

**COMPARING ANTI-CORRUPTION STRATEGIES IN
SOUTH AFRICA'S WESTERN AND EASTERN CAPE
PROVINCES**

BY

**SIZATHU TOSCA CWATI
(*****)**



**A Research Report submitted to the School of Government, University
of the Western Cape, in partial fulfillment of the requirements for the
degree of Master of Public Administration**

November 2004

Supervisor: Professor John Bardill

DECLARATION

I declare that this research report is my own, unaided work, except where due acknowledgements are shown in the text. It is submitted in partial fulfillment of the requirements of the degree of Master of Public Administration at the School of Government, Faculty of Economic and Management Sciences, University of the Western Cape, Bellville.

I further testify that it has not been submitted for any other degree at any other university or institution of higher learning.

.....

Sizathu Tosca Cwati

.....

Date



DEDICATIONS

I dedicate this study to my family members especially those who supported me throughout the academic journey.

To my parents for their unwavering love and support

To my late sisters, may your souls rest in peace.

To Liziwe Jacobs for her love and support

To all those who contributed towards the completion of this research report.



ACKNOWLEDGEMENTS

I am grateful to my supervisor, Professor J. Bardill for his guidance and encouragement throughout the research process.

Dr. K. J Maphunye for his assistance and advice.

Mr. Hennie van Vuuren, Senior Researcher: Anti-Corruption Strategies, Institute for Security Studies, for his contributions and support

Mrs. Roney Ogle, Director: Forensic Audit Component (Provincial Administration of the Western Cape) for giving me valuable information for this report.

Dr. M. E. Tom, Director-General of the Eastern Cape (also chairman of the Provincial Anti-Corruption Forum) for giving me valuable information for this report.

Mr. J. D. Morkel, Western Cape Provincial Director: Personnel Management: Corporate Services, for providing valuable information

Mr. R. Kitshoff, Director: Public Service Anti-Corruption Unit, Department of Public Service and Administration, for this support.

My parents, Mr. and Mrs. Cwati, for their encouragement

Ms. Liziwe Jacobs, lady close to my heart, for her moral support

ABSTRACT

In its new democracy, South Africa is busy making endeavours to transform and correct the wrongs and problems of the past. In the process it is vital that obstacles to development such as corruption in the public sector should be uprooted as they inhibit quality service delivery and further damage the name of the public service.

This study compares anti-corruption strategies in South Africa's Western and Eastern Cape provinces, in particular by looking at both the achievements and limitations that have been experienced. The focus area is the provincial administrations in both provinces. In order to contextualise the evaluation of the anti-corruption strategies pursued by the two provincial administrations, the study also includes an examination of the role of provinces in general in combating corruption.



The research methods employed include a detailed survey of documentation published by the provincial governments' anti-corruption agencies, as well as reports by civil society organizations focusing on corruption in the public sector. The study also draws on semi-structured interviews conducted with key stakeholders in the two provinces.

The study concludes by summarizing the successes and limitations of the two provincial administrations in dealing with corruption. A number of practical recommendations are provided to strengthen the future design and implementation of anti-corruption strategies.

The empirical research for this research report was carried out in 2003 before the national and provincial elections of 2004.

ABBREVIATIONS

ACF	Anti-Corruption Forum
ACDP	African Christian Democratic Party
ANC	African National Congress
DG	Director General
DP	Democratic Party
DPSA	Department of Public Service and Administration
FICA	Financial Intelligence Centre Act
GDP	Gross Domestic Product
HDI	Human Development Index
ID	Independent Democrats
IDASA	Democratic Institute of South Africa
IMT	Interim Management Team
ISS	Institute for Security Studies
MEC	Member of the Executive Committee
NAC	Network Against Corruption
NLP	New Labour Party
NNP	New National Party
PAC	Pan African Congress
PAIA	Promotion of Access to Information Act
PAJA	Promotion of Administrative Justice Act
PAWC	Provincial Administration of the Western Cape

PCAA	Prevention of Corrupt Activities Act
PDA	Protected Disclosure Act
PEC	Provincial Executive Council
PFMA	Public Finance Management Act
PSA	Public Service Act
PSAM	Public Service Accountability Monitor
PSC	Public Service Commission
SABC	South African Broadcasting
SAPS	South African Police service
UDM	United Democratic Party
WCPA	Western Cape Provincial Administration



TABLE OF CONTENTS

DECLARATION.....	i
DEDICATIONS.....	ii
ACKNOWLEDGEMENTS.....	iii
ABSTRACT.....	vi

CHAPTER ONE

1. BACKGROUND TO THE STUDY

1.1 INTRODUCTION.....	1
1.2 STATEMENT OF THE RESEARCH PROBLEM.....	5
1.3 HYPOTHESIS.....	7
1.4 PURPOSE AND OBJECTIVES OF THE STUDY.....	8
1.5 LITERATURE REVIEW.....	8
1.6 TYPES OF CORRUPTION.....	14
1.7 RESEARCH METHODOLOGY.....	16
1.8 SIGNIFICANCE OF THE STUDY.....	18
1.9 ORGANIZATION OF THE STUDY.....	18
1.10 ANTI-CORRUPTION LEGISLATION.....	19

CHAPTER TWO

2. THE ROLE OF PROVINCES IN DEALING WITH CORRUPTION AND BACKGROUND DETAIL ON THE EASTERN AND WESTERN CAPE PROVINCES

2.1 INTRODUCTION.....	21
2.2 WHAT IS THE GENERAL ROLE OF THE PROVINCES IN FIGHTING CORRUPTION?.....	22
2.3 THE EASTERN CAPE PROVINCE.....	26
2.4 THE WESTERN CAPE PROVINCE.....	31

CHAPTER THREE

3. ANTI-CORRUPTION STRATEGIES IN THE EASTERN CAPE PROVINCE

3.1 INTRODUCTION.....	37
3.2 THE ANTI-CORRUPTION FORUM (ACF).....	39

3.2.1	<i>THE PURPOSE/MISSION OF THE ANTI-CORRUPTION FORUM....</i>	40
3.2.2	<i>OBJECTIVES OF THE FORUM.....</i>	40
3.2.3	<i>FUNCTIONS OF THE ANTI-CORRUPTION FORUM.....</i>	41
3.3	THE NETWORK AGAINST CORRUPTION (NAC).....	43
3.3.1	<i>THE PURPOSE/MISSION OF THE NETWORK AGAINST CORRUPTION</i>	44
3.3.2	<i>OBJECTIVES OF THE NETWORK AGAINST CORRUPTION.....</i>	45
3.3.3	<i>FUNCTIONS OF THE NETWORK AGAINST CORRUPTION.....</i>	45
3.4	AN OVERALL EVALUATION OF ANTI-CORRUPTION STRATEGIES IN THE EASTERN CAPE PROVINCE.....	47
3.5	WHAT MECHANISMS ARE CURRENTLY IN PLACE TO FIGHT CORRUPTION IN THE PROVINCE?.....	51
3.6	NATIONAL GOVERNMENT INTERVENTIONS.....	53
3.7	CHAPTER SUMMARY.....	56

CHAPTER FOUR

4. ANTI-CORRUPTION STRATEGIES IN THE WESTERN CAPE PROVINCE

4.1	INTRODUCTION.....	58
4.2	THE DIRECTORATE: FORENSIC AUDIT.....	60
4.2.1	PURPOSE AND PRIORITIES OF THE WESTERN CAPE FORENSIC AUDIT.....	61
4.2.2	ORIGINS, ORGANIZATION AND RESPONSIBILITIES OF FORENSIC AUDIT UNIT.	61
4.3	AN EVALUATION OF ANTI-CORRUPTION STRATEGIES IN THE WESTERN CAPE PROVINCE.....	65
4.4	CHAPTER SUMMARY.....	69

CHAPTER FIVE

5. CONCLUSIONS AND RECOMMENDATIONS

5.1	CONCLUSIONS.....	71
5.2	RECOMMENDATIONS.....	73

BIBLIOGRAPHY.....	76
--------------------------	-----------

CHAPTER ONE

BACKGROUND TO THE STUDY

1.1 INTRODUCTION

Corruption is rife in the new South Africa. This is not because there was no corruption in the apartheid era, but because in the context of our democracy there is a greater awareness of the need for accountability and transparency (Goba, 1999:227). Goba further argues that:

“public officials in our new political context are expected to demonstrate traits of public honesty and accountability. But unfortunately, because many of our newly appointed officials have not received proper training for the positions they hold, the exposure to corrupting influences is very high. It is therefore not surprising that we have serious problems of corruption in the public sector” (Goba, 1999:228)

The Code of Conduct for the Public Service states that an employee should not use her/his official position to obtain private gifts or benefits for her/himself during the performance of her/his official duties nor should s/he accept any gifts or benefits when offered as these may be construed as bribes¹.

¹ See at www.psc.gov.za/docs/guidelines/code.html

In different government portfolios we see evidence of public officials accepting bribes and misusing government resources to advance their own personal wealth. An obvious example is the Arms Deal. According to Goba (1999:228):

“Corruption is so bad that public confidence in government is being eroded every day. Part of the corruption is promoted by the prevailing entitlement mentality that informs the behaviour of many black public officials. But there is also a sinister tendency to emulate some bureaucrats of the apartheid regime who were also guilty of corruption. ‘If they engaged in corruption why shouldn’t we’. This mentality must be challenged, for it promotes moral disregard and a breakdown of good governance”.



Corruption is often defined as a disease or sickness of our society. Sangweni and Balia (1999: viii) note that:

“in the context of understanding socially deviant behaviour, we observe that in our rapidly changing country social defects are becoming culturally patterned to such an extent that they are no longer considered contemptible or obnoxious. Our culture has, regrettably, enabled us to live with a defect without necessarily becoming ill. We all collaborate in a ‘consensual validation’ of our social norms and concepts.”

Human beings require social acceptance and, as a result, people sometimes engage in certain practices not because these practices are good for the society but because most people are doing it. Sangweni and Balia (1999:viii) further argue that:

“with the presence, practice and proliferation of corruption in our society, we are essentially dealing with what psychoanalyst Erich Fromm would call a ‘socially patterned defect’. Because so many of our kith and kin share it with others, they are not aware of it as a defect, and their security is not actually threatened by the experience of being different, of being outcasts, so to speak”.

Their behaviour may change so as to fit with others, forgetting about what is morally wrong or right.



It is against this background that the National Government must take further steps in fighting corruption. Provincial and local governments should also commit themselves in fighting the problem of corruption. If the provincial governments, in particular, could be more serious about corruption, corruption could be curbed, as the evidence² suggests that most corruption cases take place in the provinces. However, most provincial governments seem to be having difficulties in addressing this problem. This might be because the senior public officials who are supposed to play the lead against corruption are also corrupt. On the other hand, it might be the case that the public officials and political

² See the Country Assessment Report: South Africa by the Department of Public Service and Administration and the United Nations Office on Drugs and Crime, 2003: pp. 120.

office-bearers are prepared to sacrifice development and public trust rather than exposing their colleagues. Ramaite (1999: 164) notes that:

“it is significant for anti-corruption policy makers, law enforcement officers and judicial officers to understand the relationships within which acts of corruption take place. It is also important to know exactly what interests are served within the relationship in which acts of corruption take place. Lack of understanding of these issues has often led to misplaced conceptions about corruption.”

It is sometimes wrongly stated, for example, that corruption is a difficult crime to control because it does not have an identifiable victim (Ramaite, 1999: 164). The argument put forward is that since there are no identifiable victims, then whose interests are directly affected by acts of corruption? There is often no one to initiate investigations and to ensure that the matter is pursued to its final conclusion. Yet corruption does have identifiable victims, who do (or at least should) have an interest in ensuring that acts of corruption and their perpetrators are dealt with by the law. There is a common tendency of thinking that the money that is being misused in government departments is the money that comes from government, forgetting that it comes from the taxpayers' pocket. As identifiable victims, the taxpayers have a responsibility of blowing the whistle and ensuring zero tolerance towards corruption.

1.2 STATEMENT OF THE RESEARCH PROBLEM

South Africa's complex political economy has given rise to several forms of corruption.

According to the Public Service Commission (2001: 9):

“There are many causes including the fact that the new social forces governing South Africa have historically been excluded from the economy, but now control state power in a context where the state is a major mechanism of accumulation. Anxious to deliver services to previously excluded and marginalized people, the new administrative cadre finds itself stifled by a bureaucratic, rule-bound public system. The state should not be bulldozed into panic reactions but it should, when appropriate, root out corruption through swift decisive action. Bribery, fraud, nepotism, and systematic corruption are some of the forms corruption takes in contemporary South Africa.”

Ebrahim (1999:58) notes that:

“corruption has been identified as a scourge capable of threatening our new democracy. Reports on incidences of corruption have become a recurring theme in the media, creating the impression that the new transforming administration of the public service is corrupt and that the rot is setting in. There has been an outcry from civil society, the media, and the public, together with a growing demand that government should prevent this issue from becoming an all-consuming problem.

At the same time, there is a growing realization that we need to get to grips with this phenomenon if we are to address it. Fortunately, government is now showing signs of taking the lead in this regard.”

The Constitution of South Africa (Act 108 of 1996) provides the legal basis for combating corruption, promoting good governance and moving away from our apartheid and colonial past. Various pieces of legislation that explicitly address the issue of corruption have been developed and an anti-corruption strategy is becoming increasingly prominent at the national, provincial and local government levels in South Africa. The Government has introduced key legislation such as the Protected Disclosure Act 26 of 2000, the Promotion of Access to Information Act 2 of 2000, the Financial Intelligence Centre Act 38 of 2001, the Promotion of Administrative Justice Act 3 of 2000 and the introduction of the new and improved Prevention of Corrupt Activities Act 12 of 2004³. Furthermore, institutional capacity has been established at the national level to complement basic police work, through such institutions such as the Public Protector, the National Prosecuting Authority, the Special Investigating Unit, the Public Service Commission, the Financial Intelligence Centre and the Auditor General. These institutions, individually and collectively, are reaching levels of maturity and efficiency which has provided the country with strong anti-corruption capacity.

However, one area that remains relatively under-explored in academic research is the role of provinces in dealing with the problem of corruption. The Western and Eastern Cape

³ These Acts are explained briefly towards the end of this section

provinces are vastly different in socio-economic development, despite their geographic proximity. The Eastern Cape is plagued by allegations of corruption while the Western Cape appears to be in a relatively better position.

The key research problem of this study, therefore, concerns the different approaches followed by the Eastern and Western Cape Provinces in tackling the problem of corruption.

The key questions for this research include:

- What is it that differentiates the perception of corruption in these two provinces?
- What are the historical reasons for this?
- To what extent are these provinces affected by corruption?
- How effective are their anti-corruption strategies?
- What are the achievements and limitations in their endeavour to fight corruption?
- What challenges and constraints have been encountered?

1.3 HYPOTHESES

This study is based on the following hypotheses:

- That provinces in general are not doing enough to deal with corruption.
- That, although the Eastern Cape has taken bolder steps to involve stakeholders in fighting corruption than the Western Cape, many of these initiatives have been still-born and less effective than those adopted in the Western Cape.

1.4 PURPOSE AND OBJECTIVES OF THE STUDY

The main purpose of the study is to analyse the effectiveness of the anti-corruption strategies of both the Eastern and Western Cape provinces.

More specifically the objectives of this study are:

- To examine the role of provinces in general in dealing with corruption so that this study could provide insight into what is anticipated from provinces in fighting the problem.
- To describe the situation regarding corruption in both the Western and Eastern Cape Provinces.
- To examine and compare the Anti-Corruption Strategies in the two provinces.
- To identify and analyse the achievements, limitations and constraints pertaining to the formulation and implementation of anti-corruption strategies in the two provinces.
- To provide practical recommendations for improving the fight against public service corruption in the two provinces.

1.5 LITERATURE REVIEW

The word corruption is used to refer to a dishonest, bribable, fraudulent or dishonourable action by a political office-bearer, public official or other person (Witgaard in Cloete, 1996: 28). Witgaard further notes that:

“Every such corrupt action will be an unaccountable action. Thus it is obvious that accountable government and public administration will have to be uncorrupted. Therefore it is essential that steps should be taken to prevent the development of a culture of corruption. Where there is a custom of giving gifts – even free lunches – to officials or governmental functionaries, there is a real danger that a culture of corruption could develop. The prevention of the development of a culture of corruption requires consistence vigilance against corruptive misdeeds committed by citizens as well as public functionaries.”

It is for this reason that strategies to fight corruption should be developed to curb the problem in the public service, thereby enabling citizens to have more confidence in the public sector.




According to Ramaite (1999:161):

“In South Africa, corruption at present is narrowly defined in the Corruption Act of 1992 as the giving, offering, or agreeing to give a benefit to an official or agent and the receiving, obtaining or agreeing to receive or attempting to obtain a benefit by a public official or agent. The word benefit is not defined in the Act but is intended to cover any kind of favour, whether financial or non-financial, which is not legally due”

Ramaite further argues that:

“In its broad context, corruption involves abuse of authority by persons in positions of power, authority or trust. It is a perversion of integrity or fidelity of a person in relation to the discharge of his or her duties. The act or conduct in question is deplorable and morally reprehensible precisely because it is dishonest or unfaithful”.

According to Gildenhuis (1991:69) corruption refers unequivocally “... to blatant and deliberate dishonesty in the use of public money and goods”. The incidence of corruption violates and is incongruous with public order in any public department. It can essentially destroy the very fabric of public order.  The maintenance of public order exalts common interests over the personal interests of the public officials, management and politicians; therefore the encroachment of common interests for personal advantage is corrupt. To understand our country’s approach to fighting corruption, it is important to also understand that we have a proud history of mobilising ordinary citizens, civil society and international communities to fight past oppression and corruption (Public Service Commission Newsletter, 2001: 1). The commission further notes that “fundamental to our approach to fighting corruption in contemporary society is to again mobilize ordinary citizens, civil society and the international community”.

Corruption tends to flourish where governance is weak, and institutions of accountability (such as Parliament, the courts and institutions supporting democracy) are marginalized.

A “culture of corruption” undermines public confidence in state institutions. Corruption distorts policy, leads to poorer public services and infrastructure, reduces resources available for social spending, and creates budgetary problems. Corruption distorts the political process, substituting patron-client relationships for policy-focused political competition (www.Parlcent.ca/anticorruption/index.html). Corruption also damages the name of the public service and it is essential that the corrupt officials are identified and be taken out of the service before they damage the reputation of the public service. Ramaite (1999:173) notes that

“The most significant and basic steps in fighting corruption is the proper monitoring of all the functions, activities and conduct of all officials, no matter how honest or virtuous an official appears to be, during the course of their exercise of government authority. Particular attention must be paid to identifying those acts, which are suspect, because of their specific and overall adverse effect on the quality of service and on the capacity of the institution’s ability to deliver quality service in accordance with the public’s expectation. A properly managed system or mechanism for assessing, monitoring and reporting must be developed within the institution.”

Smith (1999:193) states that “combating corruption to improve effectiveness requires political commitments, practical anti-corruption strategies, stamina to sustain such campaigns, the allocation of adequate resources to such campaigns, and the establishment

of integrity systems at national, provincial and local levels”. In the South African context, Smith (1999:194) further argues that:

“Fighting corruption is not an end in itself but a means of achieving a broader goal of effective and accountable government. Corruption may contribute significantly to ineffective services. Improving effectiveness and at the same time eliminating, or at least drastically reducing, corruption requires urgency and seriousness in implementing the policy, principles and prescripts of the White Paper on Transforming Public Service Delivery 1997, improving accountability and introducing evidence-based planning.”

To fight corruption we need to incorporate all the relevant stakeholders to play their part in making sure that the problem of corruption is curbed. It should not only be the National Government that should be concerned about corruption. Provincial and local governments should also take the lead in coming up with initiatives to fight corruption in their spheres of operation. When the problem of corruption overwhelms the provincial government, as it did in the Eastern Cape, the National Government must intervene and find solutions. With respect to the Eastern Cape, President Mbeki pointed out in his 2003 State of the Nation Address (2003:12) that:

“”In cooperation with the Provincial Government, a multi-disciplinary national team is working in the Eastern Cape to contribute to the solution of the problem facing this province. This work will continue with the necessary speed and

intensity. It will also help the government as a whole to understand what needs to be done to improve our overall system of governance. The work being done in the Eastern Cape will also assist us greatly to further intensify our offensive against the cancer of corruption within the public service. This work will be intensified in all three spheres of government, building on the experience accumulated within departments and through the efforts of such institutions as the Public Protector, the Auditor General and the Public Service Commission.”

In the context of fighting corruption in developing countries, Osborne and Plastrik (1997:239) suggest that:

“the best defences against many types of corruption are full information, consequences for performances, and prosecution of illegal activity. If everyone in a system faces consequences when performance suffers, outright stealing will trigger those consequences, because it will drive costs up.”

When fighting corruption the first important principle is for the people involved to trust each other and most importantly to be prepared to fight with a team spirit. The prevailing challenge is to know the extent of commitment of the people that are mandated to fight corruption as they may pretend to be against corruption whereas they are in fact the beneficiaries of corruption.

In summarizing the literature review, the definition, manifestation of corruption and what corruption entails has been explored, as it is necessary to first bring in insight regarding the issue of corruption. It has been noted that to improve effectiveness requires political commitment. The incorporation of all the stakeholders to play their part in making sure that the problem of corruption is curbed became one of the points raised in the literature review. The review also touched on the National Government intervention. The points raised above will further play a role in the development of this research paper.


1.6 TYPES OF CORRUPTION

In order to develop a Public Service Anti-corruption Strategy it is important to understand the various forms in which corruption manifests itself in the public service and elsewhere in society. The following examples illustrate some of the various manifestations⁴:

- *Bribery*: Bribery involves the promise, offering or giving of a benefit that improperly effects the actions or decisions of a public servant. This benefit may accrue to the public servant, another person or an entity. A variation of this manifestation occurs where a political party or government is offered, promised or given a benefit that improperly affects the actions or decisions of the political party or government. *Example*: A traffic officer accepts a cash payment in order not to issue a speed fine.

⁴ Adapted from Department of Public Service and Administration (DPSA) , Public Service Anti-Corruption Strategy: January 2002, pp. 7

- ❑ *Embezzlement*: this involves theft of resources by persons entrusted with the authority and control of such resources. *Example*: Hospital staff stealing medicines and selling these to private pharmacists.
- ❑ *Fraud*: this involves actions or behaviors by the public servant, other person or entity that fools others into providing a benefit that would not normally accrue to the public servant, other persons or entity. *Example*: A public servant registers a fictitious employee in order to collect the salary of that fictitious employee.
- ❑ *Extortion*: this involves coercing a person or entity to provide a benefit to a public servant, another person or an entity in exchange for acting (or failing to act) in a particular manner. *Example*: A public health official threatens to close a restaurant on the basis of fabricated health transgression unless the owner provides the public health official with regular meals.
- ❑ *Abuse of power*: this involves a public servant using his/her vested authority to improperly benefit another public servant, person or entity (or using the vested authority to improperly discriminate against another public servant, person or entity). *Example*: During a tender process but before actual selection of a successful contractor, the head of department expresses his/her wish to see the contract awarded to a specific person.
- ❑ *Conflict of interest*: this involves a public servant acting or failing to act on a matter where the public servant has an interest or another person or entity that stands in a relationship with the public servant has an interest. *Example*: A public servant considers tenders for a contract and awards the tender to a company of which his/her partner is a director.

- *Insider trading/ Abuse of privileged information:* This involves the use of privileged information and knowledge that public servants possess as a result of his/her office to provide unfair advantage to another person or entity to obtain a benefit, or to accrue a benefit himself/herself. *Example:* A local government official has, as a result of his/her particular office, knowledge of residential areas that are to be rezoned as business areas. He/She informs friends and family to acquire the residential properties with a view to selling these as business properties at a premium.
- *Favouritism:* This involves the provision of services or resources according to personal affiliations (for example ethnic, religious, party political affiliations, etc.) of a public servant. *Example:* A regional manager in a particular province ensures that only persons from the same ethnic group are successful in tenders for the supply of foods. 
- *Nepotism:* This involves a public servant ensuring family members are appointed to public service positions or that family members receive contracts from state resources. This manifestation is similar to conflict of interests and favouritism. *Example:* A head of department appoints his/her sister's child to a position even when more suitable candidates have applied for the position.

1.7 RESEARCH METHODOLOGY

The study uses both documentary sources and interviews with key role players. Documentary sources include documentation published by the Department of Public

Service and Administration, the Public Service Commission and the provincial governments' anti-corruption agencies, as well as reports by civil society organizations focusing on corruption in the public service such as the Public Service Accountability Monitor's "Government Corruption From the Inside" (Allan et al., 2002). These documents provide details about the strategies in place, as well as information on the operations of the anti-corruption agencies in both provinces.

This researcher further interviewed (using semi-structured interviews) relevant people from the provincial government anti-corruption agencies of both provinces. The aim of the interviews was to elicit additional information, in particular about issues and questions not covered in the published documents. In the case of the Western Cape province, the Provincial Director: Forensic Audit (Mrs. Renay Ogle) was interviewed concerning the functions and operations of the agency and other related information (interview, 17:02:03). The Director-General of the Eastern Cape Province in the Office of the Premier (who is the chairman of the Provincial Anti-Corruption Forum) was also interviewed in an attempt to obtain information regarding the situation in the province. Experts in anti-corruption strategies from civil society organizations such as the Institute for Security Studies in Cape Town and the Public Service Accountability Monitor in Grahamstown were also interviewed to obtain their views on the provincial anti-corruption strategies in place in both the Western and Eastern Cape provinces.

1.8 SIGNIFICANCE OF THE STUDY

This study is significant in the following ways: first, it will identify the fundamental obstacles to effectively dealing with the problem of corruption in these two provinces. Second, by exposing the problems, new ways of overcoming them will be considered in order to fight corruption more successfully. Third, this research should contribute to ongoing debates and research in the media and academic journals regarding anti-corruption initiatives in provinces and nationally. Lastly, this study should also contribute to policy development and legislation designed to curb corruption.

1.9 ORGANIZATION OF THE STUDY



The study is organized into five chapters as follows: -

Chapter One: provide an introduction and background.

Chapter Two: examines the role of provinces in general in dealing with corruption and presents a brief background of the Eastern and Western Cape provinces.

Chapter Three: examines and assesses the Eastern Cape anti-corruption strategy.

Chapter Four: examines and assesses the Western Cape anti-corruption strategy.

Chapter Five: summarizes the findings of the study, presents conclusion and provides practical recommendations for improving the formulation and implementation of anti-corruption strategies.

1.10 ANTI-CORRUPTION LEGISLATION

Protected Disclosures Act 26 of 2000

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. It also provides for the protection of employees who make a disclosure which is protected in terms of this Act.



Promotion of Access to Information Act 2 of 2000

This act gives effect to the constitutional right of access to any information held by the State and any information that is held by another person and that is required for the exercise or protection of any right; and to provide for matters connected therewith.

Financial Intelligence Centre Act 38 of 2001

This act establishes a Financial Intelligence Centre and a Money Laundering Advisory Council in order to combat money laundering activities. It also imposes certain duties on institutions and other persons who might be used for money laundering purposes, and

amends the relevant sections of the Prevention of Organised Crime Act, 1998, and the Promotion of Access to Information Act, 2000.

Promotion of Administrative Justice Act 3 of 2000

This act gives effect to the right to administrative action that is lawful, reasonable and procedurally fair and to the right to written reasons for administrative action as contemplated in section 33 of the Constitution of the Republic of South Africa, 1996.

Prevention of Corrupt Activities Act 12 of 2004

This legislation provides (i) for the strengthening of measures to prevent and combat corruption and corrupt activities; (ii) for the offence of corruption and offences relating to corrupt activities; (iii) for investigative measures in respect of corruption and related and related corrupt activities; (iv) for the establishment and endorsement of a Register in order to place certain restrictions on persons and enterprises convicted of corrupt activities relating to tenders and contracts; and (v) for extraterritorial jurisdiction in respect of the offence on corruption and offences relating to corrupt activities. The act also places a duty on certain persons holding position of authority to report certain corrupt transactions.

CHAPTER TWO

THE ROLE OF PROVINCES IN DEALING WITH CORRUPTION AND BACKGROUND DETAIL ON THE EASTERN AND WESTERN CAPE PROVINCES

2.1 INTRODUCTION

It is the initiative of the democratic government of South Africa to fight and root out corruption in its widest sense (Matomela, 2000:1). The government has adopted a proactive approach to combat corruption, and to promote the government's constitutional obligations, including transparency, clean government, and efficient service delivery.

According to Smith (1999:192):



“combating corruption to improve effectiveness requires political commitments, practical anti-corruption strategies, stamina to such campaigns, and the establishment of integrity systems at national, provincial and local levels. Politicians cannot afford to pay lip service to combating corruption. They have to become champions of the anti-corruption campaigns”.

This chapter will examine the general role of the provinces in fighting corruption. It will also provide a brief history and background detail on the Eastern and Western Cape provinces.

2.2 WHAT IS THE GENERAL ROLE OF THE PROVINCES IN FIGHTING CORRUPTION?

In terms of Sections 114 and 132 of the South African Constitution, provincial legislatures have the responsibility to maintain effective oversight and to ensure the accountability of the Executive and all other organs of state in the province. Section 114 (2) of the Constitution obliges the legislatures to create a legal framework to prevent corruption and promote government's accountability, exercise oversight over government departments, and provide a forum for questioning where members of the executive account for their actions.



The provincial legislatures can only fulfill their constitutional oversight role if these have accurate and reliable information at their disposal regarding the level of accountability of public officials and the performance of executive members responsible for the efficient running of departments. It would be naïve and remiss of the legislatures to take the accounts of departmental performance delivered by representatives of these self-same departments at face value. For this reason it is crucial that the legislatures and their committees avail themselves of all of the avenues open to them to obtain accurate information on the performance of officials and of departments. According to the Canadian Parliamentary Centre⁵ “corruption tends to flourish where governance is weak,

⁵ See www.parlcent.ca/anticorruption/index.html, “Parliamentary Centre and Anti-Corruption”. The Parliamentary Centre is an independent, not-for-profit organization. It is not part of the Parliament in Canada, though it works closely with it to strengthen legislatures in Canada and around the world.


and institutions of accountability (e.g. parliament) are marginalized”. In this respect, it is crucial that acts of corruption, which generally manifest themselves as weak financial management and poor internal control within departments, maladministration, and undue delays, are brought to the attention of legislative committees at the earliest opportunity (Matomela, 2000:3).

According to Matomela (2000:3) without this information these committees cannot do their work. However, by the same token, without transparent mechanisms for obtaining, following-up and acting on this information the legislatures cannot be seen to be doing their work. Similarly, if the existing democratic process is not seen to be working in the province then the public and investor confidence in the provincial government and administration will be lost.



Transparency is the cornerstone of democratic governance. Without transparency there is no possibility of holding elected representatives and public officials accountable. This is because without reliable information the public cannot make an informed judgment about their performance. Institutionalized transparency, therefore, is the single most powerful weapon against corruption. The corrupt flourish under conditions of secrecy and anonymity and where there is little threat of their actions being exposed. Institutionalized transparency deprives corrupt officials of their anonymity and forces them to take responsibility for their actions. Fostering transparency and accountability in the public sector has been significant in exposing corrupt elements. As Van der Merwe (1999:236) notes, “anti-corruption activists frequently compare the fight against corruption with the

process of cleaning a staircase. It starts from the top”. The idea conveyed is that it is often the ‘big ones’ and the powerful at the top who manage to get away, or are allowed to get away, with corruption. This adage has to retain its place in our approaches, strategies and mechanisms to fight corruption. An example is the case of the Deputy President (Mr. Jacob Zuma) when it was alleged that he was also implicated in the Arms Deal scandal and the Director of Public Prosecutions (Mr. Bulelani Ngcuka) claimed to have insufficient information to prosecute Mr. Zuma. As a result criminal proceedings were dropped, although this case continues to have repercussions.

Provinces generally have to fight corruption because for a government to enjoy legitimacy, it must be accountable to democratic controls by the people and by the rule of law. It is this legitimacy that gives the  government the moral standing and strength to undertake reforms to guard against corruption, which may affect people’s lives negatively. In the provinces generally, it is the responsibility of any public officer, not only to maintain a high standard of ethical behaviour on issues of public concern, but also to see to it that acts of corruption are reported to the Public Protector, Auditor-General, Public Service Commission and other oversight institutions.

South Africa has a unitary government operating at national, provincial and local levels. The nine provinces have the responsibility to deliver especially on key service delivery areas such as social services, health and education. It is for this reason that provinces should be playing a more vital role in fighting corruption. Provinces have to cooperate with one another to grow the economy of this country. The importance of cooperative

governance and intergovernmental relations in South Africa is reflected in Chapter Three of the Constitution of the Republic. A number of intergovernmental structures have been instituted to promote and facilitate cooperative governance and intergovernmental relations between the respective spheres of government. Unfortunately, it seems as if most of the corrupt practices occur in the provinces and the main problem is that when one province is implicated in corruption, in the eyes of the public the whole public service is damaged. The Public Service Commission (2002, 8) has found that:

“Provincial governments are in many ways more vulnerable than national departments and face special challenges. Management in provinces is generally less developed, and systems, procedures, controls and other elements of governance and integrity are also often weaker. Provincial administrations have experienced serious impediments in provinces that have had to integrate former homelands into their organizational set-up.”

Around seventy per cent of public service personnel (excluding local government and parastatals) are located in provincial governments. While they are consumers of significant public resources, their results are often not satisfactory. Efforts to ensure value for money should take provincial governments as a priority target group and work with them in a constructive and supportive way. According to the 2003 national budget speech by the Minister of Finance:

“Excluding debt service costs and the contingency reserves, the budget framework provides for expenditure of R280 billion in 2003/04 rising to R332 billion in 2005/06 to be allocated between the national, provincial and local spheres. Of this amount, national departments receive R103.3 billion, provinces receive R142.8 billion and local governments receive R10.2 billion, signaling a marked shift in favour of provinces and local government.”⁶

The provincial governments should acknowledge their responsibility of keeping the provinces honest and accountable to the citizens. This can only be done by putting mechanisms in place to fight the problem of corruption in the provinces, thereby contributing towards restoring the confidence of the public towards their authorities.



2.3 THE EASTERN CAPE PROVINCE

The Eastern Cape is one of the poorest provinces in South Africa. Statistics South Africa has mapped the distribution of poverty in South Africa based on the 1996 census and the Income and Expenditure survey of 1995. The Eastern Cape was identified as the poorest province in terms of average monthly household expenditure. The poorest magisterial districts are OR Tambo and Alfred Nzo (former Transkei) where 60-80% of households subsist on R800 per month or less. People living in poverty constitute 74.3 of the Eastern Cape Province population.

⁶ See in the treasury department website (www.treasury.gov.za)

With a population of 6,3 million people, the Eastern Cape has the third largest population in the country, according to the 1996 census. Of these 2,9 million are male and 3,4 million are female. About 37% of the Eastern Cape population live in urban areas as opposed to 63% who live in non-urban areas.

Demographic and socio-economic data for the Eastern Cape province is shown in Table 1 below, while the racial composition of the population is shown in Table 2.

Table.1 Population Characteristics of the Eastern Cape

Characteristics	%
% Population living in informal housing	46.9
% Unemployment rate	48.5
% GDP per Capita	2.856
% Annual population growth	2.65
% Females	53.8
% Adult literacy rate	76.5
% of over 20 years not having received any schooling	20.9
% Xhosa speaking	83.8
% Afrikaans speaking	9.6
% English speaking	3.7
% Access to electricity	31.3

Source: Population Census 1996

Table.2 Population by racial distribution in the Eastern Cape

Racial Groups	Number	%
African	5, 448, 495	86
Coloured	468, 532	7.4
Indian	19, 356	.3
White	330, 849	5.2
Unspecified	35, 849	.6
Total	6,302,525	100%

Source: Population Census 1996

The Eastern Cape is situated in the south east of the country and encompasses what is traditionally known as the Eastern Province, Border and north-eastern Cape areas, as well as the former “homelands” of Transkei and Ciskei. On the northern side, it borders the Kingdom of Lesotho and the Free State, while the districts of Middelburg, Graaff-Reinet and Willowmore form its western borders. The Eastern Cape is spatially the second largest province, covering 170 616 km², or 13, 9% of the total surface area of South Africa. According to the Eastern Cape Provincial Government Website⁷:

“For millennia the province was occupied by small egalitarian groups of aboriginal hunter-gatherers whose enduring legacy consists of thousands of beautiful, and often enigmatic, rock paintings and superbly crafted stone implements. Khoikhoi pastoralists, whose legacy lives on in place names like Keiskamma, Kei and Tsitsikamma, also inhabited the area. Then about 2 000 years ago Nguni speaking people who were pastoralists and agriculturists arrived from the north, bringing with them a totally new way of life - farming – into the hunting grounds of the aboriginal people usually known as the San.”

This website also mentions that these early settlers were a major disruption to the traditional hunter gatherers way of life that began a gradual but far reaching revolution in the political, economic and social system of the peoples of the Eastern Cape. The provincial government website further notes that:

⁷ See at <http://www.ecprov.gov.za/aboutecape/>

“The next major settlement wave occurred during the nineteenth century when European settlers predominantly from Britain but also Germany, France, the Netherlands and other European countries came to lay down their roots. The arrival of the European settlers, coupled with the general expansion of the earlier Dutch and British settlers at the Cape of Good Hope into the hinterland of the subcontinent, sparked off a series of skirmishes, battle and wars. The Eastern Cape experienced a number of “frontier” “wars of dispossession” during the last century which left the region devastated and the indigenous Xhosa-speaking people under the political and economic control of the white settlers.”

During the last century this political hegemony of white over black was translated after 1948 into formal apartheid with the region divided into “ethnic”, supposedly independent, homelands of Transkei and Ciskei. This lasted until the democratic elections held in the country in 1994.

The current Eastern Cape administration resulted from an amalgamation of three apartheid era institutions, the Ciskei Homeland Administration, the Transkei Homeland Administration and the Cape Provincial Administration. Each of these administrations had been governed by its own Public Service Act and had its own central personnel authority. Allan, Mattes and Millie (2002:1) note that:

“The inheritance of an unmotivated, under-skilled and oversized workforce in 1994 presented the biggest single challenge to the new democratic administration

in the Eastern Cape. Before the integration the Transkei administration consisted of 20 separate government departments and employed 95 000 public officials. The Ciskei administration, in turn, had 18 separate departments and employed 30 000 officials. Each department was headed by a Director General and had its own top management echelon. The successful integration of these three bureaucracies with a combined number of 54 departments and their rationalization down to 12 departments under a single administrative authority constitutes a significant achievement by the current provincial administration.”

Presently, there are 12 provincial government departments in the Eastern Cape. These are the Office of the Premier; the Department of Agriculture; Economic Affairs and Environment; Education; Health; Treasury; Housing and Local Government; Safety and Security; Roads and Public Works; Transport; Sport, Recreation and Art; and Social Development. The Eastern Cape Provincial Administration currently employs a mere 213 senior managers out of more than 127 000 officials (Allan et al. 2002: ii). The total provincial equitable share of national revenue for 2003/04 was R24.448 billion (Godongwana⁸, 2003: 10).

The Eastern Cape Provincial legislature consists of 63 members⁹, 48 of whom are male and 15 are female. At present, 47 seats belong to the African National Congress (ANC), 9 to the United Democratic Party (UDM), 4 to the Democratic Party (DP), 2 to the New

⁸ Enoch Godongwana the Provincial MEC for Finance, Economic Affairs, Environment and Tourism in the Eastern Cape (Provincial 2003 budget speech).

⁹ Because most of this research was conducted before the 2004 national and provincial elections, these figures are for the period 1999-2004.

National Party (NNP), and 1 seat to the Pan African Congress (PAC). This shows that the ANC is the majority party in the Provincial legislature and that the UDM is the official opposition party. Each party holds a caucus at least once a week to discuss how they are going to deal with issues before the Legislature.

The Eastern Cape is poor when compared to most of the other eight provinces. Erasmus, (1996:19) argues, “ This is reflected in the low human development index value. The province has rather large population with substantial momentum for further growth. The population is poor and ill-educated, with limited access to health services. On the production side, economic growth has been disappointing while unemployment is high”. One may argue that, as a result of ill-education among the majority of the people in the province, some authorities take advantage of this by practicing acts of corruption. These authorities might take advantage because they know that people are less educated and as a result less participative and uninformed about government processes. Therefore, these people on the ground might not be aware which channels to go through when they want to enquire about certain suspicions.

2.4 THE WESTERN CAPE PROVINCE

The Western cape has the highest Coloured population in the country, constituting around 54% of the province’s 3,9 million people. There are more women than men in the province, with 1,9 million males and 2 million females. The Western Cape has 21%

African/Black people, 21% White people and 1% Indian/Asian people. This is a highly urbanized province, with 88,9% of its population in urban areas¹⁰.

Demographic and socio-economic data for the Western Cape province is shown in Table 3 below, while the racial composition of the population is shown in Table 4.

Table. 4 Population Characteristics of the Western Cape

Characteristics	%
% Population living in informal housing	20
% Unemployment rate	18.9
% GDP per Capita	9.381
% Annual population growth	1.8
% Females	51.4
% Adult literacy rate	94.6
% Of over 20 years not having received any schooling	6.7
% Xhosa speaking	19.1
% Afrikaans speaking	59.2
% English speaking	20.3
% Access to electricity	86

Source: Population Census 1996

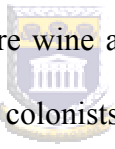
Table. 5 Population by racial distribution in the Western Cape

Racial Groups	Number	%
African	5, 448, 495	20.9
Coloured	468, 532	54.2
Indian	19, 356	1.0
White	330, 849	20.8
Unspecified	35, 849	3.1
Total	6,302,525	100%

Source: Population Census 1996

¹⁰ Found in Census of 1996

The Western Cape is situated in the south-western corner of the country. It borders the Northern Cape and the Eastern Cape, and is wedged by the Atlantic and Indian Oceans. The Western Cape is spatially the fourth largest province, covering 129 386 km² or 10.6% of the total surface area of South Africa (Meintjes and Meyer, in Development Information Business Unit, 1998:1). The Western Cape Provincial Government website¹¹ notes that:

“In 1652 a victualling station was set up in Table Bay (Cape Town) by the Dutch East India Company (VOC) to supply passing ships with provisions. Trade with the Khoi and the San soon degenerated into raiding and warfare. The first permanent European settlers started carving out farms for themselves in the fertile region around Cape Town, where  wine and wheat became their major products, and by the early 18th century the colonists had begun to spread into the dry Karoo beyond the mountain ranges.”

In this provincial website it is also mentioned that “in the 1770s, the colonial frontier for the first time began to clash with the African farmers, some 700km east of Cape Town, where the southernmost phalanx of Nguni chiefdoms was ensconced. A century of intermittent warfare ensued, pitting colonists and their black allies against the black chiefdom”.

In 1854, the then Cape Colony was granted a representative legislature in keeping with British policy, followed in 1872 by responsible self-government

¹¹ See www.westerncape.gov.za/history.asp

(www.westerncape.gov.za/history.asp). The franchise was non-racial and based on income and property qualifications, so that a substantial minority of voters were coloureds and Africans. Descendants of the Khoi and the San, former slaves, and the offspring of interracial unions were gradually being defined as a single, intermediate group, known as the Coloured people¹². The provincial government website also states that “they were mainly Afrikaans speaking and members of the Protestant churches with a substantial Muslim minority in and around Cape Town.” The coloureds were fully assimilated into the lower reaches of colonial society, constituting the colony’s working class. They were informally discriminated against, as much on account of their class as their racial status. But among the poor there was a great deal of racial mixing and intermarriage.



The liberal tradition at the Cape was facilitated by the fact that the great mass of Bantu – speaking settled farmers remained beyond colonial borders until late in the 19th century. Thus non-racialism could be formally embraced without any threat to white supremacy.

The Western Cape has the second-highest Gross Domestic Product per capita and personal income per capita in the country after Gauteng. Meintjes and Meyer (1998:15) state that:

“It (the Western Cape) boasts, moreover, the highest attainments regarding literacy rates, pupil-teacher ratios and school attendance of all the provinces. It also recorded the highest labour absorption capacity and the lowest

¹² See www.westerncape.gov.za/hostory.asp

unemployment rate of all nine provinces. These attainments enable the Western Cape to maintain its position as the province with the highest human development index ranking. The population of the province is thus relatively affluent.”

While there is a portion of the Western Cape population that is highly literate and financially stable, large numbers of people live below the poverty line. The majority of low-income inhabitants in the Western Cape cannot afford to pay for basic services, such as water, electricity, and sanitation. The province is experiencing a great influx of people from the rural and poorer areas of the country, especially from the Eastern and Northern Cape provinces. As a result, informal settlements (people living in unacceptable conditions) are growing enormously. For example Khayelitsha is one of the places where one would experience conditions of poverty, the majority of the population living in this area are Black Africans from the rural areas of the Eastern Cape.

Presently, there are 13 provincial government departments in the Western Cape. These are Agriculture; Community Safety; Cultural Affairs and Sport; Economic Development and Tourism; Environmental Affairs and Development Planning; Health; Housing; Local Government; Social Services and Poverty Alleviation; Transport and Public Works; Provincial Administration of the Western Cape (PAWC); Treasury; and Education. Working with a budget of 16.4 billion (in 2003), these departments are responsible for implementing laws and providing services to the people of the Western Cape. According

to the interview with Mr. Jannie Morkels,¹³ the Western Cape Provincial Administration had 67 497 persons in its employ as at 3 March 2003.

The Western Cape Provincial Parliament consists of forty-two elected members¹⁴ (32 of whom are male and 10 female) and in the second democratic Parliament, five political parties are represented. At present, 23 seats belong to the African National Congress (ANC), 10 seats to the New National Party (NNP), 7 to the Democratic Party (DP), 2 to the African Christian Democratic Party (ACDP), 1 to the New Labour Party. This shows that the ANC is the majority party in the Provincial Legislature. The ANC is in partnership with the NNP as result an agreement was reached by both the ANC and NNP that the premiership position be given to NNP.



¹³ Mr. Morkels is Director: Personnel Management: Corporate Services in the Western Cape Provincial Administration – interviewed electronically 13 March 2003

¹⁴ Because most of this research was conducted before the 2004 national and provincial elections, these figures are for the period 1999-2004.

CHAPTER THREE

ANTI-CORRUPTION STRATEGIES IN THE EASTERN CAPE PROVINCE

3.1 INTRODUCTION

The existing Eastern Cape administration is a result of an amalgamation of three apartheid era institutions, the Ciskei Homeland Administration, the Transkei Homeland Administration and the Cape Provincial Administration. Each of these administrations had been governed by its own Public Service Act and had its own central personnel authority.




IDASA's Public Opinion surveys in 1997, 1998 and 2000 consistently reported that over 63 percent of citizens perceived "most" or "all" provincial government officials in the Eastern Cape to be involved in corruption.

In his report to the Eastern Cape Provincial Legislature on the 12th October 2000, Premier M. Stofile noted that:

"In order to fight corruption one has to consider three levels of operation, which is what our strategies and policies are addressing. Firstly, one has to consider the preventive steps that are required to curb corruption. Secondly, we have to deal with the curative aspects, which involve dealing with those involved in corruption

and also taking corrective steps to close any loopholes that are detected in the system as we identify more corruption. The third level is to promote an environment and a culture where corruption is not tolerated” (Stofile, 2000).

The province’s anti-corruption strategy dates back primarily to March 1998 when the Speaker of the Eastern Cape Legislature, Mr. Mkhangelisi Matomela, introduced a motion in the House stating that the legislature and the executive should “launch and promote an anti-corruption and fraud campaign” (Allan et al, 2002). This motion also proposed establishing anti-corruption and fraud units in all departments to report directly to Members of the Executive Committee (MECs) and be coordinated by the Premier’s Office Unit reporting directly to the Premier. This was accepted and passed by the legislature. It is clear, therefore, that the  Speaker of the Eastern Cape legislature backed the idea of an anti-corruption strategy in the province. It was clearly not easy for him to just turn a blind eye while corruption was taking root in the provincial government where government officials were allegedly involved in corrupt practices including top officials such as members of the Provincial Executive Committee. As a result, two structures were formed in assisting the Eastern Cape government in its attempts to uproot corruption. The Anti-Corruption Forum (ACF) was introduced by the Premier’s Office with the overall purpose of being the central body for strategising and advancing anti-corruption objectives. The Network Against Corruption was established as an initiative of the Provincial legislature. It sought to enhance the functions of the legislature by acting as a conduit through which information is channelled to and from standing committees, the public and even the Anti-Corruption Forum. This chapter will seek to evaluate the

achievements and limitations of the two bodies. It will also examine anti-corruption initiatives undertaken in the Province by the National Government (in section 3.6 below).

3.2 THE ANTI-CORRUPTION FORUM (ACF)

In November 1999 the Eastern Cape Premier's Office seized the initiative and convened a Provincial Anti-Corruption Summit with representation from all sectors of society. This Provincial Anti-corruption Summit was held in East London on 18 and 19 November 1999. The following eight resolutions emanated from the Summit and were subsequently adopted by the Provincial Executive Council:



- a) The establishment of a Provincial Anti-corruption Forum.
- b) The implementation of a Provincial anti-corruption campaign in the Province.
- c) Effective co-ordination of anti-corruption investigating agencies.
- d) Streamlining of institutional arrangements to enhance the fight against corruption.
- e) Review of legislation that inhibits the effective fight against corruption.
- f) Development of an effective communication and information strategy.
- g) Putting in place of effective corruption prevention measures.
- h) Ensuring effective administration of law enforcement in corruption cases.

The Premier's Office subsequently established an Anti-Corruption Forum (ACF) on the 18th April 2000, made up of representatives from government, criminal investigation

agencies, business and civil society. The ACF was chaired by the Director-General (DG) of the Provincial Administration and met on a number of occasions between April 2000 and March 2001¹⁵. Members of the forum included: Dr Tom, Director-General of the Eastern Cape; Mr. Mzwandile Msoki – Public Service Commissioner of the Eastern Cape; Mrs. Sarah Hugo – a representative of the Non-Governmental Organization Coalition; Mr. Les Brook, Border Kei Chamber of Business Chairperson; Mr. Cyril Langbooi – Labour; Mr. Wyne Malgas and Superintendent Witbooi of the Investigation Agencies; and Rev Lulama Ntshingwa – Eastern Cape Council of Churches¹⁶.

According to its founding document (2000) the Anti-Corruption Forum was established with the following mission, objectives and functions.



3.2.1 The purpose/mission of the Anti-Corruption Forum

This was to strategize on and advance anti-corruption objectives and to advise and coordinate implementation of policy for the combating and prevention of corruption in society.

3.2.2 Objectives of the Forum

These included:

- The central synchronization of the efforts of anti-corruption units for maximizing impact;
- The establishment of a secretariat to assist the Forum;

¹⁵ See A survey report by Public Service and Accountability Monitor 2002 (www.psam.ru.ac.za)

¹⁶ Found at www.ecprov.gov.za/speeches/premier/2000/anticorruptforum.htm

- The channeling of information gained to relevant law enforcement agencies; and
- The establishment of close links with the National Director of Public Prosecution, the Member of Executive Committee (MEC) for Safety and Liaison, the Provincial Commissioner of the South African Police Service and the National Anti-Corruption Forum.

3.2.3 Functions of the Anti-Corruption Forum

The main functions of the Forum were:

- To launch the Anti-corruption Campaign.
- To advocate for the effective involvement of all sectors and organizations in the implementation of programmes and strategies aimed at the prevention and combating of corruption, misconduct and maladministration.
- To coordinate the implementation of programmes and strategies developed in the Provincial Anti-Corruption Summit and other national forums consistent with its purpose and objectives.
- To recommend and commission appropriate research, and establish a database of the incidence of corruption, misconduct and maladministration, and of the responses thereto.
- To facilitate the development and strengthening of institutional capacity for the implementation of anti-corruption strategies.
- To monitor, review and provide advice, guidance and assistance to stakeholders in the investigation and assessment of the efficacy of programmes and strategies

aimed at the prevention and combating of corruption, misconduct and maladministration.

- To develop a communication strategy in liaison with the Office of the Premier.

The Anti-Corruption Forum was required to report to the Premier and the Provincial Legislature at least once a year. Members have also to account to the structures or organizations that they represent and such other sectoral structures as may be helpful in achieving the purpose and objectives of the forum. A Secretariat was established to assist the forum with secretarial services.

On the 22 May 2000, the Provincial Director-General, Dr Tom, who was also the chairperson of the Anti-Corruption Forum, held a two-hour meeting with members of the forum to finalise its terms of reference and its programme of action as outlined in the resolutions of the anti-corruption summit held in November 1999.

Addressing a media briefing after the meeting, Dr Tom said that the forum would help to coordinate activities of all investigating and law enforcement agencies to avoid duplication of activities and subsequently improve the impact of government's efforts. He further said the Forum would help to build a database of corruption cases as well as the person/s investigating the matter to ensure that resources were utilized efficiently. Campaigns against corruption would be held and the Forum will ensure their success. One of the objectives of the anti-corruption campaign was to ensure that people with information have access to and use of public systems of dealing with illegal operations

with ease. He concluded by stressing that the Forum led by him would do everything possible to ensure that cases of corruption are expeditiously and effectively dealt with¹⁷.

Despite such assurances, it is acknowledged by most observers and stakeholders (as section 3.4 will show in detail) that the Forum has not been successful or effective in contributing to the fight against corruption in the province (Eastern Cape Government, Public Service Commission, Public Service and Administration and National Treasury, 2002: 8). One of the limitations, which led to a lack of success was the lack of support provided to the Provincial Director-General. Little organizational capacity (human & financial resources) was allocated to support the Director-General. The result was that the Director-General and other officials had to balance anti-corruption work as an “add-on” together with other responsibilities. As will be seen in more detail shortly, the duplication of role and membership of the Forum and the Network against Corruption was also a contributing factor, leading as it did to problems of coordination, role confusion and poor relations between the two bodies.

3.3 THE NETWORK AGAINST CORRUPTION (NAC)

The Speaker of the Eastern Cape did not just introduce the idea of an anti-corruption strategy in the province but took further steps to develop his ideas. The Public Service Accountability Monitor (Allan et al, 2002) notes that, in February 2000, the Office of the Speaker of the Eastern Cape Legislature hosted a provincial anti-corruption workshop and subsequently launched an anti-corruption campaign involving members of the

¹⁷ See <http://www.ecprov.gov.za/speeches/premier/2000/anticorruptforum.htm>.

provincial legislature and their constituencies. This led to the formal establishment of a statutory body called the Network Against Corruption by the Provincial Legislature on 12 October 2000. This structure was designed to allow members of the public to refer reports of corruption to legislative standing committees for onward referral to relevant government departments. In so doing, it was expected that this would improve legislative oversight of the executive and government department's performance in combating corruption (Allan et al, 2002:59). According to the Network Against Corruption's constitution, the network was composed of the Presiding Officers of the Legislature; Chairperson of Committees; Chairperson of the Standing Committee on Public Participation; Head of the Petitions Office of the Legislature; and representatives of all other stakeholders having an interest in fighting corruption. The Network was chaired by the Speaker of the Legislature.



According to the constitution of the Network Against Corruption (Sections 4 & 5), the mission, objectives and functions of the NAC included the following.

3.3.1 The Purpose/Mission of the Network Against Corruption

This was to monitor the effectiveness of anti-corruption policies and strategies in the Eastern Cape.

3.3.2 The Objectives of the Network

These included:

- To rally support for anti-corruption strategies in the public sector of the Eastern Cape by mobilizing and educating public officials, members of the Provincial Legislature and the community in the province.
- To encourage the reporting of suspected corruption by alerting officials and the public to appropriate mechanisms for efficient receipt, processing and referral of such reports.
- To make an ongoing assessment of all anti-corruption strategies, policies and initiatives.
- To facilitate the exercising of oversight by the Legislature of Government's response to reported cases of corruption in the province.



3.3.3 The Functions of the Network

These included:

- The identification, establishment and maintenance of strategic relationships with all necessary and relevant stakeholders.
- Acting as a resource to the Legislature and its committees.
- Facilitation of legislative oversight of all initiatives to combat corruption within the province.
- Receipt of reports on corruption.

- Assisting the Legislature to monitor the effectiveness of internal mechanisms of departments to deal with reporting, investigation, disciplinary mechanisms and education in corruption and the combating thereof.
- Facilitating the education and mobilization of the public around anti-corruption initiatives in the province, including education on how to report corruption.

As section 3.4 shows in detail, the Network made few significant achievements other than the holding of meetings. The constitution of the Network overlapped with the function and membership of the Forum. This is evident in its goal to establish relationships with relevant stakeholders while the Forum have the same mandate. Duplication of membership has been extracted from the founding document of the Forum (2000) and the constitution of the Network (2000). According to its constitution the composition of the Network includes representatives of all other stakeholders having an interest in fighting corruption. The Founding Document of the Forum includes in its composition the Public Service Commission and NGO's that have an interest in fighting corruption. As a result, both the Public Service Commission and the same NGO's became part of both structures. The duplication of membership and role with the Forum led to lack of good relations between the two structures. It also led to poor coordination and planning of their respective activities.

3.4 AN OVERALL EVALUATION OF ANTI-CORRUPTION STRATEGIES IN THE EASTERN CAPE PROVINCE

In their survey among public servants in the Eastern Cape, Allan et al (Public Service Accountability Monitor, 2002) attribute the collapse of the Network Against Corruption (NAC) in the Legislature and the Anti-Corruption Forum (ACF) in the Premier's office primarily to politicking surrounding Health MEC Dr Bevan Goqwana's private health-related businesses¹⁸. The Public Service Accountability Monitor (PSAM) survey noted that the decisive event, which sparked this process, was the Speaker's referral (at the request of the NAC) of a case of alleged corruption involving this MEC to Premier Stofile on 01 November 2000. The PSAM survey further reported that Dr Goqwana had admitted to owning a private specialist medical practice and an ambulance service whilst in public office at the end of October 2000. He also allegedly admitted to owning and profiting from these business interests prior to his appointment (July 1999) while he was a full-time public servant, working as a state doctor in Umtata (in the former Transkei). In a letter (1 November 2000) to the Premier involving the oversight powers of the legislature, the Speaker requested that the Premier either convene a Commission of Inquiry to investigate the matter or that it be referred to the Office of the Public Protector for investigation¹⁹.

The PSAM survey notes that this request and attempted exercise of parliamentary oversight in respect of a case of alleged corruption by the member of the provincial executive was without precedence in any South African provincial legislature. In his

¹⁸ See dispatch.co.za/2002/11/easterncape/gtowncor.htm

¹⁹ See www.psam.ru.ac.za

response, Premier Stofile (November 2000) accused the Speaker and the NAC of being “partisan” and of becoming a “political critic of government no matter what the facts are”. This was not a proper way to deal with the matter because labelling others does not solve the problem. In dealing with matters of corruption one has to be tactful and allow an environment for smooth investigation for alleged corrupt practices. After Premier Stofile’s response, the relationship between Premier Stofile’s Anti-Corruption Forum and the Legislative Network Against Corruption soured markedly”. Soon after this, members of the ACF, who were closely aligned to the Premier, started to issue calls for the NAC to be disbanded. As reported in the local Daily Dispatch on 14 March 2002, the Chief Whip of the Eastern Cape Legislature, Sicelo Gqobana, announced the closure of the Network Against Corruption due to its alleged ineffectiveness²⁰. Although the Forum continued to exist, it also ceased to function effectively from this point in time.



The breakdown of the ACF and the NAC prompted the Director-General of the Province, Dr Tom, to approach the Public Service Commission (PSC) in April 2001, with a view to investigating the poor functioning of the two bodies. Only by identifying the problem, it was felt, could the Province come up with better anti-corruption policies and strategies for the future.

Following the discussions between the Provincial DG and the PSC, a multi-disciplinary and multi-skilled task team led by the Office of the Public Service Commission was put in place. The team included officials from the Eastern Cape Government, the Office of the Public Service Commission, the Department of Public Service and Administration,

²⁰ See www.dispatch.co.za/2002/03/16/eaterncape/bisho.htm

and the Office of the Accountant General (Eastern Cape Government, Public Service Commission, Department of Public Service and Administration and National Treasury 2002:27)

The Task Team's report revealed that the anti-corruption strategies and agencies put in place in the Eastern Cape had in general functioned poorly due to the following reasons, amongst others:

- There was serious lack of capacity within the Office of the Premier and Provincial Director General (Chair of the Forum) to ensure that the Anti-Corruption Forum functioned well and implemented the Provincial Anti-Corruption strategy effectively.
- The lack of a central database and monitoring and evaluation system for the recording, tracking and evaluation of corruption cases (whether criminal, civil and/or disciplinary cases).
- The inability of the Provincial Administration to come to a successful resolution (whether criminal, civil and/or disciplinary) of corruption cases.
- The Anti-Corruption strategy was not publicised effectively, with the result that stakeholders had a limited knowledge of its content.
- Only head office staff and senior regional officials were trained in the Code of Conduct and Ethics, leaving out the regions where the majority of employees are deployed.
- The lack of an interdepartmental Ethics Unit.

- The lack of a centralized information database on appointments, performance agreements, job descriptions and financial disclosure and security vetting practices.
- The absence of a clear protocol for cooperation and co-ordination between the Special Investigative Unit, Auditor General and Public Protector often leading to duplication of investigations.
- The Provincial Administration had not commenced with implementation of the Protected Disclosures Act, and mechanisms to protect departmental whistle-blowers.

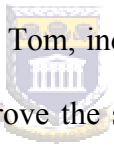
In addition, the Task Team’s report highlighted a number of other problems, including:

“duplication of membership; poor definition of roles; lack of support to the Provincial Director-General; a perceived agenda by the Speaker of the Legislature to “embarrass” the Premier; perceptions that the Public Service Accountability Monitor (PSAM) has “hijacked” the NAC; and the lack of trust in partners such as the civil society participants in the ACF who are perceived to “have an agenda” that is not really about curbing corruption, but rather about causing maximum embarrassment to the Premier and Provincial Administration.” (Eastern Cape Government, Public Service Commission, Department of Public Service and Administration and National Treasury 2002:27).

In an e-mail interview with the Provincial DG, Dr. Tom, on 31 March 2003, the researcher asked him what led to the failure of the Provincial Anti-Corruption Forum?

The response was that “this particular question already has an assessment that the forum failed. I want to say that the forum had its own achievements within the constraints it faced. One of the major constraints was the duplication of membership with another structure formed by the legislature (the NAC). That duplication led to the inability of the members to participate fully in the forum.”

3.5 WHAT MECHANISMS ARE CURRENTLY IN PLACE TO FIGHT CORRUPTION IN THE PROVINCE?

With the collapse of the ACF and NAC, the question arises as to what other policies and structures have been put in place by the Eastern Cape Government to continue the fight against public sector corruption in the province. In the researcher’s e-mail interview of 6 November 2002, the Provincial DG, Dr Tom,  indicated that the Provincial Government was now exploring better ways to improve the situation. Premier Stofile had requested Peter Leon, the former Gauteng Democratic Alliance leader and current chairman of the Ministerial Advisory committee on Local Government Transformation, to prepare an urgent report on the establishment of improved anti-corruption measures, including an anti-corruption tribunal in his office. Following this, a number of measures were publicly mooted by the Office of the Premier for dealing with corruption, including the establishment of an asset register for public officials, the creation of a new investigation agency and the establishment of corruption ‘hot-lines’. According to AllAfrica.com (2003)²¹:

²¹ See <http://allafrica.com/stories/200305190286.html>

“The Office of the Premier has allocated R1.9 million to fight fraud and corruption in the government departments in the province over the next three years. The office has set aside R400 000 for the establishment of anti fraud committees within all 12 provincial departments. R500 000 has been earmarked for the professional investigation of fraud and corruption cases. R1 million has been allocated to establish an independent “ethics line committee” by the end of June this year. According to the Office of the Premier, this would increase the number of reports of suspected ethical offences and improve work ethic.”

Before the final completion of this research report, the researcher interviewed Mr. Z Tyikwe (on 10 September 2004) regarding developments with respect to such initiatives. Mr Tyikwe is Senior Manager in the Eastern Cape Premier’s Office responsible for anti-corruption work. He pointed out that the anti-corruption work is centralized in the Office of the Premier. However, the provincial departments do have anti-fraud working committees. The province is currently considering an Anti-Corruption and Ethics Unit, which will be located in the Office of the Premier. The proposed structure comprises of a senior manager and a secretary, a manager responsible for corruption assessment and investigation, a manager responsible for departmental capacity and an administrator responsible for office support and database. The establishment of Provincial Hotline was abandoned following the PSC’s recommendation (PSC, 2002) that a single national hotline be put in place: This recommendation has now been approved by the National Cabinet, and will require all the provincial and the national departments to close their

hotlines as soon as the national hotline start to operate (1 September 2004), so that all corruption related cases could be reported at one central point.

3.6 NATIONAL GOVERNMENT INTERVENTIONS

Persistent problems of corruption and mismanagement in the Eastern Cape Province ultimately led the National Government to intervene directly. In November 2002, President Thabo Mbeki's office announced that a multi-sectoral management team would be sent to the Eastern Cape Province to intervene in the administrative affairs of the Province. The Eastern Cape Premier, Stofile said the move followed his discussions with President Mbeki and was a significant move in his initiative to combat corruption.

(www.sabcnews.com/politics/government/0,1009,48541,00.html).



On 4 December 2002, the National Cabinet approved the initial mandate, composition and powers of the Interim Management Team (IMT) to assist the Eastern Cape Provincial Administration to improve service delivery and establish sound governance in the Province. This decision followed an agreement between the President and the Premier of the Province on the deployment of multi-sectoral team to tackle service delivery challenges within the Departments of Education, Health, Roads and Public Works, Social Development and Treasury. Among many things, this team was to focus on the treasury functions of the Province and had a dedicated capability to focus on corruption. The IMT was accountable to its political principals, namely the President through the Minister for the Public Service and Administration and the Premier of the Province.

During December 2002 the IMT was deployed in the Province and began working on a number of transversal challenges encountered by the Province. These included the following:

- ***Strengthening Back office support (Corporate Service Support)***: this aimed to address many of the Human Resource Management, Financial Management and general administration problems identified.
- ***Improving Internal Controls and Accountability***: this aimed to improve internal controls and accountability within the four IMT departments through the establishment of an internal audit function.
- ***Improving Human Resources Management***: this dealt with a number of human resources issues, both in terms of existing problems as well as piloting new initiatives.
- ***Strengthening Leadership and Management***: this dealt with issues of leadership and management.
- ***Rapid and Visible Service Delivery***: the overall objective of this was to pilot an innovative and fast track project implementation solution.
- ***Ethics and Anti-Corruption***: this was concerned with improving anti-corruption strategies, discipline and ethics.

For the purpose of this research report, the ethics and anti-corruption area is the most relevant. This area focused on forensic audits on procurement, hospital stock, petrol cards, promotions and awards and senior appointments. In the process, 18 audits were completed. A Disciplinary Cases Task Team (DCT) was set up to deal with backlogs and

emerging disciplinary cases. The team recorded over 1324 cases on its database, of which 60 still have to be taken through the disciplinary process. A hotline was established for the reporting of corruption cases. And training and awareness courses were instituted for public servants on ethics (especially in relation to Batho Pele) and corruption.

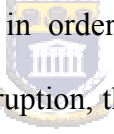
In his State of the Province Address, at the opening of the legislature (21 February 2003), Premier Stofile said, “We are striving to provide effective, transparent, accountable and coherent government for our province”. However, the question remains: is enough being done? To arrive at an answer one has to consider a number of relevant factors. Firstly, the Premier did not handle well the issue reported by the NAC (as mentioned in section 3.4) regarding a case of alleged corruption involving his Health MEC Dr Goqwana. Instead of allowing an environment for smooth investigation for alleged corrupt practices, the Premier accused the NAC of being “partisan”. Secondly, the Office of the Premier has, however, set aside a reasonable amount of money (as shown in section 3.5) to fight corruption in the province. Thirdly, the Premier invited the National Government to intervene to the problem of corruption faced by the province. In October 2002 the Public Service Commission national chairman, Professor Stan Sangweni, commended the Eastern Cape Premier Makhenkesi Stofile for demonstrating good governance by fighting corruption²². Although the premier received praise, he and his government need to do more to make sure that corruption is uprooted in the province. Words alone cannot take away the problem of corruption. The National Government can offer support or intervene directly, but if the Provincial Government does not succeed in

²² See www.dispatch.co.za/2002/10/24/easterncape/ecommit.htm

demonstrating the necessary commitment, problems of corruption and mismanagement in the Province are likely to persist.

3.7 CHAPTER SUMMARY

The Eastern Cape province has taken a number of steps in their endeavour to fight corruption in the province. It became unfortunate that the ACF and the NAC could not manage to co-exist and operate in a cooperative way to fight corruption in the province. Views on causes of poor functioning of these structures include duplication of membership, poor definition of roles, lack of support to the Provincial Director-General.

However, a call has been made that  in order to promote public confidence in the commitment of government to fight corruption, the Provincial Executive Council and the Eastern Cape Provincial Legislature should demonstrate their own commitment to tackle corruption by resurrecting the Anti-Corruption Forum based in the Office of the Premier and the Network Against Corruption, based in the Eastern Cape legislature (Allan et al, 2002:67).

There is no reason why these initiatives should not be able to co-exist and pursue programmes of action consistent with their constitutional mandates. Whilst the Anti-Corruption Forum should coordinate the efforts of the Executive and the Provincial Administration to implement anti-corruption policies and strategies within provincial departments, the Network Against Corruption should facilitate the Legislature's ability to

exercise oversight of the performance of the executive and the administration's implementation of these policies and strategies (Allan et al, 2002: 67).

The next Chapter will examine the Western Cape Anti-Corruption strategy,



CHAPTER FOUR

ANTI-CORRUPTION STRATEGIES IN THE WESTERN CAPE PROVINCE

4.1 INTRODUCTION

As mentioned in chapter two, the Western Cape has the second highest GDP per capita and personal income per capita after Gauteng and also has the highest HDI rating (Meintjes and Meyer, 1998: 15). Compared to the Eastern Cape, therefore, the Western Cape province would seem to be in a better position in terms of socio-economic development. However, there is a large number of people migrating from the Eastern Cape to the Western Cape to seek better opportunities. This has resulted in the growth of informal settlements, where most people live in conditions of chronic poverty.



The Western Cape Provincial Administration has its own corruption related problems. It is for this reason that the former Premier²³ of the Western Cape, Gerald Morkel, in his opening address at an Anti-Corruption workshop in Cape Town (25 July 2000) emphasized that “anti-corruption workshops are vital to any government which has the best interest of its public at heart, which takes pride in being transparent and committed to clean governance, and which wants to serve its public in the most sincere way possible”. It should be the Government that initiates a campaign against corruption

²³ This former Premier was Mr. Gerald Morkel – this opening address could also be found in the following website (www.westerncape.go.za/premier/articles/showquestion.asp?fldAuto=24)

especially in the public service where the taxpayers' money is being misused for selfish personal interests. Mr. Morkel further noted:

“The Provincial Government of the Western Cape is committed to transparency and has an obligation towards clean government and corrupt-free society. These requirements stem directly from the National Government's decision on fraud and corruption. However, fraud prevention involves more than simply preparing documents – it requires a commitment at all levels of society to the protection of the nation's assets” (Gerald Morkel, 25/08/00)

This commitment towards fraud and corruption prevention will not succeed, however, without effective mechanisms being put in place to address the problem. To this end the Western Cape Government has established a forensic audit unit that focuses on fraud and theft by employees of provincial government. In his opening address at an Anti-Corruption workshop in Cape Town (25 July 2000) Mr. Morkel stated that “the forensic audit unit's mandate is based on zero-tolerance, and effective prosecutions and disciplinary processes”. When interviewing the director of forensic audit unit Mrs. Renay Ogle (17 February 2003) in her office, this researcher asked her about the mandate of the unit and she replied by saying, “it is to audit and investigate allegations of economic crime and serious financial misconduct”. According to Accountancy South Africa²⁴:

²⁴ See at www.accountancysa.org.za/archives/2001feb/features/techniques.htm.

“Forensic auditing is an element of forensic accounting, but it has a more limited scope. Estimates are that only between 10% and 20% of economic crimes came to light through the performance of standards audit procedure. More should therefore be done with regard to both the prevention and detection of economic crime, and also to extend the scope of standard auditing. Such an extended role forensic audits could include the following: a risk-based audit approach; proactive detection procedures; and non-standard audit procedures.”

This chapter will examine the anti-corruption strategy in the Western Cape Provincial Administration, with a particular focus on the Forensic Audit Component.

4.2 THE DIRECTORATE: FORENSIC AUDIT



The Directorate: Forensic Audit is located in the Internal Audit Component of the Western Cape Provincial Administration. The Forensic Audit reports to the Audit Committee, which in turn reports to the Provincial Cabinet. The staff complement of Forensic Audit comprises the Director who manages the Unit, a Deputy Director, three Assistant Directors, a Forensic Auditor and eight Assistant Forensic Auditors. According to Mrs. Ogle (2003) “ In order for the Directorate to address its mandate a new structure was proposed, which is currently under review and which entails three sections, covering health, social services and education respectively. Each of these three Units will be headed by a Deputy Director.

4.2.1 Purpose and priorities of the Western Cape Forensic Audit:

The purpose and priorities of the Forensic Audit are:²⁵

- ❑ To determine the loss and facilitation thereof, as well as make recommendations to prevent similar losses in the future and, if need be, in liaison with the relevant Department, review Policies and Procedures and advice thereon;
- ❑ To provide sufficient evidence to ensure the success of internal disciplinary processes;
- ❑ To provide sufficient evidence when reporting the case to the South African Police Service;
- ❑ To pro-actively follow-up on the recovery of the losses;
- ❑ To pro-actively follow-up on the disciplinary process;
- ❑ To pro-actively follow-up on the criminal investigation and prosecution; and
- ❑ To advocate ethical conduct and good governance through the education of public officials.

4.2.2 Origins, Organisation and Responsibilities of Forensic Audit

In the researcher's interview with Mrs. Renay Ogle²⁶ (17 February 2003), she explained that the first fraud investigation unit was established during 1992 and vested within the ex-House of Representatives. Investigations were conducted under the auspices of the

²⁵ See PAWC – Anti-Corruption Policy – pawcnet.wcape.gov.za/prov_admin/support_service/Forensic_Audit/default.asp

loss control officer. Mrs. Ogle continued by highlighting that “With the disbandment of the ex-House of Representatives in 1994, the unit was closed and re-established within the Provincial Administration of the Western Cape during 1996. The first fraud, theft and corruption prevention policy was compiled at this stage and approved by cabinet during 1997”. This move demonstrates the commitment of the Provincial Government to eliminating corruption in the provincial administration. When asked how national legislation impacted on this corruption prevention policy, Mrs. Ogle noted that:

“With the promulgation of Public Finance Management Act of 1999 and subsequent regulations, the amendment of this policy was necessitated. All matters pertaining to financial misconduct (economic crime) where employees of the province are reasonably suspected to be involved, must be reported to the Directorate – Forensic Audit for investigation and finalisation. Cabinet resolved during September of 1999, that the function of Internal Audit including Forensic would remain centralized. The aforementioned decision was taken after the inception of the Internal Audit component established in terms of the PFMA.”

The Directorate Forensic Audit has its own toll free number on which information regarding offences related to fraud, theft and corruption can be reported by employees of the administration, as well as by the broader public. The operation and management of the hotline is the sole responsibility of senior personnel who are trained individuals regarding the identification of related offences and the interviewing of informers. These

²⁶ Mrs. Renay Ogle is the director of the Forensic Audit Component in the Western Cape Provincial Administration (the interview took place in her office in Cape Town).

mangers are equipped with official mobile telephones, which are utilized to redirect any call from the hotline to these respective managers. A 24-hour service has been established in order to enhance service delivery by the component. The Forensic Audit has compiled a pro-forma questionnaire, which is completed by the managers and which contains vital questions regarding the alleged offences and the identification of possible transgressors.

In many cases people who have information about corruption that take place in government departments are not adequately motivated to come forward and report corruption. It might happen that people are not so sure about their safety after reporting corrupt practices. The researcher, therefore, asked Mrs. Ogle how the Forensic Audit Component goes about encouraging the provincial government employees and the public to report corrupt practices. Her reply was that:



“The provincial Anti-Corruption Policy (1999) makes provisions for matters to be reported anonymously through the hotline system. In terms of the provincial Anti-Corruption Policy, officials who have knowledge of any financial misconduct and fail to report this, make themselves guilty of actionable conduct. The intimidation of witnesses is prohibited and anonymity is guaranteed”.

All suspected incidences of corruption in the Western Cape Provincial Administration must be reported to the Forensic Audit Component. Reporting can be through various means, including the toll free reporting line. When irregularities are reported, the details

are recorded on a database (fraud register) and a case number is allocated. Forensic audit will decide, on a cost-benefit basis, which cases will be investigated, and the respective department will be informed if no investigation is to be conducted. Investigations are conducted in terms of an Audit Plan, which is reviewed on a weekly basis. The database (fraud register) is made available to Heads of Departments on a monthly basis in order for them to remain informed of matters reported and progress made. Where necessary the auditors confiscate all documents relating to the Forensic Audit in order to prevent further losses/irregularities and to ensure evidence is not destroyed. All cases reported are investigated and appropriate steps taken to ensure recovery of any loss to the WCPA. If warranted, disciplinary action is instituted, and criminal charges are registered with the South African Police Service. Appropriate recommendations with regard to the management of risks are contained in the audit report. Where it is reasonably suspected that the implicated parties may pose a risk to the Audit, suspension of such parties is required. Upon completion of the Forensic Audit, the Auditor must compile a confidential report, addressed to the Head of the relevant department or institution. The Forensic Auditor will follow up on all outstanding cases and liaise with the South African Police Service on continuous basis. The Department concerned must report progress on a monthly basis and in writing to the Forensic Audit until the recommendations as agreed upon are fully implemented.

4.3 AN EVALUATION OF THE ANTI-CORRUPTION STRATEGY IN THE WESTERN CAPE PROVINCE

The evidence suggests that fraud, theft and corruption in the Western Cape Provincial Administration have been significantly reduced. The number of cases in the Province's Education and Health departments, for example, were significantly lower on 2001 than in previous years, according to Western Cape's former Premier, (Mr. Gerald Morkel, 2001²⁷). Addressing an anti-corruption workshop in Cape Town (25 July 2000), Mr. Morkel said that the success rate in containing fraud, theft and corruption in the Provincial Administration within manageable parameters is largely due to the excellent work carried out by the Province's own Forensic Audit Component. He went on to say that:



“In the Western Cape fraud and theft occurs mainly within our education and health departments where we are dealing with large numbers of employees. But so far the year 2000 is looking pretty good. Where the forensic Auditors investigated between 40 and 50 cases in each of these departments last year, we are down to 4 and 5 cases respectively during the first six months of this year. This is extremely encouraging.”

On February 17, 2003 this researcher asked the director of the Forensic Audit (Mrs. Ogle, 2003) how many corruption cases are presently being investigated in the Province. The

reply was that currently (2003) there were 110 cases of significance that were being investigated. Of the finalized cases, there are 3 finalized criminal prosecutions, 12 pending criminal prosecution, and 24 disciplinary hearings that recorded guilty verdicts. This indicates that the Western Cape Provincial Administration is playing its part in fighting corruption in the province. The province’s “Whistle Blowing” strategy, where employees are able to report fraud, theft and corruption anonymously, has also contributed in combating the problem. “It has been made clear to all employees that ‘silence is collaboration’ and this in itself, has had very positive results” said Mr. Gerald Morkel (17 February 2003).

The following statistics provide information pertaining to the operation of the Directorate Forensic Audit Hotline for the period 2001/2002 and in respect of the types of cases that are reported on the hotline and dealt with either criminally or through disciplinary procedures.

Table. 5 Cases reported on the Western Cape Hotline

DESCRIPTION	RECORDED CALLS	CRIMINAL/ DISCIPLINARY
Fraud	10	7
Theft	23	14
Corruption	5	2
Unauthorized use of GG Vehicles	7	0
Misappropriation of School Funds	6	4
Harmful Business Practices	2	0
Matters to Departments for Financial Inspection	13	-
Non- relevant allegations	17	-
Total	83	27

Source: Forensic Audit Case Study (Ogle, 2003:18)

²⁷ See www.westerncape.gov.za/premier/articles/showquestion.asp?fldAuto=247

Statistics provided are only relevant to the operation of the hotline and do not reflect matters directly reported to the office of the Forensic Audit. Table 5 shows that there were 10 recorded calls related to fraud. Of these 70% led to criminal or disciplinary action against the perpetrators. Theft is one the major problems in government departments. The above table indicates that 23 calls were recorded leading to 14 criminal or disciplinary cases. Out of 5 cases reported on corruption, only 2 led to criminal or disciplinary action. Although not all calls led to criminal or disciplinary action, what is more important is the fact that people are eager to report whatever they perceive would have a negative impact on the public purse. To encourage the employees even further, it would also be important to workshop with the provincial government employees and show them the damages of corruption in the economic development of the province and of the country as a whole. If the employees are not equipped with education about corruption it would be a futile exercise to expect a satisfying response, as employees would not see the importance of reporting corruption. In many cases employees do not report corruption simply because they believe there is nothing to lose if one keeps quiet, although reporting might cause enemies. This mentality should be changed through education, and a culture of a corruption-free in the public service should be instilled. This can only be done if the people at the top of the hierarchy could lead by example and abstain from corrupt practices.

According to the report of the Public Service Commission on the Western
Cape hotline (2002:20):

“It was found that the province such as the Western Cape, which have in-house investigators to the hotline, have proved to be more effective. This province only refer cases to the relevant departments in terms of making recommendations for disciplinary procedures or to the police in case of preliminary investigation, based on the hotline report. Ideally, all provinces should have some investigative capacity based in their hotline offices.”

The Public Service Commission further noted that the location of provincial hotlines in the Forensic Audit department also make sense since this office seems to have the human resources and expertise to manage the hotlines, as well as a greater degree of independence, all of which is important for building public credibility.



The office of the Public Service Commission recently submitted an audit report on a countrywide assessment of anti-corruption capabilities within Provinces. The Western Cape Forensic Audit Unit attained the highest rating and was recommended and benchmarked together with the National Department of Trade and Industry, as best practices for the Country (PSC, 2003:24). This suggests that the Western Cape Provincial Administration is doing its best in promoting clean governance, which would lead to provision of quality services to its people. To be regarded as an example of best practice for the country as a whole is an obvious achievement for the Province.

Despite these achievements, this researcher's interview with Ms. Ogle (17 February 2003) suggest that there are number of limitations that are hampering the effectiveness and efficiency of the Forensic Audit component. These include the lack of capacity to conduct regular preventative audits and exercises based on a pre-determined audit plan; the lack of capacity to ensure regular follow up on recommendations contained in reports; the lack of a trend analysis database and adequate database on allegations reported, progress made and linked to a database of suspects, trends analysis and precedent register; and lastly, the lack of adequate Forensic Audit/ investigative capacity and material resources. In the researcher's interview with Mr Hennie van Vuuren, Senior Researcher on Anti-Corruption Strategies for the Institute for Security Studies in Cape Town, another limitation of the Western Cape's anti-corruption strategy was felt to be the fact that it had not sufficiently involved members and organizations of civil society.



4.4 CHAPTER SUMMARY

This chapter has described the Forensic Audit Component in the Western Cape Provincial Administration. Despite some limitations in its operations, the Forensic Audit Unit has managed to achieve the establishment of an independent, centralized Audit/ Investigative capacity. It has introduced a provincial Anti-Corruption policy focusing on audit/ investigation, prevention and education. This policy recognizes the fact that the Provincial Administration is entitled to protect its assets and institute reasonable steps to do so. The Provincial Administration however realizes that it must take cognizance of the fact that employees also have rights, especially with regards to self-esteem, person

and privacy. The employer therefore has limits as to how far to proceed to confirm reasonable suspicions of fraud, theft and corruption. An effective and efficient hotline has been established. Furthermore, public and employee confidence²⁸ has been retained and as a result the public continues to report their suspicions of economic crime and serious financial misconduct.

By way of conclusion, the next chapter will summarize the findings of the study. It will also provide a number of practical recommendations for improving the fight against corruption in the two provinces.



²⁸ see table 5 above where it has been indicated that people take corruption reporting serious.

CHAPTER FIVE

CONCLUSIONS AND RECOMMENDATIONS


5.1 CONCLUSIONS

The primary objective of the study was to compare the Anti-Corruption Strategies in South Africa's Western and Eastern Cape provinces. This has been achieved by firstly exploring the role of provinces in general dealing with corruption. Subsequently, the study examined the anti-corruption strategies of both Eastern and Western Cape provinces.



The two provinces took a different approach in their endeavours to deal with corruption. The Eastern Cape Provincial Administration introduced two new structures that were mandated to deal with corruption in the Province. These were the Network Against Corruption (NAC), which was established as an initiative of the Legislature and the Anti-Corruption Forum (ACF) that was located in the Premier's office. The NAC sought to enhance the functions of the legislature by acting as a conduit through which information is channeled to and from standing committees, the public and the ACF. The ACF sought to strategically coordinate the functions of various role players to establish a central structure that would strategize and advance anti-corruption objectives.

The Western Cape Provincial Administration has established a Forensic Audit Unit that focuses on fraud and theft by employees of the Provincial Government. The Directorate: Forensic Audit is located in the Internal Audit Component of the Western Cape Provincial Administration. The Forensic Audit reports to the Audit Committee, which in turn reports to the Provincial Cabinet.

The study has shown that neither of the two agencies established in the Eastern Cape have functioned effectively. One of the reasons for this was the duplication of function, role and, in some cases, membership of the two bodies. This led to competition and a lack of effective coordination between the work of the two bodies. More specifically, in the case of the Anti-Corruption Forum, one of the most important limitations was the lack of support to the Provincial Director-General, who was charged with the main responsibility for the work of the ACF.  Little organizational capacity (human & financial resources) was allocated to support the Director-General. The result was that the Director-General and other officials had to balance anti-corruption work as an “add-on” together with other responsibilities.

In the Western Cape, the Forensic Audit Unit has managed to achieve the establishment of an independent, centralized Audit/ Investigative capacity. It has introduced quite a successful provincial Anti-Corruption policy focusing on audit/ investigation, prevention and education, that has been lauded by the Public Service Commission as a best practice model for other provinces.

Despite these achievements, there are number of limitations that are hampering the effectiveness and efficiency of the Forensic Audit component. These include the lack of capacity to conduct regular preventative audits and exercises based on a pre-determined audit plan; the lack of capacity to ensure regular follow up on recommendations contained in reports; the lack of a trend analysis database and adequate database on allegations reported, progress made and linked to a database of suspects, trends analysis and precedent register; the lack of adequate Forensic Audit/ investigative capacity and material resources; and the lack of civil society involvement in the work of the Audit.

5.2 RECOMMENDATIONS

The following recommendations are put forward as a way of improving the anti-corruption strategies in both provinces.



- Anti-corruption activities in both provinces should be a work area for the Governance and Administration clusters at the levels of the Executive and Heads of Department. Regular implementation progress reports be submitted to these clusters for monitoring and evaluation.

- The Eastern Cape should learn from the Western Cape by establishing hotlines in order to encourage the public officials and the public to report incidents of corruption anonymously.

- An analysis should be conducted in the Eastern Cape with respect to existing provincial anti-corruption capacity, including departmental structures, skills levels and capacity to manage disciplinary cases.

- The Eastern Cape Anti-Corruption Forum and Network Against Corruption should be resurrected with a clear role definition and the avoidance of duplication of membership. While the Forum should coordinate the efforts of the Executive and the Provincial Administration to implement anti-corruption policies and strategies within provincial departments, the NAC should facilitate the Legislature's ability to exercise oversight of the performance of the executive and the administration's implementation of these policies and strategies.



- The Eastern Cape Province should consider establishing a dedicated Anti-Corruption Unit that will focus on anti-corruption work in the province. The office of the Director General of the Province would be an ideal strategic location, as it would give such a unit a high profile.

- The Western Cape Provincial Administration should also learn from the Eastern Cape Provincial anti-corruption strategy by considering involving other relevant stakeholders such as the civil society, business and the community in the fight against corruption. This could promote a situation whereby all sectors of society are aware that they should be partners in the fight against corruption.

- The work of the Western Cape Forensic Audit Unit should be acknowledged and improved by the commitment by the provincial Government of more staff and resources. This would enable the unit to clear current backlogs and process more cases than it is currently capable of doing.

- Both the Western and the Eastern Cape governments should play a more proactive role in educating their employees about the importance of reporting incidents of corruption in the public service. One way in this could be achieved is by encouraging provincial departments to establish a section that deals with ethics, awareness and education. Employees should be better educated about the consequences of corruption in the economic development of the province and the country as a whole.



- It is recommended for both provinces that adequate financial and human resources be allocated as matter of urgency when dealing with corruption. Unless such resources are forthcoming, the fight against corruption will always be an uphill struggle.

BIBLIOGRAPHY

Allan, C., Mattes, R., and Millie, U. 2002. *Government Corruption Seen From The Inside*. Grahamstown: Public Service Accountability Monitor.

Cloete, J. J. N. 1996. *Accountable Government and Administration for the Republic of South Africa*. Pretoria: Van Schaik.

Constitution of the Network Against Corruption, launched on 12 October 2000. Bisho: Speakers Office.

Constitution of the Republic of South Africa. 1996. (*Act 108 of 1996*). Pretoria: Government Printers.

Department of Public Service and Administration. 2002 (January). *Public Service Anti-Corruption Strategy*. Pretoria: DPSA.

Department of Public Service and Administration and United Nations Office on Drugs and Crime. 2003. *Country Corruption Assessment Report: South Africa*. DPSA.

Development Information Business Unit. 1998. *Western Cape: Development Profile*. South Africa: Development Bank of Southern Africa.

Du Plessis, D. Oct. 1997. *Forensic Auditing – assessing the risks of economic crime*. Accountancy and Finance Update, vol. 2, no. 5.

Eastern Cape Government, Public Service Commission, Department of Public Service and Administration and National Treasury. 2002. *Eastern Cape Anti-Corruption Evaluation*. Unpublished.

Ebrahim, H. 1999. 'Coming to grips with corruption: a constitutional perspective.' Sangweni and Balia, 1999: 58-85. *Fighting Corruption: South African perspectives*. Pretoria: Unisa Press.

Erasmus, J. 1996. *Eastern Cape: A Human Development Profile*. South Africa: Development Bank of Southern Africa.

Gildenhuys, J. S. H. (ed). 1991. *Ethics and the Public Sector*. Kenwyn: Juta.

Goba, B. 1999. 'Moral vision of a transforming society: choosing who we are.' Sangweni and Balia, 1999: 220-235. *Fighting Corruption: South African perspectives*. Pretoria: Unisa Press.

Godongwana, E. 2003. *Budget Speech 2003 for the Eastern Cape Province*. Bisho: Provincial Parliament.

Matomela, M. 2000. Presentation: *Network Against Corruption*. Bisho. Provincial Parliament.

Mbeki, T. 2003. *State of the Nation Address of the President of South Africa*, National Parliament. Cape Town: 14 February.

Ogle, R. 24 April 2003. *Case Study*. Western Cape Provincial Administration Directorate: Forensic Audit.

Osborne, D. and Plastrik, P. 1997. *Banishing bureaucracy*. New York: Plume.

Public Service Commission. 2003. *Audit of Anti-Corruption Capabilities of Departments*. Pretoria: PSC.

Public Service Commission. 2000. *Founding Document of the Eastern Cape Provincial Anti-Corruption Forum*. Eastern Cape: Regional office.

Public Service Commission, 2001(a). *A review of the South Africa's National Anti-Corruption Strategies*. Pretoria: PSC.

Public Service Commission, 2001(b). *South Africa Ready to Face Corruption Head-on*. Pretoria: PSC Newsletter November 2001.



Public Service Commission. 2002. *State of the Public Service Report*. Pretoria: Public Service Commission.

Public Service Commission. 2002. *Report on the Effective Management of Hotlines*. Pretoria: PSC.

Ramaite, S. 1999. 'Corruption versus good administration of public affairs'. 158-180. In Sangweni, S. and Balia, D. (eds). *Fighting Corruption: South African Perspectives*. Pretoria: Unisa Press.

Rasool, E. 2003. Budget Speech 2003 for the Western Cape Province. Cape Town: Provincial Parliament.

Sangweni, S. and Balia, D. (eds.). 1999. *Fighting Corruption: South African Perspectives*. Pretoria: Unisa Press.

Smith, K. 1999. 'Improving the effectiveness of service-delivery by fighting corruption.' 181-194. In Sangweni, S. and Balia, D. (eds). *Fighting Corruption: South African Perspectives*. Pretoria: Unisa Press.

Stofile, M. A. *Fighting Corruption- A Report by the Premier to the Eastern Cape Provincial Legislature* 12th October 2000.

Stofile, M. A. *State of the Province Address*. Provincial Legislature Chamber. Bisho. 21 February 2003.

Van der Merwe, S. 2001. *Combat Corruption Collectively*. Pretoria: Van Schaik.

Interviews

Email interview with Dr M. E Tom, Director General of the Eastern Cape (also Chairman of the Provincial Anti Corruption Forum), on the 6 November 2002.

Email interview with Dr M. E Tom, Director General of the Eastern Cape, on the 31 March 2003.

Email interview with Mr. J.D Morkels, Western Cape Provincial Director: Personnel Management: Corporate Services, on the 13 March 2003.

Email interview with Mr. H. van Vuuren, Senior Researcher: Anti-Corruption Strategies at Institute for Security Studies (ISS), on the 31 March 2003.

Interview with R. Ogle, Western Cape Forensic Audit Office. 17 February 2003.



Websites

<http://www.accountancysa.org.za/archives/2001feb/features/techniques.htm>.

<http://allafrica.com/stories/200305190286.html>

<http://www.dispatch.co.za>

<http://www.easterncape.gov.za>

<http://www.ecprov.gov.za>

<http://www.ecprov.gov.za/aboutecape/>

<http://www.ecprov.gov.za/speeches/premier/2000/anticorruptforum.htm>

<http://www.idasa.org.za>

<http://islamic-finance.net/islamic-ethics/article-10/>

<http://www.Parlcent.ca/anticorruption/index.html> (The Parliamentary Centre and Anti-Corruption)

<http://www.psc.gov.za/docs/guidelines/code.html>

<http://www.psc.gov.za/docs/reoprts/2002/hotlines/01.pdf>

<http://www.sabcnews.com/politics/government/0,1009,48541,00.html>

<http://www.westerncape.gov.za>

<http://www.westerncape.go.za/premier/articles/showquestion.asp?fldAuto=24>

http://pawcnet.wcape.gov.za/prov_admin/support_service/Forensic_Audit/default.asp

