

**STRATEGIES FOR ENHANCING GOOD  
GOVERNANCE IN SOUTH AFRICAN LOCAL  
GOVERNMENT**

By

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*Thesis presented in partial fulfilment of the requirements for  
the degree*

**MASTER OF PUBLIC ADMINISTRATION**

at

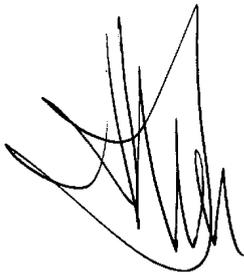
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## Abstract

The Republic of South Africa has drawn increasing attention from the international community for its new approaches towards solving a variety of problems and thus enhancing good governance in Africa in general. Such problems include, but are not limited to, poverty and systemic corruption. The constitutional and legislative frameworks that underpin governance in municipalities are identified and explained. These constitutional and legislative frameworks include the Constitution of the Republic of South Africa, 1996 (RSA, Act 108 of 1996) and the Local Government: Municipal Finance Management Act, 2003 (RSA, Act 56 of 2003). The manifestations and consequent dangers of poor governance as well as strategies to instil good governance in municipal functionaries are also identified.

The manifestations of poor governance include poor financial management, ill-advised appointments and misguided patriotism in service delivery. The consequences of poor governance in local government include high incidents of violence, decline in municipal service payments and the consequent deterioration in service delivery. It is herein argued that municipal functionaries must be able to identify the manifestations of bad governance for them to serve as effective whistle-blowers.

The role of the national integrity system as a strategy for combating the manifestations of bad governance is also identified. The national integrity system refers to the holistic approach (or various strategies) for instilling good governance amongst municipal functionaries. These include an anti-corruption strategy for local government (also known as “a local government integrity system”), constitutional strategies and exemplifying ethical behaviour by municipal functionaries. Constitutional strategies include the Auditor-General and the Public Protector. It is argued that preventing unethical conduct such as corruption assists in raising municipal revenues and thus towards improved service delivery. The study concludes by asserting that big, corrupt actors must be named and punished to convince an already cynical citizenry that the avowed anti-corruption drive is more than just lip service. It is, accordingly, important that one of the “first big fish” should preferably come from the governing party to ensure that the party is not accused of protecting its members against charges of corruption.

## Opsomming

Die internasionale gemeenskap se aandag word toenemend getrek deur die nuwe benaderings wat die Republiek van Suid-Afrika volg om 'n verskeidenheid probleme op te los en sodoende goeie staatsbestuur in Afrika in die algemeen te bevorder. Die probleme sluit armoede, sistemiese korrupsie en vele meer in. Die konstitusionele en wetgewende raamwerke onderliggend aan bestuur in munisipaliteite word geïdentifiseer en verduidelik. Dié konstitusionele en wetgewende raamwerke sluit in die *Grondwet van die Republiek van Suid-Afrika*, 1996 (RSA, Wet 108 van 1996) en die *Wet op Plaaslike Regering: Munisipale Finansiële Bestuur*, 2003 (RSA, Wet 56 van 2003). Die manifestasies en gevolglike gevare van swak bestuur, en strategieë om goeie bestuursbeginsels by munisipale amptenare vas te lê, word ook geïdentifiseer.

Die manifestasies van swak bestuur is onder andere gebrekkige finansiële bestuur, onverstandige aanstellings en ondeurdagte patriotisme in dienslewering. Die gevolge van swak bestuur in plaaslike regerings sluit in 'n hoë voorkoms van geweld, 'n afname in die betaling vir munisipale dienste en die gevolglike agteruitgang van dienslewering. Hier word aangevoer dat munisipale amptenare die manifestasies van swak bestuur moet kan identifiseer sodat hulle doeltreffende alarmlaers (*whistle-blowers*) kan wees.

Die rol van die nasionale integriteitstelsel as strategie om die manifestasies van swak bestuur te beveg, word ook geïdentifiseer. Die nasionale integriteitstelsel is 'n holistiese benadering tot die vaslegging van goeie bestuursbeginsels by munisipale amptenare. Dit sluit 'n teenkorrupsiestrategie vir plaaslike regering en konstitusionele strategieë in. Die konstitusionele strategieë sluit die Ouditeur-Generaal en die Openbare Beskermer in. Daar word aangevoer dat die voorkoming van onetiese gedrag, byvoorbeeld korrupsie, daartoe lei dat munisipale inkomste toeneem en dienslewering dus verbeter. Die studie eindig met die stelling dat groot, korrupte rolspelers ontmasker en gestraf moet word sodat die siniese burgery kan sien en beleef dat die teenkorrupsieveldtog nie net lippediens is nie. Dit is dus belangrik dat een van die eerste "groot visse" wat gevang word, 'n lid van die regerende party moet wees sodat die party nie daarvan beskuldig kan word dat sy eie lede teen korrupsie-aanklagte beskerm word nie.

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## TABLE OF CONTENTS

DECLARATION.....	ii
Abstract .....	iii
Opsomming.....	iv
Acknowledgements.....	v
<b>CHAPTER ONE .....</b>	<b>1</b>
<b>INTRODUCTION AND BACKGROUND TO THE STUDY.....</b>	<b>1</b>
1.1. INTRODUCTION.....	1
1.2. BACKGROUND TO THE STUDY.....	1
1.3 STATEMENT OF RESEARCH PROBLEM.....	2
1.4 MOTIVATION FOR THE STUDY .....	8
1.6. SCOPE OF THE STUDY.....	9
1.7. DEFINING CONCEPTS.....	9
1.7.1. Government .....	10
1.7.2. Governance.....	10
1.8 RESEARCH METHODOLOGY .....	11
1.9 OUTLINE OF CHAPTERS.....	11
<b>CHAPTER TWO .....</b>	<b>13</b>
<b>CONCEPTUALISATION AND CONTEXTUALISATION OF GOOD GOVERNANCE IN LOCAL GOVERNMENT .....</b>	<b>13</b>
2.1 INTRODUCTION.....	13
2.2. ANALYSIS OF THE CONCEPT “GOVERNANCE” .....	13
2.3. ANALYSIS OF CONCEPTS RELATED TO GOVERNANCE .....	15
2.3.1. Democracy .....	15
2.3.2. Transparency.....	16
2.3.3. Access to information .....	17
2.3.4. Inclusiveness and public participation .....	17
2.3.5. Accountability .....	18
2.3.6. Ethics .....	19
2.3.7. Rule of law .....	20
2.4. DIMENSIONS OF GOVERNANCE .....	20
2.4.1. Political Governance .....	21
2.4.2. Institutional Governance.....	22
2.4.3. Technical Governance .....	23
2.5. CHARACTERISTICS OF GOOD GOVERNANCE .....	24
2.6. PRINCIPLES OF GOVERNANCE .....	25

<b>2.7. GOVERNANCE AND DEVELOPMENT .....</b>	<b>27</b>
<b>2.8 THEORIES OF GOVERNANCE .....</b>	<b>30</b>
2.8.1. Traditional Authority.....	38
2.8.2. Network Steering.....	38
2.8.3. Policy instruments.....	39
2.8.4. Institutional analysis.....	40
2.8.5. Rationale Choice .....	41
<b>2.9. AFRICAN COMMITMENTS ON GOOD GOVERNANCE .....</b>	<b>34</b>
<b>2.10. CONCLUSION .....</b>	<b>41</b>
<b>CHAPTER THREE .....</b>	<b>42</b>
<b>CONSTITUTIONAL AND LEGISLATIVE FRAMEWORKS FOR GOOD .....</b>	<b>42</b>
<b>GOVERNANCE IN LOCAL GOVERNMENT .....</b>	<b>42</b>
<b>3.1 INTRODUCTION.....</b>	<b>42</b>
<b>3.2 LEGISLATIVE OVERVIEW .....</b>	<b>42</b>
<b>3.3. CONSTITUTIONAL AND LEGISLATIVE FRAMEWORK FOR PROMOTING GOOD GOVERNANCE.....</b>	<b>44</b>
3.3.1. <i>Constitution of the Republic of South Africa, 1996.....</i>	45
3.3.2 <i>Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003).....</i>	46
3.3.3 <i>Local Government: Municipal Electoral Act, 2000 (Act 27 of 2000).....</i>	48
3.3.4 <i>Promotion of Access to Information Act, 2000 (Act 2 of 2000) as amended .....</i>	49
3.3.5 <i>Protected Disclosures Act, 2000 (Act 26 of 2000).....</i>	49
3.3.6 <i>Local Government: Municipal Systems Act, 2000 (Act 32 of 2000).....</i>	50
3.3.7 <i>The Public Service Regulations, 1999 (as amended).....</i>	50
3.3.8 <i>Corruption Act, 1992 (Act 94 of 1992).....</i>	51
<b>3.4. CONCLUSION .....</b>	<b>59</b>
<b>CHAPTER FOUR.....</b>	<b>60</b>
<b>MANIFESTATIONS AND CONSEQUENCES OF POOR GOVERNANCE IN LOCAL GOVERNMENT .....</b>	<b>60</b>
<b>4.1 INTRODUCTION.....</b>	<b>60</b>
<b>4.2. CONCERN ABOUT MANIFESTATIONS AND CONSEQUENCES OF POOR GOVERNANCE.....</b>	<b>60</b>
<b>4.3. MANIFESTATIONS OF POOR GOVERNANCE AND THEIR CONSEQUENCES.....</b>	<b>62</b>
4.3.1 Manifestations of poor governance.....	62
4.3.1.1 Ill-advised senior management appointments.....	62
4.3.1.2. Corruption: unethical use of public office.....	64
4.3.1.3 Lack of Training and Experience in Local Government .....	67
4.3.1.4 Using inside knowledge and influence .....	69
4.3.1.5 Self-dealing.....	69
4.3.1.6 Outside employment.....	70
4.3.1.7 Using government property.....	71
4.3.1.8 Post-employment .....	71

4.3.1.9 Patriotism in service delivery .....	73
4.3.2. The Consequences of Poor Governance in Local Government.....	73
4.3.2.1 High incidents of violence .....	74
4.3.2.2 Decline in municipal service payments .....	78
4.3.2.3 Deterioration in service delivery .....	78
4.3.2.4 Impact on local business: the case of Khutsong.....	79
4.3.2.5 Economic consequences .....	79
4.3.2.6. Social consequences .....	79
 4.4. CONCLUSION .....	 80
 <b>CHAPTER FIVE.....</b>	 <b>81</b>
<b>NATIONAL INTEGRITY FRAMEWORK: A COMPREHENSIVE MODEL FOR INSTILLING GOOD GOVERNANCE.....</b>	<b>81</b>
5.1 INTRODUCTION.....	81
5.2 NATIONAL INTEGRITY FRAMEWORK AND GOOD GOVERNANCE.....	82
5.2.1 Constitutional Strategies .....	84
5.2.1.1 Public Service Commission .....	84
5.2.1.2 Auditor-General.....	86
5.2.1.3 Public Protector .....	88
5.2.1.4 Special Investigating Unit .....	88
5.2.1.6 Judicial institutions.....	92
5.2.2 A “local government integrity system” .....	93
5.2.3 Education and training in ethics of good governance.....	96
5.2.3.1. DBSA Vulindlela Academy and SALGA training initiatives.....	98
5.2.4 Exemplifying ethical behavior by municipal councilors and senior officials .....	99
5.2.5 Communication Media .....	100
5.2.6 Strengthening the role of civil society .....	101
5.2.7 Professional associations .....	103
5.3 CONCLUSION .....	104
 <b>CHAPTER SIX .....</b>	 <b>105</b>
<b>CONCLUSION AND RECOMMENDATIONS.....</b>	<b>105</b>
 <b>REFERENCES.....</b>	 <b>109</b>

## **CHAPTER ONE**

### **INTRODUCTION AND BACKGROUND TO THE STUDY**

#### **1.1. INTRODUCTION**

Bad governance has created crisis of confidence and service delivery problems in South African local government. People no longer believe that their governments will keep their promises to deliver social services. The majority of people are faced with inadequate health services, unclean water, poor educational services, badly maintained infrastructure, inadequate housing and starvation because state institutions have become so paralysed by corruption that they are unable to deliver on their promises (Frimpong & Jacques, 1999:125).

This chapter focuses on the background of the study, the formulation of the research problem, motivation for the study, objectives of the study, research methodology, scope of the study, defining key concepts and organisation of chapters. A brief review of related literature is also provided in this chapter.

#### **1.2. BACKGROUND TO THE STUDY**

On September 15<sup>th</sup> 2006, the World Bank released a report titled ‘A decade of measuring the quality of governance’. This report was aimed at measuring the quality of governance in over two hundred and thirty countries around the world, including South Africa. This report uses five governance indicators to measure the quality of governance, namely: voice and accountability, political stability, absence of violence, government effectiveness, regulatory quality, rule of law and control of corruption. On average, the report shows Africa faces enormous challenges in the governance terrain.

Even though South Africa victoriously emerged from the apartheid era government through its first democratic elections held in April 1994, the democratic Government in South Africa inherited a country with disparities and backlogs in terms of provision of

basic services like access to potable clean water, proper sanitation, electricity and decent housing. To effectively deal with these backlogs, government in South Africa needs to exercise good governance and effective use of the limited available resources.

The *Constitution of the Republic of South Africa*, 1996 suggests that the provision of basic services like water, sanitation and waste removal is the competence of local government. In doing this, the local government must be transparent, responsible, and accountable and should be served by honest officials in order to achieve good governance and deal with the challenges of underdevelopment. A democratic government must ensure accountability and a good governance as these two must go hand in hand. In order to achieve good governance, several acts were promulgated shortly after the 1994 elections in South Africa.

The *Constitution of the Republic of South Africa* 1996, *Public Service Regulations* and the *Promotion of Access to Information Act*, 2000 (Act 2 of 2000) enlarged the scope of transparency as a governance tool, including the local sphere of government. The *Promotion of Access to Information Act*, 2000 further enlarged the scope of transparency through provisions that give effect to the public's right of access to information from public and private bodies, as contained in section 32 of the Constitution. The *Promotion of Administrative Justice Act*, 2000 (Act 3 of 2000) and the *Protected Disclosure Act*, 2000 (Act 26 of 2000) constitute a major advance in the development of good governance as they promote redress and accountability in local government in South Africa.

The above constitutional and legislative framework for enhancing good governance will be fully discussed in Chapter Three of this study.

### **1.3 STATEMENT OF RESEARCH PROBLEM**

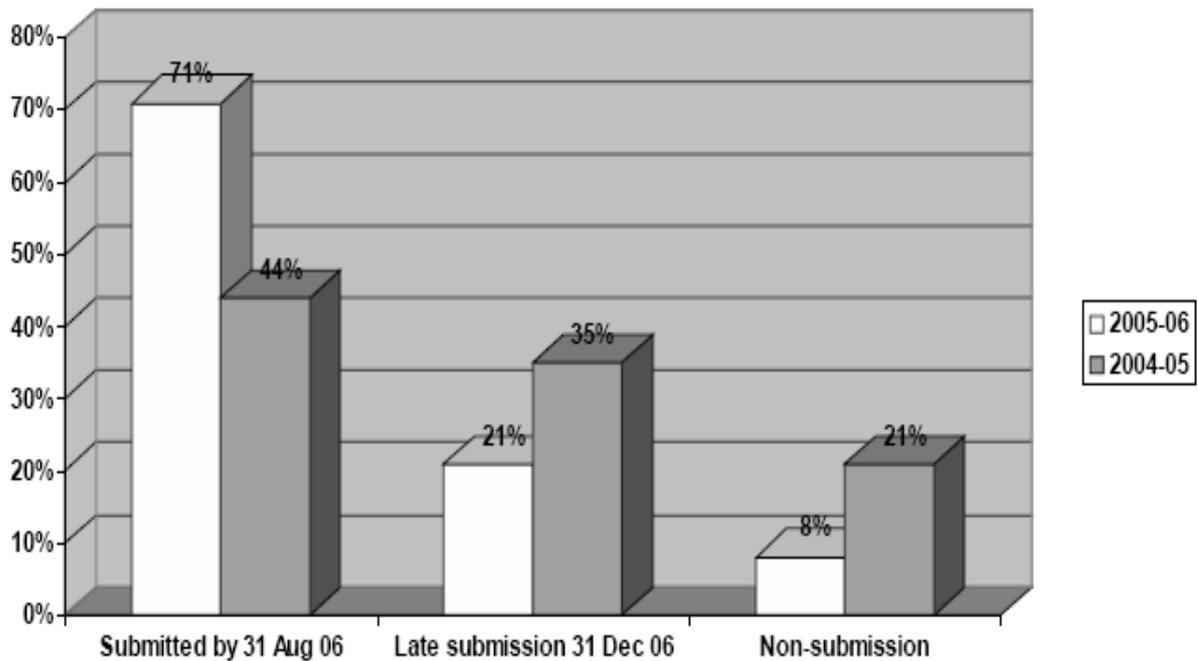
The various calls for good governance are a world-wide phenomenon as evidenced by current literature as well as by the agendas of *inter alia*, national and international conferences on the administrative sciences. The World Bank report on 'A decade of measuring the quality of governance' points out that Africa faces enormous governance

challenges.

There is a range of financial governance problems in local government including poor audit reports from Auditor General (AG). The Auditor-General has a long history in South Africa, but in 1993 the nature of this organization changed. It used to be part of the public service, like a government department, but is now an independent institution with its own regulations, defined by law. The Auditor-General is governed by the *Public Audit Act, 2004* (Act No. 25 of 2004). This act empowers the Auditor General to perform tasks more effectively and to promote transparency and accountability, which allows the public a more prominent role in promoting democracy. The Auditor-General is one of the seven chapter 9 institutions which, in terms of the Constitution, must “support constitutional democracy”.

Poor audit reports are not only a problem of local government in South Africa, but also of National and Provincial Government Departments. Section 126(1)(a) of the Municipal Finance Management Act (MFMA) requires all accounting officers to prepare annual financial statements of the municipality and, within two months after the end of the financial year to which those statements relate, submit the statements to the Auditor-General. The diagram below shows the submission of financial statements by municipalities as at 31 December 2006 as required to comply with the law and to satisfy transparency, openness and accountability requirements.

**Figure 1: Graph on Submission of Financial Reports by Municipalities**



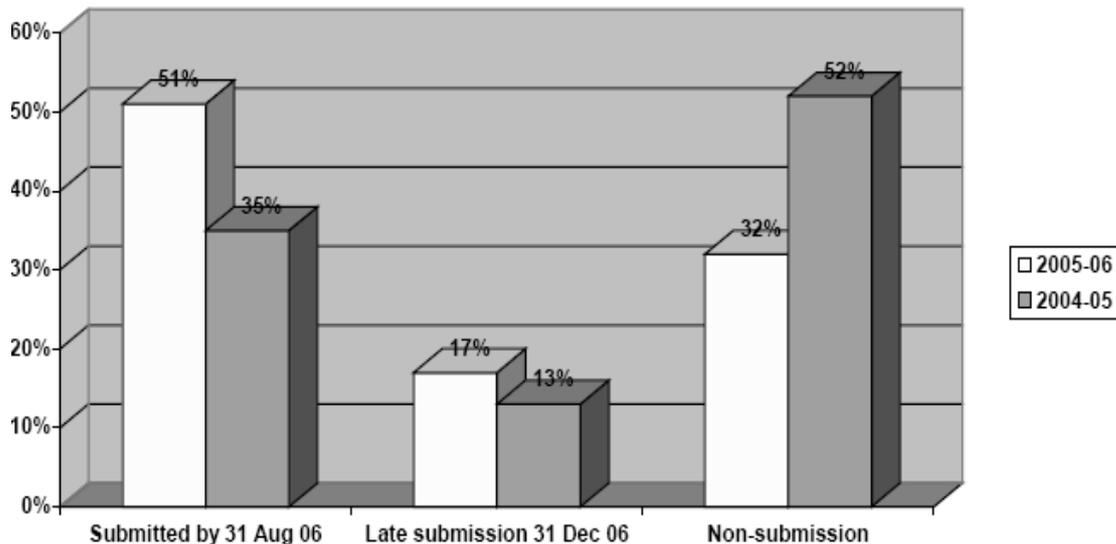
*Source:* Auditor General Report on Submission of Financial Reports by Municipalities (2006:2)

Two hundred municipalities (71%) (2004-05: 44%) submitted their annual financial statements by 31 August 2006. Sixty (21%) municipalities submitted annual financial statements between 1 September 2006 and 31 December 2006. These financial statements are regarded as late submissions. This means that 29% of municipalities do not comply with the requirements of the MFMA in terms of compiling the financial reports and submit to the AG at least two months after the end of the financial year (i.e. end of August each year). Without such financial reports it is impossible for the municipality to claim good governance, openness and transparency.

In addition to the foregoing, Section 126 (1) (b) of the MFMA requires that municipalities with municipal controlled private companies prepare consolidated annual financial statements incorporating the annual financial statements of the municipality and its entities. In terms of section 133(2) of the Municipal Finance Management Act, 2003 (Act No. 56 of 2003) (MFMA), the Auditor General has to report to Parliament and the provincial

legislatures.

**Figure 2: Graph on Submission of municipal entity financial statements**



*Source:* Auditor General Report on Submission of Financial Reports by Municipalities (2006:2)

In terms of the Auditor General's report on the submission of municipal entities financial statements during 2004/05 and 2005/06, timely submissions are still a major constraint. The law requires submission of statement by both municipalities and their entities in terms of section 126 of the *Municipal Finance Management Act, 2003*. Though this Act has been in place since 2003, effective and consistent implementation still remains a problem and therefore compliance with the provisions of this Act needs improvement.

Respondents (the Auditor-General, Chief Executive Officers and line managers of the provincial departments) to a study on the shortcomings in financial management in the public sector have listed the following shortcomings of financial management in the provincial government (Van Wyk 2004: 414);

- responsibilities are not clearly defined
- lack of experienced, knowledgeable, skilled and qualified staff
- the incorrect placement of staff (not the right people for the job)

- the attitude of staff
- the capacity to achieve stated goals and objectives effectively
- the outdated accounting and information systems
- a lack of knowledge of the Public Finance Management Act
- The transformation from financial control / administration to financial management
- The inadequate control systems and a lack of knowledge of accrual accounting and the Generally Accepted Accounting Practices (GAAP).

Van Wyk (2004: 415) argues that all the above shortcomings, which are not in a particular order, can be grouped into three broad categories, namely inadequate and knowledgeable personnel; poor integration of budgets and strategies and outdated control and reporting systems. The low rating of financial management in the provinces that was given by the respondents and the shortcomings listed above should, therefore, be addressed by government in order to improve the effectiveness of public financial management. The provincial departments of local government should use their insight into their financial shortcomings to solve the challenges faced by municipalities within their areas. This is specifically so because they share the same financial challenges. The financial challenges of municipalities are briefly discussed below.

The SALGA Report (in *City Press*, 18 September 2005: 23) points out that the state of financial accounting and auditing in some municipalities is lamentable. The other challenges that continue to contribute to this situation in municipal finances are non-compliance with legislation, lack of internal audit units and the lack of capacity in municipal finance departments. The Report states that most municipalities are not ready to implement the Municipal Finance Management Act, which imposes strict adherence to sound financial management and accounting.

The other factor is that most municipalities have not appointed chief financial officers, and in those who have appointed them, performance contracts have not been concluded with their municipal managers. In some municipalities, the academic qualifications of the chief financial officers are not relevant to their positions. Some problems emanate from tensions

and corruption within municipalities, finance departments being understaffed, non-existence of audit committees and the suspension of municipal managers due to corruption.

A large number of municipalities do not have the capacity to provide services to members of the public. As a result, the former Minister of Provincial and Local Government, Mr Mufamadi, announced the assistance the Department of Provincial and Local Government (DPLG) is providing to 136 municipalities (almost half of all the municipalities). He has stated on a number of occasions that government would empower financially and administratively weaker municipalities to enhance their capacity and service delivery.

The three spheres of government, in conjunction with the South African Local Government Association, have, since April 2005, started deploying experts to assist in the capacity building of municipalities. Mufamadi stated that in some cases those deployed would work in municipalities where ward committees had not yet been established. Mufamadi is of the opinion that this will ensure that a positive legacy of skills transfers is created. It is expected that this will enable the municipalities to manage their own affairs in a professional and efficient way. The research questions of this study are:

- What are some of the manifestations and consequences of poor governance in the South African local government?
- What role does the national integrity strategy play in dealing with bad governance such as corruption, nepotism, bribery, fraud and mismanagement in the South African local government?

The premise, from which this study moves, is that the quality of governance in the local government has a direct impact on service delivery and it is therefore critical to understand governance, manage the ethical dilemmas of good governance and develop a strategy to deal with corruption, maladministration, nepotism, bribery, fraud and mismanagement.

#### **1.4 MOTIVATION FOR THE STUDY**

Whilst the acts mentioned above help provide a legislative framework to enforce good governance, implementation of these laws remains a challenge for local government in South Africa. Cloete (2006:1) suggests that South Africa has to overcome numerous difficulties caused largely by the burden of history, unethical and corruptive constraints and government secrecy. It is good that governance implies a transparent, responsible and accountable government, and served by honest officials. Public administrations in all countries face a variety of issues, including the ethical dilemmas of governance. This seems to be a problem in the local sphere of government in South Africa. For example, there are several reports about extremely high salaries paid to municipal managers and city managers in the local government which are in some instances higher than that the President of the Republic of South Africa. This seems to be an ethical dilemma which is confronting our country. At the same time, we see communities publicly protesting against lack of service delivery.

Governance challenges in South Africa manifests in many ways, including nepotism and self-dealing. The DBSA Infrastructure Barometer Report (2006: 144) points out that only 85% of households in South Africa have access to water, 82,7% has access to sanitation, 70, 4% have access to electricity, and 90, 6% have access to a telephone. In order to deal with these challenges, the African Governance Report (2005) suggests that good governance is central to Africa's development agenda and progress.

#### **1.5. OBJECTIVES OF THE STUDY**

The main objective of this study is to explore strategies for instilling good governance in the South African municipalities by:

- Identify the constitutional and legislative framework underpinning good governance in the South African local government
- Identifying and explaining the manifestations and consequences of poor governance in local government

- Identifying the mechanisms for enhancing ethical conduct, hence effective governance in municipal functionaries and
- Making recommendations on strategies to be followed in order to enhance good governance in municipalities.

## **1.6. SCOPE OF THE STUDY**

There are three spheres of government in the Republic of South Africa. These spheres are national provincial and local. There are nine provincial departments of local government in South Africa. Within each of the provincial governments, there are several municipalities. The *Local Government: Municipal Systems Act, 2000* (Act 32 of 2000) defines a municipality as follows:

- It is an organ of state within the local sphere of government
- It exercises legislative and executive authority within boundaries as determined by the Demarcation Board (Demarcation Act, 1998)
- It consists of (1) the political structures (2) administration and (3) communities of the municipality
- It functions within its area according to statutory and other relationships
- It is a separate legal personality and this means that its community is not liable for the actions of the municipality.

The unit of analysis for this study is the political structure and administration, i.e. politicians (municipal councilors) and municipal officials. Attention will be paid to communities of the municipality to strengthen the argument on enhancing good governance in municipalities.

## **1.7. DEFINING CONCEPTS**

The following concepts are defined in the paragraphs that follow to establish a common understanding for discussion.

### **1.7.1. Government**

A formal and institutional process that operates at the national level to maintain public order and facilitate collective action (Heywood: 2002). Fox and Meyer (1995: 55) argue that a government refers to a body of persons and institutions that make and apply all enforceable decisions for a society. Government functions are usually divided into horizontal categories of legislative, executive and judicial authority. Vertically, government authority can be divided into central, regional, metropolitan, local and rural authorities with a variety of relationships between such authorities.

### **1.7.2. Governance**

Governance is defined as the manner in which power is exercised in the management of a country's economic and social resources for development (World Bank. 1994). Governance is however a complex concept since it's one of many other related concepts such as transparency, access to information, openness, responsiveness, inclusiveness, accountability, whistle-blowing, and disclosure in order to avoid corruption, maladministration, nepotism, bribery, fraud and mismanagement in the public service. However, these related concepts help us understand the concept of governance better.

According to Cloete (2006: 2), governance is achieving the most appropriate developmental policy objectives to sustainably develop a society, by mobilising, applying and co-ordinating all available domestic and international resources in the public, private and voluntary sectors in the most effective, efficient and democratic way.

Governance is a broader term than government and there are different types or models of democracy. Democracy is government of the people, by the people and for the people. Governance is a system of values, policies and institutions by which a society manages its economic, political and social affairs through interaction within and among the state, civil society and private sector (Olowu and Sako 2002:37). Some of the related concepts stated above are defined in the next chapter.

## **1.8 RESEARCH METHODOLOGY**

Two types of sources will be used for this dissertation. These are primary and secondary sources. Babbie (2001:98) defines secondary analysis as a form of research in which data collected and processed by one researcher are reanalysed – often for a different purpose by another. This is especially appropriate in the case of survey data. Data archives are repositories or libraries for the storage and distribution of data for secondary analysis. Primary sources include the constitution, legislation, and reports whereas secondary sources include books, journal articles, newspaper articles, dissertations, theses and departmental annual reports.

In addition, there are two types of research, namely: qualitative and quantitative research. Qualitative research is defined as the non-numerical examination and interpretation of observation, for the purpose of discovering underlying meanings and patterns of relationships. This is most typical of field research and historical research. Quantitative research refers to the numerical representation and manipulation of observation for the purpose of describing and explaining the phenomena that these observations reflect (Babbie 2001: 98). In this dissertation, the qualitative research approach, which is exploratory in nature, will be followed. An exploratory study of governance practices (independent variable) as a phenomenon will be undertaken as the primary unit of analysis and its inherent dangers on local government service delivery (dependent variable).

## **1.9 OUTLINE OF CHAPTERS**

This dissertation is organized into six chapters. In this first chapter the background of the study, statement of research problem, motivation for the study, objectives of the study, scope of the study, analysis of the concepts government and governance, research design and methodology and the outline of chapters are provided.

Chapter Two deals with the concept of governance as defined by various authors, including the World Bank. In order to gain a broader understanding of the concept of governance, other related concepts will also be defined. These concepts include access to information,

openness, transparency, inclusiveness, public participation, accountability, democracy and ethics. In addition, dimensions of governance like political, economic, technical and institutional will also be defined. These dimensions lay a good foundation for further discussion, analysis, conceptualization and a broader understanding of governance. The characteristics and principles of governance will be examined and discussed.

The constitutional, legislative and policy frameworks that underpin governance at the local government sphere will be identified and explained in Chapter Three. These constitutional and legislative frameworks include the *Constitution of the Republic of South Africa, 1996* and the *Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003)*. These constitutional and legislative frameworks will be discussed to indicate how they impact on governance at the local sphere of government.

Chapter Four will attempt to highlight some of the manifestations and their consequences on good governance in the local government in South Africa. Manifestations of poor governance in local government to be discussed in this chapter include corruption, bribery and kickbacks. The consequences of poor governance in local government include a decline in municipal service payments and deterioration in service delivery.

The national integrity system framework, as a tool to enhance good governance in local government sphere, will be discussed in Chapter Five. The national integrity system refers to various strategies for instilling good governance in municipal functionaries. These strategies include an anti-corruption strategy for local government (also known as “a local government integrity system”), constitutional strategies, education and training in ethics strategy, the media, strengthening of citizens’ involvement and exemplifying ethical behaviour by municipal councilors and senior municipal officials. Constitutional strategies include the Public Protector and the Auditor-General. Chapter Six provides conclusions and recommendations of the study.

## **CHAPTER TWO**

### **CONCEPTUALISATION AND CONTEXTUALISATION OF GOOD GOVERNANCE IN LOCAL GOVERNMENT**

#### **2.1 INTRODUCTION**

This chapter deals with the concept of governance as defined by different scholars and organisations, including the World Bank. In order to gain a clearer perspective of the concept governance, other related concepts like access to information, openness, transparency, inclusiveness, public participation, accountability, democracy and ethics are also defined. In addition, dimensions of governance namely, political, economic, technical and institutional are defined. These dimensions lay the foundation for further discussion. The characteristics and principles of governance are examined.

#### **2.2. ANALYSIS OF THE CONCEPT “GOVERNANCE”**

According to the UNDP (1997:11), governance is the 'exercise of political, economic and administrative authority to manage a nation's affairs'. Governance is a very complex concept since it has many other related concepts (i.e. elements of governance) like democracy and transparency. An understanding of these elements helps us understand the concept of governance better. It is against this background that these related concepts are also briefly defined in this section.

Governance is a system of values, policies and institutions by which society manage its economic, political and social affairs through interaction within and among the state, civil society and private sector (Olowu and Sako 2002:37). Heywood (2003:6) contends that the notion of governance is broader than government. He further goes on to define it as the way through which social life is coordinated.

Governance has to do with the manner in which power is exercised in the management of a country's economic and social resources for development. It is achieving the most

appropriate developmental policy objectives to sustainably develop society, by mobilising, applying and co-ordinating all available domestic and international resources in the public, private and voluntary sectors in the most effective, efficient and democratic way.

Governance is a multi-disciplinary concept that has been defined and interpreted in different ways by scholars especially in the social sciences (see Tandon, 2000:3; Sharma, 2000a: 20 and Leftwich, 1993:605). Defined in simplest terms, governance has to do with the manner in which a country is governed, the way politics should operate, and how power is exercised.

Scholars give credit to the World Bank as the first institution that used the term 'governance' in the context of sub-Saharan Africa (see Sharma, 2000b: 1; Ikhide, 1999:165 and Boeninger, 1992:268). In its 1989 report titled *Sub-Saharan Africa: From Crisis to Sustainable Growth*, governance is defined as "the manner in which power is exercised in the management of a country's economic and social resources for development" (World Bank, 1989:60).<sup>1</sup> This definition highlights the role played by governments in establishing a framework for economic activity and in deciding how the benefits of such activities are distributed. Governance encompasses all of the state's institutional and structural levels (national, regional or provincial, local and grassroots levels), decision-making processes, implementation capacity, interaction and relationships between government and the citizens. The UNDP's view of governance is manifested in its programmes for the Management Development and Governance Division. These include decentralisation, local governance, public sector management, accountability, and strengthening civil society organisations (UNDP, 2000: 2). The UNDP's perspective of governance is related to improvement of macroeconomic and overall development management.

Thus, governance involves influence and enacting policies and decisions concerning public

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<sup>1</sup> The World Bank's interpretation of governance is referred to as the technocratic interpretation. It focuses on administrative and managerial terms and the way in which the public sector is managed. The main areas of concern are accountability - holding the government officials responsible for their actions or inaction, legality - a structure of rules and laws that provide predictability for the public sector, availability of information about economic conditions and government policies, and transparency - the existence of an open government (see Craneburgh, 1998:77; Hoebink, 2001:188).

life and economic and social development. As a process, governance also involves citizen and state interactions, generation and management of resources and state interrelationships. It also involves various public decision-making processes and the implementation capacity for government action.

Despite the above variations in the wording of definitions of governance, and the fact that some definitions tend to be more explicit than others, all of them revolve around the same meaning and understanding of the concept. It is evident that governance involves the exercise of political, economic, administrative and legal authority, in the country's public affairs. Governance issues pervade governmental institutions at all levels, the private sector, civil society and all interest groups. It involves capacity building and the establishment of rules and institutions that ensure even distribution of public resources. Governance is essentially concerned with the search for new ways to improve state and citizen relationships and interaction, and the quality and performance of government and public administration. The following are the elements of governance and related concepts:

### **2.3. ANALYSIS OF CONCEPTS RELATED TO GOVERNANCE**

This section focuses on the concepts which are related to good governance in the South African local government.

#### **2.3.1. Democracy**

This concept is derived from Greek words *kratos*, meaning power or rule, and *demos* meaning people. Democracy is thus government of the people, by the people and for the people (Heywood 2003:68). Effectively, democracy has to do with the rule of the majority though this may happen through elected representatives who are responsible to govern. Heywood (2003:68) further identifies a list of other definitions for democracy:

- A form of government in which the people rule themselves directly and continuously, without need for professional politicians or public officials

- A society based on equal opportunity and individual merit, rather than hierarchy and privilege
- A system of welfare and redistribution aimed at narrowing social inequities
- A system of decision making based on the principle of majority rule
- A system of rule that secures the rights and interests of minorities A means of filling public offices through a competitive struggle for popular vote
- A system of government that serves the interests of the people regardless of their participation in political life

From the foregoing definitions, it can be deduced that the concept “democracy” emphasizes the aspect of majority rule. This illustrates that public involvement is essential in a democratic local government.

### **2.3.2. Transparency**

Transparency involves access to reliable, comprehensive, timely, understandable, and internationally comparable information on government activities and is necessary for sound government and good governance. Transparency is therefore closely linked to the ability of all citizens to access information relatively easily according to Auriacombe and Cloete (2006:3).

Vishwanath and Kaufman (1999:1) define transparency as an increased flow of timely and reliable economic, social and political information. Transparency can be defined the same as openness. The image of public institutions is perceived by the community in terms of the quality of services and the amount of information available concerning the decisions behind the services (Du Toit et al. 1998:146).

Therefore, transparency refers to the availability of information to the public on the transactions of government and the transparency of the decision-making processes. The difficulty with ensuring transparency is that only the generator of information may know about it, and may decide to limit access thereto. Hence, it may be useful to strengthen the

citizen's right to information with a degree of legal enforceability. For similar reasons, broadly restrictive laws that permit public officials to deny information to citizens need to provide for independent review of claims that such denial is justified in the greater public interest (Van der Waldt 2004:18). However, the media can also play a role in so far as placing pressure on public officials to disclose or make available all relevant information.

Transparency is about the extent to which the functioning of government institutions is open to public scrutiny (Schwella *et al* 1996:16). It requires mechanisms to ensure that all public processes and programmes are open to the public. This study will therefore also focus on the mechanisms that have been established to facilitate information dissemination to members of a municipality to ensure that the right to information by members of the public is enforced. From the above exposition, it could be argued that it is only when government activities are transparent that there will be an easing of the need to reduce bad governance in government. The community needs to be informed about public affairs (government issues) so that they are able to analyse and evaluate these issues in terms of ethics and morality.

### **2.3.3. Access to information**

Fox and Meyer (1995: 1) define "access" as the social contract and communication channels between society and the government which are utilized by an individual or group to make demands known to government and express support for it. Martin & Feldman (1998:1) define access to information as 'the ability of the citizen to obtain information in the possession of the state'. Access to information refers to the right of public access to information, documents and records held by administrative authorities, except for specific privileged information relating to defence, fiscal policy, international relations or information held in confidence or of a personal nature. Fox and Meyer (1995: 1) argue that in an open system of government it is recognized that the considerations which justify the restriction of public access to official information are limited ones.

### **2.3.4. Inclusiveness and public participation**

Bourgon (2003: 5) argues that public participation addresses how government institutions

can put the principles such as transparency and access to information into practice. These practices, through which either political office bearers or municipal officials seek input from both individuals and groups within the broader community in the development of public policies and programmes, are intimately linked to the notion of shared governance. Involving civil society in planning, monitoring and evaluating public programmes and policies is extremely useful towards ensuring steady progress towards a well-functioning state.

Public participation is about encouraging involvement of communities and community organizations in the matters of government (Craythorne. 2003:263). Effectively, public participation is a tool to exercise the constitutional right of access to information. Maimela (in Frimpong and Jacques, 1999: 228) argues that participation in decision making by members or groups of a particular community must be made possible and structured in such a way that the most acceptable decisions can be taken. Participation can be promoted by members of the public through their continual contact with society and their knowledge of communal needs, values and norms.

The benefits of state-led public participation are readily identifiable. When stakeholders, social groups and members of the public feel part of the governance process, they are more willing to accept the judgment of duly-elected decision-makers. The process itself, of bringing together groups from various sectors, contributes to broader civic education as the public understands the challenge of building consensus and better appreciates the often conflicting demands that government must often choose between. This builds trust as such processes essentially entail open deliberation and dialogue, sharing of information, and, ideally, feedback. There can also be a virtuous circle created by public participation. Enhanced involvement in state-led activities can generate further community demand in the future for better local government and effective service delivery (Bourgon, 2003: 5).

### **2.3.5. Accountability**

Accountability can be viewed from different points of view- (1) responsibility of a government and its agents towards the public to realise previously set objectives and to account for them in public, (2) commitment required from a public official to accept public

responsibility for his or her actions or inaction and (3) the obligation that a subordinate has to keep his or her superior informed on the execution of responsibility (Fox and Meyer 1995:1). There is hierarchical accountability where a public official accounts to his / her political superiors whilst public accountability is where public officials give an account of their actions to the public or the community.

Normanton (1972: 311-312) argues that accountability, in its broadest sense, is an obligation to expose, to explain and justify actions. In essence, accountability in democratic states such as South Africa comprises more than just hierarchic or bureaucratic accountability. It is therefore termed public accountability. Public accountability demands that the actions of public institutions be publicized to encourage public debate and criticism. These debates should be taken up by representative institutions and the news media. This empowers legislative institutions to exercise control over public resources on behalf of citizens. Public accountability compels municipal councilors and officials to openly debate and justify their actions.

According to Mafunisa (2001: 8), the important aspect in the development of adequate accountability practises will be the development and incorporation into them of better ways to measure what municipal officials are doing. The future of organisational leadership lies in performance management, based on more accurate performance measures and reporting. Public officials have to learn to establish clear and (where possible) quantifiable objectives, and then to be accountable for meeting those objectives. That is what service standards mean. Public officials should declare what their standard is to be, and they must measure themselves to ensure that they meet that standard. The performance measures to be developed must give equal emphasis to service delivery and to people management because, ultimately, effective and ethical service delivery depends on effective people management.

### **2.3.6. Ethics**

Mafunisa (2000:25) defines ethics as being closely related to principles and the code of conduct. He further points out that being ethical is to carry out socio-professional acts in a manner defined as acceptable. Principles are more abstract than rules and they serve as basis

for rules. Principles are further designed to suit the needs of a particular institution. According to Du Toit, *et al*, (1998:108), ethics is a study of what is good or right for human beings. However a study of the concept *ethics* can never be complete if not studied alongside norms and values. Norms and values deal with ideals, beliefs, and attitudes held by individuals that underlie all personal, social and political relationships (Mafunisa 2000:52). Ethics are about the application of these values and norms into action and behaviour.

### **2.3.7. Rule of law**

Law is a set of public and enforceable rules that apply through-out a political community and usually recognized as binding. Law normally defines what can or cannot be done (Heywood. 2003:301). The rule of law is a principle that the law, in essence, establishes a framework to which all conduct and behaviour should conform, applying equally to all members of society, be they private citizens or government officials. The rule of law is vital in a democratic society in order to enforce good governance. According to Nzongola-Ntalanja (1997: 14), the rule of law refers to the existence of a legal framework, regulations and policies that are equally, fairly, consistently and orderly applied to local people, institutions or the society. According to Hussein (2005: 10), the rule of law is one of the key tenets of good governance which involves enforcing constitutional and legislative provisions that provide a predictable and secure living and working environment for planning and decision-making. This principle of good governance emphasizes the absolute supremacy or dominance of regular law as opposed to the influence of arbitrary power. The implication thereof is that no person is punishable or can be lawfully made to suffer in body or goods except for a distinct breach of law. The overall aim of this study is to determine the extent to which the rule of law is upheld by constitutional bodies in enhancing good governance in local government in South Africa.

## **2.4. DIMENSIONS OF GOVERNANCE**

From the above analysis, it is derived that governance is a multi-faceted concept that encompasses state and social relations at all levels of government. It is, therefore, important to clarify its three interrelated dimensions, namely, the political, institutional and technical (Boeninger, 1992:268) that provide an essential foundation for this study.

### 2.4.1. Political Governance

The political dimension is concerned with the form of political authority in a country, the nation's system of politics and how it relates to public administration, laws and regulations, accountability mechanisms and its citizens (Leftwich, 1993:606).<sup>2</sup> This dimension, which is also called democratic governance, embraces the requisites of Western democratic practice<sup>3</sup>. These include the promotion of a decentralised governance system, the rule of law, human rights, freedom of expression and association, accountability (i.e. hierarchical and public accountability), transparency (i.e. openness), citizen participation, civic and political rights like the right to vote and to run for office, to access relevant public information and to participate in free elections (UNDP, 2000:23).

Leftwich (1993:606-611) argues that democratic governance can be viewed from three major perspectives namely, systemic, political and administrative. The systemic perspective on democratic governance involves wider distribution of both internal and external political and economic power. It covers the entire system of political and socio-economic relations in a country, the structures of political as well as economic relationships and rules by which the productive and distributive life of the society is governed. The systemic view of democratic governance is broader than the conventional view of government, which is traditionally restricted to the formal structures and location of authoritative decision-making in modern branches of government such as the judiciary, executive and legislature. This is called the separation of powers and is aimed at ensuring that there is no centralization of power or even abuse of public office. In addition, the separation of powers ensures that there is an accountability mechanism in place.

From the political perspective, democratic governance involves legitimacy and authority

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<sup>2</sup> The political interpretation of good governance focuses on the way political and legal systems are organised. It emphasises rights and freedoms of citizens, the presence of democratic rules and procedures, multi-party democracy, the key role of political parties in governance, the existence of pluralist press and the functioning of an active civil society. According to Hout (2003:261) and Hoebink (2001:188, the political interpretation is the second major dimension of governance, which is distinct from the technocratic interpretation.

<sup>3</sup> It must be stated that 'governance' per se is not by definition linked to Western democracy. However, in the World Bank terminology and Western scholars, democratic governance is regarded as the required method of governance.

derived from a democratic mandate which is based on the separation of powers among the legislature, executive and judiciary. This perspective also states that democratic governance is about the establishment of a pluralist polity with freedom to elect representatives regularly and the capacity to check executive powers and protect human rights (UNDP, 2000:23).

The administrative perspective of democratic governance emphasizes efficiency and effectiveness, accountability and transparency in public administration, and bureaucratic competence to manage, design and implement appropriate policies in the public sector (Leftwich, 1993:612). This perspective is part of the institutional dimension of governance analysed below. The concept of governance is central to development and cannot be ignored, especially in the third world. This is more so because the developed world uses governance as a yardstick and conditionality for development investment. The same applies to municipalities in that they should be managed in terms of openness, transparency and good access to information. In fact, good political governance helps enhance the credibility of government and investor confidence. Good political governance can help with local economic development as a result of investor confidence in a particular municipality. In other words, good political governance can affect economic issues on investment, employment, and local economic development of communities.

#### **2.4.2. Institutional Governance**

The second essential dimension of governance is the institutional dimension, which is also called effective governance (Tandon, 2000:2). This dimension of good governance is concerned with the ability of governmental institutions (state capacity) to manage and get activities done through institutional mechanisms (Boeninger, 1992:268). It is concerned with the state's institutional capacity, structural arrangements, decision-making processes and the interaction and relationship between government officials, public agencies and the local people. It emphasizes effective management of development and coordination between economic development and political and administrative structures of a country (Edralin, 1997:111).

The institutional dimension emphasizes that an efficient and effective public administration

system is a critical element of good governance and an essential ingredient for quality development management. Brantingham (1996:83) is of the opinion that an efficient and effective public administration system stimulates development projects and leads to improved policy-making processes. Therefore, effective promotion of good governance is based on a public administration system that effectively and efficiently manages the country's affairs, like the national resources, distribution of national output, supplying the necessary public goods and services and the promotion of social and political stability at the national and local levels.

Brantingham (1996:83-85) further argues that the state's capacity, or the ability of government agencies, structures and systems to design and accomplish its goals, is an important component of the institutional dimension of governance. This component embraces the regulatory, administrative, technical and extractive (revenue) capacity. The regulatory capacity involves the establishment of rules, laws, by-laws, mechanisms and procedures at all levels that ensure service delivery by the state apparatus in a coherent, effective and administratively accountable manner.

According to Eriksen (2002: 12-13), the administrative capacity relates to aspects of economic growth and development, public welfare, and efficiency and effectiveness in public service delivery, an effective bureaucracy, skilled manpower, committed leaders and officials, and ability to manage and extract resources especially financial resources, communication and transport facilities among the requirements of an effective administration system at national, regional and local levels. In this context, governance is viewed as an efficient, transparent and accountable public administration, bureaucratic competence to design and implement appropriate developmental policies and capability to manage both the public and the private sector (Leftwich, 1993:612).

#### **2.4.3. Technical Governance**

The technical dimension of governance, which is also an element of state capacity, focuses on resource constraints and the technical know-how on resource mobilisation and utilisation, quality service delivery and economic development (Boeninger, 1992: 268). It is concerned

with the level of education, manpower skills and the means through which authority is exercised in the management of economic and social resources. It includes the expertise and knowledge required to make and implement technical decisions effectively (Boeninger, 1992: 268).

Adamolekun (1991:285) avers that governance requires expertise and technical capacity in the public administration system in order to promote efficiency and cost effectiveness in its operations. The human resource and capacity building measures in management and leadership in public administration are important elements of governance. The motivation factors such as better pay systems, qualification structures, and improving accountability and transparency in the administrative machinery are key to public sector management and good governance projects in many developing countries.

In summary, good governance therefore requires strengthening the political, in other words, strengthening the functions of public authority – legislative, executive and judicial – by establishing the rule of law, the efficient and effective management of the public sector, cracking down on corruption and protecting human rights.

## **2.5. CHARACTERISTICS OF GOOD GOVERNANCE**

As mentioned above, the need for good governance as a solution to the 'crisis of governance' and Africa's socio-economic predicament, was put forward by the World Bank. Initially, good governance involved efficient practices for economic development and ultimately included political dimensions. The World Bank approach on good governance that has dominated the scene rests on six pillars, which are applicable to the macro or state level, as well as the regional and local levels. These are: political accountability, freedom of association and popular participation, a sound judicial system, bureaucratic accountability, freedom of information, and capacity building.

Good governance is about transparent and accountable management of a country's resources. The major concerns of the IMF are improvement of the management of public resources, maintenance of a transparent and stable political-legal and socio-economic environment that

promote efficient private sector activities and effective development management.<sup>4</sup> The IMF's agenda on good governance is more directly related to macroeconomic stabilisation and development rather than state reform. The IMF guidelines on governance are limited to economic aspects of good governance, especially those that pertain to improving the management of public resources, and supporting the development and maintenance of transparent and stable economic environment that is conducive to private sector activities (IMF, 1997:5).

It must be mentioned however, that the distinction between political and economic as in economic governance and, for example, fighting corruption, is often perceived as also a political conditionality (Gibbon and Olukoshi, 1996:54). It characterises good governance as a form of governance which is, among others, participatory, transparent, accountable, effective, equitable and promotes the rule of law (UNDP, 1997:11 and UNDP, 1998:23). Symptoms of poor governance according to the UNDP include the monopoly of political space by the state, or the exclusion of local actors in policy-making processes, the erosion of democratic practice and failure to apply the rule of law. These elements guide the operations of the UNDP's Management Development and Governance Division, which address five areas, namely, 'institutions of governance, decentralisation and local governance, public sector management and accountability, urban management and capacity development'. Other UN agencies like UNCTAD assert that the new international assistance strategies have to address the three broad areas of 'regression' which include deterioration of economic and social indicators, state failure, interpreted as a condition in which the state no longer provides necessary public goods, and complex emergencies defined as humanitarian crises that are caused by serious internal conflicts (UNDP, 1997:11 and UNDP, 1998:23).

## **2.6. PRINCIPLES OF GOVERNANCE**

The principles of good governance highlighted by the UNDP (1997:11) are also emphasised by agencies such as USAID (1991:13), the British Overseas Development Agency (see ODA, 1993:15) and other OECD countries (IDS Bulletin, 1993:7). Similarly, scholars and

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<sup>4</sup> In the case of Malawi, the IMF has emphasised socio-economic aspects such as fighting corruption and checking unsound economic management policies (*The Nation*, 31 May 2000).

practitioners reflect the good governance principles above.<sup>5</sup> For instance, Hope (1997, 126-127) points out that good exists where there is political accountability, bureaucratic transparency, the exercise of legitimate power, freedom of association and participation, freedom of information and expression, sound fiscal management, public financial accountability, respect for the rule of law, a predictable legal framework encompassing an independent and credible judicial system, respect for human rights, an active development of pluralistic forces including civil society (also Lohmann, 1007:29; Archer. 199-1:7: Robinson,1993:90; Boeninger, 1992:267).

From the above, the good governance agenda can be summarised into six principles, which are not necessarily discussed in their order of importance. The first principle is democracy, which embraces elements such as the constitutional division of power between the legislature, executive and the judicial branches of government, a multiparty system, regular free and fair elections and a vibrant and vigilant civil society. The presence of the institutions and practices of democracy is required not only at the central tier of government, but also at regional and local levels (World Bank, 1989: 6, 61).

The rule of law, in the second place, refers to the existence of laws, regulations and policies that are equally, fairly, consistently and orderly applied to local people, institutions or the society. It means the absolute supremacy or dominance of regular law as opposed to the influence of arbitrary power. Furthermore, it excludes the existence of arbitrariness, of prerogatives, or even of wide discretionary authority on the part of the government (IDS Bulletin, 1993:7).

The protection of human rights is the third principle, which is from a liberal perspective, inextricably linked to democracy. In this respect, human rights are associated mainly with individuals' political and civil rights, including freedom of speech, association and movement. Apart from these typically first generation rights, African states place a high premium on second-generation rights, which include social and economic rights and also on third-generation rights, which relate to the rights of groups and communities (ODA,

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<sup>5</sup> Most scholars tend to toe and reflect the IMF's line and perspective of good governance, which is a neo-liberal one.

1993:15).

The fourth principle is accountability and transparency in government, which is associated with democratic societies. The principle is based on the view that those who rule, like members of the cabinet, are required to be answerable or accountable to both the legislature and the populace at large. This principle also demands that political decision-making should be conducted in a democratic and transparent manner, public finances should be managed in a competent manner and that corruption has to be combated by government (IDS Bulletin, 1993:7).

Fifthly, the public service should function effectively and efficiently in terms of implementing policy and rendering services to the general public. Civil servants are expected to be competent and incorruptible (World Bank, 1989: 6, 61, 192). Lastly, the government should promote and pursue market-driven economic policies in order to reduce direct state control over the economy through privatisation and deregulation (IDS Bulletin, 1993:7).

## **2.7. GOVERNANCE AND DEVELOPMENT**

In September 15<sup>th</sup> 2006, the World Bank released a report titled '*A decade of measuring the quality of governance*'. This report was aimed at measuring the quality of governance in over two hundred and thirty countries in the world, including South Africa. In this report Kaufmann (2006:2) uses five governance indicators to measure the quality of governance. These indicators are: voice and accountability, political stability and absence of violence, government effectiveness, regulatory quality, rule of law and control of corruption. This report reveals that Africa faces enormous governance challenges. Governance challenges in South Africa manifests in many ways, including nepotism.

Promoting good governance and improving governance in Africa has drawn increasing attention from the international community as a new approach to solving a variety of problems such as poverty, corruption and slow economic development. Good governance and anti-corruption are central to poverty alleviation. International financial institutions (IMF and World Bank) in the 1980s turned to the instrument of structural adjustments to make

development projects function effectively and efficiently. They introduced the concept of conditionality to all aid programmes. Again, this was to ensure good governance on aid funded projects.

Gibbon (1993:52) suggests the emergence of a two-pronged basis of governance consisting of an economic dimension and the political dimension. Economic governance is based on the discourse promoted by the World Bank from the mid 1980s, which expresses the need for an enabling environment to facilitate prescribed economic reforms. The political dimension covers the prescription of political agendas, institutional frameworks and democratization of aid-recipient countries.

Structural Adjustment Programmes (SAP) introduced by the IMF and the World Bank in the 1980s were the first set of economic policy prescriptions by the international financial institutions to address the slow development in Africa. According to Abrahamsen (2000:37), SAPs included two interrelated types of adjustment programmes, namely, stabilisation and structural adjustment policies. On the one hand, stabilization programmes are short-term programmes promoted by the IMF and are aimed at immediate effects on the economic balance sheet of a country through measures such as devaluation, deflation and fiscal and monetary restraint. On the other hand, structural adjustments are designed by the World Bank to address balance of payments in the long term by expanding the production of exports.

However, SAPS did not always have the desired results especially where the political climate was not conducive for economic development. The World Bank drew attention to the 'lack of accountability, transparency and predictability' and concluded that a 'crisis of governance' was making it almost impossible for the right economic policies to work (Abrahamsen, 2000:41). The World Bank (1989:14, 183, 193) argued that economic reform would be wasted if not accompanied by political reform, and in this respect, it urged bi-lateral donors to be selective and direct aid only to countries that undertook both economic and political reforms.

The use of political conditionality as an aid principle was also promoted by European countries to enhance effectiveness of SAP. For example, in 1989 the EC Council of

Ministers and European bi-lateral donors issued a number of directives relating to political conditionality, and terms such as 'democracy', 'governance' and 'good government' appeared in statements used by the various heads of European states (see Baylies, 1995:327-329). President Mitterrand issued a statement to African heads of state that his government would reduce its aid to those countries that did not demonstrate progress toward multi-partism, free elections, and respect for human rights' (IDS Bulletin, 1993:7). In June 1990, the British Foreign Secretary, Douglas Hurd clearly stated that British Aid would be used to promote good government (ODI, 1992:1).

The imposition of political conditions to influence political change and democratic reforms or punish non-compliant aid recipient countries is a recent phenomenon. According to Robinson (1993:93) the use of aid to influence political change has also taken forms such as funding of governance and democratisation initiatives in countries undergoing political transition, and the use of negative sanctions where progress is seen as unsatisfactory.

The DBSA (2006: 144) points out that only 85% of households in South Africa have access to water, 82,7% have access to sanitation, 70, 4% have access to electricity, and 90, 6% have access to a telephone. These figures look somewhat too optimistic. Even if they were accurate, this kind of infrastructure and service backlog provides motivation for this study on governance and its ethical dilemmas in the local government in South Africa. In order to deal with these challenges, the African Governance Report (2005:1) of the Economic Commission for Africa suggests that good governance is central to Africa's development agenda and progress.

Cloete (2006:1) in his article 'Measuring transparency in public governance: Lessons from South Africa' suggests good governance requires a transparent, responsible and accountable government, and served by honest officials. In this article, Cloete (2006:1) further points out that public administration in all countries also faces a variety of issues, including ethical dilemmas of governance. This seems to be a problem even in the local sphere of government. For example, there are several reports about extremely high salaries paid to municipal managers and city managers in the local government which are in some instances higher than

the salary of the President of the Republic of South Africa. This is an ethical dilemma which is confronting South Africa while at the same time communities that should be serviced by these highly paid officials publicly protest against poor of service delivery.

NEPAD has been initiated in Africa to promote good governance on the continent by means of the 'African Peer Review Mechanism' (APRM). Before examining the principles and different types of governance, a brief overview and definition and elements of governance shall be made.

## **2.8 THEORIES OF GOVERNANCE**

Pierre and Peters (2000:37) identify the following theories of governance:

### **2.8.1 Traditional authority**

The starting point for a consideration of governance theories is the traditional notion of 'top-down' authority in the state. Put in other words, government, as the legitimate embodiment of the general will, or whatever the source of authority is assumed to be, is the only possible source of governance in these models. Law and coercion are the instruments of this style of governance, and attempts to undermine the power of government must be assumed to be unacceptable usurpations of state powers. Indeed, in some conceptions of the authoritative state, even the attempts of interest groups or political parties to influence the actions of government border on the illegitimate.

As well as these broad question concerning political regimes the traditional top-down view also comports with a legalistic conception of governing. In practice, to govern from above is constrained and the state therefore is only 'semi-sovereign by both constitutions and the power of groups in society that are given legitimate powers to participate.

### **2.8.2 Network steering**

Another way to think about the power and significance of society in governance is to think of

the literature on civil society. Civil society includes those organisations that are separate from the legislative, administrative and judicial power of the state and these includes labour unions, religious groups, cultural and educational associations, sports clubs, student groups, political parties and ethnic groups adhering to their rules of conduct and distinctive customs. The voluntary associations are also known as non-governmental organisations. Municipalities will, for the proper performance of their functions, often establish formal contacts with and obtain the co-operation of the relevant institutions in civil society (Cloete, 1996:5).

Democratic governance tends to be most effective when there is a strong civil society to support its activities. An effective civil society is perhaps most important for the democratic aspects of governance, but is certainly not unimportant for the effectiveness of the process as well. For example, effective organisations can be used to develop partnerships and to provide an infrastructure through which government can operate (Pierre, Pierre and Peters, 2000: 38). In this view however, rather than being competitive with government the structures in civil society are seen to be complementary and cooperative. The role of civil society in enhancing good governance in South African local government will be discussed in Chapter Five.

### **2.8.3 Policy instruments**

A third way to think about how government can steer society is to think about the instruments that it has at its disposal. This view tends to assume that governments can govern, and then proceeds to consider that it can govern most effectively and efficiently. Further, some scholars writing on the instruments, or tools, literature also take into account the political consequences of instruments choice. In the contemporary political environment this political factor means primarily that governments will select the least intrusive instruments. The basic argument of the tools approach is that the means through which governments choose to govern will not only affect the outcome in the policy area, but will also have a number of secondary effects on the economy and society. The choice of instruments will also have an effect on government itself.

Unlike the first two approaches to governance the instruments approach does not appear to ask any sweeping questions about the relationship between state and society. Rather it assumes that there is a government process in place that is making choices about policy goals and the means that will be employed to implement those goals. In this way the tools approach links governance with the large body of public policy research in political science and public administration.

Governance is in many ways about the capacity of governments to make policy and put it into effect. Tools capture that basic questions and provide a means of understanding one of the variables central to success. This more operational view of governance, however, does highlight the capacity of government to implement those choices and the multiple characteristics of any instruments selected. This study contributes to the development of the body of knowledge, as instrument, for enhancing ethical conduct in local government.

#### **2.8.4 Institutional analysis**

Another approach to the question of governance is to examine the role that institutions play in the process. Institutional analysis is that part of the social sciences which studies how institutions behave and function according to empirical rules, informal rules, theoretical rules and laws. Institutional analysis deals with how individuals and groups construct institutions, how institutions function in practice and the effect of institutions on the members of the public (Wikipedia, 2009a: 1).

One of the important questions in this area is the role that the choices of presidential or parliamentary institutions play in determining the capacity of government to govern effectively. There has been a great deal of normative analysis in this area, as well as a growing body of more grounded analysis. There are other substantive institutional questions raised also, for example, the role of non-majoritarian institutions such as courts, bureaucracies and central banks. As well as the empirical question about the impact of institutions on governance, there are also analytical questions about how to understand the structure and functioning of institutions. March and Olsen (1989), for example, conceptualize institutions as sets of norms and logics of appropriateness that provide

guidance for policy-makers. In such a view, attempts to exert governance can be understood only through the logics being utilized, and therefore to some extent through regimes' norms.

The new institutionalism conceives institutions as a structural feature of social systems that provides a specific degree of order and stability to social interaction by means of regulating and affecting the beliefs and behaviour of the actors. This common conception of the role of institutions hides a number of competing theoretical approaches that tend to disagree about the nature of institutions, how they affects human behaviour and how they are constructed and transformed (Sorensen an Torfing, 2007: 28). Chapter Five of this dissertation will look at different institutions which are used in South Africa for enhancing good governance.

### **2.8.5 Rational choice**

Rational choice theory based on the utilitarian logic of economics has become an important, if not dominant, approach for the social sciences. Rational choice theory also known as rationale action theory is a framework for understanding and often formally modelling social and economic behaviour. It is the dominant theoretical paradigm in micro economics. It is also central to modern public administration and is used by scholars in other disciplines such as sociology and philosophy (Wikipedia, 2009a: 1).

The exponents of rational choice also recognise that the threat of punishment or a promise of a reward may inspire people just as much as the punishment or the reward itself. The threat of punishment, for example, may call forth appropriate behaviour from those who wish to avoid the punishment. This assumption allows one to recognise the motivating role of threats and inducements in the conditioning of human behaviours (Wikipedia, 2009b: 1 & 2).

The question is: what does this approach say about governance? One answer can be taken from principal agent views of public bureaucracy (Horn, 1995; Wood and Waterman, 1994). This becomes in some ways another way of stating the traditional, top-down view of governance in that the assumption is that a principal for example, a political office bearer is attempting to control his/her agents through performance contracts or agreements. These individual bureaucrats have incentives to pursue their own goals and to 'shirk' control from

the principals.

The linkage of rational choice to authoritative management of the state should be obvious. The assumption behind that linkage is that the principals represent the legitimate policies of the government and therefore any shirking by the agents is a deviation from those legitimate wishes. Again, this perspective is very similar to the implementation literature in that it begins the analysis with the policy intentions formulated at the centre of government and then proceeds to identify deviations from those intentions. The difference from implementation analysis is that there is an assumption of some sort of contractual relationship existing among the parties. Further, there is an assumption that the selection of the correct set of economic incentives is capable of making the relationship function effectively.

## **2.9. AFRICAN COMMITMENTS ON GOOD GOVERNANCE**

Despite critiques by scholars of the good governance agenda, African states have formally, collectively and repeatedly committed themselves to most if not all the standards of good governance. It can, however, be argued that these commitments were made because it is a prerequisite for obtaining aid by bi-lateral and multi-lateral donor agencies. African countries' formal acceptance of the elements of good governance is to be found in their adoption of a wide-range of international conventions, agreements and declarations. Therefore, this section analyses African initiatives towards the principles of good governance.

The first initiative towards embracing the basic elements of good governance was the 'Khartoum Declaration: Towards A Human-Focused Approach to Socio-Economic Recovery and Development in Africa". This Declaration emphasizes the urgent need to improve the African political environment, promote development, overcome political instability and intolerance, restore the freedom and human rights of individuals and groups, and to abolish the over-centralisation of power in African states (UNECA, 1988:1).

The Conference was organised under the auspices of the United Nations, and in the context

of the United Nations Programme of Action for African Economic Recovery and Development 1986-1990 (UN-PAAERD) and Africa's Priority Programme for Economic Recovery 1986-1990 (APPER). The demand is for changes in the political systems of African countries to allow for citizen participation in decision-making at all political levels. During the conference, manpower development and its utilisation in the long run, and the ways and means to strengthen the role of non-governmental organizations, were also discussed (UNECA, 1988:2).

The recommendations passed during the conference in Khartoum include the need for African countries to adopt a new style of governing and to establish a new foundation for development and equity based on democracy and decentralisation of decision-making. All these recommendations manifest the desire to promote good governance principles at all political levels in Africa.

The African Charter for Popular Participation in Development and Transformation is the second important initiative by African countries towards embracing the principles of good governance. The African Charter is a result of the international conference on 'Popular Participation' held in Arusha, Tanzania in February 1990. In 'The Recovery and Development Process in Africa', the African Charter 'calls for the emergence of a new era in Africa - an Africa in which democracy, accountability, economic justice and development for transformation are internalised, and the empowerment of the people, initiative and enterprise and the democratisation of the development process are the order of the day in every country' (UNECA, 1990:1).

The Charter also calls for changes in the role of the state and the people in the political process. It asserts that new partnerships between governments and the people are necessary to promote freedom of expression and other basic human rights, the people, to ensure political accountability and effective decentralisation, and to facilitate popular participation at all levels. The Charter also highlights the requirements for the development process that reflect the demands by the bi-lateral and multi-lateral institutions, and emphasizes more economic power to the people, decentralisation, accountability and popular good governance principles. It also pays attention to indicators for monitoring the progress in relation to citizen

participation, which includes aspects such as literacy rate, the number and scope of grassroots organisations, the representation of the people in the assemblies, the rule of law, freedom of association, press and media freedom and the political accountability of leadership (UNECA, 1990:19). It can be argued that the African Charter provides a useful understanding of the meaning of good governance in the African context.

Related to the African Charter above, is the 'African Alternative Framework (AAF) to Structural Adjustment Programmes for Socio-Economic Recovery and Transformation', which was published in 1989 and adopted in April 1990 by the African Ministers of Planning and Development and the African Ministries of Finance (UNECA, 1989). The AAF implicitly mentions many aspects of good governance. It calls for a broad based approach towards participatory structural adjustment programmes and the formulation of alternatives that are owned and internalised by African states. In other words, the AAF demands the formulation of an alternative adjustment framework to the externally imposed adjustment programmes, which permit subjugation to international financial institutions. However, emphasis is placed on popular participation at all state-society levels in the implementation of the structural adjustments. The AAF calls for more authority to local communities, defining a new role for popular civil society organisations, promoting public-private partnerships, and supporting more community self-management, and mass participation in decision-making (UNECA, 1989:50).

In 1990, the Addis Ababa Declaration of the Assembly of Heads of State and Government of the Organisation of African Unity on 'The Political and Socio-Economic Situation in Africa and the Fundamental Changes Taking Place in the World' outlined the new role of African governments and citizens. The participatory democratic and decentralised systems are emphasised as means of promoting empowerment of the people in Africa. The declaration clearly calls for the promotion of democracy, decentralisation, popular participation, political accountability of leadership, and consolidation of democratic institutions.

There are a number of documents from African development groups and institutions that also highlight good governance principles. However, the two important documents that emphasise good governance principles are the African Development Bank's (ADB) 'Proposal for the

design of African Development Strategies for the 1990s'(ADB 1994: 155-166) and the "Imperative Political and Economic Agenda for Africa to 2000 and Beyond" (IPEA) (Ndegwa and Green, 1994:54).

The ADB (1994:155) states that development strategies have to be people-centred so that equity issues are embraced in economic reform and adjustment programmes. It also echoes the principles relating to political democratisation as enunciated by the World Bank such as (ADB, 1994:177):

- legitimacy of the government based on popular sovereignty and international recognition,
- an appropriate legal framework that guarantees the rule of law,
- popular participation to allow decision-making by the people at all levels of the state, and on the basis of political and social pluralism,
- freedom of association and expression to allow the formation of civil society organisations, and a critical evaluation of government decisions,
- bureaucratic accountability and transparency so that impersonality in decision-making by officials, and a uniform application of rules by them can be guaranteed, and
- rationality of the governmental organisational structures and incorporation of a public administration system that is highly structured and characterised by impersonality and a predictable behaviour of officials.

These six elements of good governance are regarded as critical ingredients that are instrumental to the promotion of socio-economic development, and a reflection of the new-liberal perspective articulated by the World Bank.

The 'Imperative Political and Economic Agenda for Africa' (IPEA) of 1994 also emphasizes political, economic and social changes at all state levels (Ndegwa and Green, 1994). The IPEA consists of a political and continental economic agenda. In the political agenda, good governance is related to `democracy, respecting human rights and suppression of corruption

and broadly related to the creation of accountability and transparency in all public actions and programmes, and of establishing political legitimacy at all state levels' (Ndegwa and Green, 1994:54). Restructuring governance is an important part of the IPEA. It further demands civil service reform and an increased role in governance by non-governmental organisations and community participation (Ndegwa and Green, 1994:54). In the context of good governance the economic agenda demands 'credible policies and macro-economic stabilisation and the rehabilitation of infrastructure facilities and rebuilding institutions'. The economic agenda regards an on-going democratisation process as helpful to design new ways of addressing poverty programmes and to increase overall public awareness. The idea is that good governance and democratisation in Africa are essential in the process of formulating a regional political strategy (Ndegwa and Green, 1994:54).

Although the United Nations Special initiative on Africa (UNSIAs) (UN, 1996) is not African in the true sense, it reflects objectives and programmes of the Cairo Plan of Action which was adopted by the Organisation of African Unity (OAU) Heads of summit in 1995. The aim of the initiative was to make the new agenda for development in Africa more effective in addressing African problems by Africans themselves. Most relevant in this initiative are the three components of peace building, conflict resolution and national reconciliation, capacity building for governance, and strengthening the civil society for development (UNECA, 1997:1). The core projects include peace building, increasing the effectiveness of governance, strengthening civil society and specific programmes to create transparent, accountable and efficient government (UNECA, 1997:1).

At the regional level, the Treaty of the Southern African Development Community (SADCC) was adopted in 1992 by the then ten countries but has since increased to 13 countries.<sup>6</sup> The present SADC principles include human rights, democracy and the rule of law. In the Maputo Declaration (1997), signatories expressed conviction that the promotion of peace has to be accompanied by, among other things, a system of representative democracy and a governance driven by democratic principles of justice, freedom and tolerance.<sup>7</sup> It is clearly

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<sup>6</sup> SADCC was transformed into SADC to prepare for and accept South Africa as a member in 1994. The fourteenth member, Seychelles withdrew its membership from SADC in 2003.

<sup>7</sup> The Declaration was approved at an international conference on 'The Culture of Peace and Governance',

stated that the vision of SADC is to strengthen sustainable democracy and to 'assist governments, organisations and people of the SADC region to move quickly towards empowerment and the involvement of the people in development or decision-making'

The African Union (AU), established in June 2002, and composed of all 53 African States, re-affirms the above values. The AU's goals include the promotion of democratic institutions and the basic elements of good governance like citizen participation, human rights and the rule of law (Constitutive Act, 2001:4). Among other things, the objective of the Union is to promote and protect human and people's rights in accordance with the African Charter on Human and People's Rights' (Constitutive Act 2001, Article 3h), and to 'respect democratic principles, human rights, the rule of law and good governance' (Constitutive Act 2001, Article 4m). The AU emphasizes public participation in decision-making and in keeping the citizens informed. It also seeks to promote peaceful resolution of conflicts and the rule of law on the African continent and internationally through its organs, and in particular, through the Pan African Parliament and the Court of Justice.

A particularly important recent development has been the establishment of the New Partnership for Africa's Development (NEPAD), an African initiative to attract foreign aid and investment (see section 2). Under an agreement concluded in 2001, prospective member states committed themselves to the respect for global standards of democracy. The core elements of the agreement include the promotion of pluralism, democratic political and economic governance and accountability and transparency in Africa (see Constitutive Act, 2001:24-26). As stated in section 2, the Africa Peer Review Mechanism (APRM) has been introduced to enable member states to monitor each other's adherence to the principles of good governance, and at the time of writing, 24 countries had signed up to be reviewed by their peers.<sup>8</sup>

Apart from the above-mentioned declarations and commitments, prominent African leaders

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which was held in the Mozambican capital at an event that was organised by the OAU, UNESCO and the government of Mozambique.

<sup>8</sup> The countries are Algeria, Angola, Benin, Burkina Faso, Cameroon, Republic of Congo, Egypt, Ethiopia, Gabon, Ghana, Kenya, Lesotho, Malawi, Mali, Mauritius, Mozambique, Nigeria, Rwanda, Sierra Leone, Senegal, South Africa, Sudan, Tanzania and Uganda (<http://www.Sarpn.org.za/documents>).

have also expressed commitment to the principles of good governance. For example, president Bingu wa Mutharika of the Republic of Malawi stated during his inaugural speech that 'Malawi, like other countries in the SADC will continue to observe the principles of good governance such as accountability and transparency and a zero tolerance on corruption' (quoted in *The Daily Times*, 21 May, 2004).

Therefore, the concept of good governance as highlighted by various African initiatives are linked to the demands of a political component of governance as propounded by the World Bank and other multi-lateral and bi-lateral institutions and donor agencies. The governance concept embraces 'the promotion and continuous improvement of market-oriented-systems, democratic practice and public service delivery to ensure better living standards' (World Bank, 1997:10). In addition, the 'efficient and effective provision of public goods and services, the establishment of public choice in a democratic environment, and the support for market-oriented socio-economic systems' are some of the key governance principles that are emphasized (World Bank, 1997:10). Good governance is clearly linked to the developmental potentials and challenges of democratisation in Africa.

The above perspectives all seem to suggest that undemocratic governance leads to ills such as corruption, wastes of the much-needed resources, abuse of human rights, and economic and social exclusion. Therefore, the absence of good governance principles is detrimental to the developmental role of the government. For instance, poverty alleviation measures and the decentralisation processes are likely to be undermined by the lack of public accountability and transparency, corruption and disregard of human rights.

Democratic governance is considered by donor agencies such as the World Bank, IMF and OECD as best equipped to address the most pressing social needs of the citizens, including those of the poor and the destitute. The most substantive form of democratic governance requires two strategies, namely: the decentralisation or devolution of power to areas where people live in order to strengthen local government and secondly, strengthening civil society in order to enhance citizen participation in decision-making.

## **2.10. CONCLUSION**

Governance is very complex and has many related concepts like transparency, access to information, democracy, public participation and openness, ethics, morality, accountability and the rule of law. These inter-related concepts help in the better understanding of governance. There is good and bad governance and the difference between these two depends on whether local government allows for an open, transparent and democratic management of public affairs with a strong rule of law or not. If unethical conduct such as corruption is not addressed decisively in local government, the investment aimed at development can end up in individuals' pockets at the expense of service delivery. Local government which is not transparent about its activities becomes a fertile ground for corruption and all kinds of unethical conduct which is not good for service delivery.

## **CHAPTER THREE**

### **CONSTITUTIONAL AND LEGISLATIVE FRAMEWORKS FOR GOOD GOVERNANCE IN LOCAL GOVERNMENT**

#### **3.1 INTRODUCTION**

Legislation can provide guidelines against which the morality of decision making of high intensity can be tested. It can also provide guidelines for municipal managers who are appointed to high positions. Legislation can make it possible for behaviour and decision making to become qualified and therefore measurable. The aim of legislative control is to prevent bad governance such as the mismanagement of public funds.

Andrews (1995: 35) supports the view that internal control measures are necessary since municipal managers possess power and authority and, therefore, ought to consistently comply with the requirements of public morality and of general legal validity. All decisions which are not ethical ought to fall under the spotlight so that corrective action can be initiated. This chapter deals with various laws within the local government terrain as they pertain to governance. An attempt is made to give a historical legal perspective from pre to post democratic South Africa. At the end of this chapter a summary table is added which addresses and highlights the various governance provisions from each of the Acts discussed below.

#### **3.2 LEGISLATIVE OVERVIEW**

The Freedom Charter adopted at the Congress of the People in Kliptown on the 26 June 1955 is one of the key documents which led to the current Constitution of the Republic of South Africa Act, 1996 as amended and many other relevant laws aimed at building a free democratic South Africa. The Freedom Charter is clear in its vision of a South Africa that belongs to all who live in it, both black and white, and that all people shall be entitled to take part in the administration and governance of the country. This applies to all spheres of Government, including local government.

In South Africa even the interim Constitution, Act 200 of 1993, included a Bill of Rights, which was adopted by the multi-party negotiating council (CODESA) at Kempton Park. A technical committee compiled the chapter on fundamental rights. These rights must be understood in the context of the Constitution as a whole. The Bill of Rights was subsequently revised and included in a separate chapter of the Constitution of the Republic of South Africa, Act 108 of 1996. A total of thirty-two (32) rights are listed in Chapter 2.

The Bill of Rights is the cornerstone of democracy in South African, since it safeguards the rights of all people in the country and affirms the democratic values of human dignity, equality, and freedom. The state must protect, promote, and fulfill the rights in the Bill of Rights, (Van Niekerk *et al* 2001: 130). Any legislation passed or administrative action exercised which is contrary to the provisions of the Bill of Rights can be declared invalid by South African courts and, furthermore, the courts can make an appropriate order to rectify the damage done to the person whose rights were affected.

Following the 27<sup>th</sup> April 1994 democratic elections in South Africa, several pieces of legislation were developed based on the provisions of the Constitution of the Republic of South Africa Act No. 108 of 1996 (Constitution). These laws were intended to strengthen the new democracy in South Africa. In this chapter the provisions of the Constitution, other relevant laws as they pertain to governance in the Local Government and the role of chapter nine (9) institutions are examined. Sections dealing with governance through transparency, openness and accountability are also explained.

The 1996 Constitution makes provision that all spheres of government and all organs of state within each sphere of government must preserve peace, national unity and secure the well-being of the people of the Republic and provide for an effective, transparent, accountable and coherent government for the Republic as a whole. From the Constitution, the following things are clearly provided: a) access to information and b) transparent, c) accountable and d) a coherent government.

Internationally accepted ideologies, such as the protection of human rights, encourage countries to conform to or move closer to international norms. The eventual acceptance in

South Africa of a bill of human rights was largely influenced by the existence of an international human-rights culture. These internationally accepted ideologies shaped South Africa's bill of rights as contained in Chapter 2 of the Constitution of the Republic of South Africa. This bill of rights contains some of the following rights, to name but a few, Access to information; Just administrative action; Access to courts; Equality; Privacy; Freedom of religion, belief, and opinion; Freedom of expression; assembly, demonstration, picket, and petition; Freedom of association; Political rights; Citizenship; Freedom of movement and residence; Freedom of trade and occupation. The Bill of Rights applies to all laws and binds the legislature, the executive, the judiciary, and all organs of the state. The Bill of Rights (Chapter 2 of the Constitution) also makes provision for the right to equality, right to access to information, right to administrative justice and right to: a) an effective, b) transparent, c) accountable and d) coherent government for the people of the Republic.

In addition, the local government is set up in terms of the Constitution. Local government is a sphere of Government set up in terms of chapter seven under section (151) to section (164) of the constitution. The local sphere of government consists of municipalities, which must be established for the whole territory of the Republic. The executive and legislative authority of a municipality is vested in its Municipal Council. Each municipality has the right to govern, on its own initiative, the local government affairs of its community, subject to national and provincial legislation, as provided for in the Constitution. The National and Provincial government may not compromise or impede a municipality's ability or right to exercise its powers or perform its functions. The Constitution states everyone has the right of access to any information held by the state; and any information held by another person.

### **3.3. CONSTITUTIONAL AND LEGISLATIVE FRAMEWORK FOR PROMOTING GOOD GOVERNANCE**

This section focuses on the constitutional and legislative frameworks for promoting good governance in the South African local government.

### **3.3.1. *Constitution of the Republic of South Africa, 1996***

The preamble of the *Constitution of the Republic of South Africa, 1996* (RSA, Act 108 of 1996) makes a commitment to laying foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected and equal before the law. This means, election of public officials is critical to building democracy and democracy is about the will of the people. Therefore, public participation in the management of government is vital and critical in any democracy. To maintain democracy, government must be open and transparent about how it manages the resources which are limited in nature. Transparency, openness and accountability are critical ingredients for a democratic and well governed municipality. The rule of law and respect for the will of the people are thus central to both the constitution and its preamble.

Section 9 (1-5) of the Constitution (RSA, 1996) states that all people are equal before the law and have equal right to protection and benefit from the law. In addition section 2 and 1(c) further state that the Constitution is the supreme law of the Republic and there shall be rule of law in the land. The concept of ‘rule of law’ is an important provision. Both the political arm (i.e. councilors, mayors and executive mayors and mayoral committees) and the administrative arm (known as section 57 managers) in local government must respect, observe and comply with all the constitutional provisions in order to ensure good governance.

The Freedom Charter and the Preamble of the Constitution of the Republic of South Africa, 1996 (the Constitution) state that ‘people shall govern’. The Constitution is thus aimed at laying foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law. In local government, people govern through ward committees. The law requires that the development of integrated development plans should be driven from and informed by the needs in the communities. These needs are defined by communities through ward and community meetings which are aimed at ensuring public participation and good governance characterized by openness, transparency and horizontal and vertical accountability. These rights and provisions from the Constitution are detailed briefly below.

Section (195) of the *Constitution of the Republic of South Africa Second Amendment Act, 2003* (Act 3 of 2003) makes provisions for good governance through a set of good public administration guidelines. These principles are:

- A high standard of professional ethics must be promoted and maintained.
- Efficient, economic and effective use of resources must be promoted.
- Public administration must be development-oriented.
- Services must be provided impartially, fairly, equitably and without bias.
- People's needs must be responded to, and the public must be encouraged to participate in policy-making.
- Public administration must be accountable.
- Transparency must be fostered by providing the public with timely, accessible and accurate information.
- Good human-resource management and career-development practices, to maximize human potential, must be cultivated.
- Public administration must be broadly representative of the South African people, with employment and personnel management practices based on ability, objectivity, fairness, and the need to redress the imbalances of the past to achieve broad representation.

These basic values and principles of public administration also apply at the local sphere of government. It is the duty of the political leadership and municipal managers to ensure that they are instilled in the municipal workforce through training and workshops.

### **3.3.2 Local Government: *Municipal Finance Management Act, 2003* (Act 56 of 2003)**

The *Municipal Finance Management Act, 2003* (Act 56 of 2003) is one of the most important pieces of Local Government legislation in so far as ensuring good governance is concerned, especially on financial management matters. It deals with the management and control of municipal bank accounts, handling of withdrawals, budget preparation processes, publication

of annual budgets, auditing requirements, debt disclosures, use of municipal websites to publish information, and financial governance matters (sections 85-130) dealing with irregular, fruitless and wasteful expenditures, provisions for reporting of improper interference by councilors and, most importantly, barring of councilors in participating in the tender committees. The Act is aimed at securing sound and sustainable management of the financial affairs of municipalities and other institutions in the local sphere of government; to establish treasury norms and standards for the local sphere of government; and to provide for matters connected therewith.

The object of this Act is to secure sound and sustainable management of the fiscal and financial affairs of municipalities and municipal entities by establishing norms and standards and other requirements for:

- Ensuring transparency, accountability and appropriate lines of responsibility in the fiscal and financial affairs of municipalities and municipal entities
- The management of their revenues, expenditures, assets and liabilities Budgetary and financial planning processes and the co-ordination of those processes with the processes of organs of state in other spheres of government
- Borrowing and handling of financial problems in municipalities
- Supply chain management and other financial matters

In the spirit of openness, transparency, and public accountability, the entire budget preparation process is a consultative process in nature and in compliance with the legislative provisions in terms of section (21) of the Municipal Finance Management Act, No. 56 of 2003. This also allows for intergovernmental planning across the three spheres of government. The Act provides (in terms of section 22) for publication of a full set of approved municipal financial budgets. The publication of the annual budgets allows for further openness in the management of the municipal financial affairs which is vital for good financial governance. In this regard, there is a range information to be placed on websites of municipalities in terms of (section 21a) of the Municipal Systems Act. These are: the annual and adjustments budgets and all budget-related documents; all budget-related policies; all

performance agreements required in terms of the section; all service delivery agreements; all long-term borrowing contracts; all supply chain management contracts above a prescribed value; an information statement containing a list of assets over a prescribed value that have been disposed of in terms of section 14(2) or (4) during the previous quarter; contracts of public-private partnership agreements referred to in section 110; all quarterly reports tabled in the council in terms of section 52(d) and any other documents that must be placed on the website in terms of this Act.

The Act further provides very strict guidelines (in terms of section 102) in so far as dealing with irregular, fruitless and wasteful expenditure by municipal staff is concerned, irrespective of level they occupy within the municipality structure. The Act requires that if there is a way, such expenditure must be reported to the mayor, Auditor General or even recovered where possible. In addition, the Act makes provision that the municipality must take steps to prevent the reoccurrence of irregular, wasteful and fruitless expenditure. Such steps include, but are not limited to, reporting the matter to the South African Police Service where conduct is classified as criminal offence. Finally the Act has an important provision (in terms of section 103 and 117) on reporting improper interference by councilors and barring them (councilors) from participating in tender committees. These two provisions are very crucial in terms of good governance in Local Government. Handling of tenders in Local Government was seen as corrupt because of councilors allocating tenders to companies of friends; wives's or even those of their kids. Section 117 of this Act is vital in preventing the corrupt conduct of councilors in as far as awarding of tenders in Local Government is concerned.

### **3.3.3 *Local Government: Municipal Electoral Act, 2000 (Act 27 of 2000)***

The *Municipal Electoral Act*, (Act 27 of 2000) provides guidelines to regulate municipal elections, setting up of voting stations (sections 19-22), relocations, and boundaries of voting stations for local government elections. Elections are one of the means of achieving a democratic government, an essential element of good governance.

### **3.3.4 *Promotion of Access to Information Act, 2000 (Act 2 of 2000) as amended***

The *Promotion of Access to Information Act, 2000 (Act 2 of 2000)* broadly gives effect to two constitutional provisions (section 32) aimed at fostering a culture of transparency and accountability in public and private bodies, by giving effect to the right of access to information and actively promoting a society in which the people of South Africa have effective access to information to enable them to fully exercise and protect all of their rights. Section 32 (1) (a) of the Constitution provides that everyone has the right of access to any information held by the State and section 32(1) (h) of the Constitution provides for the horizontal application of the right of access to information held by another person to everyone when that information is required for the exercise or protection of any rights.

### **3.3.5 *Protected Disclosures Act, 2000 (Act 26 of 2000)***

The *Protected Disclosures Act, 2000 (Act 26 of 2000)* (the Act) was promulgated in order to ensure transparency and avoid corruption in the public and private sectors. This Act makes provision for procedures in terms of which employees in both the private and the public sector may disclose information regarding unlawful or irregular conduct by their employers or other employees in the employ of their employers; to provide for the protection of employees who make a disclosure which is protected in terms of this Act; and to provide for matters connected therewith. This Act recognizes that criminal and other irregular conduct in organs of state and private bodies are detrimental to good, effective, accountable and transparent governance in organs of state, and open and good corporate governance in private bodies, and can thus endanger the economic stability of the Republic and have the potential to cause social damage.

In Section 8 (1) the Act makes provision for protected disclosures to certain persons or bodies and these are regarded as disclosure made in good faith. The bodies are the Public Protector; the Auditor-General; or a person or body prescribed for purposes of this section; and in respect of which the employee concerned reasonably believes that the relevant impropriety falls within any description of matters which, in the ordinary course are dealt with by the person or body concerned: and that the information disclosed, and any allegation

contained in it, is substantially free, is a protected disclosure. Auriacombe (2005: 223) argues that the enactment of this piece of legislation proves that the government is serious in its commitment to tackle bad governance without exposing those who bring this to the attention of the authorities to too much risk. In short the *Protected Disclosures Act, 2000* is there to encourage and protect whistle-blowers. Municipal officials and politicians may be discouraged from getting involved in corrupt activities if they know that other politicians and officials serve as whistle-blowers and may therefore report on their activities.

### **3.3.6 Local Government: Municipal Systems Act, 2000 (Act 32 of 2000)**

The *Municipal Systems Act, 2000 (Act 32 of 2000)* (Act) is aimed providing for the core principles, mechanisms and processes that are necessary to enable municipalities to move progressively towards the social and economic upliftment of local communities, and ensure universal access to essential services that are affordable to all. This act further defines the legal nature of a municipality as including the local community within the municipal area, working in partnership with the municipality's political and administrative structures; to provide for the manner in which municipal *powers* and functions are exercised and performed; to provide for *community participation*; to establish a simple and enabling framework for the core processes of planning, performance management, resource mobilization and organizational change which underpin the notion of a developmental local government. Sections 16, 17 18 and 19 of *Municipal Systems Act, 2000 (Act 32 of 2000)*, provides for public participation to allow for transparency, involvement, openness, accountability, responsibility and participation. The municipality must encourage, and create conditions for, the local community to participate in the affairs of the municipality.

### **3.3.7 The Public Service Regulations, 1999 (as amended))**

In addition to providing for necessary employment and employee systems, the Public Service Regulations incorporate a Code of Conduct for Public Servants, thus giving it legal status; this code contains a brief reference to the receipt of gifts by officials: "C.5.3 [an official] does not use her or his official position to obtain private gifts or benefits for herself or himself during the performance of her or his official duties nor does she or he accept any

gifts or benefits when offered as these may be construed as bribes”

### **3.3.8 *Corruption Act, 1992 (Act 94 of 1992)***

The *Corruption Act, 1992 (Act 94 of 1992)* resulted from an investigation into the South African law on corruption and bribery by the South African Law Commission in 1989 at the request of the Minister of Justice. The Commission concluded that the law needed substantial reform. Among its recommendations was a proposal for the criminalization of corruption, which had mainly been dealt with under the common law crime of bribery and the related *Prevention of Corruption Act, 1958 (Act 6 of 1956)*. The result was the promulgation of the *Corruption Act, 1992 (Act 94 of 1992)*. This Act applies to any person in a position of power, with a specific duty as detailed in an employment contract or derived from a specific office or relationship. This indicates that municipal councilors and officials who get involved in mismanagement may be charged in terms of this Act.

**3.3. TABLE FOR COMPARISON ON LEGISLATIVE PROVISIONS FOR GOVERNANCE IN LOCAL GOVERNANCE**

## No.	LEGISLATION	ASPECTS OF GOVERNANCE				
		<b>Transparent / Accountable / Effective / Efficient / Economic</b>	<b>Access to Information</b>	<b>Rule of law / Accountability / Responsibility</b>	<b>Democratic / Responsive</b>	<b>Inclusive / Participatory / Consensus Oriented Involvement</b>
1.	Constitution of the Republic of South Africa Act No. 108 of 1996	Section (41) states that all spheres of government and all organs of state within each sphere must provide <i>effective, transparent, accountable and coherent</i> government for the Republic as a whole; be loyal to the Constitution, the Republic and its people;	Section (32) states that everyone has the right of access to- (a) <i>Any information held by the state</i> ; and (6) <i>Any information that is held by another person</i> and that is required for the exercise or protection of any rights.	Section (9) subsection (1-5) states that <i>all people are equal before the law</i> and have equal right to protection and benefit from the law.	Section (152) states that the objects of local government are- (a) to provide <i>democratic and accountable</i> government for local communities; (b) to ensure the provision of services to communities in a sustainable manner; (c) to promote social and economic development; (d) to promote a safe and healthy environment	Section (152) states that the objects of Local Government are: (e) To encourage the <i>involvement of communities and community organizations</i> in the matters of local government.

<b>3.3. TABLE FOR COMPARISON ON LEGISLATIVE PROVISIONS FOR GOVERNANCE IN LOCAL GOVERNANCE</b>						
<b>## No.</b>	<b>LEGISLATION</b>	<b>ELEMENTS / ASPECTS OF GOVERNANCE</b>				
2.		<b>Transparent / Accountable / Effective / Efficient / Economic</b>	<b>Access to Information</b>	<b>Rule of law / Accountability / Responsibility</b>	<b>Democratic / Responsive</b>	<b>Inclusive / Participatory / Consensus Oriented Involvement</b>
	Municipal Finance Management Act, No. 56 of 2003 ( <i>refer to Systems Act regarding tenders and procurement</i> )	Section (2) of the MFMA requires a secure sound and sustainable management of the fiscal and financial affairs of municipalities and municipal entities by establishing norms and standards and other requirements for- <i>(a) ensuring transparency, accountability and appropriate lines of responsibility in the fiscal and financial affairs of municipalities and municipal entities:</i>  Section 13 (a) A	Section (13) A bank where a municipality at the end of a financial year holds bank account. or held a bank account at any time during a financial year. Must in writing, of such bank account, including- (i) the type and number of the account; and (ii) the opening and closing balances of that bank account in that financial <i>(b) promptly disclose information regarding the account when so requested</i>	In terms of section (75) the municipality is required <i>to place information on their website</i>	In terms of section (24) Approval of annual budgets The municipal council must at least 30 days before the start of the budget year (2) An annual budget consider approval of the annual budget. <i>(a) must be approved before the start of the budget year;</i> <i>(b) is approved by the adoption by the</i>	In terms of section (21) The mayor of a municipality must- <i>(m) co-ordinate the processes for preparing the annual budget and for reviewing the municipality's integrated development plan and budget-related</i>

		<p>municipality must <i>establish an appropriate and effective cash management and investment policy</i> in accordance with any framework as may be prescribed in terms of Subsection (1).</p>	<p>(a) within 30 days after the end of that financial year notify the Auditor-General National Treasury or the Auditor-General.</p>		<p>council of a resolution referred to in section 17(3)(a)(i) must be approved together with the adoption of resolutions as may be</p>	<p>policies to ensure that the tabled budget and any revision of the integrated development plan and budget-related policies are mutually consistent and credible: (h) at least 10 months before the start of the budget year. Table in the municipal council a time schedule outlining key deadlines for the preparation, tabling and approval of the annual budget</p>

**3.3. TABLE FOR COMPARISON ON LEGISLATIVE PROVISIONS FOR GOVERNANCE IN LOCAL GOVERNANCE**

## No.	LEGISLATION	ELEMENTS / ASPECTS OF GOVERNANCE				
		<b>Transparent / Accountable / Effective / Efficient / Economic</b>	<b>Access to Information</b>	<b>Rule of law / Accountability / Responsibility</b>	<b>Democratic / Responsive</b>	<b>Inclusive / Participatory / Consensus Oriented Involvement</b>
3.	Promotion to Access to Information Act No. 2 of 2000	Section (9) on the objects of this Act are— (a) to give effect to the constitutional <i>right of access to:</i> (i) <i>any information held by the State; and</i> (ii) <i>any information that is held by another person and that is required for the exercise or protection of any rights;</i> (b) to give effect to that right— (i) subject to justifiable limitations, including, but not limited to, limitations aimed at the reasonable protection of privacy, commercial confidentiality and <i>effective, efficient and</i>	The purpose of the Act is to give effect to the constitutional <i>right of access to any information held by the State and any information that is held by another person</i> and that is required for the exercise or protection of any rights; and to provide for matters connected therewith.	Section (9) (c) gives effect to the constitutional obligations of the State of promoting a human rights culture and social justice, by including public bodies in the definition of “requester”, allowing them, amongst others, to access information from private		

		<p><i>good governance; and</i>  (ii) in a manner which balances that right with any other rights, including the rights in the Bill of Rights in Chapter 2 of the Constitution</p>		<p>bodies upon compliance with the four requirements in this Act, including an <i>additional obligation for certain public bodies in certain instances to act in the public interest;</i></p>		
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**3.3. TABLE FOR COMPARISON ON LEGISLATIVE PROVISIONS FOR GOVERNANCE IN LOCAL GOVERNANCE**

## No.	LEGISLATION	ELEMENTS / ASPECTS OF GOVERNANCE				
		<b>Transparent / Accountable / Effective / Efficient / Economic</b>	<b>Access to Information</b>	<b>Rule of law / Accountability / Responsibility</b>	<b>Democratic / Responsive</b>	<b>Inclusive / Participatory / Consensus Oriented Involvement</b>
4.	Municipal Structures Act No. 117 of 1998	To define the types of municipality that may be established within each category; to provide for an appropriate division of functions and <i>powers between categories of municipality</i> ; to regulate the internal systems, structures and office-bearers of municipalities		In terms of section (29) and (50) the municipality is required to hold public meetings to ensure access to information, disclosure, accountability and openness	To provide for <i>appropriate electoral systems</i> ; and to provide for matters in connection therewith	In terms of section (81) Traditional authorities that traditionally observe a system of customary law in the area of a municipality, <i>may participate through their leaders</i> , identified in terms of subsection (2), in the proceedings of the council of that municipality, and those

						traditional leaders must be allowed to attend and participate in any meeting of the Council.
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### 3.4. CONCLUSION

There is a comprehensive body of legislation aimed at addressing governance in South Africa. The major challenge is on the implementation of these laws across the three spheres of government in South Africa, including the local government. In addition, Chapter 4 of the *Local Government: Municipal Systems Act, 2000* (Act No 32 of 2000) (Act), sections (16) (17) (18) and (19) also make provisions for public participation to allow for transparency, involvement, openness, accountability, responsibility and participation. The *Promotion of Access to Information Act, 2000* (Act No. 2 of 2000) makes necessary provisions for access to information and protection of whistleblowers and individuals to report wrong doing in the public and private sectors.

The next chapter will focus on the manifestation of poor governance and the consequences thereof. Such manifestations of poor governance in local government include, but are not limited to bribery and poor financial management.

## **CHAPTER FOUR**

### **MANIFESTATIONS AND CONSEQUENCES OF POOR GOVERNANCE IN LOCAL GOVERNMENT**

#### **4.1 INTRODUCTION**

The previous chapter on local government legislation clearly shows that there is an adequate amount of legislation in South Africa aimed at promoting good governance. However, there are challenges in so far as the effective implementation and consistent enforcement of these laws are concerned. These implementation and enforcement problems manifest in many ways and are dealt with in this chapter. Authoritative sources and reports issued by Transparency International, South Africa's Auditor General, the South African Local Government Association (SALGA), the National Treasury and other important studies undertaken in the country attempt to point out some of these governance challenges.

The manifestations of bad governance are evident and their negative consequences are witnessed and often reported regularly by various South African media, including television channels and newspapers. This chapter will attempt to highlight some of these manifestations and their consequences on good governance in the local government in South Africa. Manifestations of poor governance in local government discussed in this chapter include corruption, bribery, kickbacks and poor financial management.

#### **4.2. CONCERN ABOUT MANIFESTATIONS AND CONSEQUENCES OF POOR GOVERNANCE**

Schulz-Herzenberg (2008: 13) argues that the manifestations of unethical behaviour by public officials are a concern because they indicate that democratic values underpinning the constitution are neither internalised nor taken seriously. More worrying, however, is the lack of an institutional response by democratic watchdog organisations towards unconstitutional behaviour. Parliament as an institution has been unable to flex its independence over executive pressure when confronted with the conflicts of interest presented by the arms deal.

Mafunisa (2007: 100) argues that a primary reason for concern about poor governance is that it reduces public trust and confidence in the integrity and impartiality of elected representatives. In this respect, the perception of unethical conduct can be as damaging as an actual unethical conduct. Once in discussing his code of conduct, President F. Kennedy (in Frier, 1969:3-4) remarked that even though a technical conflict of interest may not exist, it is desirable to avoid the appearance of such a conflict from a public confidence point of view. By the same token, even though unethical conduct may not exist, its perception should be avoided from a public trust point of view. Williams (1985:6) supports this view by remarking that even if no financial gain accrues to the elected representative involved, other aspects of the conflict of interest dilemma do create problems and attract criticism, e.g. competition for an elected representative's time has been recognized. There is also the criticism that a multiplicity of outside interests may result in an unduly large amount of the time and energy elected representatives has available to think about and perform their duties. Media coverage of incidents and allegations of unethical conduct such as conflict of interest have stimulated this public concern which, in turn, has prompted many politicians to seek out cases of actual or apparent conflicts of interest involving their political opponents with a view to using adverse media coverage for political advantage.

Increased concern in contemporary society about unethical conduct and poor governance has come about in large part from the realization that public functionaries such as elected representatives have various opportunities to put private benefit before public duty. These opportunities arise from the increased scale and complexity of government and the expansion of bureaucratic power in the policy process. The slow growth in government functions means that public functionaries have fewer opportunities for promotion and that their jobs are likely to be less permanent. The detrimental effect of these developments on morale is aggravated by the relatively low public image of public institutions. That is one of the reasons why some elected representatives may feel less committed to their jobs and that they increasingly seem to become engaged in activities for remuneration outside government as a hedge against losing or quitting their job. In some cases, elected representatives may experience the financial and psychical rewards from serving the public so inadequate that they are justified in using their public office for private gain (Kernaghan & Langford, 1990:139-140).

Of even greater concern, argues Schulz-Herzenberg (2008: 13), is the fear that dissatisfied

voters “buy out” of democracy. When elections fail to serve as a safety valve, without an outlet public dissatisfaction may accumulate as people begin to question the importance of democracy. Citizens can become dissatisfied with the political system, and democracy itself, if they feel there is little chance of exercising accountability over elected leaders. The consequences for the political system may be even more serious if citizens do reject democracy as the best form of government because of systemic bad governance.

### **4.3. MANIFESTATIONS OF POOR GOVERNANCE AND THEIR CONSEQUENCES**

A problem can only be curbed if people know its root causes. Maimela (in Frimpong and Jacques, 1999: 224) argues that identifying the manifestations of bad governance will assist in understanding it and coming up with suggestions and ways that should be taken to combat it. Corruption holds various negative effects for South Africa, including the following:

- It creates a negative international image of the country
- It impairs the character of the South African state
- Corruption wastes taxpayers’ money
- It harms investors’ confidence
- It erodes the legitimacy of the state

#### **4.3.1 Manifestations of poor governance**

The manifestations of poor governance are identified and discussed hereunder.

##### **4.3.1.1 Ill-advised senior management appointments**

In the recruitment, selection, placement, transfer and promotion of municipal officials, principles that undergird merit must always be adhered to. Should nepotism (favouring of relatives or friends) be practised, it could lead to the deterioration of the public service because unqualified candidates might be recruited and promoted even to top posts for which they are unsuitable. A culture of appointing, transferring or promoting a candidate because of

culture, race, ethnic, religious, national or political background could be an ethical training need, which can be eradicated by training in and using of the merit system instead of spoils system. This system of merit as a precondition for appointment and promotion would ensure that candidates are dealt with solely in terms of their academic qualifications, level of training, working experience and performance.

Maimela (in Frimpong and Jacques, 1999: 225) argues that instances where family considerations (extended or nuclear) may dominate administrative decision making contrary to the Weberian model of bureaucracy in which merit criteria are expected to be paramount must not be encouraged. Hanekom (1995: 155) argues that the practice of nepotism may lead to the downgrading of the quality of the public service, disrupting the *spirit de corps* and trust resultant in corrupt administration, owing to the ability of a select few to impair control measures on account of their personal relationship with the policy maker, and by reason of their not being dismissed or replaced by other means.

In Phumelela, management inadequacies and failures led – in a predictable vicious circle – to direct failures of service delivery; complaints from the public; a failure to deal with these complaints; more complaints, this time about process and attitude; and, finally, direct protest action. According to ‘Voices of Anger article’ published by the Centre for Development and Enterprise (2007:15) all respondents who were interviewed or participated in focus groups in Phumelela believed that the mayor and municipal manager were less than competent, under-qualified, and had very poor interpersonal skills, which helped to paralyze what little leadership and management capacity the municipality did have. These views were corroborated by official reports. Neither of these key figures appeared to behave with acceptable professionalism or maturity. Whether or not they were directly responsible for the political split that divided the ruling party and paralyzed the council is not clear, but they presided over it, and probably exploited it pursuing their own personal differences. The result was chaos.

Nonetheless, these individuals had both been chosen by political structures for reasons that were less than transparent, shipped into the municipality, and, when they failed, shipped out again by the same authorities and given equally or even more responsible and highly paid

posts. As interviews and focus groups in both Phumelela and Khutsong made clear, this system of 'deployment' obscures accountability and in doing so erodes trust in the minds of the public. In Phumelela and Khutsong it led to cynicism about all public appointments, and encouraged conspiracy theories about all political and governance issues. The research findings were rife with these kind of sentiments.

Seventeen top directors employed in municipalities across the Limpopo Province are trained teachers with no management-related qualifications. At least 4 of the 17 directors hold positions as municipal managers, while the rest occupy key positions as directors of finance, integrated development planning (IDP), corporate services, local economic development (LED), accounting and human resources. One municipality hired an IDP/LED director with only a secretarial diploma, another appointed a chief finance officer with only administrative qualifications, while yet another appointed an employee with only a matric certificate.

The leader of the Democratic Party (DA) in Limpopo, Michael Holford, states that the above situation is affecting service delivery. He further states that the advice these employees give to politicians is poor, since they make decisions about things they do not understand. This is seriously affecting service delivery. The spokesperson of the Limpopo Department of Local Government and Housing has confirmed that municipal employees are unable to perform because they lack relevant qualifications (*City Press*, 1 October 2006). It can be argued that appointments in municipalities must be based on merit (and not on nepotism and patronage) to enhance effective and efficient service delivery. Senior municipal officials and politicians must also adhere to legislative and constitutional provisions regarding appointments and promotions.

#### **4.3.1.2. Corruption: unethical use of public office**

Corruption in the public sector refers to the misuse of a public office for private or personal gain. For example, a municipal councillor will make himself / herself guilty of corruption if he / she should show favouritism in appointing a voter who voted for him / her, or he / she or his / her friends, relatives or children should at his / her request be favoured with the allocation of bursaries, scholarships or study loans or any other employment contract.

Despite legislation which is in place, South Africa is still rated poorly on corruption according to the Transparency International's Corruption Perception Index Report for 2007. The Transparency International's Corruption Perception Index Report (CPI) ranks countries in terms of the degree to which corruption is perceived to exist among public officials and politicians across the different spheres of government. It is a composite index, a poll of polls, drawing on corruption-related data from expert and business surveys carried out by a variety of independent and reputable institutions. These surveys are conducted year on year, taking a sample of countries each year. In terms of the 2007 (CPI) report, South Africa is rated number 43 with a score of 5.1 out of a total of 10 points. In this CPI report (2007), South Africa was rated number 43 together with other countries like Malaysia and South Korea.

Whilst South Africa seems to be slightly improving in 2007 (rated 43 amongst countries rated in 2007 in the Transparency International Corruption Index Table below) when compared to 2006 CPI report (rated 51 amongst countries rated during 2006) and 46 during 2005 CPI report, the improvement is not significant enough to improve investor confidence. Therefore, CPI ratings still require serious attention in South Africa. (See table below).

**Figure 3: Transparency International Corruption Perception Index Table**

Transparency International's Corruption Perception Index 2007		
Country Rank	Country	2007 CPI Score
1	Denmark	9.4
1	Finland	9.4
1	New Zealand	9.4
4	Singapore	9.3
4	Sweden	9.3
6	Iceland	9.2
41	Italy	5.2
43	Malaysia	5.1
43	South Africa	5.1
43	South Korea	5.1
46	Bahrain	5.0
46	Bhutan	5.0
46	Costa Rica	5.0
49	Cape Verde	4.9
49	Slovakia	4.9
51	Latvia	4.8

*Source:* Transparency International (CPI) Report 2007

Coupled with the actual CPI ratings stated above are perceptions of poor governments response in the fight against corruption. When compared with the survey results from the previous year (i.e. 2006) on respondents ratings of how they access their governments efforts in fighting corruption, only 13% of the respondents rated South Africa as being ‘very effective with 34% rating government as ‘not effective’, 18% ‘not fighting at all’, 13% stating that government does not fight it at all and 12% saying that in fact government encourages corruption. These are worrying statistics about South Africa on corruption (see table below).

**Figure 4: How respondents assess their government's fight against corruption, all countries**

How would you assess your current government's actions in the fight against corruption?	Very effective	Effective	Not effective	Does not fight at all	Does not fight but actually encourages it	DK/NA
Total sample	5%	17%	38%	16%	15%	8%
Africa	17%	27%	24%	20%	9%	3%
- Cameroon	5%	12%	41%	15%	21%	6%
- Congo, Republic of the	10%	10%	25%	15%	19%	20%
- Gabon	5%	6%	21%	20%	33%	15%
- Kenya	10%	33%	39%	9%	8%	2%
- Morocco	3%	17%	39%	23%	15%	3%
- Nigeria	23%	29%	16%	22%	7%	3%
- Senegal	7%	13%	28%	20%	16%	17%
- South Africa	13%	25%	34%	13%	12%	3%

Source: Transparency International Global Corruption Barometer 2006 Report

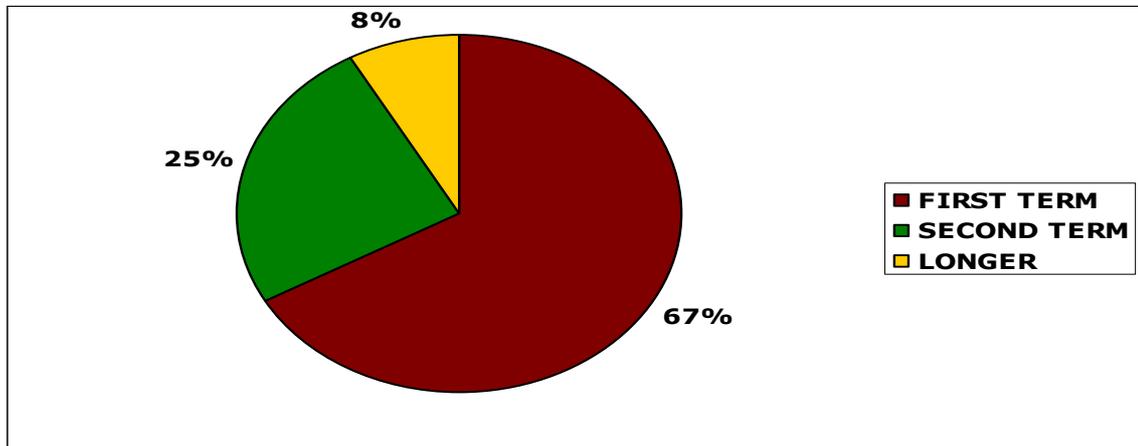
#### 4.3.1.3 Lack of Training and Experience in Local Government

Excessive waste of resources required to produce goods and services for the community, low productivity and failure to fulfil work programmes are manifestations of the need for ethics training. The supervisors of public officials should establish whether the officials have the basic educational qualifications and training expected of the incumbents of the posts. If a public official fails to accomplish the tasks delegated to him / her because of lack of knowledge to use the factors of production at his / her disposal, on-the-job training should be provided. If failure is due to inappropriate behaviour and attitudes toward work, the supervisor should instil a sense of career, departmental, or national pride in the subordinates. If officials have a sense of career, departmental, institutional or national pride they do not need not be encouraged to do the job since that would be an inherent characteristic.

The following is a diagram that shows inefficiency caused by the general lack of skills and

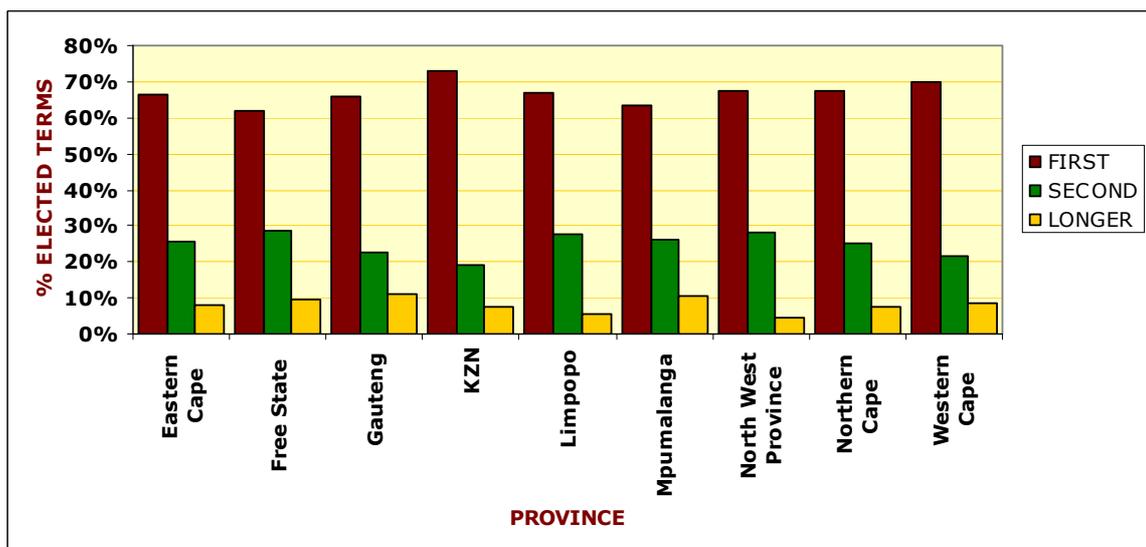
experience amongst councillors as reflected in an unpublished SALGA Report (2006:6-7):

**Figure5: Number of terms served: National perspective**



In terms of this diagram, about 67% councillors were in the office for the first time, 25% in office for the second time and only 8% in office for the third time or more. These (including the diagram below) clearly show general lack of experience and training amongst councillors in Local Government in South Africa today. Combined, these have a cumulative negative effect on Local Government performance and governance in general.

**Figure 6: Terms of Office for Municipal Councillors**



#### **4.3.1.4 Using inside knowledge and influence**

Section 2 (2) (b) of the *Executive Members' Ethics Act, 1998* (Act 82 of 1998) does not allow elected representatives (Cabinet members, deputy ministers and members of Executive Councils (MECs)) to use any information entrusted to them, to enrich themselves or improperly benefit any other person. In many situations an elected representative can access inside knowledge as a source of potential profit. At the local sphere of government, a mayor colluding with the director of city planning potentially could profit from knowing where new sewer facilities are to be constructed or what land is likely to be rezoned. Such advanced knowledge has significant financial implications for land purchasers.

There is a temptation to provide friends or relatives with this [invaluable] information before it is made public. Elected representatives sometimes become silent partners and profit from these transactions, either in exchange for the information they provide or as a gratuity for their tacit manipulation of events to make such transactions possible. According to Murphy (1981:496), some elected representatives argue that it would be foolish not to take advantage of inside knowledge gained as bystanders, but it is immoral and illegal to actively influence decisions which could favourably affect their own financial positions.

Often elected representatives can avoid conflict of interest by disqualifying themselves from situations in which personal interests are involved. In judicial circles, for example a judge may disqualify himself / herself because he / she was prosecuting attorney on a case now before him / her on appeal. Similarly, an executive director may disqualify himself / herself when he / she is called upon to make decisions affecting a department for which he / she formerly worked or where he / she is a director.

#### **4.3.1.5 Self-dealing**

Cooper (1990:117) states that self-dealing refers to a situation where one takes an action in an official capacity which involves dealing with oneself in a private capacity and which confers a benefit on oneself. The notion of *self* is expanded to include one's spouse, family members, and business partners. It also refers to situations in which any elected official may

be in a position to do favours for a relative. This form of unethical conduct is also called nepotism. It is a special class of influence peddling. It involves using influence to gain preferential treatment in hiring, promotion, awarding contracts, or other business practices in which a relative will benefit. An elected representative who engages in such practices gains not directly but mainly indirectly, by reinforcing family bonds and mutual support.

A case example of self-dealing is a public functionary who awards a contract to a company which he / she owns. A recent case is that of the Travelgate scandal, involving the misuse of travel vouchers intended to cover the cost of travel from Parliament in Cape Town to the members' constituencies, which has defrauded Parliament of as much as R17m. Up to 40 MPs (members of Parliament) allegedly colluded with several travel agents to make false claims and inflate the price of air tickets to cover the costs of luxury car rentals and hotel accommodation. One MP formed his own travel agency to further his own selfish aims. Some MPs are repaying the money and others are negotiating possible bargains, which will have to be ratified by a judge, or deals linked to co-operation with enquiries. These are also evident in the local sphere of government where councillors use their public office to grant tenders to their own spouse / partner (Sunday Times, 2009: 1).

#### **4.3.1.6 Outside employment**

Outside employment refers to the work or an activity in which a person engages outside normal working hours for additional remuneration. While such activity may be conducted on a full-time basis, it usually involves part-time work and includes a wide variety of activities such as working for a non-governmental organization, running a business, or consulting. Conflict of interest problems arise when outside employment (or moonlighting) of elected representatives clash with the performance of their official duties. Cooper (1990:116) argues that conflict situations include the use of public employment status to enhance a private employer (or oneself), the draining away of efforts and energy required for official duties, and the use of government services and equipment in outside work. It must be stated here that the case of councillors is different if they are not full-time. More specifically, moonlighting may need to be restricted (Kernaghan & Langford, 1990:147):

- if the activity is in direct competition with the council, or Parliament or provincial legislature;
- if an elected official's work performance is affected;
- if the employer's property is being used to engage in the activity;
- if confidential information is being used by an elected representative;
- if an elected official is using his / her position to solicit business; or
- if an elected official's activity could be perceived by members of the public to be a conflict of interest.

Section 2 (b) (I) and (ii) of the *Executive Members' Ethics Act*, 1998 (Act 82 of 1998) prohibits elected representatives from undertaking any other paid work and exposing themselves to any situation involving the risk of a conflict of interest between their official responsibilities and their private interests.

#### **4.3.1.7 Using government property**

Kernaghan and Langford (1990:145) argue that elected representatives should not use or permit the use of, government property of any kind for activities not associated with the performance of their official duties, unless they are authorized to do so. The private use of government property can take different forms. It can range from relatively minor offences such as taking pencils home or using a government office for non-governmental purposes to major offences such as using government computers for a private business. The Code of Conduct for Councillors contained as Schedule 1 of *Local Government: Municipal Systems Act*, 2000 (Act 32 of 2000) prohibits municipal councillors to use, take, acquire or benefit from any property or asset owned, controlled or managed by the municipality to which that councillor has no right.

#### **4.3.1.8 Post-employment**

The scope of private interests considered relevant to conflict of interest debate also varies, extending from the fundamental level of interest an elected representative possesses while holding office to encompass interests discussed when taking office, interests their families

have and interests acquired on leaving office. Economic interests for elected officials are likely to arise on retirement or resignation, where there are potential opportunities for using confidential information or expertise obtained in public office, or influencing policy either for their own benefit or for that of their prospective employer (Williams, 1985:8-9). Kernaghan and Langford (1990:149) describe post-employment as subsequent employment or future employment. It constitutes conflict of interest when elected officials use, or appear to use, information and contacts acquired while in government to benefit themselves or others after they leave office.

Among other variations of conflict of interest, the post-employment problem is one of the most difficult to regulate. The difficulty arises, in large part, from the fact that the persons being regulated are former elected representatives; once elected representatives have left the government, the range of penalties that the government can apply to them is limited. In the Canadian federal government, ministers and public employees are responsible for ensuring that former elected representatives do not take advantage of their previous position (Kernaghan & Langford, 1990:150). In some countries a cool-off period is required before a former political office bearer may take up employment in the private sector.

Re-affirming their political commitment to enhance professionalism and ethics in the public service, Africa public service elected representatives (ministers) (Charter for the Public Service in Africa, 2001) argue that upon leaving office, and for such period of time as may be stipulated by law or by the relevant regulations, public employees appointed to certain positions of responsibility and trust shall not take undue advantage of positions previously held by accepting remunerated employment that is related to their previous functions. What applies to public service employees should apply equally well to elected representatives, as they are both serving members of the public.

Addressing a media briefing in Pretoria, President Mbeki (*The Star*, July 27, 2001:1) stated that the government is working on new regulations that would clarify the role of employees involved in negotiations of large contracts and thus to limit corruption. He cited as an example any Cabinet minister, who could leave the government to join a field in the private sector, which operated in an area covered, by the minister during his / her term. Such a move,

Mbeki stated, could be viewed as corruption since the minister would have participated in the awarding of tenders to a firm that he / she later joined. The legislation will make it impossible, for instance, for a former defence minister to join the arms industry after leaving the government.

#### **4.3.1.9 Patriotism in service delivery**

The Vision for South Africa is “a better life for all”. This vision suggests that all people of South Africa will receive similar attention from government when it comes to service delivery across all three spheres. However, this seems not to be the case in a number of protest actions for service delivery. According to an article in the Star newspaper (The Star: 26 October 2007: p 2) headlined “Illegal service delivery match halted”, police and local government officials spent hours negotiating with Inkatha Freedom Party (IFP) supporters, mainly from Thokoza Township, who were marching to Germiston City Council to protest against an African National Congress (ANC) led council for poor service delivery. This article suggests that the ANC led government is not delivering in Thokoza Township because it is seen as a so-called IFP area. Reports on poor service delivery in areas perceived to enjoy support from the opposition parties are not unfamiliar. Of course these accusations could be real or mere political back lashing from opposition parties in those areas.

In South Africa the ruling party is the ANC, which also controls most municipalities in the country. However, Cape Metro is now under leadership of the Democratic Alliance (DA). In terms of planning, perceptions are that integrated development plans (IDP) tends to advance development projects in wards where the ruling political party enjoys more support. In addition, it is unrealistic to expect appointed administrative executives or officials, as is with most human beings, not to have any political affiliation or ideology. The senior managers in local government are also accused of separate development.

#### **4.3.2. The Consequences of Poor Governance in Local Government**

The negative consequences of poor governance are hereunder, identified and explained.

#### **4.3.2.1 High incidents of violence**

The post-1994 period in South Africa has been characterized by widespread strike actions (both in the public and private sector), community protests and high levels of service delivery related violence. Protests and riots over the incorporation of the Merafong City Local Municipality in Khutsong led to violent protests which caused R70 million of damage to public and private property. The Government wanted to incorporate this municipality in the North West Province whilst the community wanted to remain under the Gauteng Province. Poor communication, poor leadership, political favouritism and ineptitude are some of the causes of problems in the Local Government.

According to an article titled 'Voices of Anger' published by the Centre for Development and Enterprise (2007:1) there has been widespread boycotts and community protests since 2004 largely due to poor governance and general lack of service delivery. The two classical affected areas which can be cited as examples are Phumelela in the Orange Free State and Khutsong in the West Rand over its incorporation into the North West Province. This report further describes these protests as 'violent'. On whether this was over leaking taps, or incorporation into another province, these citizens of our new democracy fundamentally revolted against insensitive, unresponsive, and unaccountable political elites resulting in a damage to property in Khutsong to the value of about R70 million. These Phumelela and Khutsong cases are good examples for economic dangers which are caused by poor governance in Local Government.

The two cases (i.e. Phumelela in the Orange Free State and Khutsong in the North West) cited here reflect a bigger problem in the entire country where protests of a similar nature can be seen daily on South African television. Khutsong and Phumelela are not the only case that can be cited. In the same CDE report (2007:2) there is also a Phumelela case which shows that the will and the voice of the people were ignored in Local Government. Clearly there are many examples where public participation and the will of the people are ignored by the political elite.

In November 2005, citing the results of an impact assessment and an analysis of the public

hearing submissions, the local government portfolio committee of the Gauteng legislature stated that Merafong should be included in the West Rand District Municipality in Gauteng, contrary to the wishes of national government. However, on 5 December 2005 the legislature approved legislation allowing Merafong to be incorporated into North West, thus ignoring the recommendation of its own committee. Adding to the confusion was the role of the Municipal Demarcation Board. Between August and October 2005, the Board appeared first to give effect to the Minister's wishes for Merafong (and Westonaria) to be included in North West and then withdrew in the face of public objection, before issuing press statements to the effect that it had no powers in the matter anyway.

The above case clearly illustrates how poor communication and lack of public participation (though the community was consulted, their views were effectively ignored and not taken into account) resulted in many problems in Khutsong. One can ask the following questions:

- What happened to 'Constitutional provisions on public participation' in Khutsong?
- What happened to the slogans 'people shall govern' in Khutsong?
- What happened to 'the government for the people, by the people' in Khutsong?

Another case where violent protests were experienced is in Phumelela. This was one of the first municipalities to experience violent protests, and is a typical example of the recent municipal unrest, at least in the limited sense that discontent there focused on poor delivery of the most basic services, notably water and sanitation. However, the anger provoked by this dysfunctional council embraced the relatively well-off as well as those deprived of decent living conditions. Indeed, unrest in Phumelela was driven by a coalition of the previously advantaged and the still disadvantaged against an incompetent and unresponsive new political and administrative elite. Phumelela Local Municipality has a population of about 50 000, and consists of three small towns in the north eastern Free State, namely Memel, Vrede and Warden; their respective townships, namely Zamani, Thembalihle and Ezenzeleni; and their agricultural hinterland. Phumelela is a good example of current stresses in rural municipalities as its three towns face several mutually compounding difficulties. The first is the uncertain role of small towns in a changing South Africa, which no government

development strategy seems to adequately address. The second is the rapid migration of poor and unskilled people from farms and other purely rural areas to small towns, which places increasing demands on services without contributing to the local tax base. The table below shows that the total population of Phumelela has declined slightly since 1991, but that the balance between its rural and urban components has changed significantly. In 1991 the split was about two thirds rural to one third urban; by 2001 it was about 60 per cent urban to 40 per cent rural.

**Figure 7: population change in Phumelela, 1991-2001**

<b>Date</b>	<b>Urban population</b>	<b>Rural population</b>	<b>Total</b>
1991	17080	36007	53 087
1996	24112	21181	45 293
2001	29684	21206	50 890

*Source:* CDS calculations based on Phumelela Local Municipality, Housing Sector Plan, Vrede, 2005

For Phumelela, and many other municipalities like it, these stresses came at a time of flat economic growth – 0,22 per cent between 1996 and 2004 – and even negative growth in key employment sectors. This low growth rate precluded making an impact on the unemployment rate of 38, 6 per cent, and the 78, 2 per cent of people in the municipality living in poverty. In this general context of poverty and economic stagnation, the poor state of infrastructural development was an important underlying reason for the social unrest, frequently cited in media reports and in the interviews and focus groups that made up CDE’s field research. Infrastructure problems in all three of Phumelela’s towns began with inadequate provision (see table below on access to infrastructure in Phumelela), and were exacerbated by poor planning and management.

**Figure 8: Access to infrastructure in Phumelela, 2001**

Indicator	% and absolute number in municipality	Ranked in Free State (x/20)
Households with bucket / no sanitation	45.5 (5470)	13
Households without water access or with access to water further than 200m away	11.3 (1359)	15
Households without access to electricity	35.2 (4232)	19

*Source:* CDS calculations based on 2001 census data

The primary source of discontent was poor water provision, compounded by poor sanitation which, in some instances, resulted in sewage flowing into the streets and leaking into rivers and dams. Interrupted electricity supplies and poor garbage collection were added sources of irritation especially for business people in both town and township. All three urban areas were affected by these problems which featured prominently in petitions and memoranda of demand that united a wide cross-section of the population. This combination of poverty, economic stagnation, and inadequate service delivery formed the background to the protest action in Phumelela which followed more than a year of meetings between various community groups and council representatives. Protests lasted intermittently for about two months, from mid-September to early November 2004. In all three towns – Vrede, Warden and Memel – the main protagonists were groups of unemployed and school age-youths who called themselves ‘Concerned Youth Groups’. However, in all three towns, ratepayers’ groups consisting of white residents also played a prominent role in the protests, and business people – both in the towns and the townships – aired specific grievances.

A number of newspaper articles including a *Mail and Guardian* (2007: p14) feature many incidents of violence (accessed from 6<sup>th</sup> -12<sup>th</sup> July, 2007) by despondent communities who are unhappy about the levels of service delivery. Since 1994 approximately 11 million working days have been lost due public sector strike actions in South Africa. Councillors are killed, municipal offices and property burned and working days lost due to strikes.

Sometimes lack of public participation, poor communication has led to incidents of violence in the Khutsong Municipality in the North West Province and Phumelela Municipality in the Free State Province.

Poor governance tends to manifest itself through community boycotts, protests and riots in local government. Clearly, the weapon available to the public is riots especially if the perception is that there is mismanagement of public office and poor governance. South Africa has seen many of these widespread protests, even in the post democracy government. In a research paper titled 'Voices of Anger' April 2007, the Centre for Development and Enterprise (CDE) reports on two case studies of violent protests which broke out in several municipalities against poor service delivery and poor local governance in South Africa and the widespread unrests since 2004. These riots and boycotts resulted in some of the consequences discussed hereunder.

#### **4.3.2.2 Decline in municipal service payments**

The scale and intensity of the unrest allowed very little service delivery to take place. This fuelled the culture of non-payment for services. Previously, payment levels in Khutsong and Khutsong South were as high as 50 per cent, but in April 2006 payment levels dropped to 12 per cent in Khutsong and 24 per cent in Khutsong South. According to an Eskom representative interviewed for the study, payment for electricity in Khutsong dropped from 87 per cent prior to the unrest to 43 per cent, increasing outstanding debt from R37 280 to R439 580. Illegal connections also increased significantly, as Eskom could only account for 45 per cent of the power supplied to Khutsong.

#### **4.3.2.3 Deterioration in service delivery**

In Khutsong, municipal officials and vehicles could not enter the area to maintain infrastructure. All payment points were burnt down and all community development projects came to a standstill. This has impacted negatively on good governance, hence effective and efficient service delivery.

#### **4.3.2.4 Impact on local business: the case of Khutsong**

Poor governance has a negative effect on infrastructure development and local economic governance. This in turn affects the business sector. In late 2005 for example, Eskom provided electricity to 126 small and medium businesses in Khutsong. By June 2006 the number had decreased to a mere 35.

#### **4.3.2.5 Economic consequences**

One of the consequences of poor governance is poor service delivery. If the municipality is badly managed that affects its ability to collect revenue. In fact, communities generally become reluctant to pay for services if the municipality is badly managed as evident in the Phumelela and Khutsong cases mentioned in 4.3.1 above. A number of municipalities are struggling with revenue collection which is one of the key aspects to ensuring service delivery. Good revenue collection policies and systems are vital for the sustenance of the municipality. This problem of revenue collection also affects the ability of that municipality to deliver services to the community. Poor service delivery is normally not an end in its own as it is often followed by riots and boycotts. A sad consequence of poor governance are riots which are followed by negative economic impacts on revenue collection, payment of rates as evidenced in the Phumelela and Khutsong cases above. Riots create an environment for non-payment of services and even those citizens who are good rate payers get affected by those who are bad rate payers.

#### **4.3.2.6. Social consequences**

Working for local government carries a very strong negative stigma. There is a perception that if you work for local government or is a public servant, you cannot find work elsewhere (normally private sector). Being a public servant generally is seen in a negative light because of perceptions that government does not have work ethic, no work commitment and is corrupt, hence associated with poor governance. Many of young talented professionals in South Africa do not want to work for Local Government as a result of these perceptions. This means that Local Government jobs have become least preferred amongst young professionals

in South Africa due to these perceptions of poor governance.

#### **4.4. CONCLUSION**

This chapter has reflected on a number of poor governance manifestations despite clear abundance of laws aimed at ensuring good governance. The chapter has also pointed out the glaring gaps in terms of the implementation of existing applicable laws. Such failure has been shown to manifest in the form of corruption, bribery and poor financial management which seem to be amongst the major problems facing local government in South Africa post 1994. Many of the financial managers are not recognized as competent at least by the National Treasury guidelines and gazettes. Many incidents of non-reporting as required by the various laws are also shown. These are indications of non-transparent government, lack of openness and public accountability. As a consequence, there has been destruction of public property and municipal infrastructure, a decline in payment for services by communities, and sometimes even killing of public officials (mainly councilors) since they are government representatives in these communities (i.e. closer and accessible to communities).

## CHAPTER FIVE

### NATIONAL INTEGRITY FRAMEWORK: A COMPREHENSIVE MODEL FOR INSTILLING GOOD GOVERNANCE

#### 5.1 INTRODUCTION

Municipal functionaries, i.e. municipal councilors and officials, are tasked with the provision of services to members of the local community. These services include the provision of water and electricity, rubbish removal, storm water drainage, sanitation and fresh produce markets (just to name a few). The government has, in general, a sound legislative framework not only for providing these services but also for ensuring that these services are provided to clients efficiently, effectively and ethically. Enhancing or strengthening the operational ability of municipalities to translate these policies and legislation into fruitful activities, however, remains a major challenge. In this regard, significant efforts have been made for laying the basis of institutionalizing a comprehensive ethics framework. Comprehensive legislation and institutions have been put in place, accompanied by efforts to involve the business sector and society as partners in the fight to prevent unethical conduct such as fraud and corruption. In this chapter, different strategies for enhancing ethical conduct in local government will be identified and explained, and, where possible, practical examples will be provided. Such strategies include an anti-corruption drive for local government, constitutional approaches, and education and training in ethics. Preventing unethical conduct such as corruption assists in raising municipal revenues, improving service delivery, stimulating public confidence and community involvement in public affairs.

Chapter Four highlighted some of the negative manifestations and their consequences on governance in the South African municipalities. Manifestations of poor governance in municipalities discussed in this chapter include corruption, bribery and kickbacks. The consequences of poor governance in municipalities identified include high incidents of violence, decline in municipal service payments and deterioration in service delivery. It was argued that municipal functionaries must be able to identify the manifestations of bad governance for them to serve as effective whistle-blowers. This, the fifth Chapter, deals with the national integrity system as a strategy for combating the manifestations of bad

governance.

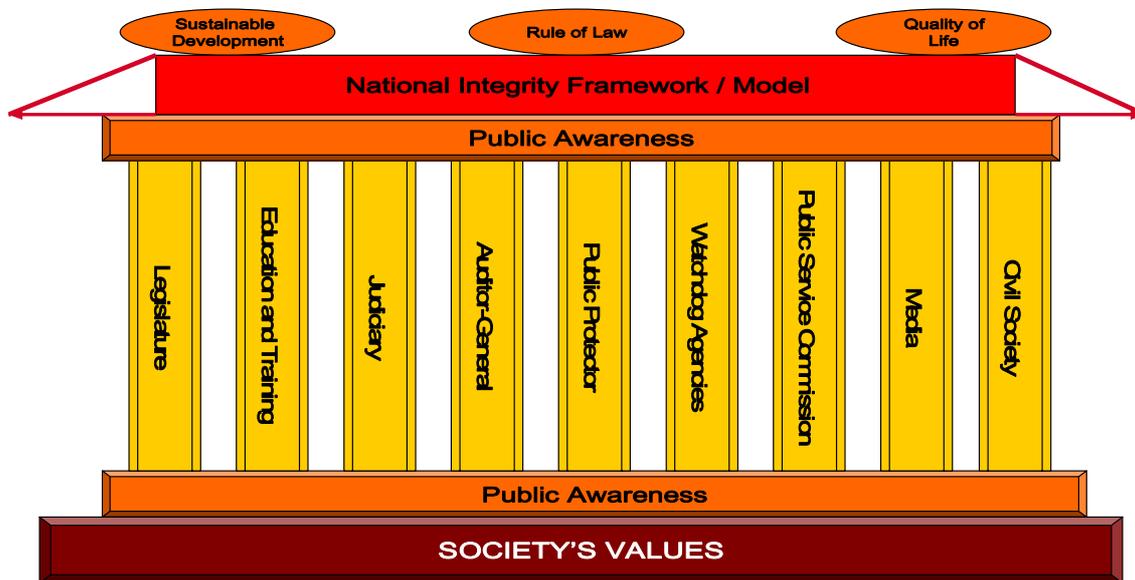
## **5.2 NATIONAL INTEGRITY FRAMEWORK AND GOOD GOVERNANCE**

The task in developing countries and countries in transition, is to move away from a system which is essentially top down; one in which an autocratic ruling elite gives orders which are followed, to a greater or lesser degree, by those down the line. The approach is to move, instead, to a system of “horizontal accountability”; one in which power is dispersed, where none has a monopoly, and where each is separately accountable. In such a system, there must be a free press. But the press must respect prescribed limits imposed by law – for example, avoiding defamatory attacks on individuals. For even a free press is accountable, not only perhaps to a Press Ombudsman (which may or may not be a statutory body) but also, and ultimately, to the courts. For their part, the courts are no longer ‘servants’ of the ruling elite, but rather act with independence and enforce the Rule of Law, and the rule under the law. Yet such independence is not absolute. Judges are answerable for their individual decisions through a system of appeals, and each Judge is accountable for his or her integrity and competence to another body, be it a parliament or a judicial services commission. That body, in turn, is accountable elsewhere and ultimately to the people through elections. So do the strands of accountability link the various elements, or “pillars”, and in such linking they brace and strengthen each other (Pope 2000: 32-33).

Under a system of “horizontal accountability” a virtuous circle is perfected: one in which each actor is both a watcher and is watched, is both a monitor and is monitored. A circle avoids, and at the same time answers, the age-old question: “Who shall guard the guards? The shift is thus from a system of vertical responsibility – be it the tyrant or the leadership of the one party – to one of horizontal accountability whereby a system of agencies of restraint and watch-dogs are designed to check abuses of power by other agencies and branches of government. These include the courts, independent electoral tribunals, Auditors General, central banks, professional organisations, Parliaments (and Public Accounts Committees) and a free and independent media.

Frimpong and Jacques (1997: 47) argue that the pillars of integrity include parliament, the judiciary, the ombudsman, the anti-corruption institutions, commissions of ethics and the press. Under most systems in Africa, governments are accountable to the electorate through parliament. The parliament, the executive and the judiciary form the three independent arms of government.

The National Integrity System approach unlocks a new form of diagnosis and potential cure for corruption. Instead of looking at separate institutions (e.g. the Judiciary) or separate rules and practices (e.g. the criminal law) and then focusing on stand-alone reform programmes, it is imperative to start looking at inter-relationships, inter-dependence and combined effectiveness in a holistic approach. For example, what is the benefit of a sound and “clean” Judiciary ready to uphold the Rule of Law, if there is corruption amongst the police, investigators, prosecutors or the legal profession? The judges would simply not receive the cases they should hear; they would then sit in splendid isolation – honest, capable, yet able to achieve little (Pope 2000: 34). **Figure 9: National Integrity Pillars**



Source: *Integrity Pillars* (Adapted from Pope, 2000: 35)

The National Integrity Pillars model provides for:

- Parliament;

- Judiciary;
- Civil service;
- “Watchdog” agencies (Public Accounts Committee, Auditor-General, the Public Protector, Police, Anti-Corruption Agency, etc.);
- civil society (including the professions and the private sector);
- mass media;
- education and training in ethics of good government.

These pillars / strategies for instilling good governance by municipal functionaries are thus discussed.

### **5.2.1 Constitutional Strategies**

Constitutional strategies for promoting ethical conduct are those strategies that have been provided for by the Constitution of the Republic of South Africa, Act No 108 of 1996 as amended.

#### **5.2.1.1 Public Service Commission**

Pope (2000: 106), argues that to ensure the maintenance of a sound public service, many countries provide for public service commissions, whether in their constitutions or in their general law. These institutions, independent of the government of the day, are designed to protect and promote the integrity of public servants. In the case of the Republic of South Africa, the Public Service Commission is established in terms of Section 196(1) of the Constitution of 1996. Its independence and impartiality are provided for and safeguarded by Section 196(2) of the Constitution in the interests of the promotion of effective public finance and administration and a high standard of professionalism and ethics in the public service which includes the local government.

The Public Service Commission is competent to investigate, monitor, and evaluate the organisation and administration, and the personnel practices of the public service; to propose

measures to ensure the promotion of efficiency and effectiveness in the departments of the public service; to give directions aimed at ensuring that personnel procedures relating to recruitment, transfers, promotions and dismissals comply with the values and principles of public administration; to investigate grievances of officials in the public service and to advise national and provincial governments regarding personnel practices in the public service, including those relating to recruitment, appointment, transfer, discharge and other aspects of the careers of officials in the public service (Section 196 (4) of *the Constitution of the Republic of South Africa*, 1996). Vil-Nkomo (1996:21) argues that the Public Service Commission ensures effectiveness and contributes to conformity in the total system of governance. A unified system of governance suggests efficient and effective delivery of services, a responsive public service, recognizable adherence to ethical behaviour by municipal officials, and a focus on productivity and accountability.

The Public Service Commission's powers include the promotion of the democratic values and principles applicable in public administration. These values include the following: a high standard of professional ethics must be promoted and maintained; efficient, economic and effective use of resources must be promoted; services must be provided impartially, fairly, equitably and without bias; people's needs must be responded to; public administration must be accountable and transparency must be fostered by providing members of the public with timely, accessible and accurate information (Section 195(1) of *the Constitution of the Republic of South Africa*, 1996).

There are a number of initiatives to assess how well the public service meets its obligations of impartiality, fairness, equity and non-biasness. The Public Service Commission has put in place mechanisms such as the *Batho Pele* audits, the National Anti-Corruption Hotline and Citizens Surveys to test whether citizens experience government as meeting these ideals. Through data gathered from such mechanisms, problem areas can be identified and improvements made. Trends in terms of the types of issues raised can be analysed and dealt with before these escalate to levels that are unmanageable (Public Service Commission, 2006: 34).

The Public Service Commission promotes the development of ethics and accountability by

ensuring that public officials follow sound principles of public administration for the efficient, economic and effective use of resources, and that people's needs are responded to.

The Commission has played an important role both in terms of putting the issue of unethical conduct on the agenda by initiating conferencing And establishing the National Anti-Corruption Forum. This should be seen as measures of effectiveness (PSC, 2001:31).

#### **5.2.1.2 Auditor-General**

Pope (2000: 75) argues that the Auditor-General is the fulcrum of a country's integrity system. As the office responsible for auditing government income and expenditure, an effective Auditor-General acts as a watchdog over financial integrity and the credibility of reported information. The Office of the Auditor-General audits the financial statements of government on behalf of Parliament. He / she is the external auditor of government, acting on behalf of the taxpayer through Parliament. According to Mafunisa (2006: 514), the post of the South African Auditor-General, as it currently operates, was created in terms of section 188 (1) of the *Constitution of the Republic of South Africa*. The functions of the Auditor-General are to ascertain, investigate and audit all the accounts and financial statements of all departments of the central, provincial and local spheres of government and any statutory body or any other institution which is financed wholly or partly by public funds.

The legislatures appoint some of their members to public accounts or finance committees which can summon accounting officers to give account of financial transactions involving their specific institutions. Cloete (1998: 197) argues that the word "accounting" in the title of the officials concerned refers to the rendering of account and to answerability, and not to accounting in the sense of bookkeeping.

A forensic auditing capacity was established in 1997, as a result of increasing levels, and negative effect, of economic crimes on the public accountability process, which obliges the office of the Auditor-General to report on such crimes within the public sector. The objective of the office of the Auditor-General with respect to forensic auditing is to (PSC, 2001:13):

- determine the nature and extent of the perpetration of economic crime and the adequacy and effectiveness of measures that should have either prevented or detected them; and
- facilitate the investigation of economic crime in general by providing support to the relevant investigating and / or prosecuting institutions (by handing over cases and providing accounting and auditing skills).

Mafunisa (2006: 514) indicates that to address corruption, preventive and reactive strategies have been developed by the forensic auditing division. The proactive strategy is aimed at preventing economic crimes by promoting an overall fraud awareness culture in the public sector through, amongst others, publications, workshops and participation in relevant national and international initiatives. The following aspects have been identified to minimize the risk of economic crime:

- strong financial management systems;
- effective internal controls;
- adequate awareness (and acceptable standards of conduct).

The Public Service Commission (2001:13) is of the opinion that the reactive strategy aims at the investigation of allegations of economic crime. Allegations submitted to the office of the Auditor-General are confirmed or refuted by collecting and submitting substantive evidence and findings and are reported through the normal audit process or, when applicable, are handed over to institutions with investigating and prosecuting powers.

The Office as a whole has developed performance indicators. Audit costs are the main performance indicator in that costs should not exceed 1% of the budget of the auditee. Other measures are the responsibilities under the MFMA where the Office has to bring the report three months after year end (PSC, 2002:16).

### **5.2.1.3 Public Protector**

The Public Protector has the power 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 may result in any impropriety or prejudice. In terms of section 112(1) of the *Constitution of the Republic of South Africa Act, 1993* (Act 200 of 1993) the Public Protector shall, on his / her own initiative or on receipt of a complaint investigate any alleged maladministration, abuse or unjustifiable exercise of power, improper or dishonest act, corruption, unlawful enrichment, or receipt or any improper disadvantage, or promise of such enrichment or advantage, by a person as a result of an act or omission in the public administration of public institutions, or omission by a person in the employ of any sphere of government, or a person performing a public function, which result in unlawful or improper prejudice to any person (Mafunisa 2006: 514-515).

The Office of the Public Protector measures its effectiveness in respect of whether recommendations in a particular case are followed. It has been found that whilst the government does act in most cases, it does not always follow the recommendations, particularly with respect to political office bearers. The Public Service Commission (2001:23) argues that in the recommendations concerning actions against public officials will get full backing from Parliament. But where those recommendations concern political office bearers the majority party seems to close ranks. That does not happen too often. It's a pity that it works like that because it does the image of the Office harm. It can be argued that those who are found to be corrupt or involved in conflict of interest must be punished to make the recommendations of the Public Protector effective in curbing conflict of interest; and also to promote public confidence in the functioning of the Office.

### **5.2.1.4 Special Investigating Unit**

The *Special Investigating Unit and Special Tribunals Act, 1996* (Act 74 of 1996) provides the mandate for the functions of the Special Investigating Unit (SIU). The Unit carries out investigation as referred to it by the President through publication of a proclamation in the Government Gazette. The President of South Africa may refer a matter to the Unit for

investigation only on the following grounds:

- serious maladministration in public sector institutions
- improper conduct by elected officials
- unlawful expenditure of public funds
- unapproved transaction
- intentional or negligent loss of public money or damage to public property
- public sector corruption and
- unlawful conduct which causes serious harm to public interests.

The functions and powers of the Special Investigating Unit are to investigate all allegations regarding the matter concerned; to collect and present evidence regarding acts or omissions which are relevant to its investigation; to present evidence in proceedings brought before a special tribunal and to refer evidence regarding an offence to the relevant prosecuting authority. The Unit has broad powers, which enable it to act on allegations of maladministration and corruption. With the authority of a magistrate or judge, unit members can enter and search premises and remove documentation on the basis of a reasonable suspicion that it would assist an investigation. The Unit can also summon anyone to appear before it and compel them to answer any questions asked. It has powers to make an order for the return of money or property and to issue an interdict to stop the potential loss of such money or property (Mafunisa 2006: 516).

The Unit plays a major role not fulfilled by any of the constitutional bodies since the unit is the only public body which has as its focus area the application of civil law in order to recover money and other assets, save such money and assets and or safeguard such money and assets belonging to public institutions. The Unit has the power to take a matter from the stage where it is a mere allegation, through a full investigation and ultimately engage in litigation to bring the matter to finality (PSC, 2001 62).

Pope (2000: 280) argues that a major percentage of the cases dealt with by the Unit consist of actions to prevent the loss of State assets or the protection of State assets or money. The Unit

has the power to apply to the special tribunal for an interdict or an Attachment Order to intervene and stop the loss of State assets (about to occur) or to freeze misappropriated assets out of the possession of State institutions.

A typical case example of an order interdicting a transaction is where the State has entered into a contract without complying with the procurement requirements. The implementation of such a contract is then stopped pending an investigation. An example of an Attachment Order is where a person has stolen a State cheque, cashed and deposited it into a bank account. The money is then frozen or attached pending the outcome of the investigation. The concept of the Unit to recover and protect State assets from a civil point of view is unique in the world, and its achievements show that the concept is a considerable success (Pope 2000: 280).

The following problems with the effective functioning of the SIU may be highlighted. In particular, the efficiency of the teams is hampered by the taking on of less serious matters and / or more work than teams could handle. The workload is such that it may take the unit two to three years to complete all the investigations should they proceed to search for and investigate each and every possible unlawful, improper or unethical conduct. (PSC, 2001: 76).

#### **5.2.1.5 National Prosecuting Authority**

The Head Office of the National Prosecuting Authority has the power to:

- institute and conduct criminal proceedings on behalf of the state
- carry out any necessary functions incidental to instituting and conducting such criminal proceedings
- discontinue criminal proceedings.

The Act provides that “the National Director, shall with the concurrence of the Minister of Justice, and after consulting the Directors of Public Prosecutions, determine prosecuting policy and issue policy directives which must be observed in the prosecution process”. The

National Director may intervene in any prosecution process when policy directives are not complied with and review a decision to prosecute or not to prosecute, after consulting the relevant director of public prosecutions, and after hearing representations from the accused person, the complainant and any other person whom the National Director considers being relevant.

At the discretion of the National Director, any of the Deputy National Directors may perform any of the powers, duties and functions of the National Director. Presently there are three National Directors responsible for the Offices of the Prosecuting Authority, the Directorate of Special Operations (DSO) and the Asset Forfeiture Unit. The Directorate of Special Operations' purpose is to combat organized crime, corruption within the criminal justice system, serious economic crimes and crime against the state such as terrorism.

The aim of DSO is to:

- investigate and carry out any functions incidental to investigations
- gather, keep and analyze crime information and
- institute criminal proceedings and carry out any necessary functions incidental to criminal proceedings relating to offences or any unlawful activities committed in an organized manner, or such other offences as determined by the President.

The Public Service Commission (2001:42 –54) argues that the DSO is an attempt to institutionalize a proactive, multidisciplinary approach to fighting crime. The idea behind the Directorate is the integration of three traditionally separate functions: intelligence, investigations and prosecutions. This will see special investigators, intelligence operatives and specialist prosecutors working together in project teams. Focus areas that the Asset Forfeiture Unit has identified for itself include:

- seizure of large amounts of cash associated with drug trade
- seizure of property used in the drug trade or other crime
- corruption

- white collar crime
- targeting serious criminals and
- violent crime.

Mafunisa (2006: 51-70) indicates that a typical case of the above is that of the Asset Forfeiture Unit, which was granted an order to seize assets worth R30-million belonging to convicted Durban businessman. The businessman was convicted of fraud and corruption (Mail & Guardian, 2009: 1). Therefore, it can be deduced that the seizure of assets obtained through illegal means serve as a deterrent to elected officials who aspire to accumulate wealth unethically.

#### **5.2.1.6 Judicial institutions**

Section 165 of the Constitution, 1996 provides that the judicial authority of the Republic of South Africa is vested in the courts of law established by this Constitution and any other law. The judiciary shall be independent, impartial and subject only to this Constitution and the law. No person and no organ of the state shall interfere with judicial officers in the execution of their duties.

Rasheed and Olowu (1993) argue that the judiciary contributes to the checking the abuse of administrative power and making political office-bearers and employees account for their actions. Legal disciplinary sanctions are instituted against the erring political office bearers and municipal officials. Cloete (1993) argues that most judicial institutions attend to cases in public, and give motivated reasons for their judgement after evidence has been heard. Court cases usually receive wide publicity from the press. The fear of being exposed to the public by the press is a factor which may discourage political office bearers and officials at the local sphere of government from acting in an irresponsible and unaccountable manner. For the judiciary to be effective in instilling a sense of accountability to political office bearers and officials in local government, their independence and objectivity must be maintained.

Frimpong (1997: 36) argues that the failure of the judiciary to live up to its obligations of

playing an independent role in the protection of the liberties of the members of the public can also be explained in part by the generally disappointing role of the educated members of society. Any judge who chooses to allow himself / herself to be influenced or dictated to by the executive, abdicates his / her judicial responsibility and does not deserve to be a judge.

Pius Langa, Chief Justice and head of the Constitutional Court (City Press, 3 August 2008: 4) argues that the independence of the judiciary should be defended by civil society and the organs of state because subverting the independence of the judiciary would be subverting the very foundation of a constitutional democracy. He further maintains that it is in everybody's interest that the courts should be enabled to function without fear or favour of anybody. It stands to reason that a weak, unprincipled judiciary will be powerless to stem the tide of human rights violations and keep the state power in check. At the same time we must demand the highest ethical standards and utmost integrity among members of the judiciary.

Frimpong (1999: 36) argues that democratic institutions suffer irreparable damage when the Bench does not assert its independence and offer the citizens the protection of the law. When the law speaks a different language, depending on the whims of individual judges and not on solid judicial principles and sound authoritative exposition of the law, what emerges is disrespect for the law, loss of public confidence in the law and undisciplined society. From the above exposition, it can be argued that the judiciary must be independent to serve as checks and balances. This will ensure that the members of the public have confidence and trust in it.

### **5.2.2 A “local government integrity system”**

When asked to identify the “pillars” in their own local government integrity systems, mayors from several African cities, identified the equivalents, at the local level, of the “pillars” and interestingly, added as a final pillar, the “National Integrity System” as the provider of national judicial and police services, and as a major partner for local administrations. Therefore, in the “municipal integrity system” the National Integrity System is recognised by itself as comprising a “pillar”. It is, of course, augmented by local arrangement for procurement, audit and public access to meetings of elected representatives (Pope 2000:

116).

The *Public Finance Management Act, 1999* (Act No. 1 of 1999) came into effect in 1999. One of its key objectives is to eliminate waste and corruption in the use of public assets. It promotes effective public financial management and professionalism in public finance and asset management. It is an important instrument that “enables authorities to make sure that the public financial interest is protected” (Pauw, Woods, Van der Linde, Fourie and Visser 2002:4) against abuse for private gain, which is corruption. To deal specifically with municipalities, the *Local Government: Municipal Finance Management Act, 2003* (Act No. 56 of 2003) was promulgated. This Act came into effect in order to give guidelines for municipalities to comply with the provision of Section 216 of the Constitution. The Section provides for a National Treasury, which will prescribe measures to ensure proper expenditure control in all the spheres of government.

In passing the Act, Parliament wanted to regulate financial management in municipalities; ensure that all revenue, expenditure, assets and liabilities of municipalities and municipal entities are managed economically, efficiently and effectively; determine the responsibilities of officials and councillors entrusted with local financial management; and provide for other financial matters concerning municipalities.

Government has put the institutional framework for fighting corruption in place. The establishment of a new Local Government Anti-Corruption Unit by the DPLG is a critical step in rolling out the Public Service Anti-Corruption strategy to municipalities in a coherent manner. The work of the Unit, together with the DPLG, SALGA and provinces, is informed by key elements of the Anti-Corruption Strategy. These elements include raising awareness of good governance, implementing the current legislative framework to ensure compliance, severe penalties for corrupt councillors and municipal officials, mobilising and empowering communities to expose corrupt practices, and providing technical support to municipalities and mayors to champion the Anti-Corruption Campaign (*Local Government Review 2003/2004*, 54-55).

Schedule 5 of the *Local Government: Municipal Structures Act, 1998* (Act No. 117 of 1998)

contains a code of conduct for councillors. The *Local Government: Municipal Systems Act, 2000* (Act No.32 of 2000) sets out a code of conduct for officials in terms of Schedule 1. The sections dealing with general conduct emphasise values such as loyalty, good faith, honesty, transparency, credibility, integrity and impartiality. These values are essential to addressing and meeting the basic needs of the local community and for engaging in social and economic development. Both codes stress the performance dimension of local government activity.

Codes of conduct have the following objectives: promoting and maintaining responsible conduct of public officials, providing guidelines to public officials in their relationship with fellow public officials, elected representatives, and with members of the public; and providing guidelines to public officials in the exercise of the discretionary powers they have (Hanekom, Rowland & Bain 1987: 163). Chapman (1993:18) argues that a code conduct is necessary to promote public trust and confidence in the ethical performance of public officials, to decrease and, if possible, to eliminate, unethical practices by discouraging and punishing them, to legitimise the imposition of sanctions for unethical behaviour, to sensitise both current and aspiring public officials to the ethical and value dimensions of bureaucratic decisions, reduce uncertainty as to what constituted ethical and unethical behaviour, to develop skills in the analysis of ethical and value issues, to assist public officials to resolve ethical and value dilemmas and to promote moral development.

Various steps are already being taken to make the codes of conduct living documents. These steps include the following:

- newly appointed staff and managers are introduced to the codes through the orientation package of the Training Section.
- an introductory workshop for managers on Ethics in the Public Service, including the codes, is held.
- thematic notes on the codes are circulated to supervisors on a monthly basis.
- a draft implementation strategy on the codes has been distributed to all employees.
- the codes of conduct have been distributed to all employees.

- pamphlets on aspects of the codes are distributed to all employees on an ongoing basis .

Another way of making the codes of conduct living documents is to inform members of the public about deviant behaviour not expected of municipal councillors and officials. Members of the public should also be sensitised to the provisions contained in the public service codes of conduct to enable them to serve as effective whistleblowers. The most important requirement of a code of conduct remains the attitude of the councillors and officials towards their work, employer and members of the public. If municipal councillors and officials do not adhere to the different codes of conduct in terms of action and attitude, their success will be seriously impaired (Mafunisa 2002, 56).

As a part of a “local government integrity system” an in-depth communication strategy on professional ethics, public service values, the nature of corruption and how to prevent and report it has to be implemented. The Minister of DPLG, MECs of local government in each province and mayors, in cooperation with the Fraud and Corruption Unit, should drive this process.

In addition, an assessment of the investigative capacity that currently exists within the DPLG’S s Anti- Corruption Unit should be made. A web-based Corruption Management Information System (CMIS), within the DPLG’s Anti-Corruption Unit, for data collection and analysis should be established. This will enable the Department to establish trends on the manifestations of bad governance in local government.

### **5.2.3 Education and training in ethics of good governance**

Unethical practices in the South African local government are relatively high to an extent that in 1994, the then President Nelson Mandela (in Mafunisa 1998) called for a moral crusade to put an end to rampant corruption. Corruption results, in part, from lack of appropriate training in ethics and accountability for the majority of municipal councillors and officials. Most respondents to a study to determine ways which can be used in enhancing ethical conduct and positive work ethic indicated that corruption could be combated by education

and training in ethics of effective and efficient government. Thus it may be deduced that education and training in ethics may assist in combating unethical conduct such as corruption in the local government.

Inefficiency in the public sector is relatively high, particularly when judged in terms of the ability to deliver services that are responsive to public needs. Inefficiency results in part from lack of appropriate education and training in ethics of effective and efficient government. Hanekom, Rowland and Bain (1987:170) argue that issues dealing with ethical dilemmas such as misuse of public office, value choices and the relationship between senior public officials and their subordinates should be included in Public Administration curricula of universities and universities of technology. It is, however, unfortunate that not all public officials attend universities or universities of technology, and that not everyone that does, studies Public Administration.

Bowman (1990: 59-60) is of the opinion that it is not enough to pass legislation requiring ethical behaviour and good governance. Laws usually deal only with what cannot be done and do not assist to resolve ethical dilemmas positively. Municipal managers need knowledge about what cannot be done but also, especially, knowledge about how to achieve the larger goal of positive, proactive ethical behaviour. It is essential to go further than “making the knowledge available”, as a first step in helping to create a more ethically sensitive local government, training in ethics should be made easily available to both municipal councillors and officials. Education and training will not assist those who have no interest in good governance, but for those who care, such education and training will assist and improve both their ethical sensitivity and understanding.

Appropriate education and training in ethics should be provided to senior municipal officials. They should be able to collect, with the assistance of training officers, auditors, accountants and organisation and work study officers, information about corruption. The objective is not simply to find out which forms of illicit behaviour are most severe but also to deter political and administrative corruption. If municipal councillors and officials recognise that their corrupt practices would be detected (and punished), they would be less likely to take part in them (Bozkurt & Moniz 1997: 194).

Training of public officials and political office-bearers could promote ethical conduct because these functionaries could then be told what they should do to ensure that their conduct is ethical, and what actions, attitudes and behaviour they should avoid that may lead to unethical conduct. Public functionaries should be provided with training in ethical foundations of Public Administration. Training and education may also promote morale and enthusiasm among the functionaries concerned, and this has the potential to prevent them from unethical actions, attitudes or behaviour because it could mean that their colleagues would despise and ostracise them.

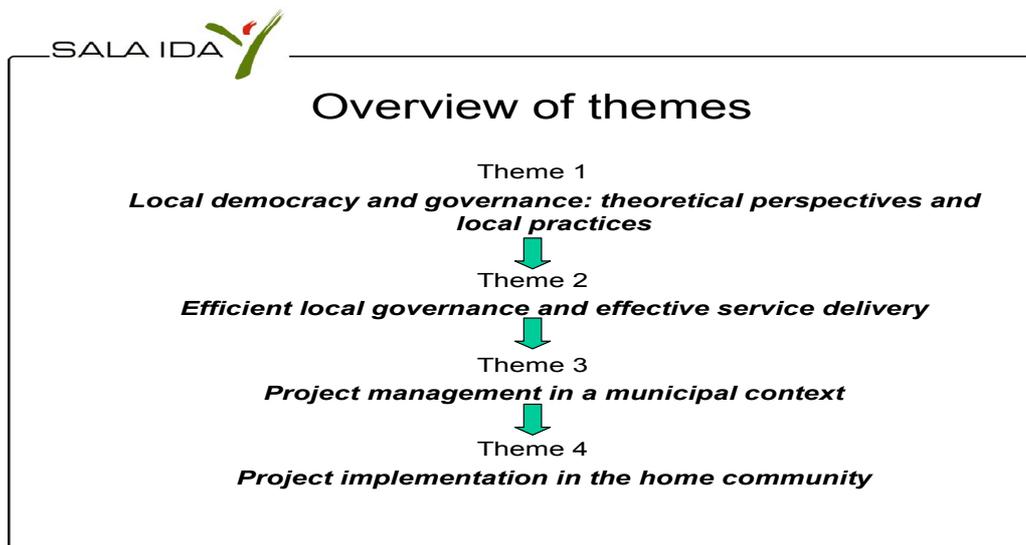
#### **5.2.3.1. DBSA Vulindlela Academy and SALGA training initiatives**

The Academy of the Development Bank of Southern Africa (DBSA) and the South African Local Government Association (SALGA) has introduced the LODLOG (which stands for Local Democracy and Local Governance) programme. This is a carefully structured capacity building programme which is initiated and driven by South African Local Government Association (SALGA) with its international partners – the Swedish Association of Local Authorities and Regions (SALAR) and is funded by Swedish Association for Local Authorities International Development Agency (SALA IDA). It's an annual programme which takes politicians (mayors, councillors) and administrators (municipal managers and heads of department) to educate them on democracy and governance issues. The purpose of the programme is twofold. Firstly it aims at providing support towards the consolidation of democracy in South Africa by developing skills of local officials and politicians on local democracy and governance. The LODLOG programme is aimed at creating a platform to share knowledge and perspectives between South African and Swedish local government officials. At a practical level, it is aimed at addressing capacity building at senior management level within 'project consolidate' municipalities and at the same time implement the 5-Year Local Government Strategic Agenda. Ultimately, this programme will be rolled out to all SADC countries through the United Cities and Local Government Association (UCLGA)

LODLOG is a four weeks formal contact / classroom lecture covering local governance and local democracy issues broadly. One week is held in South Africa and three weeks in

Stockholm (Sweden). Lecturers from Universities in South Africa and from Lund University in the South of Sweden and practitioners / consultants from both countries are involved in delivering formal lectures. A stronger component comprises of actual visits to Swedish County Councils and Local Municipalities which gives the programme a practical angle. The formal programme covers knowledge in theoretical and practical aspects of local democracy, good governance and delivery of municipal services, including aspects of political systems, citizens' participation, democratic values, gender, local development, HIV/Aids and many other topics. The programme has four themes which are covered in the following modules.

**Figure 10: Diagram on SALA IDA LODLOG programme**



From the above exposition, it can be deduced that education and training on the ethics of good government should be provided to both councillors and officials on a continuous basis so that such training does not risk being seen as just the flavour of the month.

#### **5.2.4 Exemplifying ethical behavior by municipal councilors and senior officials**

To strengthen good governance in the South African local government it is essential for senior municipal officials to personify the municipal service values and as such provide tangible role models for junior municipal officials to follow. Senior municipal officials show their juniors the right way of behaving at work. If unethical behaviour such as conflict of

interest exists at the top of the municipal hierarchy it is likely to permeate the entire municipal service. Rasheed and Olowu (1993:44) argue that the unethical conduct known to exist in Africa starts at the top of the political and public service leadership and flows down the ranks by example. Once the head gets rotten the body has no chance of escaping the cancer. For example, if political office-bearers and senior municipal officials, who are well paid, are engaged in the manifestations of bad governance, the attitude of the traffic officer to his / her job is likely to change drastically and he / she will see nothing wrong taking a bribe, for example, or to release a driver who violates a road sign. In this atmosphere all junior municipal officials discover illicit ways of obtaining money from their jobs.

In *Corrupt cities: a practical guide to cure and prevention*, Klitgaard, Maclean-Abaroa and Parris (2000: 79) argue that to break through the culture of corruption, experience indicate that frying big fish is essential. Big, corrupt actors must be named and punished so that a cynical citizenry is encouraged to believe and see that an anti-corruption strategy is more than just mere rhetoric. They further argue that it is important that a campaign against corruption is not confused with a political campaign, or a campaign against the opposition. Importantly, therefore, one of the first big fish should preferably come from the political party in power.

The manifestations of corrupt behaviour by municipal councillors and officials not only reduce the morale of many committed junior municipal politicians and officials but also negatively influence others in engaging themselves in similar practices. Ethical values and norms of the society, which have been widely respected, disintegrate immediately, particularly in a society which respects politicians and municipal employees. Thus, it can be argued that politicians and senior municipal officials must show the correct way of behaving at work to provide tangible role models for junior municipal officials.

### **5.2.5 Communication Media**

Pope (2000: 119) argues that without information there is no accountability. Information is power, and the more people who possess it, the more power is distributed. Access to information on the part of the people is fundamental to a nation's integrity system. Without it, democratic structures cannot operate as they should, and individuals are left unable to

enforce their rights perhaps not even knowing that their rights have been infringed upon. The main vehicle for taking information to members of the public is through an independent and free media. A free media ranks alongside an independent judiciary, as one of the twin powers that should not be held accountable to politicians. Both serve as powerful counter forces to corruption in public life. Reports by communication media are used to safeguard ethics and accountability amongst public officials. They do this by exposing scandals, mismanagement and corruption in the public sector. Rasheed and Olowu (1993) argue that the traditional values of honesty, diligence in work, probity and accountability should be used constantly in the communication media for educational and entertainment purposes. Such positive values should be frequently promoted in the communication media. The communication media such as television and radio have a great potential to contribute more in developing ethics and accountability, especially if government control is reduced and a more community-based approach can be used, for example, by freeing more air time to allow all stakeholders to state their views on the work behaviour of public officials.

The degree to which the media is independent is the degree to which it can perform an effective public watchdog function over the conduct of municipal councillors and officials. Just as the municipal council should keep the administration under day-to-day scrutiny, so should the media keep both the politicians and municipal officials carefully monitored. The media has a special role to play in combating corruption. Politicians and municipal officials may be more tempted to abuse their positions and state resources for personal gain if and when they are confident that there is no risk of public exposure and humiliation through the media. The media must as such not allow themselves to be muzzled by the corrupt politicians (Pope 2000: 119-120). Most of the scandals in local government in South Africa are exposed by the media. The watchdog bodies, also called the anti-corruption agencies, use the media's information as the basis for investigation.

#### **5.2.6 Strengthening the role of civil society**

Pope (2000: 247) further argues that an informed citizenry, aware of their rights and asserting them confidently, is a vital underpinning to a national integrity system. An apathetic public, ignorant of its rights in the face of administrative and political abuse, provides an ideal

breeding-ground for complacency and political and administrative corruption. Of primary importance is an awareness campaign, both of the damage that corruption is doing to the community and to families within it, and of the need for individual citizens to take appropriate action when they encounter it. Public opinion and attitudinal surveys are primary tools in giving the members of the public both a voice and the realisation that their opinions are valued and are taken seriously by others. Pope continues to argue that newspapers and radio stations are also specifically good vehicles: newspapers can run columns of complaints investigated, and publish the results of their enquiries together with the original complaint. Reaching an even wider audience are radio “talk-back” programmes, where representatives of civil society, or even the Public Protector, receive individual complaints on air and give advice. In this way, the advice given to a single person reaches others likely to encounter similar situations, giving them the opportunity to prevent them from happening.

Mafunisa (in Bozkurt and Moniza 1997: 196) is of the opinion that members of the public, specifically clients are sometimes effective sources of information about unethical practices such as bribery, fraud and corruption. When they are victimised by municipal councillors and officials, as in extortion, they have an incentive to demand retribution. (However, members of the public who benefit from corruption will, obviously, tend to keep quiet about it). Municipalities should encourage clients and the members of the public to report corrupt practices by issuing guarantees of anonymity, setting up hotlines (i.e. easy access telephone lines), getting testimonials from local political figures and encouraging citizen groups to act against corruption. As Klitgarrd, *et al* (2000: 62) argue, the citizenry can assist in combating corruption in many ways. The greatest enemy of corruption are members of the public. Citizens are wonderful sources of information about where corruption occurs. The mechanisms include systemic client surveys, focus groups, hotlines, call-in shows, village and borough councils, citizen oversight bodies for public agencies, the involvement of professional associations and educational programmes. As Mafunisa (2000: 79) argues, experience indicates that frying big fish is essential. Big, corrupt actors must be named and punished so that a cynical citizenry believes that an anti-corruption drive is more than words. Importantly, therefore, one of the first big fish should preferably come from the political party in power.

### 5.2.7 Professional associations

Professional associations include Institute of Local Government Management (ILGM). These associations also maintain a code of conduct that specifies the overall responsibility, interaction with clients and other professionals, and accountability requirements of its members. For example, the Institute of Local Government Management of South Africa (Information Pamphlet, in Mafunisa 2001: 332) influences training content and trends pertaining to local government. It has been instrumental in developing a relevant and up to date curriculum for local government management courses offered by some educational institutions. The Institute also organizes, for its members, periodic workshops on fundamental issues (including ethical ones) facing local government.

A member of the Institute for Local Government Management of South Africa (ILGM Code of Ethics,) signs a pledge that he / she shall uphold the values of the Institute and conduct himself / herself in his / her professional and personal capacity, in a manner that enhances the good repute of both the Institute as well as the profession of local government management as a whole. In doing this he / she shall be committed to: efficient, effective and democratic local governance and high standard of professionalism; uphold the personal values of honesty, propriety and integrity, objectivity, independence and impartiality, competence and duty of care as well as loyalty; and act in the best interest of the public, fellow members of the Institute, officials and colleagues, amongst others. Professional associations promote the development of good ethics and professionalism by providing training courses to their members. Training equips municipal councillors and officials with the skills to utilize limited resources effectively and efficiently. The codes of conduct of professional associations promote acceptable behaviour and accountability by setting guidelines that govern the work behaviour of members, hence municipal officials.

Citizens' groups are becoming more active in the fight against corruption. In this regard, Klitgaard, et al. (2000: 60), argue that Transparency International is a case example. Transparency International (TI) is a non-government organization founded in Berlin in 1993 "to do for corruption what Amnesty International does for human rights". TI has designed a

straightforward code of conduct (no bribery, honest bids, amongst others), which builds on previous work by the International Chamber of Commerce and the United Nations. In Ecuador, TI and the government have applied this code of conduct to both government officials and the private firms that compete for public contracts. The firms promise not to offer bribes, and the government employees promise not to solicit or accept them.

### **5.3 CONCLUSION**

From the foregoing exposition it is clear that constitutional strategies, the communication media, education and training in ethics of efficient and effective government, exemplary ethical conduct by senior politicians and senior municipal officials, and an anti-corruption strategy for local government, including codes of conduct for councillors and officials are essential to ensure that municipal employees fulfill their obligations in an ethical manner and that social values are protected by these strategies against possible unethical conduct such as self-dealing. For this reason, Holtzhausen (2007: 156) argues that there is a need for guidelines against which public employees can measure their behaviour. To ensure an honest government, a code of conduct which can guide and direct the actions of public employees is essential; otherwise it would be virtually impossible to define what constitute unethical conduct. The drafting of the code of conduct for municipal councillors and officials in South African local government is an indication of the seriousness of government in fighting unethical conduct among municipal employees.

The chapter identified and explained different strategies for promoting good governance in the South African local government. It is concluded that government should also clarify discretionary powers to create a conducive environment within which constitutional bodies can function. The government should not drag its feet in implementing the recommendations of the anti-corruption agencies, whoever is involved. Failure to implement the recommendations of the anti-corruption agencies damages the image of these agencies. Ill-advised appointments, patriotism in service delivery; lack of public participation (ineffective client interface); lack of transparency; poor service delivery due to lack of skills, nepotism, lack of professional ethics and fairness in so far as deficient management appointments, lack of the rule of law all have a negative impact towards service delivery.

## CHAPTER SIX

### CONCLUSION AND RECOMMENDATIONS

Bad governance in African local authorities has created a crisis of confidence in the actions of governments. People no longer believe that their governments will make good their promises to deliver services. The majority of people are constantly faced with the daily prospects of a lack of health services, sanitation services, clean water, roads, housing and starvation because state institutions have become paralysed by the manifestations of unethical conduct such as corruption and thus fail to deliver.

Africa currently is a continent characterised by unacceptable levels of maternal and infant mortality, squalor, massive poverty, disease and hopelessness. However, in this same situation, a few continue to enjoy ultra-modern standards of living. These are the few with power to “divert” funds, to bribe, to influence decision-making processes for their own benefit and to enjoy special privileges to the exclusion of the majority. This perpetuates inequalities in the distribution of power, wealth and opportunity. The few then create difficulties to prevent any necessary changes and hence work to preserve the status quo (Frimpong and Jacques 1999: 125). It is common to hear about funds meant for social services being stolen, embezzled or diverted to some frivolous projects that would benefit some public officials.

In the Republic of South Africa there appear to be many problems with regards to efficient and effective service delivery by government departments. The system of social security is in “crisis”, and is characterised by inefficiency in service delivery as well as fraud and corruption. Whilst some problems are specific to welfare, many relate to the transformation of the public service as a whole. These general problems which affect the state’s ability to deliver effective programmes have been identified as, *inter alia*, outdated and inefficient financial management, administrative systems, organisational structures and gross inefficiencies and loopholes which are exploited by corrupt public officials (Camerer, 1997).

The background of the study, statement of research problem, motivation for the study, objectives of the study, preliminary literature study, research methodology, scope of the study and outline of chapters are provided in Chapter One. The concepts of government and governance are also defined in this chapter to establish a common ground and understanding for discussion.

Chapter Two examines the concept of governance as defined by different scholars and institutions, including the World Bank. In order to gain a broader perspective towards understanding the concept of governance, other related concepts such as access to information, openness, transparency, inclusiveness, public participation, accountability, democracy and ethics are also defined. In addition, dimensions of governance like political, economic, technical and institutional are examined. These dimensions like the other related concepts mentioned above, lay a good foundation for further discussion, analysis, conceptualization and a broader understanding of governance. Characteristics, principles of governance as well as the various African commitments to governance are also unpacked and explored.

The constitutional, legislative and policy framework that underpin governance at the local government sphere are identified and discussed in Chapter Three. An attempt is also made to give a historical legal perspective from pre- to post democratic South Africa. The chapter also reflects on aspects of governance and mechanisms for enforcing governance, including the so-called watch-dog institutions - also known as institutional democracy institutions as envisioned in constitutional and legislative frameworks that include the *Constitution of the Republic of South Africa, 1996* and *Local Government: Municipal Finance Management Act, 2003* (Act 56 of 2003). The constitutional and legislative frameworks are discussed to also illustrate how they impact on governance at the local sphere of government.

Chapter Four highlights some negative manifestations, and their consequences, on good governance in the Local Government in South Africa. Manifestations of poor governance in Local Government discussed in this chapter include corruption, bribery and kickbacks, poor financial management, poor service delivery, protest action and riots due to poor communication and lack of public participation (ineffective client interface), lack of

transparency, gravy trains, nepotism and lack of professional ethics and fairness in so far as deficient management / ill advised appointments and general lack of the rule of law are concerned. The consequences of poor governance in local government include high incidents of violence, decline in municipal service payments, deterioration in service delivery and negative impact on local business: the case of Khutsong and economic and social consequences. It is argued that municipal functionaries must be able to identify the manifestations of bad governance if they are to serve as effective whistle-blowers.

The national integrity system framework, as a tool to enhance good governance in the local government sphere, is discussed in Chapter Five. The national integrity system refers to various strategies for instilling good governance in municipal functionaries. These strategies include an anti-corruption strategy for local government (also known as “a local government integrity system”), constitutional strategies, education and training in ethics strategy, the media, strengthening of citizens’ involvement and exemplary ethical behavior by municipal councilors and senior municipal officials. Constitutional strategies include the Public Service Commission, the Auditor-General, the Public Protector, Special Investigating Unit and National Prosecuting Authority. The chapter also argues that preventing unethical conduct, such as corruption, assists towards raising municipal revenues, improving service delivery, stimulating public confidence and community involvement in public affairs.

Against the background of the foregoing exposition, it may be concluded that municipalities in South Africa are characterized by the manifestations of bad governance. In an attempt to combat bad governance such as conflict of interest, the judiciary must consider increasing penalties for such offences which will serve as a deterrent while laws enforcement agencies should increase the probability of being caught. The government should also clarify discretionary powers so as to create a conducive environment within which constitutional bodies will function. The government should not drag its feet with regards to implementing the recommendations of the anti-corruption agencies, no matter who is involved as failure to implement such recommendations damages the image of the said agencies.

To promote good governance in the South African local government and thus improve service delivery, the following should seriously be considered;

- assessment of investigative capacity that currently exists within the DPLG'S Anti-Corruption Unit
- establishing a web-based Corruption Management Information System (CMIS), within the DPLG's Anti-Corruption Unit, for data collection and analysis
- education and training on ethics of good government should be provided to both councillors and officials on a continuous basis
- an in-depth communication strategy on professional ethics, public service values, the nature of corruption and how to prevent and report it. The Minister of DPLG, MECs of local government in each province and mayors, in cooperation with the Fraud and Corruption Unit, should drive this process.
- As Klitgaard, Maclean-Abaroa and Parris (2000: 79) argue, experience indicates that frying big fish is essential. Big, corrupt actors must be named and punished so that a cynical citizenry begins to believe that an anti-corruption drive is more than mere sloganeering. Importantly, therefore, one of the first big fish should preferably come from the political party in power as part of a process to show that everybody is equal before the law.

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