

**THE CHALLENGES OF CURBING CORRUPTION IN A DEMOCRACY:
THE CASE OF THE PUBLIC PROTECTOR AND NKANDLA**

BY

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*Thesis presented in fulfilment of the requirements for the degree of Master of Sociology in the
Faculty of Arts and Social Sciences at Stellenbosch University*

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March 2016

DECLARATION

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ABSTRACT

Corruption as a global phenomenon has remained a recurring subject in development and nation-building discussions, particularly in Africa. Across the continent, there is a growing concern about the negative effect of corruption on economic development, with grave consequences for the wellbeing of citizens. The media in Africa is inundated with news of corrupt activities of public officials on a daily basis. Despite efforts that are being made at all levels – national, regional and international - corruption appears to be on the increase rather than declining.

This aptly describes the situation in South Africa where, since transition to democratic governance in 1994, corruption has been one of the major problems the different administrations have had to contend with. Since 1994, there has been the enactment and ratification of national, regional and international conventions, as well as the establishment of numerous institutions to address the problem of corruption. The problem has persisted despite all these efforts. It is to this end that this study seeks to understand the challenges of curbing corruption in a democratic system such as South Africa. To help understand these challenges, the handling of the Nkandla case by the Public Protector has been used as a case study. The bureaucratic organisational model is employed to aid understanding of the prevailing governance and leadership structure in South Africa. It is argued that neo-patrimonialism, which best defines the existing leadership structure, engenders patronage networks that on one hand create the avenue for corruption and on the other, make it difficult to address the problem.

This study argues that the patronage network of relationships that exist between the President and various state organs involved in the implementation and investigation of the Nkandla project gave rise to the challenges the Public Protector experienced in the course of investigating the case. Other specific challenges of curbing corruption that emerged include lack of political will to address the problem, political interference in the operations of anti-corruption institutions, internal capacity constraints and institutional framework deficiencies.

The conclusion reached is that for South Africa to make progress in the fight against corruption, these issues have to be addressed. For instance, as part of the strategy to address institutional framework deficiencies, there is a need to reconsider the suitability of a single, well-empowered and independent anti-corruption agency, with a clearly defined mandate. Although the status of the recommendations of the Public Protector regarding the Nkandla case are soon to be addressed by the Constitutional Court, it is important to still have a dedicated anti-corruption agency so as to avoid the current problem of a multiplicity of reports and the overlap of responsibilities, which amounts to poor coordination and a waste of public resources.

OPSOMMING

Korrupsie as 'n globale verskynsel en is 'n onderwerp wat aanhoudend opkom in die ontwikkeling en nasiebou besprekings, veral in Afrika. Oor die hele vasteland, is daar 'n groeiende kommer oor die negatiewe uitwerking wat korrupsie op ekonomiese ontwikkeling het endie ernstige gevolge wat dit vir die welsyn v burgers inhou. Die media in Afrika is op 'n daaglikse basis oorval met nuus van die korrupte aktiwiteite van openbare amptenare. Ten spyte van pogings wat op alle vlakke gemaak word- nasionale, streek- en internasionale, blyk dit of korrupsie eerder styg as bedaar.

Dit beskryf gepas die situasie in Suid-Afrika, waar sedert die oorgang na 'n demokratiese regering in 1994, korrupsie een van die grootste probleme is wat die verskillende administrasies moet aanspreek. Sedert 1994, is daaraanvaarding en ratifikasie van verskeie nasionale, streeks- en internasionale konvensies, asook die vestiging van talle instellings om die probleem van korrupsie aan te spreek. Ondanks al hierdie pogings, duur die probleem voort. Om hierdie rede poog die studie poog om die uitdagings van die bekamping van korrupsie in 'n demokratiese stelsel soos Suid-Afrika te verstaan. Om o hierdie uitdagings te begryp, word die saak Nkandla deur die Openbare Beskermer gebruik as 'n gevallestudie. Burokratiese organisatoriese model is gebruik om ons begrip van die heersende regering en leierskap struktuur in Suid-Afrika te ontleed. Dit is aangevoer dat neo-patrimonialisme die bestaande leierskap struktuur verduidelik, en dat dit begunstigtinge netwerke kweek wat aan die een kant die baan vir korrupsie bevorder en aan die ander, dit moeilik om die probleem aan te spreek.

Hierdie studie argumenteer dat die begunstigtinge netwerke van verhoudings wat bestaan tussen die President en verskeie staatsorgane wat betrokke was by die implementering en ondersoek van die Nkandla-projek het aanleiding gegee tot die uitdagings wat die Openbare Beskermer ervaar het in die afloop van die ondersoek van die saak. Ander spesifieke uitdagings van die bekamping van korrupsie wat na vore gekom het sluit die gebrek aan politieke wil in om die probleem aan te spreek, politieke inmenging in die werksaamhede van anti-korrupsie instellings, interne kapasiteit beperkings en institusionele raamwerk tekortkominge.

Die gevolgtrekking is dat as Suid-Afrika vordering wil maak om die stryd teen korrupsie te wen, dat hierdie kwessies aangespreek moet word. Byvoorbeeld, as deel van 'n strategie om institusionele raamwerk tekortkominge aan te spreek, is daar 'n behoefte om die geskiktheid van 'n enkele, goed bemagtigde en onafhanklike teenkorrupsie-agentskap met 'n duidelike mandaat te heroorweeg. Alhoewel, die status van die aanbevelings van die Openbare Beskermer rakende die geval Nkandla binnekort deur die Konstitusionele Hof aangespreek gaan word, is dit belangrik om steeds 'n toegewyde anti-korrupsie agentskap om die huidige probleem van veelvuldige verslae en

oorvleueling van verantwoordelikhede te vermy, wat neerkom op swak koördinasie en vermorsing van staatsgeld.

ACKNOWLEDGEMENTS

My gratitude first and foremost to God, Almighty, for the strength and grace to start and complete this study. Your faithfulness has brought me this far. I will forever be grateful to You.

I want to thank my supervisor, Prof Lindy Heinecken, for your commitment and dedication to getting the best of me throughout this period. I have learnt and improved considerably through your comments and suggestions, which made this study what it is.

My profound gratitude to the lecturers in the department for their support and willingness to assist any time it was requested. I am particularly grateful to the Coordinator of the Postgraduate programme, Prof Cheryl Walker, who made my entrance and time in the department a great one. My gratitude to Genay Dhelmine, Elizabeth Hector and other administrative staff for their support services and contribution to my pleasant experiences in the department. I am indeed grateful to every one of you.

Thank you to all the members of my Master's class and other postgraduate students in the department for your support and encouragements. The journey of the last two years was made more tolerable by your presence and the opportunities we had to discuss our research and share experiences. I am grateful to my Nigerian student community in Stellenbosch (ANSSU), and for the opportunity to serve as Vice President.

Last but not the least, I want to thank my friends and family back home in Nigeria for their support and encouragement throughout this period. I am particularly grateful to my boss, Dapo Olorunyomi, for his unflinching support, and the management of Premium Times for giving me the time off to pursue this degree. I am also grateful to everyone who contributed this study in one way or another. Your support is highly appreciated. Lastly, to my love, Kemi Fred-Adetiba, for your immense contribution to the successful completion of this work. Thank you for your editorial input and for creating a conducive environment for me to finish up. I share this degree with you.

DEDICATION

In loving memory of my parents, Samuel Ajayi Adetiba and Abigail Titilayo Adetiba. You two would have been very proud of this achievement.

LIST OF ACRONYMS

ACA	ANTI-CORRUPTION AGENCIES
ADB	AFRICAN DEVELOPMENT BANK
ANC	AFRICAN NATIONAL CONGRESS
AU	AFRICAN UNION
CEO	CHIEF EXECUTIVE OFFICER
CIA	CENTRAL INTELLIGENCE AGENCY
COO	CHIEF OPERATING OFFICER
COPE	CONGRESS OF THE PEOPLE
COSATU	CONGRESS OF SOUTH AFRICA TRADE UNIONS
CPI	CORRUPTION PERCEPTION INDEX
CPIB	CORRUPT PRACTICES INVESTIGATION BUREAU
CSNAC	CIVIL SOCIETY NETWORK AGAINST CORRUPTION
CSO	CIVIL SOCIETY ORGANISATION
CW	CORRUPTION WATCH
DA	DEMOCRATIC ALLIANCE
DCEC	DIRECTORATE ON CORRUPTION AND ECONOMIC CRIME
DG	DIRECTOR GENERAL
DOD	DEPARTMENT OF DEFENCE
DPW	DEPARTMENT OF PUBLIC WORKS
ECCOSOC	ECONOMIC AND SOCIAL COUNCIL
EFF	ECONOMIC FREEDOM FIGHTERS
FDI	FOREIGN DIRECT INVESTMENT
FEDUSA	FEDERATION OF UNIONS OF SOUTH AFRICA
GPG	GAUTENG PROVINCIAL GOVERNMENT
ICAC	INDEPENDENT COMMISSION AGAINST CORRUPTION
IMF	INTERNATIONAL MONETARY FUND
ISS	INSTITUTE FOR SECURITY STUDIES
M&G	MAIL AND GUARDIAN
MP	MEMBER OF PARLIAMENT
MRM	MORAL REGENERATION MOVEMENT
NACF	NATIONAL ANTI-CORRUPTION FORUM
NACTU	NATIONAL COUNCIL OF TRADE UNIONS

NGO	NON-GOVERNMENTAL ORGANISATION
NP	NATIONAL PARTY
NPA	NATIONAL PROSECUTING AUTHORITY
NRLF	NATIONAL RELIGIOUS LEADERS' FORUM
OECD	ORGANISATION FOR ECONOMIC COOPERATION AND DEVELOPMENT
OPP	OFFICE OF THE PUBLIC PROTECTOR
OSEO	OFFICE OF SERIOUS ECONOMIC OFFENCES
PEP	PEOPLES' ENVIRONMENTAL PLANNING
SADC	SOUTHERN AFRICAN DEVELOPMENT COMMUNITY
SAHO	SOUTH AFRICAN HISTORY ONLINE
SANDF	SOUTH AFRICAN NATIONAL DEFENCE FORCE
SANEF	SOUTH AFRICAN NATIONAL EDITORS' FORUM
SAPS	SOUTH AFRICAN POLICE SERVICE
SIU	SPECIAL INVESTIGATION UNIT
TI-SA	TRANSPARENCY INTERNATIONAL SOUTH AFRICA
TRC	TRUTH AND RECONCILIATION COMMISSION
UN	UNITED NATIONS

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CHAPTER ONE

INTRODUCTION

1.1 BACKGROUND TO THE STUDY

Corruption in various shapes can be said to have been part of human society from time immemorial. Farrales (2005:3) describes corruption as a timeless phenomenon that “can exist under any form of government, in any country or state and at any time”. It is a global phenomenon that cannot be pinned down to any particular historical period of human development. According to Mbaku (2008:427), “the persistence of corruption throughout the ages has forced some researchers and policy makers to consider it as an unavoidable part of human interaction”. Just like other social problems, corruption remains a subject of interest to researchers, scholars and development experts across the world, because of its devastating effect on development and governance (Coetzee, 2014; Sakyi, Azunu & Mensah, 2011). Increasingly, efforts are being made across the globe to further the understanding of the phenomenon in its different forms and manifestations, with the aim of curbing it.

While considerable progress can be said to have been achieved in developed economies and democracies to understand and mitigate it through reforms, corruption persists and has become widespread in other parts of the world, particularly in the developing economies of Africa (Szeftel, 2007:291). Others, such as some of the emerging economies of Asia like China, appear to have been more able to fight against corruption (ADB/OECD, 2008). Unfortunately, the same cannot be said of African countries, particularly those in sub-Saharan Africa, where corruption is part and parcel of the way the system functions (Diamond, 1987:581). With the exception of a few African countries, corruption can be said to have become pervasive both in and outside government circles.

This is both harmful and devastating, as it threatens not only development, but democracy. Many African states have grappled with how to stem the tide of corruption because of the negative effects it has on good governance (McGowan & Johnson, 1984). This is because corruption not only undermines democracy, but is seen to promote social inequalities and poverty, as it hampers the even distribution of public goods (Adebanwi & Obadare, 2011:186). It also discourages the inflow of foreign direct investment (FDI), as international businesses do not wish to deal with corrupt governments, as this hampers the functioning of business. This is not to say that there are no instances where these private businesses in fact encourage corruption, through the bribery of public officials in order to facilitate their business interests. This practice, where private businesses bribe

their way through public bureaucracies, gave rise to the term ‘efficient corruption’, and this has become commonplace in Africa (Leff, 1964; Huntington, 1968; Svensson, 2005).

While efforts are being made by different countries to curb and minimise the impact of corruption, it is a difficult problem to deal with. Different countries have been able to record different levels of success in the fight against the scourge. It seems when one form of corruption is being dealt with, another form begins to manifest (Caiden 2013:92). According to Adejumbi (in Adebani & Obadare, 2011), corruption is a wild animal; an octopus that changes shapes and sizes. In some countries, the endemic and pervasive nature of corruption makes it appear to be woven into the very fabric of the society, making it difficult to deal with. Some state that in Africa, corruption “is no longer an aberration but rather the way the system works” in the state (Diamond, 1987:581). To further appreciate the difficulty of tackling corruption, Adebani and Obadare (2011), in their work “When Corruption fights back: Democracy and Elites Interest in Nigeria anti-corruption War”, showed how corruption in some instances fights back. “After a bright start in Kenya, Angola, Nigeria and South Africa, the anti-corruption war in Africa quickly stalled” (Adebani & Obadare, 2011:203).

There have been several postulations by social researchers regarding the causes of corruption, or the conditions that are necessary for corruption to thrive. According to Camerer (1999b:6), causes of corruption include: weak checks and balances, greed of public officials, and bureaucratic ‘red tape’. Another interesting perspective on the causes of corruption is provided by the Public Choice theory, which was popularised by Gordon Tullock and James M. Buchanan in the 1960s (Mbaku, 2008). Public choice theory, which is an attempt to combine the notions of man being a political as well as an economic animal by nature, sees man as ‘an egoistic, rational and utility maximizer’ that will not fail to satisfy his/her economic interest given the political opportunity (Mbaku, 2008:429). This is particularly common in emerging democracies in Africa that are characterised by neo-patrimonial rule, where public offices are to a great extent influenced by personal interests (Adebani & Obadare, 2011:188). It is therefore imperative to put in place constitutional frameworks (institutions) to ensure individuals in positions of authority adhere to rules (Mbaku, 2008:430).

In South Africa, one such institution is the Public Protector, established to assist in strengthening constitutional democracy by dealing with various forms of official misconduct, including corrupt practices (Constitution of the Republic of South Africa, 1996:s182-3). A review of how South Africa is faring in terms of curbing corruption reveals that the country is not doing well, as shown by the Corruption Perception Index over time (CPI Reports, 2010-2013). The Corruption Perception Index is a periodic corruption level assessment conducted by Transparency International. Pillay

opined that, “corruption is likely to appear on every observer’s list of factors that threaten to obstruct South Africa’s path towards sustainable development” (2004:586). The CPI reports show that corruption has increased, despite the existence and efforts of numerous anti-corruption institutions in the country (Pillay 2004:586). This study looks specifically at the challenges the office of the Public Protector faces in dealing with instances of public misadministration and corruption.

1.2 RATIONALE OF THE STUDY

The Public Protector was established by an act of parliament in 1994, with constitutional backing that came into effect in 1996 (Public Protector, 2010). The Constitution empowers the Public Protector “to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice; to report on that conduct; and to take appropriate remedial action”. (Chapter 9, s182(1)(a),(b),(c)). The Public Protector Act of 1994 also clearly states that, “The format and the procedure to be followed in conducting any investigation shall be determined by the Public Protector with due regard to the circumstances of each case” (Public Protector, 2010:s7(1)(b)(i)). In this regard, the Constitution mandates the Public Protector to design procedures through which complaints are to be filed, and emphasises that the office must be accessible to the populace (Chapter 9, s182(4)). By these provisions of the Constitution and the Act, the mandate of the Public Protector in safeguarding members of the public against various forms of official misconduct is made clear.

The Public Protector has remained an important government institution in the fight against corruption and other forms of public misconduct in South Africa (Musuva, 2009:6). The institution has dealt with quite a number of high profile cases, including the recently-concluded Nkandla Investigation involving the President, Jacob Zuma. Like every other public institution, however, the Public Protector is confronted with its own challenges. Despite the numerous cases it has investigated, the institution is perceived by some as powerless, as it cannot enforce its own recommendations (Mena Report, 2006). Although the Constitution provided for the independence of the Public Protector, it seems not to be free from political interference, which impacts negatively on its ability to combat corruption and act impartially.

With rising levels of corruption in South Africa, it is imperative that agencies such as the Public Protector are able to operate freely, without any inhibitions, and to have the necessary resources to enable them to function effectively. Given this, the key rationale for this study is to examine the difficulty of investigating state corruption by the Public Protector, with specific reference to the

high-profile case of Nkandla, which involves the alleged misuse of state funds by President Jacob Zuma for his private residence.

1.3 RESEARCH QUESTION AND OBJECTIVES

1.3.1 Research Question

A broader question which this research seeks to provide the answer to is: What are the difficulties experienced by the Public Protector when dealing with high profile cases of state corruption, such as Nkandla, and what are the implications of this for democracy in South Africa?

1.3.2 Research Objectives

The specific objectives of the study include the following:

1. To examine the theoretical debates on the causes of corruption;
2. To examine corruption in the context of South Africa, its causes, how it is being prevented;
3. To determine how the powers of the Public Protector are viewed in dealing with instances of state corruption;
4. To examine the challenges that the Public Protector has faced in dealing with the Nkandla issue, with reference to the report, and media debates; and
5. To interview participants to obtain their comments on the functioning of the office of the Public Protector, why this has been such a difficult case, and its implications for democracy in South Africa.

1.4 RESEARCH METHODOLOGY

For this study, a qualitative design was chosen for the following reasons. According to Blanche, Kelly and Durrheim (2006:272), a qualitative research design refers to use of “methods that try to describe and interpret people’s feelings and experiences in human terms rather than through quantification and measurement”. It is clear that, while use of numbers in the process of measuring and testing variables is a feature of quantitative research, it is not so with qualitative research, which is rooted in understanding the meaning individuals attach to social phenomena, and their experience of the social world around them. These two designs have certain approaches that are unique to them. As pointed out by Craswell (2009), qualitative design has a number of approaches that a researcher can employ. These approaches include ethnography, case studies, phenomenological research, grounded theory, and narrative research. The choice of approach, just as in the case of research design, is largely dependent on what the study is about. The case study approach has been preferred for this study as a result of the focus on the office of the Public Protector and the Nkandla case.

This study looks at the office of the Public Protector in the handling of the Nkandla case. The Public Protector is only one of many anti-corruption institutions in South Africa, and the Nkandla case represents one out of many cases that the institution has dealt with since it was established in 1994. It would be difficult, if not impractical, for a study of this scope to focus on all of the anti-corruption institutions in South Africa in order to understand the challenges of curbing corruption in the country. This automatically makes the approach of this study a case study. According to Yin (2009:4), the case study approach enables researchers to have a holistic and in-depth understanding of the subject of study. This could be an individual, group, organisation or event. The approach helps to expound the features and functionality of the subject of study. Case study approach could be exploratory, explanatory or descriptive. It could be used for either a single or multiple case studies (Mouton, 2001:149).

The case study method is expected to unpack everything that there is to know about the subject of study. In this regard, this study focuses more on the aspects of the Public Protector and the Nkandla case that help to provide answers to the research question, and also meet the objectives of the study. As effective as the approach could be in providing in-depth understanding about any phenomenon, the approach, like other qualitative approaches, has been criticised for its lack of the rigour that is more associated with quantitative design (Yin, 2009:116). One of the shortcomings that are usually associated with qualitative designs, including the case study approach, is their inability to produce generalisable findings. While the focus on the office of the Public Protector and the Nkandla case using the case study approach provides insight into the challenges of the office in dealing with public sector corruption, particularly those cases involving high-profile public officials, care must be taken in how much the findings can be generalised, even within the South African context. However, this is a significant case, as it involves the head of state, and has symbolic value in terms of how cases of corruption are dealt with, and the state of democracy in South Africa.

The problem of generalisation is exacerbated when the study uses a single source of data. This problem is reduced when the researcher is able to access data from multiple sources, which strengthens the findings of the study. The use of multiple sources of data in case study research has been referred to as data triangulation (Bryman, 2003:1142; Yin, 2009:116). According to Bryman, the main aim of triangulation is to enhance confidence in the findings of the study. In order to mitigate this shortcoming, this study made use of multiple sources of data, aimed at helping to provide adequate answers to the research question, in order to be able to achieve the objectives of the study. The various sources of data for the case study approach include participant observation, documentation, archival records, direct observation, physical artefacts, and interviews (Yin, 2009).

These methods are not unique to the case study approach, as they can also be used in other research designs and approaches for data gathering.

1.4.1 Data Collection and Analysis

In order to achieve the objectives of this study and adequately answer the research question, it is important to access the right data, and to do this, appropriate data collection techniques had to be used in line with the research approach. Three different methods of data collection were employed. These were in-depth interviews, documentary analysis, and media publications on the Nkandla case, which are part of the data collection techniques identified by Yin (2009). The use of multiple sources of data is typical in the case study approach, as it enables one to analyse a particular case from various angles (Merriam, 1998; Willis 2007).

Official Document Review: The first method that was used was the review of the Public Protector's report on Nkandla. The report was titled *Secure in Comfort: Report on an investigation into allegation of impropriety and unethical conduct relating to the installation and implementation of security measures by the Department of Public Works at and in respect of the private residence of President Jacob Zuma at Nkandla in the KwaZulu-Natal province*. It was detailed, and contains the entire process of the investigation and the various exchanges that took place between the office of the Public Protector and the various individuals and State agencies and departments that were involved in the project. While the findings of the report, as well as the recommendations made by the Public Protector, are important for understanding how the office functions, attention was given to understanding the challenges the Public Protector encountered in the process of investigating the case.

The report was very useful to this study because it details the step-by-step process the Public Protector followed in conducting the investigation into the Nkandla case. It helped in no small measure to make up for the major limitation of this study, which is the preclusion of the office of the Public Protector as participants. A review of the report took place earlier in the course of the study, where it was discovered that most of the questions that would have been directed to the Public Protector were already answered in the report. Reviewing the report first helped to properly shape the direction of the in-depth interviews that were conducted with select civil society organisations. For instance, it helped to shape the interview questions (Addendum A), as some of the details reported by the Public Protector served as background to these questions. The other reports on Nkandla were also reviewed, but more attention was given to that of the Public Protector.

Structured interviews: Interviews are generally one of the most important techniques of data collection in a case study approach (Yin, 2009). A semi-structured interview schedule was used in order to be able to engage with the respondents more productively. The interview was conducted with select individuals who are considered experts on corruption in South Africa. These individuals work with leading civil society organisations (CSOs), whose work focuses on transparency and accountability in governance, as well as corruption. CSOs generally played an important role in the realisation of a democratic South Africa, as well as in the continued strengthening of democracy after apartheid (Habib & Taylor, 1999:73). One of them was a political editor working for a leading weekly newspaper; another was an expert on Chapter Nine institutions working for a research institute; the others were senior members of staff dedicated to the office of the Public Protector and corruption issues in their respective organisations. The researcher was able to contact five of those experts, of which four were able to take part in the study.

In order to be able to make the most of the opportunity to access these individuals, a list of questions were sent to each of them in advance via email. This was followed by a phone conversation via Skype for a more in-depth interaction and engagement with the issues. Sending the questions ahead and giving them time to respond, as well as following that up with a phone conversation, helped get the best out of the process.

Media Reports/Debates: The third source of data employed for the study was media reports. Since 2011, when the Nkandla case made it to public domain, it has received a high media focus. This can be attributed to the involvement of high profile public officials, particularly the President, Jacob Zuma. The popularity of the case can also be attributed to the amount of money involved. To this end, there has been a lot of public engagement and debates on the issue. The media has consistently reported on the progress of the case, which has been accompanied by contributions from members of the public.

It is important to point out that the study relied on online media sources from different media houses. In this regard, the daily Legalbrief carried most of the leading stories in their reports, as published in the various daily newspapers in the country. Legalbrief.com is an online platform that aggregates reports from different news platforms on policy, governance and constitutional matters in South Africa. It provided regular updates on the Nkandla case as it developed.

The analysis of data collected through the various sources described above was carried out in line with a qualitative research design. The documents, media reports and structured interviews were analysed using qualitative content and discourse analysis. The content analysis used was focused and guided by the research aim and objectives, and the data is reported on below

1.5 SIGNIFICANCE OF STUDY

The virulent and ubiquitous nature of corruption has made it imperative for state institutions charged with the responsibility of combating it to be strengthened and remain effective. As it stands, corruption is a major threat to societies in several ways. Broadly speaking, it is a threat to democracy, a governance system meant to guarantee the freedom of the citizenry, as well as promote development, which guarantees the well-being of the people. According to Adebawo and Ebenezer, corruption “strikes at the very root of democracy and development” (2011:186). This significant negative impact of corruption has made it imperative to continue to understand the phenomenon, with the aim of effectively curbing it.

Examining the challenges of curbing corruption affords us the opportunity to dig deeper into the subject of corruption, particularly with regards to the difficulty of dealing with it within a democracy. This study aims to expand our understanding of corruption, particularly within the context of South Africa, and to re-examine the challenges it poses to democracy and development, which can be regarded as two sides of a coin. Like many African countries, democracy was not easily achieved in South Africa. It was a hard and long battle that took many years and much effort. To this end, it is important for democracy to be strengthened, guided and preserved.

Also worth noting and exploring is the significance of democracy for development. Edigheji (2005:22) opined that democracy has the “capacity to promote development and growth”. Cilliers (2011:44) argues that “democracy is a central determinant of the quality of life, and a central element in the ability of men and women to live freely and autonomously as human beings”. Some scholars have argued that a clear-cut relationship between democracy and development has yet to be established, as it is thought that there is no strong causal relationship between them, except in the long term (Cilliers, 2011:44). Nonetheless, corruption remains a threat to both democracy and development in South Africa, much as it is in the rest of the continent.

This study is also significant because of its focus on one of the most important institutions in democratic South Africa, the office of the Public Protector. It will enrich our understanding of the operations and challenges of the institution in terms of its ability to address corruption, and what this means for democracy in South Africa.

1.6 SCOPE OF THE STUDY

Corruption has been described as a multi-headed dragon, requiring multiple approaches to tackle effectively (Camerer, 1999a). This has been the justification of some countries across the world for having multiple agencies dedicated to combating the menace. South Africa is one such country,

with quite a number of institutions established for that purpose. Some of the currently existing ones include the Special Investigations Unit (SIU), the South African Police Service (SAPS) Anti-corruption Unit and Commercial Branch, the Public Service Commission, the National Intelligence Agency, the National Directorate of Public Prosecution, the Office of the Auditor-General, and the Independent Complaints Strategy, among others. This study is only looking at the office of the Public Protector.

This study is focused on the Public Protector because of the broad nature of its mandate, as well as its constitutional status as an independent public institution. The Public Protector is conceived as a typical ombudsman, but with extended powers to handle corruption cases. By the provisions of the Constitution, it is required to function with limited interference from all organs of the state. To this end, the institution is in principle poised to play a pivotal role in combating corruption and strengthening South Africa's democracy.

The Public Protector has handled several cases of maladministration, abuse of public office and corruption involving public offices and officials. A number of these are high-profile cases. For instance, the office investigated an allegation of maladministration, corruption and potential conflicts of interest against a former Minister of communications; maladministration, abuse of power and irregular appointment of a head of the South African Broadcasting Corporation; alleged improper salary reduction implemented by the auditor-general; and alleged maladministration by the Johannesburg Metropolitan Police Department, among several others. This study, however, focuses only on the Nkandla case involving President Jacob Zuma, to help understand the challenges of curbing state corruption.

Although corruption exists in the public sector as well as the private sector, this study focuses only on the former. This is because public sector corruption has a far-reaching effect on the entire citizenry of the country, either directly or indirectly. There are instances where public corruption spreads over to the private sector. It is important to note that the mandate of the Public Protector only covers the public sector. The institution does not have the mandate to investigate cases of corruption in the private sector, unless they are connected to a public institution. To this end, this study is restricted to corruption in the public sector.

Although a number of studies have been conducted on corruption globally and in South Africa, these studies have focused mainly around the concept of corruption, its causes, and its consequences. This study, however, looks at the factors that have made combating corruption a challenge within a democratic system, as there are little or no existing literature on this aspect of corruption in South Africa to the researcher's knowledge.

1.7 LIMITATIONS OF THE STUDY

A major limitation of the study is its inability to include the Public Protector, and particularly the investigators of the Nkandla case, as participants. This is so for a number of reasons. First, it was to avoid the usual bureaucratic bottlenecks associated with public institutions generally. Getting institutional permission would have been more difficult when compared with private organisations, such as NGOs. The study, however, relied on the comprehensive report detailing the entire investigation process of the Nkandla case, published by the Public Protector.

Secondly, there is also the limitation of generalisation of the findings of this study, as a result of the research design used. Unlike other research designs, findings from the case approach cannot be easily generalised (Mouton, 2001:150; Silverman, 2010:138). Even though there is a possibility and likelihood that the findings of this study could help us understand the challenges of curbing corruption in South Africa, it is important to be cautious about it. This is particularly true because the study only focuses on one of the many institutions in South Africa mandated to address the problem of corruption. Nevertheless, the findings of this study provide us with invaluable insight into the challenges of tackling the problem in South Africa, and how they can be mitigated.

The third limitation of the study is the limited number of expert interviews. Out of the five individuals contacted for interviews, even though all responded, the researcher was only able to properly engage with four of them. However, the various Nkandla reports, as well as the numerous media debates, provided rich and complementary sources of data for the research.

1.8 PERSONAL REFLECTIONS

Most studies on corruption are considered very sensitive. Gathering data on the subject can be a daunting task. There are also some ethical considerations that one must be mindful of. According to van Vuuren (2006:9), data on corruption is usually accessed through official investigations, media reports or whistle-blowers. Initially, I planned to include the staff of the Public Protector who worked on the case as research participants, in order to get first-hand knowledge of the challenges they experienced in the course of investigating the case. However, I had to jettison the idea when my attention was drawn to the sensitive nature of the case. As the study continued, and controversies surrounding the case increased, I discovered how difficult it would have been to include the staff of the Public Protector as participants, because the case became a source of personal security risk to the personnel.

This study therefore relied substantially on media reports and official investigations. The official investigations include the report of the Public Protector on Nkandla, as well as those of the Police

Minister, the SIU, the Ministerial Task Team, and the Parliamentary ad hoc committee. The media reports were very helpful, particularly in following up with developments regarding the case. Access to media reports through a subscription to Legalbrief.com helped to keep track of the case as it unfolded. In order to strengthen these two sources of data, interviews were conducted with carefully selected experts, who provided the study with invaluable insights. Analysis of the interviews revealed some unexpected findings that have enriched our knowledge of the corruption problem in South Africa. These unexpected findings are presented alongside the findings from other data sources.

It was quite difficult to reach the experts for the interviews, as they all appeared to be very busy. They were also located in different parts of the country, which made physical meeting quite difficult. In order to ensure their participation, structured questions were sent to them via email, alongside the consent form (Addendum B). They responded to the questions, and where necessary, a Skype call was arranged to further clarify and gain more insights into the issues. This system was particularly helpful for a number of reasons. First, it gave participants an opportunity to respond to the questions at their own time. It is believed that the adequate time also enabled them to reflectively provide answers to the questions without the urgency associated with real time interviews. Secondly, it was helpful in saving cost, as I did not have to travel to different parts of the country to meet with them. Thirdly, engagement through the video call, via Skype and sometimes phone conversations, was quite interesting, as it helped to fill the gaps in their written response.

As a result of the sensitive nature of the research, I had thought the individuals contacted would not be too willing to speak with me. When they obliged, I was very particular about the consent form, in order to draw their attention to the associated risks of taking part in such sensitive research. To my surprise, all of them were very excited about it, as they were already engaging with the government at different levels on the issue of corruption. It was also easier to contact them as individuals than to contact their organisations. They took part in the research in their individual capacity, and not as representatives of their organisations, as earlier planned.

As a non-South African, who believes that corruption is a major problem on the continent, this research has exposed me to the politics of South Africa. I have gained an understanding of the political processes and dynamics of the country, as well as how state institutions function. Even though my home country, Nigeria, operates under a presidential system of government, which is different from South Africa's parliamentary system, the two countries share a lot in common in terms of their political processes and practices. This has been a great learning experience for me,

and I believe Africa would be on the path of sustainable development if these two countries can overcome their similar internal challenges, of which corruption is a major part.

1.9 CHAPTER OUTLINE

This initial chapter introduces the entire study, setting the background on the issue of corruption and why it has become a subject of interest to researchers and development experts. It details the rationale for the study, and defines the main focus of the study, which is the challenges of curbing corruption, as well as the research question and objectives. This chapter also includes the research design, methodology, scope, significance and limitations of the study.

The next is chapter two, and it contains the theoretical and conceptual framework of the study. It details the use of the Bureaucratic Organisational Model as the theoretical frame that provides a background understanding for the research problem, with particular focus on the relationship between patronage networks, neo-patrimonialism and corruption. It also contains different theories and effects of corruption on development and democracy.

The third chapter contextualises the problem by looking at the problem of corruption in South Africa. It starts with a brief historical background to the problem, by looking at corruption under the apartheid regime, as well as the present democratic dispensation. It also outlines the efforts of government to tackle the problem in terms of the various institutional frameworks established to address it. These include domestic and international regulations, and institutions set up to enforce them. An attempt is made to look at models of successful anti-corruption campaigns in other parts of the world, and the possibility of replicating them in South Africa.

Chapter four focuses on the Public Protector and the Nkandla case, which together form the case study of this research. It looks at the mandate, powers and functioning of the office of the Public Protector in general, and their handling of the Nkandla case in particular.

Chapter five contains the research methodology and presentation of findings from the three sources of data used for this research. These data sources include the report of the Public Protector on Nkandla, media reports, and interviews with select experts on corruption in South Africa. In the course of the research, some unanticipated findings also surfaced. These are also presented in the chapter.

Chapter six, the concluding chapter, discusses the findings of the study, which are the main issues that constitute core challenges of curbing corruption in South Africa from the theoretical standpoint of the Bureaucratic Organisational model. These issues include absence of political will, political interference, capacity constraints, and institutional framework deficiency. It is concluded that these

issues are exacerbated by a governance structure of neo-patrimonialism, as patronage networks that exist between the various organs of the state account for why they are shielding the president from accountability, which has grave consequences for the fight against corruption and, by extension, democracy. The chapter also includes recommendations for addressing the problem, as well as issues for further study.

CHAPTER TWO

CONCEPTUAL AND THEORETICAL FRAMEWORK

2.1 INTRODUCTION

Literature on the subject of corruption is laden with debates and different theories in an attempt to aid our understanding of the phenomenon. The main focus of this chapter is to review the relevant literature on the subject of corruption, and its consequences and implications for democracy and development. It also looks at the different schools of thoughts and theories in the conceptualisation of corruption, as well as its causes and consequences in a general context. This chapter also looks at the Bureaucratic Organisational model of Weber, as the theoretical framework in which the study is located.

2.2 CONCEPTUALISING CORRUPTION

Corruption is a problematic concept, as it is difficult to present a singular comprehensive definition of the term. Although the concept has been popularly reduced to “misuse of public office for private gain”, it is as simple, as there are more complex forms that corruption takes, including organised crimes. To Haller and Shore (2005:8), the term is “slippery and protean”. However, there have been different schools of thought, and theories have evolved to aid our understanding of the concept. There are two dominant schools of thought in the earlier debates of what constitutes corruption. These schools of thought can be said to have shaped the various definitions of corruption that exist today, some of which are considered here. These dominant views are the moralist and revisionist views.

In his work, *What is Corruption: A History of Corruption Studies and the Great Definitions Debate*, Farrales (2005:14) explains that the earliest form of debate on the definition of corruption was between the moralists’ and revisionists’ views. He notes that while the moralists’ definition of the term is value-laden, that of the later revisionists is value-neutral. The moralists see corruption as essentially inimical to society, as it hampers development and the delivery of public goods. Some of the earliest proponents of this view include Edward Banfield (1958), and Wraith and Simpkin (1963). Their position has come to shape the views of recent scholars and researchers, who essentially see corruption as having a negative effect on society.

Contrary to moralists, the revisionists hold that the assumed negative effects of corruption should not be incorporated into its definition, meaning that the definition should be value-free. A good example of this is put forward by Leff (1964:8), who sees corruption as “an extra-legal institution

used by individuals or groups to gain influence over the actions of the bureaucracy. As such, the existence of corruption per se indicates only that these groups participate in the decision-making process to a greater extent than would otherwise be the case". In other words, Leff sees corruption as being functional, in that it allows a section of the society, who do not have access through normal channels, to take part in the decision-making process.

The view espoused by Leff has informed the notion that corruption is capable of having beneficial outcomes for society. The term "efficient corruption" has been developed out of this view (Leff, 1964; Huntington, 1968; Svensson, 2005). The only argument to support this so far is that corruption could lead to economic growth in societies characterised by "transplanted bureaucracies", for instance where companies can easily cut through the red tape to expand on production (Nuijten & Anders, 2005:8). This is in line with one of the criticisms of Weber's legal-rational bureaucracy. The administrative processes could become clogged, making it tedious for individuals to deal easily with public institutions. In order to ease the complex process and get things done faster, big companies are able to bribe public officials to fast track or smooth the process for them. The possibility of using inducement to cut through the red tape in order to get things done much faster is what is referred to as efficient corruption.

Regardless of the arguments that have been made in favour of efficient corruption, there is no substantial evidence to support the claim that it has been responsible for development in any country. What is plausible is a rise in growth indicators amidst widespread corruption, which may not necessarily translate into the well being of the citizenry. Nigeria presents a clear example, where economic indicators look good on paper amidst systemic corruption and poor infrastructural development. However, Vaal and Ebben (2011:108) noted that, while corruption could promote growth in the short run, it could be "detrimental to countries' economic performance in the long term". There is a growing consensus among academics and public intellectuals on the negative impact of corruption, particularly in sub-Saharan African countries (Adebanwi & Obadare, 2011:186). This line of thought promoting efficient corruption is no longer popular, as there is more evidence and focus on the adverse effects of corruption (Lambsdorff, 2006:4).

Aside from the moralists' and revisionists' views, the other widely cited approaches to be considered are public office centred, public interest centred and market interest centred definitions, popularised by Heidenheimer (Heidenheimer & Johnston 2002; Philips 2002). According to Farrales (2005:16), the main feature of the public office centred definition of corruption is "the misuse of public office or authority in exchange for some type of private gain".

The market interest centred definition of corruption, on the other hand, focuses on the incentives or profit that characterise exchanges in the market place to explain the phenomenon of corruption (Farreles, 2005:18). An example of such a definition is one provided by Van Klaveren (1970, cited in Farrales, 2005:19). He defines the term:

A corrupt civil servant regards his public office as a business, the income of which he will... seek to maximize. The office then becomes a 'maximizing unit.' The size of his income depends... upon the market situation and his talents for finding the point of maximal gain on the public's demand curve.

In contrast to public office and market interest centred definitions of corruption, the public interest definition focuses on the public interest that is undermined by corrupt practices (Farreles, 2005:20). An example is provided by Rogow and Lasswell (1963:132). According to them, "...[a] system of public or civic order exalts common interest over special interest; violations of the common interest for special advantage are corrupt". Friedrich (1972:127), also using a public interest centred approach, defined corruption as a "deviant behaviour associated with a particular motivation, namely that of private gain at public expense". What one can see from these definitions is that corruption exists when and where there is an inappropriate diversion of collective wealth to individuals, in contravention of rules and regulations.

Although conceptualising corruption has been a daunting task for scholars and social researchers, there seems to be little disagreement about the broad classification of corruption into grand and petty corruption (Farreles, 2005; Rose-Ackerman, 2006:xix; Kyambalesa, 2006). According to Kyambalesa (2006:103), grand corruption is the type of corruption usually perpetrated by high-level government officials. Such corrupt practices are usually large-scale, involving significant public resources or privilege unduly appropriated to or by public officials and/or their proxies. It is expected that highly placed government officials are relatively well remunerated all over the world, which raises the question of why they still engage in corrupt practices. This type of corruption has been termed "corruption of greed" which, according to Olaniyan (2014:19), "occurs when high-ranking state officials abuse their entrusted positions to convert public treasuries into private gain". He notes further that this is usually systemic, where these officials sometimes take advantage of the weaknesses in the institutional frameworks of the state for their personal benefits. Examples include embezzlement, bribes (usually from private and foreign companies), or money laundering (Olaniyan, 2014:19).

Petty corruption, on the other hand, is usually associated with low level public officials, who engage in practices such as the collection of bribes in small amounts from ordinary citizens requiring public

service. Most petty corrupt practices can be linked to low income, or poor conditions of work. However, low income does not in any way justify the use of corrupt practices. This type of corruption, according to Dike (2004) in Kyambalesa (2006:104), can be referred to as “bureaucratic corruption or corruption of need”. Olaniyan (2014), who also referred to this as ‘street-level’ or survival corruption, opines that it is common and practiced virtually every day and everywhere. A classic example of this type of corruption would be collection of bribes by police personnel.

Out of all the definitions of corruption above, the most widely used is, “the misuse of public office for private gain” (Svensson, 2005:20; Farreles, 2005:31). Similarly, Transparency International defined the term as “the abuse of entrusted power for private gain” (2014). This definition, which is originally from the work of Nye (1967), *Corruption and Political Development: A Cost-Benefit Analysis*, is classified under the public-interest centred definition. This has also been critiqued for its shortcomings. It is seen as being “problematic” and “too restrictive” by social researchers (Haller & Shore, 2005:8). Haller and Shore (2005) point out that this definition has simplified the concept and reduced it to dishonest individuals in the public service, thereby ruling out the existence of systemic corruption and corruption in the private sector. They also observed that most policies around the issue of corruption are now based on this simplified definition of the term. This may have informed the varieties in anti-corruption frameworks across different countries. While the scope of some anti-corruption agencies covers both the private and public sector, others are only focused on the public sector, like South Africa’s Public Protector.

The World Bank, who in recent years has become increasingly interested in the subject of corruption, particularly as it impacts on their operations in the various countries they work with, maintain that corruption covers a number of human actions (World Bank, 2007). Closely related to the existing popular definition, the Bank equally settles for the simplified definition of the term: “abuse of public office for private gain”, and this manifests in bribery, theft of public funds, political and bureaucratic corruption, isolated and systemic corruption, as well as corruption in the private sector (World Bank 2007). While corruption in the private sector, which includes organized crime, is not less inimical to society, the focus of this study is on public sector corruption, particularly state corruption in the context of South Africa, as this has far-reaching consequences for society as a whole.

2.3 CAUSES AND CONSEQUENCES OF CORRUPTION

Many researchers question the notion of ‘efficient corruption’, given the different causes and adverse consequences of corruption on society (Lambsdorff, 2006:4). In this regard, several efforts

have been made through cross-country surveys to determine this effect, particularly on democracy and development.

According to a World Bank report on Corruption and Economic Development, “the causes of corruption are always contextual, rooted in a country’s policies, bureaucratic traditions, political development and social history” (World Bank, 1997:12). While there are generic factors that encourage corruption across different countries, contextualising it helps to broaden our understanding of the phenomenon in different societies. One of the causes of corruption identified by the World Bank is weak government policies (World Bank, 1997). This can be seen as a generic cause of corruption, which cuts across different countries. Similarly, Lambsdorff (2006:4) identified the quality of regulations put in place by authorities to regulate the conduct of both public and private citizens and residents. As noted by the World Bank, every country has regulations against corrupt practices. Aside from the weakness of some of these regulations, most of them are plagued by poor implementation and enforcement.

Another generic factor that promotes corruption is the size of the public sector (Lambsdorff 2006:4). He explains that corruption is more prevalent in countries that have a large public sector, as this shows how much of the economic structure is controlled by the state. This view is mostly shared by those who support privatisation policies and market economy. The argument is made that the more political economic power is concentrated in an entity, be it an individual or a state, the higher the propensity for corruption. This is aptly expressed in the popular axiom by Lord Upton: “Power corrupts, and absolute power corrupts absolutely” (van der Merwe, 2001:17).

Henry Kyambalesa (2006:108), in his work, *Corruption: Causes, Effects and Deterrents*, looked at causes of corruption in the African context. According to him, corruption is caused by a multiplicity of factors. Some of these factors include:

Poor governance: Poor governance is used in this context to mean any governance system that lacks “principles of accountability, transparency, the rule of law, and genuine citizen participation” (Kyambalesa, 2006:108). These are core principles of governance, without which the affairs of the state cannot be properly managed. It is interesting to note that poor governance is a common feature of evolving democracies in Africa. The affairs of government in most of these states are shrouded in secrecy, lacking in transparency and accountability. According to Klitgaard (1998:6), corruption “equals monopoly of power plus discretion of officials minus accountability”. Where there is no proper accountability, corruption thrives, as public officials do whatever they like with no consequences.

Political instability: Political instability is another common feature of African countries. This factor, according to Kyambalesa (2006:108), causes uncertainty and fear in public institutions, where people are concerned about the security of their jobs. This uncertainty pushes public office holders and public servants into corrupt practices with the aim of providing safety nets for themselves against unforeseen job loss. The other important aspect of political instability in Africa is military intervention in politics, which in itself is usually blamed on high levels of corruption by politicians. A number of African countries have experienced the intervention of the military in domestic politics. These regimes are in turn characterised by high levels of corruption, which further negatively affects governance and development.

Traditional practices: The carryover of traditional practices has also been identified as one of the causes of corruption in Africa (Sakya *et al.*, 2011:65). This is in line with the theoretical framework of this study, which maintains that corruption results where traditional elements (patrimonialism) influence a modern bureaucracy. For instance, patronage is accepted under traditional rule, which is characterised by loyalty, favouritism, and familial affinity, which are not frowned upon. However, there are laws against these practices under modern democratic governance, and the existence of rules is of the features of modern bureaucracy (Wallis, 1989:2).

Weak legislative and judicial system: The judiciary and legislature are important arms of government meant to act as checks on the executive. They are among the factors meant to check executive excesses by ensuring transparency and accountability in governance. Where these arms of government are weak in terms of providing checks for the executive, corruption thrives (Van der Merwe, 2006:38). The reason for separation of power between the executive, judiciary and legislature is so that they can serve as checks and balances to one another. A situation where there is no proper separation of power between them, or where the executive has overwhelming power over the others, is a recipe for corruption (Klitgaard, 1998:5).

Bureaucratic red tape: A governance system that is characterised by too many bureaucracies gives room for public officials to engage in corrupt practices. According to Caiden (2009:113), when bureaucracy is taken too seriously, it becomes pathological, and one of its manifestations is corruption. Rigid administrative processes that cause delay could make public official demand bribes to hasten the process for members of the public who are in a hurry to procure a particular service (Muniu-Pippidi, 2011). In this case, even if the corrupt act is not supplied, it could be demanded by the members of the public in order to bypass cumbersome administrative procedures. This is the type of corruption that some scholars have termed ‘efficient corruption’.

Inadequate compensation: Inadequate compensation has been identified as one of the major causes of corruption in the public sector (Luiz, 2000; Brown, 2001). Where public officials are inadequately remunerated, some of them engage in unethical practices in order to compensate. In this instance, corruption is demanded from members of the public seeking to use public services, which occurs more in the form of bribery. Corrupt practices that result from inadequate compensation are regarded as the corruption of need (Dike, 2004). Even though this does not justify corruption in any way, it has been identified as a major cause of corruption, particularly in Africa, where development is still a challenge.

The list of causes of corruption discussed above is not exhaustive. Those presented are merely some of the very popular and more pronounced ones. No matter how corruption is defined, the effects are generally negative.

2.4 EFFECTS OF CORRUPTION

As established earlier, there is increasing evidence to show that corruption has more negative effects on the state than the purported advantages known as efficient corruption. Its negative effects on different aspects of life cannot be over-emphasised. Some of these effects include:

Negative Economic Growth: One of the ways corruption affects economic growth, according to Tooley and Mahoi (2007:369), is that it discourages foreign direct investments and local investments. There are instances where local investors prefer to invest in neighbouring countries because of rampant corruption in their home country. This would further exacerbate the problem of development. Generally, investors' confidence is eroded in the face of massive corruption. It also affects economic growth by raising public expenditure and creating budget deficits, making it difficult for government to deliver on their promises. It has been pointed out that there is an inverse relationship between increased taxes and corruption on the inflow of foreign direct investment (Wei, 1997:1). That is, where corruption levels and taxation are high, foreign investment would be low, thereby affecting economic growth.

Tarnishes National image: Heymans and Lipietz (1999:22) note that highly corrupt countries suffer castigation, particularly from international development partners. They cited instances where countries have had their aid stopped by the International Monetary Fund (IMF) as a result of rampant corruption. The negative labelling that results from being known as a highly corrupt country affects bilateral and economic relations; and it discourages the rendering of technical assistance, debt relief, and other forms of collaboration that exist between countries. This is one of the stated reasons why international donor agencies usually impose stringent conditions and policy

suggestions on countries aiming to benefit from their facilities. According to Peter Eigen (2004) of Transparency International, corruption negatively affects the integrity of nations and their institutions.

Hampers Delivery of Public Good: Corruption hampers the efforts of the state to cater for the well being of the citizens, as resources meant for that purpose are often diverted into private purses. Necessities such as food, good health care systems, education, and housing remain inadequate, and in some instances unavailable, because resources end up in private accounts (Eigen, 2004). Countries with high rates of corruption are usually inefficient and provide low-quality public services. In such countries, the quality of health care services, transportation systems, education, and other infrastructures are either poor or non-existent. There are instances where government would have made budgetary provisions for these projects at the beginning of the year, but this would not have been seen by the end of that fiscal year. Reinikka and Svensson (2006:441), in their study of the Ugandan educational sector, discovered how corruption affects service delivery. Soliman and Cable (2011:735), in their study *Sinking under corruption*, discovered the role corruption played in the 2006 ferry disaster that killed 1035 people on the Red Sea. Their study revealed some irregularities before the accident that contributed to it, as well as irregularities during and after the investigation into the disaster. Here, we see how corruption can endanger the lives of the citizens.

Inequality and Poverty: In addition to poor service delivery, which affects the citizens directly, corruption also promotes poverty and inequality by concentrating wealth in the hands of a few at the expense of the majority (Tooley & Mahoi, 2007:370). By reducing growth, corruption also reduces the opportunities available to the poor to escape from poverty, thereby widening the income gap between the rich and poor.

2.5 CORRUPTION AND DEMOCRACY

It is important at this point to look at how corruption affects democracy. There are numerous definitions of democracy within the social sciences. According to Edigheji (2005:2), democracy “is generally conceived as voters, through elections, choosing their leaders”. When people are able to choose their leaders or representatives, the governance system is perceived as democratic. Similarly, Huntington (1991:7) sees democracy as a governance system where “most powerful collective decision makers are selected through fair, honest and periodic elections in which candidates freely compete for votes and in which virtually all the adult population is eligible to vote”. The crux of this definition is participation and contestation, which Robert Dahl (in Huntington, 1991) identified as the two ideals of democracy. Vanhanen (1990:11) provided a more

descriptive definition of the term as a “system in which ideologically and socially different groups are legally entitled to compete for political power and in which institutional power holders are elected by the people and are responsible to the people”. It is assumed that when the citizens are allowed to freely choose their representatives through the ballot system, they are effectively part of governance and the decision-making process, and these representatives are in turn supposed to protect the interests of the people.

According to Edigheji (2005:3), some of the elements of a democratic state include, but are not limited to, tolerance, citizen participation, economic freedom, accountability, regular elections, human rights, and rule of law. These elements are reflected in some of the definitions of democracy that have been put forward. This view of democracy could to a large extent be a reflection of the situation in developed countries of the West. Some of the definitions that have become popular are even regarded as Western. Vanhanen, for instance, admits that his “definition is based on the traditional Western perception of democracy” (1990:11). Owing to this view of democracy, Lane and Ersson (2003:219) posit that by design, democratic rule ought to be immune to corruption because decisions are reached based on popular participation. In other words, as compared with authoritarian regimes, democracies are expected to score low on corruption. However, this is not always fool-proof, as it can be invaded by special interests and individuals seeking to benefit through patronage and rent-seeking. This explains the exceptional experience of democracy in Africa.

It is evident that democratic practice in Africa is quite different from what is obtainable in developed countries of Europe and the Americas. One can easily make an excuse for Africa because this system of governance is not native to the people. Most African traditional political structures tend to be monarchical and autocratic in nature, even though few could boast of having some democratic elements. There is still a measure of the influence of traditional practices, which overlaps with the Western democratic system. The result of this hybrid is often detrimental, manifesting in neo-patrimonialism, as discussed earlier. For instance, the extent to which citizens participate in decision-making process varies from one country to another. In some cases, the elected representatives assume office to represent their own interests and to further their personal ambition. There are situations where the results of elections do not reflect the wishes and aspirations of the people, due to electoral fraud. Bratton (2008:621) suggests that vote buying, intimidation, and violence are some of the features of democratic elections in Africa. At the end of the day, the candidates with the bigger purse and guns win party nominations or tickets, and eventually become the winners at the general elections. Under this situation, the essence of democracy is truncated, and

some of the elements mentioned above are eroded as the outcome becomes the direct opposite of what is intended.

When this arises, it prepares the ground for corruption to thrive, even though the entire process is a reflection of corruption. When corruption defines the very foundation of the democratic process, it is only a matter of time before it begins to manifest in different sectors of the society. In a situation where politicians have parted with huge amounts of money during their campaigns as a result of vote buying, the first thing they would want to do upon assuming office is to recover the money. In the case where corruption assumes a grand dimension, the outcome of elections is usually a consequence of corruption. At the end, the people are left with unfulfilled promises. This therefore leads to the various developmental challenges that threaten democratic governance. In this regard, Muller (1997:133) notes that there is a strong and positive relationship between economic development and democratic governance. In other words, a political system that is experiencing a strong economic development usually has low or non-existent anti-democratic forces.

Cilliers (2011) notes the on-going debates around the kind of relationship that exists between democracy and economic development. He notes the examples of China, Korea, and Indonesia, which made some progress in economic development, while maintaining an authoritarian regime. The reason given for this exception is that a powerful ruler is able to ensure discipline and compliance to rules, as well as provide for the needs of the people. They are not free, but are better off economically and in terms of standard of living. Therefore, it can be summed up that there are some authoritarian regimes that have been able to do well in terms of development, and there are democratic systems that have not done well. Despite this, there is a positive relationship between development and democratic rule in the long term (Cilliers, 2011:45).

Having looked at the relationships between corruption and economic development, and between democracy and economic development, it suffices to say that corruption poses a threat to democracy. Corruption has ripple effects. Adebani and Obadare (2011:207) assert that corruption itself can become democratised, a stage when it begins to undermine anti-corruption measures. The moment corruption becomes systemic, the outcome includes loss of public trust in the system and lack of respect for the rule of law, which also implies lack of faith in other arms of government such as the judiciary and the legislature, which are meant to act as checks on executive excesses (Kroukamp 2006:211). When this situation is not timeously checked, it could lead to a loss of legitimacy (Pienaar 2000:53), and eventually the disruption of democratic governance.

It is important to note at this point that corruption fundamentally negates the principles of democracy, such as human rights, rule of law, and economic freedom (Olayinka 2014:21). It is

usually one of the major excuses for military intervention in politics in a number of African countries, even though the replacement regimes soon become entangled in the same web of corruption at a greater scale. About 80 per cent of African countries have experienced military intervention in politics in some form or another, and corruption has consistently played a major role in this (Mcgowan & Johnson, 1984:634). Adebani and Obadare (2011:206) put it succinctly, stating that, “corruption is as much a symptom as a cause of dysfunction within a democracy”. This calls for closer attention.

It is interesting to note that Botswana presents us with a clear example of how good governance, development and low levels of corruption can sustain a democratic process. Since its independence in 1966, Botswana has never experienced military intervention (Theobald & Williams, 1999:118). The country is known for having a relatively transparent and efficient governance system since independence, which has obviously helped to keep the military in their barracks. This reinforces the argument that corruption creates an opportunity for the military to intervene in politics, thereby truncating democratic process alongside whatever gains it has been able to achieve. The process of rebuilding democratic practices after military interventions is usually an onerous one, because the affected countries have to start anew, working on and adopting a new constitution and rebuilding other democratic structures. The negative consequences of corruption on democracy can therefore not be overemphasised, nor taken for granted.

2.6 THEORETICAL FRAMEWORK – BUREAUCRATIC ORGANISATIONAL MODEL

Corruption, like any other social problem, is of utmost interest to social scientists, including sociologists. In contemporary society, specific state institutions generally deal with the issue of corruption. However, the degree to which these bureaucratic institutions are able to function effectively varies in the extent to which they are able to exercise their mandate according to set rules and procedures, and their ability to apply these impartially, and to be free from political interference. Max Weber’s Bureaucratic Organisational model aptly outlines the manner in which bureaucracies in modern societies should function.

In his work, *The Three Types of Legitimate Rules*, Weber (1958) listed charismatic, traditional and legal-rational authority as types of leadership that exist in organisations and societies. While the first two types are common in pre-modern societies, the legal-rational approach is associated with the development of the modern state, which is characterised by bureaucratic practices. According to Farazmand (2009:5), the Weberian model of bureaucracy refers to “any organisation of modern society with several ideal type characteristics such as unity of command, clear line of hierarchy, division of labour and specialization, record keeping and merit system for recruitment and

promotion and rules and regulations”. In his work, Weber identified two types of bureaucracy. These are the legal-rational, and the patrimonial bureaucracies.

Legal-rational bureaucracy, which also informs the type of authority that is exercised, is the ideal type of administrative system that promotes efficiency in modern societies. The holders of this type of authority are expected to exercise it “in accordance with a legally defined structure directed towards a publicly acknowledged goal”, rather than a personal goal (Clapham, 1985:44). Weber appeared to be very optimistic about this administrative system. Such a system functions according to a strict separation between public and private property, and public officials are expected not to use their office for any private gain, but for the common good as defined by the stated rules and regulation (Haralambos & Holborn, 2008:877). Patrimonial bureaucracy, on the other hand, is the type that is commonly found in traditional societies, characterised by the exercise of traditional authority (Albrow, 1970). Under this type of administrative system, there is no separation between private and public property, and administrative processes are more personal. Clapham (1985:47) notes that an important feature of patrimonialism is that authority is vested in the person and not the office.

Another distinguishing factor is that there are some distinctive elements in a legal-rational bureaucracy which are not necessarily required in a patrimonial bureaucracy. These elements include hierarchy, division of labour, specialisation, impersonal relationship, regulations, and expertise, among others (Haralambos & Holborn, 2008:876; Albrow, 1970:45). Beetham (1987:11) adds that these elements have to be in place for an administrative system to be properly referred to as a modern bureaucracy. The system is expected to remain functional irrespective of the persons occupying these offices. These elements are not found in a patrimonial bureaucracy, which is usually typical of underdeveloped or pre-modern societies. Weber referred to the administrative system that existed in the Roman Empire and other ancient civilisations as patrimonial bureaucracies, which differ from the ideal type “primarily because it depended upon unfree officials rather than contractually appointed men” (Albrow, 1970:41).

Weber has been criticised for this optimism about the efficiency of bureaucracy. As much as it can promote efficiency, it also in some instances promotes inefficiency, which is commonly referred to as ‘red tape’ (Albrow, 1970; Beetham, 1987). Particularly, his views that bureaucracy could determine and inform human behaviour within a legal-rational bureaucratic setting have been greatly criticised. Despite these criticisms, however, his framework for understanding organisations and society has remained prominent as a springboard for other scholarly insights into how society works. Aside from the derivatives of patrimonialism and neo-patrimonialism that this study is

relying on, his model influenced the development of other theories, such as modernism and post-modernism (Haralambos & Holborn, 2008:878).

2.6.1 Neo-patrimonialism

There was no indication that Max Weber had Africa in mind when he referred to patrimonial bureaucracy as an administrative system of traditional societies. His reference was clearly in relation to ancient empires, as noted by Albrow (1970:41). While the term could be aptly applied to pre-modern African societies, elements of that practice are still evident in the modern bureaucratic structures of some African countries. This situation produces a hybrid administrative system where the legal-rational bureaucracy intertwines with patrimonial bureaucracy. This hybrid is referred to as neo-patrimonialism (Bratton & van de Walle, 1994:459; Bach, 2011:278).

According to Clapham (1985:48), neo-patrimonialism is “a form of organisation in which relationships of a broadly patrimonial type pervade a political and administrative system which is formally constructed on rational-legal lines”. Erdmann and Engel (2007:101) note that the core element of neo-patrimonialism is the personalisation of the public, and one of the consequences of this is that political power becomes highly personalised. Neo-patrimonialism is therefore an administrative system where the legal-rational structure is influenced by a ruler or a person in power, which in turn undermines the functioning of modern bureaucracy (Erdmann & Engel, 2007; Bach, 2011; Soest, Bechle, Korte, 2011). Bach (2011:276) highlights two types neo-patrimonialism: regulated and predatory. According to him, regulated neo-patrimonialism attempts to comply with some formal rules, while the authority holder in predatory neo-patrimonialism possesses unrestrained control over the state. In a submission that seems to support the existence of regulated neo-patrimonialism, Erdmann and Engel (2007:104) maintain that it is not all administrative processes that are characterised by personal interests in a neo-patrimonial state. What we would therefore have under a democratic system such as South Africa is regulatory neo-patrimonialism.

Aside from patrimonialism being the major administrative feature of traditional African societies, neo-patrimonialism has become characteristic of governance in modern African states. Bratton and van de Walle argue that it has become “the distinctive institutional hallmark of African regimes”, where loyalty and dependence characterise the operations of bureaucratic institutions (1994:458). However, Erdmann and Engel (2007:106) opine that neo-patrimonial administrative structures in Africa have their origins in colonialism. They argue that colonial rule, particularly in Africa, was traditional rather than modern. The use of indirect rule by some of the European colonialists gives credence to this argument. The indirect rule was particularly used in regions under the control of the British. In those situations, they allowed people to maintain their traditional governance structures,

to the extent that those structures facilitated effective administrative control for the purpose of domination and exploitation (Babou, 2010:45). For instance, according to Subrahmanyam (2006:99), the use of native authority structures, which was a form of indirect rule in parts of colonial Nigeria, inhibited the transformation in those areas.

Neo-patrimonial rule, which now defines many modern African states, has become closely associated with corruption, nepotism, tribalism and clientelism (Clapham, 1985; Erdmann & Engel, 2007). Clapham particularly notes the linkage between corruption, patronage and neo-patrimonialism. According to him, corruption and patronage cannot be associated with a typical patrimonial rule, because there is no separation between the private and the public. The authority figure manages the resources under his/her domain as a private estate. However, corruption can be identified as neo-patrimonial rule, “because the system itself is formally constructed on the principle of rational-legality” (1985:50). It is a situation of ‘where there is no law, there is no sin’. Clapham notes further that one of the explanations for growing corruption in Africa is the carryover of patrimonial practices into the developing modern state. Some of these practices include the act of gift-giving to chiefs and other authority figures as tributes or signs of reverence. The corollary of this practice in modern Africa is clientelism and patronage (1985:51)

Clientelism and patronage, which are elements of corruption in a modern bureaucratic system, involve exchange of resources for political or other material gains. These exchanges revolve around personal interests, which often negate rules and regulations meant to govern bureaucratic structures (Erdmann & Engel, 2007:107). This practice is particularly evident in a country like Nigeria, where corruption has grown amidst an increasing multiplicity of bureaucratic structures. This manifests in the appointments of persons in key positions of government based most often on personal loyalties, rather than competence for the job. The leaders or persons who facilitate such appointments expect some form of tangible or intangible rewards in return. In some cases, the reward could be loyalty and the opportunity to interfere unduly in the running of departments or agencies of government. This situation has promoted, as well as hampered, the fight against corruption in Africa, which has been exacerbated by the impunity that shields some of these political office holders from investigation and prosecution.

From the abovementioned, it is apparent that an important element of neo-patrimonialism is that the line between private and public property is blurred (Bach, 2011:282). As Clapham (1985:50) notes, “...the dangers of corruption are at their greatest when the distinction... is scarcely recognised, and when public office becomes accepted as a route to personal wealth and power”. Elected and appointed public officials who are supposed to be in the service of the people accord themselves

undue favours, at a huge cost to the public. Lodge (1998:158) asserts that corruption becomes a system when it sets up different procedural rules that are parallel to those that constitute normal functions of bureaucracy.

In summary, neo-patrimonialism creates a patronage network, where persons in positions of authority have some form of loyalty to individuals within or outside the state bureaucracy. These networks are usually serviced using state resources at the disposal of such individuals, in exchange for some form of favour, which could be material or intangible. Bauer and Van Wyk (1999:59) describe patronage as a system where official or government privileges are given to certain individuals in exchange for political support. This happens mostly in the form of employment opportunities, or the procurement of goods and services. The diagram below is an illustration of how patrimonial influence (neo-patrimonialism) within a modern bureaucracy leads to corruption through patronage networks:

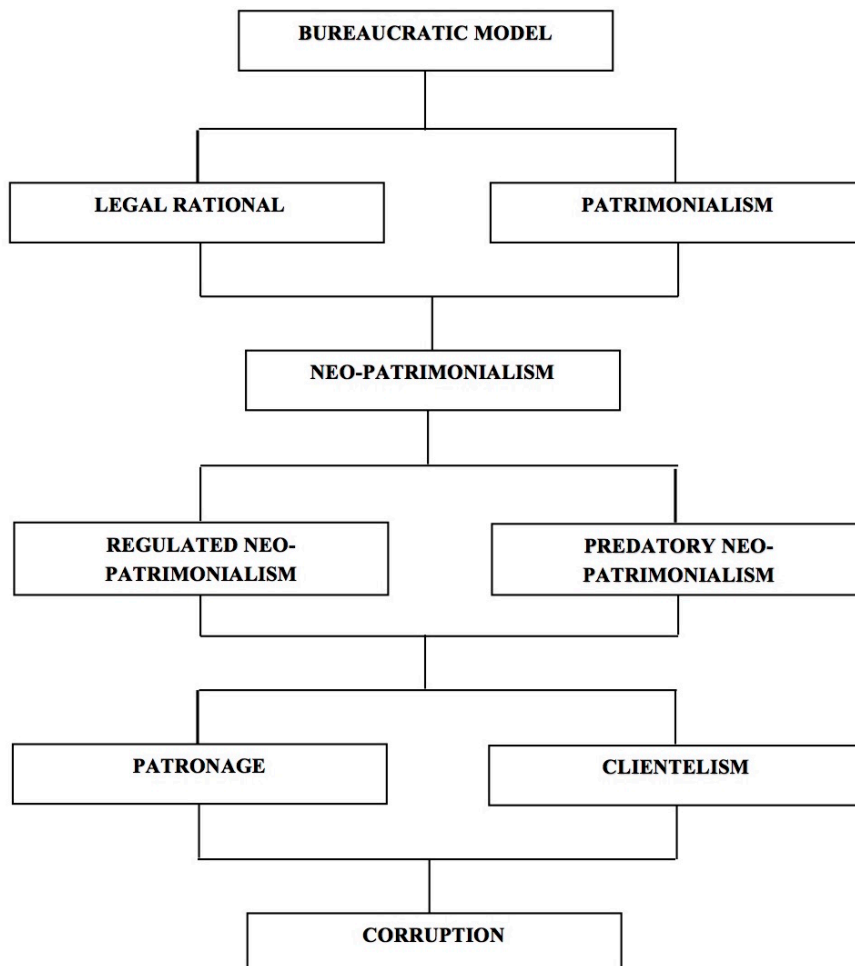


Figure 1: Theoretical illustration of Bureaucratic Corruption

Source: Author

2.7 CONCLUSION

This chapter has looked at the conceptual and theoretical framework of corruption. Using the Bureaucratic Organisational model, it has shown how neo-patrimonialism remains at the root of corruption in Africa through patronage networks. Some causes and consequences of corruption for development as well as democracy have been presented. South Africa, although a growing democracy, is declining on the corruption perception index. This raises a number of questions in terms of why this is the case, the difficulties in curbing corruption and the potential consequences for this relatively young democracy. The following chapter therefore focuses on corruption in the context of South Africa.

CHAPTER THREE

CORRUPTION IN THE CONTEXT OF SOUTH AFRICA

3.1 INTRODUCTION

Corruption has become one of the constant subjects of public discussion in South Africa, and seems to have become more pronounced under democratic rule. This chapter takes a cursory look at corruption within the context of South Africa, from a historical perspective. As Girling (1997:43) rightly puts it, “Corruption takes new forms in response to changing social conditions”. This implies that corruption changes in line with social dynamics as it takes on other forms under different social, economic and political climates. The form it assumes under a dictatorial political climate is different from that of a democracy, and the form it takes under a communist economic system is different from that of a socialist or capitalist system.

Based on this, I examine corruption under the different socio-political formations in South Africa, in terms of its nature and consequences, and the efforts made to address the problem. Additionally, given the negative implications of corruption for democracy and society at large, the different mechanisms and instruments that are put in place to deal with it are examined, as well as the role of the civil society in the fight against corruption under the current democratic dispensation. Before doing so, it is important to provide a brief historic context of corruption in South Africa.

3.2 CORRUPTION IN SOUTH AFRICA: A BACKGROUND

Corruption in South Africa is not a recent phenomenon. As in many other countries, it has a long history (Tanzi, 1998:3). In most instances, evidence of corruption is not available, and in cases where it is, accessing the information is often difficult – especially where this involves persons in positions of power and influence. While insufficient data has been a typical problem of corruption study across the world, it has remained a major challenge of conducting a thorough historical analysis of corruption in South Africa. For instance, most of the evidence of corruption under the apartheid regime was allegedly destroyed shortly before transition to democratic rule (Bell & Ntsebeza 2001:13). This is partly because it bridged the transition between colonialism and the present democratic system.

Nevertheless, in order to be able to appreciate the historical background of corruption in South Africa, it is important to look at the different dispensations that characterise the socio-political history of the country, starting from the colonial era. As posited by Pityana (2010), corruption is deeply rooted in South Africa’s colonial past. Colonialism, apartheid and democratic rule are the

three distinctive and historically definitive eras in South Africa. Although these eras have markedly different social, economic and political configurations, corruption equally took different shapes and forms under them, particularly during apartheid. It is beyond the scope of this study to discuss corruption in the pre-colonial and colonial era in depth, except to mention a few important points in relation to corruption in the pre-colonial era, and how it influences the present.

According to Thompson (1990:1), the pre-colonial history of South Africa is very significant in the current corruption discourse. For example, it has been argued that some pre-colonial traditional structures contributed to corruption, and that these still have an effect on the nature of corruption in South Africa today (Ntsebeza, 2006). As in many other pre-colonial African societies, patronage was deeply engrained into the traditional authority structure, characterised by personal rule and patrimonialism. However, it cannot be termed corruption, because there were no rules against such relations at the time. For instance, it was customary for subjects to deliver tributes to traditional rulers, which in turn put such subjects in a favourable position with the leaders. However, in the modern era this type of relations has become a major driver of corruption, as the theoretical framework of this study shows, where patronage becomes entrenched within the state bureaucracy. We will now proceed to look at the forms and shapes corruption took in South Africa.

3.2.1 Corruption in Apartheid Regime

The apartheid regime, having its own social, economic and political configuration, had a unique manifestation of corruption. In the words of Smith (1990:30), “Apartheid was characterised by separate development, political domination, economic exploitation and selective incorporation”. There was a structured class formation, and codified segregation, which defined a new social, economic and political order. The racial policies that were introduced conferred certain rights and privileges on the white minority, who were mostly of Dutch descent (Guelke, 2005:43), at the expense of the majority. These new structures were defined and enforced by the new political structure, headed by the National Party (NP) that came into power, which signalled the end of British colonialism. This also marked the beginning of the active role of party politics and their complicity in corruption. Political power, particularly in Africa, is inextricably tied to economic benefit, which according to Snidert and Kidanett (2013:695), is the greatest challenge of curbing corruption.

Unlike the colonial era, the apartheid regime was a more structured system of government, with defined social, economic and political systems and bodies of rules, albeit segregated along racial lines. The regime, like other authoritarian regimes, allowed for the concentration of state resources in the hands of a powerful ruling class made up of an elite (Pityana, 2010). The regime also

operated with a high degree of secrecy and press censorship (Harris, 2000;Fourie, 2002), making access to information difficult for members of the public. This monopoly of power without accountability provides opportunities for corruption to thrive (Klitgaard, 1998).

As Harris (2000) notes, the apartheid regime was highly bureaucratised, with loads of paper documents on operations and activities of the regime, which were strictly guarded from the public eye. Even public officials were expected to have clearance in order to access certain public records. Some of these documents were routinely destroyed to prevent public access to them. In addition to this measure, there was censorship of the press, and repression of oppositional voices through various forms, including assassination, which are common features of authoritarian regimes. The grand effort of the regime to suppress information was the destruction of a large number of public records prior to transition to democratic rule (Bell & Ntsebeza, 2001:13). This, according to Harris (2000:30), was “a large-scale sanitation of its memory resources designed to keep certain information out of the hands of a future democratic government”.

The restriction of access to information under apartheid has made it look as if corruption was not a major issue under the regime. However, efforts have been made to put together bits and pieces of data in order to understand what transpired during apartheid. For example, the reports of the Truth and Reconciliation Commission (TRC), set up to assist in a peaceful transition, has become an invaluable source of data for researchers and members of the public in this regard. Most importantly, the work of Hennie van Vuuren (2006), titled *Apartheid Grand Corruption: Accessing the Scale of Crime for Profit from 1976 to 1994*, which was commissioned by the Institute for Security Studies, provides an insight into the nature of corruption under apartheid.

As the title of the report suggests, corruption under apartheid was massive. The report shows that a substantial part of the corrupt practices under the regime was in connivance with private enterprises. Some of these corrupt practices led to politically motivated assassination. Bribery and kickbacks involving large sums of money were prevalent. It was alleged that secret bank accounts were operated through fraudulent and questionable transactions, particularly meant to stash funds abroad (van Vuuren, 2006:36). Funds that would have been used for development activities were used to finance the regime’s nefarious activities within and outside of South Africa. Very few individuals in government knew about the existence of these funds, as revealed by the report.

A number of high profile cases of corruption have come to light. A summary of apartheid corruption, provided by Nevin (2006), details how \$60bn was misappropriated through the special defence account. Bribery and secret deals became particularly rampant when an embargo was placed on oil and arms deals. In the 1980s, about \$15bn was frittered away from the public purse

through deals with private individuals. Corruption was not restricted to the central government, as the homeland administration, managed by traditional chiefs under the regime, were characterised by rent-seeking and corruption (Hyslop, 2005:781).

Patronage was also prevalent, particularly in the activities of the Afrikaner Broederbond, a group that was made up of few white South Africans who wielded political and economic power to the benefit of its members. Ensuring that their members were employed in strategic positions in government, with loyalty primarily to the group, created a system of patronage. This powerful society was described by Bell and Ntsebeza (2001:22) as a “multi-layered web of patronage, manipulation and deceit”, and had a strong hold on the apartheid regime, with powers to influence policies and executive decisions in the interests of its members as opposed to the interests of the country. Although from inception it was aimed at empowering its members economically, it soon grew to become a major source of political influence, with members in top political positions serving the interests of its members.

Later, in 1991, the apartheid regime must have seen the negative effect of allowing corruption to thrive, which led to the creation of the Office of Serious Economic Offences (OSEO). The OSEO was created to effectively and urgently deal with economic offences (Camerer, 1997:36). Corruption had become so rife that the OSEO had to prioritise its cases based on public interest, the amount involved, and the urgency with which the regime wanted particular cases resolved. This shows that the office must have had quite a number of cases to deal with. The Reserve Bank also had a department that focused on issues relating to foreign exchange fraud. Ironically, the Bank itself was at some point embroiled in a number of corruption scandals under the regime. The apartheid regime no doubt handled the issue of corruption its own way. Special commissions of enquiry were set up to handle serious cases of corruption (van Vuuren, 2006:69). However, some of the structures which facilitated corruption under the regime were maintained after the transition to democratic rule, with new forms of corrupt practices (Hyslop, 2005:785).

3.2.2 Corruption in Post-Apartheid South Africa

Nelson Mandela, lamenting the prevalence of corruption after the transition to democracy in 1994 said, “Little did we expect that our own people when they get the chance, would be as corrupt as the apartheid regime. That is one of the things that has really hurt us” (Snidert & Kidanett 2013:692). Some of the structures of apartheid were carried over into the democratic dispensation.

Rather than abate, corruption has persisted over the years under the present democratic rule. A recent report has named South Africa as one of eight most corruption hotspots in Africa, alongside

Nigeria, Uganda, Kenya, the Democratic Republic of Congo, Mozambique, Angola and Ghana (BDlive, 2015). While some have argued that corruption has become more prevalent, others maintained that this only appears to be so as a result of the free flow of information in the public space, against the backdrop of apartheid regime that thrived on secrecy (Kgosimore, 2001:101). Freedom of the press, which is one of the tenets of democracy, has made it possible for media houses to report government activities. The media is now recognised as an integral part of democratic governance, with the responsibility of keeping members of the public aware of the day to day running of government.

South Africa's performance on the Corruption Perception Index (CPI) shows that corruption has persisted over the years. Table 1 below shows how South Africa is rated in comparison with other countries in the Southern African Development Community (SADC). The index ranks countries on a scale of 10. The countries with a score between six and ten are seen as less corrupt. Those with a score of five and below are seen as highly corrupt (Mungiu-Pippidi, 2011:67; Adisa, 2013:55). Although the accuracy of the CPI in measuring corruption is contentious, as it only focuses on the assessment of private individuals of corruption in the public sector in the respective countries, it has remained a popular measure of corruption across the world (Hussein, 2005:93). This measure of corruption has over the years helped decision makers and international development partners to have an appreciable understanding of the prevalence of corruption in different countries. It remains the largest assessment of corruption globally, covering nearly 200 countries. The difficulty in accessing data on corruption has informed the continued reliance on this measurement (Pityana, 2010:10).

Table 1: Corruption Perception Index for SADC Member States

S/N	COUNTRY	CPI 2014	CPI 2013	CPI 2012	CPI 2011
1	Angola	1.9	2.3	2.2	2.0
2	Botswana	6.3	6.4	6.5	6.1
3	Democratic Republic of Congo	2.2	2.2	2.1	2.0
4	Lesotho	4.9	4.9	4.5	3.5
5	Madagascar	2.8	2.8	3.2	3.0
6	Malawi	3.3	3.7	3.7	3.0
7	Mauritius	5.4	5.2	5.7	5.1
8	Mozambique	3.1	3.0	3.1	2.7
9	Namibia	4.9	4.8	4.8	4.4
10	Seychelles	5.5	5.4	5.2	4.8

11	South Africa	4.4	4.2	4.3	4.1
12	Swaziland	4.3	3.9	3.7	3.1
13	Tanzania	3.1	3.3	3.5	3.0
14	Zambia	3.8	3.8	3.7	3.2
15	Zimbabwe	2.1	2.1	2.0	2.2

SOURCE: Adapted from Transparency International reports for 2014, 2013, 2012, 2011

The table above shows the performance of South Africa among the member states of the SADC. The country has continued to float between 4.1 and 4.5/10, since 2011. These scores show that there is a problem of chronic corruption in South Africa, calling for strategic and urgent attention.

The early response of the new democratic government to confronting the problem of corruption was to repeal old apartheid laws which allowed corruption to thrive, and to make new ones to stem the tide (Kondlo, 2009:324). In a move that appears to appreciate the evils of corruption, the new democratic government began to take steps to address the problem.

3.3 PREVAILING FORMS AND EFFECTS OF CORRUPTION

The nature and form of corruption differs from one country to another. There are different classifications and forms of corruption in a general sense, some of which have been mentioned in the preceding chapter. However, some forms are more prevalent in South Africa. Corruption Watch, in their 2013 and 2014 annual reports, shows that there are three dominant forms of corruption in South Africa. These are abuse of government resources, employment corruption (nepotism), and procurement corruption and bribery. Abuse of government resources and power accounted for about 41% of reported cases to the office of Corruption Watch in 2014. These forms of corruption are found at all levels of government: local, provincial and national. Corruption hotspots include: schools, immigration, traffic and licencing, and housing (Corruption Watch, 2014:9).

According to Williams and Quinot (2004:341), public procurement or tender fraud is a major source of bureaucratic corruption, and this is where corruption on a large scale takes place. This is large scale as a result of the huge sums of money that are usually involved. Public procurement seems to provide that opportunity, as prices of goods and services provided to public institutions are usually hiked beyond what is reasonable, and that this takes place in virtually all the sectors of the economy is alarming. Other forms of corruption include bribery of public officials in the awarding of contracts, and the relaxation of certain regulatory provisions, which could result in the provision of substandard products and services. This has been the case with the Nkandla project, which is the

subject of this study. This is also where neo-patrimonial transaction manifests: where public officials use contracts as political payments or incentives to attract other forms of favours.

Another form of corruption that is prevalent in the South African public sector is bribery. A publication of the Gauteng Provincial Government (GPG) on fraud and corruption gives other forms of corruption which are prevalent in South Africa, such as embezzlement, an outright theft of public resources by public officials; extortion, which involves forcefully extracting money or favours from members of the public; and abuse of privileged information for personal benefits (GPG, 2015:3). These are some of the prevailing corrupt practices that anti-corruption agencies are saddled with and need to curb. According to Lodge (1998:158), when practices such as these become prevalent in any society, corruption has become systemic, which then makes it difficult to control. This is the point at which it creates a different set of procedures that are parallel to those of a formal bureaucracy, thereby corrupting it. Rather than go through formal bureaucratic processes, offering bribes creates alternate procedures, which then gives preferential access.

Currently, there is evidence of corruption in South Africa's central government, provincial government, and at the local government level. This evidence spreads across different departments and agencies: Defence, Health, Housing, Education, Land reform and so forth, costing the government billions of Rands every year (Grobler & Joubert, 2014). News24 chronicled the corruption scandals that rocked South Africa over a period between 1999 and 2014. One of them is the arms deal scandal, involving a number of public officials. Many agree that this is where the rot really began in 1992, and enquiries into the corruption, bribes and paybacks are still on-going. The arms deal was a political scandal that implicated both the past and current presidents of the country, Thabo Mbeki and Jacob Zuma respectively (Holden, 2008). There are several others involving varying amount of money, and government at all levels (News24, 2014). The media space is saturated with reports of one corruption scandal after another, a situation that shows how difficult it is to tackle the problem.

The negative effects of bureaucratic corruption in South Africa cannot be overemphasised. While it would be difficult to accurately determine how much is lost to corruption due to the clandestine nature of the acts, the real cost has a devastating effect on the country as a whole. Different attempts have been made to put figures to the cost of corruption. One such attempt was made by the Institute of Internal Editors (Times Live, 2015). According to the Institute, South Africa has lost R700billion to corruption in the last 20 years. This amounts to roughly US\$55billion. This situation can only have grave consequences for growth and development. According to Kroukamp (2006:211), corruption depletes resources and endangers sustainable development. It is not entirely surprising

that over 20 years after apartheid, the country is still grappling with growing unemployment, and housing and other infrastructural deficits. According to a report by People's Environmental Planning, 12 million South Africans require proper shelter, and this number is said to be growing (PEP, 2015). With growing corruption, the wellbeing of the people will continue to be a challenge.

Suffice to say that the generic causes of corruption discussed in the previous chapter apply clearly to South Africa as well. These causes include the carryover of traditional practices of tribute and gift giving; weak checks and balances, particularly from the legislature; inadequate compensation; and rigid bureaucracies that promote bribery. Other specific causes of corruption in the context of South Africa include the transfer of a bureaucratic structure of corruption from the apartheid regime, and job insecurity among the staff of the old regime (Lodge, 1998:4). As pointed out earlier, corruption through rent seeking and patronage was common under the traditional chiefs in the former homeland governance structure. This practice, according to Lodge, has been brought into the present provincial structures.

3.4 ANTI-CORRUPTION INSTITUTIONS IN SOUTH AFRICA

Given the serious problem of corruption, numerous institutions have been created in South Africa to deal with the various types of corruption. Different countries have adopted different approaches to tackling corruption. While some maintain a single-agency approach, others like South Africa use the multi-agency approach. This means that there are multiple institutions with the responsibility to address different aspects of corruption. The table below provides a summary of the functions of these state institutions:

Table 2: Anti-Corruption Agencies in South Africa and their Functions

S/N	ANTI-CORRUPTION BODY	SECTOR	FUNCTIONS
1	Auditor General	Constitutional Body	Investigates adherence of financial transactions to treasury rules and legislation, and reports on accounts of all three tiers of government.
2	Heath Special Investigation Unit	Justice	Investigates public sector corruption with a view to recover assets.
3	Independent Complaints Directorate	Safety and Security	Receives and acts upon complaints of police misconduct.
4	Investigating	Justice	Investigates serious economic offences

	Directorate: Serious Economic Offences		with a view to institute a prosecution, which could lead to the conviction and sentencing of the culprit.
5	National Crime Prevention Strategy	Safety and Security	Government co-ordination vehicle for crime prevention.
6	National Directorate: Public Prosecutions	Justice	Controls and guides prosecutions and institutes criminal proceedings.
7	National Intelligence Agency	Justice	Gathers intelligence.
8	Public Protector	Constitutional Body	Investigates misconduct in state affairs or public administration.
9	Public Service Commission	Public Administration	Monitors, evaluates and investigates the public service.
10	SAPS Anti-corruption Unit	Safety and Security	Investigates corruption within the SAPS.
11	SAPS Commercial Branch	Safety and Security	Investigates public/private sector complaints.

Source: Institute for Security Studies, Occasional Paper No 38, 1999 (Adapted)

In addition to these numerous institutions that have been given the responsibility of addressing the problem of corruption in South Africa, the country is also signatory to a number of regional and international protocols designed to assist participating countries in their fight against corruption.

3.5 REGIONAL AND INTERNATIONAL ANTI-CORRUPTION PROTOCOLS

Since 1994, a number of frameworks have been established to curb corruption, including laws and institutions. South Africa country is signatory to a couple of regional and international protocols against corruption. These conventions include: the SADC Protocol against Corruption, the African Union (AU) Convention on Preventing and Combating Corruption, the United Nations (UN) Conventions against Corruption, and the OECD Anti-Bribery Convention (Corruption Watch, 2013). The SADC protocol was signed by the 14 member states, including South Africa in 2001. It was ratified by South Africa in 2003 (Rity, 2003:9). Article 2 of the protocol states the three important purposes it was designed to serve (SADC, 2001:3). These are:

- a) To promote and strengthen the development, by each of the State Parties, of mechanisms needed to prevent, detect, punish and eradicate corruption in the public and private sector;

- b) To promote, facilitate and regulate cooperation among the State Parties to ensure the effectiveness of measures and actions to prevent, detect, punish and eradicate corruption in the public and private sectors;
- c) To foster the development and harmonization of policies and domestic legislation of State Parties relating to the prevention, detection, punishment and eradication of corruption in the public and private sectors.

The AU Convention on Preventing and Combating Corruption was adopted by the General Assembly in 2003. By 2004, it had been signed by South Africa (Rity, 2003:10). The objectives of the protocol, as stated in Article 2 of the convention, include (AU, 2003:5):

- a) Promote and strengthen the development in Africa by each State Party, of mechanisms required to prevent, detect, punish and eradicate corruption and related offences in the public and private sectors;
- b) Promote, facilitate and regulate cooperation among State Parties to ensure the effectiveness of measures and actions to prevent, detect, punish and eradicate corruption and related offences in Africa;
- c) Coordinate and harmonize the policies and legislation between State Parties for the purposes of prevention, detection, punishment and eradication of corruption on the continent;
- d) Promote socio-economic development by removing obstacles to the enjoyment of economic, social and cultural right as well as civil and political rights;
- e) Establish the necessary conditions to foster transparency and accountability in the management of public affairs.

The General Assembly of the UN adopted the Convention against Corruption in October, 2003. South Africa signed the Convention in 2003, and ratified it the following year, 2004. The purposes of the Convention include (UNODC, 2003):

- a) To promote and strengthen measures to prevent and combat corruption more efficiently and effectively;
- b) To promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery;
- c) To promote integrity, accountability and proper management of public affairs and public property.

The OECD (Organisation for Economic Cooperation and Development) was established in 1961, “to promote policies that will improve the economic and social well-being of people around the

world” (OECD, 2015). The organisation also seeks to promote beneficial economic relations among member states. In 1999, the OECD launched its Anti-Bribery Convention to assist member states to combat corruption. The Convention is primarily focused on criminalising the bribery of foreign public officials in international business transactions. In 2007, South Africa acceded to and ratified the Convention.

Looking at what each of these protocols set out to accomplish, they overlap considerably (Rity, 2003, Snidert & Kidanett, 2013). They highlight what constitutes corruption and encourage member states to criminalise it, and provide support for members in the area of implementation. The areas of focus can be summarised to include prevention, criminalisation, and international cooperation in the areas of investigation and prosecution of offenders. The UN Convention also includes cooperation in the area of asset recovery, to prevent corrupt public officials from enjoying the proceeds of corruption, and also ensure the affected states regain access to their resources.

As scripted, these protocols are very ambitious in their approach to tackling corruption. However, this is yet to translate into actual gains in South Africa. A number of factors account for this. According to Dintwe and Masiloane (2014:182), these international protocols are complex and sophisticated, making them difficult to adequately implement. They also contend that there is inadequate understanding and public awareness of these regulations, due to the lack of capacity on the part of the managers to effectively educate the public. The protocols are simply legal frameworks. After ratification, they require specialised institutions of government to implement and enforce them.

3.6 DIFFICULTIES OF CURBING CORRUPTION

From the preceding section, several efforts have been made by the government to confront and address the problem of corruption in South Africa. These efforts include the establishment of several anti-corruption institutions, as well as signing and ratifying a number of regional and international protocols to strengthen the fight against the scourge. Despite these efforts, corruption continues to be a problem in South Africa. One would expect that all these efforts would put the country at the forefront of countries successfully curbing corruption. This therefore begs the question: Why has corruption persisted, despite these efforts? While it would not be fair or accurate to posit that the various anti-corruption institutions and protocols are entirely worthless, there has to be some of explanation of this contradiction.

One of the causes of the ineffectiveness of the anti-corruption framework is a lack of strict enforcement of regulations. This is one of the major factors responsible for the increasing incidence

of corruption, despite the existence of laws (Dintwe, 2013:555). It is one thing to have the required laws and agencies, an area the South African government can be adjudged to have done well, but another to enforce those laws (CNBC, 2015). In the same vein, Sardan (2014:30) notes that corruption will persist when the government does not take prosecution of corrupt public officials seriously. Thus, as long as the enforcement of appropriate laws is lacking, corruption will continue unabated.

Corruption by its very nature is a discreet practice, and as a result it is often difficult to detect, as perpetrators try as much as possible to cover their tracks (Grobler & Joubert, 2004:95). This shows that there is a likelihood that more corrupt activities are going on than those that are reported. Steven Powell, a forensic expert with ENS Africa, notes that “as long as the risk of detection of corrupt activities remains low, and the penalties are insignificant, corruption will flourish” (2011:1). When corrupt practices are not reported to the appropriate authorities, little or nothing can be done about them. Aside from the problem of low detection, Powell also raises the important issue of penalties. This could count as a major reason why people are not deterred from corrupt activities, despite widespread condemnation. When penalties for crimes are like ‘a slap on the wrist’, they will do very little to discourage people from indulging in it. On one level, they expect not to be caught, and even if the perpetrators are caught, they do not expect stiff penalties. This situation only encourages perpetrators to continue to take advantage of every opportunity to engage in the act.

Other contributing factors are the lack of political will, and political interference in the operations of anti-corruption institutions by senior political actors, which contribute to the difficulties of curbing corruption (Dintwe, 2013:555). There have also been other instances of alleged political interference in the investigation and prosecution of cases of corruption involving high profile political figures in South Africa. A case in point was the protracted battle between President Zuma and the judiciary, before he became the President of the country. The Economist reported that the manner in which the courts handled the case suggested that there was political interference in the process. It was also reported that a judge of the Supreme Court who heard the case opined that there could have been political interference in the case in favour of President Zuma (The Economist, 2009). This is an indication of how political interference can undermine the fight against corruption. One sees a similar pattern when it comes to the abuse of state funding relating to the Nkandla case, which will be discussed in detail in forthcoming chapters.

Although it has been argued that a multi-dimensional approach remains the best way to tackle the problem of corruption, this approach also has its problems (Camerer, 1999a; Johnston & Kpundeh, 2004). This relates primarily to the issue of overlap in terms of the responsibilities of these

approaches, and inadequate coordination amongst them (Camerer, 1999a; Pillay, 2004), which also poses a hindrance to the anti-corruption war. This has become quite apparent in the way in which the Nkandla case has been handled, where various institutions have become involved in the investigation claiming, for example by claiming that this was not within the mandate of the Public Protector.

In South Africa, civil society organisations have been instrumental in mitigating some of the difficulties of curbing corruption highlighted above. There are a number of non-governmental organisations (NGOs) whose main focus is fighting corruption. The following section details these organisations, and how they strive to ensure that government remains accountable to the populace.

3.7 THE ROLE OF CIVIL SOCIETY IN THE FIGHT AGAINST CORRUPTION IN SOUTH AFRICA

The role of the civil society in strengthening democracy and in nation building cannot be overemphasised. Over the years in Africa, the effectiveness of the three primary arms of government, namely the executive, legislative and judiciary, has remained an important subject in the corruption discourse. As pointed out by Kyambalesa (2006), a society with weak legislative and judicial systems contributes to widespread incidence of corruption. This has been identified as one of the problems facing the majority of African countries. Where this is the case, the last line of intervention is civil society, and most importantly organised civil society. Although what constitutes civil society is an on-going debate (Beger 2004:3), van der Merwe (2001:4) defines it as referring “both to citizens as individuals and to citizens as they have organised themselves around particular issues in different types of organisation”.

While the level of development and effectiveness of organised civil society differs from country to country, they generally serve as the watchdog of the government (van der Merwe, 2001). An ADB/OECD (2006:xviii) report acknowledged the significant contribution civil society organisations are making in the fight against corruption across the world, particularly in the areas of creating awareness among the populace and making contribution to government policies.

In this regard, civil society has been particularly active in driving anti-corruption campaigns in South Africa. One such civil society organisations is the Institute for Security Studies (ISS). The organisation has conducted surveys and published extensively on the subject of corruption, covering the entire African continent. ISS was recently selected to drive a newly proposed civil society coalition against corruption on the African continent (Institute for Security Studies, 2014). While this was not initially the focus of the ISS, the extent of corruption and the effect this has on security

and development means that they now have an entire research programme dedicated to this (Kondlo, 2009:322)

Corruption Watch (CW) is another NGO whose primary focus is the issue of corruption in South Africa. This NGO publishes extensively on the subject of corruption with the aim of educating members of the public on the subject. Among other things, Corruption Watch also receives reports of corruption from members of the public, and channels them to the appropriate anti-corruption agency for investigation and redress. To this end, it serves as a bridge between the citizens and state institutions in bringing these matters to justice. They have received about 5485 reports of alleged corruption since commencement of operations in 2012 (Corruption Watch Annual Report, 2013).

Very important in bringing matters of corruption to the attention of the public is the media. In this regard, the Mail & Guardian (M&G) is one media outlet that has brought incidents of corruption to the public space extensively. Beyond regular news reporting, they have carried out extensive coverage of corruption, particularly in South Africa's public sector. According to Hyslop (2005:775), the M&G has been incisive and aggressive in their investigation of corruption. Their work is further enriched by their focus on investigative journalism, which enables them to go beyond news reporting and analysis, to conducting investigations into the activities of government and bringing them to the public domain. In the words of Bert Ronhaan, "History has proven that investigative journalism is vital in exposing human rights abuses, corruption and regulatory failures" (Sahara Reporters, 2011). Aside from being the first to publish the story of the Nkandla upgrade in 2011 (Letsoalo & Molele, 2011;Public Protector, 2014a;), they have continued to update members of the public on issues emanating from the case. As their website reveals, they have published over 100 reports on just the Nkandla case (www.mg.co.za). The decision to include them in the study provided a great deal of insight into the Nkandla case, and helped provide answers to the research question.

The above mentioned are a glimpse of what a few civil society organisations are doing in the area of corruption. The South African government's recognition of the importance of civil society informed its approval and support for a National Anti-corruption Summit in 1999, where key stakeholders from both the public and private sectors were brought to deliberate on the subject with the aim of forcefully confronting the scourge. The summit led to the establishment of the National Anti-corruption Forum, to among other things help coordinate government's anti-corruption programmes (1999a:72). The forum is made up of the private and the public sector, as well as civil society organisations whose focus is on corruption, accountability and transparency in governance

(Ramsingh & Dobie, 2015). The various participating NGOs are represented under the following bodies (NACF 2015):

1. The Convenor of Civil Society Network Against Corruption (CSNAC). This is a coalition of several anti-corruption and transparency-promoting organisations;
2. Congress of South Africa Trade Unions (COSATU);
3. The Convenor of the Economic and Social Council (ECCOSOC);
4. Federation of Unions of South Africa (FEDUSA) ;
5. Moral Regeneration Movement (MRM);
6. National Council of Trade Unions (NACTU);
7. South African National Editors' Forum (SANEF);
8. National Religious Leaders' Forum (NRLF);
9. South African National NGO Coalition; and
10. Transparency International South Africa (TI-SA)

The private sector and government are equally represented on the forum by ten different bodies each. This represents a broad platform for civil society organisations to be part of the campaign against corruption. The forum meets bi-annually and submits report of their findings and suggestions to Parliament, as well as sharing them with members of the public. The following are the four objectives of the forum (NACF, 2015):

- To contributes towards the establishment of a national consensus through the coordination of sectoral strategies against corruption;
- To advise Government on National initiatives on the implementation of strategies to combat corruption;
- To share information and best practice on sectoral anti-corruption work;
- To advise sectors on the improvement of sectoral anti-corruption strategies.

In addition to the efforts of anti-corruption NGOs, the media has also been playing a critical role in the fight against corruption in South Africa. The dawn of democratic rule saw a new wave of anti-corruption journalism in the country. The media have been very active and instrumental in ensuring transparency and accountability in the operations of government. Larmour (2005:99) clearly defines the role of the media to act “as a watchdog, publicise acts of corruption, enhance democratic values such as accountability, and influence the ethics of public life by monitoring the conduct of government officials and politicians”. Television stations, radio stations and newspapers currently number in the dozens in South Africa, with every one of them jostling to catch and retain the attention of the public. The proliferation of online newspapers has also made access to media

content easier for members of the public. Through the comments sections on online platforms and phone-in programmes, the people can make their contributions to debates on various issues, including those of corruption.

As one of its preventive measures, the SADC Convention against Corruption urges member states to encourage the participation of civil society organisations and the media in combating corruption (SADC, 2001:6). The South African Constitution also provided for the involvement of civil society organisations in the appointment process of the head of important state anti-corruption agencies, like the Public Protector and the Auditor-General (s193(6)). Apart from this constitutional mention of CSOs in the appointment of heads of these institutions, also referred to as Chapter 9 institutions (derived from their location in the Constitution), the role of CSOs in the fight against corruption is somewhat passive. The best we have seen them do is advocate. The CSOs have the potential to play a more active role if they are so empowered by relevant laws.

3.8 THE SOUTH AFRICAN JUSTICE SYSTEM AND CORRUPTION

The justice system is an important state organ in the fight against corruption in any democratic state. As noted by Treisman (2000:402), the prevalence of corruption is largely influenced by the legal culture that exists in a particular state. While the Constitution of the Republic of South Africa remains the supreme law of the country, and binding on all organs of state at all levels, the authority of the justice system is exercised through the courts. The courts are independent and their decisions or rulings are binding on every legal entity in South Africa. The courts are only subject to the supreme law of the country – the Constitution.

Given the different and numerous courts that exist, South Africa can be said to have a robust justice system. According to the country's official website (www.gov.za), the courts in South Africa consist of the Constitutional court, Supreme Court of Appeal, High Courts, Magistrates' Courts, Specialists' High Courts (labour courts, land claim courts, tax courts, electoral courts, and competition appeal courts), Regional Courts, Community Courts, and Traditional Courts (Customary Courts). Most of these courts have different jurisdictions with the Supreme and Constitutional courts at the apex. The Traditional courts are closer to the people at the grassroots, and are headed by village chiefs or heads.

The justice system is very important in the fight against corruption as anti-corruption institutions largely depend on them to settle corruption cases. The courts are the last arbiter for the determination of guilt and the enforcement of anti-corruption laws. A weak justice system would make the fight against corruption difficult. However, in South Africa, a Gallup poll conducted in

2008 revealed that a significant percentage of South Africans have confidence in their justice system (Rheault and Tortora, 2008). This implies that they have faith in the integrity of the judges and court processes to deliver justice. This particularly speaks to the independence of the judiciary as stipulated in the Constitution. Also worthy of note is that the several courts that exist would help in the quick dispensation of cases including those relating to corruption.

3.9 EXAMPLES OF SUCCESSFUL ANTI-CORRUPTION AGENCIES IN THE WORLD

Having briefly looked at South Africa's anti-corruption framework, it is pertinent at this point to take a cursory look at a few examples of successful anti-corruption institutions in other countries. The reason for this brief discussion is just to provide a different perspective of how this issue is being dealt with elsewhere. This also enables one to reflect on the South African situation from a wider, more global context. Traditionally, investigation and prosecution of all sorts of crime has been primarily the job of the police and other state institutions. The establishment and dedication of specialised agencies to handle corruption cases started in Singapore in 1952, with the establishment of the Corrupt Practices Investigation Bureau (CPIB), and later the Independent Commission Against Corruption (ICAC) in Hong Kong in 1974 (Meagher, 2005). As corruption in governance became an increasing problem, different countries across the world began to follow the steps of Singapore and Hong Kong (Akinola & Uzodike, 2014).

The different natures and manifestations of corruption in different countries necessitated the different approaches employed by various countries to curb it. For instance, while some countries have a single anti-corruption agency, others such as Nigeria, India, France, and South Africa opted for multiple agencies (Akinola & Uzodike, 2014:44). The argument for the establishment of multiple agencies to tackle corruption was justified by the multi-dimensional nature of corruption (Camerer, 1999a). However, this does not necessarily translate into effectiveness or a success story. The globally acclaimed and acknowledged success story is the Independent Commission Against Corruption (ICAC) of Hong Kong. It has become a model for an effective anti-corruption commission across the world (Camerer, 1999a; Kpundeh & Johnston, 2004; Webb, 2005; ADB/OECD, 2006; Pityana, 2010; Masiloane & Dintwe, 2014). As models of successful anti-corruption campaigns across the globe, we can look at the institutional frameworks of Singapore, Hong Kong and Botswana. It is important to note that Singapore and Hong Kong are not democratic states, but they have been able to curb corruption using institutional frameworks that have become reference points across the globe. That of Hong Kong in particular has been replicated in the democratic country of Botswana, which is an indication that some of those practices can be employed to tackle corruption in a democratic setting.

3.9.1 Singapore

The history of Anti-Corruption Agencies (ACA) across the world usually starts with the Singapore experience. Before the establishment of their ACA, corruption was a major problem in Singapore, and was deeply rooted in the country's colonial past (Quah, 2001:29). The problem continued after independence from colonial domination. According to Quah, "corruption was a way of life as it was perceived by the public as a low-risk high reward activity" (2001:29). A major step towards stemming the tide was taken in 1952 when the CPIB was established as an independent unit to address the problem. However, the agency was not functional until the inception of the leadership of Lee Kuan Yew in 1959, when the CPIB was strengthened and equipped to perform its statutory mandate (Meagher, 2005:72).

Lee Kuan Yew apparently realised that for any meaningful development to be achieved in a country that was one of the poorest in the region at the time, the anti-corruption institution had to be empowered. Consequently, he granted enormous powers to the CPIB to do its work. Meagher notes that the criminal liability under the expanded powers of the CPIB included the intention to commit the offence, such as those who collected bribes but did not fulfil the obligation thereof. Rather than concentrate on petty corruption, as is commonly the situation in many countries still battling with corruption, the CIPB was going after top government officials, including members of parliament, ministers, directors of government agencies and large companies (2005:72).

The Singapore experience further justifies the position that corruption is detrimental to growth and development. This city-state used to be known as one of the poorest of the Third World; however, over the years it has been transformed into a First World country. It is apparent that the strong stance against corruption that the leadership took contributed in no small measure to the realisation of this transformation. Today, while corruption remains one of the major problems of many Asian countries, Singapore is reputed to be the least corrupt, consistently scoring highly (positively) in corruption measures ahead of Hong Kong, Japan, Malaysia, and Taiwan (Quah, 1999:29).

One of the most important contributing factors to this successful anti-corruption campaign was the political will of the leadership. Any leadership that is committed to development in emerging economies must be equally committed to curbing corruption. The other factors, according to Quah (1999), include the implementation of strategies to reduce opportunities for corruption, which include stiff penalties for corrupt practices. When the penalty of a corrupt act outweighs the benefit, and the chances of being caught and punished are high, public officials began to desist from the act. The other factor in the implementation of strategies to reduce incentives for corruption is increasing the salaries of public official at the time the country started witnessing economic growth.

However, according to Meagher (2005), the CPIB has been criticised for its enormous powers. For instance, its staff have been criticised for being over-zealous in discharging their duties, as they are authorised to arrest, search and prosecute alleged offenders. They have also been criticised for being too secretive in their operations. Nevertheless, the CPIB remains an example of a successful anti-corruption campaign, which has informed the establishment of others across the world, including the ICAC of Hong Kong.

3.9.2 Hong Kong

Just like Singapore, Hong Kong used to be one of the most corrupt cities in the world. Corruption was so rife that it was practised right in the open, and was a normal way of life. It existed in both the private and the public sector, and few had faith that the ICAC would succeed (Man-wai 2006:196). Today, the ICAC is known as being one of the most successful anti-corruption agencies in the world due its achievements since it was created. “Within three years, the ICAC smashed all corruption syndicates in the government and prosecuted 247 government officials, including 143 police officers” (Man-wai, 2006:196).

Man-wai (2006:200) notes a number factors responsible for the rapid success of the agency. Most importantly, the leadership of the country had the political will to fight corruption. This political will made the ICAC relatively independent, and the leadership equally provided adequate resources for the agency to effectively carry out its operations. Mr Man-wai, a former Deputy Commissioner and Head of Operations at the ICAC, also opines that for any anti-corruption effort to be successful, the political, social, economic and legal environment must be conducive. Aside from adequate political will, the issue of political interference in the activities of the agency must be considered and avoided.

According to Camerer (1999a:3), the scope of the mandate of the ICAC is beyond just enforcement. It also looks at the structural defects in the governance system that promote corrupt practices, and ensures they are taken care of. Yat-sau (2014:34) notes that apart from enforcement, which includes investigation and prosecution, the agency equally employs the educational and preventive approach. The agency enjoys the support of the political leadership, and as a result is relatively well shielded from external interference. Camerer notes that aside from the agency being well resourced to carry out its duties, the powers it wields are more than those of similar agencies in liberal democracies. The reason for mentioning this is that this study will attempt to look at how favourable South Africa’s political, economic, social and legal environment is in the effort of an agency like the Public Protector to combat corruption.

Although the idea for the establishment of the ICAC was gotten from Singapore's CPIB, and while they share similar mandate and scope, they are still different in some ways. Reasons for this, according to Meagher (2005), include the fact that the ICAC has a much larger operation, in terms of human resources and budget, than the CPIB. Also, the activities of the CPIB are more secretive than those of ICAC. These reasons may have also contributed to why the ICAC has gained more prominence and popularity across the globe than the pioneer CPIB. As a result of the rapid successes of the ICAC, a number of countries across the world are now open to learning from them. One such country is Botswana (Camerer 1999a:3).

3.9.3 Botswana

Botswana is one of few countries in Sub-Saharan Africa that has experienced relative economic and political stability since gaining political independence from its formal colonial powers in 1966. In the 1990s, the country transformed from being one of the poorest countries in the world to having about 10 per cent annual growth rate (Theobald & Williams, 1999:117). Some countries that are more richly-endowed in terms of natural resources have not been able to match the rate of development experienced in Botswana. According to Olowu (1999:607), Botswana has the best performing economy and democracy in Africa, with no military intervention since independence.

Aside from being renowned for having a good governance system that is characterised by probity and transparency, Botswana has a relatively low level of corruption, which is seen as a rare case in the African context (Prinsloo, 2001:40). The public and civil service up to the early 1990s was seen as highly efficient, to the point of incorruptibility (Olowu, 1999:607). However, when corruption began to surface in the 1990s, particularly among top public officials, the government decided to legislate the Corruption and Economic Crime Act in 1994, which made provision for the establishment of the Directorate on Corruption and Economic Crime (DCEC), with the power to investigate all corruption related cases (Theobald & Williams, 1999:119; Meagher, 2005:75). In a bid to ensure the effectiveness of the agency and prevent corruption from becoming engrained in the system, the government modelled the operations of the agency on that of the ICAC. Among other things, the DCEC equally adopted the three-pronged approach of education, prevention and enforcement.

To prove their commitment to the fight against corruption, the leadership of the country ensured that the foundational staff of DCEC were highly qualified, some of whom were foreigners who had previously worked at the ICAC. Theobald and Williams (1999:119) recall that its first Director when it was established in 1994 was a former deputy director at ICAC. This confirms the deliberateness of the government of Botswana to borrow patterns from the ICAC, and their

seriousness and sincerity of purpose to address the problem of corruption before it became widespread. The country has since maintained a consistently impressive score on the CPI rating. In a recent rating, the country stood at number 31 out of 175 countries in the 2014 CPI results, ahead of all other African countries that were assessed (Transparency International, 2015). Botswana today is reputed to be the one African country with a record of a successful anti-corruption campaign (Prinsloo 2001; Mbaku, 2008; Theobald, 2008; Pityana, 2010; Mungiu-Pippidi, 2011; Adisa, 2013). As with the CPIB and ICAC, there are on-going debates about the replication of the DCEC in other African countries (Theobald & Williams, 1999:126).

3.10 TRANSFERABILITY OF ANTI-CORRUPTION INITIATIVES

The extent to which the ICAC experience could be transferred to other countries is still a subject of debate, as different countries usually have unique social contexts, which have to be considered for any policy framework to be successful (Pillay, 2004:597). Heeks (2007:258), in his work, *Why Anti-Corruption Initiatives Fail: Technology Transfer and Contextual Collision*, likens anti-corruption initiatives to technology that is usually transferred from the developed world to developing economies. He submits that failure in transferring anti-corruption initiatives from one country to another arises from conflict between “context of design and context of use”. Olaniyan’s (2014:360) view is that nothing stops African leaders from replicating those successful initiatives in their respective countries, although this should be done with caution.

The Botswana example has shown the possibility of successful transferability, whilst considering the uniqueness of environment. Because DCEC is not a 100 per cent replication of the ICAC, there are some differences. One such difference is that the ICAC has considerable prosecutorial powers, while the DCEC does not. The reports of its investigations are usually passed on to the Attorney General of the State, who decides whether or not those cases should be prosecuted by the DCEC. In considering the issue of the social context in the replication of the ICAC in Botswana, Rudolf and Moeti-Lysson observed that the corruption prevention strategy was designed to be context specific. The successes of the DCEC have been notable in their high conviction rates, as well as their effective corruption awareness campaign among the populace (Rudolf & Moeti-Lysson, 2011:1).

It has been suggested that the ICAC model can be employed in South Africa as it has in Botswana (Pillay, 2004:597). The suitability of this proposal is still being debated, particularly the idea of having a single anti-corruption agency to replace all the existing ones. There are two camps in the debate of whether or not to have a single anti-corruption agency in South Africa. Those in support of multiple agencies have insisted that, due to the multidimensional nature of corruption, it would require multiple agencies to address it effectively. Those for a single agency are of the view that a

well-resourced and highly independent agency would be more effective (Camerer, 1999a; Pillay, 2004). On the other hand, Theobald and Williams (1999:126) note that due to the popularity that the DCEC in Botswana has garnered, some African countries are likewise looking at the possibility of domesticating the framework. However, with the commitment and proper domestication process, this model can be helpful to other African countries in their efforts to combat the menace of corruption.

3.10 CONCLUSION

This chapter has examined the issue of corruption within the context of South Africa, summarily looking at the different anti-corruption laws and agencies. From the examination of the problem, it is apparent how deep-rooted the issue has become, occurring at all levels of government and in various departments and agencies. Although the problem of corruption is not a recent phenomenon, as shown in this chapter, one would have expected that this problem would have been easier to manage and detect under a democratic dispensation in the light of the principles of accountability, transparency and freedom of expression. However, it has become more prevalent, despite the multitude of state institutions mandated to deal with it, and a strong civil society, which focus on bringing these matters to justice.

In this regard, a particularly interesting case has been how the Office of the Public Protector has dealt with issues of corruption, especially in handling high profile cases involving state officials. Most notable has been the controversial Nkandla case and the enforceability of the recommendations of the Public Protector. This is the topic of the next chapter and the focus on this study.

CHAPTER FOUR

CASE STUDY: PUBLIC PROTECTOR AND NKANDLA

4.1 INTRODUCTION

The Public Protector and the Nkandla case have been very significant in the corruption discourse in South Africa since the case became public knowledge in 2011. The case has become a recurring media subject and debate. Even though there were other state-sanctioned investigations into the case, the report of the Public Protector has generated numerous debates and controversies in different quarters. This chapter looks at the office of the Public Protector, its mandate and operations. It also looks at the Nkandla case and the report of the investigation conducted by the Public Protector.

4.2 THE PUBLIC PROTECTOR

4.2.1 Background

In the wake of the transition to the present democratic dispensation in 1994, one of the immediate challenges that confronted the ANC-led government under the leadership of Nelson Mandela was corruption. Mandela himself had expressed disappointment in the manner that corruption had continued under the new dispensation (Snidert & Kidanett, 2013:692). One of the immediate steps taken to address the problem was the creation of the office of the Public Protector, to function as an Ombudsman, but with a far-reaching mandate and powers. The history of the Public Protector has been traced to the White Paper on Reconstruction and Development that was released in 1994 (Naidoo, 2013:525). At this point, there had been a lot of pressure from different quarters, including the international community, for the new government to tackle the problem. The White Paper revealed that legislation was being prepared to introduce a Public Protector to provide an avenue for members of the public to be part of the fight against corruption. That same year, the Public Protector Act of 1994 was enacted, which provided for the establishment of the office of Public Protector.

The Public Protector, as referred to by the Constitution, is both an individual and an institution. The individual is the head of the organisation, while the institution comprises of the structures, rules, procedures and, most importantly, other personnel in the organisation. While the individual exists only for a term of seven years (1996:s183), the bureaucratic institution continues to exist as long as the legislation that established it remain valid. Pienaar (2000:63) is of the view that the name in respect to the mandate of the institution is somewhat misleading, because it does not really

present it as an impartial entity. Nonetheless, he noted that the name Public Protector must have been settled for by those who drafted the Constitution, because the general concept of “Ombudsman” was foreign to the South African society. Advocate Thuli Madonsela is the current Public Protector of South Africa. She is the third since the establishment of the institution, and the first woman to hold the position.

4.2.2 The Mandate of the Public Protector

The Public Protector has the mandate of “investigating any conduct in state affairs or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in impropriety or prejudice; to report on that conduct; and to take appropriate remedial action” (Public Protector, 2010:7; Thornhill, 2011:82). The Public Protector Act has been amended twice to provide clarification and broaden the scope of the institution. The Act was amended in 1998 and 2003 (Public Protector, 2010:7). The Act is further strengthened by the 1996 Constitution, which among other things provides that certain subsequent legislation would further empower and enlarge the scope of the mandate of the Public Protector (s182(2)). Such legislation has been promulgated since then, have further empowering the Public Protector to deal with a broad range of issues affecting members of the public in terms of their interaction with public institutions and state officials. This explains the provision in the Constitution requiring the office to be accessible to all South Africans for the resolution of their grievances against state institutions.

The mandate of the Public Protector is far-reaching, having the responsibility to address different aspects of malfeasance in the public sector. As an Ombudsman, the mandate covers all forms of corruption and malpractice of public officials, including ill treatment of members of the public by state officials. The institution has the responsibility to investigate and recommend appropriate remedial actions. The Public Protector Act provides that it shall have jurisdiction over “improper or dishonest acts, or omission or corruption, with respect to public money” (Pienaar, 2000:60). As such, the Public Protector is classified, alongside others such as the Auditor-General and Human Rights Commission, by the Constitution as democracy-supporting or -protecting institutions (Chapter 9).

There is a debate around the scope of the mandate of the Public Protector. Pillay (2004:586) argues that combating corruption is not the primary function of the Public Protector. This is primarily the task of other agencies with similar mandates, such as the Special Investigation Unit, and the SAPS Anti-Corruption Unit. Understandably, the police across the globe have always had the mandate of investigating and prosecuting all forms of criminal acts. The SIU, on the other hand, was set up

solely to investigate corruption. The scope of its mandate is not as wide as that of the Public Protector.

Although the term corruption is not explicitly mentioned in the wording of the constitutional mandate of the Public Protector, it is safe to claim, as other researchers and public commentators have done (Webb, 2005 Tooley & Mahoi, 2007 Von Holdt, 2013 Masiloane & Dintwe, 2014), that acts of corruption fall under the scope of official misconduct, which the Public Protector is mandated to address. The lack of specificity in its mandate widens the scope of cases the Public Protector can investigate (Pienaar, 2000:58), as long as they are within the public domain. The only cases that are outside the purview of the Public Protector are, “Court decisions and sentences; private individuals; private companies; and professionals not employed by government such as doctors or lawyers” (Public Protector, 2014c). However, this does not mean that private individuals who have dealings with public institutions cannot also be investigated and addressed by the Public Protector.

In addition to the provisions of the Constitution and the Public Protector Act, there is other legislation that has further broadened the scope of operations of the Public Protector as an Ombudsman and anti-corruption agency. Such legislation includes the Electoral Commission Act 51 of 1996; the Executive Members’ Ethics Act 82 of 1998; the Promotion of Access to Information Act 2 of 2000; and the Promotion of Equality & Prevention of Unfair Discrimination Act 4 of 2000, among others. The introduction of the Prevention & Combating of Corrupt Activities Act 12 of 2004 in particular clearly spells out issues of corrupt practices that the Public Protector has a responsibility to investigate. The Act empowers the Public Protector to investigate and address general offences of corruption, with a particular focus on the demand and acceptance of gratification by public officials (Public Protector, 2010). The Executive Members’ Ethics Act empowers the Public Protector to investigate high-ranking public officials, including Ministers, Premiers and even the President. This is one piece of legislation that empowered the Public Protector to investigate the Nkandla case.

4.2.3 Independence of the Public Protector

As a way of ensuring the effectiveness of the Public Protector, the institution is designed to have greater independence from other arms of government. This was intended to create a political environment conducive for the institution to perform its constitutional and legislative mandates. Compared with other anti-corruption agencies in South Africa, the Public Protector was intended to be more independent, impartial and accessible to all classes and categories of the citizenry. The Constitution clearly states that the Public Protector will remain independent, and charges other

organs of state to protect the independence of the Public Protector and ensure it continues to function effectively (s181(3)).

While it may be difficult for any public institution to be completely independent, particularly in an emerging democracy such as South Africa, the Public Protector has continued to be seen as an independent institution, largely as a result of the emphasis placed on it by the Constitution. However, the mode of appointment of the Public Protector as provided for by the Constitution makes the institution susceptible to interference. The Constitution provided that the Public Protector will be appointed by the President, based on the recommendation of Parliament. While it is required that the individual must have a 60% vote of members of the national Parliament, the final appointment rests with the President (s193(5)). The same process is also required for the dismissal of the Public Protector (s194(2)&(3)). However, the office is required to report to Parliament periodically, rather than the President. Parliament is also responsible for its budget. This line of reporting and funding of the Public Protector is very important to minimise executive interference in its operations, and to ensure the institution is protected and remains effective in performing its statutory responsibilities.

The Public Protector has made a significant contribution to the promotion of public accountability in South Africa, which is important in strengthening democracy in the country (Thornhill, 2011:88). It has provided an opportunity for the people to find redress for poor service delivery by institutions of the state, and its investigations have brought transparency and accountability into the activities of various departments and agencies of government. In 2013/2014, it dealt with over 20,000 cases. While the Public Protector has been able to address numerous cases of maladministration in the public sector, it has also dealt with some high profile cases that involved the misuse of state funds. Some of the high profile cases that have made headlines, aside from that of Nkandla, include the Sarafina saga, and the arms deal. Dealing with cases involving high ranking public officials is usually challenging, as both the on-going arms deal saga and the Nkandla case have revealed (Public Protector, 2014c). The table below contains the various individuals and state organs that were investigated in connection with the Nkandla case:

Table 3: Key Role Players in the Nkandla Case

S/N	NAME	POSITION	ORGAN OF STATE/SECTOR
1	Jacob Zuma	President	Presidency
2	Mr J. Radebe (MP)	Minister	Ministry of Justice and Constitutional Development

3	Ms N. Mapisa-Nqakula (MP)	Minister	Ministry of Defence and Military Veterans
4	Mr N. Mthethwa MP	Minister	Ministry of Police
5	Mr T. W. Nxesi (MP)	Minister	Ministry of Public Works
6	Dr S. Cwele (MP)	Minister	Ministry of State Security
7	Amb G. Doidge	Former Minister	Ministry of Public Works
8	Ms G. Mahlangu-Nkabinde	Former Minister	Ministry of Public Works
9	Ms H. Bogopane-Zulu (MP)	Former Deputy Minister	Ministry of Public Works
10	Lt Gen V Ramlakan	Former Surgeon-General	South African National Defence Force
11	Dr C. R. Lubisi	Director-General	Presidency
12	Mr S. Malebye	Former Acting Director-General	Department of Public Works
13	Mr S. Vukela	Former Acting Director-General	Department of Public Works
14	Ms G. Pasley	Chief Quantity Surveyor	Department of Public Works
15	Mr K. Khanyile	Former Regional Manager	Department of Public Works
16	Mr J. RIndel	Project Manager of the Nkandla Project	Private
17	Mr J. P. Crafford	Director, Architectural Services	Department of Public Works
18	Brigadier S. J. Adendorff	Head, Security Advisory Services	SAPS
19	Mr M. Makhanya	Architect and Principal Agent	Private

Source: *Secure in Comfort; Nkandla Investigation by the Public Protector*

4.3 THE NKANDLA CASE STUDY

4.3.1 A Case of Maladministration and Corruption

The Nkandla case can be regarded as a litmus test of the effectiveness of efforts to ensure public accountability and curb public corruption in South Africa. The case, which first made headlines in 2011, involves a number of government agencies and public officials, including the President of the Republic, Jacob Zuma (Letsoalo & Molele, 2011). The case revolves around the use of state funds to upgrade the private residence of the President. The project was initially intended to put in additional measures to ensure maximum security for the President and his family, and was accommodated by relevant statutes. However, the process of executing the project has been fraught with irregularities and flagrant spending of taxpayers' resources. When the case was first reported,

the project cost was at R65m. By the time the Public Protector had finished the investigations, the cost had risen to R246m (Public Protector, 2014a).

According to the Public Protector, the Cabinet Policy of 2003 and the National Key Point Act were the legal instruments that the Department of Public Works (DPW) relied on to provide the security measures for the President. Other principal agencies involved include the Department of Defence (DOD), South African Police Service (SAPS), and South African National Defence Force (SANDF). They were to advise on the security measures to be provided. The security upgrade was intended to focus on security measures, but later on non-security projects were included. The non-security projects that were added along the way included a swimming pool (claimed to be a fire pool), a cattle kraal, an amphitheatre, a chicken run and extensive paving (Public Protector, 2014a:41).

The case was first brought to public knowledge by the Mail & Guardian on the 11th of November 2011, under the heading: “Bunker bunker time: Zuma’s lavish Nkandla upgrade” (Letsoalo & Molele, 2011). From that report, there were conflicting figures as to how much it would cost the state to carry out the security upgrades. The cost seems to have moved from R36m to R65m, and eventually to R246m, as reported by the Public Protector. For instance, the Mail & Guardian report quoted the spokesperson for the Presidency as saying that the President was bearing the cost of the upgrade at his private residence. The Public Protector (2014a:85) also reported that the Presidency released a statement in 2009 claiming that the government was not responsible for the upgrade. However, the Public Protector did not commence investigation into the matter until 2013, after series of complaints had been sent to the office.

The final report of the investigation by the Public Protector eventually made it to the public sphere amid controversy in 2014. Some of the issues the Public Protector investigated raised pertinent questions about the separation of private and public property. Within the case, one comes to observe how the line between private and public property becomes blurred, and how neo-patrimonialism, characterised by patronage and clientelism, plays itself out in reality. Some of the areas of investigation which are of particular interest include the following (Public Protector 2014a:9):

1. Was the expenditure incurred by the state in this regard excessive or amounting to opulence at a grand scale, as alleged?
2. Did the President’s family and/or relatives improperly benefit from the measures taken?
3. Was there any maladministration by the public office bearers, officials and other parties in this project?
4. Was there any political interference in the implementation of the project?

5. Is the President liable for some of the costs?
6. Were there ethical violations on the part of the President in respect of this project?

Reports in the media and in the 400+ page investigation document suggest that there were several attempts to frustrate the investigation process of the Public Protector, and discourage the institution from looking into the case. This became so pronounced that the Public Protector, Thuli Madonsela, asked the ruling party to stop interfering in her job (City Press, 2014). The investigation report itself also shows that there were attempts to dissuade her from investigating the case. The executive preferred the Special Investigation Unit (SIU) to handle the case, but Madonsela insisted that her office was poised to handle the case, given her level of independence from the executive, unlike the SIU that reports to the President (Public Protector, 2014a).

As part of efforts to disregard the report of the Public Protector, other institutions were encouraged to conduct their own investigations. Reports other than that of the Public Protector include those of the SIU, a Task Team constituted by the Department of Public Works (DPW), as well as a Task Team of the Minister of Police. A parliamentary committee made up of members from across political parties equally carried out a physical inspection of the project. It is instructive to note that the SIU, DPW and the Minister of Police all report directly to the President. As argued by Madonsela, the Public Protector is the only institution of government poised to investigate the case, because it is accountable to Parliament and not directly to the President. These other reports are gradually shifting attention away from that of the Public Protector, which concluded that the President benefited unduly from the public funds expended on the estate. While the three other reports acknowledged that the project was riddled with corruption through overpricing and improper contracting processes, they all exonerated the President. The parliamentary committee that inspected the project also acknowledged corruption in the execution of the project (DPW, 2014; EWN, 2015).

4.3.2 The Investigation, Findings and Recommendations

The Public Protector is mandated by the Constitution to investigate cases brought to it by members of the public. It can also decide to initiate investigations in line with its mandate, and make recommendations based on its findings. In the case of Nkandla, several complaints were submitted to the Public Protector between 2011 and 2012. A member of the public made the first complaint in 2011, noting irregularities in the execution of the project funded by the state, and called for investigation. The Mail & Guardian published this complaint. A year after the first complaint was published, another was lodged, this time directly with the office of the Public Protector by a Member of Parliament on the 12 of December 2012. The MP requested that the Public Protector

investigate the allegation that members of the President's family benefitted unduly from the state-funded project, and a possible violation of the Executive Ethics Act (Public Protector, 2014a:84). These and other complaints provided the legitimate grounds for investigation, which officially commenced in 2013.

All in all, the investigation lasted for about two years, and included close scrutiny of public officials in the DPW, Presidency, Ministries of Police, and Defence involved in the upgrade of Nkandla. The investigation was also extended to some individuals who were involved in their private capacity, such as the private architect of President Zuma, and some of his family members.

A cursory look at the focal points of the investigation, findings and recommendations made, and some of the focal issues of the investigation are highlighted as follows (Public Protector, 2014a:8):

- To ascertain the legal basis for the upgrade and whether such were violated in any way;
- To determine whether procurement of goods and services were done in line with laid down procedure;
- Whether or not the scope of the project as conceived by the DPW went beyond what was required;
- Was the amount expended on the project excessive?
- Did the President and his family benefit unduly from the project?
- Did the conduct of public officials who took part in the project conform to regulations?
- Was there any political interference in the implementation of the project?
- Was the project executed at the expense of other important state projects?
- Is the President liable for some of the cost incurred?
- Were there ethical violations on the part of the President in respect of this project?

These are important grounds on which corruption and official malpractice can take place. The issues are a reflection of a possible patronage network between the President and the public officials that were involved. The Public Protector, Thuli Madonsela, pointed out that those who were implicated and investigated resorted to legal representations, even though the Public Protector is not a judicial body and does not even have the powers to prosecute (Public Protector, 2014a:15). Some of the findings of the investigation include the following:

- Two main instruments were relied on for the implementation of the project. These are the Cabinet Policy, and the National Key Points Acts. The Cabinet Policy stipulates that certain security measures should be provided for members of the cabinet, including the President. It was discovered that, while there were legal grounds for the project, there was no compliance

with their provisions. The procedures in these legal instruments were not properly followed, and the boundaries set were exceeded.

- There was failure to comply with supply chain management policy, leading to a flawed tender process. As pointed out earlier, public procurement is one of the avenues for corruption in South Africa. Ignoring procurement regulations often provides opportunities for irregularities. Refusal to follow the supply chain management policy amounts to operating with rules that are parallel to those of formal bureaucracy.
- It was discovered that the project implemented went way beyond what was in the original plan, and what was required and permitted within the provisions of the law. This shows that the public officials intentionally went beyond what was necessary, which raised the cost of the project considerably.
- The project was described by the Public Protector as “unconscionable, excessive and a misappropriation of public funds” (Public Protector, 2014a:430). The implemented project amounted to opulence at public expense. What is not clear in the report is the actual intention of the public officials who were responsible for the implementation of the project. However, the action of these public officials is typical of a neo-patrimonial state, where formal bureaucratic rules are circumvented for personal interests. This often creates avenues for patron-client relations that breeds maladministration and corruption. The President, on the other hand, continued to maintain that he did not ask for the expansion and therefore cannot be held liable for any wrong doing (Reuters, 2014).
- The investigation revealed that the project implemented added to the private property of the President, thereby giving him and his family benefits beyond what they are entitled to, at a great cost to the state. One of the tenets of a modern bureaucracy is the separation of private property from that of the state, which otherwise would amount to neo-patrimonial rule (Weiss, 1983; Adebani & Obadare, 2011). The way and manner this project was implemented meant that the President and his family were given an undue entitlement to state resources. The non-security measures that were implemented in the estate are not for the state, neither will they revert to the state. In this instance, there is total blurring of the line between private and state property.
- The report revealed a total failure of state bureaucracy, as the various departments and ministries of government involved in the implementation of the project did not show adequate understanding of the formal rules that regulate their actions. This situation allowed for the corruption of the bureaucracy that is meant to provide efficiency in the operations of

the state. This also explains why the project kept expanding and the cost kept going up, without measures to arrest the situation, until the project was made public knowledge.

- The investigation equally revealed some systemic deficiencies, particularly in the regulatory frameworks, as they did not provide limits to funds the state could commit to providing security measures for serving and former Presidents and their deputies.

In line with its mandate, the Public Protector made recommendations in terms of remedial actions that should be taken to address the findings described above. Having found out that the President benefited unduly from the construction, particularly with regards to the non-security aspects of the project, the Public Protector recommended that the President should work with the National Treasury to determine the cost of non-security measures and refund same to public purse. The refund of the money as recommended has become a major subject of contention, particularly in Parliament, between the ruling and opposition parties. On a number of occasions, the President has had to appear before Parliament to respond to questions on Nkandla, which has led to conflict between the ruling party, the ANC (who tend to support Zuma publically), and the leading opposition parties, the Democratic Alliance (DA), and the Economic Freedom Fighters (EFF).

The President has maintained that he has no refund to make. When the President appeared before Parliament in March, the same question was posed to him, and he responded that the recommendations of the Public Protector were not binding, and he would rather wait for that of the Minister of Police (EWN, 2015b). It is important to note that the Minister of Police reports to the President and, given the level of servitude that is evident among state officials, it is unlikely that any report to one's "boss", is likely to be condemning. Consequently, when the Minister of Police presented his report, unsurprisingly, the President was exonerated of any wrongdoing. Instead, the Ministers who overstepped their bounds in the course of implementing the project were held accountable for the abuse of public resources.

As such, the Ministries of Public Works, Police and Defence were required to conduct their respective internal investigations in order to find out which public officials were directly responsible for the irregularities. They were equally required to conduct proper training for their personnel in the areas of complying with different regulations guiding their operations, to prevent any further such incidences of maladministration in the future.

What the various reports uncovered is that there are certain statutory deficiencies that need to be addressed. For example, the Public Protector recommended that the Secretary to the Cabinet take urgent steps to update the Cabinet Policy to prevent the lapses that gave room for the Nkandla project to be expanded without restrictions. Members of the cabinet were also requested to

familiarise themselves with the provision of the policy in order for them to know the details of what they are entitled to under the regulation.

4.4 CONCLUSION

The Public Protector's report is the most comprehensive of all the investigations that were conducted into the Nkandla case, covering the various state organs and individuals involved in the project. The report paints a graphic picture of the entire investigation process, including communications with various government agencies, ministries and individuals that were involved in the project. The analysis provides insight into the challenges the Public Protector confronted in the course of investigation into the case. Against this background, the next chapter focuses on the challenges the Public Protector experienced in the process of investigating the Nkandla case, starting with the findings from the report. It also analyses the Nkandla discourse in the media space, as well as the presentation of findings from the expert interviews that were conducted, in order to show why this case of corruption is so telling in terms of the state of democracy in South Africa.

CHAPTER 5

METHODOLOGY AND DATA ANALYSIS

5.1 INTRODUCTION

The central focus of this study is to determine the difficulties of addressing the problem of corruption by focusing on the Public Protector's handling of the Nkandla case. While the preceding chapter provided an overview of the structure and operations of the Public Protector as a state institution mandated to address maladministration in the public sector, as well as the Nkandla case, this chapter deals with data analysis. The data collected for the purposes of understanding the difficulties experienced by the Public Protector in addressing the problem of corruption is presented in this chapter. This includes the analysis of the Public Protector's report, media debates, and the expert interviews conducted for the purpose of this study.

5.2 THE CHALLENGES THE PUBLIC PROTECTOR FACED IN DEALING WITH THE NKANDLA CASE

The Nkandla case is without a doubt one of the most difficult cases ever handled by the Public Protector since its establishment in 1994. One obvious explanation for this is the personalities involved, as well as the nature of the project itself, which involved a number of state departments and agencies. This complicated and prolonged the investigation. The investigation was launched in 2012 and it was envisaged to last for one year, which is the duration set for investigating complex cases. However, the investigation dragged on for two years as a result of the numerous difficulties encountered in the process (Public Protector, 2014a:14). These difficulties are discussed below.

One of the major constraints the Public Protector faced was the sensitive nature of the project, which encompassed numerous security matters. Adequate care had to be taken to ensure the protection of sensitive details, in order not to compromise the initial objectives of the project, which was to provide adequate security for the President. For instance, the Auditor-General of the country could not look into the Nkandla case, because most of the information needed was labelled 'classified'. In the words of the Auditor-General, "It was not an easy task for us to do the audit because the documents were classified, and it was not easy for us to do a normal audit" (Sowetanlive, 2014). As presented below, this is one of the major hurdles the Public Protector had to confront in the investigation of this case.

Having to deal with multiple agencies in a single investigation, and the sensitive nature of the project, are general constraints that anti-corruption institutions face in dealing with cases such as

this. However, the specific difficulties the Public Protector experienced in the process of investigating the case provide us with an understanding of the challenges of curbing corruption in South Africa. These specific difficulties, as contained in the report of the Public Protector, are analysed below.

Objections to the Investigation: Several attempts were made to ensure that the Public Protector did not continue with the investigation after it was initiated in January 2012. At the commencement of the investigations, the Public Protector wrote to all parties involved in the case, including the President. The first objection came from the Minister of Police. While the investigation continued, other objections soon followed from the Ministers of Public Works, and State Security, the Acting State Attorney, and the Chief State Law Advisor. All these are state institutions that report directly to the President. However, nowhere in the Constitution or the Public Protector Act is it stated that these agencies have the power to stop an investigation by the Public Protector. The reason given for their objection was that the project is a sensitive one because it has to do with the security of the President.

As contained in the report of the Public Protector, efforts were made to allay the fears expressed by these agencies that the security of the President would be at risk. The Public Protector assured them that sensitive details regarding the investigation would not be featured in the final report, which would be seen first by principal parties before it would be released to the public, as mandated by the Public Protector Act. The issue of security was thus dealt with, but this gave rise to other attempts to prohibit the Public Protector from investigating this case, such as challenging her powers to investigate a private consultant on the project.

These agencies argued further that the Public Protector does not have the powers to investigate the private consultant that was at the centre of the implementation of the project. This was based on the provision in the Public Protector Act, which restricts the scope of its mandate to public institutions. However, this particular case had to do with a state project, involving a number of state agencies. As the Public Protector could not be stopped on these grounds, its power to investigate the case was questioned by the same agencies under investigation, while showing preference for other state institutions to conduct the investigation. This led to the next difficulty.

Preference for other state bodies to conduct the investigation: Aside from the several attempts to discourage the Public Protector from proceeding with the investigations, the state agencies involved expressed their preference for other organs and institutions to conduct the investigation. The problem is that these 'preferred' institutions all answer directly or indirectly to the President. Hence, the counter argument was that the Public Protector was in a better position to conduct the

investigation, and not institutions such as the SIU, who report directly to the President. In one of the correspondence exchanged, the Acting State Attorney, who was representing the Ministers of Police, Works and State Security, maintained that, “Our clients believe that the SIU has competency and powers to conduct this investigation” (Public Protector, 2014a: 101). Afterwards, based on the recommendations of the ministers, the President instructed the SIU to commence its own investigation into the case in December 2013 (SIU, 2014:2). This meant that there were now parallel investigations. The implication of this is that the report of the on-going investigation by the Public Protector can easily be set aside or disregarded.

The SIU was not the only institution set to investigate the Nkandla issue in addition to that of the Public Protector. On the instruction of the Minister of Public Works, the Department of Public Works set up an Internal Task Team to conduct an investigation into the case. The Chief State Law Advisor at one time requested that the Public Protector halt its investigation, so that the Internal Task Team could proceed with its own. The issue here was how could the Department of Public Works conduct an investigation that involved itself? Also, how could an ad hoc departmental team investigate a case involving numerous individuals and agencies? These were some of the questions raised when considering the request that the Public Protector jettison its investigation for that of the DPW and others, as captured by the Public Protector thus:

After a smooth flow of information from affected organs of state, including extensive documents received from the DPW, the Minister of Police suddenly raised an objection to the investigation. He questioned the need in the light of government having established an internal task team that had made findings on the matter and that the internal process had not yet been concluded as the investigation by the Auditor-General and the Special Investigation Unit (SIU), which had been recommended by the Task Team had not yet been undertake. There was also a veiled questioning of the authority of my office to investigate a security matter and o access related security documents (2014a:96).

In the face of these objections, the Public Protector remained undeterred and continued with the investigation. The investigation required that all the principal actors, including heads of these agencies, be interviewed by the Public Protector as part of the investigations. However, rather than do that in person, they sent legal representatives to respond to queries by the Public Protector. This led to the next difficulty the Public Protector experienced in the course of investigating the case.

Resort to use of lawyers and threat of litigations to stall investigations: It is customary to engage the services of legal experts, such as lawyers, when individuals have cases to answer in the courts. It is on very rare occasions that individuals choose to represent themselves. In the course of

this investigation, most of the individuals and agencies implicated in this case resorted to legal representations with the Public Protector, even though it is not a judicial body. Although it is not clarified in the Constitution, or the Public Protector Act how individuals are to appear before the institution, one would expect that those invited in this case would respond in person. In the process of investigation, the Public Protector had to interact with several attorneys. Some of these representatives went as far as threatening to secure a prohibitive order of the court against the Public Protector, in an attempt to shield their clients from investigation, as noted by the Public Protector:

Some of the parties that appeared to have been implicated by the investigation were assisted by attorneys and advocates in their responses and a total of seven attorneys and five advocates were involved, some of whom tried to turn the investigation into adversarial proceedings. Threat of interdicts were frequently made (2014a:15)

This adversarial approach taken by those implicated in the case was capable of discouraging and dampening the commitment of those working on the case. The President's lawyer also attempted to use a provision in the Executive Members' Ethics Act to stop the investigation. The provision requires the Public Protector to give an update to the President on any investigation involving members of the executive within 30 days of the commencement of the investigation. Due to the complex nature of the investigation, the Public Protector could not meet the 30 day period. Lawyers to the President attempted to use this to stop the investigation entirely, stating that because the Public Protector was unable to meet the deadline, the investigation should be discontinued. The President's lawyers argued that her inability to comply with that provision would negate the entire investigation. She explained that the inclusion of the Executive Ethics Act was done about one year after the case had started (Public Protector, 2014a:89).

In their protracted effort to truncate the investigation, the Public Protector was finally taken to court by the state organs involved, ostensibly for not giving them adequate time to review the provisional report. The court was also directed to halt the release of the report to other parties involved. This was clearly a breach of the provision in the Public Protector Act (s6(8)) that staff of the agency are not compelled to appear before any courts in connection with their investigations. The resort to legal representation and the use of litigation to halt the investigation were all part of efforts to prevent the Public Protector from pursuing the case. While all this could not stop the investigation by the Public Protector, access to the necessary information needed was made difficult.

Restriction of Access to Information: Secrecy or restriction of access to information is one of the ways corruption thrives under any system of government. The success of investigations of any kind

is largely dependent on the availability of and access to the required information. In this case, attempts were made to prevent the Public Protector from accessing the information required to carry out a successful investigation. For instance, requests for information made to the Presidency and the President were not answered. Some required information was deliberately kept away from the Public Protector because it was labelled as classified (Public Protector, 2014a:14). This confirmed the position of the Auditor-General regarding how lack of access to the necessary information prevented his office from conducting the investigation. Even after the Public Protector had assured the relevant state agencies that sensitive details would be properly managed, it was difficult to access information to aid the investigation.

While a possible security breach was used as an excuse to restrict access to relevant documents, other agencies with non-sensitive information delayed the release of such documents to the Public Protector. This appeared to be a deliberate attempt to stall or possibly frustrate the investigation. There was also an instance where an official document containing vital information, which was prepared by the Project Team, disappeared. In the words of the Public Protector, Thuli Madonsela:

It is clear that at the level of the Project Team the document was produced and delivered but at a **political level**, it seems to have been managed in a manner that removed it from the normal administrative process or track. (Public Protector, 2014a:26) (emphasis added)

Restriction of access to information is one of the most effective ways any investigation could be hindered. If the required documents are not available to the investigators, the process would be adversely affected. This is the first indication of political interference in the investigation of the Nkandla case as indicated by the Public Protector herself.

Politicisation of the case by the ruling party: Politicisation of cases of corruption and maladministration has the tendency to downplay their seriousness and distract from the core issues. Evident in the report is the role played by the ruling party, the ANC, which has the majority of the seats in the Parliament. Before the conclusion of the investigation, the ANC accused the Public Protector of being political by planning to release the provisional report close to the elections. This accusation was deemed to harm the credibility of both the report and the office of the Public Protector. The Public Protector submitted that this accusation was “hurtful” to herself and her team (Public Protector, 2014a:120). Aside from the ruling party, some of the agencies implicated by the investigation also harassed and threatened her with legal action.

Harassment from State Agencies under Investigation: The Constitution (s181(2)) mandated the Public Protector to be impartial and perform its roles without fear or favour. Despite this provision in the Constitution, there were threats of legal proceedings against the Public Protector. First,

government departments took her to court on the excuse that they were not given adequate time to go through the report (Public Protector, 2014a:93). Second, the Public Protector (2014a:104) reported that the Minister of State Security informed her of his decision to investigate her office for the leakage of the provisional report. Eventually, the SAPS National Commissioner launched a criminal investigation against her for the leaked provisional report (Public Protector, 2014a:105). It appeared that they all ignored the section of the Public Protector Act which protects the Public Protector and her staff against such criminal proceedings. That provision states:

The Public Protector or any member of his or her staff shall be competent but not compellable to answer questions in any proceedings in or before a court of law or anybody or institution established by or under any law, in connection with any information relating to the investigation which in the course of his or her investigation has come to his or her knowledge(s6(8)).

Even though none of these threats were actually carried out by the government departments and ministries that initiated them, it negatively affected the staff of the Public Protector. This harassment and intimidation is contrary to the spirit of the Constitution (s181 (3) (4)) which mandates other organs of the state, including the ones implicated in this case, not to interfere in its investigations, but to ensure its independence, dignity and effectiveness are protected. Aside from these external challenges, which must have been frustrating for the staff of the Public Protector, there were other internal constraints that hampered the capacity of the Public Protector to deliver on their mandate.

Capacity Constraint: Human and financial resources are vital requirements for the effective functioning of any institution. From the number of individuals and agencies implicated in this case, it is apparent that a lot of human and financial resources would have been required to conduct such an investigation. Interviews would have to be conducted with everyone, and documents relating to the project reviewed. This contributed to its inability to complete the investigation timeously, in addition to the deliberate delays from the state organs involved. The Public Protector noted that, “Due to the lack of resources in my office, the delays in the investigations and the other challenges referred to in this report, it was not possible to investigate every allegation and suspicion of impropriety that was raised by different role players that were approached and engaged” (Public Protector, 2014a:108).

It is not surprising that it took the Public Protector two years to complete its investigation into the case, given the line-up of individuals (see Table 3) and state organs that were involved. It is safe to say that this investigation was completed in the face of these difficulties simply as a result of the commitment of the office of the Public Protector to the case. The challenges posed by organs of the

state that were meant to protect the effectiveness of the Public Protector could have truncated the investigation, as it appeared they were committed to ensuring the investigation was not completed. The following section is the findings from media reports to enrich our understanding of other possible challenges the Public Protector encountered in the process of investigating the Nkandla case.

5.3 THE CHALLENGES OF DEALING WITH THE NKANDLA CASE, AS EVIDENCED IN MEDIA DEBATES

The report of the Public Protector started generating controversies before it was released in 2014. A copy was allegedly leaked to the public before it was officially released. The ruling party attempted to use this to discredit the report, because it was seen as targeting some members of the party, including the President. After the report was released officially, controversies continued to trail it, particularly in the media, which by itself is a reflection of the difficulties of addressing corruption in South Africa. This section looks at some of these issues, as reflected in the media:

Attacks from members of the ruling party: Verbal attacks against the person and the office of the Public Protector continued after the report was released. They intensified after a confidential letter she wrote to the President was leaked to the press. This letter, according to the Public Protector herself, was allegedly leaked by a high ranking official of the ANC. ANC members in and out of Parliament used the opportunity to descend on her and her office in their bid to protect the President. The attack became so personal and sporadic that a civil society organization called AfriForum announced their intention to charge the secretary general of the ANC and the deputy in court for insulting the Public Protector, which is an offence under the Public Protector Act (Netwerk24, 2014a). According to the CSO, they considered the legal action against the secretary and his deputy because “Not only did they criticize her, but made a series of personal attacks. They climbed into her person – saying she was a populist and implying she was fighting democracy” (enca, 2014). An ANC MP, Thandi Mahambehlala, attacked the Public Protector by saying its report is misleading (Khoza, 2015). This sort of attack was intended to tarnish the image of the Public Protector and the institution she represents. Additionally, it served to pitch the South African people against the Public Protector, by labelling her an enemy of democracy, which is tantamount to being an enemy of the people.

Another attack against the person and the institution of the Public Protector came from the Deputy Minister of Defence and Military Veterans, Kebby Maphatsoe. He accused the Public Protector of being a CIA spy. In the words of the minister, as reported by the Mail & Guardian (2014a),

These chapter nine institutions were created by the ANC, but are now being used against us, and if you ask why, it is the Central Intelligence Agency. *Ama* [the] Americans want their own CEO in South Africa and we must not allow that.

In addition, he was quoted as saying, “We can’t allow people to hijack the ANC. We’ll fight and defend the African National Congress. *uThuliumele asitshela ukuthi ubani ihandler yakhe* [Thuli must tell us who her handler is]”. This accusation against the Public Protector by the Minister was done at an event in Soweto. Addressing the people in the local Zulu language shows how the Minister intended to invoke the sentiment of the liberation struggle against the Public Protector. Aside from undermining the office, this had implications for the safety of the person of the Public Protector. Understanding the seriousness of the allegation, the Public Protector demanded that the Minister provide evidence to support his claim, otherwise he should retract the statement and apologise to her. The minister later apologised for the statements, and denied calling the Public Protector a spy (SABC, 2014).

Aside from Afriforum, some other civil society organisations have condemned the incessant attacks against the person and office of the Public Protector. David Lewis, the executive director of Corruption Watch noted that:

We view the office as a crucial anticorruption body that is well placed to speak authoritatively on the management of public resources. There are disturbing signs of disrespect for this office, and we will do all in our power as a civil society organization to protect it (Corruption Watch, 2014).

The Institute for Security Studies (DefenceWeb, 2013) pointed out that these attacks against the Public Protector are capable of threatening constitutional democracy in the country. In addition to the position of the civil society organisation, some opposition parties in the country have equally condemned these attacks, while ANC MPs have insisted that the Public Protector is not under any attacks (Eliseev, 2015). The DA (2014) notes that, “It is an alarming trend that members and leadership of the ANC have taken to attacking and undermining constitutional bodies and processes when their findings go against the ANC, in any of its forms or iterations”. The EFF and COPE have also separately condemned the attack and asked that the Public Protector be allowed to perform its Constitutional roles (EFF Supporter, 2013; Wakefield, 2015). This stance by civil society and the opposition parties shows how fierce the attack against the Public Protector had been.

While most of ANC members and organs defended President Zuma, some sections of the party have taken a different position on the matter. Some members of the ANC Veteran’s League insisted that, even though the President did not order the construction of the non-security related measures, he benefited from their inclusion, and should bear part of the responsibility. The President of the

League, Sandi Sejake, blamed the ANC members of parliament for their inability to hold the President to account. He alleged that they were doing so to protect their own interest, at the expense of what is good for the country as a whole (Mail & Guardian, 2014b). This implied: firstly, the ANC MPs have primary loyalty to the President as opposed to the State; and secondly, the loyalty shown was to protect their personal interest, which is in itself a form of patronage. The EFF, on the other hand, has been demanding that the President comply with the recommendations of the Public Protector by paying back part of the money.

Political interference: The Public Protector alleged that the ANC attempted to interfere in her work. This was done by casting aspersions on her person, as well as to taint the credibility of her office. She was accused of having a personal interest in the case, and of operating outside her Constitutional mandate. It is at this point that she warned the ANC not to interfere with her work, as mandated by the Constitution (The Citizen, 2014a). The Public Protector said that the “extraordinary and unwarranted attacks on her by the African National Congress (ANC) were an attempt to interfere with the functioning of her office” (Rabkin, 2014). These attacks were an attempt to undermine the integrity of her office, as well as lower the morale of her staff, as she has mentioned (SABC, 2014b).

Additionally, the ANC has also been using its majority status in the Parliament to influence the position of the National Assembly on the matter. Parliament, in addition to the judiciary, is expected to act as a check over the conduct of the executive. Attempts that were made by the opposition members of parliament to make the President accountable were quashed by members of the ANC (News24, 2014a). Members of the opposition parties in Parliament have accused their ANC counterparts of trying to ‘rubber stamp’ the report of the Minister of Police, which exonerates the President of any wrong doing in the case (News24, 2015a). The ANC is able to achieve this as a result of its majority status in the Parliament. It presently controls 62% of the seats (SA News, 2014), which makes it easy for the party’s position to prevail on any matter when put to vote. For instance, when some members of the Parliamentary ad hoc committee wanted the President to appear before them, the ANC used its majority membership in the committee to vote out the proposal (News24, 2015a). Because democracy is about numbers, it has put the ANC at an advantage over other parties in Parliament.

Destruction of evidence: What was also reported in the media is how important evidence relating to the Nkandla case was allegedly destroyed by some staff of the DPW. These staff have been blamed by the Ministry of Works for the irregularities in the execution of the project. The affected staff have alleged that Ministers, DGs and security officers ordered them to destroy evidence

relating to the project (News24, 2014). This was a ploy to prevent investigators from finding out details of culpability. The evidence that was destroyed, according to the media report by News24, includes minutes of secret meetings on the project, which could have revealed how procurement regulations were circumvented in the process of awarding the contracts. The report (News24, 2014), notes that, “The accused officials say they and their colleagues were to leave no paper trail or recording of many “special” Nkandla meetings held during the construction period”. This shows that those who gave the instructions knew they were circumventing the law. This destruction of evidence is reminiscent of the apartheid era, where evidence of the atrocities committed under the regime was destroyed shortly before the democratic transition (Harris, 2000:29). Destroying such evidence makes it difficult to discover the individuals responsible for those decisions.

Multiplicity of reports: The multiple agency approach to combating corruption is usually intended to make the campaign against the scourge more effective. As noted earlier, there have been several reports into the Nkandla case. In addition to that of the Public Protector, there are those of the SIU, the DPW internal task team, the Parliamentary ad hoc committee, and the Police Minister’s reports. The multiplicity of reports have provided different views, which have tended to counter those of the Public Protector. While all these other reports agree that there were irregularities in the execution of the project, they all differed from that of the Public Protector, in terms of the recommendation that the President needs to pay back part of the costs. This has been a source of ongoing controversy, as the other reports put the blame entirely on the personnel that executed the project, and not on the President.

As pointed out earlier, all the other agencies and committees that investigated the case have either an administrative or political link with the President. The only one that is relatively independent is the Public Protector. The SIU, Police Minister, and Minister of Public Works all report to the President. The Parliamentary ad hoc committee that also investigated the case was made up of ANC members, as the opposition members in the committee pulled out as result of the refusal of ANC legislators to allow the President to appear before the committee as part of its investigation. The implications of having different reports in the Nkandla case are further reviewed under the section ‘State Response to Public Protector’s Report’.

Unenforceability of the recommendations of the Public Protector: Success of any anti-corruption agency is the ability to enforce its rulings and to hold perpetrators to account. One of the major problems the Public Protector is confronted with in handling cases of corruption, as this study has revealed, is the unenforceability of its recommendations. The Public Protector Act provides that the Public Protector investigates and takes appropriate remedial actions. These actions are usually in

the form of recommendations, which are not legally binding. This was brought to the fore in the case involving the appointment of Chief Operating Officer for the South African Broadcasting Corporation (SABC). In this case, she recommended that the new COO was not fit to hold the position. The matter ended up in the High Court, and it was ruled that her recommendations were not binding and enforceable by her office (Mail & Guardian, 2014c). Although the matter has been taken to the Appeals court, the ruling of the High court dealt a major blow to the powers of the Public Protector, particularly in cases involving high profile public officials (Mail & Guardian, 2014d).

The President is currently holding on to this position to reject the recommendation of the Public Protector, which directs him to pay back part of the money. He repeatedly insisted that the recommendations of the Public Protector are not binding (Marrian, 2014). After the pressure for him to pay back the money from opposition MPs and some members of the public intensified, he instructed his Minister of Police to conduct another investigation to determine what aspects of the construction at the President's residence do not constitute security measures (News24, 2014). The report, which was released recently, posits that the President does not have any refund to make. It listed facilities such as a swimming pool, an amphitheatre, a cattle enclosure and a chicken run as part of security measures (Munusamy, 2015).

Besides clearing the President of any wrong doing and having to refund the state purse, the report of the Minister of Police also alleged that the fundamental human rights of the President have been infringed upon as a result of the publicity the case generated. In the words of the Police Minister, "...the President and his family's rights have been violated. The State President is not liable to pay anything" (Mail & Guardian, 2015a). This is clearly an attempt to divert attention from the main issue, while trying to make the President appear as the victim, rather than the people of South Africa. The report has been widely criticised and condemned. According to Lawson Naidoo, the Secretary of The Council for the Advancement of South African Constitution, and the leader of DA in the Parliament, Mmusi Maimane, the report by the Police Minister is an insult to all South Africans (Business Day, 2015a).

Resort to court for the enforcement of recommendations: As the powers of the Public Protector are being challenged, the only option available to the institution is the judiciary. The implication of this is that the Public Protector becomes obliged to approach the courts for the enforcement of her recommendations. The Public Protector is currently appealing the judgment that went in favour of SABC, which held that its recommendations are not enforceable. It is also going to court over the refusal of the President to comply with her recommendations on Nkandla. There is a possibility for

these two cases to set an unhealthy precedent, where every recommendation of the Public Protector would have to be subjected to court rulings. The Public Protector notes that if her office has to depend on the courts every time for her recommendations to be complied with, it would cripple the institution (News24, 2014).

The ruling of the Supreme Court of Appeal upheld the position of the Public Protector that its recommendations cannot be simply ignored, but can only be reviewed by a court of law. This latest ruling on the status of the recommendations of the Public Protector also condemned the setting up of a parallel body to look into a case that has been concluded by the independent institution. The Supreme Court of Appeal ruled that:

An individual or body affected by any finding, decision or remedial action taken by the public protector is not entitled to embark on a parallel investigation process to that of the public protector, and adopt the position that the outcome of that parallel process trumps the findings, decision or remedial action by the public protector (Davis, 2015).

This ruling has put to rest what could have set a bad precedent, where organs of the state can wilfully ignore the recommendations of the Public Protector by setting a parallel structure to assess the situation, as the SABC management did. However, the Nkandla case is still before the Constitutional Court, where the case would finally be put to rest.

In situations such as this, the Parliament would have been able to intervene to protect the effectiveness of the Public Protector. Unfortunately, the ANC-dominated Parliament, which the Public Protector reports to, has not been helpful in protecting the institution, as clearly pointed out by the President of ANC Veteran's League (Mail & Guardian, 2014b).

Personal security risk: For any institution or person tasked with investigating cases of corruption, there should be the surety that this is without prejudice and risks to the person. Besides the incessant attack on the credibility of her person and her office, the Public Protector had reasons to fear for her personal safety. While the civil society could possibly protect her from verbal attacks, they may not be able to protect her from physical attacks. The Public Protector claims that the controversies her report generated, and particularly the attacks from the ruling party, have put her in a dangerous position, where she is viewed as the enemy of South Africans. She said someone referred to her once as an 'askari', a term which denotes a 'sell out', on the social media platform, Twitter (IOL 2014). This term was popularly used during the apartheid era to refer to individuals who betrayed their comrades in the struggle for freedom. Such people were seen as the enemy of the oppressed people, and the consequences were grave (Camerer, 2001:1). This was very troubling for the Public Protector, which prompted her to contemplate extra security measures for herself.

Insufficient Funding: Access to adequate resources is vital for effective functioning of any institution. This is particularly true for anti-corruption institutions. The issue of funding for the Public Protector has also generated a lot of debates in the media space. The Public Protector has repeatedly asked the Parliament to look into her funding to enable the office operate more effectively (South African Government, 2014). The opposition MPs have also expressed concerns over what is termed a deliberate attempt by the ANC MPs to starve the Public Protector of funds.

A newspaper report (Mokone, 2014) published online quoting some MPs from the ANC, DA and EFF reflects the position of the various parties regarding the funding of the Public Protector. The report quoted a senior ANC MP and committee chairman as accusing Madonsela of “*being the undemocratic leader of a dysfunctional office*”. This comment, which was made when the issue of funding for the Public Protector came up, shows how the institution is viewed by some members of the ruling party in Parliament, which has strong implications for the effectiveness of the institution.

The same report quoted a DA MP as saying:

“Given recent attempts by the ANC and its representatives in Parliament to undermine the office of the Public Protector, it is clear that her office will not be capacitated as required. The ANC fears a fully-funded public protector”.

An EFF MP said: “*Zuma militias blame the Public Protector for the situation of insolvency that her office is in, when in fact both parliament and Treasury are refusing to allocate funds for her*”.

Here we see how sympathetic the members of the opposition parties are towards the plight of the Public Protector. These different positions reflect how the Public Protector is viewed by the different political parties, particularly in relation to her funding. The refusal to adequately fund the office by the ANC MPs is also a form of political interference in the operations of the Public Protector, aimed at crippling the institution.

5.4 THE FUNCTIONING OF THE OFFICE OF THE PUBLIC PROTECTOR: ANALYSIS OF EXPERT INTERVIEWS

The Nkandla case is significant in the corruption discourse in South Africa. This is so for a number of reasons. First, it has generated extensive media debates, public discourse and controversies; secondly, it is one case that involves multiple agencies of government and high profile public office holders; and thirdly, different organs of state conducted investigations into the case. Aside from being one of the most important cases the Public Protector has ever handled, it has also brought the issue of corruption under the current democratic dispensation into the limelight, as well as some salient issues around the functioning of the office of the Public Protector.

The outcome of the interviews conducted with some experts and commentators on the Nkandla case on the difficulties of curbing corruption in South Africa are analysed under the following themes, informed by the objectives of the study:

- Challenges facing the Public Protector in addressing corruption in South Africa
- Political Interference in the functioning of the Public Protector
- Powers of the Public Protector in addressing corruption
- The significance of the Nkandla case and its implication for democracy in South Africa

5.4.1 Challenges facing the Public Protector in addressing corruption in South Africa

Insufficient funding and inadequate human resources: Adequate financing and a competent workforce are important resources needed for any bureaucratic institution to function effectively, the absence of which would affect their operations adversely. The Public Protector identified in her report that inadequate funding is one of the challenges it encountered in the course of investigating Nkandla. In this regard, those interviewed were unanimous regarding the problem of funding. One of the respondents said:

If you look at the number of cases it has to deal with in relation to their budget, it's certainly not adequate. All the Public Protectors since inception have always complained about not having sufficient investigators to match their work load.

Another respondent said: *While the OPP (Office of the Public Protector) is kept on a budget that is about half of what it requires there will continue to be impunity.*

This shows that the institution is grossly underfunded to carry out its Constitutional duties. Another issue that came up in relation to funding is that the Parliamentary committee that is responsible for it is headed by an ANC member. In addition to reporting to Parliament, the Public Protector also gets its funding through Parliament, where the ruling ANC maintains a majority. One of the respondents said: *The Parliament committee that is responsible for her funding is headed by an ANC member, with the kind of cases she has been handling; she now faces a lot of hostility in the ANC controlled parliament.*

The issue of inadequate funding, as well as the views of the dominant parties on the matter, also came up in the process of reviewing media debates, which can be said to support the views expressed by those interviewed. With the view that the Public Protector is anti-ANC as a result of the cases she handles, ANC MPs can decide whether or not she gets adequate funding for her operations. Invariably, the ANC can to a great extent determine how effective the institution would

be because of the power they have in Parliament to determine the funding of the institution, and this is a reflection of the seriousness of the government in addressing the problem of corruption.

Absence of Political Will: Theoretical analysis of the causes of corruption earlier carried out in this study pointed to the importance of political will in addressing the problem of corruption. A number of the participants were of the view that the lack of political will on the part of political actors is one of the major impediments to curbing corruption. One of the participants noted that there is an:

Absence of political will to protect the Public Protector. It is common place now to find the ruling party attacking the Public Protector, whereas in the original constitution, it was meant to be protected from interference.

Here we see political will in relation to political interference. The political leadership does not ensure that the Public Protector is protected from such interferences as provided for by the Constitution of the country. The institution is expected to be protected from all forms of attacks and harassment, some of which also came up earlier in the report of the Public Protector. There is no political will to protect the institution from these harassments. Absence of political will on the part of political actors could also weaken anti-corruption institutions through insufficient funding, among other things.

Politicisation: The Public Protector earlier alleged that the interference of the ruling party in the case, in an attempt to protect the President, was reducing the case to a political issue. Unlike other cases of maladministration and corruption handled by the Public Protector, the Nkandla case has become a political issue. One of the participants maintained that:

Corruption has become a political issue, and fighting corruption and financial resource mismanagement cannot be divorced from the politics at hand. Dealing with Nkandla would mean questioning and interrogating the head of the majority political party, which has both a historic role and a current political role.

When a President cannot be held accountable for how he or she is managing the affairs of the state, it shows how much power the President wields under the current democratic system in South Africa. If the ruling party has such dominance and influence, then it becomes a major player in governance, including the issue of corruption in the system. This is one of the ways patronage networks operate, and promote corrupt practices.

Political Interference in the functioning of the Public Protector: The Constitution guarantees the independence of the Public Protector. Unlike other state organs, like the Auditor-General, the SIU and so forth, the Public Protector is not directly appointed by the President, and neither does he/she

report to the President. What was clear from the interviews is that there is a consensus that there was and remains political interference in the Nkandla investigation. However, all claimed that this was indirect political interference, as expressed in the following comment:

Yes, mainly to protect the president and those who conspired to benefit him unduly; the parliamentary committees and the investigation by the minister of police conflict with the constitutional way in which reports of the OPP are meant to be dealt with.

The network of relationships between the President and these state organs makes it difficult for them to hold him accountable. This in turn demonstrates that cabinet members who are appointed by the President, and the Parliament made up of ANC members, all collude to protect the President.

However, as regards the actual investigation, there was consensus that the Public Protector had refused to allow her commitment to the job be compromised. One of the other participants who believed there was no direct interference maintained as follows: *“There has not been much of direct political interference. What we have is indirect interference, particularly in the area of starving the institution of funds to carry out its constitutional mandates.”* It is believed by this participant that the insufficient funding that the Public Protector has to contend with is a deliberate attempt on the part of the ruling party to get to control and interfere in her operations. Another said:

I think Madonsela is independent so there was no political interference in the case. However, there was an effort by some within the executive to stop her from investigating. The security cluster went to court claiming that her investigation would endanger the life of Zuma. If there was any attempts to interfere it was not successful.

This response clearly shows that the person of the Public Protector, Madonsela, is a major factor in the way and manner the office operates. This raises the question of what will happen when she is replaced. There is more on this in the next chapter, where the personality of the heads of institutions are examined, and how this becomes a major factor in their effectiveness. According to these responses, what was prevailing in the Nkandla investigation is indirect political influence, which manifested through inadequate funding, lack of access to information, and objections that were raised against her investigation earlier.

5.4.2 Powers of the Public Protector in addressing corruption

For the Public Protector to be able to function and carry out its Constitutional and legislative mandates, the institution was accorded certain powers, which have been mentioned in Chapter Three of this study. However, its effectiveness is also dependent on the adequacy of these powers

and their use. Most of the participants interviewed are of the view that the provisions of the Constitution adequately empower the Public Protector to perform its functions. What has to be revisited, however, is the Public Protector Act, which has to clearly define these powers. As one of the interviewees said:

As provided for in the constitution and the Act, the powers of the Public Protector are adequate. The only question that has to be answered is what happens to her recommendations? There is a need for the Public Protector Act to clarify this. Even if the provisions are there another issue would be the willingness of the political class to ensure compliance with those recommendations.

Here again, one has the issue of political will being identified as a major factor in the fight against corruption, particularly with regards to the status of her recommendations. Political will is required to implement the recommendations of the Public Protector.

Another respondent pointed out the issue of her recommendations and said: *“there is no clarity on exactly what remedial action means within the context of her powers and how the PP Act envisions her role outside the realm of making recommendations.”* It appears that the main problem with the powers of the Public Protector to effectively address the problem of corruption is the contention surrounding her recommendations, which is currently awaiting clarification from the Supreme Court of Appeal. As it stands, it not clear whether or not her recommendations are binding.

5.4.3 The Significance of the Nkandla case and its implication for democracy in South Africa

Democracy has become an important political process and development in the world, and particularly in Africa, which must be protected. Cases such as Nkandla have certain implications for the political process in the country. When asked about the significance of the Nkandla case and its implications for democracy, this was one of the comments made by the participants:

Nkandla is fundamentally about whether state resources are being used in a transparent, equitable manner that further social justice and development in South Africa. What it illustrates is the power that individuals have to shift resources from that mandate and how processes of accountability can be manipulated. These have far reaching consequences for the type of democracy we have.

This statement implies that the Nkandla case has revealed how the political leadership manages, manipulates and abuses state resources. What is common, as shown by the Nkandla project, is that leaders appropriate more resources to themselves at the expense of members of the public, a practice that is not in line with the democratic practice of social justice. An interviewee made the following comment:

South African democracy is at a turning point, and this case has brought serious issues about the threats of corruption to democracy to the fore. At this stage in the country's history it is appropriate to be engaging with notions of the type of democracy we would like to live in.

This implies that the Nkandla case has helped to bring to the fore those salient issues that are capable of endangering South Africa's nascent democracy. These issues revolve around lack of accountability, impunity and equitable distribution of state resources by those in charge. What this also shows is that if the leaders can set an example for corrupt practices and skewed management of state resources, it would appear to be okay for others to engage in such practices. This inevitably leads to a culture of corruption, as explained by one interviewee:

Nkandla became the face of corruption in South Africa-which is mostly an institutionalised phenomenon. I don't think it speaks to stemming out corruption because no one has been effectively penalised for it. In a situation where corruption is so rife, Nkandla should have, but did not, become a deterrent to other offenders.

Even though Nkandla has for some become the face of corruption in South Africa, it still does not indicate that the fight against corruption is being won. On the contrary, the refusal of those involved to comply with the recommendations of the Public Protector is indicative of impunity. This undermines the rule of law and constitutionalism, which are features of a democracy. Although the type of democracy that is currently being practiced in South Africa is more advanced than that under apartheid regime, the Nkandla case has shown how deficient the current one is, as it is lacking in proper accountability, equitable distribution of state resources, and abuse of privileged positions, among other things.

5.5 RELATED ISSUES

During the course of the interviews, a number of other related issues surfaced about the powers of the public protector, issues of leadership, and the state versus party. These issues, which are considered pertinent to the research subject, are highlighted below:

5.5.1 Public Protector: An Ombudsman versus anti-corruption institution

Evident in the interviews were the differing positions regarding the status and powers of the Public Protector. Some of the interviewees regard the institution as a typical Ombudsman, such as that found in several other African countries. Others see it as an Ombudsman like no other in Africa, because of its far-reaching mandate and powers. Others regarded the Public Protector as an anti-corruption institution, whose mandate includes all forms of maladministration, as spelt out by the

Constitution, the Public Protector Act, and other various legislation that empowers it to function as such. These views were noticed in the manner they responded to the questions.

Those who see the Public Protector as an anti-corruption institution hold the view that its recommendations are enforceable, but it would need to rely on the courts to effect it, as reflected in the following comment: *“In my view the remedial action required by the OPP is enforceable; the appeal courts will, if the view the purpose of Chapter Nine correctly, so rule.”* The Supreme Court of Appeal has, however, ruled that only the courts can review the recommendations of the Public Protector. Others who see the institution as an Ombudsman hold the view that her recommendations are simply remedial actions, which are not necessarily binding. However, there is a consensus around the need for various organs of government to comply with the recommendations, as failure to do so poses a threat to the country’s democracy and against the tenet of accountability.

This lack of clarity in the status of the Public Protector is evident in the work of Pillay (2004). On the one hand, he sees the Public Protector as an anti-corruption agent (Pillay, 2004:592), while on the other hand he maintains that combating corruption is not the primary responsibility of the Public Protector, but that of the SIU. An attempt to clarify this saw him divide corruption into two categories. These he termed criminal corruption and ethical transgression or maladministration. The confusion was worsened when he later stated that the Public Protector, SIU, Auditor-General and other similar agencies are poised to address ethical transgression and maladministration, while criminal corruption is the reserve of the police. This appears to be one of the greatest challenges of a multi-agency approach to curbing corruption, as it poses the problem of overlap and definition of responsibilities.

This lack of clarity and overlap of roles of different organs of state is related to one of the challenges of curbing corruption identified earlier, which is the multiplicity of reports on the same case. This phenomenon gives room to public office holders to escape accountability by aligning themselves with the report that serves their purpose, while discrediting those that hold them culpable. It is important for this problem to be addressed for the fight against corruption to be successful. There is a need to clarify this, as one interviewee stated: *There is a lot misunderstanding about the roles of the Public Protector. There is a need to understand this so we can properly engage with the institution. Corruption is just one of the many issues she has to deal with.*

This shows that the mandate of the Public Protector is far-reaching, encompassing maladministration and corruption, making it both an Ombudsman and an anti-corruption agency. There is a need to clarify this so that citizens can properly engage with the institution without the pitfall of misrepresentation, which affects public perception of its powers.

5.5.2 Leadership and effectiveness of State institutions

Since its creation, the Public Protector has had three heads. The first Public Protector was Adv. Selby Baqwa. He served between 1995 and 2002. The second was Adv. Lawrence Mushwana, who served between 2002 and 2009. The third and the current is Adv. Thuli Madonsela, whose tenure started in 2009 (SouthAfrica.info, 2015). Going by the seven year tenure of office of the Public Protector as provided for by the Constitution (s183), the present Public Protector will be out of office in 2016. Out of all these three, Thuli Madonsela has been adjudged the most competent, fearless and committed by those interviewed. A reservation about the effectiveness of the institution after the tenure of Thuli Madonsela, which ends next year, was expressed, and there is a likelihood that President Zuma, who is going to have another opportunity to appoint the next Public Protector, would be more wary of who he appoints, as one of the interviewees noted:

It is very doubtful that the next person after Thuli Madonsela would be as effective. She's taken on a number of big cases in a manner that is transparent and she tries to get to the root of every matter. SA has never had this type of Public Protector and it may be difficult to have someone like her again.

What we see here is the importance of a leader that can act according to principles without compromise. It is with such leaders that strong institutions are built, and these are required to strengthen democracy. Thuli Madonsela represents this kind of leader. However, there have been numerous attempts to tarnish this image by members of the ANC. Madonsela is currently seen as the face of the anti-Zuma campaign that the leading opposition parties have been championing (EWN, 2014). This therefore leads to the question of what is more important in public appointments: merit or loyalty?

This situation brings to the fore the issue of quality of individuals that the state appoints to lead important institutions, such as the Public Protector. It shows that a public institution is primarily as effective as the leader's competence and commitment to the mandate of the institution. This has a number of implications for the development of institutions in South Africa, as well as on the African continent. During his first visit to Africa, President Obama stated that Africa needs strong institutions and not strong individuals (The Sunday Times, 2009; BBC News, 2009). While this is quite important for the development of democracy, it is apparent that certain kinds of individuals are required to build those institutions.

The obstacle to having the type of leaders in Africa who would be loyal and committed to the state rather than individuals is the extensive patronage network that characterise state bureaucracies. The Nkandla case has shown how those appointed by the President made an effort to frustrate the

investigation by the Public Protector through various means, including the alleged destruction of evidence. This shows the extent to which personal rule continues in a modern democratic system, a phenomenon which encourages maladministration and corruption. This patronage system continues to pose a challenge to the possibility of having heads of institutions that would be loyal to the state, rather than individuals.

5.5.3 The Question of State Versus Political Party

Modern democracy operates through the instrumentality of political parties. Political parties are responsible for fielding candidates that emerge as leaders in various political positions. To this end, political parties have become an integral part of modern democratic systems. It emerged in the interview that there is an overbearing influence of the ruling political party, the ANC, over the South African state. The ANC controls the Presidency as well as the Parliament. Some of the respondents pointed out that the party is also a part of the problem of corruption in South Africa, as one of them stated: “*she reports to the Parliament that is being controlled by the ANC, where the President belongs. The ANC is shielding the President from accountability. The real issue here is the party.*” This shows that in a democracy where there is the dominance of one party like the ANC, it would make accountability difficult, as different state organs are dominated by persons who are loyal to the party and its leadership, which in this case is the President.

One of the interviewees noted the difficulty of engaging with the state without being labelled an antagonist of the ruling party:

When the civil society for instance begins to deal with state bureaucracy, it seen as being against the party. The party and the bureaucracy are conflicting. The issue refusal of access to information in the course of investigating the Nkandla is out of the loyalty of those public officials to the party.

This somewhat makes the state synonymous with the party, at least from the perspective of the ANC, which also explains the position of the ruling party in the Nkandla case. This labelling of the civil society by the ruling party now raises the question of where to draw the line between the South African state and the ruling party. Another issue of concern here is the display of loyalty to the party over the State by public officials. The explanation for this is in the patronage system in the governance structure of the country.

These unanticipated issues are very important in understanding the problem of corruption, particularly in the South African context. It would be helpful to look more deeply into these three issues in corruption discourse, in building state institutions as well as strengthening democratic practices.

5.6 OVERVIEW OF FINDINGS

The table below shows the overview of findings, including those unanticipated, from the various data sources presented above. These sources are the Public Protector's report, media reports and debates, and expert interviews. These are the issues that emerged from the data collected and analysed in line with the research objectives. This overview shows at a glance the strength of some of the issues given their recurrence across the different data sources.

Table 4: Overview of Research Findings

S/N	Public Protector's Report	Media Reports	Expert Interviews
1	Capacity Constraint	Insufficient funding	Insufficient funding and inadequate human resources
2	Politicisation of the case by the ruling party, ANC	Political interference	Indirect Political Interference
3	Harassment from State Agencies under Investigation	Attacks from members of the ruling party, ANC	Politicisation of corruption
4	Restriction of Access to Information	Unenforceability of the recommendations of the Public Protector	Unenforceability of recommendations
5	Preference for other state bodies to conduct the investigation	Multiplicity of reports	Absence of Political Will
6	Resort to use of lawyers and threat of litigations to stall investigations	Resort to court for the enforcement of recommendations	Unclear status of the Public Protector
7	Objections to the Investigation	Personal security risk	Vague separation of the State and the political party
8		Destruction of evidence	

This table shows the listing of the various issues that emerged in the process of examining the challenges the Public Protector had to face in handling corruption cases. As noted earlier, some of these issues recurred across the different data collected, showing the seriousness of the problem. These recurring issues include insufficient funding, and the influence of politics in the investigation process. Others include harassment of the Public Protector and the difficulty of enforcing her

recommendations. These and others have very strong implications for the fight against corruption in South Africa. This analysis has shown the response of the various state organs involved in the implementation of the project as well as that of the ruling party. Below is the State's response to the Public Protector's report.

5.7 STATE'S RESPONSE TO PUBLIC PROTECTOR'S NKANDLA REPORT

After several unsuccessful attempts were made by different organs of the state to discourage the Public Protector from continuing with the investigation into the Nkandla case, as reflected in the findings above, the investigation was conducted and the report released to the public. In line with its constitutional mandate to institute remedial actions, the Public Protector, among other things, stated that the President should work with relevant state agencies to determine the amount that is fair for him to pay back to the state treasury. It was equally recommended that efforts be made to address several loopholes in existing laws and practices that gave room for corrupt practices to occur, in order to forestall a recurrence.

While the report of the Public Protector has continued to generate debates from different quarters, reports from other state sanctioned investigations started generating mixed reactions. These other reports include those of the internal task team of the DPW (DPW, 2014), the SIU (SIU, 2014) and the Police Minister (Police Minister, 2015), all of which are organs of the state under the executive arm of government. There is also the report of the Parliamentary ad hoc committee (Parliament of Republic of South Africa, 2015) made up of mostly ANC members. The Police minister's investigation was ordered by the Parliament after the reports of three other investigations had been released. The Parliamentary ad hoc committee was thereafter constituted to conduct its own independent investigation. These reports agree with that of the Public Protector on a number of issues. These include, among other things, the bloated cost of the project; the project not being properly budgeted for; and the flouting of statutory procurement regulations.

However, the reports differ in the area of what constitutes security measures. While those of the Public Protector and the SIU identified some non-security related measures such as the swimming pool, cattle run, and visitors' centre, that of the Police Minister viewed them as security related measures and deemed them necessary. The major area of contention which led to the debates and controversies is the recommendation of the Public Protector that the President should be responsible for part of the cost expended, because he and his family members were found to have benefitted unduly from the implementation of the project. This position was also shared by a former Deputy Minister of Public Works, as revealed by the SIU report. Deputy Minister Bogopane-Zulu, having seen the rising cost and extent of the project, recommended that the cost be shared between the state

and the owner of the property, which is the President. The report of the DPW tacitly shared this view when it directed the department “to do a cost apportionment of the total expenditure incurred for the purposes of *allocating cost to and invoicing relevant stakeholders*” (emphasis added). The report, however, did not state whether the President was part of the ‘relevant stakeholders’.

While the report of the Public Protector recommended that the President pays back part of the money, the others clearly put the blame of the bloated cost on the staff of the DPW and SAPS that were directly involved, as well as the Principal Agent, the President’s private architect, who was hired by the DPW to supervise the project. The Police Minister’s report, in particular, which was meant to determine the amount the President should pay back in relation to what does not constitute security measures, recommended that the President has no refund to make to the state. This, according to some members of the public, is not surprising as the Police Minister is not expected to indict the President who employed him (Times Live, 2015)

It is evident that, even though the some of the reports have some areas of agreement, particularly on issues of maladministration and corruption in the execution of the project, they differ in their final recommendations. That of the Public Protector stands out particularly in the area of the culpability of the President. This brings to the fore the issue of the network of relationships between the President and the different agencies that investigated the case. This is expanded upon in the next chapter.

5.8 CONCLUSION

The report of the Public Protector on Nkandla has provided insight into the challenges the institution experienced in the course of investigating the case. The media reports provided additional insight into the challenges facing the Public Protector in addressing the problem of corruption, and captured some of the voices of civil society. These were expanded upon by interviewing some key experts who have commented on this case. The findings emanating from the three different types of data presented were merely described in this chapter. In the next chapter, these will be evaluated in more depth.

CHAPTER 6

DISCUSSIONS AND CONCLUSION

6.1 INTRODUCTION

This chapter presents a detailed reflection on corruption in South Africa and the challenges in curbing it, with specific reference to the Public Protector and, ultimately, the consequences for democracy. This is in reference to the previous chapters, and brings together the theoretical framework and findings of this study.

6.2 THE CAUSES OF CORRUPTION

Experts and researchers have put forward different factors as causes of corruption. According to Kyambalesa (2006:180), the causes of corruption in a general sense include poor governance, political instability, traditional practices, bureaucratic red tape, inadequate compensation, and weak legislative and judicial systems. These generic causes of corruption apply to both corruption of greed and corruption of need. There are some causes of corruption that are context specific, “rooted in a country’s policies, bureaucratic traditions, political development and social history” (World Bank, 1997:12). South Africa, for instance, has certain types and causes of corruption that are prevalent.

In the context of South Africa, according to a report by Corruption Watch (2014), the major types of corruption in the country include the abuse of power, procurement corruption, bribery, and employment corruption. Procurement corruption, according to the report of the Public Protector (2014a:34), was one of the irregularities that characterised the execution of the project. Other causes of corruption in South Africa, according to the ISS (2001), include a decline in morals and ethics, greed and self-enrichments, socio-economic conditions, weak checks and balances, the apartheid legacy, and political transformation. Having theoretically examined the causes of corruption, this study focused on the challenges of curbing corruption in a democracy by focusing on the Public Protector’s handling of the Nkandla case. The findings, which are presented in the preceding chapter, are discussed below.

6.3 CHALLENGES OF CURBING CORRUPTION

Corruption has become a difficult social problem to deal with. As noted earlier in the study, corruption has persisted across the world despite the existence of anti-corruption instruments and institutions. Only a few countries with chronic corruption problem have been able to address it significantly. These countries include Hong Kong, Singapore and Botswana. Studies have revealed

that a number of factors account for the difficulties of curbing corruption in different parts of the world.

As noted in chapter 2, these include absence of political will; political interference; the discreet nature of corrupt practices, which makes detection difficult; and lack of strict enforcement of anti-corruption regulations. This study therefore focuses on the challenges of addressing the problem of corruption in the South African situation.

Analysis of the report of the Public Protector on Nkandla and of media reports, as well as expert interviews, revealed a number of difficulties the Public Protector experienced in the course of investigating the Nkandla case, as presented in the previous chapter. Some of the issues recurred across the three different data sets that were collected and analysed, showing how significant they are. These issues can be summed up as political interference, lack of political will by political actors, internal capacity constraint on the part of the Public Protector, and institutional framework deficiency. So how did this come about?

6.3.1 Neo-patrimonialism and Corruption

While the governance system of African states has been described as a neo-patrimonial bureaucracy (Erdmann & Engel, 2007; Bach, 2011; Pitcher, Moran & Johnston, 2013), some scholars, such as Wai (2012), believe the Weberian conception of the different types of leadership and governance systems is Eurocentric, and has failed to take certain historical dynamics of African states into consideration. As it has been pointed out in this study, there are some historical practices that were within the scope of the law in traditional African societies, but are now tantamount to acts of corruption under modern democratic rule. These include gift giving and the payment of tributes to the paramount rulers, a system where there is no clear separation between private and public property (Treisman, 2000). However, relationships under modern democratic governance are meant to be impersonal; there should be a separation between private and public property, and the loyalty of individuals in positions of power should be primarily to the state and not to individuals.

This traditional rule, which Weber described as patrimonial bureaucracy, has remained in many African states after the transition to modern democracy, leading to the hybrid of neo-patrimonialism. This hybrid has within it the elements of patrimonialism, such as clientelism and patronage networks. It is these patronage networks that eventually promote corrupt practices, and at the same time cause difficulties in efforts to fight corruption in democratic African states. Neo-patrimonialism and patronage networks are evident in the challenges of curbing corruption that this study has revealed, particularly in the absence of political will, political interference, and the

capacity constraints the Public Protector has to grapple with. These issues are further discussed below in relation to neo-patrimonialism.

Lack of Political Will: Politics is central to democratic governance, as it is the basis for wielding power and decision-making. Political will, on the other hand, is fundamental to how political power is utilised, and the quality and direction of decisions political actors make. The absence of it therefore has implications for good governance, as it is “inextricably tied to policy outcomes” (Post, Raile & Raile, 2010:658). Even though the concept is gradually becoming commonplace in democratic governance discourse, its definition is becoming contentious. For the purpose of its use in this context, the following conceptual clarification is provided.

Charney (2009:1), who aimed at providing conceptual clarification, succinctly views political will as “the motive force that generates political action”. In this context, political will is the willpower to take certain tough decisions in the interest of the public. Post *et al.* (2010:659) view political will as “the extent of committed support among key decision makers for a particular policy solution to a particular problem”. This places political will in the context of leadership. It must be held by key decision makers for it to be effective or evident. Brinkerhoff (2000:242), in analysing political will in the context of corruption, describes the term as meaning “the intent of social actors to attack the manifestation and causes of corruption in an effort to reduce or eliminate them”. This definition brings together salient terms in other definitions, and situates them in the context of addressing the problem of corruption. Some of these salient points are motive force, commitment, and intent of political actors or decision makers to take necessary steps to address the problem of corruption, without which the problem would persist.

Based on the findings, it appears as if ‘political will’ is currently lacking in the fight against corruption in South Africa. Even if every other aspect is put in place, without political will the fight against corruption will remain unsuccessful. As Pityana (2010:17) posits, “Even the most well-crafted institution will fail if the requisite political will does not exist”. This partly explains why corruption has persisted in the midst of varied anti-corruption legislation and institutions in South Africa. Absence of political will would make it difficult to address the problem, even when the institutions are able and willing to tackle it.

The treatment of the report of the Public Protector on Nkandla by various state organs and actors clearly shows an absence of political will to address the problem of corruption, particularly in cases involving high profile political actors. The reason for this is the network of patronage that exists between these actors, which elevates loyalty to individuals above state interest. This lies at the heart of the problem, thereby redefining politics and democratic governance in neo-patrimonial African

states. The implication of this is that these institutions would not get the necessary support and cooperation from other state organs and political structures. As revealed by this study, this situation manifests not only in political interference in the operations of these institutions, but in the denial of access to required information for their investigation, and of adequate funding to perform their tasks effectively.

Neo-patrimonialism and Political Interference: Having established the existence of patronage positions in bureaucratic institutions, a practice that is typical of neo-patrimonial states, Soest *et al.* (2011:1310) point out that neo-patrimonialism leads to political interference. Political interference in the operations of bureaucratic institutions takes different forms. This can occur either directly or indirectly. Direct political interference can manifest in the form of influencing the appointment of heads of bureaucratic institutions by political actors, in order to protect their personal interests. Shen and Lin (2011) show how the periodic appointment of heads of public financial institutions undermines their performance. Soest *et al.* (2011:1322) note that politicians sometimes interfere in the operations of bureaucratic institutions in the interest of their friends and family members. Indirect interference, or administrative interference, as seen in the Public Protector's investigation of the Nkandla case, resulted in other state institutions attempting to hamper the investigation in their bid to protect the President, with whom they have some form of relationship, either politically or administratively. The diagram below shows the network of relationships that exist between the President and the various state organs that investigated the Nkandla case:

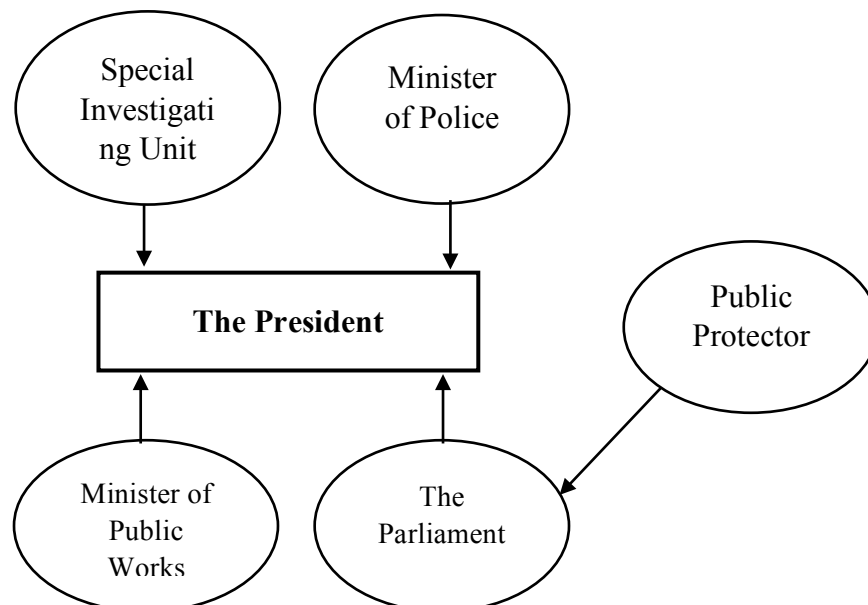


Figure 2: Network of relationships between the President and State organs that investigated Nkandla case

Source: Author

This diagram shows the reporting line and the relationships between the President and the various organs of the State that conducted investigations into the Nkandla case. There is an administrative and executive relationship between the President and the Ministers of Police, Public Works and the SIU. These offices and individuals report to the President directly. It is highly unlikely that the reports of these public officials would indict their employer in a system where patrimonialism defines the operations of modern bureaucracy, a situation typical of neo-patrimonial states.

For the Public Protector to be effective in its mandate to address the problem of corruption, it is important for the institution to function without any form of interference, either directly or indirectly, as provided for by the Constitution. The meddling in the operations of any bureaucratic public institution by other state organs or political apparatuses can be referred to as political interference. The South African Constitution appears to have envisaged this when it provided for the independence of the Public Protector and other Chapter 9 Institutions. These include the Human Rights Commission; the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities; the Commission for Gender Equality; the Auditor-General; and the Electoral Commission. Most importantly, the Constitution makes it the responsibility of other state organs and institutions to protect these institutions from any form of interference (s181 (3) (4)). This was intended to assist the Public Protector to operate freely.

However, this study has revealed otherwise in the case of the Public Protector, where there have been instances of indirect forms of interference. The various state organs involved in the execution of the Nkandla project are under the executive branch of government, as the heads of these agencies and ministries report directly to the President. On one hand, the execution of the project, at huge cost to the South African public, and with total disregard for applicable statutes (as revealed by the various reports) demonstrates patronage positions in action. On the other hand, the various state organs that have risen in defence of the President also show evidence of patronage positions. As noted by some of the interviewees, it would be difficult for investigating organs like the SIU, Minister of Police, and Minister of Public Works, to indict the President, as they either report to him, or have affiliations with him, as in the example of the ANC-dominated Parliament. According to Soest *et al.* (2011:1310), these positions are simply 'patronage positions', as individuals who are appointed are expected to serve the interest of the political actors who facilitated their appointments.

Political interference in the operations of public institutions is not only typical of the Nkandla case and the operations of the Public Protector, but appears to be typical of other cases involving highly placed individuals as well. Musuva (2009:39) referenced a case by the National Prosecuting

Authority involving President Zuma, before he became the President, where the judge handling the case decried the political interference evident in the handling of the case. Interference has also been identified in the arms deal investigations, conducted by a number of anti-corruption agencies (Naidoo, 2013:533), including the SIU. Through interference, some state institutions have simply become tools in the hands of these highly placed persons to protect their interests. This is most evident in the way and manner the Nkandla project was executed, and the justifications some state organs involved have given for the project. The classification of the swimming pool, cattle kraal, chicken run and other facilities as security measures by the Minister of Police is an example. The challenges posed by these state organs to the Public Protector are forms of indirect political or administrative interference, as the current Public Protector herself could not be influenced directly, like her predecessor.

What is evident here is how neo-patrimonialism prepares the ground for political interference in the functioning of state bureaucracy. The implication of this is that it would not only cause corruption to thrive, but would also negatively impact on the efforts of institutions like the Public Protector to address the problem. As noted by one of the interviewees, denying these institutions access to required funds is one of the ways political actors interfere in their operations, as is the case with the Public Protector, which negatively affects their capacity to address the problem.

Institutional Capacity Constraint: Institutional capacity in this context is the ability of anti-corruption institutions to carry out their mandate successfully in terms of human and financial resources. Addressing corruption, particularly in societies where it has become endemic, requires enormous financial and human resources. The mere existence of anti-corruption institutions, policies and instruments is not enough to address the problem. Thorough implementation of these strategies is very important to a successful anti-corruption campaign, without which corruption would continue unabated (Dintwe, 2013:555). Inadequate capacity of anti-corruption institutions has become one of the major challenges in addressing the problem in South Africa, as is evident in the Public Protector's handling of the Nkandla case. Institutional capacity to address the problem of corruption is assessed in terms of the strategies employed, as well as adequate human and financial resources to implement them.

In terms of strategies, several countries have adopted a multi-pronged approach as a way of providing a holistic strategy to address the problem of corruption. This approach includes prevention, education and investigation, as seen in the operations of the successful anti-corruption models discussed in chapter 3 (Olowu, 1999; Meagher, 2002; Man-wai, 2006; Naidoo, 2013). In recent years, the Public Protector has incorporated public education and awareness campaigns into

its strategy, in addition to its traditional investigative mandate (Public Protector, 2014b). It has a special outreach programme, where members of the public are educated about the roles of the institution and how they can access its services, among other things. The institution can still do more in the area of public awareness around the negative consequences of corruption. This requires both human and financial resources.

The Constitution mandates that the “Public Protector must be accessible to all persons and communities” (s182(4)). Thus, to ensure easy access to members of the public, the institution has to maintain a presence in all the provinces. Maintaining these offices requires a qualified workforce and financing to effectively serve the populace.

The Public Protector, which is only one of the many anti-corruption institutions in South Africa, is inundated with cases of corruption and maladministration. Human and financial resources are required for the institution to be able to conduct thorough investigations into these cases. According to its annual report in 2013/14, the institution received about 20,083 complaints from members of the public across the country (Public Protector, 2014b:11). Dealing with this volume of cases requires enormous financial and human resources. As Meagher (2002:3) states, any country that is serious about tackling corruption must commit adequate financial resources to the process.

Despite the Public Protector’s need for human and financial resources to be able to effectively deliver on its mandate, the institution has had to consistently deal with inadequate resources. According to one interviewee, a consistent complaint from the three Chief executives of the institution since it was established is that of insufficient funding. The present Public Protector has also on several occasions complained of how insufficient funding is hampering her work. This is evident in the Nkandla report (Public Protector, 2014a:14). In its 2013/2014 annual report, the Public Protector maintains that, “The caseload remains disproportionate to both the financial and human resources... the acute funding and human resource complaint result in cases taking too long to complete” (Public Protector, 2014a:12). This has a negative effect on the ability of the institution to address the volume of cases it receives every year, and to effectively address the problem of corruption and maladministration. As a result of this constraint, the institution could not conduct all the interviews it needed to in the process of investigating the Nkandla case. Several appeals have been made to Parliament to look into the possibility of increasing its budget.

In its 2013/2014 annual report (Public Protector, 2014b:12), the Public Protector requested that Parliament look into its budget, after lamenting the inadequacy of its current budgetary allocation. As a way of guaranteeing the independence of the Public Protector, the Constitution provided that Parliament provides oversight for the institution, including its funding. This provision was intended

to shield the Public Protector from executive interference. Unfortunately, as pointed out by one of the interviewees, the Constitution did not envisage a situation where a single party would control the executive and the legislative arms of government. The implication of this arrangement is that Parliament becomes the political extension of the President, who by virtue of his position doubles as the leader of the political party with a simple majority in Parliament. Under this political arrangement, the President enjoys the loyalty and support of the Parliament that makes decision regarding the funding of the Public Protector.

Although the issue of funding for the Public Protector is not a recent problem, the institution is at the mercy of Parliament, the majority of whose members have a political relationship with the President. As pointed out by one of the interviewees, the Parliamentary committee responsible for the funding of the Public Protector can deliberately starve the institution of funds to cripple its operations in order to protect certain private interests. This is another instance of a patronage network undermining the functioning of a state bureaucracy. While she has continued to ask Parliament to consider increasing her budget, the Public Protector's request has been met with hostility by the ANC members of Parliament (MPs), who accused her of mismanaging her funds. According to the Public Protector, as a result of the caseload it has to grapple with, the Treasury approved a staff strength of 500 personnel for her office five years ago. Up till this moment, her total staff strength is a little over 300 (ISS, 2014).

Calls have been made for Parliament to look into her budget to enable the office to perform its Constitutional mandate. The ISS drew the attention of government and members of the public to the importance of what the Public Protector is doing, and how insufficient funding hampers the fight against corruption. Part of the statement by the ISS reads, "If the South African government is indeed committed to fighting corruption, the budget allocated to the Office of the Public Protector needs to increase" (ISS, 2014).

Institutional Framework Deficiency: Different approaches have been developed by different countries to address the problem of corruption. It is important for anti-corruption frameworks and reforms to be context specific. Heeks (2007) posits that there must be a connection between anti-corruption initiatives and the social contexts in which they are deployed. Lack of consideration for specific contexts is one of the reasons anti-corruption initiatives fail. While some countries adopt the single-agency approach, others adopt a multi-agency approach. South Africa currently uses the multi-agency approach.

The complexity of curbing corruption has been the major justification for a multi-agency approach versus a single-agency approach. The effectiveness of the current multi-agency approach in South

Africa is still being debated (Camerer, 1999a; Public Service Commission, 2001). While some experts have insisted that the present approach should be maintained, others have raised concerns about poor coordination between the various anti-corruption agencies, especially in areas where they are supposed to play a complementary role, and where overlapping of roles exists (Meagher, 2005; Webb, 2005). This situation is capable of undermining the fight against corruption, as this study has revealed. The problem of the multiplicity of reports on the Nkandla case, which have undermined that of the Public Protector, is an example of how a multi-agency approach can be counter-productive. There was also a contention regarding which agency (the SIU or the Public Protector) should investigate the case. At the end of the day other investigations were conducted, in addition to those of the SIU and the Public Protector. This amounts to a waste of public funds, time and human resources.

In addition to the issues mentioned above, there is also the matter of the status of the Public Protector, particularly regarding its mandate and powers. The status of the Public Protector is presently unclear, as it plays the dual role of an Ombudsman and an anti-corruption institution. The Public Protector herself has raised concerns regarding this. As a result of the expanded scope of the mandate of the Public Protector, the institution lacks the capacity to take on all the cases of maladministration and corruption it receives on a daily bases. According to Pityana (2010:17), even though the Public Protector is an independent agency, its primary mandate is not to combat corruption. Aside from being in the best position to handle corruption cases because of its independence, there are other agencies that handle corruption cases. This has now raised the question of whether the Public Protector is an Ombudsman or an anti-corruption agency.

Equally of concern is that the powers of the Public Protector are not entirely clearly defined. The Constitution is clear on the basics, but the Act is not explicit regarding the status of the office's recommendations, particularly in cases of corruption. The statement, "take appropriate remedial actions" (Public Protector Act, 1994) after an investigation into official misconduct, is not clear enough. The debate ended up in the High Court, where the judge ruled that the recommendations of the Public Protector "were not binding, they could not be ignored but could only be rejected if there was a rational basis to do so" (Rabkin, 2015). The question is therefore who determines the rational basis upon which the recommendations could be rejected? President Zuma and others have capitalised on this ruling to disregard the recommendations of the Public Protector.

However, not satisfied with the ruling, the DA and the Public Protector proceeded to the Supreme Court of Appeal in a bid to further clarify the status of the recommendations of the Public Protector. In addition to the problem of what happens to her recommendations, there is also the issue of

whether or not Parliament has the power to set aside her recommendations. This has now been clarified. In a recent judgment delivered by the Supreme Court of Appeal, it was ruled that the recommendations of the Public Protector have to be implemented (van Niekerk, 2015). This ruling is likely to be challenged in the Constitutional Court. The case of the EFF demanding clarification of the status of the Public Protector's recommendations in the Nkandla case is still before the Constitutional Court. However, as it stands, this ruling has strong implications for the functioning of the Public Protector. State organs as well as public officers will now take the Public Protector more seriously.

The problem of a clear definition of the status of a public institution in this context is not limited to the Public Protector. The mandate of the SIU is also not clearly spelt out, as noted by Reddy and Sokomani (2008:43). There is a conflict in the kind of investigation that the SIU is mandated to conduct. The Act establishing the SIU restricts the institution to civil investigation, and requires it to hand over criminal investigations to other designated state organs like the NPA. However, the SIU appears to find it difficult to make such distinctions, as some of the civil cases could have elements of criminality, which could make it difficult for them to pass them on to other agencies.

While corruption remains a global social problem, it is particularly the bane of social, economic and political development in many African countries. Although there could be other factors that account for the challenges of curbing corruption in South Africa, lack of political will, political interference, insufficient funding and institutional framework deficiency have stood out in this study. These factors exist particularly within the leadership framework of neo-patrimonialism, which characterises the current governance structure of South Africa. We see how the patronage networks created by neo-patrimonialism encourage corruption, and make it difficult to address the problem due to the four factors discussed above.

The implication of the absence of political will on the part of the leaders, political interference, insufficient funding, and institutional framework deficiency is that corruption will remain a problem. These issues account for why corruption has remained a problem in the country, despite its varied anti-corruption legislation and numerous institutions intended to address it. Addressing these issues would contribute to resolving the problem of personalisation of bureaucratic structure, thereby strengthening state bureaucracy.

6.4 IMPLICATION OF CORRUPTION FOR DEMOCRACY

Over time, democracy has become the preferred system of government as a result of the opportunities it provides for citizens to be part of decision making processes. This can ensure

inclusivity, political equality, freedom and opportunities for meeting the material needs of the people. As a result, democracy has come to be seen as the cornerstone of development (Abdi, 2011; Olayinka, 2014). While democracy is expected to facilitate the equitable distribution of a state's resources, and ensure people-centred development, corruption has remained at the root of Africa's development crisis (Adisa, 2013:44). This therefore has implications for democratic governance.

As this study has shown, the Nkandla case shows how the state's resources skewed in favour of certain individuals at the expense of the populace. It is also a reflection of the state of democratic governance in South Africa; rather than promote equality and social justice, the distribution of wealth is in favour of a few highly placed individuals. As pointed out earlier, corruption becomes an antithesis to the development that democracy is expected to ensure. This explains why over R200m could be spent on the accommodation of one citizen, in a country with an acute housing shortage (Wilkinson, 2014). Spending that sum on one person's accommodation, where millions of people are still living in shacks, does not amount to the social justice that is one of the tenets of democracy.

This situation is capable of making the citizens lose confidence in the democratic process. As noted earlier, one of the reasons given for the truncation of democratic processes in African countries is systemic corruption. This is capable of reversing many years of gains of democracy, of leading to dictatorship, and of undermining political freedom and participation. Furthermore, when corruption, particularly public sector corruption, continues unchecked and with impunity, it is capable of encouraging a culture of corruption amongst the citizens, which could lead to state collapse.

As pointed out earlier, Botswana presents a clear example of how a low level of corruption can help sustain the democratic process. The reverse is also clear: corruption can become harmful to democracy, as shown by this study. South Africa, being a relatively young democracy, must ensure that corruption does not remain unchecked, by addressing the challenges of curbing corruption that this study has revealed. Below are specific recommendations to address these issues.

6.5 RECOMMENDATIONS FOR STRENGTHENING THE FIGHT AGAINST CORRUPTION

The negative effect of corruption on development and democracy cannot be overemphasised. Corruption can be said to be at the root of several societal problems, ranging from poverty to unemployment, a housing deficit, and crime. As this study has shown, this is rooted in the interference by patrimonialism in the functioning of modern bureaucracies through patronage networks. To stem the tide of corruption in South Africa, the following steps should be considered:

One of the most important findings of this study that an absence of political will creates huge challenges for curbing corruption. The first test of the political will of a country to address corruption is the quality of the individuals appointed to head anti-corruption institutions. Such a leader must have a combination of competence, courage, credibility and commitment. Thuli Madonsela, for instance, has been exceptional in her commitment to the anti-corruption campaign.

Madonsela's leadership of the institution has made it clear that, for Africa to have strong institutions, it requires strong individuals. These individuals, as exemplified by the Public Protector, must have the qualities of competence, courage, credibility and commitment. For competence, there must be a demonstrated capacity and qualification to do the job; the courage to take tough decisions in the interest of the people as against the interests of few powerful individuals; personal integrity to ensure the leader cannot be compromised; and passion and dedication to the cause. If these values are considered in the appointment of individuals who head public institutions, it would be a major step toward building strong institutions in Africa.

The government should reconsider its stance on a single-agency approach to curbing corruption. The current approach has been hampered by a number of factors. One is that of a lack of effective coordination between these agencies. Others include the overlapping of roles, and unclear mandate and status of some of the agencies, as noted earlier. The countries that have been mentioned as having a successful anti-corruption model all operate under a single-agency approach. Although the peculiarities of the South African social context have to be taken into consideration, the case studies of Botswana and Singapore are useful.

There is a need for strong institutions that are free of the influence of personal rule and political interference. However, this requires strong individuals, and a committed political leadership with the requisite political will. The current Public Protector has been able to achieve this much as a result of her commitment to her job, and of refusing to back down in the face of stiff opposition. If the appointment of the next Public Protector is on the basis of loyalty and patronage, it would further weaken the institution. There are doubts about the possibility that a new Public Protector would be committed to the job and protect the Constitution, as well as the country's democratic ideals.

The idea of a National Anti-corruption Forum is a good option, as it could facilitate the effective participation of civil society in the fight against corruption. It is also capable of serving as an effective support system for government and its agencies charged with the responsibility of curbing corruption. There is, however, the urgent need for the forum to be more active and engaging, particularly with members of the public, in the area of public enlightenment about the ills of

corruption, and how the public can be part of the fight. It is also important for the civil society organisations, including the NACF, to pay attention to the personality and character of individuals selected or appointed to run sensitive public institutions like the Public Protector.

According to Meagher (2004:3), “no agency can cope with an unlimited mandate”. There is a need for a review and clarification of the mandate of the Public Protector and other anti-corruption agencies, if the multi-agency is preferred. There is also a need to look at the Public Protector Act, with the aim of reviewing its mandate to make it either solely an anti-corruption agency, or an ombudsman focusing on maladministration. Conduct constituting maladministration should clearly be defined to exclude corrupt practices. It can also be redefined to include both maladministration and corruption. The issue of its powers and internal capacity should be revisited, with the aim of enabling the institution to be effective.

6.6 CONCLUSION

This study has attempted a theoretical examination of the causes and effects of corruption on development, as well as its negative impact on democracy. Patrimonial influence in the functioning of modern bureaucracies creates a neo-patrimonial rule, which promotes corruption through patronage networks. Corruption was also examined in the context of South Africa. While corruption has become a major subject of public debate in democratic South Africa, available evidence has shown that corruption existed under apartheid, even though it was not a subject of public discourse, because of the secrecy and press censorship which characterised the regime.

The transition to democratic rule has seen the establishment of a number of public institutions to combat the menace of corruption. Despite the existence of these institutions, corruption has persisted unabated. By focusing on the Public Protector’s handling of the Nkandla case, this study examined the challenges of addressing corruption, particularly in cases involving high profile public officials. As noted in this study, the major challenge in curbing corruption is the absence of political will from the leadership to address the problem. According to Johnston and Kpundeh (2004:4), “without demonstrated political will, anti-corruption programs become an empty gesture, or camouflage for continued abuses”. Political will among the political leadership is one of the factors responsible for Hong Kong’s successful anti-corruption campaign (Man-wai, 2006:200), even though it is not a democratic society. The Nkandla case has shown that there is a lack of political will to address the problem of corruption from major political actors in South Africa. Without the requisite political will, the problem of corruption will persist.

The second major challenge is political interference in corruption investigations, particularly those involving highly placed public officials. For anti-corruption campaigns to be successful in any clime, the political environment must be conducive, and political actors must also be supportive. This support includes allowing anti-corruption agencies to operate freely without any form of interference from political actors. According to Meagher (2002:2), the success of any anti-corruption institution is dependent, among other things, on strong political support across political platforms. Rather than the required support, this study has shown that the Public Protector has suffered harassment and intimidation from sections of the political leadership, particularly the ruling party. This is capable of demoralising the Public Protector and her staff, which would adversely affect the performance of their legislative mandate.

The third challenge is insufficient financial and human resources for anti-corruption institutions to effectively function. The issue of funding for the operations of the Public Protector has become a recurring issue. Adequate funding is required for anti-corruption institutions, not just in terms of hiring qualified personnel, but to also ensure they are adequately remunerated to prevent their susceptibility to corruption themselves. Insufficient remuneration is one of the reasons public officials become corrupt (Klitgaard, 1998:5). Adequate remuneration is required to ensure the staff of anti-corruption institutions are not compromised. It can also negatively affect their commitment to the job. Overall, funding is crucial for the Public Protector to be able to perform its duties of addressing the problems of maladministration and corruption.

The fourth major challenge is the deficiency in the institutional framework of the anti-corruption strategy in South Africa. This structural deficiency exists in terms of the definition of the institutions' mandate and powers. This is particularly evident in the on-going debate around whether or not the recommendations of the Public Protector are binding. This is very crucial to the effectiveness of the Public Protector, as otherwise the institution's existence would simply be of no effect, which would continue to negatively affect the fight against corruption. When corruption continues unabated, it negatively affects the quality of governance, delivery of public goods, foreign investment, and ultimately public confidence in the democratic process.

All these challenges are exacerbated by neo-patrimonialism, where personal rule is more prevalent, and where state bureaucracies are greatly influenced by this personal rule. The Nkandla project, and the justification given by the various public officials involved, is an indication that South Africa is indeed a neo-patrimonial state, characterised by patronage networks. The Nkandla case has also shown how the resources of the state can be treated as the personal property of the ruler (Ibrahim,

2015). This situation was succinctly captured by a member of the public who expressed his opinion on the matter as follows:

I have news for you, President Zuma: that Nkandla residence is not your property, and it never was. It was built with our money. It belongs to us. Likewise, South Africa is not your personal property. You cannot do with it as you please. South Africa is ours. It belongs to the people of South Africa. And we will rebuild it, and fix it and look after it, even if we have to do it ourselves, with our own bare hands, without the so called; help' of your team of useless cronies and cadre (sic) – (Kombuis, 2015).

This view, which was contained in an opinion piece published by News24, expresses dissatisfaction with the manner in which public officials manage public funds. The text and the tone express a feeling of anger. It also shows the reality of collective versus private ownership of supposedly public wealth. This typifies the management of collective wealth as private property, a situation typical of a patrimonial state, as noted by Weber.

6.7 RECOMMENDATIONS FOR FURTHER STUDY

As it has been re-established in this study, corruption is a complex problem, requiring sustained effort and commitment to tackle. To this end, it requires continuous study to find a workable strategy that would be suited for the South African context. The following are recommended for further study:

- One of the issues that came to the fore in the course of this study is the place of political parties in governance, and the various positions the major political parties maintained in the Nkandla case. It would be interesting to analyse the kind of influence political parties have on public sector corruption, and their role in either promoting or discouraging it.
- There are different positions regarding the effectiveness of a single-agency approach to combating corruption in South Africa. A more comprehensive study should be conducted to determine whether or not it would better, particularly against the backdrop of the challenges of the current multi-agency approach. The study should be comparative, weighing the strengths and weaknesses of both approaches, and drawing examples from countries with similar socio-political contexts.
- This study has provided little insight into the important role of civil society in combating corruption in South Africa. The media in particular stood out in this regard, as shown by the way they provided a platform for the public to be part of the debates. A study focusing on the role of the media in the fight against corruption would add to our knowledge of the

subject, and how the media can be better positioned to continue to complement the efforts of anti-corruption institutions.

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ADDENDUM A

INTERVIEW QUESTIONS

1. What would you say are the main challenges facing the Public Protector in dealing with cases of state corruption?
2. Why has the Nkandla case been such a difficult case for the Public Protector to deal with?
3. Has there been political interference in this case and if so, can you explain how and why this has occurred?

4. How would you describe the powers of the Public Protector in dealing with cases of corruption?
5. How significant is the Nkandla case for dealing with corruption in South Africa and what are the implications for democracy?
6. There were other investigations into the case. Why did that of the Public Protector generate so much debates and controversies?
7. The Public Protector reported that the various ministries departments of government involved in the project made it difficult for her office to access information relating to the project. Why do you think was a problem?
8. Media Report... *In Parliament, Zuma said three times that 'recommendations are just recommendations. It can be accepted or rejected.'* Constitutional law expert Pierre de Vos reportedly said this was a half-truth. The Western Cape High Court ruled last year that the Public Protector's findings may not be binding, but cannot simply be ignored. *'It is not binding in the same way as a court order is, but if the executive decides not to take the remedial steps, it must provide convincing reasons.'* – Daily Maverick

What is the implication of unenforceability of the recommendations of the Public Protector in the fight against corruption?

9. Are there any other insights you would like to share on the Public Protector and the Nkandla case?

ADDENDUM B



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CONSENT TO PARTICIPATE IN RESEARCH

The Researcher

My name is Frederick Olumide Adetiba, a student in the Department of Sociology and Social Anthropology, Stellenbosch University.

Title of the study

The Challenges of Curbing Corruption in a Democracy: The Case of Public Protector and Nkandla.

Purpose

This research examines the causes and consequences of corruption and the challenges the Public Protector faces in dealing with cases like the Nkandla. This study is part of the requirements for the award of Master of Arts degree in Sociology.

Procedures

If you are willing to participate in this study, I would be conducting an in-depth interview with you on the operations of the Public Protector, and the difficulties and challenges of dealing with the Nkandla issue. I will be making notes in the process and also use an audio recording device to ensure I keep track of our conversation. I envisage the interview would be between 1 hour to 1hr30mins. You are free to request a break at any time during the interview. If necessary we may meet again to shed more light on issues that would emerge.

Potential Risk and Discomforts

The subject of the research is sensitive and controversial due to the political sensitivity associated with this case. Your rights and obligations in terms of Promotion of Access to Information Act (PAIA) is honoured and respected.

Potential benefit to society

Although this is an academic research project, the insights gleaned from this study is of public worth and is considered to be transformative in that it may shed light on how civil society can influence and curb the power of the state.

Payment for participation

There will be no financial or material compensation for participating in this research.

Confidentiality and Anonymity

All information that would be obtained in the course of this study is treated with utmost confidentiality. Your identity will not be revealed unless required by the court of law. Should you prefer to be quoted in person or reference made to your institution you would be granted an opportunity to review the report to ensure your views are accurately represented. Only I and my supervisor would have access to the recordings and notes taken during this interview.

Right to Withdraw from Research

You have the right to withdraw from the interview at any time without any due consequences.

Identification of Researcher

If you have any questions about the research at any point in time, please contact me, or my supervisor:

Researcher: Frederick Adetiba
0842272929
18701000@sun.ac.za

Supervisor: Prof Lindy Heinecken
0218082095
lindy@sun.ac.za <mailto:kfakier@sun.ac.za>

If you have questions regarding your rights as a research participant please contact Ms Maléne Fouché by email or by phone via mfouche@sun.ac.za or 021 808 4622, at the Division for Research Development, Stellenbosch University.

SIGNATURE OF RESEARCH PARTICIPANT

The information above was described to me, _____ by _____ in English, and I am in command of this language. I was given the opportunity to ask questions and these questions were answered to my satisfaction.

I hereby consent voluntarily to participate in this study. I have been given a copy of this form.

Signature of Participant

Date

SIGNATURE OF RESEARCHER

I declare that I explained the information given in this document to _____. She was encouraged and given ample time to ask me any questions. This conversation was conducted in English and no translator was used.

Signature of Researcher

Date