. In adhering to basic democratic values, the 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 et al 2001:119).

- **Responsibility and responsiveness:** Responsibility in its simplest form means the duty of people to carry out certain pieces of work allocated to them. Responsibility can also mean the manner in which people carry out tasks, the values they attach to these tasks, and in what way they consider the values of other persons they come in contact with while performing daily tasks (Van Niekerk et al 2001:119). In democracies, one of the purposes of government institutions is to improve the general welfare of the public. Therefore, the actions of political office bearers and public officials 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 groups (Henry 1980:133). Office bearers and officials should therefore weigh these values against the possible outcome 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 et al 1996:16). It requires mechanisms to ensure that all public processes and programmes are open to the public. The media play a very important role in this regard.
- **Representation:** From a South African perspective, the Constitution of the Republic of South Africa, Act 108 of 1996 (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 et al 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 publicised 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, sets 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 of the Republic of South Africa, Act 108 of 1996 provides for specific guidelines in adherence to administrative justice (Van Niekerk et al 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 institutions and political office bearers are sensitive to the various ethical and moral systems. To complicate this matter further, it is virtually impossible to quantify these values and they are also subject to change. These aspects make it very difficult to address social problems with a specific policy directive. Other guidelines that could be derived from society include probity, religious doctrine and value systems, thoroughness, effectiveness and efficiency, and fairness and reasonableness.

As far as fairness and reasonableness are 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 government action is fair and reasonable or not:

- Is it in conflict with national or specific legislation?
- Did the office bearer or public official responsible for the action act without the necessary authority?
- Did the office bearer or public official act in a manner perceived as fair and reasonably by the community? (Van Niekerk et al 2001:1120).

2.3 Theoretical approaches to ethics

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

- empirical theory;
- rational theory;
- intuitive theory;
- revelation 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 & Meyer 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 deeds can be right or wrong, but they require actual verification before agreeing that a particular action is right or wrong. Furthermore, the empiricist would translate an ordinary value judgement about right or wrong into tangible terms, thereby enabling a person to deal with it on a factual basis (Fulmer & Franklin 1982:92).

Empirical theory concerns itself with “relations to generalisations 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 true accurate knowledge of reality is only gained through verifiable sensory experiences (Fox & Meyer 1995:43). As such, a code of ethics could put into concrete terms what public officials may perceive to be incorrect, by laying down concrete guidelines.

2.3.2 Rational theory

The occurrence of moral ambiguity or a conflict of moral principles encourages those who wish to do so to rationalise or justify unethical conduct. According to Gellerman (1986:2), the following four common rationalisations exist:

- 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 individuals should use their 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 people to be entirely rational in their thoughts or actions at all times. Furthermore, the rational approach can also be twisted and employed for distinctly unethical purposes (Fulmer & Franklin 1982:92).

However, a code of ethics would clearly provide the necessary guidelines that would neutralise the occurrence of moral ambiguity or a conflict of moral principles to a certain extent. Thus, it is essential that public officials should be capable of making rational decisions and that, when faced with temptations and the prospect of immediate gain, a code of ethics would place them on the right track again.

2.3.3 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 known.”

The intuitive theory developed as a reaction to the rational theory and followed the viewpoint that people do not need to go through any logical or experimental process to discover what is right or wrong, as everyone has

been born with a basic understanding of ethical truths. The native intuition of individuals would inform them immediately when something is wrong, but as a result of the corruption of natural moral laws through outside influences such as poor environments, inadequate political institutions, disadvantaged education and misguided religious training, people have lost their intuitive powers. This situation would only be reversible if people returned to living healthy lives in pleasant surroundings (Fulmer & 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 have become corrupt. A code of ethics would enable public officials to regain their correct intuitive powers (Bauer 1997:203).

2.3.4 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 & 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 in Hanekom et al 1986:152). Ethics can be used in a specific sense to refer to the standards characteristic 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 behaviour and

decisions of people, but also with those things that they create such as institutions and policies that form part of the network of society. In this sense not only the ethical conduct of public officials and political office bearers has to be noted, but also the importance of ethics for the institutions within which they act (Esterhuysen 1991:11).

2.4.1 Definition of ethics

Fulmer and Franklin (1982:90) define ethics as 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) sees ethics as the basic principles of the right action undertaken based on rules of conduct. In Andrews (1988:34), ethics are defined as follows:

- “... the application of values to individual behaviour and action. They provide the moral and legal basis for guiding personal conduct in different circumstances and situations. Ethics are reflected in laws and regulations, codes of behaviour and professional standards.”
- “... 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 endeavour. The **telos**, in other words the goal or aim of government, stands central to the attainment of the good and happiness. In Aristotle’s

Politics, the **telos** of democracy is described as the liberty of oligarchy, the wealth of the aristocracy, culture and the conduct of tyranny and self-preservation. Aristotle rejected the dogma that changes and events occur in the world without any **telos** or overriding purpose, although he did recognise that accidental events could occur as a result of a mechanistic causation. All changes except accidents, according to Aristotle, were therefore natural (Day & Chambers 1962:56, 61). The latter (i.e. deontology) means that which is necessary and refers to concepts such as duty, correct conduct and moral responsibility, which relate to the kinds of behaviour that may properly elicit moral approval (Scruton 1982:156).

Ethical teleologists regard the deontological concepts as subordinate concepts in that no behaviour may be considered right or worthy of moral approval unless it promotes the good or has desirable consequences. To justify a given act or behaviour 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. The term "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 behaviour 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 generalisation to which there could be exceptions (Olsen 1967:92).

It is therefore apparent that ethics points out the difference between right and wrong behaviour. 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) people acquire their culture as a result of the process of socialisation within group context. Values and norms are also part of this culture. As people grow up in a specific society, certain values and norms that are institutionalised in this society, become internalised in individuals lives, i.e. they become part of their 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 (Inkeles 1964:74; Rip 1970:11-14). Thus the value of honesty, when coupled with the specific situation of dealing with the property of others, becomes a norm that prescribes (ordains/orders) that people must care for such property as if it were their own, and proscribes (forbids/prohibits) their stealing it (Rip 1970:11-12).

People's existence on earth and as part of a community is also governed by what they perceive to be their own values, as well as the values that form part of their culture. This aspect also has a bearing on the role that public officials fulfil when serving the interest of their specific community and the country as a whole.

The human being is the only living creature who can distinguish between good and bad, and right and wrong. The word "values" therefore refers to people's idea of what is acceptable or unacceptable (Athos & Coffey 1968:100), virtuous or virtueless. Values thus indicate the importance allocated by individuals to activities, experiences or phenomena and provide them with a guideline for their personal conduct. It should be borne in mind, however, that values represent personal judgements 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 concepts to different people with values forming an important part in the culture of a public official. Values, for public officials, are the bases of their preferences and decisions, provide the standards by which they live and may even give direction and meaning to everything that they believe in and undertake (Hanekom 1989:120).

Values thus represent individual perceptions of what is good or bad and right or wrong, and fulfil the function of guiding individuals in the fulfilment of their duties (Hanekom 1977:10). The existence and importance of values must be recognised in public administration. As public officials react 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 behaviour and the presence of different value 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 people, their greed for power, personal aggrandisement, wealth and status, rather than their endeavour to render unbiased service and to adhere to professional norms. The fallibility of people can undermine the effective personal performance of the official duties of public officials. It 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 to indulge in unethical practices.

Owing to the presence of different cultures in a country, conflicting value judgements can be made that 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 judgements and generally sympathise with the values held by groups and/or individuals in society. The obligation faced by officials that may cause a dilemma is to substitute their personal values for those of society and/or the community at large as a first priority. It is unfortunately so that conflicting value judgements (often conflicting only in the view of the official) can lead to low morale among officials, resulting in inefficient work performance and even, in extreme cases, in malicious obedience, i.e. executing policies without informing the policy maker of the negative aspects of the policies.

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

Public functionaries can never detach themselves from the value 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 recognised 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 environments (Hanekom & 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 the 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 A definition of morality

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

The term “ethics” has a macro or comprehensive meaning that could be applied to all cultures at all times, but it also has a micro or restrictive meaning related to a specific society or social 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, social group or even an individual.

For the purposes of this thesis, 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 public officials, it deals with whether the public’s business was conducted rightly or wrongly and whether public officials’ behaviour was good or bad when they executed their official duties. “Ethics” evaluates conduct against some supposedly absolute criteria and imposes negative or positive values upon it. These criteria can be in writing

(legislation), or merely the interpretation by an individual of what is acceptable and what is not.

Morality, on the other hand concerns the personal conduct of individuals and has a bearing on the moral duties of individuals 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, for example, 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 its attempts to prescribe what 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 behaviour. When viewed in terms of its public service aspect, morality "involves willingness on the part of the public official that the public official would endeavour to serve the public justly, competently, fairly, accountably and without prejudice (Du Plessis 1990:233)".

To conclude, 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 combating corruption among public officials. Acceptance of a code of ethics by public officials is crucial if the causes of corruption are to be successfully combated, as will be discussed in chapter three.

Some advocates of a moralising approach have added to the debate from religious, behaviourist, communist or imperialist perspectives. The basis of finding corruption to be unacceptable to society rested on an approach that was value driven instead of also being related to cause and effect. For example, one writer claimed that communist leaders earn their reputation “through selflessness and incorruptibility in the period when they neither hold power nor stand on the threshold of power” and that socialist experiences of corruption are “seldom driven by the pursuit of personal riches” (Toussaint in Bahlia 2005:31). While somewhat extreme, this view is not contrary to what many Marxist and neo-Marxist scholars would have argued to be the inherent merits of socialism over the distortions of capitalism. The absence of studies on the endogenous growth of corruption in socialist countries by such scholars may be further evidence of their tacit acceptance of such rhetoric.

The subject of corruption has also been largely absent from discussions by the theological fraternity during the past century. Although religious injunctions against bribery and corrupt practices might have been uttered, there has been no sustained debate on the issue in any of the religious traditions. Of course, sin has been the preoccupation of the Christian church since its origins, but elaborate essays on the subject would usually refer to matters of sexual conduct. Noonan commented: “It was as though at a certain level of theological sophistication or at a certain level of class consciousness it was agreed that everyone knew what constituted bribery, that everyone knew that bribery was wrong, and that no problems existed worthy of debate or discussion” (Noonan 1984:542). This does not mean that corrupt behaviour is not condemned. The Ghanaian Catholic Bishops Conference has called for a “crusade against bribery and corruption first from within and then [fanning] outwards towards secular society.” In 1994 the larger African Synod of Bishops blamed greedy African politicians for embezzling public funds (see Bahlia 2005:80).

In explaining the prevalence of corruption in developing countries, referring specifically to states in West Africa, Wraith and Simpkins claimed that corruption had “nothing to do with traditional values, with the African

personality, or with that adaptation to Western values.” They felt it has everything to do with pure avarice: “the wrong that is done is done in the full knowledge that it is wrong, for the concept of theft does not vary between Christian and Muslim, African and European” (Wraith & Simpkins 1970:340).

However, this approach could support the measurement of corruption on the fact that the act as such is bad, without considering the causes or consequences. By comparing different cultures as indicated above, the fundamental issues arises of comparative morality where one set of values relative to one country is regarded as superior to others. Wraith and Simpkins were obviously referring to the cultural pressures common in African societies where the rights of individuals are superseded by those of the extended family, and where duty took precedence over law. Public officials may be expected to share the benefits of their position with members of their immediate family and ethnic group, as such an obligation may be culturally accepted. Corruption may therefore involve an ostensibly immoral act with strong normative undertones. This matter will be returned to in chapter three.

2.5 The role of ethics in public administration

Public officials need to ensure that their behaviour is ethical and that they need to know what kind of work is required of them by their organisation, and what other people require of them. It is also important that the acts of officials are ethical and conform to morality and values at all times.

2.5.1 Ethics and the professions

Professions are distinct from occupations in that they exist to secure some fundamental end; for instance, the law profession seeks “justice” and an academic institution seeks ‘knowledge’. Achieving this end requires specialised skills, knowledge and individual judgement. Ideally, members of professions internalise the fundamental ends that define their particular profession, and depend in part on their own capacity and sense of self-worth to realise these ends.

Professional ethics concerns itself with the rules that regulate professional conduct. In the legal profession, these rules aim to ensure the competent and professional ethical conduct of legal professionals to protect the public against the consequences of misdemeanours. In other words, the public interest demands that a professional person must be an ethical one. The sole objective and guiding light of ethical conduct and the rule or rules prescribing ethical conduct must and can only be the public interest. Arguments have been put forward that, in a competitive market, a company's own enlightened self-interest dictates that it should behave in an ethical manner, as the adherence to high ethical standards in itself may be a key way of competing for a share of the market. The legal profession has also noted that "if we serve the public interest, we also serve our own interest" (Wiechers 1995:238).

Unfortunately, corruption can be found to a greater or lesser degree in most human activities, including in those of members of the professions. It has been argued that this is perhaps more so in the legal profession, because of the morally ambiguous character of legal work. As it entails the use of the law and of deception, the tendency to become involved in corruption may be a basic occupational hazard. Corrupt officials are thus those who not only abandon the fundamental end or goal of their profession, but also use this professional position – or the skills and knowledge associated with it – for their own self-interest or for immoral ends. Mostly, corrupt individuals engage in interdependent corrupt activities, quite often at senior levels, with the corruption itself becoming a cooperative enterprise. It influences those who are not corrupt: it comprises and intimidates those who wish to avoid becoming corrupt themselves, and especially those who feel morally responsible to expose corruption.

When blowing the whistle to expose corruption within organisations, those who choose this route face various dilemmas. The predicament of the potential whistle blower may be due in part to economic dependence and in part to legal obligations of confidence or loyalty owed to employers. Besides the real fear of victimisation resulting from such disclosures, a primary

dilemma involves the conflicting loyalties between the individual's desire to follow entrenched moral beliefs and expose misconduct, and the organisational pressures to conform to a culture of loyalty and confidentiality, albeit misplaced. These notions will be looked at later in some depth.

2.5.2 Ethical behaviour of public officials

However, what 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. those people who are working with you who have a right to expect you to fulfil your work obligations.

The public expect ethical behaviour from public officials in the fulfilment of their duties and also expect 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. As such the general behaviour and actions of public officials are determined by specific codes of ethics. As soon as the employees of public institutions engage in unethical behaviour, this could lead to ineffective administration and unsatisfactory service. This action in turn results in a violation of the specific rights of members of the community, because public officials do not fulfil their obligations to the community in an ethically justifiable manner (Andrews 1988:33).

It is of the utmost importance that public officials fulfil their duties in an ethical manner. According to Max Weber (in French 1983:133), "the behaviour of the (public official) is vested in his ability to execute conscientiously the order of

superior authorities, exactly as if the order agreed with his own conviction". Public officials should show at all times the utmost respect for and trust in the truth, the law, the Constitution and its conventions. the customers, clients and users of the services provided, the management hierarchy, and other public officials (Williams 1980:63).

It is also important to pay attention to the ethical problems that arise as a result of the tensions between politicians and the public service hierarchy. Undue pressures placed on public officials could result in unethical behaviour on their part and could lead to a search for a moral justification of their action. As soon as the public official is faced with a moral dilemma, it emphasises "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 behaviour of public officials is always of interest to the community 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 fulfilment of their duties. Furthermore, public administration takes place in an environment where values – political values, ideological values, social values, cultural values and historical values – shape public administration (Hanekom 1989:3-6).

The following are acceptable behaviours on the part of public officials:

- 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)*.

2.5.3 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 behaviour is derived from the purpose of the institution. The reason for being of a government is to protect and preserve those conditions which are necessary to ensure the continued existence of a civil society within 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 invented. Hence, there is a commonality of purpose in the invention of morality and of government. Any other use of government office is a perversion of office.”

It is of the utmost importance that ethical government remains the first priority of any public official and that politicians do not influence the functioning of public officials. If no balance exists between the two, the situation arises, as is currently the case in the developing world, where the 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 politicised behaviour by public officials who, in order to maintain their jobs, have to become politically knowledgeable. This brings about the intense

internal politicisation of the public service whereby public officials line up beneath various political patrons to ensure advancement and recognition. This can all amount to an undesirable state of affairs, which inevitably leads to administrative corruption, with political corruption providing the guidelines and examples 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 the public administration, an effort should be made to ensure that effective government is being realised, and that attention should be given to those values that 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:

- a higher form of society, which entails that the efforts being undertaken to ensure happiness in society form the main basis of social organisation;
- service to the community, which entails that the public official's actions must be commensurate with the expectations of the community; and
- the happiness and well-being of the official, which entails that the official's interest is safeguarded against unlawful and unethical behaviour through specific legal or other measures (Hanekom 1989:121-123).

In South Africa, the current trend is to try and regulate all types of behaviour 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 society. According to Estherhuysen (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 a constituent part of ethics determine how people will react to others. Values are also responsible for how people experience, accept, defend or change ideals. It is part of human nature to perceive people who have different ideals as a threat. As a result, opposing groups with different ideals are formed whose interactions can only be interpreted in terms of conflict, victory or defeat. Thus, according to Lategan (in 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 in some cases also have to make certain individual judgements about whether the emerging social values are right and acceptable. This responsibility cannot be underestimated. Specific values to which public officials should pay attention are equity, freedom, justice, fairness and various individual rights (Denhardt 1988:126).

To conclude, every group of individuals develops norms and values pertaining to ethical behaviour that enable the other members of the group to predict others' behaviour. Norms and values help make for more effective communications and also facilitate cooperation. Norms and values are the bases for a collective agreement about what is necessary to survive, what works and what needs to be done to ensure cooperation (Moeller 1988:120). It is also important to establish how public officials interpret the role that ethical behaviour should play in the execution of their duties.

2.6 Conflicts of loyalty and confidentiality

Whistle-blowing in its most general form involves calling (public) attention to wrongful acts, typically in order to avert harm. It is often denounced as morally

unjustifiable on the presumption that it violates the obligation to be loyal and the adherence to confidentiality owed to the business or profession. However, whistle-blowing that reveals genuine wrongs can be wholly consistent with personal, public and business/professional duties (Sternberg in Camerer 1996:1).

For various reasons, employees often experience confusion about their responsibilities towards managers or colleagues. In terms of loyalty in the work place, there is a culture of aversion towards the perception of being “sneaks, informers, rats and squealers” (Borrie in Camerer 1996:1). As such, there is considerable pressure on people to turn a blind eye on malpractice, to leave it to someone else to raise the matter, or to contact a regulator anonymously. Many organisations may also create a culture and procedures that deter employees from raising concerns through all-embracing confidentiality clauses to keep quiet in and outside the workplace.

There are, however, many different kinds of loyalties. It is, for instance, inappropriate to demand friendly or familial loyalty from or to a business, since the limits of business or professional relationships are legal and contractual. While supplemental loyalties may develop as colleagues become friends, the loyalties owed to them as friends must be recognised as different in kind from the obligations that arise purely from a business or professional association. In effect, attempts to identify, avert and remedy organisational wrongdoing will normally benefit a business, even if they temporarily reduce accounting profits. Stakeholders are therefore being loyal – not disloyal – when they criticise or attempt to prevent abuses. Not only is loyalty to corrupt professionals misplaced, it is an abrogation of duty, for loyalty is only warranted by those who embody the ideals of the profession and who are not corrupt.

Does the duty of confidentiality preclude whistle-blowing? Ordinarily not, for logically a business cannot bind its stakeholders to do, or to keep silent about, that which is illegal or contrary to its definitive purpose. The law has recognised this through the following judicial dictums: “fraud unravels all” and

“there is no confidence as to the disclosure of iniquity” (Gartside in Camerer 1996:3). As long as the law of confidence has existed, there has existed alongside it a public interest exception. In 1743, it was found that, “no private obligations can dispense with that universal one which lies on every member of the Society to discover every design which may be formed, contrary to the laws of Society, to destroy the public welfare” (Annesley in Camerer 1996:3).

Under modern law, it is preferable not to speak about there being “no confidence in iniquity”, but rather to recognise that there is always a balance to be struck between competing public interests. Thus, while there is the obligation of the law of fidelity owed by the employee to employer, and “a public interest that confidence should be preserved and protected by law”, this kind of public interest may be outweighed by a countervailing public interest that favour disclosure. Therefore, the court has to undertake a balancing act to weigh the public interest in maintaining confidence, against a countervailing public interest that favours disclosure. This happened in the Spycatcher case where the court held that there was no obligation on an employee to keep information secret if it relates to such misconduct on the part of the employer or fellow employees that there is a public interest in its disclosure. For instance, in the case of a crime, “the public interest in the maintenance of confidence may be overridden wherever there is a countervailing public interest in disclosure which is sufficient to override it” (Brindle & Dehn in Camerer 1996:4).

With regard to the kind of disclosure that would be in the public interest, there is no hard and fast rule. However, the disclosure of gross mismanagement, illegal or unethical acts, fraud or conduct that puts the life or health of individuals or the safety of property or the environment at risk, is probably appropriate. The information must certainly be in the public interest, and not of mere interest to the public. The media have a private interest of their own in publishing what appeals to the public and “are peculiarly vulnerable to the error of confusing the public interest with their own interest” (Borrie in Camerer 1996:4). It is important that codes of professional conduct should explicitly recognise the public interest exception. Without doing any damage to

the law of confidence, much greater use can and should be made of internal avenues of complaint and inquiry. In this regard, legal services can assist greatly in promoting communication of this kind.

High ethical standards include the creation of clearly understood procedures and channels of communication by business organisations so that employees who are aware of illegal or unethical conduct or practices in the workplace are able to disclose it without fear of reprisal or victimisation. If this means altering a culture of misplaced loyalty to friends or to the organisation, of turning a blind eye, or of organisational concealment, high ethical standards require that this is done or at least attempted. Whistle-blowing properly understood is not informing in a negative sense, but relaying essential information to those responsible to get things in order. As such, whistle blowers should be rewarded, rather than repudiated, for their efforts.

2.7 Conformity and the public official

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

Conformity can be defined as action or behaviour 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, organisational structures, oaths of office, popularity, prestige or fear, or merely because individuals are drawn toward the ethical behaviour of a group or person and strive to bring their actions into harmony with a specific model. The result of the sensitivity of individuals to acceptable and unacceptable behaviour (Armstrong & Graham 1975:21) is that, as employees, they deliberately and often voluntarily tend to conform to the standards of the institution where they are employed.

Public officials are probably in an even more difficult situation: political policy decisions and long-standing public 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) (in 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 & Payne 1980:94) and even political office bearers.

The need for conformity in public service is to ensure that public officials conform to the ideals of the public institution. As no two persons are the same and public institutions employ people of many different persuasions, conformity is of great importance for public institutions. Public officials can be expected to conform to certain stated guidelines regarding their 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."

2.8 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 behaviour and to provide incentives for good conduct.

To establish a transparent and “ethics infrastructure”, basic elements should be in place. Some of these key elements include:

- **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 should set standards of behaviour and enforce them.
- **Efficient accountability mechanisms:** education and training should be in place and actively encouraged.
- **Workable codes of conduct:** statements of values, roles, responsibilities, obligations and restrictions must be formalised.
- **Professional socialisation mechanisms:** education and training should again be encouraged.
- **Supportive public service conditions:** fair and equitable treatment, appropriate pay and security should be provided and ensured.
- **A coordinating body:** this should combine and pull activities together.
- **An active civil society** (including a probing media): they should act as watchdogs over government activities (PUMA Policy Brief 1998).

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 public management, and its historical record in promoting ethical and transparent behaviour. Like any other set of management tools, the effectiveness of infrastructure depends on whether it is

consistently implemented, understood and applied. Transparency should cease to be seen as a separate and distinct activity, and more as an integral part of all management systems.

2.9 Manifestations of unethical conduct

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

2.9.1 Election fraud

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

2.9.2 Official violence

Official violence usually manifests itself during protest action, labour disputes 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 allowance, it can also be regarded as official violence (Van Niekerk et al 2001:123).

2.9.3 Institutional misconduct

Misconduct and unethical behaviour by public employees and political office bearers can take on a variety of forms. Some of these are listed below:

- 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 favoured in awarding contracts or promotions);
- Bribery (if public employees accept improper gifts and entertainment in return for special favours such as privileged information); and
- Misuse of inside knowledge and influence peddling (Van Niekerk 2001:123).

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 in 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 corrupts absolutely” (Du Toit et al 1998:156). The selfish tendency of human beings is a hard truth that forms the starting point for much political thought. It is crucial for a state to devise remedies that would inhibit corrupting tendencies.

2.10 Statutory guidelines and codes of conduct

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

The Public Service Anti-Corruption Strategy (PSAS) includes a strategic *consideration for the management of professional ethics*. This concern is derived from the emphasis it received at the National Anti-Corruption Summit (held in Parliament in Cape Town on 14-15 April 1999) where the need to promote and implement sound ethical, financial and related management practices was endorsed (see appendix 1).

The statutory framework is the basis for communicating the minimum obligatory standards and principles of behaviour for every public official 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.

In 1997, parliament established a Joint Committee on Ethics and Members' Interests in terms of its joint rules to implement the Code of Conduct for Assembly and Permanent Council Members. This code is intended to regulate conflict of interest and provides for the disclosure of income, assets and gifts by members, but is not a code of personal conduct. The purpose of the code is to help members conduct themselves appropriately as public representatives, give specific guidelines based on the tasks of office, hold members accountable for their exercise of power, establish minimum standards of behaviour, and promote transparency through the disclosure of members' interests (Explanatory Document on Code of Conduct for Members of Parliament in Bahlia 2005:87).

The parliamentary code of conduct has set a standard for public conduct to some degree as far as conflict of financial interests is concerned. But it is not a legal instrument that can be used with strict sanctions against defaulters, nor does it deal with issues such as post-employment. Its implementation is managed by a registrar whose restricted functions and status serve only to weaken the perception that the code is an effective instrument. Nonetheless, a number of cases are recorded where members failed to declare interests and suffered detriment as a result. The most prominent case involved the former chief whip of the ruling ANC party, Tony Yengeni, who failed to declare

a massive discount he received on the purchase of a luxury motor vehicle. After initially denying the allegation, he was subsequently found guilty in court on charges of fraud and resigned, thus preventing parliament from taking up its case against him. Winnie Madikezela-Mandela, president of the ANC Women's League, was found guilty of failing to declare gifts worth about R50,000 and the Minister of Defence, Mosioua Lekota, who was also ANC chairman, was reprimanded for his failure to declare his business interests in certain oil and wine companies that had transactions with the government. These cases aside, there is a strong argument to be made, which is supported by the former Speaker, Frene Ginwala, for the code to be revised (*Government Ethics in Post-Apartheid South Africa* 2003:26). Most of the shortcomings identified above are in the code itself, and these must be rectified for efficacy's sake.

The Executive Members' Ethics Bill, number 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 was also intended to provide for matters such as the investigation of possible breaches by the public protector.

Those members of the legislature who serve in the cabinet as ministers, deputy ministers and members of provincial executive councils (MECs) are further subjected to the Executive Member's Ethics Act of 1998. It provided for a code of ethics to be proclaimed by the President in the Government Gazette that would prescribe standards and rules to promote open, democratic and accountable government by executive members. This code was published in 2000 after consultation with parliament and, like the parliamentary code, includes provisions for financial disclosures, but with the addition of a list of liabilities to be attached. Also, it goes much further in upholding standards of diligence, honesty, confidentiality, trust and integrity that the relevant members are required to adhere to (*Executive Ethics Code of 2000*, 28 July 2000). From a public point of view, a critical problem relates to access to the financial disclosure records of the executive members. Officials in the offices of the premiers and the presidency, who are responsible for managing the

implementation of the above Act, face formidable challenges in terms of the promotion of Access to Information Act of 2000. The Institute for Democracy in South Africa (IDASA) found, as a result, a fairly high degree of inconsistency in the application of the Executive Members Ethics Act of 1998 across the country and recommended that compliance officers should be appointed, especially in the provinces, to oversee implementation (Government Ethics in Post-Apartheid South Africa in Bahlia 2005:100). The establishment of a forum was also encouraged to offer such officers a platform to share ideas on how to manage their registers more efficiently and discuss related issues.

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:

- 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 (Van Niekerk 2001:124).

Chapter M of the Public Service Act 102 of 1994 includes a code that contains guidelines for employees on what is expected of them from an ethical point of view, both in their individual conduct and in their relationships 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:

- 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); and
- Personal conduct and private interest (M4.5) (Van Niekerk 2001:125).

The Public Service Regulations were amended in 2001 to introduce a similar financial disclosure framework for senior managers (from director upwards) employed in terms of the Public Service Act No 103 of 1994. This was in line with a resolution taken at the Public Sector Anti-Corruption Conference of 1998, where it was agreed that public service managers must report their assets in asset registers held by the relevant legislature (see appendix 2). Such reporting is done to the relevant executing authority with a copy of the disclosure form being sent to the relevant executing authority and another copy of the disclosure form being sent to the Public Service Commission. However, many managers are negligent about completing such forms or submitting them in time, and no action has been taken so far against defaulters (Public Service Commission Report, Implementing Financial Disclosure Requirements 2004). From the forms submitted, it is evident that senior managers participate in many other business interests in addition to their public duties, with some directors-general holding shares in multiple companies. As directorships in private or public companies are not regulated or monitored, individuals are therefore able to plan their exit from public service in consultation with potential government contractors who could serve as a source for future employment. This is almost encouraged by the fact that there are no post-employment restrictions at present to prevent such unethical collusion taking place in the public service.

From its experience of managing the financial disclosure system, the Public Service Commission has given notice to the cabinet that there is a need for the entire framework to be decentralised to the provinces and national departments of government (PSC Presentation to cabinet 2004 in Bahlia 2005:38). Ethics officers need to be appointed to provide a range of functions including administration, enforcement advice and counselling. Line managers are believed to be the ones best placed to identify conflicts of interest if these exist, and to take appropriate action where necessary (Public Service Commission Report, Implementing Financial Disclosure Requirements, 2004 in Bahlia 2005:39).

Transactional disclosures of the kind mentioned above are required in the Code of Conduct for the Public Service, but these are poorly managed. This standard for professional conduct in public service was promulgated in 1997 and specifically obliges an employee to “recuse himself or herself from any official action or decision-making process which may result in improper personal gain, and this should be properly declared by the employee” (Code of Conduct of the Public Service 2002). The primary purpose of the code is a positive one, that is, to “promote exemplary conduct”. However, public officials can be charged with misconduct if they fail to adhere to any of its stipulations. It provides rules and guidelines regarding employees’ relationships with the legislative and executive arms of government, the public, the immediate employer, colleagues, as well as personal conduct and private interests. To assist with its implementation, the Public Service Commission regularly conducts workshops and has published an explanatory manual of the code. It remains the responsibility of heads of department to ensure that their staff are familiar with and abide by the provisions of the code. Given that the code is part of a regulatory framework, in a structured and controlled environment, the Public Service Commission has further developed an ethics pledge, which it hopes will be used by public officials to advertise their commitment to the highest standards of service delivery as well.

Whether a rules-based code of conduct can be more effective than a values-based code of ethics in promoting professional conduct is as difficult a

question to answer as whether codes in themselves are effective in creating awareness of ethics in public life. The public sector in South Africa has taken the lead in requiring members of parliament, provincial legislatures and the cabinet, and all public officials to abide by codified standards of public life. The extent of compliance may be difficult to measure; nor is any code mentioned comprehensive enough to cover all aspects of public duty. Whether it is a case of the national or provincial legislature, or the public service, the capacity to enforce compliance is severely curtailed by the lack of adequate resources, particularly with regard to managing the financial disclosure system. If it is to be effectively used as an instrument to promote and maintain a high standard of ethics, more specifically to prevent conflict of interest, a greater level of awareness and sense of public responsibility will have to be generated about the instrument. Furthermore, if civil society is to play a meaningful role in holding government accountable to minimum standards of conduct, then its demand for greater transparency and public access to financial disclosures will have to be managed with far less suspicion than at present.

A United Nations study has pointed out that the reality in the public service in South Africa is contrary to the good intentions of the government to improve ethics. It showed that the absence of an “overall strategy on building and promoting a culture of appropriate conduct and an ethos of public service” causes problems in the country (Public Service Ethics in Africa in Bahlia 2005:87). Ethics training, where it exists, is too brief to be effective and does not focus adequately on important groups of employees, such as new employees and managers.

In an ethics survey undertaken jointly by partners from the public and private sectors and civil society (Ethics Survey 2001 & Ethics in practice 2002 in Bahlia 2005:48), it was revealed that “ethics criteria do not form part of performance, reward or promotion criteria”. It concluded that much remains to be done to convince organisations that the integration of ethics management practices to become an integral part of all processes within an organisation is of the utmost importance. While the National Summit challenged all sectors “to promote training and education in occupational ethics on all levels of South

African society”, the benefits to be derived from such action where it has occurred can only be seen in the long term (see appendix 3). Despite the efforts of the Public Service Commission, the South African Management Development Institute, the universities of Pretoria and South Africa and other organisations and institutions to develop ethics training for public officials, there remains an absence of leadership or national coordination in the public sector about how to foster ethics awareness through the allocation of new and existing resources. Only two dedicated officials manage financial disclosures from all legislators and public service managers collectively in the country. This suggests an urgent need for further training and education in ethics management.

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

2.11 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 made by a higher authority for a specific group of employees to ensure that they behave in an acceptable and justifiable manner (Hanekom 1982:162-163). A code of ethics can be defined as “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 a “set of ethical rules” (in Barrie 1994:75).

The need for a code of ethics can be regarded as twofold: to combat and to prevent corruption. It can be used to combat the following activities that are generally regarded as unethical in public administration:

- bribery, favouring, nepotism, influencing, gift;

- 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 (De Barros 1990:6-7).

A code of ethics is a measure to control and minimise indiscretions and corruptible behaviour. 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 judgement 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 behaviour or integrity and the public service code of ethics must be "acceptable as a sensible guide to good behaviour by the vast majority of officials ... it will give them the conscience that now sometimes seems lacking, the mechanism by which morality can be internalised 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:

- the promotion and maintenance of responsible conduct by public 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
- the provision of guidelines for public on how to exercise their discretionary powers (Hanekom 1982:163).

According to Thakathi (1995:14), the following ethical principles can serve as ethical guidelines to help in combating corruption:

- a dedication to the concept of effective and democratic government composed of responsibly elected office bearers and the belief that it is essential that the public with respect, concern, courtesy and responsiveness, as well as to recognise 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 public officials do their 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. Such codes cannot teach virtue; rather “they can teach rules and regulate types of virtue that need 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 characterised by a high standard of professional ethics” (Clapper 1996:23).

A code of ethics also has to define what constitutes decent behaviour and integrity. Integrity involves a willingness not only to obey the code of ethics but also to show 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 behaviour 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 internalised and thereby enforced by the individual” (Williams 1985:62).

Codes of ethics have to do with behaviour; more specifically, the behaviour related to duty, self-control, equal treatment and the absence of favouritism. Codes of ethics also have a role to play in ensuring uniform conduct in accordance with community values, as well as being a means of upholding existing community values and norms. They should also emphasise the positive and not only the negative; serve as criteria against which improper conduct can be measured; and serve as guidelines for the observance of acceptable norms (Barrie & Carpenter 1994:75). The behaviour of public officials are often directed by defined basic principles – referred to as moral laws – that are based on doctrines endorsed by the relevant community (Andrews 1988:41). Codes of ethics thus serve as an indication of which values are accepted by the majority of society as being more important than others (Hanekom 1982:163).

2.12 Contents of codes of ethics

Many different 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 plaques. For the new public official, a written code eliminates a great deal of uncertainty that is often associated with taking on a new job. The public, on the other hand, will have reason to feel assured that they will be treated in an ethical fashion (Fulmer & Franklin 1982:99).

In South Africa, a number of codes of ethics exist in the local government sector. These are prescriptive and not punitive in nature and only lay down general guidelines. They include:

- 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 also contained in the local Government Transition Act, Act 209 of 1993 (Cameron & Stone 1995:4).

A code of ethics should not only be regarded in a negative fashion, but should serve as a criterion against which improper behaviour 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:

- the relationships between officials, government and parliament;
- financial and other private concerns;
- secrecy and just decisions, and
- personal behaviour (De Barros 1990:7).

Furthermore, any public official should be required at all times to show the utmost respect for and trust in:

- the truth;
- the law;
- the constitution and its conventions;
- the customers and clients in terms of the services provided; and
- each individual public official (Williams 1982:63).

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 behaviour 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 officials' personal conduct and private interest (Cameron & 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

Officers or employees:

- honour the Constitution and accept it as a guide in the execution of their daily tasks;
- are familiar with and abide by all statutory and other instructions applicable to their conduct and duties;
- are bound to execute the policies of the government of the day loyally in the performance of their administrative functions;
- put the interest of the state first in the execution of their duties (Cameron & Stone 1995:80).

Relationship with the community

Officers or employees:

- foster the unity of the South African nation in their official actions;
- always act in a manner that will promote the trust of the public in the public service;
- are open and fully accountable to the public regarding their official actions by way of the appropriate statutory bodies and elected political office bearers;
- have regard for the circumstances and concerns of communities in dealing with administrative actions affecting them;
- are committed to the development and upliftment of all South African citizens;
- are honest in dealing with public funds and use state property economically and only for official purposes;
- do not take part in and will expose maladministration, corruption and any other act which constitutes an offence or which is prejudicial to the state;
- do not discriminate unfairly against any member of the community on account of race, gender, religion, conviction or any other arbitrary reason;
- are non-partisan and unbiased in rendering services to members of the public;
- do not use their positions in the public service to promote or prejudice the interests of any political party or interest group;

- are always polite and helpful when dealing with the public;
- recognise every citizen's right of access to all information in so far as such information is required for the exercise or protection of any citizen's rights; and
- are committed to lawful, justifiable and procedurally fair administrative action (Cameron & Stone 1995:81).

Relationships between officials

Officers or employees:

- cooperate fully with other officials to advance the public interest;
- obey and execute all lawful instructions by persons competent to give them;
- reply explicitly and fully to a lawful question put to them by persons competent to put such a question, except where such a reply may incriminate them;
- never misuse their authority;
- use the appropriate statutory or other prescribed channels to air their grievances or to direct representations; and
- apply human resources and labour relations practices in an objective, fair and equitable fashion and are committed to the optimal development and utilisation of his/her subordinates (Cameron & Stone 1995:82).

Performance of duties

Officers or employees:

- direct their actions and decisions to achieve the objectives of their organisation in the public interest;
- devote their undivided attention to their daily task and place all of their time at the disposal of the state;
- use the resources at their disposal efficiently and effectively;
- are punctual in the performance of their duties and are never absent from their workplace without permission or a valid reason;
- execute their duties in a competent manner and respect as well as protect the human dignity of everybody with whom they have contact;
- do not get involved in any transaction or action that is in conflict with or in any way infringes upon the execution of their official duties;
- willingly declare their interests and excuse themselves from any official action or decision-making process that may affect their interests; and
- accept the responsibility of equipping themselves for their career through further and persistent training and self-development (Cameron & Stone 1995:82).

Personal conduct and private interests

Officers or employees:

- are concerned with their dress and appearance and ensure that these are in accordance with the standards appropriate to their duties;

- at all times act responsibly as far as the use of alcoholic beverages or any other substance with an intoxicating effect is concerned;
- do not accept without approval, and never demand gifts or benefits related to the performance of their duties;
- do not use or disclose any official information for personal gain or the gain of others or publicly comment to the prejudice of their department;
- arrange their private activities so that they do not clash with their official duties and do not undertake without approval remunerative work outside their official duties;
- do not use their official position to seek or obtain any financial or other advantage for themselves, their families or any other person or organisation;
- are prepared to reveal their business or financial interests when required to do so in the official interest; and
- ensure that their personal financial affairs are essentially sound and do not without approval cede the right to the whole or any part of their salaries or any allowance payable to them (Cameron & Stone 1995:82-83).

2.13 Enforcing a code of ethics

The code of conduct/ethics for public officials in the South African public service is an indication of the important rating given by the government to the role that such a code can play as a measure against unethical behaviour 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 grounds (Cameron & Stone 1995:85). In addition to a code of

ethics, provision is also made in the doctrines of democracy for the conduct of public officials:

- it is generally accepted that public officials must promote the general welfare of the public in accordance with the policy goals determined by the legislator;
- public officials, according to the doctrine of democracy, in performing their duties, must 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 fulfil their activities effectively without wasting the resources of the community (Cloete 1995: 187-188).

Without measures in place, it is unclear how far an organisation or sector can be left to regulate itself properly. Club-like and self-regulatory constraints have mostly proven to be inadequate to protect the public interest, unless buttressed by law. In practice, the higher ethical standards encouraged by whistle-blowing need further legal underpinning. Unfortunately, in the past, the law offered employees who acted in the public interest no protection against victimisation through dismissals or otherwise. However, the Protected Disclosures Act of 2000 supported by leading businesses, unions and others, has since been introduced as a legal protection for whistle blowers.

In order to secure protection (injunction, declaration or compensation) from this Act, whistle blowers will have to show that they are being punished

because they have sounded the alarm on some serious malpractice. Moreover, they will have to pass several additional tests. It will have to be established, among others that they:

- did not act in bad faith;
- had reasonable grounds to believe the information to be accurate;
- did not make the disclosure for money or personal gain; and
- could prove that it would have been ineffective to have raised the matter internally (Camerer 1996:7).

It is hoped that the Act will become a real deterrent to misconduct. In theory, it will serve to deter malpractice and encourage organisations across the public, private and voluntary sectors to adopt more open and accountable cultures with codes of ethic that encourage the effective internal reporting of malpractice. Before the Open Democracy Bill made provision, among others, for transparency of Government actions; access to Government records; and the protection of whistle blowers. It is hoped that the protected disclosures will be a real deterrent to misconduct. It will serve to deter malpractice and encourage organisations across the public, private and voluntary sectors to adopt more open and accountable cultures with codes of ethics that encourage the effective internal reporting of malpractice.

2.14 The South African Legal Protection

In South Africa, specifically with regard to the legal profession, the Krugel Commission's report to the Transvaal Law Society found "that the present system of submitting complaints must be changed so that complainants can feel confident about lodging a complaint against an attorney with the law society' (De Rebus in Camerer 1996:8). This finding is supported by conclusions from question 1637 in the Radloff questionnaire where "half of the

respondents were reluctant to report unethical conduct to their provincial law societies because they believed that the law society would fail to take appropriate steps to curb such conduct, in fact 60% believed that the law society attempted to curb unethical conduct it would be unable to do so (Camerer 1996:5).

The fact that “law societies find it increasingly difficult to act, simply because nobody is prepared to lodge a complaint or take a colleague to task” is obviously a serious matter in need of urgent attention. It raises the question: “How can we expect the public to have faith in our profession’s ability to regulate itself properly if so many of us have doubts in this regard?” The fact is that the manner in which any law society is seen to exercise discipline against defaulting members, determines whether the public perceives it as being a self-protection outfit – a perception which would justify the imposition of discipline from outside – or a body that governs the profession in a manner sufficiently responsible to justify its being left to its own devices (Camerer 1996:8).

Various proposals have been made to address these issues, from a disciplinary body of retired judges to an independent legal services ombudsman. However, it is not the intention of this thesis to address these suggestions. Suffice it to note, before concluding, that the Law Society in Britain has recently announced the introduction of a confidential hotline to its Investigation Unit in cases where a solicitor or employee suspects that fraud may be being perpetrated by someone in his/her firm or by another member of the profession (see Sternberg in Camerer 1996:8). Could this be a solution for the South African legal profession?

2.15 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 the 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 the 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 et al 2001:127).

Political philosopher John Locke (Locke in Van Niekerk et al 2001:128) raised the central question: Under what circumstances and for what reasons should people obey the commands of government? The answer, he argued, must be based on the fact that people 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 people 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. Locke (in Van Niekerk et al 2001:180) put it as follows: “Whenever the legislators endeavour 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 (Locke in Van Niekerk et al 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 & Viljoen 1995: 236). Civil liberties guarantee individual freedoms of speech, religion, press, assembly, and petition against governmental interference. Human rights can be limited by government. Civil rights involve the protection of both groups

and individuals against state discrimination based on the suspect criteria of race, national origin, or gender (Van Niekerk et al 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 founding 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 et al 2001:128).

2.15.1 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? 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 trials); and
- protection of property rights.

Furthermore, governments should provide economic assistance, including equal pay for equal work, regardless of gender, 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 et al 2001:128).

2.15.2 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 are political and civil rights, including the right to life, freedom of speech and of association, and religious freedom (Van Niekerk et al 2001: 129).

Second generation rights are socioeconomic 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 socioeconomic 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 et al 2001:129).

Third generation rights have been identified more recently. These are rights that apply in general 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 et al 2001:129).

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

- harmonisation of all laws with one another and the Constitution, including religious 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 Convention for the Elimination of all forms of Discrimination Against Women (CEDAW) and the Child Convention; and
- establishment of a central legal drafting component (Van Niekerk et al 2001:129).

As in the case of ethics, the application of human rights involves moral and value judgements. The government is often confronted by different sets of values from different communities in society, which may be in conflict with national legislation and policy directions. 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 as the same as other diseases, because with other diseases people are not denied employment, are not evicted from family homes, 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 the 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 Advices, 1999: 41).

However, it should be kept in mind that human rights 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.

2.15.3 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 32 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 the country and affirms the democratic values of human dignity, equality, and freedom. The state must protect, promote, and fulfil the rights in the Bill of Rights, (Van Niekerk et al 2001: 130).

Any legislation passed or administrative action exercised that 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.

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;
- healthcare, food, water, and social security;
- children;
- education;
- language and culture;
- cultural, religious, and linguistic 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 ideologies, 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 an 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 enforced between states on the international level.

2.16 The right to distinguish right from wrong

As policies are developed in the field of whistle-blowing, the authorities should encourage serious concerns to be raised by individuals who identify themselves in confidence. One way to do this is to offer some protection to the

meritorious whistle blower. If this approach is taken then it will go a considerable way to addressing the legal and social problems that stem from anonymous informants. Firstly, anonymity is the preferred cloak of a malicious individual. Secondly, anonymous information is rarely admissible as evidence in the courts of any member state. Thirdly, anonymity suggests that the informant is in some way doing something morally or socially wrong when he or she sounds the alarm on wrongdoing in an institution. If policies on whistleblowing actually encourage anonymity then they will fail to give a clear and live message that frauds are prevailing.

Provided the authorities are able to receive the information in confidence – and are able to offer some protection to the source – then there is no reason why sources should not identify themselves to them. If the identity of the source is known then it is not directly relevant whether he or she acts with bona fides or in good faith. Situations may well arise where a source also has an ulterior motive in passing on the information. Where the source is known to the authorities then this issue can be explored and it is easier to establish whether there is any substance in the information. Additionally, investigations are clearly more efficient if the authorities know who their sources are and can contact them and this is not possible with anonymous informants. Encouraging and protecting people who identify themselves in confidence is central to the investigation as it is the accuracy of their information – rather than the purity of their motives – which is the most important issue to the authorities and the wide public interest in preventing crime.

By offering some protection against victimisation to whistle blowers, the authorities can only encourage people to identify themselves and thereby facilitate the effective investigation of the alleged irregularities. If sources do not identify themselves to the authorities then they cannot claim any protection that may be available. This is particularly important for employees as the protection of their identity cannot be guaranteed even if they remain anonymous: information provided by employees is often only known to a limited number of colleagues and through the process of elimination, the source can be identified by those suspected of malpractice. If the identity of

the source is not known then neither the authorities nor the law can offer them protection.

It is clear from the Protected Disclosures Act of 2000 that there is a growing recognition of the role of employees and citizens in helping to combat corruption. While this is seen as part of a development toward the responsibility of the individual and away from the idea that the state and its institutions can on their own protect the public interest, the debate about whistle-blowing is not without controversy as the next sections show.

2.17 Summary

This chapter focused on a conceptual analysis of the ethical dilemmas facing public officials when having to choose between right and wrong. Within the context of these dilemmas, attention was paid to democratic values, including responsibility and responsiveness, openness and transparency, representation, legitimacy and accountability. Under the same rubric, prescribed guidelines looked particularly at those guidelines derived from community values.

The theoretical approaches to ethics were identified as empirical, rational, intuitive and revelation theory. These were examined and discussed in turn.

The concept ethics was explored in detail. Definitions of ethics, values and morality were provided, and attention was paid to how these three concepts interact. The role of ethics in public administration was considered and the focus fell on ethics and the professions, the ethical behaviour of public officials, and the relationship between public officials and government ethics.

The conflict deriving from feelings of loyalty and requirements for confidentiality was identified as a major possible dilemma for the public official. The desire for conformity, which is part of being human, was also identified as a potential dilemma confronting the public official. The need to

establish appropriate infrastructure to ensure transparent and ethical governance was also discussed.

Manifestations of unethical conduct were identified. These include election fraud, official violence and institutional misconduct.

Statutory guidelines and codes of conduct, both nationally and internationally, were examined, before focusing on a code of ethics in the public administration. An indication was given of what such a code of ethics should contain and how its stipulations could be enforced.

The issue of human rights was also discussed and how these rights impact upon transparency, corruption and the need to blow the whistle on wrongdoing. Particular attention was paid to the obligations of government, the different generations of rights and the Bill of Rights as it appears in the Constitution of 1996.

Finally, the issue of individuals' right to distinguish right from wrong was briefly discussed, as well as their role in helping to combat corruption.

In the next chapter, corruption will be examined in detail, by focusing on what forms corruption can take on, its causes and conditions and the levels on which corruption may occur.

CHAPTER 3

LITERATURE STUDY: CORRUPTION AS AN EXTERNAL VARIABLE INFLUENCING THE WHISTLE-BLOWING PROCESS

3.1 Introduction

In the previous chapter, an in-depth, but general overview of ethics, morality and human rights was provided, serving as a framework within which the “grey areas” – where employees are unsure of the appropriate behaviour necessary to serve the public in an ethical public service – can be identified.

One of the objectives of the study as stated in chapter one is to compile a systematic exploration of conceptual knowledge about corruption, its different forms and the manner in which it manifests itself and to analyse these as important external variables that influence the process of whistle-blowing.

To fulfil this objective, various definitions of corruption will be provided and analysed in this chapter. Once a definition of corruption has been established, the various causes, manifestations and conditions in society that allow corruption to occur among public officials and political office bearers will be considered.

The causes and conditions in society conducive to the occurrence of corruption among 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 among political office bearers are also examined.

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

Other areas of enquiry include 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.

3.2 Background and context of corruption

Any aspect of weak public service ethics, not to mention criminal corruption, represents a challenge to the rational management of the service, however well established and secure its norms and procedures may be. Where a public service is in dramatic transition and hoping to establish a democratic alternative to an authoritarian political heritage, any unethical and criminal conduct is far more damaging because it helps to drain away public acceptance and legitimacy as soon as it may have started to build up. Therefore, issues of unethical conduct, mismanagement and maladministration – or what is sometimes referred to as corruption – have serious implications for the development of the post-apartheid public service.

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 OECD countries in 1999 (Puma Policy Brief 1998), 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 decentralised 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 et al 2001:122).

Corruption occurs therefore whenever people misuse their power in the exercise of their duties and make themselves guilty of behaviour that does not comply with prescribed rules and regulations, and which benefits the

individuals and is detrimental to a third party or general public (Du Plessis 1989:551-552). Corruption can also be defined in terms of the conflict between values that differ from culture to culture, when viewed against the background of Western and African cultures.

In the pre-democratic 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, totalling R56 million, were granted, for which loan agreements were not in place and for which no repayments were received. It was also found that, in departmental budgets, these amounts were not audited and authorised. The need for transparency in this example is obvious (Van Niekerk 2001:122).

Post-apartheid South Africa has had its fair share of reported cases of corruption in both the public and private sectors. Reports of alleged corrupt activity in the departments of Public Enterprises, Home Affairs, the Mpumalanga Department of Health and other provincial departments are indicative of the problem and challenges facing the government. In his 2001 Budget Speech, the Minister of Finance referred to corrupt activities that lead to the liquidation of Regal Bank, while more recent allegations of tax evasion by some companies amounting to millions of Rand are indicative of various forms of private corruption.

There is evidence that the problem of corruption in South Africa is often denied. The president frequently makes reference to the unacceptability of corruption in keynote speeches, often in relation to the sphere of local government. Notwithstanding the doubters, particularly in the media and among political opposition parties, the perpetrators of both petty and grand corruption are brought to book, and are often successfully prosecuted or disciplined.

The first glimpse of the truth through increased transparency often comes from someone inside the organisation involved. It may be passed to the press, a member of parliament, a pressure group or a regulatory agency. But however formidable these institutions' investigative skills, that initial inside information is crucial. Reactions to whistle blowers – whether they act anonymously or speak out openly – are often ambivalent. The person whom the public or the media see as having performed a heroic public service, in other eyes, will have been betraying the trust of colleagues or the institution. So it should be acknowledged immediately, that blowing the whistle might sometimes be the wrong thing to do. How many people would accept their own apparent failings being publicly exposed by a colleague who may have misread the evidence, or has made no effort to raise the issue with them first?

But when something is seriously wrong, when the public is put at risk, and when a conscientious employee has tried everything to remedy the matter from the inside, the issues become clearer. The overriding public interest may lie in protecting people's right to be told, and the whistle blower's right not to be punished for telling people.

3.3 Definition of corruption

As is the case with whistle-blowing, there is no universally accepted definition of corruption. The traditional definition – corruption is the abuse of public office for private gain – is now understood to be unbalanced, unhelpful and is largely discredited.

Different organisations engaged in combating corruption have therefore tended to focus on different forms of corruption (see box below). In the context of this chapter, corruption is understood to be an activity that involves two parties: the bribe maker (the private sector individual or organisation) and the bribe taker (the public sector official, politician or political party) who, driven by the prospect of making significant economic gains, engages in a 'win-win' transaction.

Box: No universal understanding of corruption

World Bank

corruption = “offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution”

OECD

corruption = “bribery of foreign public officials in international business transactions illicit payments”

European Union Convention on the fight against corruption involving officials of the European Community or officials of the member states of the EU

corruption = “deliberate action of whosoever promises or gives, directly or through an intermediary involving officials of the European Union or officials of Member States of the European Union”

Draft United Nations Convention against Corruption

corruption = “promising, requesting, offering, giving or accepting, directly or indirectly, of an undue advantage or prospect thereof that distorts the proper performance of any duty or behaviour required of the recipient of the bribe, the undue advantage or prospect thereof”

Council of Europe – Criminal law convention

corruption = “bribery and any other behaviour in relation to persons entrusted with responsibilities in the public or private sector which violates their duties that follow from their status as a public official, private employee, independent agent or other relationship of that kind and is aimed at obtaining undue advantages of any kind for themselves or for others”

(Cf. Dehn & Borrie 2001)

The statutory definition of corruption in South Africa is found in section 1 of the Prevention of Corruption Act, 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 favour or disfavour 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 favour of the designated party shall be deemed guilty of a corruptible offence.

The word “corruption” has a variety of meanings and beliefs. Besides including crimes and felonies, it can also be related to administrative misdemeanours such as bribery, deceit, falsification, embezzlement, forgery, theft, graft, patronage, nepotism and influence peddling (Joubert 1979:2). Klitgaard (1992C: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 of corruption.”

Heidenheimer (1978:21-22) views the following behaviour as comprising corruption: “bribery (use of a reward to pervert the judgement of a person in apposition of trust); nepotism (bestowal of patronage by 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) views 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 (1978:9) 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 "behaviour which deviates from the formal duties of a public role because of private gain-regarding pecuniary or status gain, or violates rules against the exercise of certain types of behaviour. This includes such behaviour as bribery, nepotism and misappropriation". The definitions of both Heidenheimer and Joubert relate to corruption occurring whenever public officials abuse their positions for their own personal gain, something that is out of context in relation to their public duties.

Heidenheimer (1978:21) sees corruption as being "behaviour which deviates from the formal duties of a public role because of private-rendering pecuniary or status gains; or violates against the exercise of types of private-rendering influence". Wronsley (1994:39), underlines this viewpoint by stating that "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 himself and/or others".

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 the 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 taking on any other form. The public official may arrange for advancement through a variety of corrupt practices, which include contributions to party chests, flattery of a superior or

relatives, or catering to 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 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 ...”.

In principle, whistle blowers provide potentially powerful mechanisms to deter bribery and corruption. Bribery and corruption are most likely to flourish where the likelihood of getting caught is low and the sanctions applied to those who are caught are insufficient. Protecting whistle blowers, and thus encouraging people to speak out, clearly increases the chance of detection. So long as sanctions are sufficiently severe, providing protection for whistle blowers should provide an effective deterrent.

3.4 Corruption and the interpretation of values and norms

However, corruption can also be defined in terms of the conflict of values and norms as they differ from culture to 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, the values and norms of kinship and reciprocity are found. Are these to be denied validity and the public official who fulfils their expectations to be considered corrupt? After all, “... in a given society, various kinds of norms operate, some congruent, others inconsistent with one another. Legal norms may conflict with moral, religious and cultural norms, so that a sample of behaviour defined as illegal may be acceptable using cultural standards” (Caiden 1977:302).

It can happen in certain traditions that public officials in South Africa, according to their values and norms, are 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 on 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 make it illegal and immoral are alien, imported or super-imposed. The individuals who assume a public role are torn between two social forces and values and norms in their world. The rational, impersonal and universal values and norms of the bureaucracy mean that a public official must accept that a public office is an arena of public trust, not a personal domain. It is thus essential for public officials to place national and community needs ahead of their personal and family interests, values and norms. However, the presence of strong kinship bonds will compel public officials to look after the needs of not only immediate family members but even an extended family system (Caiden 1977:303).

3.5 Causes and conditions conducive to corruption

Administrative corruption can take on many forms and can comprise, among others, the misappropriation of public money or stores; the acceptance of illegal gratifications in recruitment, transfers and promotions; irregularity in the granting of import/export licences; the underassessment of income tax or estate duty for pecuniary gain; and the intentional delay in the supply of tender forms to favour certain firms. Above all, corruption would entail the actual and unauthorised diversion of government funds to private hands (Hager 1973:201).

As mentioned, corruption is deemed to have taken place if public officials deviate from their public duties, and that this deviation is contrary to the interest of the public. Corruption occurs whenever public officials abuse their position for personal gain, totally out of context of their public duties. The situation is furthermore complicated by the presence of different values and norms prevalent in the society in which the public official operates. Furthermore, the common factor is that 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.

If large-scale socioeconomic or political inequalities exist in a society, corruption could be stimulated if the “have-nots” hope to obtain what the “haves” enjoy, at a too rapid pace. According to Hope (1985:2): “some Third-World nations have been patron-client regressing rather than progressing in terms of economic development. Public officials striving for high social status and to be counted among the ‘haves’ must resort to the instrument of ‘demonstration effect’ – administrative effect that entails conspicuous consumption of luxury goods that they cannot afford from their low salaries”.

3.5.1 Causes of corruption

The following aspects can cause corruption, according to Werner (1983:14):

- The presence of networks in society, which thrive at any level of 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 have 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-oriented society and the gap between desire and the means of fulfilment can also fuel corruption. People do not always want to wait for a certain object, so the desire to possess a certain object can be of such magnitude that they go over to deviant behaviour to achieve their 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 lifestyle manifestly different from that of an average person, for example, buying an expensive car and wearing tailor-made clothes (Klitgaard 1992b:81).

- 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 the disproportionate impact of government on 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).

According to Hope (1985:3-4), administrative corruption in developing countries thrives as a result of the following causes:

- Lack of leadership and discipline shown by the politicians tends to be more widespread where there is significant political corruption and/or where the idea of the national interest remains weak.
- The expanding role of state activity in 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.
- The absence of a public service work ethic may also result in administrative corruption. Public officials in 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. The Congo serves as an example 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 unauthorised pauses and loitering. In the Congo, when one has submitted a dossier, one must intervene many times at every administrative step" (Oiwu 1989:217).

Corruption can also be caused by the divergence that exists between government and society, where citizens of a country can find the 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, in order to continue in business, may buy the right to continue a lucrative business, knowing full well that to continue in business would be contrary to prescribed laws. Furthermore, prohibition, vice and illegal gambling have become associated with the prevalence of police corruption with McMullan being of the opinion that bribery and official extortion are fostered by this government/society divergence (Klitgaard 1992c:87).

With the above as background, some individual causes of corruption will be discussed, including poor remuneration of public officials, and power and corruption.

3.5.1.1 Poor remuneration of public officials

A corruption syndrome can develop in situations 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 its 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 while always operating within the letter of the law thereby doing nothing for which public officials could be criminally prosecuted (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. This may also depend on whether the leaders themselves are involved or not (SAPEM June 1995:6). In one African country, it was found that health officials were selling more than 95% of all hospital drugs through illegal channels. When the attention of the authorities was 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 the collapse of the health system as that was the only way through which health workers could support 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 their wages not being sufficient, public officials thus have to seek alternative sources of income. On the other hand, individuals exposed to bureaucratic and inefficient services will rather pay bribes to get them than wait indefinitely (SAPEM June 1995:6).

3.5.1.2 Power and corruption

Another cause of corruption can be found in the aspirations of individuals for high office and the desire 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 (Hilliard 1992:10). The type of political system prevalent in states could also be conducive to corruption, especially governments 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 a government from office that has firmly entrenched itself (Hilliard 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 licences 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”.

3.6 Conditions and causes of corruption among public officials

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

3.6.1 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 administration, especially if public officials in senior positions abuse their authority to their own advantage. This form of self-enrichment could be exacerbated by the following factors:

- impatient ambition (a public official who always wants promotion and other rewards immediately);
- exploitation of political status in the hierarchy;
- ignoble 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 (Hilliard 1994:217).

The corruption of public officials by private interests is usually very subtle: favours by the public to officials put officials under obligation and they gradually substitute their public loyalties for loyalties to those doing them favours. It is quite possible that officials believe and claim that their benefactors (Douglas 1953:44) do not influence their decisions.

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

3.6.2 Patronage

Patronage basically entails the assignment of government positions to political supporters. Tolchin and 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 awarded by the government on the basis of partisan support and not on the basis of merit. It has the following characteristics:

- 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 for contracts.
- Patronage can be administered selectively, that is to say on a case-by-case basis.
- For the political actor the rewards are power and the retention of office, while the non-political actor will enjoy money in the form of contracts or jobs.
- Patronage can be carried out both by the political actor and the non-political actor who possess official status and adequate resources (Gibbons 1976:9).

In the United States of America, despite the use 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 ties are more important than the ability to perform the job (Eisenstadt in Lorch 1978:37). Army and police jobs continue to be a source of patronage in Africa. In Uganda, Idi Amin stayed in power by giving army and secret police appointments to members of groups who previously enjoyed little access to such jobs – such as his own Kakwa tribe – to the detriment of the Ancholis and Langis tribes, who had formed the traditional backbone of the Ugandan army up to that point (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 a patronage system, government jobs can be a source of long-term 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 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.

Giving undue preference to 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 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 were 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 (Hillary in Sylvia 1989:219). 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 after it has won an election because once a political party is in power, it is able to dispense patronage to achieve its political objectives (Marais 1990a:111).

3.6.3 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 victimisation of another person without taking cognisance 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 misuse 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 qualifications – are supposed to apply. In Africa, nepotism and kinship form an integral part of corruption. According to Meister (1981:11-12), tribally-inspired nepotism promotes corruption: “... the solidarity of tribalism tends towards exaggeration. 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 primarily the popes who made use of the practice of nepotism by appointing relatives to senior positions such as bishops, cardinals and princes (Marais 1990a: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 are limited as a result of 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 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 others (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 victimisation of an individual or individuals. The snowball effect of victimisation could impair the esprit de corps and quality of public administration.

3.6.4 Bribery

San Pasha, the Ottoman treasurer in 1717, had the following to say about bribery: "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" (quoted in Alatas 1990:193).

Bribery concerns the offering of money or other inducements to secure a 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; to augment insufficient remuneration; as well as other immediate benefits that

can accrue as a result of authority to manipulate the system. Bribes will be more easily but not exclusively accepted if salaries are low. The risk might be worth taking despite running the risk of being caught. Furthermore, the strength of a 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).

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 preference to certain individuals in return for a certain service or rewards that have a large and deliberately unspecified value (Heidenheimer et al 1990:149).

Bribery appears to have taken place in the Department of Public Works in Mmabatho where a public official stands accused of taking bribes before the approval of contracts. It was alleged that a public official was demanding R6,000 before awarding the contract for the supply of gas heaters to certain hospitals in the area (Mail 18 November 1994). At Lagos's Murtala Mohammed international airport in Nigeria, visitors are informed by immigration officials that one page of the passport is missing – the missing page being a US \$20 bill. In Mozambique, if someone is involved in a road accident, it is necessary to offer the traffic officers a bribe if you wish to obtain the required police report needed by your insurance company. Although the US \$5 bribe might seem insignificant, for the receiver it is crucial, as salaries in the police force are so low that officers cannot survive without taking bribes. People 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 people in the position to decide whom to employ, will give preference to their kinsman but only after they have agreed to hand over a part of their pay (Bekker 1991:58-59).

3.6.5 Ghosting

This manifestation of corruption occurs whenever 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:

- 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 pockets 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 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).

In post-apartheid South Africa, ghosting is still an important corrupt practice, whereby officials and others manage to draw into their control the salaries, pensions and other benefits of non-existent public service employees, mainly at provincial government level. In 1996, for instance, the South African public service was reported to comprise around 1.2 million employees (Cape Times 19 December 1996), which the government wanted reduced. This figure should be treated with caution, however, given the alarming number of ghost workers subsequently detected to have been on payrolls in some provinces

around that time (Daily Dispatch 18 December 1997). Some provinces, such as Eastern Cape and Mpumalanga, have been particularly associated with this practice: the post-1994 integration of different administrations brought this established practice to more national attention. In 1999, the Eastern Cape government threatened severe penalties for those stealing money by possessing as many as four faked identity documents to draw four pensions from the welfare department. Since then, numerous rumours and public revelations have appeared in other provinces, as well as in the national sphere.

3.6.6 Bid rigging

Bid 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 cooperation (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).

A further 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 female 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 contractor turned out to be the wife of the public official in charge of the tendering process (Pickard Report 1991).

3.6.7 Graft

Graft occurs whenever public officials demand payment for rendering a public service, which they had to perform as part of their duty. In cases of graft, the public official is the initiator and not the target of demand for illegal rewards (Gibbons & Kowal 1976:10-11).

This manifestation of corruption occurs when public officials make use of advance and confidential information for his/her own benefit (Gildenhuis 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 graft works: a political party, of which the public official is a supporter, enjoys power in 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 centre in a certain area. The public official locates the designated area and buys up all the land in the neighbourhood. The city council makes public its plan to erect an amusement centre and, consequently, there is a rush to obtain the land recently purchased by the public official. The public official, in turn, then sells the land at a good price and makes a profit on the investment (Riordon 1990:95).

Another example could be the establishment of a company whose directors are members of the public official's family. Tender specifications could be set out in such a way that it ensures 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 (Gildenhuis 1991:46).

A further example of outright graft is the flight of capital from Mexico. According to Pomeranz (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 suppliers 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.”

3.6.8 Kickbacks

It is difficult to envisage any manifestations of corruption to take place without the cooperation of a public official who will receive compensation in the form of cash kickbacks, thereby profiting at the expense of the taxpayer (Gildenhuis 1991:47). Andreski (1978:64) sees this manifestation of corruption occurring as follows: public officials who possess the necessary 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, with a portion of that payment being kicked back to the public official. The practice of getting cuts on government contracts substitutes 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 in 1992, a publishing house called Qualities Publishers was favoured by senior officials of the department and placed orders of several million Rands with this firm. At the same time, there was at least one case of a “kick back” given to a departmental official. This amounted to about R12,000, which was to have been distributed among the department’s personnel.

3.6.9 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 & Payne 1980:16-

17). The official's obligation to respect the political process may conflict with his or her view on how the objects of policy-making are treated (Fleishman & Payne 1980:16-17). In other words, the dilemma of the public official is the clash between his view of the public interest and the requirements of law (Fleishman & 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 public 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 its implementation. If they set strategies for execution, determine priorities, establish organisational 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 & Payne 1980:10).

The new political dispensation in South Africa, for example, has elicited different views from leading public officials. One leading official sees the implementation of the proposed reforms as problematic regarding the availability of finances (Croeser 1983:90), while another sees it as implementable especially regarding personnel provision and utilisation (De Beer 1983:106; see also Bain 1984:54-5).

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 specific way (Fleishman, Liebman & Moore 1981:109).

Because public officials are expected to serve their political masters (the minister 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. If they merely try to please their superiors, then it should indeed be asked whether they would be able 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 be pointed out, however, 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 1984a: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.

3.6.10 Information leaks

Official information is often of 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 individual, improper monetary gains. Leaking official information at a date prior to its public announcement 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 or her official obligations (Fleishman, Liebman & Moore 1980:27-28).

Personal views of the public good may be directly opposed to judgements 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 & Payne 1980:39), i.e. a clash of values.

3.6.11 Pressure group influence

The demands of pressure groups (such as trade unions) usually place personal interest above national interests. In times of poor economic conditions (recession, abnormal inflation) it could happen that pressure groups, in their endeavour to promote the well-being (salaries, promotion, prevention of retrenchment) of their members, ignore the short or long-term economic consequences of their demands.

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 cycle is complete – resulting in economic chaos and disaster (Hanekom in Hanekom & Rowland & Bain 1986:159).

3.6.12 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, among others:

- 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, or by the code of the society (Hanekom in Hanekom et al 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 leave privileges, extended tea breaks and the violation of office rules in general.

3.7 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; politicisation of the public service and political

interference; excessive administrative secrecy; and vote buying. It is essential to show these causes and conditions of corruption among political office bearers in order 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, some of these conditions discussed below, can also be associated with public officials. Each of these conditions will now be discussed and practical examples will be given of the more common conditions of corruption.

3.7.1 Relationship between appointed public officials and elected political office bearers

It is important to recognise the fact that, in the view of the public, every appointed public official represents the government of the day; not only the department or office where he or she is employed, but the government as a whole. This view places a strain on appointed public officials. 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 causes of corruption.

3.7.2 Conflict of interest

Kernaghan (in Gibbons et al 1976:11) defines conflict of interests as “a situation in which a public employee has a private or personal interest sufficient to influence rewards for such behaviour 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 of interests include its narrow scope of involvement (individual involvement), the selective nature of inducements, the rewards in monetary forms, and the official status of the political actors. 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 is particularly accentuated in public administration because the manifestation of public trust is of such importance. As such, it is possible for public officials to find themselves constantly in situations where public objectives and private goals, as well as the means to attain them, are in conflict (Gibbons 1976:1-12).

3.7.3 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 the ineffective scrutiny of executive action thereby giving public officials and political office bearers the impression that, as the public shows little interest 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 media to monitor the action of government closely and to bring to the attention of the general public all incidents of deviant behaviour on the part of the government. Unless the media fulfil the function of watchdog over society, public officials and office bearers will operate without fear of detection and embark on deviant behaviour at the expense of society. However, the media can only be successful in their function as watchdog for society, if they enjoy the freedom to operate. As soon as restrictions are placed on their behaviour, the media will not be able to expose corrupt behaviour by public officials and office bearers successfully.

Since public officials occupy positions of trust, it is only natural that the public should be interested in their ethical behaviour and official conduct. It is, however, also true that the interest of the public waxes and wanes (Armstrong & 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 the official behaviour of appointed public officials. When it becomes general knowledge that public officials have acted unethically, for example, in the utilisation of state monies, there is usually an outcry for matters to be rectified, but the outcry subsides in time and only sporadic references are made to the misconduct. 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).

In spite of the improvement over the years in the ethical standards of public officials, the public and the media are not necessarily trustful of the public service (Armstrong & Graham 1975:5). Ethical behaviour and professional competence cannot be divorced (Armstrong & Graham 1975:6). Adhering to higher ethical standards of behaviour, but conducting the public's business in an incompetent manner, will definitely not satisfy the public or promote their 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.

In a long series of cases under the civil law of confidence, the courts in Britain have acknowledged that the public interest sometimes requires the disclosure of confidential information. When the Spycatcher case reached the House of Lords, Lord Griffiths (Public & Private Concerns 1995:1), ruled: "theoretically, if a member of the [security] service discovered that some iniquitous course of action was being pursued that was clearly detrimental to our national interest, and he was unable to persuade any senior member of his service or any member of the establishment, or the police, to do anything about it, then he should be relieved of his duty of confidence so that he could alert his fellow citizens to the impending danger(Public & Private Concerns 1995:2)".

Yet even in such cases, where the law may uphold the right to publish, it frequently does not protect the discloser from reprisals. Neither government

nor the private sector finds it easy to tolerate those who speak “out of turn”. They are likely to be dismissed, or even prosecuted, however serious the abuse they reveal.

When the new Official Secrets Act was introduced in Britain in 1989, ministers resolutely rejected a public interest defence to allow the public official who may have released information, or the journalist who published it, to defend themselves on the grounds that the disclosure was justified. The then Home Secretary, Douglas Hurd, repeatedly claimed that such a defence was without precedent in criminal law. In fact, the precedents not only exist, but are found in the Home Office’s own legislation – notably the obscenity laws, which contain precisely such a “public good” defence. The statute books are peppered with some 250 additional legal penalties for disclosing information. Many protect individual privacy but others criminalise officials for daring to disclose even safety information in dangerous products. Again, no public interest defence is available (Public & Private Concerns 1995:3).

Reviewing the literature of disclosing information it is evident that in many countries the contracts of both public and private sector employees increasingly contain gagging clauses, making the unauthorised disclosure of any information to anyone a disciplinary offence, which could lead to dismissal.

Equally worrying is the trend for confidentiality clauses in out-of-court settlements. The victims of unfair dismissal, sexual discrimination or dangerous consumer products may get their compensation – but only in return for a binding promise of silence. This may protect a negligent company’s reputation. It also allows it to buy off the strongest claimants, undermining others by denying them the previous evidence.

Journalists sometimes risk imprisonment to protect their sources’ anonymity – a basic requirement if those with evidence of wrongdoing are to come forward. Here the government operates a curious double standard. The legislation in some countries, which allows the public to see official information, also permits public authorities to conceal the identity of their sources. A similar

principle applies during legal proceedings, where public interest immunity certificates often protect the identity of certain kinds of informants.

3.7.5 Inequality prevalent in society

It is also said that corruption is 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 that they practice. It becomes the norm to protect people's own positions by subverting the government, thereby ensuring that no one can use the government against their wealth. Exclusionary inequality in political power and authority can also exist on the basis of criteria such 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 and economic power to the detriment of the black majority.

3.7.6 Politicisation of the public service and political interference

Especially in developing countries, it has been found that on gaining political independence, the colonial public service and administration were transformed from an emphasis on the sovereignty of politics over public administration. Political dominance over administrative values resulted in a style of political behaviour that was highly politicised – 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 (1990a:297) stating that "politicisation of the public service has come to stay and moreover it will also 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".

Governments, where political power is either highly centralised 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 undertaken 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 (Gildenhuis 1991:55). Public stores and assets and the services of officials could be used illegally or for private purposes. This could entail the utilisation of public resources (stores and labour) for maintaining the private property of officials or political office bearers. It can even happen that political office bearers could make use of officials in political campaigns during working hours. According to Mikesell, "... these activities involve straightforward stealing as individuals use assets owned by government without payment" (as quoted in Gildenhuis 1993:498).

3.7.8 Excessive administrative secrecy

An area that lends itself to the creation of situations and actions, which could cause major ethical dilemmas, 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 what 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. 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). The then leader of the official opposition reiterated this concern. At a later stage, in a somewhat different manner, the then prime minister 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 (Sunday Times 21 December 1975).

Political and government secrecy consists of the process of secreting information about political matters especially when that information has significant implications for rival parties or the general public. When it comes to foreign and military matters, governments usually refuse to divulge how decisions relating to such matters had been arrived at, subjecting them to the strictest secrecy. Be this 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 in order 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 media to distribute information about public sector action, restrictions on 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 behaviour. 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 (Gildenhuis 1991:60-61).

3.7.9 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 & 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 ..." (Machiavelli in 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 public officials to use their discretion. When faced with alternatives, the choice of the public official poses an ethical problem: the choice made may be acceptable only to 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 aggrandisement, 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.

3.7.10 Vote buying

Vote buying is an act of solicitation of a citizen's vote in exchange for some reward of monetary value. Most of the characteristics associated with patronage also have a bearing on vote buying but with the following distinctions:

- vote buying only takes place during the electoral process; and
- vote buying is initiated more often than not by a party rather than through a political competitor (Gibbons & Rowal 1976:9).

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

- miscounting votes;
- destroying the 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 (Thio 1983:44).

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 made to representatives. As such, other benefits will have to be provided as 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 1978:75-75).

3.8 High-level and low-level corruption

All the above 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. For example, the decisions taken by a cabinet minister are of much more importance than those taken by a lower-level public official (Rohr 1978:175-176).

Corruption at the higher levels of government can involve corrupt behaviour by cabinet ministers, judges and ambassadors. Such corrupt behaviour could lead to a reduction of public confidence in government action and of public willingness to trust government departments with substantial authority or funding (Nice 1986:287). In Zimbabwe, a high-level corruption racket was 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 profits thereby cashing in on the shortage of vehicles prevailing in Zimbabwe (Meldrum 1989:37).

Public officials on 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 contractors could be high enough for them to appreciate any excess over costs in the form of bribes. Approval of budgets and output levels that maximise 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 officials 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, then 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 organise their departments so as to function inefficiently thereby ensuring their own income – more money, more efficiency (Rohr 1978:67-69).

Public officials on 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 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 ruthlessly and effective programmes developed to end the occurrence of corruption, it will inevitably spill over to other spheres of society.

3.8.1 Spillover effects

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 :

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

- suppression of the opposition contributing 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 social strain and the prevention of cohesion;
- the prevention of policy changes, particularly where this works against immediate market consideration;
- the blocking of administrative reform, thereby making deleterious *administrative practices such as induced delays, profitable*;
- the diversion of public resources, as well as the contribution to a situation of private affluence, public squalor, especially serious where affluence is confined to the few;
- systematic corruption not being limited to a special case; it has an accumulative effect upon public perceptions and expectations, which subverts trust and cooperation far beyond the impact upon the individuals *immediately concerned*; and
- systemic corruption not being confined to poor, developing or modernising countries, but found in all organisational societies (Caiden 1977:307-308).

Three spillover forms are now discussed below.

3.8.1.1 Leader-follower spillover

Leaders of society play a major and permanent role in shaping public opinions and social behaviour. Whenever corruption manifests itself among 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 that tends to erode the moral base of law and can provide an ideal opportunity for other kinds of offenders to rationalise their conduct. It is thus clear that manifestations of corrupt behaviour among leaders – whether by excessive use of rewards or by massive abuse of the system – will inevitably filter down and be emulated by members of the leaders' organisation or department (Werner 1983:149-150).

3.8.1.2 Dimensions of corruption spillover

Manifestations of corrupt behaviour among the upper strata of public officials are the most difficult to detect because these are petty and borderline types of corruption, as neither the public nor public officials regard them as being punishable. Although every code of law contains definitions of corruption, it also makes provision for extenuating circumstances. 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 legitimisation of other types of corruption. As such, it would become more difficult to define what constitutes corruptible behaviour resulting in a further momentum of spilling over being established “while corruption is psychologically condoned or rationalised because it is so prevalent. By attributing little or no importance to a corrupt act, trivialisation and rationalisation function as a self-perpetrating mechanism” (Werner 1983:158).

3.8.1.3 Institutional spillover

Effective institutional corruption will reproduce itself when, for example, aircraft manufacturer A continuously loses tenders or contracts to aircraft manufacturer B because of an unwritten agreement with influential public officials. A is thereby forced to follow suit if the aircraft manufacturer intends staying in business. Corrupt leaders could allow their corrupt behaviour to spread from institution to institution. Corruption can become so regularised and institutionalised that organisational structures actually protect the perpetrators of corruption, while at the same time penalising those who live up to the old norms. Employees thus protect and cover up for on another and eventually everybody is engulfed in an administrative culture that tolerates the fruits of corruption (Carina 1995:15).

3.9 Summary

This chapter aimed to explore the concept corruption, its different forms and the manner in which it manifests itself and to analyse these as important external variables that influence the process of whistle-blowing. Firstly, the background and context of the phenomenon of corruption were provided. The difficulties that arise from the lack of a uniform understanding of the concept were examined and how this impacts on the whistle-blowing process.

A connection was then made between corruption and the interpretation of values and norms. This interpretation was identified as one of the major dilemmas facing public officials when having to choose between or judge right and wrong conduct.

The general causes and conditions conducive to corruption were studied. These include the poor remuneration of public official and the relationship between power and corruption. Subsequently, the causes and conditions of corruption among public officials were explored in greater detail. Attention was paid to greed, patronage, nepotism, bribery, ghosting, bid rigging, graft, kickbacks, policy dilemmas when required to do something that the public official feels is wrong or does not see as being wrong, information leaks, influence from pressure groups and other problem areas.

The conditions and causes of corruption among political office bearers were also examined. These included the relationship between appointed public officials and elected political office bearers, conflicts of interest, the lack of public interest, prevailing inequality in society, the politicisation of the public service, political interference, excessive administrative secrecy, the problems posed by administrative discretion, and vote buying.

Corruption was also characterised as either high-level or low-level and the spillover effects that result from both were identified, including leader-follower spillover, the dimensions of corruption spillover and institutional spillover.

In the next chapter, the strategies and instruments to combat corruption and promote the disclosure of suspected corruption will be examined. The focus of this chapter is twofold: firstly, the spotlight will fall on the global drive for the institution of national integrity systems, and South Africa's progress in this regard, and secondly, attention will be paid to legislative and other measures already in place in the country to address both corruption and whistle-blowing.

CHAPTER 4

STRATEGIES AND INSTRUMENTS TO COMBAT CORRUPTION AND PROMOTE DISCLOSURES OF CORRUPTION

4.1 Introduction

This chapter focuses on fulfilling the objective to examine and analyse strategies and instruments, both national and international, to combat corruption and promote the whistle-blowing process. After providing a general background to indicate that a combination of different strategies, measures and instruments should be in place to combat corruption effectively, the notion of national integrity systems and their value both nationally and internationally are examined. The progress that the South African government has so far made in establishing such a system is described and analysed. The second half of the chapter is devoted to the legislation in place to combat corruption, specifically through protecting the disclosures made by whistle blowers.

4.2 Background

If the task to fight corruption and promote disclosures of wrongdoing is to be effectively executed, a combination of different strategies, approaches and measures must be in place. Corruption began to surface in the 1970s as a topic of scientific inquiry, and a debate ensued about the most effective measures to contain its spread. The debate continues to this day. A range of ways to combat and prevent corruption has emerged and has been advocated specifically for adoption in the developing world by foreign governments and their donor agencies. Most of these had evolved through the efforts of Transparency International, and later the World Bank and the United Nations.

Apartheid in South Africa – until the early 1990s and especially through its apartheid homelands policy – offered a unique environment for certain forms of corrupt practices to flourish in the presence of inadequate checks and

controls. The most significant year in the history of South Africa thus far was 1994, as the country made its transition from apartheid to democracy. The past decade of democratic rule has also ushered in new and far more sophisticated forms and types of corruption than ever seen before in South Africa, much to the dismay of the law enforcement agencies that have not been fully prepared for such a development. Organised crime has made increasing gains through its activities, as a culture of lawlessness seems to take root in South African society, thus making it an even more fertile ground for corruption to succeed.

If the perception that corruption has been on the increase since 1994 were true, so too was the determination of society, particularly the national government, to take steps to remedy the situation. As President Mandela began to make way for his successor at the end of his term of office, the first attempts to establish a plan for a national anti-corruption strategy began to emerge within government. This involved consultations with stakeholders in and outside the public sector and with international partners, as well as the introduction of several measures that culminated in the adoption of legislation in 2003 to attempt to outlaw corruption in most of its overt forms.

4.3 National integrity systems

From the debate and discussions within the Transparency International movement, the concept of a “national integrity system” emerged during its early years to improve standards of governance (Pope 1996:6). This holistic system was designed to promote transparency and “horizontal accountability” in all spheres of the public sector, and required the active participation of civil society and a decisive role to be played by the private sector. It was to act “as a practical way to avert the damage which corruption causes to the public interest and as a way of fostering an environment in which the quality of decision making is heightened” (Pope 1996:6). This approach was framed within the mainstream development agenda of the time, which prioritised the interests of the poor and marginalised in the context of an enabling state. It saw corruption as an obstacle to this goal. Its use among anti-corruption

activists, governments, international institutions and aid donors had to be adapted to suit a country's socioeconomic context and institutional arrangements, as the process of reform was itself often subject to manipulation for corrupt purposes. It was therefore necessary to allow for considerable flexibility in seeking to implement the national integrity system within the unfolding development shifts of a given country so that it did not indirectly create more opportunities for new corrupt actors to stake their claim in the changing system.

The framework created by the international policy context in response to the challenges posed globally by corruption, among others, requires sovereign states to comply with international conventions and protocols. Instruments dealing with corruption serve a useful policy purpose for developing nations that rush to keep up with their peers through signing such declarations.

Modern government operations have to be transparent and accountable, but in many countries in transition to democracy, as well as in some developing countries, autocratic rule has remained the order of the day. Against such a system of autocracy, another was possible where power would be shared, no single person would enjoy a monopoly, lines of horizontal accountability would be clearly drawn, and a culture of transparency would define its character. Such a "virtuous circle" is where "each actor is both a watcher and is watched, is both a monitor and is monitored" (Pope 1996:33). In this system, watchdog bodies and agencies of restraint exercise a careful check on the president and the executive, parliament, the courts, financial institutions, the media, the public service and other institutions of government with an appropriate role identified for civil society and the international community. Each one of these entities, including the watchdog agencies, constitutes a pillar supporting national integrity. The period of transition from one system to the next can be quite slow and fraught with many obstacles, but the aim must be to make corruption a "high-risk" and "low-return" activity that can be prevented, instead of relying on law enforcement after the fact (Pope 1996:33).

Dependence on one part of an integrity system must be avoided, while gaps and weaknesses in the system must be addressed in an ongoing way. Corresponding practices such as fair elections, conflict of interest rules, public service ethics, access to information and whistle-blowing legislation, among others, should be included in the system to support its pillars.

Since its formation, much of Transparency International's work has been to promote the concept of a national integrity system as an effective way to combat corruption and to promote efficient and effective government that serves the public interest. Different areas were encouraged to cooperate as stakeholders in developing the plans for an integrity system and achieving improved quality of life, rule of law and sustainable development. They were to be interdependent with their collective efforts contributing to a coherent approach. In 2001, Transparency International used the concept as an audit tool to assess the individual performances of 20 countries in terms of their own unique integrity systems (Doig & McIvor 2001:12). It was possible to evaluate "specific pillars in terms of their centrality to the working of an NIS and the added value of pillar interaction both in terms of addressing corruption and the wider NIS goals" (Doig & McIvor 2001:12). The world's renewed fight against corruption since the 1990s was now accompanied by the creation of internationally accepted legal standards of conduct that would identify in future those countries that shared the political will to fight against corruption.

4.3.1 United Nations Code of Conduct for International Public Officials

Part of any national integrity system is the accession to international conventions, treaties and agreements focused on a specific issue, such as corruption. When the South African government began contemplating action against corruption for the first time in 1997, it was against a background of challenges posed by new international instruments that required consenting nations to agree to undertake a series of reforms to contain the spread of corruption. One of the first was the UN Code of Conduct for International Public Officials that was adopted in 1997 to provide member states with a "tool to guide their efforts against corruption through a set of basic

recommendations that national public officials should follow in the performance of their duties” (Country Corruption Assessment Report in Bahlia 2005:191). This was followed by the Declaration against Corruption and Bribery in International Commercial Transactions and the adoption in 2000 of the UN Convention against Transnational Organised Crime, which included several provisions related to corruption. These initiatives paved the way for further discussions among member states, including South Africa, on the need for an effective international legal instrument against all aspects of corruption. After two years of negotiations, the UN Convention against Corruption was adopted in Mexico in December 2003, thus creating “the first global instrument embracing a comprehensive range of anti-corruption measures to be taken at the national level” (Rooke 2004:111). A wide range of measures to prevent and combat corruption are proposed, which lead Transparency International to conclude that “many countries will require considerable help to take the necessary steps to implement it” (Rooke 2004:111).

4.3.2 The Organisation for Economic Co-operation and Development (OECD)

The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions was adopted in May 1997 by 29 member countries, and came into force in February 1999. Though South Africa is not a member, it had already begun a process of accession to the OECD Convention by early 2004, which is open to any country seeking to comply with its provisions (OPSC/CD:PEHRR in Bahlia 2005:198).

This would ordinarily require that a ratifying country enacts laws that make foreign bribery a crime. Transparency International found by 2003 that “even though most laws have been in place for several years, most countries have taken little or no enforcement action” and warned that “there is serious danger that the Convention will fail to become an effective weapon against international corruption” (Transparency International 2003:1)). Transparency International identified the following as one of the most common causes for the lack of enforcement of the OECD Convention: investigating and

and a framework for implementation” (Bahlia 2005:112). The primary of the successful fight against corruption was to be the restoration of the moral fabric of South Africa. By July 1998, the committee produced a report that included a series of recommendations for the minister’s consideration. The proposals were included in a cabinet memorandum that was approved on 23 September 1998 and constituted the first set of policy guidelines for implementation in the fight against corruption (Bahlia 2005:112) (see appendix 4).

The effective investigation and prosecution of corruption were considered paramount in the proposals. The need for a feasibility study on the issue of a single anti-corruption agency and the rationalisation of existing agencies was also identified. The need for new legislation, a new strategy with due consideration to public service corruption, a statement of political intent from the president, a national summit, business cooperation, and greater levels of accountability from public officials were all listed for attention, as well as progressing the fight against corruption.

4.3.5 National summit

The National Anti-Corruption Summit, which took place in April 1999, was to become the most critical milestone in the country’s short struggle against corruption. It was a struggle mainly inspired by President Mandela, who found support among most of his cabinet ministers, other senior officials in the public sector, community and religious leaders, and among the rank and file of all South Africans. A new president was to assume office soon after the summit, but a collective vision, tentative strategy and national consensus to combat corruption were in place.

The summit was held in parliament, supported by funding from the European Union. The government sought to “develop a clearly articulated national strategy to fight corruption in all sectors of society”, to obtain a commitment to this strategy, and to recommend legislative measures where necessary (Sangweni & Bahlia 1999:4). The resolutions (see appendix 4) focused on many issues, including the need for legislative review, whistle-blowing

mechanisms, support for open democracy, special courts, blacklisting, a national coordinating structure, hotlines, disciplinary action, ethics, codes of conduct, education and training, research and analysis, and the need for a sustained media campaign.

4.3.6 National forum

The UN's Global Programme Against Corruption requires a national integrity steering committee or its equivalent to be formed as "the watchdog and mechanism to launch, implement and monitor a country's national integrity strategy" (Anti-Corruption Tool-Kit 2001:74). It was thus expected that the national summit would recommend a cross-sectoral approach to monitoring the implementation of the anti-corruption strategy. The Public Service Commission was mandated to establish a cross-sectoral task team to consider proposals that would lead to the eventual creation of an anti-corruption entity as had been decided at the summit. This began in August 1999 with representatives from state departments, parliament, constitutional oversight bodies, parastatal institutions, civil society, business and organised labour meeting regularly in Pretoria (OPSC/343/127 in Bahlia 2005:115).

A National Anti-Corruption Forum was consequently formed and formally launched by former Deputy President Jacob Zuma on 15 June 2001. While this institution has remained largely ineffective, its creation was symbolic of the national consensus on the urgency to combat and prevent corruption (Bahlia 2005).

4.3.7 Institutional capacity

The National Summit endorsed a concern to “improve the capacity and efficiency of investigation and prosecution of corruption” (see appendix 5). In addition, the summit found that such action should be facilitated by the establishment of special courts. When the Public Service Anti-Corruption Strategy was formulated, this strategic consideration was extended to include “national corruption fighting institutions and departmental institutions” (Bahlia 2005:148). However, the emphasis rather fell on improving the specialised capacity of court officials to address corruption cases, and hence no special corruption courts have been established to date. Commercial crimes courts have been established to curb fraud with support from Business Against Crime, a private sector network that operates in partnership with government.

The Auditor-General, even though this agency does not have a mandate to fight corruption as a primary concern, performs an important audit function that indirectly helps to discourage corruption. The Constitution requires that the Auditor-General conducts audits of government departments and other public institutions and reports to parliament about the extent to which these entities have managed their financial affairs according to legalised prescriptions and generally accepted accounting practices.

Government departments also took the initiative to confront corruption within their own ranks. In April 1998, the Department of Home Affairs, after cabinet approval, instituted one of the first anti-corruption units to fight internal departmental corruption. Many other departments of government followed suit, often with the assistance of the SAPS and the National Intelligence Agency (NIA). Anti-corruption hotlines, increased investigative capacity and better audit control became the mainstay of these units. In a study by the Public Service Commission, it was noted: “The establishment of a central anti-corruption unit to be utilised by more than one department, and accessible to all members of these departments, would be cost effective and also an extremely efficient way of ensuring that anti-corruption is dealt with by the most appropriately skilled individuals” (Bahlia 2005:149). This

recommendation was based on the fact that many departments were not sufficiently resourced to fight internal corruption effectively. Since this was unlikely to change in the foreseeable future, a more centralised and integrated approach was required.

This was left to the minister of the Public Service and Administration to pursue, yet the ministry could only act on such a task within its broader public service reform agenda. The matter of assigning functions of authority or redefining mandates to fight corruption required a structured way of thinking about choices. Such choices have not been made yet, except to create a weak national forum embracing civil society and the private sector to instil public confidence in the government's attempts to fight corruption (Bahlia 2005:150).

4.3.8 Media campaign

The media form an integral part of pillar the national integrity system. The importance attached to the role of the media in fighting corruption was not ignored during the National Summit, when delegates agreed to support and cooperate with the government in creating a sustained media campaign to highlight the causes of and solutions to corruption, and to communicate the national integrity strategy. The necessity for an independent media to report freely in the public interest on acts of corruption was taken for granted in the South African context, as all restrictions in this regard had been removed after 1994. Section 16 of the Constitution protects freedom of expression, which would include freedom of the print, electronic and other forms of media (Bahlia 2005:194).

Tensions about the freedom and independence of the media arose when President Mbeki accused sections of the media of racism, and when some (black) journalists became weary of being seen as overtly critical of the ruling party and the presidency in particular (This Day 20 August 2004). This can be further illustrated by the "punishment" given to whistle blowers. This was to be expected, according to Public Service Commission chairperson Stan

Sangweni, who claimed that, if “an official goes to the media to whistle-blow to a journalist, he is immediately deviating from the prescribed procedures of whistle-blowing” (This Day 20 August 2004).

The South African NGO Coalition’s media spokesperson, Hassen Lorgat, rebutted this view by claiming: “The current structures of government are not fully functional and haven’t developed into maturity, so journalists fill a valuable gap, especially while these institutions are being built up [and] play a vital role [to ensure] that good governance and accountability is achieved” (This Day 20 August 2004).

A compact between government and the media to cooperate in exposing corruption might therefore be more difficult to create than the national strategy suggests. Transparency International believes it is imperative that the owners of the media ensure that journalists are paid wages that encourage independence. Serious investigative reporting, which can carry high risks, involving legal challenges and loss of life, is often time-consuming and costly, but remains pivotal to providing the public with relevant coverage on corruption cases. The ability of the media to shape public attitudes and government policy is often underestimated, hence the view that it is not only useful for raising public awareness “but it can also contribute by providing the necessary support of the civil society to government’s anti-corruption initiatives” (Bahlia 2005:196).

4.3.9 National hotline

To facilitate the anonymous reporting of corruption, especially by the public, open telephone lines are often set up by government departments. Such a facility can serve an important purpose in ensuring that any act of corruption, whether observed by a government official or a member of the public, will potentially be dealt with when reported. The need to establish a hotline to facilitate the reporting of corrupt practices in all sectors was acknowledged at the National Summit as a measure for implementation in corruption prevention. The resolve was also clear to promote sectoral and other hotlines

to strengthen the national hotline. However, only eight national departments have established such hotlines, while none exists in the Eastern Cape, North-West, and Free State provinces. This was one of the findings of a feasibility study undertaken by the Public Service Commission on establishing a single national anti-corruption hotline (Bahlia 2005:205). The study revealed that the approach to hotlines in the public service was disparate and lacked uniform standards. Only the Department of Trade and Industry had a system in place that compared with international best practice. The report was unequivocal that the decision to establish a national hotline should only be taken once a firm commitment to the proper resourcing of the hotline was in place (Bahlia 2005:205).

Cabinet approved the principle of establishing a single national public service anti-corruption hotline by April 2004, after expressing its impatience on the lack of progress. The new hotline was intended eventually to replace all other departmental hotlines, be accessible to the public 24 hours of the day, cater for all official languages, and operate primarily to assist members of the public and public officials to report cases of corruption, fraud and other irregularities. It would comprise a call centre, a case management and referral system, investigation by relevant departments and agencies, and provisions for maintenance, marketing, monitoring and evaluation. Cabinet had also approved the recommendation that the hotline should be housed in the Office of the Public Service Commission. It soon became apparent that the April deadline would not be met, and the launch date for the hotline was shifted to September 2004 (OPSC/343/84 in Bahlia 2005:206). The designation of the Public Service Commission as the responsible agency for the management of the hotline was justified in terms of its existing investigative role in the public service and its constitutional independence. But this can also be problematic. Hotlines are meant to facilitate the reporting of corrupt practices and, more specifically, the use of whistle-blowing as a tool. However, the Protected Disclosures Act of 2000 makes provision for disclosures to only two constitutional agencies, namely the Public Protector and the Auditor-General. The minister of Justice is empowered in terms of the Act to add the Public Service Commission to these two watchdog agencies, as this seems

necessary if the Commission are to manage the national hotline effectively (Bahlia 2005:207).

The anti-corruption hotline is mainly intended to report wrongdoing in the public service. It is not clear whether a cross-sectoral national hotline would become available as envisaged at the summit. It is also not clear whether such a hotline is needed and if its centralised implementation might not present insurmountable logistical difficulties. The private sector has instituted several hotlines mainly for the reporting of incidents of fraud. Promises of a reward for such reporting are often made. The insurance industry has introduced a toll-free hotline and, within the first month of its operation, the cost of setting it up had been recovered. Numerous reports were received as large-scale fraud was uncovered by company investigators working in partnership with law enforcement agencies (Bahlia 2005:208).

Public officials raised the issue of rewards when the Public Service Commission conducted its series of provincial workshops on whistle-blowing. Willingness or motivation for people to come forward and blow the whistle seems to wane without incentives. Moreover, the Protected Disclosures Act of 2000, which assumes that an individual's identity will be revealed when making a disclosure, makes this more difficult. The risk of occupational detriment, even against the benefits of a promise of protection against this, weighs heavily upon those wishing to blow the whistle.

A hotline offers anonymity for those reporting corruption, and may be more convenient and less threatening. However, hotlines are not substitutes for effective whistle-blowing policies, which should be part of any organisation's culture. The availability of a hotline, in fact, may undermine the promotion of a whistle-blowing culture. Anonymity coupled with financial gain may just become too easy in contrast with taking the high-risk road of a protected disclosure without any gain.

4.4 Legislative measures to combat corruption and facilitate whistle-blowing

The protection of whistle blowers – those who expose misconduct or malpractice in the public interest – is an issue that has traditionally been extremely important to trade unions. They have traditionally always been concerned with the protection and well-being of workers or employees. However, in recent years, encouraging and therefore protecting, whistle blowers have become of increasing interest to national and international policy makers engaged in designing anti-corruption policy solutions (Drew 2003:1).

In South Africa, the Protected Disclosures Act of 2000 (No 26 of 2000) has done much to alleviate the worst fears of those who blow the whistle in good faith on wrongdoing and malpractice, even if they turn out to be mistaken. Subject to certain conditions, blowing the whistle in this way constitutes a “protected disclosure” under the Protected Disclosures Act of 2000 – with legal protection for whistle blowers against reprisals by employers. This act provides protection against reprisals for good faith whistle-blowing on wrongdoing. It directs the employee toward seeking confidential advice and to blowing the whistle internally or with the person responsible. Provided there is good evidence to support the concern, it also protects whistle-blowing to designated authorities and wider whistle-blowing where both the circumstances justify it and the particular disclosure is reasonable.

The aim of whistle blower legislation is to ensure that those who speak out in the public interest are protected and thereby encouraged by de-stigmatising whistle-blowing, contributing to a change in the prevailing culture and providing a real alternative to silence.

Such outside disclosures raise ethical and legal issues of confidentiality and business secrecy. They also influence the balance of relationships between business, the state and the media. An outside disclosure will involve at the least some regulatory intervention and inconvenience and, at worst, unjustified adverse publicity. This will cause unnecessary damage and

disruption to a responsible organisation, which would have dealt with the matter properly had it been aware of it. As shown above, a culture where – in the absence of safe alternatives – media disclosures are a legitimate first port of call is an open invitation to an aggrieved or malicious person to cause damage, rather than raise the issue responsibly (Dehn & Borrie 2001:6).

In most legal systems, there is no protection for an employee who makes an outside disclosure – even if it is in good faith, justified and reasonable. Accordingly, such disclosures are often made anonymously. This raises a number of issues. Anonymity will be the cloak preferred by a malicious person. It also makes the concern difficult to investigate and even impossible to remedy. Finally, in any event, anonymity is no guarantee that the source of the information will not be deduced. Where the person is identified, the fact that they acted anonymously will often be seen as a sign of bad faith, jeopardising their position. In the worst cases such people forfeit their career. Their plight then attracts media attention, which can only discourage others from sounding the alarm (Dehn & Borrie 2001:6).

The near certainty that an outside disclosure will lead to serious reprisals means that the matter is often not raised until the employee is leaving the company or, for example, the company has lost the contract. By then the problem may be much worse (indeed the disaster may have happened), the evidence will be old and the motives of the whistle blower may allow the information to be used to damage or even blackmail the organisation (see Dehn & Borrie 2001:7).

4.4.1 The Open Democracy Bill

The people who are best acquainted with corruption, maladministration and unlawful practices in government institutions and therefore ideally placed to draw attention to such wrongdoing, are themselves usually public officials. However, conscientious officials who might wish to complain about such conduct are often deterred from doing so by a legal obligation of confidentiality, or by a fear of reprisals. By safeguarding officials from such

consequences through the whistle blower protection component in the Open Democracy Bill, recognition is given to the indispensable role of those who speak out against misconduct in the promotion of accountable and efficient government and administration (Gumbi et al 1995:online).

In terms of section 63(1) of the Open Democracy Bill, public officials who act in good faith and disclose information about a contravention of a law, corruption, dishonesty or maladministration in a government institution, cannot be held civilly or criminally liable and may not be subjected to disciplinary action. However, the protection awarded in terms of section 63(1) applies only if the official:

- disclosed the information to a parliamentary committee, a committee of a provincial legislature, the Public Protector, the Human Rights Commission, the Auditor-General or an Attorney-General;
- disclosed the information to a news medium on clear and convincing grounds that:
 - disclosure was necessary to avert an imminent and serious threat to the safety and health of an individual or the public, to ensure that the impropriety was properly and timely investigated or to protect him/herself against reprisals;
 - disclosure is in the public interest and outweighs any need for non-disclosure.

The Open Democracy Bill also prohibits the enforcement of any obligation of confidentiality, which could inhibit whistle-blowing. If it becomes law, it will override any other legislation, which may contain provisions that could hinder the disclosure of information regarding maladministration, misconduct, corruption or law-breaking in government institutions (Section 63[1]). People who have disclosed information about maladministration, corruption or

lawbreaking or indicates an intention to do so are protected against reprisals by Section 65(1): they may not be dismissed, suspended, demoted, harassed, have a condition of employment altered, be denied appointment or election to any office or profession or threatened with such action. If reasonably possible and upon their request, they must be transferred to another division in the same institution or to another government institution (Section 65[5]).

As a counter to the perceived increase in the levels of corruption, the government took important initiatives to address this problem. One such initiative was to strengthen the fight against corruption by giving legal protection to “whistle blowers” through the recently enacted Protected Disclosure Act (Act 26 of 2000). The Act works with the notion that prevention is better than cure, and gives legal protection to private and public sector individuals who raise concern about unethical practices and corruption in organisations.

4.4.2 The Protected Disclosures Act (Act 26 of 2000)

In its current form, the Act makes provision for procedures to allow and assist employees in both the private and public sector to raise concerns about the unlawful or irregular conduct of their employers or co-workers. Various types of information disclosures are highlighted in the Act, including suspicion of criminal offences, failure to comply with legal obligations and “a reasonable belief that the health or safety of an individual has been, is being or is likely to be endangered.”

Employees making a protected disclosure in terms of the specified procedures are protected from occupational detriment. This might include being subjected to disciplinary action, dismissed, suspended, demoted, harassed, intimidated, transferred against his or her will, refused transfer or promotion, or otherwise adversely affected in respect of his or her employment, profession or office, including employment opportunities and work security. The Act thus prohibits an employer from subjecting an employee to an occupational detriment on account of having made a protected disclosure. Should occupational

detriment occur and is found to have been linked to the making of a protected disclosure, the bona fide whistle blower would be protected and the employer would not be allowed to dismiss or prejudice the employee for having raised legitimate concerns. This, in effect, is how the law protects whistle blowers.

It is important to note that disclosures of information relating to the above will only be “protected” if made according to specific procedures. In order to be protected, a disclosure must be made in one of five methods :

- to a legal representative (clause 5);
- to an employer (clause 6);
- to a minister or provincial member of the Executive Council (clause 7);
- to a specific person or body (clause 8) – only the Public Protector and the Auditor-General are currently mentioned with other persons or bodies (for example, the Special Investigating Unit) required to be prescribed by the minister of Justice in regulations; or
- as a general protected disclosure (clause 9).

Each of the above procedures to ensure that a disclosure is protected, has certain requirements that must be complied with. Only a few requirements are applicable in respect of a disclosure given to a legal representative, with the requirements becoming more comprehensive as one moves up the ladder. The most comprehensive requirements are set in respect of making a “general disclosure”.

Richard Calland, Executive Chair of the new Open Democracy Advice Centre, puts it as follows (Camerer 2001:5): “at the heart of the Act is the notion that prevention is better than cure. It strongly encourages whistle blowers to disclose first of all to their employer, in order that the employer should have

the opportunity to remedy the wrongdoing. Potential whistle blowers need to know that they must first go through this door where the test is that of good faith, rather than making a wider disclosure which would require higher tests.”

Any concerns that the Act favours employees are unfounded. The Act is specifically structured in a way that best serves the interests of accountable organisations. Only when internal channels have been exhausted or fail are wider disclosures to external bodies protected if they pass the significantly higher tests. The Act allows for proactive initiatives, which means that it can and will make a difference in the way organisations and the state receive concerns about wrongdoing and the diligence with which these are addressed.

If employers respond appropriately to the good faith concerns raised by their employees, the Act should be invoked rarely rather than regularly. Ultimately, the law provides protection for both employers and employees. Through informing employees that it is acceptable to blow the whistle and putting procedures in place to do so, employers receive early warnings of potential problems in their organisations and can address them before they spill over into the public realm. Employees, by raising legitimate concerns in an environment of trust to those in a position to address the problem, cannot be subjected to occupational detriment for sticking their necks out.

In discussing the Act in more detail, the most relevant procedures to unpack in order to understand how the Act works, are those relating to disclosures to employers (clause 6) and clause 9 regarding the making of a general protected disclosure.

4.4.2.1 Protected disclosure to employer

In order to qualify as a protected disclosure, the disclosure must be made in good faith and be:

- substantially in accordance with any procedure prescribed, or authorised by the employee's employer for reporting or otherwise remedying the impropriety concerned;
- or to the employer of the employee, where there is no procedure as contemplated in the paragraph above (a).

In section 6(2), the Act also makes provision for confidential hotlines, with some companies encouraging their employees to make use of them: "Any employee who, in accordance with a procedure authorised by his or her employer, makes a disclosure to a person other than his or her employer is deemed, for the purposes of this Act, to be making the disclosure to his or her employer."

In South Africa, as elsewhere, there has been a competitive market for such services. Research has found, however, that where the only real alternative to silence is for individuals to make an anonymous report, practical problems result. Anonymous disclosures are hard to corroborate, difficult to investigate and often impossible to remedy. As such, setting up and publicising a hotline through which the public and employees can anonymously report suspected corruption is not felt to be the right answer when attempting to promote and encourage a culture of openness, transparency and accountability.

How would making a protected disclosure in terms of clause 6 work in practice? Consider the hypothetical case of the options faced by an honest official (Mr X) working in a traffic licensing department. He notices that a fellow employee is allowing visibly unroadworthy vehicles to be issued with clearance papers. The honest employee, motivated out of good faith and public interest concerns and knowing how many deaths result from such vehicles being on the road, decides to blow the whistle on his co-worker. Being a public servant, the traffic official might already have signed the Code of Conduct where the duty to report impropriety is stipulated. If there is a procedure in place for making protected disclosures, the official would be wise

to do so, or for example, may report the suspected wrongdoing to his immediate supervisor. For clause 6 disclosures to be protected, good faith is the only test. Important to remember is that it is not the duty of the whistle blower to investigate the matter under these circumstances, only to disclose information according to procedures specified in the Act to those in a position to investigate it.

If the traffic official's immediate supervisor is a responsible and honest manager, he would welcome the information supplied by the honest employee acting in good faith and ensure that the allegations are followed up. However, if the line manager to whom the disclosure is made, is an accomplice of the corrupt co-worker, a situation may arise where the traffic official is dismissed, demoted or labelled as a trouble maker in the department. It is under such circumstances that the Act, when it comes into force, will be able to protect employees, for the dismissed or victimised traffic official would have some recourse in terms of the remedies laid out in the Act for the first time.

4.4.2.2 Legal remedies

The remedies stipulated in the Act are dealt with in section 4. Where an employee is subjected to an occupational detriment in contravention of the Act, such an employee may approach any court or tribunal having jurisdiction for protection, including the Labour Court (section 151 of the Labour Relations Act, no 66 of 1995), for appropriate relief, or may pursue any other process allowed for or prescribed by any law. The Act states that any employee who has made a protected disclosure and who reasonably believes that he or she may be adversely affected on account of having made the disclosure, at his or her request and if reasonably possible or practical, must be transferred from the post or position in the same division or another division of his or her employer or, where the person making the disclosure is employed by an organ of the state, to another organ of the state. The terms and conditions of employment of a person transferred in terms of this subsection may not be less favourable, without his or her written consent, than the terms and conditions applicable to him or her immediately before his or her transfer. That

such remedies exist under the Act should provide an incentive for employees to blow the whistle without fear, as well as for employers to ensure that they are able to account for any action that might occur once a disclosure has been made.

Because cases may arise where it is impossible for an employee who is a bona fide whistle blower to make a disclosure to his or her direct employer, the Act does provide for other channels for making disclosures, such as a general protected disclosure. Here the tests are far higher than “good faith” since the Act is structured in a way to encourage employees to raise their concerns internally where organisations can take responsibility for responding to the concern, rather than externally (such as to the media).

4.4.2.3 Making a general protected disclosure

A general protected disclosure is any disclosure, other than a disclosure made in accordance with section 5, 6, 7 or 8, made in good faith by an employee who:

- reasonably believes that the information disclosed and any allegation contained in it, are substantially true; and
- does not make the disclosure for purposes of personal gain, excluding any reward payable in terms of any law.

It is regarded as a protected disclosure if:

- “one or more of the conditions referred to in subsection (2) apply; and
- in all the circumstances of the case, it is reasonable to make the disclosure.”

The conditions referred to in subsection (1)(i) in terms of circumstances are:

- that at the time the employee who makes the disclosure has reason to believe that he or she will be subjected to an occupational detriment if he or she makes a disclosure to his or her employer in accordance with section 6;
- that, in a case where no person or body is prescribed for the purposes of section 8 in relation to the relevant impropriety, the employee making the disclosure has reason to believe that it is likely that evidence relating to the impropriety will be concealed or destroyed if he or she makes the disclosure to his or her employer;
- that the employee making the disclosure has previously made a disclosure of substantially the same information to –
 - his or her employer; or
 - to a person or body referred to in section 8,

in respect of which no action was taken within a reasonable period after the disclosure; or
- that the impropriety is of an exceptionally serious nature.”

In determining whether it is reasonable for the employee to make the disclosure, consideration must be given to the following:

- “the identity of the person to whom the disclosure is made;
- the seriousness of the impropriety;
- whether the impropriety is continuing or is likely to occur in the future;

- whether the disclosure is made in breach of a duty of confidentiality of the employer towards any other person;
- in a case falling within subsection (2)(c), any action which the employer or the person or body to whom the disclosure was made has taken, or might reasonably be expected to have taken, as a result of the previous disclosure;
- in a case falling within subsection (2)(c)(i), whether in making the disclosure to the employer the employee complied with any procedure which was authorised by the employer; and
- the public interest.”

Returning to the traffic official discussed above: if he had reason to suspect that his employer would react negatively to the disclosure and find reasons to dismiss him – a common reaction – or that evidence might possibly be destroyed, he may be attempted to go the route of making a general protected disclosure, although the tests are much higher. Such a disclosure would only be protected in terms of clause 9 of the Act if it could be shown to be motivated by good faith, reasonable belief, substantial truth and was not made for personal gain. It also has to be shown that the circumstances referred to above were relevant and that it could be deemed reasonable for the traffic official to make such a disclosure.

Journalists or politicians who receive brown envelopes from so-called whistle blowers should take note of the tough requirements that have to be met in order to invoke the protection of the Act. How many journalists or politicians are aware of the provisions of the Act? Would they, if they truly cared about the fate of the whistle blower, encourage the concerned individual first to raise their concerns internally to their employer and thus retain the protection of the law, rather than to miss an exclusive scoop?

Bearing in mind the high tests required for protected disclosures to bodies other than employer channels in order to invoke the protection of the law, whistle blowers would be wise to familiarise themselves with the provisions of the Act.

4.4.3 Other legislative measures involved in whistle-blowing

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 should also contain the necessary penalties and fines to serve as a deterrent. Legislative measures should not be drawn up in such a manner that leaves the impression that public officials have a tendency toward unethical and corrupt behaviour. Measures should rather be drawn up that would prevent officials from engaging in unethical and corrupt behaviour. The legislation that will be discussed, serves as an indication that the necessary legislative measures exist to combat corruption; however, the success of these measures depends on whether they are going to be implemented or only going to gather dust.

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

The Investigation into Serious Economic 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 provide details of the nature of their suspicions, reasons for these suspicions and other relevant information to the director in an affidavit. The director can also on his or her own initiative, start an investigation. The 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 presented to 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).

4.4.3.2 Reporting on Public Entities Act, Act 93 of 1992

The Reporting on Public Entities Act, Act 93 of 1992, makes provision for certain public entities that 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 and financial transactions on an annual 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' reports are drawn up annually and made available to the relevant minister and Auditor-General after six months (Du Plessis 1993:243).

4.4.3.3 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, among its recommendations, was a proposal for a new start in the matter of the criminalisation of corruption. Until this time, this had been dealt mainly under the common law crime of 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 –
 - any power has been conferred or

- 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
- anyone else”.

Offences that had taken place outside the country would be considered to have taken place within South Africa and the person or institution would fall under the jurisdiction of the magistrate, regional or Supreme Court of the place of residence. The relevant court can pass its own sentence (Du Plessis 1993:243).

4.4.3.4 The Audit Act, Act 22 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. As such, the Act determines, among others, that ownership of 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 politics, which could compromise the independence of the office of the Auditor-General. This does not include attendance of a public gathering in a personal or private capacity. Article 41 states that no official employed in the office of the Auditor-General is entitled to unauthorised payment and that such payments must be deducted from his or her salary. The money can also be retrieved from the institution where it had been deposited (Du Plessis 1993:244).

4.4.3.5 Public Service Act, 1994 (Promulgated under Proclamation 103 of 1994)

The Public Service Act, no 103 of 1994, must be regarded as the most important of all legal stipulations relevant to the behaviour of public officials. Section 20, which deals with misconduct, is a prime example of the effort

being made to limit corruption and maladministration by means of legislation (Cameron & Stone 1995:79).

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 prosecuted in accordance with section 21:

- Contravenes any provision 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 an offence; and
- Without first having obtained the permission of his or her head of 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.

4.5 Other measures to facilitate whistle-blowing

Apart from the creation of an organisational culture that either makes whistle-blowing unnecessary or encourages it, there are other avenues of dealing with wrongdoing.

4.5.1 Ethical remedies for the detection of wrongdoing

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 6398 reports published pertaining to the events of which the vast majority were critical in nature. Through this action, public opinion as mirrored in them 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).

As mentioned before individuals who report corruption or waste in a bureaucracy are called 'whistle blowers'. Public officials 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 your job you must keep your 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 emphasises that it is good practice to expose bad practice (Sunday Times, 7 February 1999:3). In South Africa a statutory reward of, for example, 20 per cent 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-the-whistle solely for financial gain.

4.5.2 Training and internal guidelines

In-service training is an effective mechanism to institutionalise 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 behaviour towards colleagues and the public. Apart from training, institutions should have clear guidelines and codes and 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 institutionalised 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 behaviour (Brumbeck 1991:362-363).

To conclude, it is essential that fixed guidelines be in place according to which public officials must operate and be 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 know what 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 department 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).

4.5.3 Political leadership

Political leaders 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 reinforces ethical behaviour and creates sanctions against wrongdoing.
- Providing adequate support and resources for ethics-related activities throughout government.
- Avoiding exploitation of ethics rules and laws for political purposes.

4.5.4 Organisational arrangements

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.

4.5.5 Media and public awareness

Free media and public awareness on the part of the public are essential measures for combating corruption and promoting transparency and openness with Caiden summing 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" (As quoted in Aina 1982:75-76).

The greatest enemy of corruption are people as "people despise corruption and understand the erosion of incentives that it entails" (Klitgaard 1992:15). People can be an invaluable 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, professional bodies of lawyers and accountants, local councils and trade unions in the campaign against corruption (Klitgaard 1992a: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 fulfil a two way function, viz. deterring the officials concerned and educating the public (Cloete 1995:144). Freedom of the press and availability of information, as well as legislation that makes provision for 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, serve as a deterrent to unethical conduct.

The media also fulfil the role to ensure the maintenance of ethical behaviour by questioning activities and actions of governments and other officials (Van der Walt & Helmbold 1995:105). However, the more free the media are 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 should 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 and the more democratic society is and the more vested the

principles of morals, values and beliefs are in society, the greater are the chances for having a truly free media.

Like the judiciary, the media play a very important role in the fight against corruption. Theirs is a “watchdog” rather than a penalising role. Media investigations toward the end of 2000 and early 2001 regarding the R43.8 billion arms procurement deal clearly illustrate the important role of the media. In particular, the media can be instrumental in informing the public about those who are involved in corrupt activities. Klitgaard (1992a:36) calls this “frying big fish” and maintains that “leading figures involved in corruption must be publicly named and punished before a cynical public believes that anti-corruption effort is no more than words” (see Klitgaard 1992b). In agreement with this argument, Singh and Wallis (1995:145) add that by exposing corruption the media play two roles: they deter the officials concerned and educate the public. Any attempt to water down the independence of the media should therefore be strongly opposed.

4.6 Summary

In this chapter, an attempt was made to provide insight into the strategies and instruments, both national and international, employed to combat corruption and promote the whistle-blowing process. After providing some background detail on general developments in this area, the focus fell extensively on national integrity systems as propagated by Transparency International.

In the international arena, the UN Code of Conduct for International Public Officials was scrutinised, as well as the OECD Convention on Combating Bribery of Public Officials in International Business Transactions. Reference was made to the lack of progress on the SADC Protocol against Corruption.

On national level, developments since the 1990s were examined. These included the 1999 National Summit, the establishment of the National Forum, the development of institutional capacity, the accompanying media campaign,

the institution of a national anti-corruption hotline, and the resulting difficulties and pitfalls.

Secondly, the spotlight was turned to legislative measures to combat corruption and facilitate whistle-blowing. In this regard, the Open Democracy Bill and the Protected Disclosures Act of 2000 were examined in detail. In the latter case, the attention was focused on protected disclosures to an employer, legal remedies available for suffering detriment and making general protected disclosures.

Following this, other legislative measures involved in whistle-blowing and combating corruption were briefly analysed. These include the Investigation into Serious Economic Offences Act of 1991, the Reporting on Public Entities Act of 1992, the Corruption Act of 1992, the Audit Act of 1992, and the Public Service Act of 1994 (promulgated under Proclamation 103 of 1994).

Other important measures were also examined, including ethical remedies for the detection of wrongdoing, training and internal guidelines, political leadership, organisational arrangements, the role of the media and the need for greater public awareness.

The next chapter will discuss and analyse whistle-blowing through a focus on who whistle blowers are, and what the whistle-blowing process entails. It will also provide an understanding of the contexts within which whistle-blowing occurs.

CHAPTER 5

WHISTLE-BLOWING: ITS CHARACTERISTICS AND FACILITATING MEASURES

5.1 Introduction

After having examined the ethical dimensions and dilemmas as background to the whistle-blowing process, as well as considering corruption and its many manifestations as one of the most important variables, it is necessary to turn to the whistle-blowing process itself. This chapter therefore attempts to fulfil the objective to describe and analyse the whistle-blowing process, with the aim of identifying potential predictors.

Firstly, the chapter considers the difficulty in defining whistle-blowing, a complex and multileveled phenomenon. It attempts to characterise the whistle blower, before explaining the process of whistle-blowing. Some consideration is also given to the context within which whistle-blowing occurs.

5.2 Defining whistle-blowing

There is no universally accepted definition of the concept "whistle-blowing". In 2000, the Organisation of Economic Co-operation and Development (OECD) provided the following explanations of the term in a discussion paper on the issue:

"[a] Bringing an activity to a sharp conclusion as if by the blast of a whistle (Oxford English Dictionary); [b] Raising a concern about malpractice within an organisation or through an independent structure associated with it (UK Committee on Standards in Public Life); [c] Giving information (usually to the authorities) about illegal or underhand practices (Chambers Dictionary); [d] Exposing to the press a malpractice or cover-up in a business or government office (US, Chambers Dictionary); [e] (origins) Police officer summoning public

help to apprehend a criminal; referee stopping play after a foul in football” (Dehn 2000).

Near and Micelli (1985:4) describe whistle-blowing as “the disclosure by organisation members (former and current) of illegal, immoral and illegitimate practices under the control of their employees, to persons or organisations that may be able to effect action.”

Although the above definitions have been widely used, many scholars agree with the Australian Senate Select Committee that “what is important is not the definition of the term but the definition of the circumstances and conditions under which the employees who disclose wrong-doing should be entitled to protection from retaliation” (Glazer & Glazer 1989:5).

When considering legislation aimed at encouraging whistle-blowing, policy makers have chosen to use the generic term “disclosure” when referring to whistle-blowing (see, for example, the South African Protected Disclosures Act of 2000 and the United Kingdom’s Public Interest Disclosure Act 1998). However, the concept disclosure only refers to the information that is made known, whether internally or in the public domain, and not to the complex process that constitutes whistle-blowing.

From the literature, it is clear that the concept whistle-blowing implies the presence of specific **actors**, identifiable **actions** and a process consisting of several steps that occur in a specific sequence. The actors are:

- the wrongdoer, whether this is an individual or an organisation;
- the whistle blower;
- the person who receives evidence of alleged wrong-doing; and
- the organisation that is called upon to act to rectify the situation that gave rise to an incidence of whistle-blowing.

The whistle blower perceives an action by the wrongdoer that is, among many other things, allegedly wrong, fraudulent, dangerous or illegal, which obliges the whistle blower to make this action known. The process of whistle-blowing encompasses:

- the whistle blower collecting information and evidence about the alleged wrong-doing; then
- making a report internally or externally;
- on which the organisation takes action to verify the evidence brought forward; and
- puts in place measures to redress the situation.

Should the whistle blower be victimised or dismissed, legislation is in place to protect him/her, and legal steps may follow.

The rest of this chapter is devoted to a discussion of who blows the whistle, what the process entails, as well as the context where whistle-blowing occurs.

5.3 The whistle blower

Whistle blowers can come from any level of an organisation and may even come from outside, although legislation in many countries does not protect the latter. It may be an employee who is being sexually harassed; a clerk who suspects the chief accountant of committing fraud; factory workers who are pushed to cut corners with regard to health and safety; a hospital cleaner who is concerned that practices in the hospital may be harmful to patients; a bank employee who believes the bank is breaching regulatory requirements; a chief financial officer who suspects his directors of skimming money from the company's coffers; or a consul who is pushed to approve a work permit for a foreign building contractor with severe physical disabilities.

Over many years, whistle blowers have unfairly acquired a bad reputation as trouble makers, busy bodies and disloyal employees (Camerer 2001:1). Consider in this regard the attitude towards criminals who decide to testify in criminal proceedings against their former accomplices or colleagues. The justice systems of modern nation-states value such collaborators and will often offer them protection and rewards in return for the evidence necessary to secure convictions.

A major cause of the negative perception in South Africa is the vision of whistle blowers as *impimpis* – apartheid-era informants who betrayed their comrades. This historical context has unfortunately allowed the stigmatisation of whistle-blowing as an activity to be despised rather than to be encouraged (Camerer 2001:1). Sadly, the truth is often that, when responsible workers or law-abiding institutions blow the whistle on corruption, the best they can hope for seems to be isolation and disapproval. The effect (albeit unintentional) is that someone who informs on corruption in which he or she has participated, like the “collaborators” mentioned above, will receive more protection and assistance from the authorities than innocent colleagues or competitors who blow the whistle on actions in which they had no part (Camerer 2001:1).

In arriving at a reasonable description of who whistle blowers are, there is a further question. If people encounter what they perceive to be an act of wrongdoing and disclose it, should they always be categorised as whistle blowers? If corrective action is taken without any undue pressure on the person who made the disclosure, nothing untoward of an external nature has affected him or her. In this circumstance, the internal procedures have been effective. The desired situation is when the whistle blower comes to no harm and the institution is enhanced. This lack of conflict does not reflect the popular image of a whistle blower. Far more often than not, the person disclosing is at risk, or the disclosure is ignored or denied. Individuals who persist in pointing out that something is wrong even in the face of adversity are most commonly recognised by the term whistle blower (Feldman 1999:2).

5.3.1 Examples of whistle blowers who observe an act of wrongdoing

In South Africa, the case of eleven chemical factory workers who lost their lives in Lenasia is well-known. Concerned employees blew the whistle to the Department of Labour three months before the incident about working conditions in the factory. These included being locked up with gas bottles for up to 16 hours, fire extinguishers that were not in working order, lack of ventilation and the absence of an emergency alarm system – conditions that were inexcusable if not illegal.

Twenty years ago, in 1984, Indian workers, together with a local journalist, raised concerns about a gas leak and safety measures to the local authority and Union Carbide India Limited, which chose to ignore them. This resulted in the death of 3,800 people and 2,680 were left with partial disabilities (www.psir.org).

Sherron Watkins, an internal accountant at Enron, set out her concerns in a letter to the Chief Executive, Kenny Lay in 2001. While this letter has proved extremely useful to the subsequent investigation into the collapse of Enron, it did not initiate the investigation and Ms Watkins did not take action until the investigation was already under way (www.psir.org). This may be explained by the fact that there is no comprehensive whistle blower protection for private sector employees in the US.

In the United Kingdom, the Bingham Enquiry into fraud and corruption at the Bank of Credit and Commerce International found in 1991 that, due to an autocratic environment and a climate of intimidation, neither employees nor firms were willing to voice their concerns. An internal auditor who raised concerns was dismissed. This led to new rules in the United Kingdom on the duties of auditors and other firms to report suspected irregularities (Camerer 2001:2).

The potential value of employees coming forward and raising concerns over malpractices, in defence of the wider public interest, is largely self-evident.

Investigations into a host of disasters that have taken place around the world, in both the public and private sectors, have revealed that employees were either aware of the problem and too worried about damaging their jobs and careers to raise their concerns – or that employees had raised concerns but that these had been ignored. The cost of this silence – to human life, the environment, public health, employment, financial security, lifelong savings, the public purse and even loss of life or lifelong disability – is devastatingly high (Drew 2003).

It is clear from the above that the position occupied by an individual in an organisation is not the driving factor behind the choice to blow the whistle on wrongdoing. It will be shown below, however, that the position of a whistle blower may influence an organisation's response.

5.3.2 Whistle blowers who are involved or approached to act unlawfully

Allan McDonald and Roger Boisjoly, engineers at Morton Thiokol Inc. in the US, testified before the Rogers Commission investigating the 1986 Challenger shuttle disaster that there had been ongoing problems with the rocket's P-rings and that they had urged their supervisors and NASA officials to postpone the fatal launch. Following their testimony, the engineers were demoted to menial jobs. Only the intervention of the Commission members saw them being reinstated (Ettore 1994:18).

In the context of government service, whistle blowers are often public officials who, of their own accord, inform the relevant authorities when they or another public official are “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).

However, public officials may also be asked or instructed to act in an unlawful way by their political masters. In March 2004, it was claimed that the UK's immigration service had secretly allowed thousands of ineligible migrants to enter the country. Claims were made that this was done “to massage figures

so it did not appear there would be mass influx when eastern European states join EU on May 1" (Wintour in Auriacombe 2005:16). The civil servant who blew the whistle was dismissed. However, the responsible minister subsequently resigned when evidence against her started to mount.

5.3.3 Deliberate whistle blowers

Informants can also act as whistle blowers. Such informants may work, for example, for the police or a regulatory authority. They can either be placed in the institution for the purpose of uncovering evidence of suspected wrongdoing or may be employees of institutions who have been recruited by the relevant authority. This may sound more like the fiction of crime and spy stories, but there is growing evidence of police forces using this tactic to root out corruption.

5.3.4 The media as whistle blower

The media can also act as whistle blower. This could be either a journalist who is approached in his or her role as reporter on the initiative of an organisational whistle blower, or the journalist as investigative reporter who uncovers evidence of wrongdoing in the course of his or her work. For example, there have been many highly publicised investigative current affairs programmes such as Carte Blanche broadcast on national television in South Africa where investigative journalists have conducted research based very much on material provided by a company employee.

5.4 Personal characteristics of a whistle blower

Research on the individual characteristics of whistle blowers spans many fields, including psychology (Braebeck 1998; Near & Micelli 1986), organisational theory (Dozier & Micelli 1985; Graham 1986; Micelli & Near 1983), business ethics (Glazer 1998; Greenberger et al. 1987; Jenson 1987; Near & Micelli 1985) and auditing (Arnold & Ponemon 1991; Lampe & Finn 1992). These studies provide consistent findings with respect to the moral reasoning level of whistle blowers and their position within the organisation.

For instance, Near and Micelli (1985) suggest that the theory of moral reasoning as advanced by Lawrence Kohlberg and others is fundamental to an understanding of an individual's ethical propensity to blow the whistle, especially in relation to the organisation or its management. To test this proposition, Arnold and Ponemon (1994) examined perceptions of whistle-blowing and the reasoning characteristics of 106 internal auditors using a between-subjects experimental design. Findings revealed that internal auditors – within relatively low levels of moral reasoning – were unlikely to predict whistle-blowing as a means for disclosing wrongdoing. This result was especially salient when the probable retaliation meant a high degree of penalty for the whistle blower. These findings also indicate that the position of the prospective whistle blower influences internal auditors or management to act in an ethical manner.

Others have also attempted to relate moral reasoning to whistle-blowing behaviour. Brabeck (1984) examined whistle-blowing among college students in an experimental study. Using the Defining Issues Test (Rest 1979), a well-known measure of moral reasoning, she found that students with higher DIT results were more willing to reveal wrongdoing than low moral reasoning students. Further, Dozier and Micelli (1985) argue that whistle blowers are more altruistic than other organisational members, possess higher moral reasoning capacities, and are able to resist organisational retaliation.

Researchers also believe that certain positions within an organisation prescribe whistle-blowing behaviour (Near & Micelli 1985, 1986; Spencer 1987) For example, Near and Micelli (1986:137) found that internal auditors may be instructed to blow the whistle as part of their jobs; that is, their behaviour is role-prescribed, and they should therefore have more power in the organisation. Even though such reporting is role-prescribed, actual behaviour is uncertain. In a later study, Near and Micelli (1988) suggest that the internal auditor's role in reporting wrongdoing may cause ethical tension because such actions can negatively affect the reputation and profit of the organisation.]

5.4.1 Credibility

Whistle blowers who are credible have increased chances to persuade the top management team of an organisation of wrongdoing. In essence, credible information is a resource in short supply in most organisations. Whistle blowers who can convince others that wrongdoing has occurred should have greater power to change organisational behaviour. According to Kotter and Schlesinger (1979), members of organisations resist change when they do not trust those who want change – thus, the credibility of the whistle blower is of great importance.

Credibility can depend on the perceived motives of the whistle blower. These could be seen primarily as altruistic or egotistic (Brief & Motowdlo 1986; Graham 1983, 1986, 1989). Some people consider whistle blowers to be loyal employees (Kolarska & Aldrich 1980), whereas others view them as snitches or traitors (e.g. Bok, 1982; Polman, 1989). The actual motives of whistle blowers will vary from one situation to another and cannot be completely known by others. However, their motives are often perceived to be the deciding factor in judging their credibility. The perceived validity of a complaint should realistically rest on the evidence that wrongdoing has occurred and not on an individual's reason for calling attention to it. That is, even the most scurrilous liar may have witnessed real wrongdoing committed by others.

Moreover, the literature on minority influence suggests that the credibility of the complaint is important. In many instances, evidence may be sketchy or contradictory, and the complaint recipient, co-workers, or others may rely on indications that they can believe the complaint. Factors that enhance the credibility of the whistle blower will, therefore, be expected to lead to higher levels of effectiveness in dealing with a complaint.

5.4.2 Power

The relative power of an organisation's members is often reflected in their status, for a variety of theoretical reasons. For example, the organisation's dependence on the whistle blower may be partly reflected in his or her status. Individuals with low status may be easy to replace, whereas the organisation may depend more heavily on individuals with higher status, because of their technical or executive value, as reflected in their hierarchical position or pay grade, for example (Near & Micelli 1986), or their professional status (e.g. lawyer, scientist, or engineer in organisations where most members do not have this status). These individuals may be considered as more central or critical to the organisation (Perry 1992). Status may also convey competency or credibility, variables that are important in minority influence (Greenberger et al. 1987). Similarly, the extent of congruence between the values of whistle blowers and those of the dominant coalition may enhance their perceived status in the organisation. Finally, whistle blowers with status may be

accustomed to the use of reward and coercive power, especially if they hold positions of either authority or expert power in some situations.

Some preliminary evidence suggests that the whistle blower's pay grade relates to the termination of wrongdoing. Other measures of status, power and value congruence (such as educational level or tenure), however, appear to be unrelated to termination (Near & Micelli 1991). Perhaps the measures examined in these studies did not reflect others' views of the status of whistle blowers, or assessments of value congruence may have been different from those of the whistle blowers themselves. However, whistle blowers with power may be less likely to experience retaliation. Whistle blowers who lacked support from either top management or their immediate supervisors were much more likely to suffer reprisals (Micelli & Near 1992), and federal whistle blowers who suffered retaliation were less likely to be effective than those who did not (Near & Micelli 1991). In this study, effectiveness was defined as the perception of the whistle blower of the extent to which the wrongdoing that triggered the initial whistle-blowing had been terminated.

Whistle blowers' membership of groups that are underrepresented in the workplace provided another potential measure of status. The minority influence literature suggests that being female, a person of colour, or a member of another underrepresented ethnic group in most American organisations reduces the credibility and status of individuals. Such individuals, when blowing the whistle, may be viewed as "double minorities". Maass and Clark (1984) provided evidence that persons who deviate in terms of beliefs and one other category such as ethnic membership had less influence than did "single minorities". Other reasons were also found for expecting that membership of such groups may make effective whistle-blowing more difficult. First, males from majority groups tend to occupy high-status positions and may have more credibility. Second, it is likely that such males will be established members of professional groups, where whistle-blowing is encouraged as part of a code of ethics (e.g., engineers, physicians).

A related possibility was raised in a study of the use of workplace power strategies (Mainiero 1986). It was found that, when confronted with a frustrating workplace situation on which they depended, women were more likely than men to use an "acquiescence strategy" in which the "low-power individual accepts the power imbalance and decides that nothing else can be done in the situation" (Mainiero 1986:643). Mainiero identified two perspectives that predicted this finding:

- that structural segregation (into less powerful organisational positions) has caused women to be less likely to exert power forcefully; and

- that early socialisation shapes the behaviour of men and women differently; men are perceived as and rewarded for using “direct aggressive strategies,” whereas women are expected to remain powerless.

Both the structuralist perspective and the socialisation perspective suggest that women (and perhaps members of other underrepresented groups) may face substantial resistance to change in white, male-dominated organisations. To date, no published studies have examined these relationships. However, membership of a majority group represents another potential operational measure of status, along with position in the hierarchy, pay grade, professional status, educational level, tenure, support from superiors, and the lack of retaliation when the whistle-blowing occurs.

5.4.3 Anonymity

Whistle blowers may file a report without signing it, or provide incriminating evidence with no indication of its source. Whistle blowers may hide their identities in order to avoid retaliation, but then risk losing their effectiveness, for at least three reasons. First, organisation members may dismiss the concern of whistle blowers who are not willing to “face” the target of their accusations, and, presumably, give the accused an opportunity to confront them (Elliston 1982), weakening the minority influence of anonymous whistle blowers. Second, if whistle blowers do not provide sufficient evidence of wrongdoing, complaint recipients are unable to seek additional information from them, reducing their expert power. These factors suggest a main effect for revealing identity at the outset. Third, if whistle blowers are viewed as credible complainants because of their characteristics, remaining anonymous reduces their credibility.

A person may wish to remain anonymous, however, to prevent retaliation but this is sometimes difficult. Laws protecting whistle blowers, for example, do not always prevent retaliation. A second way of remaining anonymous is for whistle blowers to identify themselves to the complaint recipient while requesting that their identity should not be revealed to others. Doing so may increase credibility and facilitate the complaint recipient’s investigation. However, this action surrenders power to complaint recipients. If, at any time, the complaint recipient wishes to influence the whistle blower, he or she may threaten to betray the confidence. If the whistle blower’s identity remains anonymous to the complaint recipient, this action may adversely affect the determination by the complaint recipient of whether wrongdoing has occurred and whether it is deserving of action. If the whistle blower requests that the complaint recipient protect his or her identity, this action may jeopardise his or her power.

5.4.4 Motivated versus unmotivated communication

With the exception of Glazer (1983), none of the empirical studies on whistle-blowing examines the condition where an individual chooses to blow the whistle – not on the basis of altruism or self-sacrifice – but to advance personal interest in or outside the organisation. As noted by Glazer (1983), motivated self-interest is the underlying rationale for the whistle-blowing act in many well-known cases. For example, individuals who found fraudulent activities in the US federal government were often motivated to report their findings to government officials in order to receive a handsome finder's fee for their discovery. Others have used whistle-blowing for career advancement within an organisation, or even to exact revenge against others in the same company. For example, in the now infamous ZZZZ Best case, the fraud committed by Barry Minkow (the company's president) was disclosed to the auditing firm (Ernst & Whitney) as an anonymous tip for ransom and personal revenge against Minkow (see Knapp 1993:43-60 for a full description).

The motivation of the whistle blower has important implications as it can reduce the quality of the whistle blower's report, as well as the integrity of the company's system of internal control. Unmotivated communication means that the reason for whistle-blowing is grounded solely in an ethical conflict for the whistle blower. Motivated communication simply means that the whistle blower will report wrongdoing for purposes of personal gain such as obtaining economic resources, social power, or status within the organisation.

In other words, the probability or likelihood of a true report of wrongdoing is strictly higher when the report comes from an unmotivated whistle-blowing source than a motivated source. This assumption leads to two important implications. The worst signal is generated when the report is false and the whistle-blowing source has external motivations, because this has the potential for reducing the long-term effectiveness of whistle-blowing as a social control mechanism (Neimark & Tinker 1986), which in turn can reduce the integrity of the entire system of internal control. The best possible signal is generated when the report is true and the whistle-blowing source is unmotivated, because the user of this report – for example, internal auditors – would be able to rely on the information. Thus, when using whistle-blowing as a vehicle for communicating problems within an organisation, users of this information should pay considerable attention to the whistle blower's justifications for making a disclosure given that false allegations can be very costly for an organisation and its employees (see Glazer 1983).

5.5 The whistle-blowing process

Whistle-blowing is an overt operation and concerns making public certain issues by an individual acting on his or her own accord, who believes that

both his or her motives and the accusation made will stand up to public investigation. Four components of whistle-blowing can be identified:

- An individual performs an action or series of actions intended to make information public about an alleged act of wrongdoing.
- The information, in fact, becomes a matter of public record. Successful whistle-blowing requires that 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 wrongdoing in an organisation, such as illegal, dangerous or unethical activities in the organisation.
- The individual who makes the information public is not a journalist or an ordinary citizen, but a member or former member of the organisation. Thus, 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.

Whistle-blowing in the public service can be related to three requirements:

- As the government is entrusted with certain responsibilities, such as national security and public order, confidentiality would be of the utmost importance and a breach of confidentiality through whistle-blowing could have detrimental effects on everyone.
- A public official may resort to whistle-blowing if the conduct of another 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 (Williams 1985:15-18).

Whistle-blowing occurs, therefore, whenever individuals take it upon themselves to point out what they believe 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 often 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 losing their own jobs, or because of fear for the future of the organisation (Feldman 1999:149). If public officials had accepted the correct ethical values and behaviour, then whistle-blowing can be an effective measure that can be used by the government in its campaign against corruption.

There are three inevitable stages in the process of whistle-blowing. During the first stage, **causation**, a person perceives an activity as illegal, unethical, or immoral. The whistle blower can choose to ignore this perception, to acquiesce in the conduct of the activity, to participate, to object or to walk away. Over time, these five choices are not mutually exclusive as an individual's decision on how to behave at any given time may be reconsidered later. Irrespective of personal conduct, there may be no option but to proceed to the second stage, **disclosure**. In institutions regulated by legislation, which include all companies in democratic societies, there may be strict rules requiring disclosure to the external regulator or auditor. Auditors and other compliance officers are themselves under strict rules of disclosure. In situations of disclosure, the response of some institutions is to get rid of the problem, not by sorting out the revealed wrong, but by sorting out the whistle blower. Thus, stage three of the whistle-blowing process is **retaliation**. Disclosure is often by means of confidential information including documents, but even so, the whistle blower's identity may not be obvious. Consequently, identification of the whistle blower is a matter of extreme importance to the wrongdoer while preserving anonymity may perhaps be of greater importance to the whistle blower (Feldman 1999:2-3).

5.5.1 Whistle blowers' options

Blowing the whistle to expose corruption within institutions confronts those who choose this route with several dilemmas. In practical terms, if someone is concerned about corruption or serious wrongdoing in or by an institution, he or she has the option to stay silent; to blow the whistle internally or with the responsible person; or to blow the whistle outside to the authorities or the media. The predicament of the potential whistle blower may in part be due to economic dependence and in part to legal obligations of confidence owed to employers (Borrie in Camerer 1996:2). Besides the real fear of victimisation resulting from such disclosures, a primary dilemma involves the conflicting loyalties between the desire to follow inherent moral beliefs and expose misconduct, and the organisational pressures to conform to a culture of loyalty and confidentiality, albeit misplaced (Camerer 1996:2).

5.5.1.1 Silence

Silence is the option with the least risk for both the individual employee and for a responsible institution that encounter wrongdoing. It will be attractive for many reasons. The whistle blower will realise that his or her facts could be mistaken or that there may be an innocent explanation. Where other colleagues or competitors are also aware of the particular suspicious conduct but stay silent, the whistle blower will wonder why he or she should speak out. In institutions where labour relations are adversarial and in cultures where corruption is common, the whistle blower is likely to assume that he or she will be expected to prove that the corrupt practice is occurring, rather than see those in authority investigate and deal with the matter. Even though he or she has no control over it, the whistle blower may feel responsibility for any action that may be taken against the wrongdoer. Finally, unless the whistle blower believes there is a good chance that something will be done to address the wrongdoing, it is almost inevitable that he or she will stay silent (Dehn & Borrie 2001:3).

Even if the whistle blower thinks the alarm should be sounded, he or she will want to consider his or her private interests before taking action. Without reassurance to the contrary, the whistle blower will fear reprisals – either harassment or dismissal. The whistle blower may also suspect (rightly or wrongly) that the corruption involves, implicates or is condoned by more senior people in or outside the institution, in which case he or she will fear the matter will be covered up. Even where these obstacles are overcome or reduced, the whistle blower will fear that he or she will be labelled as disloyal by those colleagues whose respect and trust the whistle blower may want or need in future.

The results of a culture of silence are serious: first, responsible employers are denied the opportunity to protect their interests; second, unscrupulous competitors, managers or workers are given reason to believe that “anything goes”; and last, society focuses more on compensation and punishment than on prevention and deterrence.

5.5.1.2 Blowing the whistle internally

Addressing the effects of an internal whistle-blowing culture in the public sector, the UK Committee on Standards in Public Life (1996:22) commented that placing staff in a position where they feel driven to approach the media to ventilate concerns is unsatisfactory both for the staff member and the institution. It is far better for systems to be put in place that encourage staff to raise concerns within the institution, yet that allow recourse to the parent department where necessary. An effective internal system for the raising of concerns should include:

- A clear statement that malpractice is taken seriously in the organisation and an indication of the kinds of conduct regarded as malpractice;
- Respect for the confidentiality of staff raising concerns if they wish and an opportunity to raise concerns outside the line management structure;
- Penalties for making false and malicious allegations; and

- An explanation of the proper way in which concerns may be raised outside the organisation if necessary (UK Committee on Standards in Public Life 1996:22).

However, the approach taken by many institutions to information from employees is similar to the attitude displayed towards customers 30 years ago (that they were troublesome, untrustworthy complainants). This is a mistake since not only is information from the workforce readily accessible and free to collect, but it enables the institution to put a potential problem right before it causes any real damage to it, its reputation or its stakeholders. The self-interest of the institution in whistle-blowing is now being recognised and a few large institutions have recently begun to use outside advice lines to encourage and reassure staff to raise concerns about wrongdoing. These developments have been given added impetus – particularly in the US – by legal requirements to demonstrate due diligence, where safety, competition, financial and certain criminal laws have been breached (Dehn & Borrie 2001:5).

Institutions are now beginning to realise the importance of providing an alternative to (but not a substitute for) line management, since without this managers may have a monopolistic control over which information goes to those higher up in the organisation. As with any monopoly, one weak link – be it a corrupt, lazy, sick or incompetent person – will break the communication chain and stop those in charge from receiving information that could be critical to the organisation.

5.5.1.3 Blowing the whistle outside

If, however, it is not safe and accepted for people to blow the whistle internally, whistle blowers can turn to other options. Without a safe internal route, the only option is for them to disclose the matter outside – whether to the authorities or more widely. This is an increasingly important matter, since the opportunities for such wider disclosure – particularly to the media and public interest groups – are likely to be increased with new technology. A relevant example to consider in the context of any anti-corruption measure is where a worker or an audit firm discovers, or reasonably believes, that

account books or entries may conceal bribes. If they feel unwilling or unable to blow the whistle internally, the only options they will have will be to blow the whistle outside, or to stay silent (Dehn & Borrie 2001:6).

5.5.2 The whistle blower's decision-making process

As noted above, several empirical studies related whistle-blowing judgment to the moral reasoning paradigm. With the exception of Lampe and Finn (1992), however, most of these works focus on pre-decisional behaviour rather than the overall decision-making process from which the prospective whistle blower departs. As a starting point, consider the 'Four Component' model (Rest 1986:77-79), which defines basic psychological processes that underlie all ethical behaviour and action:

- **sensitivity** describes how the individual interprets the situation surrounding a particular set of ethical actions and alternatives;
- **reasoning** describes the psychological processes from which an individual selects, among the various courses of action available, a single 'best' ethical choice;
- **value assignment** describes the assigning of "moral" values among other non-moral values, such as career success, leisure time, economic gain, or power, to the ethical course of action; and
- **perseverance** describes the process by which an individual follows through on a particular ethical choice; as noted by Rest, many factors will foster or hinder an individual's ethical perseverance.

The applied psychology literature shows that, taken together, these four components provide a realistic mechanism for integrating the complex process of ethical behaviour and action. More specifically, drawing on all four components, the whistle-blowing process can be analysed in an organisational setting. To start with, the prospective whistle blower must be sensitive to the possibility of wrongdoing. In the context of fraud investigations, for instance, ethical sensitivity is tantamount to healthy scepticism, which permits the individual to frame the issue or conflict that underlies the whistle-blowing decision. As Rest (1986) observes, sensitivity to ethical issues is a necessary condition for processing and resolving ethical conflict, such as the whistle-blowing dilemma. Hence, without ethical

sensitivity, even virtuous individuals would have great difficulty in distinguishing between ethical and unethical acts and, as a result, would fail to detect the problem.

Once the fraud is identified, reasoning permits the individual to ponder ethical strategies for solving the problem according to his or her level of moral reasoning. For example, when framing an ethical strategy to a whistle-blowing dilemma, individuals at lower moral reasoning levels would tend to be concerned about the negative consequences of retaliation or punishment resulting from disclosure. Individuals at higher moral reasoning levels, however, would be concerned about the negative consequences of failing to report the incident to the proper authorities within or outside the organisation, irrespective of retaliation or punishment.

Working in conjunction with moral reasoning, value assignment permits the individual to apply ethical values to the issue or ethical conflict at hand. For example, an individual with relatively high moral reasoning skills might decide to blow the whistle after discovering a massive fraud in the organisation even though such disclosure would severely cripple the organisation and cause a major layoff of employees. Another person with identical moral reasoning skills might decide to keep silent on the same issue because he or she believes that keeping the organisation afloat is of greater value than revealing the incident of fraud to the proper authorities.

The ethical perseverance of an individual implies the following: after thinking about the problem, will the individual have the backbone to follow through on his or her ethical conviction? In the context of whistle-blowing, this component is perhaps the most important element. Empirical literature suggests that it is often very difficult for individuals to make the final decision to carry out the whistle-blowing act even after reaching the conclusion that the moral choice is to disclose the wrongdoing (see Brabeck in Near and Micelli 1985:59).

Once an ethical strategy for disclosing the whistle-blowing report has been decided, the individual must ultimately decide when and how to act on his or her judgment. Clearly, this characteristic is influenced by many factors, including the individual's level of moral reasoning, as well as the plethora of organisational, social and economic variables such as the degree of retaliation, the existence of peer pressure, economic incentives and so on that could lessen or foster the individual's propensity to do the right thing.

5.5.3 Effectiveness of whistle-blowing

The effectiveness of whistle-blowing may be defined in a variety of ways. Legal scholars tend to define the effectiveness of the outcome in terms of the win/lose ratio of lawsuits involving whistle blowers (Terpstra & Baker in Near & Micelli 1985:55). The focus here is primarily on whether the whistle blower accomplished what he or she set out to accomplish – namely, the initiation of organisational change as opposed to obtaining a judgment.

Therefore, the effectiveness of whistle-blowing is defined by the extent to which the questionable or wrongful practice (or omission) is terminated at least partly as a result of whistle-blowing and within a reasonable time frame.

Near & Micelli (1985:51) recommended that the operationalisation of “effectiveness” should be addressed. Obviously, “reasonableness” (in terms of resolution time) involves judgement and perception, and it is likely that it varies from situation to situation, as well as from person to person. There should be some concrete evidence that an action has been halted (e.g., corrected financial reports accepted by an outside authority), that cessation is attributable to the whistle blower’s action, and that the time period is reasonable (e.g., before a deadline). Lacking this, some consensus should exist among the parties involved in the whistle-blowing, but the limitations of this approach must be recognised by researchers.

5.5.3.1 Indicators of effectiveness

There are five primary factors that influence the termination of wrongdoing:

- the nature of the whistle-blowing event;
- the characteristics of the complaint recipient;
- the characteristics of the wrongdoer;
- the characteristics of the act of wrongdoing; and
- the characteristics of the organisation.

Five sets of variables affect these factors. Some are individual variables (pertaining to the whistle blower, complaint recipient and wrongdoer), and others are situational variables (organisational and wrongdoing variables).

An effective whistle-blowing process may have implications for an organisation’s future (Farrell & Petersen in Near & Micelli 1985:60). One potential long-term outcome is organisational performance (Perry in Ner & Micelli 1985:63). Although it is generally assumed that corporate wrongdoing harms an organisation’s performance (Clinard & Yeager in Near & Micelli 1985:67), empirical results suggest that this is not always the case (Baucus &

Near in Near & Micelli 1985:68). If public discovery of corporate wrongdoing does not reduce long-term performance, then executives have little incentive to terminate the wrongdoing. Alternatively, in the case of wrongdoing that harms the organisation (for example, employee embezzlement), termination of the wrongdoing clearly benefits the organisation.

The organisation's choice also affects a second long-term outcome – its ability to control external elements in its environment (Perry in Near & Micelli 1995:47), in other words, other organisations and constituents. For example, the institution sued for wrongdoing may be viewed with somewhat greater suspicion by regulatory agencies. In fact, empirical evidence suggests that corporate wrongdoers are more likely than other organisations to commit observed wrongdoing in the future; whether this is due to higher levels of wrongdoing on their part or increased surveillance by regulators could not be determined (Baucus & Near in Near & Micelli 1995). In the context of the elements that inhabit its external environment, then, the firm's ability to control the demands of these elements (Pfeiffer & Salancik in Near & Micelli 1995:53) may be impaired or enhanced by its response to the reporting of wrongdoing. Moreover, even though society may be influenced by whether an organisation terminates a particular case of wrongdoing (i.e. recalling defective Pintos), society is also influenced by potential changes in the nature of the relationship between the organisation and its external environment (e.g. when an institution implements an employee-involvement programme to prevent such errors in the future).

5.5.3.2 Elements involved in the organisation's response to whistle blowers

In much of the research, scholars have referred to "organisational response," as though it were an integrated and coherent response to the whistle blower by all members of the organisation (e.g. Farrell & Petersen in Near & Micelli 1985:55). However, most whistle blowers encounter a variety of responses within their organisations; for example, some co-workers express support, whereas others avoid the whistle blower because they fear that management will retaliate against anyone associating with the him or her (Near & Micelli 1995:19). Other parties to the process include the wrongdoer(s), who sometimes can be identified as specific persons; complaint recipients inside or outside the organisation; the whistle blower's immediate supervisor; and the dominant coalition (Thompson in Near & Micelli 1985:66), operationalised in many studies as the top management team (e.g. Micelli & Hambrick in Near & Micelli 1995:57). Parties outside the organisation – besides the complaint recipient – notably professional colleagues or family members and friends – may also react. The focus here is primarily on the reactions of organisation members, for three reasons. First, family members and friends are generally supportive of the whistle blower (Micelli & Near 1992). Second, members of the organisation may have both substantial reason to react negatively to the complaint and the power to hurt the whistle blower professionally or otherwise.

Third, organisational recourse generally would not be available for responses to the reactions of persons outside the organisation (with some exceptions, such as customers who harass employees).

5.5.3.3 Process rather than event

Whistle-blowing represents an influence process. An organisation member attempts to exert power to change the behaviour of some member(s) of the organisation. Indeed, empirical evidence suggests that whistle blowers considered themselves effective when they thought they had changed management's attitudes – even if they suffered retaliation in the process (Near & Micelli 1995).

An attempt is not made here to identify motivation; the individual may not consciously view the whistle-blowing process as an attempt to exert influence. It could be, however, that this is how the organisation, by definition, must experience it. That is, whistle blowers attempt to influence organisations to change their behaviour to terminate the wrongdoing. For this reason, change theories (organisational change and resistance to change) and power theories (external control of organisations, value congruence with managers, power relationships among groups and individuals, and power bases of the whistle blower) seem the most useful in explaining the process. Whistle-blowing might be viewed from another perspectives, for example, as a communication incident in which communications among social actors have gone awry (Near & Micelli 1995:77).

5.5.4 Appropriateness of whistle-blowing

Whistle-blowing on certain types of activities is sometimes considered part of an individual's regular job. It may be expected that individuals blowing the whistle as part of their job may be more effective than others. Consistent with this view, Trevino and Victor (in Near & Micelli 1985:79) found that, at least in some contexts, peer reporters were evaluated more positively by others when reporting wrongdoing was viewed as part of the reporters' role responsibility. Unfortunately, effectiveness was not examined.

If role-prescribed whistle blowers are more likely to hold power bases of reward and coercive power than whistle blowers without such roles, the former may be expected to be more effective than the latter in creating change. As an example, the Institute of Internal Auditors encourages firms to structure the position of director of internal auditing in such a manner that this person reports directly to the audit committee, a subcommittee of the board of directors composed mainly of outside members, in the hope of raising the efficacy of the director (Near & Micelli 1988). This is a clear instance of attempting to provide more direct power to role-prescribed whistle blowers, by

enhancing their ability to reward termination of wrongdoing and punish wrongdoers, through authority provided to them directly by the board of directors. In this case, power stemming from the basis of the ability to reward and coerce would allow the whistle blower to be viewed as someone who would be expected to report wrongdoing.

Likewise, efforts to legitimate whistle-blowing for all employees (e.g. internal whistle-blowing as part of a Total Quality Management programme) may have the same effect as creating a role-prescribed whistle-blowing status. The organisation's climate with regard to wrongdoing and specifically with regard to whistle-blowing (Near, Baucus, & Micelli, 1993) clearly affects this perception. Victor and Cullen (in Greenberger et al 1987: 101) have provided a comprehensive typology of ethical climates, defined as "the prevailing perceptions of typical organisation practices and procedures that have ethical content". They found empirical evidence of five types of ethical climates in organisations. It seems reasonable to propose that members of an organisation with "rules" for an ethical climate (Victor & Cullen in Greenberger et al 1987:112) may react differently if whistle-blowing appeared to violate these rules than where it did not, or than would members in an "independent" ethical climate (Victor & Cullen in Greenberger et al 1987:112). Whistle blowers in an organisation with "rules" may see whistle-blowing as part of their job if it were so specified, rather than a violation of apparent norms. If the climate supports whistle-blowing, members would both be more likely to report wrongdoing and be considered as more credible in so doing, thereby resulting in greater effectiveness. But there is also reason to propose that whistle blowers who are not in role-prescribed positions may be more effective than others. They may be seen as more credible, because extra effort and risk are required for them to report wrongdoing and, thus, their perceived motives may be admired, as seen in the minority influence literature. In fact, in both a sample of federal employees and of internal auditors from public and private organisations, the effectiveness of whistle-blowing was negatively related to being in a role that prescribed whistle-blowing (Near & Micelli 1991). This finding may have occurred because whistle-blowing was generally considered as appropriate only for those for whom it was prescribed; therefore, for another whistle blower to act, some strong rationale must have existed. However, others may not have seen the act as role-prescribed, when the whistle blower did so. Further research is needed to identify the conditions that affect the direction of the effect of role prescriptions.

5.5.5 Motivations for whistle-blowing

A person may disclose for any of the reasons or combination of reasons discussed below. Depending on an individual viewpoint, the whistle blower is considered heroic or heinous. In the first instance, people become whistle blowers as a matter of principle because of personally held ethical or moral

beliefs. These people are referred to as 'ethical resisters'. They tend to be 'conservative' people devoted to their work and their institutions.

Second, people may blow the whistle for legal considerations. The individual concerned may be in a regulatory function and specifically required to obey the law either because of professional obligations or the terms of his or her employment. For example, under companies' legislation in many countries, registered auditors are placed under stringent obligations in relation to company audits. Furthermore, employees of a company may be required under legislation to inform registered auditors fully and openly not merely on what auditors require, but on what they are entitled to require. International money-laundering regulations require disclosure to the relevant authorities by persons engaged in "property" and money transactions. These are merely examples of the many regulatory provisions now in force in such areas as financial regulation, competition and, of course, the vast area of environmental protection (Feldman 1999:4).

It may be argued that complying with such strict legislation is not particularly onerous on a person. There is a view that law-abiding people believe that the law in its broadest sense should be upheld. Consequently, it should be no great burden to obey the law in these matters. At the other end of the scale, an individual will comply through fear of the personal consequences arising from a failure to uphold the law once the wrongdoing becomes known. Certainly, the forms of legislation mentioned above contain criminal sanctions for breach of the law.

Third, on the heroic side, is disclosure for the public good. Such an individual is either seen as a good citizen or "do-gooder crank". Possibly the finest example was the very courageous action of Christopher Meili, the Swiss security guard, who blew the whistle on the shredding of Swiss archival documents relating to Holocaust banking accounts. Meili lost his job and suffered significant condemnation for his act. Since he had neither prior association with Holocaust victims nor any Jewish connections, his whistle-

blowing is all the more indicative of a totally selfless act motivated by public interest (Feldman 1999:5).

There is also a fourth reason for blowing the whistle, which might be described as “ancillary motives”. This could include motivation for personal gain, some malicious end such as revenge, or a destructive falling out of the concerned parties. They do not necessarily involve male fides.

5.5.6 The context where whistle-blowing occurs

Characteristics of the unit in which the whistle blower operates concern its overall climate for wrongdoing and whistle-blowing (Near & Micelli 1996). True organisational variables focus more directly on the organisation as a whole, though variations might be found in these variables at the sub-unit level of analysis (Victor & Cullen in Greenberger 1987).

For the time being, it is assumed that some homogeneity exists across subunits of the organisation in these characteristics and that organisations vary in their responses to attempts to change. In particular, some resist change, whereas others seem to embrace it. This partly reflects the perspective of the dominant coalition toward change and the appropriateness of whistle-blowing.

Beyond this, the organisation’s overall climate and its structure both reflect and influence its members’ resistance to change. At the most basic level, variables are concerned with the organisation itself. Characteristics of the wrongdoing, described previously, also influence members’ resistance to change. The organisation’s environment may also play a role in influencing organisational variables and wrongdoing variables. For example, norms associated with the organisation’s task domain and social norms may affect the organisation’s climate for wrongdoing and whistle-blowing. Economic variables such as global competitiveness may affect the dominant coalition’s perception of the organisation’s dependence on the wrongful activity.

However, the primary aim of a whistle-blowing culture is that concerns about corruption and wrongdoing should be properly raised and addressed in the workplace or with the person responsible. Crucially, the whistle blower is seen as a witness and not as a complainant. Where communication channels in organisations are designed for grievances and complaints, that is how they are used by the workforce. In the context of concerns about abuse, it is

important to bear in mind that malicious and aggrieved people do already make damaging disclosures when there is not any recognised whistle-blowing policy. Recognising this, a whistle-blowing culture should be concerned with the silent majority who thinks it is not in their interests to blow the whistle on corruption or serious wrongdoing. A whistle-blowing policy will help institutions and societies deter corruption and wrongdoing where a significant minority of those who now stay silent can be encouraged to see internal whistle-blowing as a viable, safe and accepted option (Dehn & Borrie 2001:9).

The main beneficiaries of a culture that disapproves of and penalises people who blow the whistle in good faith are those few corrupt institutions and individuals. Knowing that the alarm will not be sounded, they are confident that their wrongdoing (especially if it is corruption or bribery) will go undetected and unpunished. (In any case, when the successful investigation and prosecution of criminal activity outside of the workplace depend overwhelmingly on the information the police receive, it is not clear why the communication of information about wrongdoing in organisations is generally assumed to be undesirable). Quite apart from people with a predisposed criminal intent, the current culture adversely affects the conduct of the great majority of people. For them the strongest deterrent is the fear of being caught and the shame and embarrassment that go with it. Where a culture of secrecy and silence exists, otherwise reasonable people may be tempted to engage in malpractice because they believe they will not be caught. Equally, if such a culture exists in a society, then otherwise responsible institutions may feel they will be at a competitive disadvantage if they do not also pay bribes or engage in illegal practices (Dehn & Borrie 2001:9).

There is a strong undercurrent in the literature of public administration that suggests the existence and importance of a workplace environment that is hospitable to whistle-blowing activities. To that end, prudent employers should take steps to minimise risks and negative exposures by establishing a positive culture of whistle-blowing. Whistle-blowing can also be an effective early warning system. Employees in the front line know better than anyone what is going on in their area. All kinds of benefits may accrue from listening to them.

But not doing so may cause a local difficulty to grow into a crisis. Not knowing where to turn in a crisis can also be extremely stressful for employees who may, as a result, feel cornered into acting in a way that is neither in the interests of the employer or themselves.

Under the Protected Disclosures Act of 2000, absence or ineffectiveness of whistle-blowing mechanisms within an institution may well be enough to protect an employee against sanctions for having disclosed confidential information to a third party. However, this is not conducive to effective long-term damage limitation.

5.6 Summary

This chapter set out to describe and analyse the whistle-blowing process, with the aim of identifying potential predictors. This analysis included an examination of the available definitions of whistle-blowing and the difficulties involved in the lack of a uniform definition. It also focused more specifically on the whistle blower by providing examples of whistle blowers who observe an act of wrongdoing, those who are involved or approached to act unlawfully, those who blow the whistle deliberately and the media in their role as whistle blowers.

An attempt was made to identify the specific characteristics of individuals who choose to blow the whistle on wrongdoing. In this regard, credibility, power and anonymity were examined, before motivated and unmotivated whistle-blowing were compared.

The whistle-blowing process was then explored in detail. Whistle blowers' options were identified as silence, blowing the whistle internally and outside. In each case, the benefits and disadvantages of these choices were pointed out. The whistle blower's decision-making process was also studied.

Specific attention was paid to the effectiveness of whistle-blowing and specific indicators of effectiveness were identified. Those elements involved in an

organisation's response to whistle blowers were also considered, specifically with regard to the fact that whistle-blowing is always a process rather than an event.

The appropriateness of whistle-blowing was also explored and motivations for the decision to blow the whistle were identified. Finally, the context within which whistle-blowing occurs was described.

The next chapter will summarise the findings of this study. It will provide some indicators of causes and conditions for corruption as a major element in whistle-blowing. It will also provide some indication of what the predictors of successful whistle-blowing could potentially be. The chapter will conclude with indications of further research that would be undertaken to explore this issue in greater detail.

CHAPTER SIX

CONCLUSION AND RECOMMENDATIONS

6.1 Introduction

This study set out to explore, describe, analyse and explain the ethical dilemmas of whistle-blowing and corruption in the public sector. Corruption has not been eliminated from public institutions. The fear of reprisals as a result of a disclosure continues to impact negatively on effective whistle-blowing. Public officials are crucial observing wrongdoing in the workplace and are in a position to take action to put an end to corruption.

The research identified several problems as significant potential barriers that stop officials from acting against misconduct in the workplace. These include conduct that is seen as justified and correct when it should not be; the attitude that nothing will be done if wrongdoing is reported; continued concern about personal and professional retaliation; and a lack of knowledge about how and where to report corruption.

Relevant theories on the ethical dilemmas of the prospective whistle blower were used to establish how public officials from different cultures, backgrounds and education, could perceive ethics, corruption and whistle-blowing.

The presumed benefits of whistle-blowing to society should be seen against the potential of negative consequences of whistle-blowing as managers and administrators sometimes argue that their organisation's authority structures should protect them from the harassment of potential false, bothersome, or even violent confrontations by employees.

Whistle blowers are both citizens and managers, and are therefore exposed to dilemmas in both their roles. As citizens, they want to see the termination of wrongdoing. As managers, they would like whistle-blowing incidents to go

through internal channels only. However, if whistle-blowing is ineffective, it benefits no one. This study therefore attempted to establish the predictors that would increase the effectiveness of whistle-blowing.

The need for the reflection recorded in this study is important, because determining measures to combat corruption and promote can serve as useful benchmarks to assess the progress of democratisation in South Africa. The research questions that were therefore asked in this study addressed the extent to which the fear of blowing the whistle affects the disclosure of corruption in the South African public service; the variables that increase the likelihood that whistle-blowing will be effective; the nature of the interaction between ethics, corruption and whistle-blowing in government; the South African public's awareness of the democratic right, freedom and opportunities to disclose information on corruption and unethical practices; their awareness of where and how to report corruption; and how whistle-blowing can be integrated and encouraged in South African legislation to address the concern about personal and professional retaliation.

The aim of this study was to investigate and expand upon the ideas advanced in literature and legislation in order to investigate employees' perceptions with regard to ethics and corruption. More generally, the study attempted to present indicators and potential predictors of whistle-blowing.

In order to achieve the aim and purposes of the study, the objectives of the study were to compile systematic explorations of conceptual knowledge about ethics, values and morals, as well as about corruption, and to analyse these concepts as important external variables that influence the process of whistle-blowing; to examine and analyse strategies and instruments, both national and international, to combat corruption and promote the whistle-blowing process; to describe and analyse the whistle-blowing process, with the aim of identifying potential predictors; and to identify further steps that have to be taken to ensure the successful implementation of whistle-blowing measures with their potential positive impact on the fight against corruption.

The value of the study was identified as fostering a common definition of what is corrupt in order to address the current lack of shared understanding; equipping employees with a capacity to act if they witness workplace misconduct; providing information about how and where to report corruption and other forms of workplace misconduct; providing information to the management of organisations to enable them to take effective action against corrupt behaviour; and Inform the creation of organisational cultures where employees feel safe to report corruption.

To this effect, the following hypothesis was formulated: Public sector employees' perceptions and the government's understanding of ethical behaviour and corruption are important, as they can serve as useful indicators and yardsticks to measure the progress in disclosing and managing corruption.

6.2 Objective one: to compile a systematic exploration of conceptual knowledge about ethics, values and morals and to analyse these concepts as important external variables that influence the process of whistle-blowing

Public officials occupy a unique position in society and the promotion of the general welfare of the community must be their first priority. Their unique position cannot be used to promote their own ideals and they have to adhere to ethical standards, in other words, systems of moral principles. The values and morals by which public officials live their lives as individuals in a community have a direct influence on their position as public officials. They are first and foremost individual members of a particular community.

Consideration must always be given to existing values and morals that are deemed by the public to be sound and desirable. These values and morals provide a solid base for transparent administration. When public officials take a serious interest in their own ethical behaviour and confront ethical dilemmas with responsibility, the cornerstone of good government has been laid and

sound public administration results. This is crucial if a public service wants to have the trust of the community it serves.

Ethical dilemmas occur in most public services. Public officials will all be confronted with such dilemmas while being employed in the public service. Although it is essential that corruption – in what form it might 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 they are taking when informing on suspected corruption or other wrongdoing; the failure to provide sufficient proof for the allegations could hold serious consequences. It is essential that public officials should only embark on such a course of action if they are of the opinion that the values and morals of the society to which they belong, are being seriously harmed by the presence of unethical and corrupt behaviour.

It is clear that a code of ethics of some form is of importance to ensure that public officials fulfil their duties in an ethical manner. The values and norms of the community should also be protected by such a code of ethics. Furthermore, guidelines should be in place against which public officials can measure their behaviour. To ensure honest government, a code of ethics should lead, direct and guide the actions of public officials; otherwise, it would be virtually impossible to define what constitutes unethical behaviour.

The formulation of the code of ethics for the South African public service indicates the commitment of the South African government to combat unethical and unacceptable behaviour by public officials. The measures contained a uniform set of ethical guidelines applicable throughout the entire public service. Public officials, through training and education, should also be made aware of unethical and corrupt behaviour if the fight against corruption is to have some success.

In this chapter ethical governance and human rights were also 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, among others, through election fraud, official violence and institutional misconduct. To combat such manifestations, it is important that remedies are utilised such as whistle blowers, monitoring and investigation, transparency, clear rules 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 that are in place, include the Auditor-General, standing committees of parliament, the Public Protector and the Human Rights Commission.

In discussing the issue of human rights, it was found that respect for 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 pays due consideration to international human rights and humanitarian law.

Current and future demands on ethical and accountable governance will place increasing emphasis on ethical behaviour and professional competence. Public officials and political office bearers should serve society through actions directed at promoting the public interest. As stated in the first chapter, the perceptions of individual public officials are considered to have an impact upon the perpetuation of corrupt practices. If people do not recognise the activity they may be witnessing, or in which they may be participating as “corrupt” or at least as “undesirable” or “harmful”, then they are not likely to react to it as such. If they do recognise behaviour as unethical and corrupt, but believe that, for example, such behaviour is appropriate given the circumstances, they are also unlikely to attempt to change the behaviour. It is therefore crucial that the understanding of public officials of what constitutes unethical and corrupt behaviour should be harmonised.

6.3 Objective two: to compile a systematic exploration of conceptual knowledge about corruption, its different forms and the manner in which it manifests itself and to analyse these as important external variables that influence the process of whistle-blowing

In chapter three, an attempt was made to define the concept of corruption, and to identify the different causes, manifestations and conditions that give rise to corruption. High standards of conduct in the public sector have become a critical issue for governments. Preventing misconduct is as complex as the phenomenon of misconduct itself and a range of integrated mechanisms are needed for success, including sound ethics management systems. Public management reforms involving greater devolution of responsibility and discretion for public servants, budgetary pressures and new forms of public service delivery have challenged traditional values in the public service.

In addition, governments should make every effort possible to eliminate possible causes of unethical and corrupt behaviour. Some of these causes could include deficient control and accountability, complex legislation and inadequate procedures and information.

There seems to be conflict between traditional values and the systems governing the behaviour of public servants and the modern roles they are expected to fulfil. Public officials try to meet these standards, but there are weaknesses in the procedures for maintaining and enforcing them. As a result, people in public life are not always as clear as they should be about the boundaries of acceptable 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 commercialisation of the public sector.

Public officials should always have the public interest in mind whenever they are fulfilling their duties; taxpayers' money is involved for which proper account should be provided, in public, at any time. However, as soon as public officials use their public office for private enrichment, this immediately constitutes corrupt behaviour. Corruption is an intentional act with public officials knowing what their duties are but preferring to neglect or misperform them in order to attain some personal gain. Corruption also occurs if public officials act beyond their duties in an unethical and immoral manner thus displaying a lack of honesty and integrity – the latter two being essential characteristics of any public official serving the public. The common denominator of corrupt behaviour is when public officials make use of their office for personal gain to the detriment of another person or society. Corrupt public officials serve themselves first and care little for the public and public interest. They regard the public office as a business opportunity.

This corrupt behaviour, as shown in this chapter, can take on various forms and can also differ from high-level corruption by political office bearers and senior public officials to low-level corruption as practised by public officials lower down in the hierarchy. Bribery appears to be the most common form of corruption whereby public officials abuse their position for material or financial rewards. Patronage as a manifestation of corrupt behaviour is only of benefit to the public official as long as the political party of which he or she is a supporter, remains in power. If a political party remains in power for a considerable period of time, then a public official could look forward to a long and stale 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 be guilty of this type of corruption. However, the practice of kickbacks remains the most common manifestation of corruption for both the political office bearer and the public official. Finally, it must be realised that if leaders of society participate in corrupt activities, then it will eventually be inevitable in

most cases for this behaviour to spill over to public officials and other members of the leader's organisation.

It is evident that 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 that were indicated and discussed in this chapter.

Although disclosures of unethical and corrupt conduct by public officials are made in South Africa 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, however, are 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.

In South Africa, it is important to understand corruption in its historical context. Corruption developed under an illegitimate apartheid state and at certain levels of both the state and civil society became institutionalised. Redress and reconstruction of a racially skewed polity and economy are the major driving imperatives of the new democratic state, and are fundamental conditions for successful post-apartheid development.

A major risk arises in the context of the shift in emphasis away from public administration to service delivery, a characteristic of most transitional states. New actors and perspectives challenge a bureaucratic culture, where rules, procedures and internal controls are seen as blockages to swift service delivery. This pressure to deliver may lead to compromises in ethical

standards and the flaunting of basic internal control mechanisms such as a protective policy for whistle-blowing.

With the evolution of anti-corruption measures, there is a growing consensus that an anti-corruption policy should combine enforcement, prevention and protection measures. There is also agreement that a greater focus on prevention is likely to reduce the need for enforcement. Moreover, the prevention and combat of corruption need to be implemented in both the moral and systemic spheres, while building an honest and effective state requires an understanding of the different factors, which give rise to corruption.

6.4 Objective three: to examine and analyse strategies and instruments, both national and international, to combat corruption and promote the whistle-blowing process

South Africa's transition to democratic rule has been characterised by high levels of crime, including widespread corruption. Several initiatives have been undertaken in recent years to promote accountability and fight corruption. These efforts include establishing specialised bodies such as the Special Investigating Unit, hosting anti-corruption conferences, as well as passing relevant legislation.

Transparency International developed the concept of a "national integrity system" to improve standards of governance. It is a holistic system to promote transparency and accountability in the public sector. It requires the active participation of both civil society and the private sector. The approach coincided with the mainstream development agenda of the time, which prioritised the interests of the poor and marginalised in the context of an enabling state. It saw corruption as an obstacle to this goal. The framework requires sovereign states to comply with international conventions and protocols. In a national system where power is shared, no single person enjoys a monopoly, lines of horizontal accountability are clearly drawn, and a culture of transparency defines its character, watchdog bodies and agencies

exercise a check on the president and the executive, parliament, the courts, financial institutions, the media, the public service and other institutions of government, with civil society also playing a role. Each one of these entities, including the watchdog agencies, constitutes a pillar supporting national integrity.

Dependence on one part of an integrity system must be avoided, while gaps and weaknesses in the system must be addressed in an ongoing way. Corresponding practices such as fair elections, conflict of interest rules, public service ethics, access to information and whistle-blowing legislation, among others, should be included in the system to support its pillars.

One of the key obstacles in the fight against corruption is the fact that, without legal protection, individuals are often too intimidated to speak out or 'blow the whistle' on corrupt activities that they observe in the workplace. Although they may have a duty to report misconduct in terms of their conditions of employment, those who do stick their necks out and raise concerns are mostly victimised, intimidated and until recently, would have little recourse to legal remedies.

Within the context of a national integrity system, the United Nations Code of Conduct for International Public Officials, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the SADC Protocol on Corruption were discussed. The focus further fell on South Africa's process to tighten up its controls of corruption dating back to the late 1990s. The following events and issues were examined: cabinet briefings, the National Summit, the establishment of a national forum, a media campaign to assist in awareness raising and the institution of a national hotline for the reporting of corruption.

The second half of this chapter dealt with legislative measures to combat corruption and facilitate whistle-blowing. The following pieces of legislation were analysed: the Open Democracy Bill, the Protected Disclosures Act (Act 26 of 2000), the Investigation into Serious Economic Offences Act (Act 117 of

1991), the Reporting on Public Entities Act (Act 93 of 1992), the Corruption Act (Act 94 of 1992), the Audit Act (Act 22 of 1992), and the Public Service Act of 1994 (Promulgated under Proclamation 103 of 1994). Other measures to facilitate whistle-blowing also fell under the spotlight, including ethical remedies for the detection of wrongdoing, training and internal guidelines, political leadership, organisational arrangements, the media and public awareness.

South African whistle-blowing legislation goes further than both the Australian and American laws to cover both public and private sector employees. However, in drafting the legislation, the justice committee was not persuaded to expand the ambit of the law beyond the employer-employee relationship. As such, a pensioner (who is not an employee) who blows the whistle on a corrupt pension officer or fellow pensioner would not be protected under the law. This is currently under review.

6.5 Objective four: to describe and analyse the whistle-blowing process, with the aim of identifying potential predictors

Government and political corruption has been a persistent phenomenon throughout history. Scholars agree that it remains one of the most important challenges to modern states. Corruption is an ethical issue, based in the value system of a nation, and its eradication requires total commitment and concerted efforts by government and civil society.

The promulgation of legislation to protect whistle blowers has raised the hope that individuals within the public service will contribute more to the eradication of corruption among their ranks. This chapter therefore set out to consider who whistle blowers are, what their characteristics are and how the process of whistle-blowing occurs.

It was found that whistle blowers come from any level of an organisation and even from outside, although legislation in many countries does not protect the latter. They may blow the whistle on sexual harassment, fraud, inadequate

health and safety measures, harmful practices, breaches of regulatory requirements, money-skimming, or any other form of corruption. But whistle blowers are mostly ordinary people with a high level of moral standard and committed to ethical conduct.

The potential value of employees coming forward and raising concerns over malpractices is self-evident. Investigations into have often revealed that employees were either aware of the problem or had raised concerns that were ignored. The cost of this silence – to human life, the environment, public health, employment, financial security, lifelong savings, the public purse and even loss of life or lifelong disability – is devastatingly high.

The position occupied by an individual in an organisation is not the driving factor behind the choice to blow the whistle on wrongdoing. However, the position of a whistle blower may influence an organisation's response. In this regard, credibility may influence the response, not only the credibility of the whistle blower's claim, but also his or her credibility as an individual. The position occupied by a whistle blower in an organisation also has an effect, particularly if the person is responsible for duties that may otherwise have been categorised as whistle-blowing – internal auditors are an example of this. Other factors are power and status, anonymity, and whether there are ulterior motives for whistle-blowing or not.

The whistle-blowing process was also analysed in detail, and the three stages were discussed. Causation, the first stage, is when someone sees an activity or action that he or she regards as illegal, unethical or immoral. The choices are to ignore this, to acquiesce, to participate, to object or to walk away. These choices are not mutually exclusive as the decision may be reconsidered later. Disclosure, the second stage, may be inevitable in some cases, particularly where there are strict rules requiring disclosure to an external regulator or auditor. After disclosure, the response of some may be to get rid of the problem by getting rid of the whistle blower. Stage three is therefore retaliation.

When a person decides to blow the whistle on wrongdoing, he or she can do so internally or externally. In South Africa, external whistle-blowing is regulated by the requirements of the Protected Disclosures Act of 2000. The effectiveness of whistle-blowing, it was found, is defined by the extent to which the questionable or wrongful practice (or omission) is terminated at least partly as a result of whistle-blowing and within a reasonable time frame.

The context within which whistle-blowing occurs was also studied. It is important that a culture that enables whistle-blowing is in place. This means that concerns about corruption and wrongdoing can be properly raised and addressed in the workplace or with the person responsible. In such a culture, the whistle blower will be seen as a witness and not as a complainant. Where communication channels in organisations are designed for grievances and complaints, that is how the workforce uses them. In the context of concerns about abuse, it is important to bear in mind that malicious and aggrieved people do already make damaging disclosures when there is not any recognised whistle-blowing policy. Recognising this, a whistle-blowing culture should be concerned with the silent majority who thinks it is not in their interests to blow the whistle on corruption or serious wrongdoing. A whistle-blowing policy will help institutions and societies deter corruption and wrongdoing where a significant minority of those who now stay silent can be encouraged to see internal whistle-blowing as a viable, safe and accepted option.

6.6 Objective five: to identify further steps that have to be taken to ensure the successful implementation of whistle-blowing measures with their potential positive impact on the fight against corruption

There is no doubt that South Africa's giant steps in legislative reform over the past decade have gained the world's respect. In many areas, the country has some of the most advanced laws in place. Certainly, with respect to the freedoms and rights that have been enshrined in the Constitution of 1996 and

the Bill of Rights, the country is on a level with some of the most advanced democracies in the world.

But like in these same democracies, corruption remains a threat to the quality of ordinary citizen's lives. No government can ever be complacent in thinking that it has done enough to prevent this from occurring. It is also not only the responsibility of government to address corruption. Organisations from all sectors should be part of this drive, civil society should take responsibility, and so should educational institutions that prepare children and the young to participate fully in adult life.

It is evident from the research reported in chapters two, three, four and five, that there are four specific risk areas that have to be addressed to equip public officials to recognise corruption and to increase the likelihood that whistle-blowing will be effective. These risk areas are:

- a lack of common understanding about what is meant by “unethical and corrupt conduct” adds to the difficulty in communicating about corruption and minimising corruption;
- a lack of understanding about what is meant by effective whistle-blowing and what is meant by potential predictors of whistle-blowing that result in wrongdoing cessation;
- a lack of common understanding about the advantages and disadvantages of whistle-blowing to determine if whistle-blowing will or should increase because of the presumed benefits of whistle blowing to society at large; and
- a common understanding that there is no point in reporting corruption as nothing will be done about it and nothing will be done to protect potential whistle blowers from retaliation.

This study set out to explore and analyse the concepts of ethics, morals and values and the nexus between these three and the phenomenon of corruption. It paid particular attention to the government's actions to institute a national integrity system, as well as to specific legislation that directly or indirectly aims to address corruption. The spotlight fell on the whistle blower and the process of whistle-blowing. But much remains to be done.

The following areas have thus been identified as potential topics for further research:

- An in-depth analysis of the legislation discussed in this thesis could provide important insight into the potential reach and flaws of laws to address corruption.
- A cultural study could uncover those areas where confusion may remain about what constitutes corruption. Within the South African context, empirical data of this kind could be extremely valuable when formulating codes of ethics and conduct, but also in setting up educational and training programmes to sensitise employees in all sectors.
- A study focused on that component of civic education that focuses on values, morals and ethics may have an impact on primary and secondary school children's understanding of corruption. Educational programmes often influence parents and members of a young person's family. This could have far-reaching effects on the fight against corruption in the longer term.
- An empirical analysis of the public's perceptions of corruption, their rights as citizens of the state in general and their right to ethical service provision could provide important information to underpin awareness raising initiatives.

- An analysis of the conditions within organisational culture that facilitates effective whistle-blowing could inform change strategies that could be of benefit to both the public and private sector.

6.7 Causes, conditions and contexts that predict wrongdoing and corruption

The study identified the following general causes of corruption:

- The presence of networks in society, which rely on clientelistic relationships to hold on to power, and held together by payoffs.
- Too little or too much government control.
- The universal appearance of a consumer-oriented society and the gap between desire and the means of fulfilment.
- The presence of inadequate political channels and the disproportionate impact of government on society, bureaucratic dominance, a weak sense of nation with greater emphasis being placed on kinship, and a distinct gap between citizen and government.
- Lack of leadership and discipline shown by the politicians.
- The expanding role of state activity in developing countries with an expanding public service and increasing discretionary power.
- The absence of a public service work ethic. Divergence between government and society, where citizens of a country find the government threatening and incalculable.

Two institutional causes of corruption were identified:

- Poor remuneration of public officials with politicians and law enforcement officers turning a blind eye to corruption as this is seen as the only means for supplementing a meagre income.
- The aspirations of individuals for high office and the desire to be in control of power giving rise to pragmatism to ensure the retention of this power.

Causes and conditions for corruption among public officials were identified as follows:

- Greed or the striving for personal gain – seeking private gain at public expense – by public officials and an obsession with material gains
- Patronage or the assignment of government positions to political supporters.
- Nepotism or preferential treatment to one individual that results in the victimisation of another without taking into account the relative merit of both.
- Bribery, an economic phenomenon whereby public officials accept bribes for monetary gain; to augment insufficient remuneration; or for other immediate benefits that can accrue as a result of authority to manipulate the system.
- Ghosting or theft through phantom resources.
- Bid rigging or the pre-determining of the bid winner and the bid price among potential buyers.
- Graft when public officials demand payment for rendering a public service, which they had to perform as part of their duty.

- Kickbacks with the cooperation of a public official who will receive compensation in the form of cash or other goods, favours or benefits, thereby profiting at the expense of the taxpayer.
- Policy dilemmas when the public official experiences a clash between his or her view of the public interest and the requirements of law.
- Information leaks when the official's personal conception of what is in the public interest may vie with his or her official obligations.
- The demands of pressure groups (such as trade unions), which place personal interest above national interests.

Other problem areas for the public service are:

- The political activity of public servants resulting in divided loyalty.
- 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.
- More subtle ethical problems, such as the abuse of sick leave privileges, extended tea breaks and the violation of office rules in general.

Conditions and causes of corruption among political office bearers were identified as:

- 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 causes of corruption.
- Conflict of interest when public officials benefit privately from their public role through the choices they make.

- The lack of public interest leading to ineffective scrutiny of executive action thereby giving public officials and political office bearers the impression that, as the public shows little interest in their activities, they can partake in corrupt activities as nobody will want to become involved in exposing them.
- The existence in society of systematic and enduring inequality in wealth, power and status.
- The expanded role of state activity in a country's public service resulting in an expanding public service with increasing discretionary authority, which is abused for personal gain.
- The secret conduct of public business.
- The solicitation of a citizen's vote in exchange for some reward of monetary value.

6.8 Predictors of whistle-blowing behaviour

Whistle blowers can be characterised as follows:

- They are usually ordinary people who have a high standard of moral values that is expressed in ethical conduct.
- They have the ability to distinguish between right and wrong.
- They are courageous people who are prepared to stand up for what they consider to be right or wrong.

- They are prepared to accept the risk that blowing the whistle may endanger their employment and thus their livelihood, their status in society or their reputation.

Organisations' responses to an act of whistle-blowing are influenced by:

- The credibility of the whistle blower – if people are trusted, such an action may be taken seriously.
- The motivation of the whistle blower – if there are any suspicions about the reasons why someone choose to blow the whistle, chances are that the complaint will not be heard.
- The perceived validity of the evidence – this should be the greatest reason for taking a disclosure of wrongdoing seriously, and not perceptions of the motivations of the whistle blower.
- The position of the whistle blower – power and status often influence the capacity of an individual to influence management.
- Membership of minority groups within an organisation – females or members of underrepresented ethnic groups may find it harder to be heard.

Whistle blowers employ the following decision-making process when confronted with the choice to disclose wrongdoing or corruption in an organisation:

- The prospective whistle blower is *sensitive* to the possibility of wrongdoing. Ethical sensitivity is tantamount to healthy scepticism, which permits the individual to frame the issue or conflict that underlies the whistle-blowing decision. Sensitivity to ethical issues is necessary for processing and resolving ethical conflict, such as the whistle-blowing dilemma. Without

ethical sensitivity, virtuous individuals would have difficulty to distinguish between ethical and unethical acts and, as a result, would fail to detect the problem.

- Once wrongdoing is identified, *reasoning* helps the individual to consider ethical strategies for solving the problem. Individuals may tend to be concerned about the negative consequences of retaliation or punishment resulting from disclosure. Others would be concerned about the negative consequences of failing to report the incident to the proper authorities within or outside the organisation, irrespective of retaliation or punishment. It is the latter who would choose to blow the whistle.
- *Value assignment* permits the individual to apply ethical values to the issue or ethical conflict. One individual may choose to blow the whistle after discovering fraud even though such a disclosure will cripple the organisation and cause the retrenchment of employees. Another person may choose silence because he or she believes that keeping the organisation afloat is of greater value than revealing the incident of fraud to the proper authorities.
- *Ethical perseverance* in the context of whistle-blowing is perhaps the most important element. Empirical literature suggests that it is often very difficult for individuals to make the final decision to carry out the whistle-blowing act even after reaching the conclusion that the moral choice is to disclose the wrongdoing.
- Once an *ethical strategy* for disclosing the whistle-blowing report has been decided, the individual must decide when and how to act. This decision is influenced by many factors, including the individual's level of moral reasoning, as well as the plethora of organisational, social and economic variables such as the degree of retaliation, the existence of peer pressure,

economic incentives and so on that could lessen or foster the individual's propensity to do the right thing.

There are five primary factors that influence the termination of wrongdoing:

- the nature of the whistle-blowing event;
- the characteristics of the complaint recipient;
- the characteristics of the wrongdoer;
- the characteristics of the act of wrongdoing; and
- the characteristics of the organisation.

6.9 Concluding remarks

A prerequisite for strengthening the rule of law and the credibility of the state, both internally and externally, is an efficient administration that serves the needs of all citizens. It must be transparent, responsible and accountable, and served by honest officials.

Whistle-blowing is increasingly as crucially important in combating wrongdoing, including corruption. National and international anti-corruption policy agendas have therefore incorporated measures aimed at encouraging and protecting whistle blowers in recent years. Whistle-blowing is a key tool in promoting individual responsibility and organisational accountability. Whistle blowers acting in good faith and in the public interest may be the bravest of citizens. In refusing to turn a blind eye to suspected impropriety in the workplace and as such preventing possible harm, they deserve society's support, if not praise.

Many changes have occurred since 1994 to institutionalise openness, the disclosure of malpractice and transparency. The Constitution of 1996 (Act 108 of 1996), the Public Service Act Promulgated under Proclamation 103 of 1994 and the Promotion of Access to Information Act of 2001 (Act 2 of 2001) enlarged the scope of transparency in the affairs of the public sector. Together with the Promotion of Administrative Justice Act of 2000 (Act 3 of 2000) and

the Protected Disclosures Act of 2000 (Act 26 of 2000), it constitutes a major advance in the development of good governance. Apart from the legislative measures mentioned above, several initiatives have been undertaken in recent years to promote accountability and fight corruption

These changes indicate the public sector becoming more corruption resistant than it was before 1994. There is an increasing focus on good (and bad) corporate governance in South Africa and internationally, and institutions that are transparent and open will benefit from more favourable investor perceptions. 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 and to protect whistle blowers.

Scope remains for eliminating non-transparent practices in most countries. Corruption 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. The improper enrichment of officials, however, is not the only concern but the unlawful or unethical abuse of authority that goes with it. An act of corruption is an abuse of authority.

One of the key obstacles in the fight against corruption is the fact that, without legal protection, individuals are often too intimidated to speak out or “blow the whistle”. The Protected Disclosures Act of 2000 provides protection against occupational detriment to those who disclose information of unlawful or corrupt conduct. This law is therefore an important weapon in the armoury of anti-corruption efforts to encourage honest employees to report wrongdoing.

This thesis attempted to contribute to the knowledge of the connections between ethics, values, morals and corruption. The focus was on the many advances that South Africa has made in the past decade to address corruption. It also provided important insights into whistle blowers and whistle-

blowing, a phenomenon without which corruption will continue to grow. If it were not for those courageous individuals who choose to speak out and uphold the moral values of society, the world would be a poorer place.

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APPENDIX I

PUBLIC SERVICE ANTI-CORRUPTION STRATEGY

SUMMARY OF PROPOSALS

1. It is proposed that a holistic and integrated approach to fighting corruption be established. This requires a strategic mix of preventative and combative activities and a consolidation of the institutional and legislative capabilities of Government.
2. The proposed Public Service Anti-corruption Strategy contains nine considerations that are inter-related and mutually supportive. These considerations are as follows:-

2.1 Review and consolidation of the legislative framework. It is proposed that a new legislative framework to fight corruption be established and implemented by July 2003. This framework must provide for-

- A new corruption Act that provides a workable definition of corruption, that reinstates the common law crime of bribery, that creates presumption of prima facie proof to facilitate prosecution, that extends the scope of the Act to all public officials and private citizens and their agents;
- A range of offences and obligations;
- A holistic approach to fighting corruption;
- Compliance with regional and international conventions;
- Civil recovery of proceeds and the ability to claim for damages; and
- Prohibition of corrupt individuals and business.

2.2 Increased institutional capacity: It is proposed that the courts, existing institutions and departmental capabilities be improved for optimal functioning. In particular it is proposed that-

The efficacy of existing departments and agencies be improved through the establishment, by March 2002, of appropriate mechanism to coordinate and integrate anti-corruption work.

Departments create a minimum capacity to fight corruption (audit report available by May 2002).

- 2.3 *Improved access to report wrongdoing and protection of whistleblowers and witnesses:* this consideration focuses on improving application of the protected disclosures legislation, witness protection and hotlines. Implementation of the improvements is to commence by August 2002.
- 2.4 *Prohibition of corrupt individuals and business:* It is proposed that mechanisms be established to prohibit (a) corrupt employees from employment in the Public Sector and (b) corrupt businesses and agents of such businesses from doing business with the Public Service for a maximum period of five years. It is envisaged that the information system for prohibited employees will be established by April 2003 and central electronic register of prohibited businesses will be established by September 2002.
- 2.5 *Improved management policies and practices:* Solid management practices is widely recognised as the first line of defense against corruption and it is proposed that improvements be effected with regard to procurement systems, employment arrangements, the management of discipline, risk management, management information and financial management. The proposals include the extension of the system of disclosure of financial interests, screening of personnel, establishing mechanisms to regulate post-Public Service employment and strengthening the capacity to manage discipline. It is envisaged that revised management practises be implemented by November 2002 and that management information system will be operational by April 2004.
- 2.6 *Managing professional ethics:* It is proposed that a generic professional ethics statement for the Public Service be developed that is to be supplemented by mandatory sector-specific codes of conduct and ethics. Professional ethics will be supported by extensive and practical explanatory manuals and training and education. Implementation is envisaged to be December 2002.
- 2.7 *Partnerships with stakeholders :* Partnering has been identified as cornerstone of the national fight against corruption and in particular-
- The National Anti-Corruption Forum will be used to promote Public Service interests;
 - Partnerships will be established with the Business and Civil Society Sectors to curb corruption practices; and
 - Public Service unions will be mobilised to advocate professional ethics with members.
- 2.8 *Social analysis, research and policy advocacy:* It is proposed that all sectors be encouraged to undertake ongoing analysis on the trends, causes and impact of corruption and for these sectors to advocate

preventative measures. These partnerships will be established by August 2002.

2.9 Awareness, training and education.: It is proposed that all the above developments be supported through ongoing awareness, training and education and that a targeted public communication campaign be launched by July 2002. The campaign will be aimed at promotion of South Africa's anti-corruption and good governance successes domestically and internationally. The local part of the campaign will be hinged on the promotion of *Batho Pele* initiatives and pride amongst employees.

Balia,D.M.2005.Fighting Corruption In the South African Public Sector with special reference to costs and impact. Doctoral Thesis. University of South Africa. 2005.

APPENDIX II

CONFERENCE STATEMENT *

Corruption in the public sector involves theft from the government, extortion of the public, and the abuse of power for illegal gain. It threatens all our efforts to improve life for the majority of our people, to reconstruct and develop our economy and communities. While we acknowledge the progress we have made and the efforts of many public servants, we also recognise that we have a long way to go to establish clean, accountable and transparent government.

As politicians and public servants from all spheres of government, we rededicate ourselves to serving the public and the national interest. The Code of Conduct for the Public Service provides the basic guide for our work and our relationships to the public. We can no longer tolerate dishonesty in our work or our colleagues.

The public must take responsibility for helping to end corruption. We need to ensure that every South African knows what to expect from the public sector, how to report corruption and extortion, and that they will be safe from victimization. And we must ensure that the criminal justice system follows up swiftly and effectively on all reported cases.

We will take the process started by this conference to ensure that the public and the public services develop a clear understanding and consensus on what corruption is.

We need to draw clear lines to define corruption, which takes many forms and on that basis establish a holistic approach.

Since corruption has deep roots in our society, we must accept that while some short-term measures can have a significant effect, ending corruption forms part of the long-term and laborious process of transformation of government and society as a whole. We commit ourselves to develop a comprehensive strategy

QUALITY OF MANAGEMENT

All public service managers shall be held accountable if corruption occurs, and they are expected to address the prevention of corruption as part of their core responsibilities. Public service managers, at least from deputy director up, must report their assets in asset registers held by the relevant legislature.

We shall arm our managers to deal with corruption more effectively. The new Codes for Discipline and Incapacity must ensure that the public service can deal efficiently and affectively, but fairly, with cases of misconduct and inability to carry out duties. We must uproot the inherited system, which provide excessive protection for some public servants irrespective of their work. We need to find a better balance between the rights of the individual employee and the needs of the public.

The public service unions have all expressed support in principle for a more efficient disciplinary system. We will work closely with them to make this new system a reality.

The new Public service Regulations lay the basis for more effective performance management at all levels. We are also asking senior managers to accept performance agreements that will determine their salary increments. All performance management systems must encourage managers to fight corruption and misconduct.

We need to ensure consistent and clear rules of conduct and control mechanisms, to that public service managers know exactly what they have to do. We must audit all our rules regularly, including treasury regulations, tender procedures and personnel management systems, to ensure that they are consistent and deal effectively with problems as they begin to emerge.

Finally, reconstruction and development requires a new focus on project management, and we need to ensure adequate skills to control corruption around new initiatives.

FINANCIAL AND MANAGEMENT CONTROLS

Most departments have made great progress in reviewing and improving their financial and management controls. Nonetheless, given the inadequate systems we inherited in most areas, we need to redouble our efforts.

We need to develop simpler and more effective treasury and procurement measures that prevent and pinpoint corruption and ensure value for money, without building excessive inflexibility into the system. New systems must ensure an appropriate focus on outputs and outcomes, rather than emphasising detailed procedures that ultimately do not meet the national interest of improving service delivery while controlling corruption. The relevant national and provincial department and the municipalities must immediately review their regulations to achieve these ends.

National and provincial departments and municipalities must develop internal audit systems and bring in better financial management skills at a high level. In addition, we need to ensure that every public servant who handles public money has adequate training and control systems in place. Audit reports of municipalities shall be tabled in provincial parliaments. All employees must be made familiar with the control measures that apply to their work.

ANTI-CORRUPTION AGENCIES

The criminal justice system must develop a list of priority cases and corruption in the public service, and increase its efforts to deal with them rapidly and severely.

Government must improve the capacity and efficiency of investigation and prosecution of corruption. Anti-corruption agencies should publish clear guidelines on the nature of corruption ways to report transgressions, and how the agencies will deal with reports of corruption expeditiously and rigorously. The agencies should report to the public on progress in these areas.

The Justice Department should explore the creation of a special court to deal with cases of corruption more rapidly and expertly.

Protection for whistleblowers will be strengthened.

THE WAY FORWARD

- A working group that represents the stakeholders in attendance will oversee the implementation of the resolutions and this declaration, and work together to ensure the success of the forthcoming Summit in developing an effective programme for combating corruption.
- The interface between the public service and private sector is where much corruption occurs. The private sector must form part of the solution, not be part of the problem, in the reform of public sector procurement and other measures to combat corruption. Key private institutions, such as banks and the accounting profession, must end all involvement in corruption and commit themselves to combating it in future. An inter-ministerial team should take these processes forward to the Summit.
- The departments that constitute the Criminal Justice System will come up with practical proposals for improving coordination and ensuring more rapid and effective handling of corruption cases for the Summit.
- All areas not covered should be evaluated for medium or long-term implementation as part of a consolidated conference programme of action.

APPENDIX III

SUMMIT RESOLUTIONS

We, the delegates drawn from various sectors in South African society, acknowledge that corruption:

- Adversely effects all sectors in society and impacts most directly on the poor and is corroding the national culture and ethos of democracy and good governance at all levels and sectors of society
- Is corroding the national culture and ethos of democracy and good governance at all levels and sectors of society
- Depletes both government and civil society of scarce resources that are needed to ensure economic prosperity, equality and a better life for all, and is blight on society caused by the worship of self, which gives the pursuit of personal affluence priority above the pursuit of economic justice for all.

We therefore commit ourselves to

- Stamping out corruption at every level in society
- Developing a culture of zero tolerance of corruption
- Visibly supporting and subscribing to the national integrity strategy in order to combat corruption in all sectors of civil society and Government
- Educating all persons in South Africa to work together towards a higher moral purpose

We therefore resolve to implement the following resolution as the basis of a national strategy to fight corruption

Combating Corruption

- To endorse, support and implement all the sectoral initiatives developed in the National Anti-Corruption Summit;
- To critically review and revise legislation in place to combat corruption, and to address any shortcomings by either amending, or drafting new legislation where necessary;
- To develop, encourage and implement whistle blowing mechanism, in all sectors, which include measures to protect persons from victimization where they expose corrupt and unethical practices;
- To support the speedy enactment of the Open Democracy Bill to foster greater transparency, whistleblowing and accountability in all sectors;
- To ensure effective investigation and prosecution of acts of corruption by establishing special courts;

- To establish Sectoral Coordination Structures to effectively lead and manage the National Anti-Corruption Programme in their sector and to feed into the development of a National Coordination Structure. In particular the Public Service Commission should be empowered to effectively lead, coordinate, manage and monitor the National Anti-Corruption campaign within the Public service;
- To rapidly establish a cross sectoral task team to look into the establishment of a National Coordinating Structure with the authority to effectively lead, coordinate, monitor and manage the National Anti-Corruption Programme

The Public Service Commission is to take responsibility for establishing the cross-sectoral task team.

Preventing Corruption

- To publicise and support the blacklisting of businesses, organizations and individuals who are proven to be involved in corruption and unethical conduct;
- To establish a National Anti-Corruption Hotline to facilitate the reporting of corrupt practices in all sectors
- To establish and promote Sectoral and Other Hotlines to strengthen the National Hotline;
- To take disciplinary action and other proactive measures against persons found to be behaving corrupt and unethical ways;
- To monitor and report consistently and fairly on corruption in all areas of civil society, the private sector and Government;
- To promote and implement sound ethical, financial and related management practices in all sectors

Building integrity and raising awareness

- To promote and pursue social analysis and research and policy advocacy to analyse the causes, effects and growth of corruption, and evaluate and monitor the effectiveness of anti-corruption strategies;
- To Negotiate, develop, support and enforce Codes of Good Conduct and Disciplinary Codes in each sector of civil society;
- To work together to inspire the youth, workers, employers and the whole South African society with a higher moral purpose and ethos that will not tolerate corruption;
- To promote training and education in occupational ethics on all levels of South African society;
- To support and work together with Government in creating a sustained media campaign to highlight the causes of, and solutions to corruption, and to communicate the national integrity strategy

**APPENDIX IV:
CORRUPTION PERCEPTIONS INDEX
(SOURCE: TRANSPARENCY INTERNATIONAL)**

Country Rank	Country	CPI 2003 Score	Surveys used	Standard deviation	High-Low Range
1	Finland	9.7	8	0.3	9.2 - 10.0
2	Iceland	9.6	7	0.3	9.2 - 10.0
3	Denmark	9.5	9	0.4	8.8 - 9.9
	New Zealand	9.5	8	0.2	9.2 - 9.6
5	Singapore	9.4	12	0.1	9.2 - 9.5
6	Sweden	9.3	11	0.2	8.8 - 9.6
7	Netherlands	8.9	9	0.3	8.5 - 9.3
8	Australia	8.8	12	0.9	6.7 - 9.5
	Norway	8.8	8	0.5	8.0 - 9.3
	Switzerland	8.8	9	0.8	6.9 - 9.4
11	Canada	8.7	12	0.9	6.5 - 9.4
	Luxembourg	8.7	6	0.4	8.0 - 9.2
	United Kingdom	8.7	13	0.5	7.8 - 9.2
14	Austria	8.0	9	0.7	7.3 - 9.3
	Hong Kong	8.0	11	1.1	5.6 - 9.3
16	Germany	7.7	11	1.2	4.9 - 9.2
17	Belgium	7.6	9	0.9	6.6 - 9.2
18	Ireland	7.5	9	0.7	6.5 - 8.8
	USA	7.5	13	1.2	4.9 - 9.2
20	Chile	7.4	12	0.9	5.6 - 8.8
21	Israel	7.0	10	1.2	4.7 - 8.1
	Japan	7.0	13	1.1	5.5 - 8.8
23	France	6.9	12	1.1	4.8 - 9.0
	Spain	6.9	11	0.8	5.2 - 7.8
25	Portugal	6.6	9	1.2	4.9 - 8.1
26	Oman	6.3	4	0.9	5.5 - 7.3
27	Bahrain	6.1	3	1.1	5.5 - 7.4
	Cyprus	6.1	3	1.6	4.7 - 7.8
29	Slovenia	5.9	12	1.2	4.7 - 8.8
30	Botswana	5.7	6	0.9	4.7 - 7.3
	Tawain	5.7	13	1	3.6 - 7.8
32	Qatar	5.6	3	0.1	5.5 - 5.7
33	Estonia	5.5	12	0.6	4.7 - 6.6
	Uruguay	5.5	7	1.1	4.1 - 7.4
35	Italy	5.3	11	1.1	3.3 - 7.3
	Kuwait	5.3	4	1.7	3.3 - 7.4
37	Malaysia	5.2	13	1.1	3.6 - 8.0
	United Arab Emirates	5.2	3	0.5	4.6 - 5.6
39	Tunisia	4.9	6	0.7	3.6 - 5.6

	Hungary	4.8	13	0.6	4.0 - 5.6
41	Lithuania	4.7	10	1.6	3.0 - 7.7
	Namibia	4.7	6	1.3	3.6 - 6.6
43	Cuba	4.6	3	1.0.	3.6 - 5.5
	Jordan	4.6	7	1.1	3.6 - 6.5
	Trinidad & Tobago	4.6	6	1.3	3.4-6.9
46	Beliza	4.5	3	0.9	3.6 - 5.5
	Saudi Arabia	4.5	4	2	2.8 - 7.4
48	Mauritius	4.4	5	0.7	3.6 - 5.5
	South Africa	4.4	12	0.6	3.6 - 5.5
50	Costa Rica	4.3	8	0.7	3.5 - 5.5
	Greece	4.3	9	0.8	3.7 - 5.6
	South Korea	4.3	12	1	2.0 - 5.6
53	Belarus	4.2	5	1.8	2.0 - 5.8
54	Brazil	3.9	12	0.5	3.3 - 4.7
	Bulgaria	3.9	10	0.9	2.8 - 5.7
	Czech Republic	3.9	12	0.9	2.6 - 5.6
	Jamaica	3.8	5	0.4	3.3 - 4.3
	Latvia	3.8	7	0.4	3.4 - 4.7
59	Colombia	3.7	11	0.5	2.7 - 4.4
	Croatia	3.7	8	0.6	2.6 - 4.7
	El Salvador	3.7	7	1.5	2.0 - 6.3
	Peru	3.7	9	0.6	2.7 - 4.9
	Slovakia	3.7	11	0.7	2.9 - 4.7
64	Mecixo	3.6	12	0.6	2.4 - 4.9
	Poland	3.6	14	1.1	2.4 - 5.6
66	China	3.4	13	1	2.0 - 5.5
	Panama	3.4	7	0.8	2.7 - 5.0
	Sri Lanka	3.4	7	0.7	2.4 - 4.4
	Syria	3.4	4	1.3	2.0 - 5.0
70	Bosnia & Herzegovina	3.3	6	0.7	2.2 - 3.9
	Dominican Republic	3.3	6	0.4	2.7 - 3.8
	Egypt	3.3	9	1.3	1.8 - 5.3
	Ghana	3.3	6	0.9	2.7 - 5.0
	Moroco	3.3	5	1.3	2.4 - 5.5
	Thailand	3.3	13	0.9	1.4 - 4.4
76	Senegal	3.2	6	1.2	2.2 - 5.5
77	Turkey	3.1	14	0.9	1.8 - 5.4
78	Armenia	3	5	0.8	2.2 - 4.1
	Iran	3	4	1	1.5 - 3.6
	Lebanon	3	4	0.8	2.1 - 3.6
	Mali	3	3	1.8	1.4 - 5.0
	Palestine	3.0.	3	1.2	2.0 - 4.3
83	India	2.8	14	0.4	2.1 - 3.6
	Malawi	2.8	4	1.2	2.0 - 4.4
	romania	2.8	12	1.0.	1.6 - 5.0.
86	Mozambique	2.7	5	0.7	2.0 - 3.6

	Russia	2.7	16	0.8	1.4 - 4.9
88	Algeria	2.6	4	0.5	2.0 - 3.0
	Madagascar	2.6	3	1.8	1.2 - 4.7
	Nicaragua	2.6	7	0.5	2.0 - 3.3
	Yemen	2.6	4	0.7	2.0 - 3.4
92	Albania	2.5	5	0.6	1.9 - 3.2
	Argentina	2.5	12	0.5	1.6 - 3.2
	Ethopia	2.5	5	0.8	1.5 - 3.6
	Gambia	2.5	4	0.9	1.5 - 3.6
	Pakistan	2.5	7	0.9	1.5 - 3.9
	Philippines	2.5	12	0.5	1.6 - 3.6
	tanzania	2.5	6	0.6	2.0 - 3.3
	Zambia	2.5	5	0.6	2.0 - 3.3
100	guatemala	2.4	8	0.6	1.5 - 3.4
	Kazakhast	2.4	7	0.9	1.6 - 3.8
	Moldova	2.4	5	0.8	1.6 - 3.6
	Uzbekistan	2.4	6	0.5	2.0 - 3.3
	Venezuela	2.4	12	0.5	1.4 - 3.1
	Vietman	2.4	8	0.8	1.4 - 3.6
106	Bolivia	2.3	6	0.4	1.9 - 2.9
	Honduras	2.3	7	0.6	1.4 - 3.3
	Macedonia	2.3	5	0.3	2.0 - 2.7
	Serbia & Montenegro	2.3	5	0.5	2.0 - 3.2
	Sudan	2.3	4	0.3	2.0 - 2.7
	Ukraine	2.3	10	0.6	1.6 - 3.8
	Zimbabwe	2.3	7	0.3	2.0 - 2.7
113	Congo, Republic of the	2.2	3	0.5	2.0 - 2.8
	Ecuador	2.2	8	0.3	1.8 - 2.6
	Iraq	2.2	3	1.1	1.2 - 3.4
	Sierra Leone	2.2	3	0.5	2.0 - 2.8
	Uganda	2.2	6	0.7	1.8 - 3.5
118	Cote d'Ivoire	2.1	5	0.5	1.5 - 2.7
	Kyrgyzstan	2.1	5	0.5	1.6 - 2.7
	Libya	2.1	3	0.5	1.7 - 2.7
	Papua New Guinea	2.1	3	0.6	1.5 - 2.7
122	Indonesia	1.9	13	0.5	0.7 - 2.9
	Kenya	1.9	7	0.3	1.5 - 2.4
124	Angola	1.8	3	0.3	1.4 - 2.0
	Azerbaijan	1.8	7	0.3	1.4 - 2.3
	Cameroon	1.8	5	0.2	1.4 - 2.0
	Georgia	1.8	6	0.7	0.9 - 2.8
	Tajikistan	1.8	3	0.3	1.5 - 2.0
131	Myanmar	1.6	3	0.3	1.4 - 2.0
	Paraguay	1.6	6	0.3	1.2 - 2.0
132	Haiti	1.5	5	0.6	0.7 - 2.3
132	Nigeria	1.4	9	0.4	0.9 - 2.0
133	Bangladesh	1.3	8	0.7	0.3 - 2.2