

**Legal perspectives on the prevention and
minimisation of corruption for sustainability
in South African municipalities**

JS Wright

 **[Orcid.org/0000-0002-3317-9057](https://orcid.org/0000-0002-3317-9057)**

Thesis accepted in fulfilment of the requirements for the degree
Doctor of Philosophy in Law and Development at the North-West
University

Promoter: Prof AA du Plessis

Co-promoter: Prof ON Fuo

Graduation: December 2021

Student number: 25154532

This study was funded by the National Research Foundation of South Africa (NRF) (Grant No. 130190 and 115581) and the Faculty of Law of the North-West University (NWU) as part of the research of the South African Research Chair in Cities, Law and Environmental Sustainability.

All viewpoints and errors remain the student's own.

The research for this study was completed on the 1st of June 2021. The study reflects the legal position in South Africa as at this date.

DEDICATION

To my late grandfather Thomas Ignatius Barnard 1938-2020, who taught me how to
live life

and

my late great uncle His Worship Hendrik Francois Möller 1939-2020 who taught me that
studying law takes perseverance and great determination.

ACKNOWLEDGEMENTS

According to an African proverb, it takes a village to raise a child, in my case however, it took a village to produce this research.

Every research journey starts from a place of inspiration. The sparks of curiosity for this research were ignited by **Dr Duane Aslett** who co-presented the module of corruption during my LLM. The books, articles and writings of famous journalist **Ms Mandy Weiner** and local government veteran **Dr Crispian Olver** fuelled this curiosity of mine.

Once you have inspiration, you need continued motivation to complete a project of this magnitude. All my undergraduate professors and lecturers at one time or another served as motivation for me to succeed, but some voices spoke louder than others throughout this journey: **Adv René Koraan** who made us recite this quote before every criminal law class, "if you want to be somebody, if you want to go somewhere, you better wake up and pay attention." **Mr Myronne Stoffels** for your coaching during the Juta Mock Trials and making law of evidence one of my most loved subjects. **Prof Pieter du Toit** for your encouragement and mentorship during my LLB dissertation and my LLM. **Prof Elmiën du Plessis** for living out your passion for law that is contagious in the classroom. **Prof Klaus Beiter** for always being available and willing to share your knowledge and advocating for increased access to knowledge.

I wish to specifically acknowledge and thank **Prof Pieter du Toit** and **Mr Michael Laubscher** who helped me to apply for this PhD position and bursary, without whose help I would not have succeeded.

Entering the world of research can be overwhelming and intimidating, I therefore want to take this opportunity to thank **Dr Matthew Glasser** for being available during the course of my PhD, to answer my many questions, to give advice, and to sometimes serve as my 'trail guide' through research.

During the course of my PhD research, I realised that my family had to also make great sacrifices to ensure the success of this project. How can one ever say thank you enough to these people?

I wish to thank my mother **Elsabé Wright** for her continued support and having to put up with many a phone call on how I was going "to give up and just leave it," my father **Herbie Wright** for his confidence in me, my brother **Henry Wright** for always making jokes to uplift my spirits, my fiancé **Nick Warren** for all the coffee and meals brought to my study and my daughter **Elisma Wright** who had to sacrifice so much of her childhood including, many going-away weekends so mom could study. My grandmother, **Joey Barnard**, thank you for all your support and always sending me home with a care package of hope, faith, strength, and eat stuffs. Finally, in his absence, my late grandfather **Tom Barnard**, who knew that I could make a success of a project of this magnitude. To my chosen sisters **Marijke van Jaarsveld, Kesia Swanepoel, and Anri van Niekerk**, thank you for your encouragement, for listening, and understanding the many cancelled plans.

Apart from my biological family, I also had the privilege to conduct my research within the **CLES** (SARChI Chair in Cities, Law and Environmental Sustainability) **family**. You have all listened and encouraged me to keep at it more times than I can count. I wish to especially thank **Dr Ifeoma Owosuyi, Dr Nicolene Steyn, Ms Melandri Steenkamp, Ms Nonhlanhla Ncgobo and Ms Maricéle Botes**.

A piece of research like this does not come cheap, I wish to specifically acknowledge and thank the **North-West University, the Faculty of Law, Nedbank, the Konrad-Adenauer Stiftung, and the National Research Foundation**. These institutions all contributed to the funding of this research directly or indirectly.

Access to physical and information infrastructure was essential to this research. I wish to specifically thank and acknowledge the **North-West University, the Ferdinand Postma Library, and the SARChI Chair in Cities, Law and Environmental Sustainability** for providing me either with the physical space to conduct my work or by allowing me to make use of their physical and/or virtual libraries. In addition, I wish to extend my gratitude to the Chair for showering me with opportunities to promote my career and to grow as a person.

This thesis went through so many learned eyes, including my examiners, before being accepted, and I wish to thank and acknowledge everyone who made themselves available to do so.

Lastly, one must commend and applaud the amount of effort promoters put into a piece of research such as this. In this instance I realise that a great deal of patience was also required. This is thus the appropriate time to acknowledge and thank **Prof Anél du Plessis** and **Prof Oliver Fuo** whose dedication to this study cannot be overstated.

PUBLICATIONS AND CONFERENCE CONTRIBUTIONS

Articles in Peer Reviewed Journals

Glasser M and Wright J "South African Municipalities in Financial Distress: What Can Be Done?" 2020 *Journal of Law, Democracy and Development* 413-441

Conference Contributions

2019: Wright J *Goeie Bestuur en Beginsels van Finansiële Volhoubaarheid as Bekampingsmetodes vir Korrupsie in Plaaslike Owerhede* (Conference paper presented at the Suid-Afrikaanse Akademie vir Wetenskap en Kuns (SAAWK) Annual National Human Sciences Student Symposium, Pretoria, 16 October 2019)

2019: Wright J *South African Municipalities in Financial Crisis: What Can Be Done?* (Conference paper presented at the CLES/SALGA 1st Annual National Postgraduate Student Conference on Local Government & Urban Governance on 'Recent Developments in Local Government Law, Policy and Practice Towards Implementation of the UN Sustainable Development Goals,' Potchefstroom, November 2019)

2020: Glasser MD and Wright J "Municipalities in Financial Distress: What can be done?" (Conference paper presented at the Fifth Southern Africa City Studies Conference, Johannesburg, September 2020)

2020: Wright J "SA law for water services provision: A tissue for corruption in COVID-19 type procurement?" (Conference paper presented at the Environmental Law Association Annual Student Conference on Reconfiguring Environmental Law Amidst COVID-19, Potchefstroom, September 2020)

2021: Wright J "Corruption in harvesting marine resources: How can international policy help?" (Conference paper presented at the IX Strathclyde Centre for Environmental Law and Governance Postgraduate Colloquium, United Kingdom, June 2021)

ABSTRACT

The premise of the study is that the legal imperative for developmental local government in South Africa depends on local sustainability. The study argues that public sector corruption is an impediment to local sustainability. The primary objective of this thesis is to critically explore, from the perspective of law, how public sector corruption in local government can be prevented in the pursuit of sustainability in municipalities.

The research comprises of a desktop analysis of relevant primary and secondary sources of law and the discourse in scholarly literature. The desktop analysis establishes from a local government perspective the conceptual framing of public sector corruption, sustainable development, good governance and financial sustainability. Standards to prevent corruption in local government are identified from international and regional law and policy. South African national anti-corruption law and policy are evaluated against these standards 1) to establish whether these standards are provided for in South African law and policy, and 2) to identify which duties local government has, to help prevent public sector corruption. The final part of the study uses an empirical research method in the form of a quantitative content analysis to identify to what extent municipalities fulfil their duties to prevent corruption as prescribed by anti-corruption national law and policy. In addition, this section, through a case study analysis, aims to distil some learning points applicable to local government in general.

International and regional law contains at least fourteen standards which provide valuable indicators on how local governments could prevent corruption. An appraisal of how South African anti-corruption law and policy measure up against the standards shows that the country boasts a solid law and policy framework to prevent public sector corruption in municipalities. However, some areas for improvement remain.

In response to the research question, this study finds through a systematic analysis that the prevention of public sector corruption in local government can be improved if anti-corruption law and policy are reviewed to rectify some identified gaps which includes more robust safeguards against political interference in local governance. Improvements must be made to the existing national law and policy to include increasing access to

municipal information and improving whistle-blower protection. Law and policy can further be used to mandate supervisory and monitoring institutions of local government to review all municipal reports with the purpose of detecting potential acts of corruption. South African municipalities must fulfil their duties to prevent corruption as prescribed by national law and policy. Lastly, a peer learning initiative is encouraged where municipalities can exchange best practices, innovative measures, and other experiences which may help to prevent corruption.

TABLE OF CONTENTS

1	Introduction.....	1
1.1	<i>Background</i>	<i>1</i>
1.2	<i>Defining public sector corruption in South Africa</i>	<i>6</i>
1.3	<i>Legal perspectives on sustainability in South African local government.....</i>	<i>7</i>
1.4	<i>Good governance and financial sustainability in the South African local government context.....</i>	<i>10</i>
1.5	<i>Prevention and minimisation of corruption for sustainability in municipalities.....</i>	<i>12</i>
1.6	<i>Research question</i>	<i>15</i>
1.7	<i>Objectives of the study</i>	<i>15</i>
1.8	<i>Hypothesis</i>	<i>16</i>
1.9	<i>Assumptions.....</i>	<i>16</i>
1.10	<i>Outline of the study</i>	<i>16</i>
1.11	<i>Research methodology</i>	<i>17</i>
2	Public sector corruption, good governance and financial sustainability in local government.....	20
2.1	<i>Introduction.....</i>	<i>20</i>
2.2	<i>Public sector corruption defined.....</i>	<i>21</i>
2.2.1	<i>What is corruption?</i>	<i>21</i>

2.2.2	<i>Forms of corruption</i>	<i>30</i>
2.2.3	<i>Corruption in the public sector.....</i>	<i>37</i>
2.3	<i>Sustainable development as a concept</i>	<i>40</i>
2.4	<i>Sustainable development in South African local government ...</i>	<i>45</i>
2.4.1	<i>The environmental dimension of sustainable development</i>	<i>53</i>
2.4.2	<i>The social dimension of sustainable development</i>	<i>54</i>
2.4.3	<i>The economic dimension of sustainable development</i>	<i>55</i>
2.4.4	<i>The governance dimension of sustainable development</i>	<i>56</i>
2.5	<i>Principles of good governance in local government</i>	<i>60</i>
2.5.1	<i>Principle 1: Democracy</i>	<i>61</i>
2.5.2	<i>Principle 2: Moral and ethical conduct.....</i>	<i>66</i>
2.5.3	<i>Principles 3 and 4: Transparency and accountability</i>	<i>68</i>
2.5.4	<i>Principle 5: Capacity</i>	<i>70</i>
2.6	<i>The nexus between financial sustainability and good governance in local government</i>	<i>72</i>
2.6.1	<i>Financial sustainability defined in a local government context.....</i>	<i>72</i>
2.6.2	<i>The critical underpinnings of financial sustainability in a local government context.....</i>	<i>77</i>
2.7	<i>Concluding remarks</i>	<i>81</i>
3	<i>Standards for the prevention of public sector corruption in local government</i>	<i>84</i>

3.1	<i>Introduction</i>	84
3.2	<i>International and regional anti-corruption law</i>	85
3.2.1	<i>United Nations Convention Against Corruption</i>	86
3.2.2	<i>United Nations Convention Against Transnational Organised Crime</i>	86
3.2.3	<i>African Union Convention on Preventing and Combatting Corruption</i>	87
3.2.4	<i>African Charter on the Values and Principles of Public Service and Administration</i>	88
3.2.5	<i>African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development</i>	88
3.2.6	<i>African Charter on Democracy, Elections and Governance</i>	89
3.2.7	<i>SADC Protocol Against Corruption</i>	90
3.2.8	<i>European Union Convention Against Corruption Involving EU Officials or Officials of EU Countries</i>	90
3.2.9	<i>Civil Law Convention on Corruption</i>	91
3.2.10	<i>Criminal Law Convention on Corruption</i>	91
3.2.11	<i>The Twenty Guiding Principles for the Fight Against Corruption</i>	91
3.2.12	<i>Inter-American Convention Against Corruption</i>	92
3.2.13	<i>OECD Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions</i>	92
3.2.14	<i>ASEAN Political-security Community Blueprint 2025</i>	93
3.2.15	<i>Arab Convention Against Corruption</i>	94
3.3	<i>Principle 1: Integrity and ethical governance</i>	94

3.3.1	<i>Standard: Comply with human rights obligations</i>	<i>96</i>
3.3.2	<i>Standard: Establish and enforce codes of conduct</i>	<i>97</i>
3.3.3	<i>Standard: Reduce political interference</i>	<i>98</i>
3.3.4	<i>Standard: Strengthen systems for human resource management</i>	<i>99</i>
3.3.5	<i>Standard: Formulate and implement a public finance management system.....</i>	<i>100</i>
3.4	<i>Principle 2: Transparency in governance</i>	<i>101</i>
3.4.1	<i>Standard: Increase access to information.....</i>	<i>102</i>
3.4.2	<i>Standard: Encourage whistle blowing.....</i>	<i>104</i>
3.5	<i>Principle 3: Accountability in governance</i>	<i>105</i>
3.5.1	<i>Standard: Increase access to evidence.....</i>	<i>106</i>
3.5.2	<i>Standard: Remove legal immunities.....</i>	<i>106</i>
3.5.3	<i>Standard: Provide legal redress</i>	<i>107</i>
3.5.4	<i>Standard: Establish and strengthen anti-corruption institutions.....</i>	<i>108</i>
3.5.5	<i>Standard: Facilitate stakeholder cooperation</i>	<i>110</i>
3.5.6	<i>Standard: Promote the participation of society</i>	<i>112</i>
3.5.7	<i>Standard: Hold periodic government elections.....</i>	<i>114</i>
3.6	<i>Concluding remarks</i>	<i>115</i>
4	South African law and policy on the prevention of public sector corruption in local government.....	118
4.1	<i>Introduction.....</i>	<i>118</i>

4.2	<i>The evolution of anti-corruption law and policy in South Africa</i>	118
4.3	<i>Overview of South African anti-corruption law and policy</i>	121
4.4	<i>The principles of integrity, transparency, and accountability manifesting in South African anti-corruption law and policy ..</i>	122
4.4.1	<i>Integrity.....</i>	122
4.4.2	<i>Transparency</i>	137
4.4.3	<i>Accountability.....</i>	147
4.5	<i>Concluding remarks</i>	166
5	<i>Corruption prevention measures in selected South African municipalities</i>	172
5.1	<i>Introduction.....</i>	172
5.2	<i>Municipalities fulfilling their legal duties to prevent corruption</i>	174
5.2.1	<i>Quantitative content analysis of municipal websites and policies.....</i>	174
5.2.2	<i>Results of the quantitative content analysis.....</i>	181
5.3	<i>Municipal policies aimed at preventing public sector corruption</i>	192
5.3.1	<i>Molemole Local Municipality</i>	193
5.3.2	<i>Cape Winelands District Municipality</i>	197
5.3.3	<i>Cape Town Metropolitan Municipality.....</i>	201
5.4	<i>Concluding remarks</i>	206

6	Conclusion.....	209
6.1	<i>Background to the study.....</i>	209
6.2	<i>Scope, method, and limitations of the study.....</i>	209
6.3	<i>Concept clarification.....</i>	210
6.3.1	<i>Public sector corruption.....</i>	211
6.3.2	<i>Sustainable development in local government.....</i>	211
6.3.3	<i>Good governance.....</i>	212
6.3.4	<i>Financial sustainability.....</i>	212
6.4	<i>The contribution of this study.....</i>	213
6.5	<i>Main findings.....</i>	213
6.5.1	<i>Preventing corruption is necessary for sustainable development in the South African local government context.....</i>	214
6.5.2	<i>International and regional standards help direct the prevention of corruption in South Africa.....</i>	216
6.5.3	<i>South African anti-corruption law and policy have specific shortcomings.....</i>	217
6.5.4	<i>The majority of municipalities in South Africa fail in their legal duty to prevent corruption.....</i>	218
6.5.5	<i>Prevention of corruption in local government goes beyond legal compliance.....</i>	219
6.6	<i>Recommendations.....</i>	220
6.6.1	<i>Rectification of the specific shortcomings in South African law and policy.....</i>	220

6.6.2	<i>Provide support for policy-based non-compliance</i>	<i>222</i>
6.6.3	<i>Initiate a national peer learning initiative improved corruption prevention in local government</i>	<i>222</i>
6.7	<i>Remaining areas of research</i>	<i>223</i>
6.7.1	<i>The nature and impact of corruption in specific municipal sectors.....</i>	<i>223</i>
6.7.2	<i>The effectiveness of the existing anti-corruption law and policy framework in South Africa.....</i>	<i>223</i>
6.7.3	<i>Empirical perspectives on the meaning of corruption.....</i>	<i>224</i>
6.8	<i>Conclusion.....</i>	<i>224</i>
Annexure A: Results of the QCA.....		226
Bibliography.....		254

LIST OF ABBREVIATIONS

AGSA	Auditor-General of South Africa
ANC	African National Congress
ASEAN	Association of Southeast Asian Nations
AU	African Union
AUCPCC	African Union Convention on Preventing and Combating Corruption 2004
BRICS	Brazil, Russia, India, China, and South Africa
CIPFA	Chartered Institute of Public Finance and Accountancy
CoGTA	Department of Cooperative Governance and Traditional Affairs
CPI	Corruption Perceptions Index
DA	Democratic Alliance
ICCPR	International Covenant on Civil and Political Rights
ICLEI	Local Governments for Sustainability
ICTs	Intelligent Communications Technologies
IDP	Integrated Development Plan
MEC	Member of the Executive Council
MFMA	Local Government: Municipal Finance Management Act 56 of 2003
MIMF	Municipal Integrity Management Framework
NDP	National Development Plan 2030: Our Future Make It Work 2012
NDPP	National Director of Public Prosecutions
NEMA	National Environmental Management Act 107 of 1998
NGO	Non-governmental Organisation
NPM	New Public Management
OECD	Organisation for Economic Cooperation and Development

PAIA	Promotion of Access to Information Act 2 of 2000
PreCCA	Prevention and Combatting of Corrupt Activities Act 12 of 2004
PSC	Public Service Commission
QCA	Quantitative Content Analysis
SACN	South African Cities Network
SADC	Southern African Development Community
SALGA	South African Local Government Association
SAPS	South African Police Service
SDBIP	Service Delivery and Budget Implementation Plan
SDGs	Sustainable Development Goals
UN	United Nations
UNCAC	United Nations Convention Against Corruption 2003
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNFCCC	United Nations Framework Convention on Climate Change
UNODC	United Nations Office on Drugs and Crime
WCED	World Commission on Environment and Development

LIST OF FIGURES

Figure 1:	Municipal websites with prescribed information	185
Figure 2:	Municipalities with a treasury department, an internal audit unit and an integrity champion	187
Figure 3:	Municipalities with a prescribed integrity policy framework.....	189
Figure 4:	Municipalities' anti-corruption policies	192

LIST OF TABLES

Table 1:	List of variables used for the QCA.....	175
-----------------	--	------------

CHAPTER 1

INTRODUCTION

1.1 Background

Local governments¹ are entrusted to make a substantial contribution to the social and economic upliftment of their communities.² This speaks to the expectation in the preamble of the Constitution³ that the state will strive to improve the quality of life of everyone in South Africa.⁴ To improve the quality of life, the Constitution places great responsibility on local government in terms of duties and functions, ranging from providing municipal services and fulfilling human rights to promoting a safe environment.⁵ For this reason, local government is given a developmental mandate.⁶ Local government's developmental mandate can be seen to centre on finding sustainable ways to meet the needs of communities while improving the quality of their lives.⁷ Given the limited resources available, satisfying these responsibilities requires a capable and strong local government, but more importantly it requires sustainability in local government.⁸

Corruption is viewed as the foremost cause of poverty and unsustainable development in South African cities.⁹ Corruption spares none, not even those left vulnerable by the COVID-19 pandemic.¹⁰ In his 2021 State of the Nation Address President Ramaphosa drew attention to investigations into corrupt activities in the government amounting to some R3,5 billion.¹¹ These funds lost to corruption had been explicitly dedicated to COVID-19 government responses.¹² According to the *Victims of Crime Survey*, corruption is

¹ This thesis refers to cities, local governments and local authorities interchangeably.

² Preamble of the *Local Government: Municipal Systems Act* 32 of 2000 (hereafter the Systems Act).

³ *Constitution of the Republic South Africa*, 1996 (hereafter the Constitution).

⁴ Preamble of the Constitution.

⁵ Ss 7(2) and 152 of the Constitution.

⁶ S 152(1)(d) of the Constitution.

⁷ S 152(1)(b) of the Constitution; the introduction of the GN R423 in GG 18739 of 13 March 1998 (hereafter the White Paper on Local Government).

⁸ Preamble of the Systems Act.

⁹ SACN *State of South African Cities Report 2016* 282; Mawenya *Preventing Corruption in African Procurement* 2; Routley *Negotiating Corruption: NGOs, Governance, and Hybridity in West Africa* 41.

¹⁰ Ramaphosa *State of the Nation Address 2021* <https://bit.ly/2NABrWg>.

¹¹ Ramaphosa *State of the Nation Address 2021* <https://bit.ly/2NABrWg>.

¹² Ramaphosa *State of the Nation Address 2021* <https://bit.ly/2NABrWg>.

widespread in South Africa: the number of incidents of corruption increased from 37 778 in 2016/17 to 134 442 in 2017/18, showing a 300% increase from the previous year.¹³ This is indicative of a serious problem.¹⁴ Judge Baqwa characterised the prevalence of corruption in South Africa in *S v Mofomme*¹⁵ when he stated that:

Corruption seems to have penetrated every nook and cranny of society, to the point where every aspect, be it political, economic, social, or constitutional, is so eroded, so threatened, as to bring down the whole edifice.¹⁶

Globally, the need to improve anti-corruption efforts is underscored by the United Nations¹⁷ in its *United Nations Convention Against Corruption 2003*,¹⁸ which explains the adverse nature and effects of corruption.¹⁹ The *Global Corruption Barometer Africa* shows that corruption is perceived as pervasive throughout local government in South Africa and can be observed in a myriad of different sectors.²⁰ According to Corruption Watch, 23% of the corruption cases reported are located in local government.²¹ The number of alleged occurrences of corruption in local government has recently risen to such a level that the Western Cape Provincial Department for Local Government is considering establishing a special court for municipal corruption cases.²²

On public procurement in local government, the Auditor-General reports that in 2019/20 84% of municipalities engaged in procurement that was materially uncompetitive and followed unfair procurement processes.²³ Prohibited awards for goods and services where the suppliers were owned or managed by employees and councillors of the municipality

¹³ Statistics South Africa 2018 *Victims of Crime Survey* 62.

¹⁴ Statistics South Africa 2018 *Victims of Crime Survey* 62; Corruption Watch 2018 *Annual Report: Upholding Democracy* 20. The more recent *Victims of Crime Surveys* does not provide separate statistics on corruption related matters. It has collapsed corruption matters under miscellaneous theft and thus does not provide accurate statistics on the number of corruption-related incidents.

¹⁵ *S v Mofomme* 2018 1 SACR 213 (GP).

¹⁶ *S v Mofomme* 2018 1 SACR 213 (GP) para 21. Also see *Helen Suzman Foundation v President of the Republic of South Africa* 2015 2 SA 1 (CC) para 1.

¹⁷ Hereafter the UN.

¹⁸ *United Nations Convention Against Corruption* (2003) 43 ILM 5 (hereafter the UNCAC).

¹⁹ Foreword of the UNCAC.

²⁰ Pring and Vrushu *Global Corruption Barometer Africa 2019: Citizens' Views and Experiences of Corruption* 53; Transparency International 2021 <https://www.transparency.org/country/ZAF>.

²¹ Statistics South Africa 2018 *Victims of Crime Survey* 62; Corruption Watch 2018 *Annual Report: Upholding Democracy* 20.

²² Githahu *Independent Online* 1.

²³ AGSA *Consolidated General Report: MFMA 2019/20* 37.

amounted to about R4 165 million.²⁴ Local government procurement where municipal employees failed to declare their own interest or that of their family either as part of the procurement processes or through annual declarations totalled R1 219 million.²⁵ Although these statistics and numbers are not reflective of the factual extent of public sector corruption in local government, it does show that some material irregularities occurred. These irregularities should be interpreted as warning signs of the presence of corruption in supply chain management.²⁶

Contrary to popular belief, public sector corruption in local government extends beyond procurement practices.²⁷ In the past many instances of public sector corruption relating to land governance, town planning, housing and mining have surfaced.²⁸ For example, it is a common practice for public officials to solicit sexual favours from women who are applicants for subsidised houses in return for registering properties or awarding public houses.²⁹ Bribery also occurs in some municipalities where residents undeservedly access certain entitlements, such as the registration or rezoning of land, or the approval of property development or building plans.³⁰

In the water service delivery and human resource sectors of local government, public sector corruption takes place through unduly influencing procurement and operational processes, for example.³¹ Some corrupt practices have included leaving communal taps to dry up to create opportunities for contracts to provide water through transporting water trucks.³² Furthermore, public sector corruption in human resource practices has politicised most of the upper ranks of local government.³³ In many instances it has

²⁴ AGSA *Consolidated General Report: MFMA 2019/20* 38.

²⁵ AGSA *Consolidated General Report: MFMA 2019/20* 38.

²⁶ AGSA *Consolidated General Report: MFMA 2018/19* 154.

²⁷ "Commonly defined as the abuse of entrusted power for private gain while carrying out the functions of land administration and land management." Corruption Watch *The Writing is on the Wall* 25; CoGTA *Municipal Integrity Management Framework* para 4.3.

²⁸ Corruption Watch *The Writing is on the Wall* 25; CoGTA *Municipal Integrity Management Framework* para 4.3.

²⁹ Corruption Watch *The Writing is on the Wall* 25; Ncala *Unearthing Corruption in the Land Sector* 21.

³⁰ Ncala *Unearthing Corruption in the Land Sector* 21.

³¹ Muller *Money Down the Drain: Corruption in South Africa's Water Sector* 7.

³² Muller *Money Down the Drain: Corruption in South Africa's Water Sector* 75.

³³ This politization of the upper ranks of government were mostly due to cadre deployment. One can define cadre deployment as "the appointment of government party loyalists to an institution, as a means of circumventing public accountability." Twala 2014 *Journal of Social Sciences* 159. Cadre

become the norm for political considerations and party loyalty to take precedence over predetermined position eligibility criteria, such as the *Municipal Regulations on Minimum Competency Levels*,³⁴ and other meritocratic principles.³⁵ Other common practices include job seekers' paying a securing fee to secure a position in municipal offices.³⁶

One can observe that the costs of corruption in South Africa extend beyond money. One of the impacts of corruption felt in South African local government is the deterioration of the skills available in human resources.³⁷ To illustrate, in the Nelson Mandela Bay Metropolitan Municipality decision-making about senior management appointments is said often to be elevated to the ruling party's regional office, and occasionally to the provincial office of the ruling party.³⁸ These actions weaken an impartial, meritocratic and Weberian bureaucratic model and promote loyalty and adherence to policy of the political party.³⁹ Experience, skills and autonomy are undermined, which contributes to the lack of capacity currently experienced in local government.⁴⁰

The South African judiciary has pointed out the effects of corruption on governance, including governance in local government.⁴¹ Corruption fuels maladministration and endangers the state's capacity to comply with its human rights obligations.⁴² Various policies have also highlighted corruption as an obstacle to local governance. The *Back to Basics Policy* (2015) states that the prevalence of corruption in local government indicates a decay of the values and the principles of good governance.⁴³

deployment can therefore be seen as a form of public sector corruption. See para 2.2 for a discussion on the definition of public sector corruption. CoGTA *Municipal Integrity Management Framework* para 4.3; Olver 2018 *Area Development and Policy* 280.

³⁴ GN R493 in GG 29967 of 15 June 2007.

³⁵ Olver 2018 *Area Development and Policy* 280; *Mlokoti v Amathole District Municipality* 2009 6 SA 354 (E) 38.

³⁶ Corruption Watch *ACT Report 2019* 18.

³⁷ CoGTA *Municipal Integrity Management Framework* para 4.3; Olver 2018 *Area Development and Policy* 280; SACN *State of South African Cities Report 2016* 282.

³⁸ Olver 2018 *Area Development and Policy* 280.

³⁹ Olver 2018 *Area Development and Policy* 280.

⁴⁰ Olver 2018 *Area Development and Policy* 280.

⁴¹ Section 7(2) of the Constitution obliges the state to respect, protect, promote, and fulfil all rights entrenched in the Bill of Rights. See Deputy Chief Justice Moseneke as cited in Corruption Watch 2018 *Annual Report: Upholding Democracy* 26.

⁴² SACN *State of South African Cities Report 2016* 257; Søreide *Corruption and Criminal Justice* 7.

⁴³ CoGTA *Back to Basics Policy* (2015) 5. See para 5.2 for a detailed discussion on the status of corruption in South African local government.

Moreover, corruption can affect socio-economic growth, human health and the environment.⁴⁴ For example, the impacts of land use-related public sector corruption include residents being unjustly displaced and dispossessed.⁴⁵ Land disposition may further increase gender inequalities and disparities between the rich and the poor and other social groups.⁴⁶ Biased and improper land management may also lead to environmental damage.⁴⁷ Corruption in water service delivery has had vast negative impacts on communities: many jobs were lost, taps have run dry, rivers were polluted. Additionally, the provision of unsafe drinking water endangered residents' health.⁴⁸ Another example of how corruption affects socio-economic development is where community upliftment and development are adversely affected by the government's engaging in high-profile projects for personal gain at the cost of providing urgent infrastructure such as schools or clinics.⁴⁹ Consequently, the cost of corruption has a ripple effect and can ultimately stunt sustainable development.⁵⁰

However, it should be noted that determining the exact extent of corruption or the impact thereof in South African local government remains a challenge. This is because, in addition to the secretive nature of corruption, the available statistics and studies done on corruption are often perception-based and are not always grounded in the *de facto* circumstances.⁵¹ It is possible, however, to explore available municipal data and local government information to estimate the extent and costs of corruption in the state of local governance.⁵²

⁴⁴ See paras 2.5 and 2.6 below for a detailed discussion.

⁴⁵ Ncala *Unearthing Corruption in the Land Sector* 21.

⁴⁶ Ncala *Unearthing Corruption in the Land Sector* 21.

⁴⁷ Ncala *Unearthing Corruption in the Land Sector* 21.

⁴⁸ Muller *Money Down the Drain: Corruption in South Africa's Water Sector* 75.

⁴⁹ SACN *State of South African Cities Report 2016* 282.

⁵⁰ As cited in Corruption Watch 2018 *Annual Report: Upholding Democracy* 26; *S v Scholtz* 2018 2 SACR 526 (SCA) paras 199, 208; *S v Phillips* 2017 1 SACR 373 (SCA); *S v Wang and Another* 2018 1 SACR 426 (NWM) para 17.

⁵¹ Pring and Vrushu *Global Corruption Barometer Africa 2019: Citizens' views and experiences of corruption* 53; Transparency International 2020 <https://www.transparency.org/country/ZAF>; Statistics South Africa 2018 *Victims of Crime Survey* 62.

⁵² See paras 3.2.3 and 3.2.4 below.

1.2 Defining public sector corruption in South Africa

For an anti-corruption agenda to be clear and efficient, it is necessary to establish the meaning of the term corruption. Different context-specific meanings have been ascribed to the term.⁵³ For example, the Institute of Security Studies defines corruption as "the use of public power for private gain",⁵⁴ whereas Klitgaard, MacLean-Abaroa and Parris⁵⁵ deem it to be "the misuse of office for personal gain". On the other hand, Williams⁵⁶ regards corruption as "the theft from the state by state officials".

In some instances corruption is confined to the public sector.⁵⁷ Such instances involve the abuse of public power.⁵⁸ Thus, one of the parties to public sector corruption (the giver or receiver of the undue benefit) should be a public official⁵⁹ in a position which confers a degree of authority or the power to make decisions.⁶⁰ This thesis is devoted to public sector corruption specifically.⁶¹

There are two approaches to defining public sector corruption. Firstly there is a restrictive formulation for the purpose of creating penal sanctions in criminal law, and secondly there is a more comprehensive formulation found mostly in policies aimed at preventing

⁵³ An in-depth discussion follows in Chapter 3 on the definition of corruption and more specifically how public sector corruption manifests in South African local government.

⁵⁴ Institute for Security Studies 2019 <https://bit.ly/3rvpYws>.

⁵⁵ As cited in Grobler and Joubert 2004 *Acta Criminologica* 91.

⁵⁶ As cited in Grobler and Joubert 2004 *Acta Criminologica* 92.

⁵⁷ See para 2.2 below.

⁵⁸ See para 2.2.3 below.

⁵⁹ "A public official shall mean: (i) any person holding a legislative, executive, administrative or judicial office of a State Party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person's seniority; (ii) any other person who performs a public function, including for a public agency or public enterprise, or provides a public service, as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party; (iii) any other person defined as a 'public official' in the domestic law of a State Party." A 2 of the UNCAC; a 1 of the AUCPCC.

⁶⁰ A public official is in a position of power or authority if he or she can make decisions without acting *ultra vires*.

⁶¹ International, regional and national laws and policies also make a distinction between acts of corruption which take place in the public sector and those which take place in the private sector. Aa 7, 8, 9, 10 and 12 of the UNCAC; a 7 of the *African Union Convention on Preventing and Combating Corruption* 2004 43 ILM 1 (hereafter the AUCPCC); preamble of the *OECD Good Practice Guidance on Internal Controls, Ethics and Compliance* (2010) <https://bit.ly/3yrFaP4>; aa 3 and 6 of *SADC Protocol Against Corruption* (2001) <https://bit.ly/2VFRigI>; ss 4 and 5 of the *Prevention and Combating of Corrupt Activities Act* 12 of 2004 (hereafter the PreCCA).

corruption.⁶² These definitions differ because of their respective purposes.⁶³ Generally the narrow definition can be understood as an illegal exchange where benefits (monetary, influence, or otherwise) are exchanged or promised between two or more parties.⁶⁴ On the other hand, a broader formulation of corruption may be considered as an act (or series of acts) where democratic processes and their associated values of openness, equality, equity and accountability have been subverted for personal gain.⁶⁵ For example, Van Maanen⁶⁶ understands corruption as individual secret enrichment achieved through the abuse of entrusted powers by a person at the expense of those whom the person was supposed to serve. Therefore, the broader formulation of corruption is essentially premised on the fact that corruption amounts to stealing the value of a public decision.⁶⁷

1.3 Legal perspectives on sustainability in South African local government

Although sustainable development (also referred to as sustainability in this study) has been defined over three decades from many scholarly and policy points of view, it generally remains understood as meeting present needs without compromising the ability of future generations to satisfy their own.⁶⁸ Scholars generally deem sustainable development as a balance and integration of governance, environmental, economic, and social dimensions, all equally important for human progress.⁶⁹ The concept of sustainable development has stood the test of time and has also permeated national law and policy in South Africa.⁷⁰

⁶² See para 2.2.1 below.

⁶³ See para 2.2.1 below.

⁶⁴ S 3 of PreCCA.

⁶⁵ Grobler and Joubert 2004 *Acta Criminologica* 90; Ani 2015 *South African Journal of Philosophy* 16.

⁶⁶ As cited in Grobler and Joubert 2004 *Acta Criminologica* 91.

⁶⁷ Fisher and Taub *The New York Times* 2019 8.

⁶⁸ WCED *The Brundtland Report: Our Common Future* (1987) <https://bit.ly/3jBabd0> para 27.

⁶⁹ Preuss 2007 *Business Strategy and the Environment* 356; Hassall *Towards Sustainability in South Africa: A Study of Local Government Sustainability Planning in the Cape Metropolitan Area* 21; Department of Environmental Affairs and Tourism 2008 *National Framework on Sustainable Development in South Africa* para A6; United Nations *Transforming Our World: the 2030 Agenda for Sustainable Development* GA Res 70/1 (2015) (hereafter the UN Agenda 2030) para 5.

⁷⁰ One can deduce this from the recurrence of sustainable development as an objective in key international legal instruments such as the African Union *Agenda 2063: The Africa We Want* 2015 <https://www.un.org/en/africa/osaa/pdf/au/agenda2063.pdf>; *Habitat Agenda Istanbul Declaration on Human Settlements* UN Doc A/CONF165/14 (1996); *Habitat III New Urban Agenda* UN Doc A/RES/71/256 (2017); *United Nations Agenda 21* (1992) 31 ILM 874; WCED *The Brundtland Report: Our Common Future* (1987) <https://bit.ly/3jBabd0>. Sustainable development also features in a number

National environmental legislation such as the *National Environmental Management Act* 107 to 1998⁷¹ describes sustainable development as the integration and translation of the social, economic and environmental spheres into planning, implementation, and decision-making to ensure that development will serve present and future generations.⁷² Sustainability requires that the underpinned environmental, social and economic interests be balanced and amicably integrated.⁷³ A harmonious balance of these interests can only be achieved through proper governance. In this light, governance considered by some as an important dimension of sustainability, especially in the South African context.⁷⁴ While governance towards sustainable development takes place in both private and public sectors,⁷⁵ it is the government that is ultimately responsible to charter the way.⁷⁶

Although all levels of government may be equally responsible for advancing sustainable development, a case can be made for the unique position and responsibility of local government. It is widely believed that local government (comprising of municipalities as local authorities) is critical for sustainable development, because *inter alia* of its proximity to communities.⁷⁷ Perhaps the starkest confirmation of local government's role is found internationally in the adoption of the United Nations Sustainable Development Goals,⁷⁸ specifically SDG 11 (making cities and human settlements inclusive, safe, resilient, and sustainable).⁷⁹ Central governments, as opposed to local governments, are not always

of South African laws and policies, including the White Paper on Local Government; the Systems Act; the *Local Government: Municipal Finance Management Act* 56 of 2003; the *National Environmental Management Act* 107 of 1998; *Spatial Planning and Land Use Management Act* 16 of 2013.

⁷¹ Hereafter referred to as NEMA.

⁷² S 1 of NEMA.

⁷³ Preuss 2007 *Business Strategy and the Environment* 356; Hassall *Towards Sustainability in South Africa: A Study of Local Government Sustainability Planning in the Cape Metropolitan Area* 21; Department of Environmental Affairs and Tourism 2008 *National Framework on Sustainable Development in South Africa* para A6.

⁷⁴ Department of Environmental Affairs and Tourism 2008 *National Framework on Sustainable Development in South Africa*; s 1 of NEMA.

⁷⁵ Preuss 2007 *Business Strategy and the Environment* 356; Hassall *Towards Sustainability in South Africa: A Study of Local Government Sustainability Planning in the Cape Metropolitan Area* 21; WCED *The Brundtland Report: Our Common Future* (1987) <https://bit.ly/3jBabd0>.

⁷⁶ Preuss 2007 *Business Strategy and the Environment* 356; Hassall *Towards Sustainability in South Africa: A Study of Local Government Sustainability Planning in the Cape Metropolitan Area* 21; WCED *The Brundtland Report: Our Common Future* (1987) <https://bit.ly/3jBabd0>.

⁷⁷ Evans *et al* *Governing Sustainable Cities* 1.

⁷⁸ Hereafter SDG.

⁷⁹ UN Agenda 2030 SDG 11.

able to instigate the desired changes that sustainable development may require, hinting at the important role of local government in advancing sustainable development.⁸⁰

The message that local government is critical for sustainable development has long been accepted in South Africa.⁸¹ The Constitution places a duty on local government to realise the right to a safe and healthy environment for all, which includes current and future generations.⁸² This duty further implies a responsibility to advance sustainable development for the preservation of the environment for present and future generations.⁸³ Local government has other constitutional duties, including the provision of an accountable and democratic local government, the sustainable provision of services, promoting social and economic development, and encouraging community participation in governance.⁸⁴

The White Paper on Local Government determines that a sustainable local government is one that is able to deliver basic social and economic services while protecting the ecological and community systems upon which these services depend.⁸⁵ It defines sustainability as including both financial viability and using resources in an environmentally sound and socially just manner.⁸⁶ The Systems Act takes a slightly different view of sustainability. It proposes that sustainability includes integrated resource upliftment of a community, with a focus on the improvement of the quality of life for residents and ensuring that development will serve both present and future generations.⁸⁷ This understanding resonates with the definition of sustainability in SDG 11 to the extent that cities should be resilient, inclusive and safe.

⁸⁰ S 3 of Chapter 28 in the *United Nations Agenda 21* (1992) 31 ILM 874; Hassall *Towards Sustainability in South Africa: A Study of Local Government Sustainability Planning in the Cape Metropolitan Area* 69.

⁸¹ Du Plessis and Du Plessis "Striking the Sustainability Balance in South Africa" 422; s 3 of Chapter 28 in the *United Nations Agenda 21* (1992) 31 ILM 874; Du Plessis (ed) *Environmental Law and Local Government in South Africa* paras 1.1, 1.3; Mohamed *Malaysian Local Government's Role Towards Sustainable Development Focusing on Knowledge Transfer Practices Framework* 26; CoGTA *Back to Basics* para 1.2; the White Paper on Local Government para B.2.2.

⁸² Ss 7, 24 and 152 of the Constitution.

⁸³ Ss 7, 24 and 152 of the Constitution.

⁸⁴ S 152 of the Constitution.

⁸⁵ The White Paper on Local Government.

⁸⁶ The White Paper on Local Government para 3.1.1.

⁸⁷ S 1 of the Systems Act.

Canvassed against the above, sustainability in local government is understood to mirror the features of a sustainable city as explained by Van der Berg:⁸⁸

A sustainable city is a) liveable and promotes human well-being; b) grows at a sustainable rate and uses resources in a sustainable way; c) conserves and protects the natural environment; d) advances economic growth and development; e) is socially and environmentally inclusive, just and equitable; f) safeguards human security; g) governs by way of sound government institutions, infrastructure and financing systems; h) is continuously evolving and innovative; and i) focusses on fulfilling the needs reflected in the present and future, beyond the city's next budget or election cycle.⁸⁹

The above definition suggests that sustainability in local government comprises of an economic dimension, a social dimension, an environmental dimension and a governance dimension.

1.4 Good governance and financial sustainability in the South African local government context

The UN Agenda 2030 identifies and prioritises actions viewed by the global community as prerequisites for achieving sustainable development. SDG 16 is specifically dedicated to strengthening institutions and promoting good governance.⁹⁰ Regionally good governance also features predominantly as an aspiration of the African community of nations within targets set out in the *African Union Agenda 2063: The Africa We Want* 2015.⁹¹ In addition, Fuo's⁹² argument that good financial governance and adequate funding are mandatory if cities are to make any significant advancements in their pursuit of sustainable development is relevant for the present purposes.⁹³

The *National Framework on Sustainable Development* (2008)⁹⁴ highlights the governance dimension as part of sustainability in South Africa; it determines that it is important to steer decision-making towards the identified objectives within the parameters of

⁸⁸ See para 2.3 below for a detailed discussion on sustainable development in local government.

⁸⁹ Van der Berg *Municipal Planning Law and Policy for Sustainable Cities in South Africa* 52.

⁹⁰ UN Agenda 2030 is divided into 17 goals named SDGs and every goal is further subdivided into targets.

⁹¹ Aspiration 3 of *African Union Agenda 2063: The Africa We Want* 2015 <https://www.un.org/en/africa/osaa/pdf/au/agenda2063.pdf> (hereafter *Agenda 2063*).

⁹² Fuo "Funding and Good financial Governance as Imperatives for Cities' Pursuit of SDG 11" 87.

⁹³ See also Bolivar "Financial Sustainability" 2288-1; Burnside (ed) *Fiscal Sustainability in Theory and Practice* 2; European Commission Economic and Financial Affairs *Financial Sustainability Report 2018* para 1.2.

⁹⁴ Department of Environmental Affairs and Tourism 2008 *National Framework on Sustainable Development in South Africa*.

sustainability.⁹⁵ Governance is the process whereby a society is strategically steered, and it provides answers to the 'where to go' and 'who should decide' type of questions.⁹⁶ For local government, governance involves various activities and processes aimed at achieving the objectives of local government as set out in laws and policies.⁹⁷ The governance dimension of sustainable development is often understood to denote *good* governance in particular.⁹⁸

The *good* in good governance directs how the activities, processes and interactions concerning governance are executed. Good governance for sustainable development in local government can be described as local governance which strives to deliver on the most critical aspects of sustainable development in a community through democratic processes.⁹⁹ It follows that governance must therefore be exercised in a specific manner to promote sustainability in local government.¹⁰⁰ The institutions exercising governance, in this instance municipalities, must be strong.¹⁰¹ 'Strong institutions' refers to institutions steered by principles such as transparency, accountability, integrity and other institutional arrangements to facilitate checks and balances.¹⁰² Equality, public participation, responsiveness and cooperation among community members and other stakeholders must be promoted,¹⁰³ and public services must be delivered in a manner that fulfils and respects human rights.¹⁰⁴

Good governance further requires municipalities to have the capacity to fulfil their objectives.¹⁰⁵ This capacity may be divided into infrastructure, human and financial capacity.¹⁰⁶ Moreover, to sustain the required financial capacity, municipalities must strive

⁹⁵ See para 2.3.4 below.

⁹⁶ See para 2.3.4 below.

⁹⁷ See para 2.3.4 below.

⁹⁸ See para 2.3.4 below.

⁹⁹ As cited in Hassall *Towards Sustainability in South Africa: A Study of Local Government Sustainability Planning in the Cape Metropolitan Area 20*; Cloete *et al Improving Public Policy for Good Governance* 106. See paras 2.2.4 and 2.3.1 below for an in-depth discussion relating to the governance dimension of sustainability.

¹⁰⁰ See paras 2.4.4 and 2.5 below.

¹⁰¹ See paras 2.4.4 and 2.5 below.

¹⁰² See paras 2.4.4 and 2.5 below.

¹⁰³ See paras 2.4.4 and 2.5 below.

¹⁰⁴ See paras 2.4.4 and 2.5 below.

¹⁰⁵ See paras 2.5 and 2.6 below.

¹⁰⁶ See paras 2.5 and 2.6 below.

towards promoting financial sustainability.¹⁰⁷ Financial sustainability can be summarised as resilient financial management which enables a municipality to meet all its obligations and facilitates development without a continuous rise in debt or an undue increase in service or other charges.¹⁰⁸ It must perform its functions within the existing tax base without placing unmanageable tax burdens on present or future consumers.¹⁰⁹ Furthermore, financial sustainability also includes local government's financial capacity to be resilient and able to withstand shocks while maintaining public confidence.¹¹⁰

1.5 Prevention and minimisation of corruption for sustainability in municipalities

The global adoption of the SDGs in 2015¹¹¹ shows that sustainable development has become increasingly important and remains a universal aspiration.¹¹² The SDGs aim to address real-time challenges the global community is currently experiencing, and which hinder sustainable development.¹¹³ Corruption is considered one such obstacle.¹¹⁴ Thus, from the perspective of the SDGs, confronting corruption can promote sustainable development globally.¹¹⁵

About a quarter of a century's experience in combatting public sector corruption led to the evolution of a diversity of methods to control corruption which has been influenced by corporate practices, intelligent technologies, and other social networks.¹¹⁶ Stated plainly, preventing corruption¹¹⁷ requires reducing opportunities for corruption and, where

¹⁰⁷ See paras 2.5 and 2.6 below.

¹⁰⁸ See para 2.6 below.

¹⁰⁹ Schick 2005 *OECD Journal on Budgeting* 108; Bolivar "Financial Sustainability" 1; De Lange 2010 *IMFO* 22; Controller and Auditor-General of New Zealand 2013 *Public Sector Financial Sustainability* 7.

¹¹⁰ Schick 2005 *OECD Journal on Budgeting* 108; Bolivar "Financial Sustainability" 1; De Lange 2010 *IMFO* 22; Controller and Auditor-General of New Zealand 2013 *Public Sector Financial Sustainability* 7. See para 2.3.2 below for an in-depth discussion relating to the governance dimension of sustainability.

¹¹¹ UN Agenda 2030.

¹¹² UN Agenda 2030.

¹¹³ UN Agenda 2030 SDG 16.

¹¹⁴ UN Agenda 2030 SDG 16.

¹¹⁵ UN Agenda 2030 SDG 16.

¹¹⁶ Bukovansky 2006 *Review of International Political Economy* 183; Hansen and Tang-Jensen 2015 *Ephemera: Theory and Politics in Organization* 370.

¹¹⁷ This study uses "prevention" to refer to both preventing and minimising opportunities for corruption to take place.

opportunities to commit corruption are unavoidable, having safeguards in place to deter individuals from committing corrupt acts.¹¹⁸

Efforts to prevent corruption require ethical governance, transparency and accountability, amongst other qualities.¹¹⁹ Ethical governance refers to exercising governance procedures, practices and policies according to what the relevant community regards as the proper and acceptable handling of public affairs.¹²⁰ Transparency in government refers to openness, where the government enables the public to have access to the information necessary for them to be able to form opinions about the activities and procedures of government,¹²¹ while accountability involves public officials justifying the manner in which they exercised their public power.¹²² Where public power was abused, accountability demands legal redress to be available to the community.¹²³ International and regional laws,¹²⁴ policies and standards prescribe many actions that state governments must take to prevent public sector corruption, including enhancing ethical governance, transparency and accountability.¹²⁵

Despite the seemingly thriving state of corruption in South Africa, there also seems to be a clear commitment of government to engage in anti-corruption measures.¹²⁶ The large number of laws and the policies adopted to prevent public sector corruption in local

¹¹⁸ Peltier-Rivest 2018 *Journal of Financial Crime* 546; Hansen and Tang-Jensen 2015 *Ephemera: Theory and Politics in Organization* 370; Everett, Neu and Rahaman 2007 *Accounting, Organizations and Society* 513; Ericson 2007 *Crime in an Insecure World* 27; Shamir 2008 *Economy and Society* 6.

¹¹⁹ See para 3.2 below. Aa 2(5), 3(3) and 7(4) of the AUCPCC; Bertat, Jaeger and Grimes 2011 *Transforming Government: People, Process and Policy* 79; Park and Blenkinsopp 2011 *International Review of Administrative Sciences* 256; Brusca, Rossi and Acersano 2018 *Journal of Comparative Policy Analysis: Research and Practice* 486.

¹²⁰ Salimen *Ethical Governance: A Citizen Perspective* 31; Osifo 2014 *International Journal of Public Administration* 311; Preston and Sampford *Encouraging Ethics and Challenging Corruption* 6; Fawcett and Wardman "Ethical governance in local government in England: A regulator's view" 125.

¹²¹ Lindstedt and Naurin 2010 *International Political Science Review* 304.

¹²² Brusca, Rossi and Aversano 2018 *Journal of Comparative Policy Analysis: Research and Practice* 488.

¹²³ Lindstedt and Naurin 2010 *International Political Science Review* 302; UN Human Rights Committee General Comment No. 31, *the Nature of the General Legal Obligation Imposed on States Parties to the Covenant* (2004) CCPR/C/21/Rev1/Add13 paras 2,4, 5.

¹²⁴ 'Regional law in this study refers to laws from the African Union (hereafter the AU), the Southern African Development Community (hereafter the SADC), the five major emerging economies: Brazil, Russia, India, China and South Africa (hereafter the BRICS), European Union, the Organisation for Economic Cooperation and Development (hereafter the OECD), the Association of Southeast Asian Nations (hereafter the ASEAN), United Arab Emirates and the Inter-American States.

¹²⁵ See para 3.2 below.

¹²⁶ See para 4.2 below.

government is a testimony to this commitment.¹²⁷ Notably, this elaborate anti-corruption law and policy framework consists of about 24 pieces of primary legislation, 12 pieces of secondary legislation and at least seven policies.¹²⁸ The most noteworthy laws and policies are the Systems Act which provides clear guidelines on the behaviour expected from public officials;¹²⁹ the *Local Government: Municipal Finance Management Act* 56 of 2003,¹³⁰ which states that certain practices involving municipal finances are viewed as corruption and/or financial misconduct;¹³¹ the *Municipal Regulations on Financial Misconduct Procedures and Criminal Procedures*,¹³² that determines what procedures will be followed where a public official is accused of committing corruption;¹³³ and the *Local Government Anti-corruption Policy*¹³⁴ and the *Municipal Integrity Management Framework Policy*,¹³⁵ that set out the groundwork for anti-corruption measures aimed to prevent public sector corruption in municipalities.¹³⁶

The South African anti-corruption law and policy framework places significant obligations on municipalities to adopt and implement certain anti-corruption measures. For example, municipalities must have functional websites with sufficient information to empower the community to hold municipal officials accountable, thereby contributing to the prevention of corruption in that municipality.¹³⁷ Furthermore, the municipal organisational structure must at the very least include a capable treasury department, an internal audit committee and an integrity champion to promote and ensure integrity in the financial management

¹²⁷ See para 4.4 below.

¹²⁸ See para 4.4 below.

¹²⁹ Ss 50, 54, 55, 69, 70 and 73 and schedule 1 of the Systems Act.

¹³⁰ Hereafter the MFMA.

¹³¹ Chapter 15 of the MFMA.

¹³² GN R430 in GG 37699 of 30 May 2014.

¹³³ S 4 of GN R430 in GG 37699 of 30 May 2014.

¹³⁴ CoGTA *Local Government Anti-corruption Policy* (2015).

¹³⁵ CoGTA *Municipal Integrity Management Framework Policy* (2015) (hereafter the MIMF).

¹³⁶ Preamble of the CoGTA *Local Government Anti-corruption Policy* (2015); Preamble of the CoGTA *Municipal Integrity Management Framework Policy* (2015).

¹³⁷ Ss 21 A and 21B of the Systems Act; S 75 of the MFMA; CoGTA *Back to Basics Policy* 11; see paras 4.4.2.2, 4.4.2.5, 4.4.3.4 below. It must be noted that where a municipality cannot afford the development and maintenance of an official website, the municipality may publish the required information on the South African Local Governments Association's official website. However, no municipality's information is on the South African Local Governments Association's official website to date, 31 December 2020.

of the municipality.¹³⁸ Municipalities are further obliged through national law and policy to illustrate their commitment to preventing corruption by developing and implementing policies that describe how they will manage their vulnerability to corruption across their different sectors.¹³⁹

1.6 Research question

This study aims to critically explore, from the perspective of law, how public sector corruption in local government can be prevented in the pursuit of sustainability in South African municipalities.

This a conceptual question that leads to a critical investigation of the types of law and policy-related anti-corruption measures that could be used by different stakeholders, including municipalities, to prevent corruption. The details of the research method are outlined below in paragraph 1.11.

1.7 Objectives of the study

The primary objective of this study is to establish from a legal perspective how public sector corruption can be prevented to help advance sustainability in South African local government. The study has the following secondary objectives:

- To discuss and describe what is meant by public sector corruption.
- To establish a theoretical framework for sustainability in local government with specific emphasis on good governance and financial sustainability.
- To develop a point of departure for evaluating the anti-corruption measures in South African law and policy by critically discussing international and regional law and policy with reference to scholarly works on preventing public sector corruption.
- To evaluate South African national law and policy aimed at preventing public sector corruption in local government and identify what anti-corruption duties are specifically applicable to municipalities.

¹³⁸ Ss 80, 121 and 166(1) of the MFMA; CoGTA *Municipal Integrity Management Framework* paras 3.4, 3.5; s 79 of the Systems Act.

¹³⁹ CoGTA *Municipal Integrity Management Framework* para 4.2.

- To establish whether the 257 municipalities in the country have discharged their obligations to prevent corruption as imposed by national law and policy;
- To establish which municipal policy measures three specific South African municipalities (Molemole Local Municipality, Cape Winelands District Municipality, and Cape Town Metropolitan Municipality) have adopted to prevent public sector corruption; and
- To conclude the study by making recommendations on how public sector corruption in local government can be prevented for improved sustainability in local government in South Africa.

1.8 Hypothesis

A strengthened national and municipal-level anti-corruption law and policy framework in South Africa will assist to prevent public sector corruption in municipalities and advance sustainability in local government.

1.9 Assumptions

- a. Developmental local government is a legal imperative in South Africa and depends on local sustainability.
- b. Local sustainability comprises of an environmental dimension, a social dimension, an economic dimension and a governance dimension.
- c. Advancing sustainability in municipalities depends on good governance and financial sustainability.
- d. Corruption is a pervasive problem in local government in South Africa.
- e. Public sector corruption must be addressed for good governance.

1.10 Outline of the study

The study commences in Chapter 2 by exploring the meaning of public sector corruption and sustainable development. It begins with a detailed description of what public sector corruption means. Thereafter, the discussion focusses on the notion of sustainable development globally and in the South African context, and in particular on: a) the

meaning of sustainable development from a local government / city perspective; b) the meaning and requirements of the governance dimension of sustainable development; and c) the meaning and requirements of financial sustainability.

Chapter 3 explores the theory behind preventing corruption. As informed by scholarly works, the chapter critically discusses what is provided for in international and regional law and policy to prevent public sector corruption. The objective is to identify standards on preventing corruption from international and regional law and policy, against which South African law and policy anti-corruption measures could be critically evaluated.

Chapter 4 analyses South African national law and policy that contribute to preventing public sector corruption in local government. This chapter firstly aims to determine whether the standards identified in the previous chapter are provided for in South African law and policy. Additionally, it explores what is legally required from municipalities to prevent public sector corruption.

Chapter 5 provides a *prima facie* broad overview of whether national anti-corruption measures have cascaded into municipal by-laws and policies in South Africa. The chapter subsequently presents three specific case studies, namely Molemole Local Municipality, Cape Winelands District Municipality and Cape Town Metropolitan Municipality. The case studies are used to determine the sectors that seem to be specifically vulnerable to public sector corruption in local government and to determine how these municipalities have responded to minimise the risk of corruption.

Chapter 6 concludes the study with key findings and by making recommendations on how public sector corruption in local government can be prevented for improved sustainability in local government in South Africa.

1.11 Research methodology

The main research method of this study is a desktop analysis of relevant primary and secondary sources of law and the discourse in scholarly literature. International and regional law and policy are analysed in combination with scholarly works to systematically describe some key concepts and theories used in the study. The scholarly references

draw on works from a diversity of disciplines, including law, politics, public governance, economics, psychology, and environmental studies. The desktop analysis is further complemented by a basic quantitative content analysis and the case studies.

In chapter 3 international and regional law and policy¹⁴⁰ are interrogated by way of a desktop analysis to establish standards for preventing public sector corruption in local government. For the review of the South African law and policy in chapter 4, some of the following instruments are considered: the MFMA, the *National Anti-Corruption Strategy for South Africa*,¹⁴¹ the *Local Government Anti-Corruption Strategy*¹⁴² and the PreCCA. This analysis determines what anti-corruption measures municipalities in South Africa are expected to adopt and implement to prevent corruption. Thirty-eight anti-corruption measures are selected, the selection being based on whether their implementation could be established from a desktop study for the subsequent quantitative content analysis.

In chapter 5 a quantitative content analysis is undertaken, based on a simple survey. It looks into the 257 municipalities (metropolitan, local, and district municipalities) of South Africa to establish whether they have adopted the required anti-corruption policy measures.¹⁴³ This quantitative content analysis consists of a review of the municipal websites and published local policies that were accessible between 1 October 2020 and 31 December 2020. The 38 anti-corruption measures selected in chapter 4 are translated into 38 indicators. The quantitative content analysis subsequently investigates whether all or some of these indicators are present on each of the municipalities' websites or in their policies. To interpret the results of the survey, the researcher utilised a coding scheme which assigned different values to each indicator.¹⁴⁴ The details of this analysis and the method adopted are explained in depth in chapter 5 of this study.

¹⁴⁰ 'Regional law in this study refers to laws from the AU, the SADC, the BRICS, European Union, the OECD, the ASEAN, United Arab Emirates and the Inter-American States.

¹⁴¹ National Anti-Corruption Strategy Steering Committee *Towards a National Anti-Corruption Strategy for South Africa: Discussion Document*.

¹⁴² CoGTA *Local Government Anti-Corruption Strategy* (2015).

¹⁴³ See para 5.2.1 and Annexure "A" for further details on the design and results of the quantitative content analysis.

¹⁴⁴ See para 5.2.1 below.

The local, district and metropolitan municipalities¹⁴⁵ that were assigned the highest numerical values¹⁴⁶ in the quantitative content analysis above are then considered in greater detail by way of case studies. These municipalities are the Molemole Local Municipality, the Cape Winelands District Municipality, and the Cape Town Metropolitan Municipality. The objective is to determine how municipal policies can be used to prevent public sector corruption and to distil some exemplary points for other municipalities in the country to follow. The details of the case study analysis and the method adopted are explained in depth in chapter 5 of this study.

This study was done within the limits of desktop research. For this reason, the research method cannot assist to establish whether or to what extent anti-corruption law and policy have been implemented to prevent public sector corruption in South African local government.

¹⁴⁵ These municipalities are the Molemole Local Municipality, the Cape Winelands District Municipality, and the Cape Town Metropolitan Municipality.

¹⁴⁶ Municipalities received a higher or lower numerical value in the quantitative content analysis based on how many of the identified duties they fulfilled to prevent public sector corruption.

CHAPTER 2

PUBLIC SECTOR CORRUPTION, GOOD GOVERNANCE AND FINANCIAL SUSTAINABILITY IN LOCAL GOVERNMENT

2.1 Introduction

Local government in South Africa should pursue sustainability for many reasons, including its being able to fulfil its mandate to help improve the quality of life of people and to help protect the natural and other resources.¹⁴⁷ Corruption is a hindrance, however.¹⁴⁸ The question of how corruption can be prevented from detracting from the achievement of sustainability in local government consists of two parts. The first requires a grasp of key concepts, namely sustainability and public sector corruption as well as the interplay between them. The second, explored in later chapters, pertains to preventing public sector corruption. This chapter comprises of a desktop review and aims to establish what is meant by public sector corruption and how it manifests. The chapter further explores the meaning of sustainable development in local government and its different dimensions with a specific focus on good governance and financial sustainability as areas particularly vulnerable to corruption. The chapter deals with an eclectic mix of concepts with the objective of drawing conceptual links and informing the findings and practical recommendations in chapter 6 of this thesis.

Part 1 of this chapter reviews literature and primary and secondary sources of law to explore the legally relevant meaning of public sector corruption. Understanding the nature of 'public sector corruption' shows how sustainability is adversely affected by it and underscores the importance of legal measures to prevent it. The second part of the chapter is devoted to sustainability in local government – its meaning, relevance and constituent dimensions, with a focus on the role and place of good governance and financial sustainability.

¹⁴⁷ See paras 1.1 and 1.3 above.

¹⁴⁸ See paras 1.3 and 1.5 above.

The third part of the chapter explores the meaning of and links between good governance and financial sustainability in local government, to more directly observe how corruption negatively impact sustainability. The fourth and final section concludes the chapter by showing how the prevention of public sector corruption could contribute to sustainability (including good governance and financial sustainability) in local government specifically.

2.2 Public sector corruption defined

2.2.1 What is corruption?

Corruption is by no means a new phenomenon and has been the subject of numerous scholarly inquiries across different disciplines from many countries and regions.¹⁴⁹ Consequently corruption has been described in many ways, but of particular relevance to this study are the legal descriptions.¹⁵⁰ The predominant understanding of corruption in legal scholarship is that corruption involves an abuse of entrusted power for illicit gain (personal or otherwise).¹⁵¹ International and regional law and policy such as the UNCAC and the AUCPCC define corruption but in a way that differs from the prevalent definition(s) in legal scholarship.¹⁵² The differences which can be observed may partially be attributed to the purpose for which the definition is intended.¹⁵³ When embarking on an effort to interpret corruption one often stumbles over conceptual difficulties. Corruption is secretive in nature.¹⁵⁴ Those who do not participate therein often cannot appreciate its inner workings, resulting in the presentation of over-simple definitions.¹⁵⁵ Furthermore, corruption is often viewed as being contextually bound, meaning that it is described with reference to a specific community's moral and ethical values.¹⁵⁶

The definitions of corruption all show that it comprises different elements related to behaviour, actors, gratification, and deception peculiar to corruption. Consideration of

¹⁴⁹ See para 2.2.1 below.

¹⁵⁰ Agbor 2019 *African Journal of International and Comparative Law* 53.

¹⁵¹ See para 2.2.1 below.

¹⁵² Aa 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 27 and 28 of the UNCAC; aa 1 and 4 of the AUCPCC.

¹⁵³ See para 2.2.1 below.

¹⁵⁴ Fombad "Corruption and the Crisis of Constitutionalism in Africa" 17.

¹⁵⁵ Fombad "Corruption and the Crisis of Constitutionalism in Africa" 17.

¹⁵⁶ See paras 2.2.1.1 and 2.2.1.4 below.

these elements is necessary to inform and distinguish between different forms of corruption, which makes it possible to identify and describe what qualifies as public sector corruption specifically.¹⁵⁷ A discussion of the different elements and forms of corruption follows below.

2.2.1.1 Corrupt behaviour

It is generally accepted that corruption centres on the abuse of entrusted power for personal gain.¹⁵⁸ This understanding has numerous variations. For instance, some scholars explain that corrupt behaviour is a violation of predetermined rules or norms.¹⁵⁹ In other instances even actions intended to subvert certain values befitting a particular organisation's processes would be deemed as corruption.¹⁶⁰ These values could be openness, equality, equity and accountability attached to a democratic government.¹⁶¹ For example, ignoring the set objective criteria and the principle of fair competition in awarding tenders to companies in return for advancing a government official's standing in that political party is a form of corruption.¹⁶² Notably it is not always that such a tender award will have different monetary implications for the municipality than an award where due process was followed, but it is the subversion of values that renders the act corrupt. However, values of the kind referred to here are unique to a specific context, which could

¹⁵⁷ Philp 2008 *International Peacekeeping* 313; Kratcoski and Edelbacher *Fraud and Corruption: Major Types, Prevention, and Control* 23.

¹⁵⁸ See para 2.2.1.3 below for a detailed discussion on what constitutes 'gain'. Transparency International 2020 <https://www.transparency.org/en/what-is-corruption>; Blundo and Olivier de Sardan *Everyday Corruption and the State* 4; Grobler and Joubert 2004 *Acta Criminologica* 90; Budhram 2018 *Journal of Public Administration* 123; Kondlo 2010 *Journal of Public Administration* 325; Kroukamp 2006 *Journal of Public Administration* 208; April and Sebola 2016 *African Insight* 85; Akinola and Uzodike 2014 *Ubuntu: Journal of Conflict and Social Transformation* 38; Corruption Watch 2020 <https://www.corruptionwatch.org.za/learn-about-corruption/what-is-corruption/our-definition-of-corruption/>.

¹⁵⁹ These rules and norms may either be written, such as codes of conduct, legal prescriptions, or good industry practices, or unwritten, such as the cultural practices or moral values of the community. Blundo and Olivier de Sardan *Everyday Corruption and the State* 4; Grobler and Joubert 2004 *Acta Criminologica* 90; Ani 2015 *South African Journal of Philosophy* 14; Akinola 2014 *Ubuntu: Journal of Conflict and Social Transformation* 38; Merriam Webster Dictionary 2020 <https://www.merriam-webster.com/dictionary/corruption>; Aikin as cited in Carvajal 1999 *Systemic Practice and Action Research* 339; Levy 2000 *International Journal of Public Administration* 1863; Fan and Grossman 2001 *Policy Reform* 196; Manion *Corruption by Design* 5; Yang *Has Corruption Peaked in China?* 1; Begovic 2005 *Cadal Documentos* 2.

¹⁶⁰ Williams as cited in Grobler and Joubert 2004 *Acta Criminologica* 90.

¹⁶¹ Williams as cited in Grobler and Joubert 2004 *Acta Criminologica* 90.

¹⁶² Ss 111, 114 and 116 of the MFMA; Chapter 2 of GenN 868 in GG 27636 of 30 May 2005.

make the latter description of corrupt behaviour somewhat relative. Such relativity may result in difficulty in judging whether corruption took place, because values may often vary or be in conflict with one another, depending on different legal orders, moralities, religions or cultures.¹⁶³ For example, Western bureaucratic processes somewhat contradict the values of kinship and reciprocity often found in Asian transitional communities.¹⁶⁴ For Asian transitional communities, the exchange of favours by public officials and their families, friends or loyalists is not deemed immoral or to be a form of corruption.¹⁶⁵

Other scholars believe that actions which can potentially weaken or corrode the interests of an organisation should constitute corruption, regardless of the outcome of the actions.¹⁶⁶ To illustrate, consider a practice referred to as 'gateway politics' where membership of a specific political party is carefully navigated to ensure that a certain faction of the party remains more powerful than other factions.¹⁶⁷ The African National Congress,¹⁶⁸ which is known as a political organisation with a strong ideological agenda, has a reputation for engaging in gateway politics.¹⁶⁹ This practice has resulted in a particular faction, the Stalini faction,¹⁷⁰ mostly transforming the organisation into a platform for internal conflict which enables the faction to control organisational resources and institutional power at the expense of the institution's interests and ideological agenda.¹⁷¹ Here one can see that gateway politics should be deemed a form of corruption because it contributes to institutional dysfunction within the ANC and diminishes the interests of the ANC as an organisation.¹⁷² However, this description does little to clearly frame the characteristics of corrupt behaviour more generally.¹⁷³ Describing corrupt

¹⁶³ Guzman as cited in Caiden and Caiden 1977 *Public Administration Review* 302; Philp 2008 *Peacekeeping* 313; Fombad "Corruption and the Crisis of Constitutionalism in Africa" 17.

¹⁶⁴ Caiden and Caiden 1977 *Public Administration Review* 302; Philp 2008 *Peacekeeping* 313.

¹⁶⁵ Caiden and Caiden 1977 *Public Administration Review* 302; Philp 2008 *Peacekeeping* 313.

¹⁶⁶ Ani 2015 *South African Journal of Philosophy* 16.

¹⁶⁷ Montision *Gateways and Gatekeepers: Walking Through Everyday International Relations* 155.

¹⁶⁸ Hereafter the ANC.

¹⁶⁹ Beresford 2015 *African Affairs* 238.

¹⁷⁰ The ANC is said to be divided into smaller groups called factions aligned with different political ideologies. The Stalini faction is one such faction. Ndletyana 2021 *Journal of Contemporary African Studies* 6.

¹⁷¹ Montision *Gateways and Gatekeepers: Walking Through Everyday International Relations* 155.

¹⁷² Beresford 2015 *African Affairs* 238.

¹⁷³ Ko and Weng 2011 *Journal of Contemporary China* 361.

behaviour according to the values or interests of an organisation is subjective, which creates legal uncertainty because people or institutions' moral convictions are not universal and they may interpret corruption differently.¹⁷⁴

Corrupt behaviour may also be viewed through a narrower lens, in which case it is possible to describe corruption as an illegal transaction involving some sort of gratification, monetary or otherwise, in return for personal benefit.¹⁷⁵ A simple bribe paid to a procurement officer to lose the top competitor's bid and advance the case of a potential supplier fits this description well. For example, South Africa's *Prevention and Combating of Corrupt Activities Act 12 of 2004*¹⁷⁶ defines corrupt behaviour as offering, giving or promising a benefit to a person and receiving or accepting a benefit in return.¹⁷⁷ The South African courts interpreted PreCCA's definition as any transaction which creates a dynamic obliging the other party to return a favour.¹⁷⁸ Another example is the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, which contains a similar definition but refers to bribery alone and not corruption.¹⁷⁹ Restrictive formulations like these have also been critiqued on the basis of their excluding favouritism, the diversion of public funds,¹⁸⁰ and possible institutional gain (for an institution, group or political party).¹⁸¹ One of the motivations behind accepting such a restrictive formulation of corruption is to establish penal sanctions for the crime.¹⁸² This is understandable since the more elaborate formulations of corrupt behaviour may

¹⁷⁴ Ko and Weng 2011 *Journal of Contemporary China* 364

¹⁷⁵ A 1 of the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* (1998) 37 ILM 1; a 6 of the *Inter-American Convention Against Corruption* (1996) 35 ILM 724; Grobler and Joubert 2004 *Acta Criminologica* 90; s 4(1) of PreCCA; *the Indian Penal Code* as cited in Carvajal 1999 *Systemic Practice and Action Research* 339.

¹⁷⁶ Hereafter the PreCCA.

¹⁷⁷ S 4 of the PreCCA.

¹⁷⁸ *S v Selebi* [2010] ZAGPJHC 53 paras 8, 9.

¹⁷⁹ A 1 of the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* (1998) 37 ILM 1.

¹⁸⁰ Favouritism refers to the act of unduly appointing or giving preferential treatment to a person based solely on personal preference at the expense of an organisation or the larger community. Safina 2015 *Procedia Economics and Finance* 631. Government favouritism is frequently engaged in by individuals as members of certain manipulative networks such as political parties because of the power of these networks to monitor and punish their members. Fazekas 2017 *Crime Law and Social Change* 406.

¹⁸¹ Sayed and Bruce 2010 *African Security Review* 6.

¹⁸² Sampford *et al Measuring Corruption* 47.

be more challenging to prove in courts because of the subjectivity in judging whether or not corruption took place.¹⁸³

Neither the UNCAC nor the AUCPCC follow a restrictive or an elaborate formulation of corruption as described above. Instead they refer to a set of acts such as the embezzlement of property, illicit enrichment, money laundering, concealment or the diversion of property as constituting corrupt behaviour.¹⁸⁴ In this way corrupt behaviour is seen to include more than that described in the restrictive formulations with sufficient clarity to prove these acts in courts. However, like the restrictive definitions of the OECD¹⁸⁵ and the PreCCA above, this description also falls short of including forms of favouritism such as nepotism.¹⁸⁶

2.2.1.2 Actors

Many of the definitions suggest that corruption requires two or more parties. One of these parties should be a member of an organisation or institution¹⁸⁷ holding a specific position of power or who has a specific role to play in his organisation/institution (such as being responsible for supply chain management or staff appointments).¹⁸⁸ In some exceptional circumstances corruption can be perpetrated by one party. This happens when a person abuses power for personal gain without receiving any gratification¹⁸⁹ to do so.¹⁹⁰ For example, the diversion of property, illicit enrichment,¹⁹¹ tax evasion and excessive

¹⁸³ Sampford *et al Measuring Corruption* 47.

¹⁸⁴ Aa 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 27 and 28 of the UNCAC; aa 1 and 4 of the AUCPCC; aa 1 and 3 of the SADC Protocol; a 6 of the *Inter-American Convention Against Corruption* (1996) 35 ILM 724; Budhram 2018 *Journal of Public Administration* 123; Ye as cited in Ko and Weng 2011 *Journal of Contemporary China* 377.

¹⁸⁵ Hereafter the OECD.

¹⁸⁶ Sayed and Bruce 2010 *African Security Review* 6.

¹⁸⁷ Public or private such as government institutions or private companies.

¹⁸⁸ Ani 2015 *South African Journal of Philosophy* 14.

¹⁸⁹ See para 3.2.1.3 below for a discussion on what constitutes gratification.

¹⁹⁰ Van Maanen as cited in Grobler and Jourbert 2004 *Acta Criminologica* 91; Akinola and Uzodike 2014 *Ubuntu: Journal of Conflict and Social Transformation* 38; Bardhan 1997 *Journal of Economic Literature* 1321.

¹⁹¹ Where a person's property or expenditure exceeds his or her lawful sources of income. Ko and Weng 2011 *Journal of Contemporary China* 370.

profiteering (such as unduly increasing municipal service tariffs) do not involve another party offering or giving some form of gratification in return.¹⁹²

The person receiving or accepting any form of gratification should be in a position of trust.¹⁹³ 'A position of trust' in this context refers to a position where a person has been granted a measure of authority to act on behalf of an institution.¹⁹⁴ The institution may be a public, private, political, or non-profit institution. The occupation of a position of trust presupposes that the perpetrator has a specific role to play in the organisation.¹⁹⁵ The potentially corrupt act must be committed during the course of playing this specific role.¹⁹⁶

Certain descriptions of corruption define this position of trust or power by referring to the public interest it serves.¹⁹⁷ Public interest in the context of this study would typically entail furthering the objects of local government.¹⁹⁸ These descriptions of the agents of corruption therefore require the receiver of the gratification to hold public office, and are confined to the public sector.¹⁹⁹

Private-sector corruption, also referred to as non-government corruption, is where a person in a position of trust or power occupies an office in the private sector and abuses that office for personal gain to the detriment of his or her principal.²⁰⁰ The two main distinguishing characteristics of private-sector corruption are that the person in a position of trust and power holds a private office (is not in state employment) and that the

¹⁹² Bauer 2005 <http://journals.ufs.ac.za/index.php/jch/article/download/463/443> 57.

¹⁹³ Grobler and Joubert 2004 *Acta Criminologica* 91; Ani 2015 *South African Journal of Philosophy* 14.

¹⁹⁴ Grobler and Joubert 2004 *Acta Criminologica* 91; Ani 2015 *South African Journal of Philosophy* 14.

¹⁹⁵ Agbor 2019 *African Journal of International and Comparative Law* 53; Grobler and Joubert 2004 *Acta Criminologica* 91; Ani 2015 *South African Journal of Philosophy* 14.

¹⁹⁶ Grobler and Joubert 2004 *Acta Criminologica* 91; Ani 2015 *South African Journal of Philosophy* 14.

¹⁹⁷ Blundo and Olivier de Sardan *Everyday Corruption and the State* 4; Grobler and Joubert 2004 *Acta Criminologica* 91, 92; Kondlo 2010 *Journal of Public Administration* 325; April and Sebola 2016 *African Insight* 84; Corruption Watch 2020 <https://www.corruptionwatch.org.za/learn-about-corruption/what-is-corruption/our-definition-of-corruption/>; Kaufman and Vicente 2011 *Economics & Politics* 198; Sayed and Bruce 2010 *African Security Review* 12; Sampford *et al Measuring Corruption* 45; Ostergaard and Petersen as cited by Ko and Weng 2011 *Journal of Contemporary China* 377; Rose and Peiffer *Governance & Corruption* 4; SACN *State of South African Cities Report 2016* 224, 285; Grobler and Joubert 2003 *Acta Criminologica* 91.

¹⁹⁸ Ss 152 and 153 of the Constitution.

¹⁹⁹ For a detailed description and analysis of public sector corruption see para 2.2.3 below.

²⁰⁰ Sartor and Beamish 2019 *Journal of Business Ethics* 2; Argandona 2003 *Journal of Business Ethics* 255; Gutmann and Lucas 2018 *Social Indicators Research* 749.

principal harmed is a private entity.²⁰¹ This concept extends corruption beyond public service and state-owned enterprises to include non-governmental organisations (hereafter NGOs), religious bodies, the media and private businesses.²⁰² Some common examples of private sector corruption include kickbacks,²⁰³ corporate fraud,²⁰⁴ collusion²⁰⁵ and insider trading.²⁰⁶

Corruption has a passive and an active element to it.²⁰⁷ In other words, passive corruption occurs where the receiving party (the corruptee) receives or accepts a promise of an advantage in return for acting or refraining from acting in a certain way in the exercise of his or her official functions.²⁰⁸ On the other hand, active corruption is committed by the giving party (the corruptor) and concerns the offering or giving of a bribe or other form of gratification to influence a person in power to act or refrain from acting.²⁰⁹

2.2.1.3 Gain

Gain (also referred to as gratification in the literature)²¹⁰ features in all the definitions of corruption. Gain in this context is best described as the benefit a person receives from

²⁰¹ Sartor and Beamish 2019 *Journal of Business Ethics* 2; Argandona 2003 *Journal of Business Ethics* 255; Gutmann and Lucas 2018 *Social Indicators Research* 749.

²⁰² Sartor and Beamish 2019 *Journal of Business Ethics* 2.

²⁰³ A bribe which is paid after an undue favour or service is rendered. U4 Anti-Corruption 2020 <https://www.u4.no/terms>.

²⁰⁴ Fraud committed by larger firms or corporate entities, often as part of a network of corruption. US Legal 2020 <https://definitions.uslegal.com/c/corporate-fraud/>.

²⁰⁵ An agreement between competitors to sell certain goods and services at an agreed price. Corruption Watch 2020 <https://bit.ly/3s0muDI>.

²⁰⁶ Any individual in the possession of insider information which deals in securities or financial instruments involving such information is committing insider trading. S 2 of the *Insider Trading Act* 135 of 1998; Sartor and Beamish 2019 *Journal of Business Ethics* 2.

²⁰⁷ Transparency International 2020 <https://www.transparency.org/en/what-is-corruption>; Blundo *Everyday Corruption and the State* 4; Klitgaard, MacLean-Abaroa and Parris as cited in Grobler and Joubert 2004 *Acta Criminologica* 91; Kondlo 2010 *Journal of Public Administration* 325.

²⁰⁸ Kratcoski and Edelbacher *Fraud and Corruption: Major Types, Prevention, and Control* 25.

²⁰⁹ S 4(1)(b) of PreCCA; aa 15 and 16 of the UNCAC; a 1 of the SADC Protocol; a 1 of the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* (1998) 37 ILM 1; a 6 of the *Inter-American Convention Against Corruption* (1996) 35 ILM 724.

²¹⁰ Blundo and Olivier de Sardan *Everyday Corruption and the State* 4; Grobler and Joubert 2004 *Acta Criminologica* 91, 92; Kondlo 2010 *Journal of Public Administration* 325; April and Sebola 2016 *African Insight* 84; Corruption Watch 2020 <https://bit.ly/3IJAY3o>; Kaufman and Vicente 2011 *Economics & Politics* 198; Sayed and Bruce 2010 *African Security Review* 12; Sampford *et al Measuring Corruption* 45; Ostergaard and Petersen as cited by Ko and Weng 2011 *Journal of Contemporary China* 377; Rose and Peiffer *Governance & Corruption* 4; SACN *State of South African Cities Report 2016* 224, 285; Grobler and Joubert 2003 *Acta Criminologica* 91.

engaging in corruption – a benefit which the person would not have otherwise received.²¹¹ Gain is mainly used to refer to what a bribe consists of and can include anything ranging from money to goods, services or other favours.²¹² Although gain should extend beyond material goods and should include benefits such as political favours, the challenge is to define gain in such a manner as to retain the ability to specify what is included.²¹³

Definitions of corruption usually refer to personal gain for the perpetrator.²¹⁴ However, this ostensibly disregards gain for a group. Such a group may be a peer group, an organisation or a political party.²¹⁵ However, one can argue that group gain is an extension of personal gain. It is arguable that if the corrupt act furthers a group's interests and improves the perpetrator's standing in that group, personal gain is present.²¹⁶ For example, a human resource officer may make an appointment (regardless of the person's abilities to occupy the relevant public office) upon the instruction of his or her political leader.²¹⁷ Clearly, the political party as an institution benefits from this action because it increases or maintains its political influence in that municipality or government department. Nevertheless, it may seem that the human resource officer receives no benefit from this corrupt act. Upon closer investigation, though, one can observe that in carrying out his or her political leader's instruction the perpetrator wins some favour from the political leader, improving his or her status in the institution. Extending the ambit of personal gain in this manner will include activities often overlooked which promote the interests of a political party, ethnic group or familial network.²¹⁸

²¹¹ Sampford *et al* (eds) *Measuring Corruption* 45.

²¹² Sayed and Bruce 2010 *African Security Review* 6.

²¹³ Other benefits may include helping friends and family members, winning the approval of one's peer group and avoiding personal harm. Sayed and Bruce 2010 *African Security Review* 6.

²¹⁴ Blundo and Olivier de Sardan *Everyday Corruption and the State* 4; Grobler and Joubert 2004 *Acta Criminologica* 91, 92; Kondlo 2010 *Journal of Public Administration* 325; April and Sebola 2016 *African Insight* 84; Corruption Watch 2020 <https://bit.ly/3rXB4ff>; Kaufman and Vicente 2011 *Economics & Politics* 198; Sayed and Bruce 2010 *African Security Review* 12; Sampford *et al* *Measuring Corruption* 45; Ostergaard and Petersen as cited by Ko and Weng 2011 *Journal of Contemporary China* 377; Rose and Peiffer *Governance & Corruption* 4; SACN *State of South African Cities Report 2016* 224, 285; Grobler and Joubert 2003 *Acta Criminologica* 91.

²¹⁵ Sayed and Bruce 2010 *African Security Review* 6; Philp 2008 *International Peacekeeping* 313.

²¹⁶ Sayed and Bruce 2010 *African Security Review* 6; Philp 2008 *International Peacekeeping* 313.

²¹⁷ See para 2.2.1.1 above.

²¹⁸ Philp 2008 *International Peacekeeping* 313.

2.2.1.4 Misuse

Corruption is understood to steal the value of a decision or discretion from the institution the corrupt individual is supposed to serve.²¹⁹ A specific type of misuse (or abuse) of office distinguishes corruption from other typical crimes such as fraud or theft,²²⁰ although there is some debate concerning what misuse entails.²²¹ One could describe misuse as using a position of trust or power to obtain an advantage (a gain) one is not entitled to.²²² Another approach would be to define misuse according to a predetermined set of rules (laws, regulations, codes of conduct, policies and other informal rules of the relevant institution).²²³ These rules could be used to distinguish between acceptable behaviour and corruption or other crimes.²²⁴ While the idea of tailoring a universal set of rules for determining acceptable behaviour would simplify the task of defining corruption, this would ignore the many complexities in which different political and societal systems operate.²²⁵ Again one might consider the differences between a predominantly Western community that respects and appreciates bureaucratic processes and values, and some Asian or African transitional communities where exchanging favours as a means of looking after friends, family and loyalists is common practice.²²⁶

On the other hand, if these rules are entirely a local matter, there is a danger of reducing corruption to "what we regard as misuse around here".²²⁷ Thus, it would appear that a

²¹⁹ Fisher and Taub *The New York Times* 2019.

²²⁰ Philp 2008 *International Peacekeeping* 313.

²²¹ Agbor 2019 *African Journal of International and Comparative Law* 53; Philp 2008 *International Peacekeeping* 313.

²²² One such example could be when an illicit price is charged for an item or service as in Grobler and Joubert 2004 *Acta Criminologica* 91. Stealing time, for example, when an employee does not show up for work but still collects his or her paycheck as in Abhijt, Sendhil and Rema *Corruption* 6. Philp 2008 *International Peacekeeping* 313; the *Indian Penal Code* as cited in Carvajal 1999 *Systemic Practice and Action Research* 339; Budhram 2018 *Journal of Public Administration* 123.

²²³ Carvajal 1999 *Systemic Practice and Action Research* 339; Philp 2008 *International Peacekeeping* 313; Abhijt, Sendhil and Rema *Corruption* 6; Kratcoski and Edelbacher *Fraud and Corruption: Major Types, Prevention, and Control* 23.

²²⁴ Philp 2008 *International Peacekeeping* 313; Kratcoski and Edelbacher *Fraud and Corruption: Major Types, Prevention, and Control* 23.

²²⁵ Kratcoski and Edelbacher *Fraud and Corruption: Major Types, Prevention, and Control* 23; Philp 2008 *International Peacekeeping* 313.

²²⁶ See para 2.2.1.1 above. Caiden and Caiden 1977 *Public Administration Review* 302; Philp 2008 *Peacekeeping* 313.

²²⁷ Philp 2008 *International Peacekeeping* 313; Kratcoski and Edelbacher *Fraud and Corruption: Major Types, Prevention, and Control* 23.

balance must be struck between the use of a universal description of misuse and allowing enough flexibility in the formulation to acknowledge the subtle differences in acceptable behaviour dictated by specific local circumstances and local cultures.

2.2.2 Forms of corruption

Corruption manifests itself in many specific acts,²²⁸ can take many forms and may vary in scale.²²⁹ This section explores the different scales of corruption and then ventures into some of the details of the different forms of corruption which are relevant to the context of South African local government.

2.2.2.1 Petty and grand corruption

Grand corruption is understood in most cases to involve organisations or businesses offering comparatively large bribes in return for something from the government.²³⁰ However, it is not the amount of money or size of the advantage offered that determines whether or not corruption is considered grand or petty.²³¹ It is typically the positions of the actors involved that determines the scale of corruption.²³² Therefore, grand corruption involves the government's top tiers, the political elite, or in the highest structures of private businesses perhaps the board of directors or top management.²³³ These top

²²⁸ Administrative secrecy, vote buying, treason, subversion, illegal foreign transactions, smuggling, kleptocracy, the privatisation of public funds, larceny, stealing, misappropriation, forgery, embezzlement, the padding of accounts, the diversion of funds, the misuse of funds, unaudited revenues, skimming, the abuse of power, intimidation, underserved pardons and remissions, torture, deceit, fraud, misrepresentation, cheating, swindling, blackmail, the perversion of justice, giving false evidence, unlawful detention, frame-ups, bribery, extortion, illegal levies, kickbacks, tampering with elections, vote rigging, insider trading, the falsification of records, the unauthorised sale of public offices, giving unauthorised loans, unauthorised monopolies, unauthorised contracts, the manipulation of regulations, bias and favouritism in decision making, tax evasion, excessive profiteering, influence peddling, favour-brokering, conflict of interest, dereliction of duty, illicit enrichment, embezzlement and misappropriation. Bauer 2005 *Journal for Contemporary History* 57; April 2016 *Africa Insight* 84; Ko and Weng 2011 *Journal of Contemporary China* 370; aa 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 27; and 28 of the UNCAC; aa 1 and 4 of the AUCPCC.

²²⁹ It must be emphasised again that no universal consensus exists as to what is deemed grand or petty corruption. Fombad "Corruption and the Crisis of Constitutionalism in Africa" 19.

²³⁰ Kroukamp 2006 *Journal of Public Administration* 208.

²³¹ Fombad "Corruption and the Crisis of Constitutionalism in Africa" 17.

²³² Fombad "Corruption and the Crisis of Constitutionalism in Africa" 18.

²³³ U4 Anti-Corruption Resource Centre 2020 <https://www.u4.no/topics/anti-corruption-basics/basics>; Jain 2001 *Journal of Economic Surveys* 74.

structures consist of actors responsible for formulating and implementing rules, policies and executive decisions.²³⁴

Petty corruption involves actors occupying more menial positions of power.²³⁵ Although this is not a determining factor, the gratification or advantage offered (especially in the case of bribery) is often small or modest compared with that offered in grand corruption.²³⁶ Petty corruption can also be described as 'everyday corruption' and is prevalent in the interface between the public service and residents or citizens. An example of petty corruption is when a public official will issue government documentation only if he or she receives payment that is greater than the official advertised price.²³⁷

2.2.2.2 Collective corruption

Collective corruption occurs where a group of individuals conspires or colludes to further its own interests at the expense of the general public.²³⁸ In other words, collective corruption is committed when a group of persons or institutions agrees to engage in corrupt activities.²³⁹ Without the agreement, their actions would have been distinct and unrelated instances of corruption.²⁴⁰ The idea of such an agreement is to maximise personal gain while minimising the risks posed by corruption through the protection which the existence of a network can offer.²⁴¹ It can thus be observed that corruption can sometimes manifest in networks of interactions and exchanges or semi-organised structures.²⁴²

²³⁴ U4 Anti-Corruption Resource Centre 2020 <https://www.u4.no/topics/anti-corruption-basics/basics>; April and Sebola 2016 *Africa Insight* 84.

²³⁵ Sectional, group, or organisational gain refers to the gain for a "sub-group of peers that often forms the most important reference group." Sayed and Bruce 2010 *African Security Review* 6; Grobler and Joubert 2004 *Acta Criminologica* 91.

²³⁶ Kroukamp 2006 *Journal of Public Administration* 208; U4 Anti-Corruption Resource Centre 2020 <https://www.u4.no/topics/anti-corruption-basics/basics>.

²³⁷ U4 Anti-Corruption Resource Centre 2020 <https://www.u4.no/topics/anti-corruption-basics/basics>.

²³⁸ Ko and Weng 2011 *Journal of Contemporary China* 376; Gong 2002 *Communist and Post-Communist Studies* 88.

²³⁹ Ko and Weng 2011 *Journal of Contemporary China* 376; Gong 2002 *Communist and Post-Communist Studies* 88.

²⁴⁰ Ko and Weng 2011 *Journal of Contemporary China* 376; Gong 2002 *Communist and Post-Communist Studies* 88.

²⁴¹ Gong 2002 *Communist and Post-Communist Studies* 88.

²⁴² Shieh 2005 *Journal of Contemporary China* 69; Gong 2002 *Communist and Post-Communist Studies* 88.

State capture is a specific form of collective corruption and takes place on a grand scale.²⁴³ State capture occurs when a small, elite group in a position of power manipulates the formal and informal rules governing an aspect of society (often referred to as the 'rules of the game') to its own benefit.²⁴⁴ Thus, instead of subverting the rules, those engaging in state capture change them.²⁴⁵ An example of recent state capture in local government²⁴⁶ can be observed where the Nelson Mandela Bay Metropolitan Municipality was 'captured' by an elite political faction.²⁴⁷ This faction ensured that a carefully deployed network was able to manipulate all the key departments in the municipality, such as financial management, human resource management, and supply chain management, to unduly serve the interests of the leaders of that faction at the expense of the general public.²⁴⁸ For some years the leaders of the political faction through this network ensured that large tenders were awarded to their own or their families' and friends' companies while also ensuring that the procured goods and services were overpriced.²⁴⁹ The collective corruption ultimately contributed to the near financial and service delivery collapse of the municipality.²⁵⁰

What is peculiar to collective corruption is that it involves a network stretching across the public and private sector and includes multiple companies, state departments, and often

²⁴³ Hellman and Kaufmann 2001 *Finance and Development* 31; Hellman, Jones and Kaufmann *Seize the State, Seize the Day* 3.

²⁴⁴ Venter "State Capture, Corruption and Constitutionalism in South Africa" 70; Hellman, Jones and Kaufmann *Seize the State, Seize the Day* 3; Hellman and Kaufmann 2001 *Finance and Development* 31; Madonsela 2019 *African Studies* 116; Martin and Solomon 2016 *Southern African Peace and Security Studies* 21; Dassah 2018 *The Journal for Transdisciplinary Research in Southern Africa* 2.

²⁴⁵ Dassah 2018 *The Journal for Transdisciplinary Research in Southern Africa* 2.

²⁴⁶ For an examples of state capture in national government see Madonsela 2019 *African Studies* 113; Martin and Solomon 2016 *Southern African Peace and Security Studies* 21; Dassah 2018 *The Journal for Transdisciplinary Research in Southern Africa* 2; Venter "State Capture, Corruption and Constitutionalism in South Africa" 77.

²⁴⁷ Martin and Solomon 2016 *Southern African Peace and Security Studies* 26; Olver 2018 *Area Development and Policy* 280; Grobler and Joubert 2004 *Acta Criminologica* 91.

²⁴⁸ Olver 2018 *Area Development and Policy* 280; Grobler and Joubert 2004 *Acta Criminologica* 91; Madonsela 2019 *African Studies* 117; Martin and Solomon 2016 *Southern African Peace and Security Studies* 26; Venter "State Capture, Corruption and Constitutionalism in South Africa" 77.

²⁴⁹ Olver 2018 *Area Development and Policy* 280; Grobler and Joubert 2004 *Acta Criminologica* 91; Martin and Solomon 2016 *Southern African Peace and Security Studies* 26.

²⁵⁰ Olver 2018 *Area Development and Policy* 280; Grobler and Joubert 2004 *Acta Criminologica* 91; Madonsela 2019 *African Studies* 117; Martin and Solomon 2016 *Southern African Peace and Security Studies* 26.

groups engaged in organised crime.²⁵¹ All of these actors cooperate to unduly advance their interests at the expense of the general public.²⁵² A further distinguishing feature is that collective corruption is frequently facilitated by organised crime, which is responsible for the formation and coordination of corrupt networks.²⁵³ Thus, the extent of collective corruption relies on its facilitative network's size, influence and structure, which in turn relies on the resources available for abuse, the people involved, and the length of time the network has been in operation.²⁵⁴

Another characteristic of collective corruption is that the corrupt act is planned in advance. It is always executed according to a plan developed well in advance detailing the different roles each actor is to play.²⁵⁵ Collective corruption rarely involves one act of corruption and recurs as long as the facilitating network survives.²⁵⁶ This type of corruption may therefore become a part of an organisation's culture and because of its recurrent nature may become systemic corruption.²⁵⁷

2.2.2.3 Systemic corruption

Systemic corruption (also referred to as institutional corruption)²⁵⁸ is present when corruption is so widespread that it completely alters the operation of social systems such as governmental, political, organisational, economic, cultural and religious systems, allowing power to be repeatedly abused at the expense of the other members in those systems.²⁵⁹ This type of corruption can involve all of the levels of a social system.²⁶⁰ Systemic corruption alters the operation of a social system so that the system can no longer function without corruption taking place.²⁶¹ A defining feature of systemic corruption is that members of the particular social system consider corrupt practices as

²⁵¹ Ko and Weng 2011 *Journal of Contemporary China* 376; Gong 2002 *Communist and Post-Communist Studies* 88; Madonsela 2019 *African Studies* 118.

²⁵² Shieh 2005 *Journal of Contemporary China* 69.

²⁵³ Shieh 2005 *Journal of Contemporary China* 69; Madonsela 2019 *African Studies* 118.

²⁵⁴ Carvajal 1999 *Systemic Practice and Action Research* 340; Madonsela 2019 *African Studies* 118.

²⁵⁵ Carvajal 1999 *Systemic Practice and Action Research* 340; Madonsela 2019 *African Studies* 118.

²⁵⁶ Frost and Tischer 2014 *European Management Review* 191.

²⁵⁷ Frost and Tischer 2014 *European Management Review* 191.

²⁵⁸ Grobler and Joubert 2004 *Acta Criminologica* 91.

²⁵⁹ Grobler and Joubert 2004 *Acta Criminologica* 91; Fombad "Corruption and the Crisis of Constitutionalism in Africa" 17.

²⁶⁰ April and Sebola 2016 *Africa Insight* 84; Begovic 2005 *Cadal Documentos* 3.

²⁶¹ Kratcoski and Edelbacher *Fraud and Corruption: Major Types, Prevention, and Control* 25.

the accepted norm in the functioning of that system.²⁶² Therefore, corrupt practices become the norm and the acceptable standard of behaviour necessary to accomplish goals in that social system.²⁶³ In such cases, corruption has been institutionalised to the extent that individuals who behave according to the rules (and not according to the corrupt traditions) are penalised.²⁶⁴

Systemic corruption can be limited to one organisation, in which case it may be called organisational corruption.²⁶⁵ The organisation exploits its influence in a market or over resources to gain material benefits for the organisation by violating official rules at the expense of the public or the state.²⁶⁶

2.2.2.4 Coerced corruption

Coerced corruption occurs when one of the parties to corruption threatens the other with harm or potential harm should the other choose not to participate in the corrupt act.²⁶⁷ Corruption is therefore not always committed out of the free will of both parties.²⁶⁸ This form of corruption is also sometimes referred to as extortive corruption or defensive corruption.²⁶⁹ The difference between extortive or coerced corruption and normal transactional corruption is that transactional corruption contains an element of mutual agreement. In contrast, extortive corruption involves compulsion through a threat of actual harm unless the gratification is offered.²⁷⁰ Another difference between common extortion and extortive corruption is that all the elements of an extortive crime and corruption are present in one act.²⁷¹

²⁶² Fombad "Corruption and the Crisis of Constitutionalism in Africa" 17; Kratcoski and Edelbacher *Fraud and Corruption: Major Types, Prevention, and Control* 25.

²⁶³ Jain 2001 *Journal of Economic Surveys* 75.

²⁶⁴ Caiden and Caiden 1977 *Public Administration Review* 305; Fombad "Corruption and the Crisis of Constitutionalism in Africa" 17.

²⁶⁵ See para 2.2.2.2 above.

²⁶⁶ Ko and Weng 2011 *Journal of Contemporary China* 376.

²⁶⁷ Grobler and Joubert 2004 *Acta Criminologica* 91.

²⁶⁸ Grobler and Joubert 2004 *Acta Criminologica* 91; Carvajal 1999 *Systemic Practice and Action Research* 337.

²⁶⁹ Carvajal 1999 *Systemic Practice and Action Research* 337.

²⁷⁰ Heywood 2007 *Political Science and Politics* 696; Andersen 2018 *Journal of Human Rights Practice* 180; Schopf 2015 *Journal of Comparative Asian Development* 284.

²⁷¹ Ellis and Whyte *Redefining Corruption: Public Attitudes to the Relationship Between Government and Business* 2; Schopf 2015 *Journal of Comparative Asian Development* 284.

For example, in South Korea under the dictatorial rule of Chun Doo-whan extortive corruption was observed in government practices where some public officials threatened residents' private property rights with expropriation to elicit bribes referred to as 'protection money'.²⁷² Extortive corruption has also been observed in the South African Police Service,²⁷³ where police officers refuse to offer essential protection to or to support victims unless bribes are paid, especially in areas like the Cape Flats, where gang-related crimes are rife.²⁷⁴

2.2.2.5 Noble cause corruption

Noble cause corruption occurs when officials act beyond the scope of their functions and powers to achieve seemingly legitimate objectives.²⁷⁵ Here, those who participate in corrupt acts or in bending the rules claim that their acts are justified by their being in what they call a noble cause.²⁷⁶ Noble cause corruption is also referred to as process corruption and commonly takes place in law enforcement units or organs of state such as SAPS.²⁷⁷ Noble cause corruption, also known as the so-called Dirty Harry problem, is motivated by the desire to advance the interests of a society.²⁷⁸ Corruption here is rationalised as 'the end justifying the means', and perpetrators deny the criminality of the corrupt acts by compensating for and delimiting a perceived failed or unjust system.²⁷⁹ For instance, as protectors of the community, police officials may feel compelled to remove dangerous criminals from the community by any means necessary, such as deceiving suspects into confessing, eliciting criminal acts or tampering with evidence.²⁸⁰ This form of corruption is less prevalent in municipalities. It can take place, however, when a municipal officer subverts formal processes to aid a resident. For example, a municipal officer may have personal knowledge of the difficult circumstances of a resident

²⁷² Schopf 2015 *Journal of Comparative Asian Development* 284, 288.

²⁷³ Hereafter the SAPS.

²⁷⁴ Corruption Watch *The Writing is on the Wall* 49.

²⁷⁵ Kleinig 2002 *International Journal of Police Science & Management* 289.

²⁷⁶ Cooper 2012 *Policing and Society* 169; Kleinig 2002 *International Journal of Police Science & Management* 287.

²⁷⁷ Kleinig 2002 *International Journal of Police Science & Management* 289; Merrington *et al* 2014 *International Journal of Management and Administrative Sciences* 19, 20.

²⁷⁸ Cooper 2011 *Policing and Society* 171; Merrington 2014 *International Journal of Management and Administrative Sciences* 19, 20.

²⁷⁹ Merrington 2014 *International Journal of Management and Administrative Sciences* 19, 20.

²⁸⁰ Cooper 2011 *Policing and Society* 171.

and may register the resident as an indigent without proper documentation or following due process. One can observe that often no physical transaction takes place between the two parties, and that the gain in this instance is the feeling that the perpetrator contributed to the public good.²⁸¹

2.2.2.6 Legal and illegal corruption

Corruption can be legal or illegal. An examination of the applicable laws can establish legality.²⁸² Illegal corruption can be ascertained from the actions in law which are declared as illegal and subject to criminal or civil sanctions. Although certain corrupt actions may be legal they are considered to be unacceptable behaviour (according to predetermined rules).²⁸³ Legal corruption therefore occurs where the relevant legal frameworks do not prohibit certain actions, but where these actions are considered to be in contradiction of acceptable standards of behaviour.²⁸⁴

For example, lobby groups such as labour unions are protected by legislation and may exert undue pressure on the state government to ensure a specific governance outcome. To illustrate, trade unions arranging mass strike action to exert pressure on the South African government may take specific action in response to the country's economic problems.²⁸⁵ This alone does not constitute corruption although it may have a crippling effect on governance or the normal day-to-day functioning of the community, and may be accompanied by unrealistic demands which the government cannot meet without absorbing severe impacts on other governance matters.²⁸⁶ So government is left with an impossible choice: giving in to the unrealistic demands and thus unduly changing governance priorities, or doing nothing and letting the crippling situation remain.

Legal corruption can also be seen as an act that falls on the so-called borderline, making it difficult to distinguish between corruption and a simple favour.²⁸⁷ For example, a

²⁸¹ Cooper 2011 *Policing and Society* 169.

²⁸² Kaufman and Vicente 2011 *Economics and Politics* 199.

²⁸³ See para 2.2.1.4 above for details on misuse. Kaufman and Vicente 2011 *Economics and Politics* 199.

²⁸⁴ Kaufman and Vicente 2011 *Economics and Politics* 199.

²⁸⁵ Tembo *Independent Online* 1.

²⁸⁶ Kaufman and Vicente 2011 *Economics and Politics* 199.

²⁸⁷ Kratocoski and Edelbacher *Fraud and Corruption: Major Types, Prevention, and Control* 3.

resident overdue on his or her municipal services account may offer a municipal officer (in this case an electrician) a soft drink on a warm day. Is this an implicit bribe not to disconnect the resident's electricity, therefore corruption, or is it simply being courteous?

2.2.3 Corruption in the public sector

International and regional corruption law tends to focus on public sector corruption, although no explicit definition is provided.²⁸⁸ However, international and regional law and policy do have some agreement on certain characteristics of public sector corruption that distinguishes it from private sector corruption.²⁸⁹ In South Africa the Constitution also explicitly forbids: " the use of ... position or any information entrusted to them (cabinet members and deputy ministers), to enrich themselves."²⁹⁰

One distinction between public and private sector corruption lies in whether the parties involved in the corrupt act hold a public or private office. 'Public office', in this instance, includes both elected and non-elected public officials.²⁹¹ To establish what qualifies as public office in a specific legal order, one must examine the relevant legal definition. By way of illustration, in South Africa section 239 of the Constitution provides such a definition. It determines that an organ of state includes any person, functionary or institution which exercises a public power or performs a public function.²⁹² From this definition one may determine that public office in South Africa is regarded as any position where an individual exercises a public power or performs a public function. This definition also shows that where a private company steps into the shoes of government by way of a contract (to render a public function), such a company can become involved in public sector corruption.

Public office is often considered in terms of the responsibility of the public interest it serves.²⁹³ Corrupt acts involve the distortion of that responsibility to serve private interests

²⁸⁸ Aa 7, 8, 9, 10 and 12 of UNCAC; a 7 of the AUCPCC; the preamble of the *OECD Good Practice Guidance on Internal Controls, Ethics and Compliance* (2010) <https://bit.ly/3yrFaP4>; aa 3 and 6 of *SADC Protocol Against Corruption* (2001) <https://bit.ly/2VFRigI>.

²⁸⁹ See para 2.2.2 above.

²⁹⁰ S 96(2)(c) of the Constitution.

²⁹¹ Cuervo-Cazurra 2006 *Journal of International Business Studies* 808.

²⁹² S 239(b) of the Constitution.

²⁹³ Sampford *et al* (eds) *Measuring Corruption* 45.

instead of public interest.²⁹⁴ Public sector corruption requires a violation of the rules (or biased enforcement of such rules),²⁹⁵ norms, or public expectations that accompany the specific public office.²⁹⁶

These rules may be formal bureaucratic standards such as laws, policies, and regulations. For South African local government, these may include the Municipal Supply Chain Management Regulations, indigent policies, the MIMF, and the codes of conduct in the Systems Act.²⁹⁷ However, some rules may be informal standards regarding how public officials ought to behave.²⁹⁸ For example, the Constitution requires municipal officials to adhere to a high standard of professional ethics.²⁹⁹ The parameters of professional ethics are often implied and can therefore be considered as informal, unwritten rules.³⁰⁰ These rules are socio-psychological expectations rather than rules recorded in statutes.³⁰¹ Often the community views a violation of these informal rules as corruption, because public officials are appointed to serve the public well-being.³⁰² Furthermore public officials are considered to have a fiduciary duty towards the general public.³⁰³

For an act to be corrupt, the public official must misuse or abuse his or her public office in a specific way. When the public official accepts a benefit for doing something (or the exercise or omission of a discretion) which he is obliged to do or not to do in any way, this is considered a misuse of office.³⁰⁴ For instance, where a municipal official expects to receive a bribe to induce him or her to process an indigent application, this would constitute public sector corruption. Misuse or abuse in public sector corruption further entails an exchange of illicit value, which may include money, sexual favours, a

²⁹⁴ Agbor 2019 *African Journal of International and Comparative Law* 53; Sampford *et al* (eds) *Measuring Corruption* 45.

²⁹⁵ Begovic 2005 *Cadal Documentos* 4.

²⁹⁶ Sampford *et al* (eds) *Measuring Corruption* 47.

²⁹⁷ S 1 of the GenN 868 in GG 27636 of 30 May 2005; MIMF para 1; Schedule 1 of the Systems Act; Department of Provincial and Local Government *National Framework for Municipal Indigent Policies* 20.

²⁹⁸ Rose and Peiffer *Bad Governance & Corruption* 4.

²⁹⁹ S 195(1)(a) of the Constitution.

³⁰⁰ Mle 2012 *Africa's Public Service Delivery and Performance Review* 32.

³⁰¹ Rose and Peiffer *Bad Governance & Corruption* 4.

³⁰² Mle 2012 *Africa's Public Service Delivery and Performance Review* 32; Dintwe 2003 *Journal of Public Administration* 557.

³⁰³ Dintwe 2003 *Journal of Public Administration* 557.

³⁰⁴ Carvajal 1999 *Systemic Practice and Action Research* 338.

promotion, or greater influence in a political party.³⁰⁵ It may also be that there is only one party involved in the corrupt act, such as where the public official diverts public property for his or her personal gain without an incentive from another party.

Another distinction between public sector corruption and private sector corruption is that the victims of public sector corruption are the state and general public, whereas the victims of private sector corruption are limited to a determinable group only. Thus, in instances of public sector corruption the victim is the entire community.³⁰⁶

Systemic corruption in the public sector manifests itself where corruption is aimed to systematically create strategic influence (which may be legal or ethical) to undermine the effectiveness of government or state processes. This diverts the state's resources from its purpose and weakens its ability to fulfil its mandate.³⁰⁷ In Bangladesh, for example, systemic corruption has become part of the public service culture.³⁰⁸ Some essential public services are impossible to access without bribes, which culture (called *tadbir*) has immobilised the state administration.³⁰⁹ These practices vary from bribes for the granting of access to services and public goods, to the negligence of official duties (such as coming to the office late or leaving early), to a patronage system (the process of awarding major contracts through bypassing competitive norms).³¹⁰

This section of the thesis has explored the meaning and context of public sector corruption. The premise of this study is that public sector corruption in local government may threaten sustainability. In the section to follow the concept of sustainable development is considered with a view essentially to being able to draw the links between the absence of public sector corruption and thriving sustainable cities and towns in South Africa.³¹¹

³⁰⁵ Dintwe 2003 *Journal of Public Administration* 557.

³⁰⁶ See Chapter 4 below for a detailed discussion on the impacts of public sector corruption. Kratcoski and Edelbacher *Fraud and Corruption: major Types, Prevention, and Control* 9.

³⁰⁷ Lessig 2013 *Institutional Corruption and the Pharmaceutical Industry* 553.

³⁰⁸ Zafarullah and Siddiquee 2001 *Public Organization Review: A Global Journal* 468.

³⁰⁹ Zafarullah and Siddiquee 2001 *Public Organization Review: A Global Journal* 468, 470, 475.

³¹⁰ Zafarullah and Siddiquee 2001 *Public Organization Review: A Global Journal* 468, 470, 475.

³¹¹ See para 2.1 above.

2.3 Sustainable development as a concept

The Oxford Dictionary describes sustainability as "the ability to sustain or conserve an ecological balance by avoiding the depletion of natural resources."³¹² This provides a starting point for any discussion on sustainability. The development of sustainability or sustainable development as a notion in policy and law can be traced back to conferences of the United Nations, such as the United Nations Conference on Human Development in 1972, where it was agreed that the environment and development are intertwined.³¹³

From the above realisation came the idea of environmentally sound - or eco-development.³¹⁴ The latter maintained a strong focus on ecological goals and gave rise to many conservation strategies.³¹⁵ Furthermore, it was characterised by the idea that conservation and development were irreconcilable.³¹⁶ Later development of the sustainability concept included a more holistic human development element.³¹⁷

One of the first and now most often quoted definitions for sustainable development in law and policy can be found in the 1987 Report of the World Commission on Environment and Development,³¹⁸ *Our Common Future*.³¹⁹ According to the WCED, sustainable development takes place where the present needs of a community are met without compromising the ability of future generations to satisfy their own.³²⁰ This Report

³¹² Stevenson and Waite (eds) *Concise Oxford English Dictionary* 1452.

³¹³ Hassall *Towards Sustainability in South Africa: A Study of Local Government Sustainability Planning in the Cape Metropolitan Area* 11. See Bosselman *The Principle of Sustainability: Transforming Law and Governance* 11 for a very detailed discussion on the underlying philosophical development of sustainability.

³¹⁴ Hassall *Towards Sustainability in South Africa: A Study of Local Government Sustainability Planning in the Cape Metropolitan Area* 11.

³¹⁵ Some of the popular international instruments include *United Nations Framework Convention on Climate Change* (1992) 31 ILM 848; *United Nations Convention on the International Trade of Endangered Species of Wild Fauna and Flora* (1974) 12 ILM 1085; *United Nations Convention on Biological Diversity* (1992); *Declaration of the United Nations Conference on the Human Environment* (1972) <https://bit.ly/2X7mUNd>; *United Nations Conference on Environment and Development* (1992) 31 ILM 814.

³¹⁶ Adams *Green Development: Environment and sustainability in the third world* 15; Hassall *Towards Sustainability in South Africa: A Study of Local Government Sustainability Planning in the Cape Metropolitan Area* 11.

³¹⁷ Owosuyi 2015 *PELJ* 2013; Van der Merwe *City government resilience: Towards a diagnostic instrument* 131; Sen "Development as Capacity Expansion" 41-58; Hassall *Towards Sustainability in South Africa: A Study of Local Government Sustainability Planning in the Cape Metropolitan Area* 18.

³¹⁸ Hereafter the WCED.

³¹⁹ WCED 1987 *Our Common Future*.

³²⁰ WCED 1987 *Our Common Future* para 27.

replaced the prevalent view that sustainability and development are irreconcilable with a framework for integrating environmental and developmental needs.³²¹

The definition of sustainable development in WCED 1987 *Our Common Future*³²² serves as the basis of many subsequent formulations and theories of sustainability.³²³ It is reasonably flexible and can be relative to a specific context. A considerable amount of research has been done on what sustainability might entail, which has led to various theories.³²⁴ A brief overview of some of these studies should sketch a meaningful context for the focus of this present study on sustainability in local government.³²⁵

Two popular schools of thought in the sustainability paradigm are the anthropocentric and ecocentric schools of thought.³²⁶ These are at opposite ends of the sustainability paradigm.³²⁷ Sustainability places humanity at the heart of sustainable development when viewed through an anthropocentric lens. Nature and natural resources are viewed in terms of what they may provide in the service of human kind, and are valued according to the value they hold for people.³²⁸ It has been argued that the Brundtland Report adopts an anthropocentric approach, and the argument seems to be validated when one

³²¹ WCED 1987 *Our Common Future* paras 2-7.

³²² Hereafter the Brundtland Report.

³²³ Hassall *Towards Sustainability in South Africa: A Study of Local Government Sustainability Planning in the Cape Metropolitan Area* 18; Preuss 2007 *Business Strategy and the Environment* 356; Agyeman *Introducing Just Sustainabilities: Policy, Planning and Practice* 5.

³²⁴ Preuss 2007 *Business Strategy and the Environment* 356; Agyeman *Introducing Just Sustainabilities: Policy, Planning and Practice* 5; Owosuyi 2015 *PELJ* 2013; Van der Merwe *City Government Resilience: Towards a Diagnostic Instrument* 131; Hassall *Towards Sustainability in South Africa: A Study of Local Government Sustainability Planning in the Cape Metropolitan Area* 20.

³²⁵ See para 2.3 below.

³²⁶ Kortenkamp and Moore 2001 *Journal of Environmental Psychology* 261; Hassall *Towards Sustainability in South Africa: A Study of Local Government Sustainability Planning in the Cape Metropolitan Area* 20; Seghezzo 2009 *Environmental Politics* 540; Ten Have *Environmental Ethics and International Policy* 30; Du Plessis *Fulfilment of South Africa's Constitutional Environmental Right in the Local Government Sphere* 54; Haughton and Hunter *Sustainable Cities* 18.

³²⁷ Hoffman and Sandelands 2005 *Organization Environment* 143; Hassall *Towards Sustainability in South Africa: A Study of Local Government Sustainability Planning in the Cape Metropolitan Area* 20; Kortenkamp and Moore 2001 *Journal of Environmental Psychology* 261.

³²⁸ Seghezzo 2009 *Environmental Politics* 540; Taylor *et al* 2020 *Conservation Biology* 1091; Hoffman and Sandelands 2005 *Organization Environment* 144.

considers the Report's emphasis on the well-being of people as the ultimate goal of all environmental and development policies.³²⁹

On the other side of the sustainability paradigm is the ecocentric school of thought, which views nature and ecology as the pivotal factors that should dictate social and economic behaviour.³³⁰ In contrast with the anthropocentric theory, this theory recognises that people are intrinsic to nature as opposed to being superior to and in control of nature.³³¹ One can find different extensions of ecocentrism in this school of thought, varying from deep ecologists to more liberal scholars.³³²

According to Hassall, an ideal theory of sustainability can be found in the common ground between the above two schools of thought.³³³ This would suggest that sustainability should be approached from the view that humankind should live within the finite ecological boundaries of the Earth.³³⁴ Nature is thus treasured as being of value in its own right, and its intrinsic value is independent of its usefulness to people. Environmental protection and restraint in the consumption of the Earth's resources are thus of paramount importance.³³⁵

Four dimensions of sustainability can be identified in the multiple definitions that exist, namely environmental, social, economic and governance dimensions.³³⁶ Certain interests fall within these dimensions and can be said to stand in a unique, interdependent

³²⁹ Kopnina *et al* 2018 *Journal of Agricultural and Environmental Ethics* 113; Hassall *Towards Sustainability in South Africa: A Study of Local Government Sustainability Planning in the Cape Metropolitan Area* 22.

³³⁰ Washington *et al* 2017 *The Ecological Citizen* 2; Gray, Whyte and Curry 2018 *The Ecological Citizen* 130; Taylor *et al* 2020 *Conservation Biology* 1092.

³³¹ Taylor *et al* 2020 *Conservation Biology* 1092.

³³² Seghezzo 2009 *Environmental Politics* 540; Hassall *Towards Sustainability in South Africa: A Study of Local Government Sustainability Planning in the Cape Metropolitan Area* 25; Taylor *et al* 2020 *Conservation Biology* 1090; Ten Have *Environmental Ethics and International Policy* 30; Haughton and Hunter *Sustainable Cities* 18.

³³³ Gough, Scott and Stables 2000 *International Research in Geographical and Environmental Education* 44; Hassall *Towards Sustainability in South Africa: A Study of Local Government Sustainability Planning in the Cape Metropolitan Area* 29.

³³⁴ Koretenkamp and Moore 2001 *Journal of Environmental Psychology* 261; Hassall *Towards Sustainability in South Africa: A Study of Local Government Sustainability Planning in the Cape Metropolitan Area* 29.

³³⁵ Hassall *Towards Sustainability in South Africa: A Study of Local Government Sustainability Planning in the Cape Metropolitan Area* 29.

³³⁶ Owosuyi 2015 *PELJ* 2017. Also see para 1.3 above.

relationship with the dimension to which they relate.³³⁷ For example, in many instances environmental interests require the conservation of natural resources, whereas economic growth may require the exploitation of such resources. Another example includes social interests, which may involve food security, the search for which is sometimes accompanied by destructive agricultural practices. Since these interests often stand at odds with each other, trade-offs might be inevitable.³³⁸

The relationships among these interests can further be explained by venturing into sustainability's so-called green and brown agendas. Agyeman³³⁹ states that a large part of the early research on sustainability has a dominant focus on sustainability's green or environmental aspect. Du Plessis,³⁴⁰ however, indicates that one can observe a shift in academic discourse to the inclusion of a brown agenda.³⁴¹ A shift may thus be observed towards realising that development does not have to take place at the expense of the environment. This shift may be attributed to the realisation that human beings are an integral part of the earth's ecological system.³⁴²

In this context, the green agenda refers to ecological issues, including ecosystem protection, the protection and prevention of the degradation of natural resources and the mitigation of the adverse effects of climate change.³⁴³ In addition, the green agenda deals with issues such as environmental justice, inter-generational equity and the right to the environment of future generations.³⁴⁴

³³⁷ Elder 1990 *McGill Law Journal* 841; preface of *the United Cities and Local Governments the Sustainable Developments Goals: What Local Governments Need to Know*; Du Plessis (ed) *Environmental Law and Local Government in South Africa* 1-11.

³³⁸ Agyeman *Introducing Just Sustainabilities: Policy, Planning and Practice* 5.

³³⁹ Agyeman *Introducing Just Sustainabilities: Policy, Planning and Practice* 5.

³⁴⁰ Du Plessis 2015 *PELJ* 1849.

³⁴¹ Nel and Kotzé "Environmental management: An introduction" 3.

³⁴² Owosuyi 2015 *PELJ* 2013; Van der Merwe *City Government Resilience: Towards a Diagnostic Instrument* 131; Sen "Development as Capacity Expansion" 41-58; Du Plessis 2015 *PELJ* 1849.

³⁴³ Allen and You (eds) *Sustainable Urbanisation: Bridging the Green and Brown Agendas* 5; Du Plessis 2015 *PELJ* 1849.

³⁴⁴ McGranahan and Satterthwaite "Environmental Health or Ecological Sustainability? Reconciling the Brown and Green Agendas in Urban Development" 75; Du Plessis 2015 *PELJ* 1849.

In contrast, the brown agenda is concerned with the social and economic issues of the present.³⁴⁵ This agenda focusses on issues such as human security and vulnerabilities, human livelihoods in the built environment, and the fulfilment of basic human needs.³⁴⁶ What may be noted in considering the brown agenda is that it relates to the immediate, local or health-related effects of human activity on the people of today (it is intra-generational). Thus, it stands in contrast to the green agenda, which is concerned with the effects of human activity on future generations (it is inter-generational).³⁴⁷ The Constitution may be seen as featuring both the brown and the green agenda in its environmental right.³⁴⁸ It accords protection to the natural resource base (the green agenda) and the health and well-being of people (the brown agenda).³⁴⁹

Du Plessis and Nel³⁵⁰ showcase the intricacies and interdependence of environmental, social and economic issues in local government. The authors use a sustainable development model which consists of four dimensions: an economic dimension embedded in a social dimension, which is embedded in the environmental dimension, all on the foundation of the governance dimension (hereafter referred to as the four embedded dimension model).³⁵¹ The interdependence amongst these dimensions may be illustrated as follows: the economic dimension, which is often the subject of developmental policy, depends on the social and environmental spheres for its continued vitality. Hence, an essential component of sustainability requires that the economic

³⁴⁵ Williams 1997 *Geography* 18; Du Plessis 2015 *PELJ* 1849; Allen and You (eds) *Sustainable Urbanisation: Bridging the Green and Brown Agendas* 5.

³⁴⁶ McGranahan and Satterthwaite "Environmental Health or Ecological Sustainability? Reconciling the Brown and Green Agendas in Urban Development" 75; Du Plessis 2015 *PELJ* 1850.

³⁴⁷ Pugh (ed) *Sustainable Cities in Developing Countries* 74; Du Plessis 2015 *PELJ* 1850; McGranahan and Satterthwaite "Environmental Health or Ecological Sustainability? Reconciling the Brown and Green Agendas in Urban Development" 75; Agyeman 2008 *Journal of Media & Cultural Studies* 753; UN Habitat *Sustainable Urbanisation: Bridging the Green and Brown Agendas* 6; Scheurer and Newman *A European Model Bridging the Green and Brown Agendas* 3.

³⁴⁸ S 24 of the Constitution.

³⁴⁹ Du Plessis 2015 *PELJ* 1848, 1857.

³⁵⁰ Du Plessis (ed) *Environmental Law and Local Government in South Africa* 1-11; Department of Environmental Affairs and Tourism *National Framework on Sustainable Development in South Africa* 19; Kocmanová, Hřebiček and Dočekalová 2011 *Ekonomika ir Vadyba* 543; SACN *State of South African Cities Report 2016* 163.

³⁵¹ Many other models exist to illustrate the relationship and interlinkages of the interests inherent in sustainability, for example the three-pillar model, the three overlapping spheres model, the nested three spheres model and the prism model in Thatcher *HFSD Working Paper*, but this study will make use of the four embedded dimensions model only.

dimension be regulated to ensure respect for the integrity of the environmental and social dimensions.³⁵² Du Plessis and Nel³⁵³ acknowledge that good governance is required to maintain the balance of these often-competing interests properly. Economic, and environmental interests may be mutually and amicably integrated through the exercise of good governance.³⁵⁴ Sustainability, thus, consists of a balance and integration of environmental, economic, and social issues, built on a foundation of good governance.³⁵⁵

2.4 Sustainable development in South African local government

This study is particularly concerned with the meaning of sustainable development from a local government perspective. Internationally, Local Agenda 21³⁵⁶ emphasises the role of local government in sustainable development and indicates that many of the obstacles to sustainable development are rooted in local government.³⁵⁷ As a result of their proximity to communities, local authorities play a vital role in sustainability.³⁵⁸ Internationally and regionally, law and policy developments refer to a range of terms when dealing with local government sustainability, including cities, local authorities and urban sustainability.³⁵⁹

Although the Brundtland Report provides no definition of sustainability in local government, it dedicates an entire chapter to local authorities and the actions necessary to attain sustainable development.³⁶⁰ Some of these actions include the provision of adequate housing and adequate services, and the effective management of built areas.³⁶¹ Substantial responsibility is also placed on local government to conserve and manage

³⁵² O'Connor 2006 *Ecological Complexity* 285.

³⁵³ Du Plessis (ed) *Environmental Law and Local Government in South Africa* 1-12.

³⁵⁴ Department of Environmental Affairs and Tourism *National Framework on Sustainable Development in South Africa* 15.

³⁵⁵ Preuss 2007 *Business Strategy and the Environment* 356; Hassall *Towards Sustainability in South Africa: A Study of Local Government Sustainability Planning in the Cape Metropolitan Area* 21; Department of Environmental Affairs and Tourism *National Framework on Sustainable Development in South Africa* para A6.

³⁵⁶ An internationally negotiated action plan aimed at promoting sustainable development.

³⁵⁷ S 3 of chapter 28 in the *United Nations Agenda 21* (1992) 31 ILM 874.

³⁵⁸ Evans *et al* *Governing Sustainable Cities* 1.

³⁵⁹ *United Nations Agenda 21* (1992) 31 ILM 874; UN Agenda 2030; *Sustainable Cities Project* 1990 UN Habitat.

³⁶⁰ Chapter 9, ss 2 and 4 of the Brundtland Report; Van der Berg *Municipal Planning Law and Policy for Sustainable Cities in South Africa* 42.

³⁶¹ Chapter 9, ss 2 and 4 of the Brundtland Report; Van der Berg *Municipal Planning Law and Policy for Sustainable Cities in South Africa* 42.

ecosystems such as forests.³⁶² The international city network, Local Governments for Sustainability³⁶³ views sustainability in local government as delivering basic environmental, social, and economic services to the community without threatening the viability of the natural, built, and social systems on which such services depend.³⁶⁴

The Sustainable Cities Project of UN Habitat³⁶⁵ provides one of the early definitions of a sustainable city.³⁶⁶ A sustainable city is defined as one where social, economic, and physical developmental achievements are everlasting, and natural resources are exploited sustainably.³⁶⁷ Additionally, the above project advises that local government should minimise hazards that threaten development in order to ensure resilience in the form of lasting security.³⁶⁸ The *Habitat Agenda Istanbul Declaration on Human Settlements*³⁶⁹ elaborated on this definition to include certain features such as the provision of affordable housing, implementing equality practices, public participation, sound financial management, economic stimulation practices and monitoring of sustainable practices.³⁷⁰

The SDGs do not expressly define sustainability in local government, but SDG 11 is dedicated to creating sustainable cities and communities by the year 2030. The targets of SDG 11 guide what actions are required for sustainability in cities and communities.³⁷¹ These targets are mostly a collection of the components of previous definitions on sustainability in cities or local authorities and include access to safe and affordable basic services,³⁷² reduced adverse *per capita* environmental impacts,³⁷³ improved municipal air

³⁶² Chapter 5, s IV of the Brundtland Report.

³⁶³ Hereafter the ICLEI.

³⁶⁴ Brugmann 1996 *Environment Impact Assessment Review* 364.

³⁶⁵ A programme of the United Nations focussed on improving sustainable urban development and improving human settlements.

³⁶⁶ *Sustainable Cities Project* 1990 UN Habitat.

³⁶⁷ *Sustainable Cities Project* 1990 UN Habitat.

³⁶⁸ *Sustainable Cities Project* 1990 UN Habitat.

³⁶⁹ *Habitat Agenda Istanbul Declaration on Human Settlements* UN Doc A/CONF165/14 (1996).

³⁷⁰ *Habitat Agenda Istanbul Declaration on Human Settlements* UN Doc A/CONF165/14 (1996); Van der Berg *Municipal Planning Law and Policy for Sustainable Cities in South Africa* 44.

³⁷¹ Fuo "Funding and Good Financial Governance as Imperatives for Cities' Pursuit of SDG 11" 87; Van der Berg *Municipal Planning Law and Policy for Sustainable Cities in South Africa* 46. One can further infer from the acknowledgement that "no one should be left behind" that SDG 11 includes not only cities but also smaller towns and rural communities.

³⁷² UN Agenda 2030 SDG 11, target 11.1; Van der Berg *Municipal Planning Law and Policy for Sustainable Cities in South Africa* 46.

³⁷³ UN Agenda 2030 SDG 11, target 11.6; Van der Berg *Municipal Planning Law and Policy for Sustainable Cities in South Africa* 46.

quality and waste management,³⁷⁴ access to green public space,³⁷⁵ the protection of cultural and natural heritage sites,³⁷⁶ and sustainable links among urban, peri-urban and rural communities.³⁷⁷ SDG 11 also aspires to encourage human settlements (cities and smaller towns or urban areas) to adopt and implement policies to promote community inclusion, resource efficiency, climate change responsiveness, and resilience.³⁷⁸ Although SDG 11 is silent on aspects of good governance, sound financial management and financial sustainability, SDG 16 addresses these extensively.³⁷⁹ SDG 11 read with SDG 16 implies an objective to promote inclusive cities through strong institutions, access to justice and accountability.³⁸⁰

Although sustainable development in local government cannot be equated with a sustainable city, an investigation into what sustainable cities are may inform subsequent interpretations of sustainable development in local government. Perhaps the most comprehensive description of sustainable cities may be found in the *Habitat III New Urban Agenda*.³⁸¹ This description includes all the features highlighted above by the Brundtland Report, ICLEI, the Sustainable Cities Project, SDG 11 and the *Habitat Agenda Istanbul Declaration on Human Settlements*.³⁸² The *Habitat III New Urban Agenda* highlights additional features of a sustainable city. A sustainable city should fulfil its social function, which includes the social and ecological function of land.³⁸³ City governance is participatory and should generate a sense of belonging and ownership among residents, where the specific needs of the vulnerable are recognised.³⁸⁴ A sustainable city would also

³⁷⁴ UN Agenda 2030 SDG 11, target 11.6; Van der Berg *Municipal Planning Law and Policy for Sustainable Cities in South Africa* 46.

³⁷⁵ UN Agenda 2030 SDG 11, target 11.7; Van der Berg *Municipal Planning Law and Policy for Sustainable Cities in South Africa* 46.

³⁷⁶ UN Agenda 2030 SDG 11, target 11.4; Van der Berg *Municipal Planning Law and Policy for Sustainable Cities in South Africa* 46.

³⁷⁷ UN Agenda SDG 11, target 11.A; Van der Berg *Municipal Planning Law and Policy for Sustainable Cities in South Africa* 46.

³⁷⁸ UN Agenda SDG 11, target 11.B; Van der Berg *Municipal Planning Law and Policy for Sustainable Cities in South Africa* 46.

³⁷⁹ UN Agenda 2030 SDG 11, 16.

³⁸⁰ UN Agenda 2030 SDG 16.

³⁸¹ *Habitat III New Urban Agenda* UN Doc A/RES/71/256 (2017) (hereafter Habitat III).

³⁸² *Habitat Agenda Istanbul Declaration on Human Settlements* UN Doc A/CONF165/14 (1996).

³⁸³ Habitat III para 13; Van der Berg *Municipal Planning Law and Policy for Sustainable Cities in South Africa* 46.

³⁸⁴ Habitat III para 13; Caprotti *et al* 2017 *Urban Research and Practice* 369.

foster social cohesion, inclusion and safety for peaceful and pluralistic societies.³⁸⁵ Sustainable cities should meet the challenges and opportunities (which include the facilitation of sustainable economic growth) of the present and future sustainable and inclusively.³⁸⁶ These cities should utilise urbanisation as a means of structural transformation, enhanced productivity and resource efficiency by harnessing local economies (including the informal economy).³⁸⁷ The sustainable city would fulfil its territorial functions across administrative boundaries,³⁸⁸ and further act as a hub and driver for balanced, sustainable and integrated urban and general territorial development. Sustainable cities promote responsive planning and investment for sustainable, safe, and accessible transport systems.³⁸⁹ These cities would adopt and implement disaster risk reduction and management programmes aimed at reducing vulnerability and building resilience and responsiveness.³⁹⁰

It is uncommon to come by a depiction of sustainable development in the local government or city context in African regional law. Instead, Agenda 2063 approaches sustainable development in the context of African civilisation as a whole. However, a hint of how the AU³⁹¹ envisions sustainable development in a community can be found in Agenda 2063's first aspiration. This aspiration states that sustainable settlements must act as hotspots for cultural and economic development, they should have modern infrastructure, and their residents should have access to affordable and decent housing and all the basic necessities of life such as water, sanitation, energy, public transport and information and communications technologies.³⁹²

The formulation of sustainable development in local government depends on many factors, such as whether the community is situated in a developed or developing country;

³⁸⁵ Habitat III para 13; Van der Berg *Municipal Planning Law and Policy for Sustainable Cities in South Africa* 46.

³⁸⁶ Habitat III para 13; Van der Berg *Municipal Planning Law and Policy for Sustainable Cities in South Africa* 46.

³⁸⁷ Habitat III para 13; Caprotti *et al* 2017 *Urban Research and Practice* 369.

³⁸⁸ Habitat III para 13; Van der Berg *Municipal Planning Law and Policy for Sustainable Cities in South Africa* 46.

³⁸⁹ Habitat III para 13; Caprotti *et al* 2017 *Urban Research and Practice* 369.

³⁹⁰ Habitat III para 13; Caprotti *et al* 2017 *Urban Research and Practice* 369.

³⁹¹ Hereafter the AU.

³⁹² Agenda 2063 2.

the national political and developmental objectives of the state; the historical and cultural context of the community; and the community's geography, environmental conditions, resources, capacity and level of decentralisation.³⁹³ The contextually bound nature of sustainable development warrants a more in-depth investigation into what sustainable development looks like for South African local government.

In agreement with the above international and regional developments, South Africa has incorporated the idea of sustainable development in local government into its law and policies.³⁹⁴ Given *inter alia* its legislative and executive competence, South African local government is placed in a position to help facilitate sustainable development.³⁹⁵ An argument can also be made that local government has the most immediate mandate of all spheres of government for developing the ideal physical work and living environment for communities.³⁹⁶ In the South African context, the Constitution grants local government various competencies, which, if utilised correctly, may be key to unlocking sustainable development.³⁹⁷ These competencies include managing ambient environmental quality, determining land use and land planning, and managing waste disposal, municipal transport, and urban renewal.³⁹⁸

The *National Framework of Sustainable Development in South Africa 2008*³⁹⁹ describes sustainable development in general as encompassing an economically prosperous society. Furthermore, it denotes an independent state that protects its democracy, meets its people's basic needs, responsibly manages its limited ecological resources for current and future generations, advances efficient and effective integrated planning, and promotes cooperative governance.⁴⁰⁰ In addition, NEMA defines sustainable development in South Africa as the integration and translation of different social, economic and environmental

³⁹³ Also see Guy and Marvin 1999 *European Urban and Regional Studies* 271; Van der Berg *Municipal Planning Law and Policy for Sustainable Cities in South Africa* 56.

³⁹⁴ See para 2.3.1 above.

³⁹⁵ S 152 and Schedules 4B and 5B of the Constitution.

³⁹⁶ Du Plessis 2015 *PELJ* 1854.

³⁹⁷ Hassall *Towards Sustainability in South Africa: A Study of Local Government Sustainability Planning in the Cape Metropolitan Area* 69.

³⁹⁸ Schedules 4B and 5B of the Constitution.

³⁹⁹ Department of Environmental Affairs and Tourism *National Framework on Sustainable Development in South Africa*.

⁴⁰⁰ Department of Environmental Affairs and Tourism *National Framework on Sustainable Development in South Africa* para A8.

interests into planning, implementation and decision-making to ensure that development will serve the present and future generations.⁴⁰¹

Moving to sustainable development in South African local government specifically, one may turn to the objectives for local government in the Constitution.⁴⁰² These objectives can be said to claim how local governments in South Africa should govern. As previously stated, this includes the provision of an accountable and democratic local authority,⁴⁰³ the sustainable provision of services,⁴⁰⁴ the promotion of social and economic development,⁴⁰⁵ the promotion of a safe and healthy environment⁴⁰⁶ and the encouragement of community participation in local governance.⁴⁰⁷ These objects of local government intersect with all four dimensions of sustainability at a textual level. Moreover, in referring *inter alia* to accountable and democratic governance, it can be observed that particular consideration is given to the governance dimension of sustainable development.

South African policy provides some further details as to the specifics of sustainable development in local government. For example, the White Paper defines sustainable development in local government as:

development that delivers basic social and economic services to all, without threatening the viability of the ecological and community systems upon which these services depend. Sustainability includes both financial viability and the environmentally sound and socially just use of resources.⁴⁰⁸

The White Paper's definition takes into account both development and the environment. One can also observe specific emphasis on the provision of services for the economic and social development of the community. In complementing the White Paper, the Systems Act provides definitions for "development" and "environmentally sustainable".⁴⁰⁹ "Development" in the Systems Act is defined as sustainable development, which includes integrated resource upliftment of a community with a focus on the improvement of the

⁴⁰¹ S 1 of NEMA.

⁴⁰² S 152(1) of the Constitution.

⁴⁰³ S 152(1)(a) of the Constitution.

⁴⁰⁴ S 152(1)(b) of the Constitution.

⁴⁰⁵ S 152(1)(c) of the Constitution.

⁴⁰⁶ S 152(1)(d) of the Constitution.

⁴⁰⁷ See para 1.3 above; s 152(1)(e) of the Constitution.

⁴⁰⁸ The White Paper para 3.1.1.

⁴⁰⁹ S 1 of the Systems Act.

quality of life for residents and ensuring that development will serve both present and future generations.⁴¹⁰ "Environmentally sustainable," on the other hand, is seen to take place where the risks to the health and safety of residents in addition to the risk of harm to the environment are minimised when municipal services are provided.⁴¹¹ From the definition of "development" and "environmentally sustainable," it seems as if the Systems Act includes both development and environmental sustainability in the idea of sustainable development in local government.

By providing for intergenerational equality, integrated management, democratic and other governance interests aimed at serving the community, a stronger emphasis on the governance dimension of sustainable development can be observed in national South African law and policy than in international and regional law and policy. The strong emphasis on governance may be attributed to the desperate need of the South African community for governance that addresses specific challenges such as inequality.

For its 'local context' the City of Cape Town Metropolitan Municipality defines sustainable development as the ability to satisfy the basic needs of current residents and limit its demands for non-renewable resources through the use of renewable resources, while retaining the ability to meet the basic needs of future residents.⁴¹² This shows that some municipalities may view sustainable development rather narrowly by referring only to the ability to sustain basic service delivery and increase the use of renewable resources. Such an approach is inadequate because it omits very important aspects of sustainable development, such as improving the community's quality of life and promoting a safe and healthy environment.⁴¹³

The SACN also provides a useful definition of sustainable cities in the South African context. The SACN describes a sustainable city as one that can discharge its developmental responsibility, achieve social justice and provide urban safety.⁴¹⁴ All of this

⁴¹⁰ S 1 of the Systems Act.

⁴¹¹ S 1(a) of the Systems Act.

⁴¹² As cited in Brugmann 1996 *Environment Impact Assessment Review* 365.

⁴¹³ See paras 2.4.1, 2.4.2, 2.4.3, 2.4.4 below for a detailed discussion of all the interests involved in sustainable development in local government.

⁴¹⁴ The developmental mandate of local government is explicitly provided for in the Constitution, the Systems Act and the White Paper on Local Government.

should be done in a sustainable, spatially transformed and resource-efficient way (this includes natural, economic and human resources) having regard to both the biophysical planetary boundaries and future generations.⁴¹⁵ In addition to including intergenerational equality, this definition also attempts to include the South African community's need to address past inequalities through the inclusion of spatial transformation and social justice.

Sustainable development translates into a journey towards an ideal state (where that ideal is not static but in continuous shift according to what the community views as an ideal state) and not as an objective.⁴¹⁶ One can observe sustainable development in local government as including all four dimensions.⁴¹⁷ In the environmental dimension, sustainable development in local government requires using resources in a sustainable manner and protecting the natural environment.⁴¹⁸ The social dimension includes facilitating sustainable population growth, decent living conditions, residents' well-being, social inclusivity and increased human security, and is concerned with fulfilling the needs of the present and future generations.⁴¹⁹ The economic dimension relates to evolving local government which is innovative and focussed on advancing economic growth and development.⁴²⁰ Finally, governance as a foundation of sustainability in local government encompasses good governance through sound and strong government institutions, infrastructure and financial management.⁴²¹ Governance should be reflective of all present, future and past needs, which may extend beyond local government's budget or election cycles.⁴²²

The next section ventures into more detail on each of the dimensions of sustainable development as it relates to local government in order to be able to subsequently explain

⁴¹⁵ SACN *State of South African Cities Report 2016* 163.

⁴¹⁶ O'Riordan as cited in Hassall *Towards Sustainability in South Africa: A Study of Local Government Sustainability Planning in the Cape Metropolitan Area* 19.

⁴¹⁷ See para 2.3 above.

⁴¹⁸ Van der Berg *Municipal Planning Law and Policy for Sustainable Cities in South Africa* 52.

⁴¹⁹ Van der Berg *Municipal Planning Law and Policy for Sustainable Cities in South Africa* 52.

⁴²⁰ Van der Berg *Municipal Planning Law and Policy for Sustainable Cities in South Africa* 52.

⁴²¹ Van der Berg *Municipal Planning Law and Policy for Sustainable Cities in South Africa* 52. See para 2.5 below for a detailed discussion of good governance in local government.

⁴²² Van der Berg *Municipal Planning Law and Policy for Sustainable Cities in South Africa* 52.

the implications that corruption may have for sustainability in the local government sphere of South Africa.

2.4.1 The environmental dimension of sustainable development

The environmental dimension of sustainable development concerns the maintenance of the biophysical environment's ability to properly function within the natural parameters and cycles to provide the continual supply of environmental goods and services commonly referred to as ecosystem services.⁴²³ These environmental services may range from the basic requirements of life, such as clean water, to those needed for livelihood and well-being that enhance life, such as aesthetic, cultural and spiritual benefits.⁴²⁴ All the services provided by the environment must be balanced with the finite boundaries of the biophysical systems.⁴²⁵

The current balance of ecosystems must be maintained to ensure the continual provision of ecosystem services.⁴²⁶ Should these systems be forced beyond their boundaries, the present equilibrium would be disturbed, which would entail abrupt changes to the biophysical systems and endanger the continual provision of ecosystem services.⁴²⁷ The environmental dimension of the sustainability model, thus, ultimately entails the protection of the planet's biophysical carrying capacity.⁴²⁸ This dimension involves local government's duty as its custodian to protect all environmental assets to the benefit of both the present and future generations.⁴²⁹

By extension, corruption can reduce the quality of the environment and the conservation of natural resources.⁴³⁰ Particularly in the South African local government sphere, corruption may enable the circumvention of important regulations aimed at controlling

⁴²³ Department of Environmental Affairs and Tourism *National Framework on Sustainable Development in South Africa* 20.

⁴²⁴ Vogelpohl and Aggestam 2012 *European Journal of Forest Research* 58.

⁴²⁵ Du Plessis (ed) *Environmental Law and Local Government in South Africa* 1-11.

⁴²⁶ Du Plessis (ed) *Environmental Law and Local Government in South Africa* 1-11.

⁴²⁷ Department of Environmental Affairs and Tourism *National Framework on Sustainable Development in South Africa* 21.

⁴²⁸ Vogelpohl and Aggestam 2012 *European Journal of Forest Research* 58.

⁴²⁹ Du Plessis (ed) *Environmental Law and Local Government in South Africa* 1-11.

⁴³⁰ Fredriksson and Neumayer 2016 *Environmental Resource Economy* 453.

harmful emissions, leading to increased air pollution, for example.⁴³¹ Local government plays an instrumental role in conserving vulnerable ecosystems through its land-use planning and management function.⁴³² Where bribes are paid for the rezoning of land, or the approval of developmental or building plans in a sensitive ecosystem, for example, the land-use planning function of municipalities is distorted to the detriment of the environment.⁴³³

2.4.2 The social dimension of sustainable development

There are more diverse views on what falls in the ambit of the social dimension of sustainability than with the environmental dimension.⁴³⁴ However, it seems that at the core of the social dimension lies the expectation that environmental protection be linked with social equity.⁴³⁵ This dimension is grounded on the conclusion that an ecologically stable and healthy environment alone cannot satisfy human needs, but that other social and cultural needs are also intrinsic to human existence.⁴³⁶ Therefore, the social dimension comprises of interests such as social justice, social infrastructure, social capital, equitable distribution and participatory decision making.⁴³⁷ Some believe that this dimension also relates to social values that must forge the relationship between nature and society or that concern social or cultural relations and practices.⁴³⁸

According to international law, every person has a right to a decent life, a social life, and participation in the community.⁴³⁹ The Brundtland Report states that the necessities for a decent life include food, housing, clothing, water, health, personal safety, education,

⁴³¹ Fredriksson and Neumayer 2016 *Environmental Resource Economy* 453; Annexure 4, Part B of the Constitution; Arminen and Menegaki 2019 *Energy Economics* 263; GN 757 in GG 34695 of 19 October 2011 (*National Climate Change Response White Paper*) paras 10.2.6, 10.6; ss 11, 14 to 17 of the *National Environmental Management: Air Quality Act* 39 of 2004.

⁴³² Du Plessis (ed) *Environmental Law and Local Government in South Africa* 1-13.

⁴³³ See para 1.1; Fredriksson and Neumayer 2016 *Environmental Resource Economy* 453.

⁴³⁴ Boström 2012 *Sustainability: Science, Practice and Policy* 4; Griessler and Littig 2005 *International Journal for Sustainable Development* 5; O'Connor 2006 *Ecological Complexity* 285.

⁴³⁵ Dillard, Dujon and King *Understanding the Social Dimension of Sustainability* 60; Griessler and Littig 2005 *International Journal for Sustainable Development* 5.

⁴³⁶ Griessler and Littig 2005 *International Journal for Sustainable Development* 3; Dempsey *et al* 2011 *Sustainable Development* 292.

⁴³⁷ Littig, Grießler and Cuthill as cited in Boström 2012 *Sustainability: Science, practice, and Policy* 4.

⁴³⁸ Boström 2012 *Sustainability: Science, Practice and Policy* 5; O'Connor 2006 *Ecological Complexity* 285.

⁴³⁹ As cited in Griessler and Littig 2005 *International Journal for Sustainable Development* 11; a 25(1) of the *Universal Declaration of Human Rights* (1948).

recreation and other key social relationships, and that these elements should be viewed as part of the social dimension of sustainability.⁴⁴⁰

Local government plays a vital role in the social dimension of sustainability because it involves the relationships and institutions in society that aim to satisfy human needs (basic and extended as required for a decent life).⁴⁴¹ These relationships and institutions should ensure that nature and its reproductive capabilities are preserved while promoting values such as social justice, human dignity and participatory decision making.⁴⁴² South African municipalities are typically expected to provide public services such as clean water and increase the resilience of communities by improving the community's quality of life.⁴⁴³

Scholars have stated that corruption has many negative impacts on the social dimension of sustainability because it exacerbates poverty and hampers human development.⁴⁴⁴ Also, where corruption is rife in law enforcement, the personal safety of all community members is threatened.⁴⁴⁵ Corruption also wastes government resources and thus threatens local government's ability to provide basic public services such as access to water and electricity.⁴⁴⁶ Where public officials require bribes to grant community members access to public services, this worsens social inequalities and reduces spatial justice.⁴⁴⁷

2.4.3 The economic dimension of sustainable development

The fact that a prosperous economy is deemed a priority in society is often seen as why a shift is necessary towards more sustainable practices.⁴⁴⁸ This is so because developmental policies are mostly built around the economic aspirations of a state, at the expense of environmental considerations.⁴⁴⁹ This dimension involves formal and informal

⁴⁴⁰ Dillard, Dujon and King *Understanding the Social Dimension of Sustainability* 60; Griessler and Littig 2005 *International Journal for Sustainable Development* 9.

⁴⁴¹ Boström 2012 *Sustainability: Science, Practice and Policy* 5; O'Connor 2006 *Ecological Complexity* 285.

⁴⁴² Griessler and Littig 2005 *International Journal for Sustainable Development* 11; Kim 2018 *Journal of Global Scholars of Marketing Science* 178.

⁴⁴³ Agyeman *Introducing Just Sustainabilities* 7.

⁴⁴⁴ Lewis 2017 *Journal of Disaster Risk Studies* 5; Coetzee 2014 *Journal of Public Administration* 831.

⁴⁴⁵ Lewis 2016 *Journal of Disaster Risk Studies* 5; Corruption Watch *Corruption in Uniform: When Cops Become Criminals* 3.

⁴⁴⁶ Coetzee 2014 *Journal of Public Administration* 831.

⁴⁴⁷ Coetzee 2014 *Journal of Public Administration* 831.

⁴⁴⁸ Lewis 2016 *Journal of Disaster Risk Studies* 5.

⁴⁴⁹ Lewis 2016 *Journal of Disaster Risk Studies* 5.

monetary economic activities, and consumption patterns.⁴⁵⁰ Broadly defined, the economic dimension refers to the need of communities to permanently maintain a certain level of income as generated from non-declining capital stocks (natural and human).⁴⁵¹ For this reason, natural or human-made stocks (social capital, innovation, competitiveness and public debt) are considered essential criteria for a sustainable economy.⁴⁵²

An argument can also be made that trade-, financial-, and technological capacity building (for government and the community) should be viewed as elements of sustainability relevant to cities.⁴⁵³ For local government, the economic dimension of sustainability requires building vibrant and sustainable local economies and emphasising equal participation in the local economy.⁴⁵⁴

The impacts of corruption can probably be observed most clearly in the economic dimension of sustainable development. Increased taxes to fill the government's shortage of money created by corruption is one such prominent impact.⁴⁵⁵ Some economists estimate that consumers have to pay an average of 10% more for goods and services because of corruption.⁴⁵⁶ Furthermore, corruption is also seen to discourage much-needed foreign investment for community upliftment.⁴⁵⁷ Increased taxes, increased prices for goods and services and fewer investments all weaken local economies. Therefore, healthy local economies are needed to advance the economic dimension of sustainable development.

2.4.4 The governance dimension of sustainable development

The South African national department responsible for environmental affairs interprets sustainable development as being founded on governance and in particular on good

⁴⁵⁰ Castle, Berrens and Polasky 1996 *Natural Resources Journal* 728; Perritt 2004 *University of Pennsylvania Journal of International Economic Law* 260.

⁴⁵¹ Spangenberg 2005 *International Journal for Sustainable Development* 48.

⁴⁵² Spangenberg 2005 *International Journal for Sustainable Development* 49.

⁴⁵³ SACN *State of South African Cities Report 2016* 163.

⁴⁵⁴ Agyeman *Introducing Just Sustainabilities* 7.

⁴⁵⁶ Milner-Smyth 2017 *HR Future* 30.

⁴⁵⁶ Milner-Smyth 2017 *HR Future* 30.

⁴⁵⁷ Milner-Smyth 2017 *HR Future* 30.

governance.⁴⁵⁸ The governance dimension of sustainable development is said to influence the successful balancing of the often-competing environmental, social, and economic dimensions of sustainable development. Where corruption negatively affects the governance dimension, the other dimensions of sustainable development are also indirectly affected. Bosselman, Engel, and Taylor⁴⁵⁹ argue that the governance dimension must be offered the same weight as the other dimensions of sustainability.⁴⁶⁰ UN Agenda 2030 also dedicates a goal to strengthening institutions and especially refers to promoting good governance. Regionally, inclusive growth and sustainable development are aspirations of Africa as articulated in Agenda 2063.⁴⁶¹ Good governance also features in this regional document both as an aspiration and as a goal.⁴⁶²

Different theories, models, and approaches are used to describe governance.⁴⁶³ Terms such as governance, governing, rule, the authority of the state, or domination have been the focus of attention in various disciplines such as economics, management, public administration and politics.⁴⁶⁴ These disciplines show that the terms and the concepts attached to them have a long history and shed light of various shades on the complexities and intricacies of governance. Early developments of the concept of governance deemed it to be synonymous with rule, the authority of the state and domination.⁴⁶⁵ Since the

⁴⁵⁸ Department of Environmental Affairs and Tourism *National Framework on Sustainable Development in South Africa* 8.

⁴⁵⁹ UN Agenda 2030.

⁴⁶⁰ Bosselman, Engel and Taylor *Governance for Sustainability: Issues, Challenges and Successes* 3, 5.

⁴⁶¹ Aspiration 1 of Agenda 2063.

⁴⁶² Aspiration 3 of Agenda 2063.

⁴⁶³ Katsamuniska 2016 *Economic Alternatives* 133; Farazmand (ed) *Global Encyclopaedia of Public Administration, Public Policy and Governance* G-1; Agere *Promoting Good Governance: Principles, Practices and Perspectives* 3; Cloete *et al Improving Public Policy for Good Governance* 106; Taylor 2000 *The International Journal of Public Sector Management* 108.

⁴⁶⁴ Farazmand (ed) *Global Encyclopaedia of Public Administration, Public Policy and Governance* G-1; Katsamuniska 2016 *Economic Alternatives* 133; Taylor 2000 *The International Journal of Public Sector Management* 108.

⁴⁶⁵ Farazmand (ed) *Global Encyclopaedia of Public Administration, Public Policy and Governance* G-1; Katsamuniska 2016 *Economic Alternatives* 133; Taylor 2000 *The International Journal of Public Sector Management* 108.

1990's, however, 'governance'-related studies have tended towards New Public Management⁴⁶⁶ and emphasis has been placed on public sector service and leadership.⁴⁶⁷

This study regards governance as:⁴⁶⁸

An interaction among structures (public or private), processes, and traditions that determine how power and responsibilities are exercised, how decisions are taken and how citizens and other stakeholders have their say. Therefore, governance is about power, relationship, and accountability: it addresses the questions like who has the influence, who makes the decisions, and how decision-makers are held accountable.⁴⁶⁹

In other words, governance is the strategic guidance of society and provides the answer to 'where to go' and 'who should decide'-type questions. Governance should also be viewed as a process where the overall objective is to promote sustainable development.⁴⁷⁰

If this definition of governance is acceptable, then the 'good' in good governance would guide the governance process. The use of good governance for sustainable development has been critiqued, because it is a concept loaded with normative values and questions of morality.⁴⁷¹ What is good? What is bad? Who should decide what is good or bad and for whom or from what perspective? Another point of critique has also been, raised that hoping for good governance is too optimistic. Acceptance of the 'means to an end' theory refutes the critique of good governance.⁴⁷² If the end-goal is sustainability, then questions such as what is good, what is bad and who defines the terms can be answered with reference to what is needed to promote sustainable development.⁴⁷³

⁴⁶⁶ Hereafter the NPM. "New process of governing or changed condition of ordered rule; or the new method by which society is governed," Katsamunská 2016 *Economic Alternatives* 133; Farazmand (ed) *Global Encyclopaedia of Public Administration, Public Policy and Governance* G-1.

⁴⁶⁷ Schedler and Proeller "The New Public Management: A Perspective from Mainland Europe" 164 and Farazmand (ed) *Global Encyclopaedia of Public Administration, Public Policy and Governance* G-1.

⁴⁶⁸ Farazmand (ed) *Global Encyclopaedia of Public Administration, Public Policy and Governance* G-1; Agere *Promoting Good Governance: Principles, Practices and Perspectives* 3; Cloete *et al Improving Public Policy for Good Governance* 106; Taylor 2000 *The International Journal of Public Sector Management* 108.

⁴⁶⁹ Farazmand (ed) *Global Encyclopaedia of Public Administration, Public Policy and Governance* G-1.

⁴⁷⁰ Agere *Promoting Good Governance: Principles, Practices and Perspectives* 5.

⁴⁷¹ Skelcher, Mathur and Smith 2005 *Journal of Public Administration* 576; Farazmand (ed) *Global Encyclopaedia of Public Administration, Public Policy and Governance* G-7. Grindle 2017 *Governance: An International Journal of Policy, Administration, and Institutions* 18.

⁴⁷² Skelcher, Mathur and Smith 2005 *Journal of Public Administration* 576; Farazmand (ed) *Global Encyclopaedia of Public Administration, Public Policy and Governance* G-7; Grindle 2017 *Governance: An International Journal of Policy, Administration, and Institutions* 18.

⁴⁷³ Farazmand (ed) *Global Encyclopaedia of Public Administration, Public Policy and Governance* G-3.

The 'good' in good governance can then be found in the prerequisite criteria for achieving sustainability. Good governance for sustainable development in local government can be described as governance that strives to deliver on the most critical priorities needed for sustainable development in the community through democratic processes (see 2.5.1 below).⁴⁷⁴ Regarding the definition of sustainable development in local government as conceptualised above,⁴⁷⁵ the critical priorities for sustainable development in local government can be seen as⁴⁷⁶ (a) being socially and environmentally inclusive, just, and equitable, (b) focussing on fulfilling the needs reflected in the present and future, beyond the city's next budget or election cycle, (c) providing a liveable environment that promotes human well-being, which includes advancing economic growth and development and having a sustainable growth rate, (d) utilising resources sustainably, which includes conserving the natural environment and continuously developing and innovating, (e) safeguarding human security, and (f) governing by way of sound government institutions.⁴⁷⁷

Good governance may thus be viewed as a collection of criteria, values, relations, and functions⁴⁷⁸ which are reliant on the views of the community and may vary amongst different communities.⁴⁷⁹ The criteria for and values of good governance are rarely static because the interpretation evolves with the community's changing needs. For example, the World Bank, a pioneer in the evolution of the notion of good governance, deems the criteria for good governance to be accountably governing a country's economic and social resources, adhering to the rule of law, maintaining a professional ethos, making policies which are predictable and transparent, and facilitating public participation.⁴⁸⁰ However, these criteria and values should remain politically neutral, locally reliable and contextually acceptable.⁴⁸¹ It seems that the bulk of legal scholarship on the topic does not provide a

⁴⁷⁴ See para 2.2.4 above. Cloete *et al Improving Public Policy for Good Governance* 106.

⁴⁷⁵ See para 2.4 above.

⁴⁷⁶ As adapted from Van der Berg's definition of a sustainable city. Van der Berg *Municipal Planning Law and Policy for Sustainable Cities in South Africa* 52.

⁴⁷⁷ Van der Berg *Municipal Planning Law and Policy for Sustainable Cities in South Africa* 52.

⁴⁷⁸ Bovaird 2003 *International Review of Administrative Sciences* 220; Farazmand (ed) *Global Encyclopaedia of Public Administration, Public Policy and Governance* G-2.

⁴⁷⁹ Farazmand (ed) *Global Encyclopaedia of Public Administration, Public Policy and Governance* G-2.

⁴⁸⁰ World Bank *Sub-Saharan Africa: From Crises to Sustainable Growth* 6.

⁴⁸¹ Farazmand (ed) *Global Encyclopaedia of Public Administration, Public Policy and Governance* G-5; Bovaird 2003 *International Review of Administrative Sciences* 220.

legal definition of good governance but appears satisfied to describe it by referring to a 'shopping list' of underlying principles.⁴⁸²

Some consensus exists in legal scholarship, though, that the key principles of good governance in local government are moral and ethical conduct, accountability, transparency, democracy, capacity and integrity.⁴⁸³ Although some studies show that good governance may include more than these principles, this study will limit its discussion to these only. This is because it is argued that they are capable of accommodating other elements of good governance in local government as well, such as protecting human rights.⁴⁸⁴ These principles also provide a framework for discussing the numerous measures proposed in international and regional laws, policies and standards to implement good governance as they relate to local government.

2.5 Principles of good governance in local government

The following section explores the above principles of good governance in local government, namely democracy, moral and ethical conduct, accountability, transparency, democracy, and capacity.⁴⁸⁵ The discussion will first unpack the principle and then describe the measures required to implement each principle. This section of the study works toward providing some standards on how good governance in local government can be effected. To achieve this the researcher systematically worked through the United Nations Treaties Register,⁴⁸⁶ the AU Treaties Register⁴⁸⁷ and the policy registries of influential international bodies such as the World Economic Forum, the World Bank, the UN Habitat Programme and the Chartered Institute of Public Finance and Accountancy to identify those instruments that address the subsidiary issues of human rights, governance, decentralisation and democracy. The definition given and principles of good

⁴⁸² Botchway 2001 *Florida Journal of International Law* 161.

⁴⁸³ Botchway 2001 *Florida Journal of International Law* 161; Gathii 1999 *Buffalo Human Rights Law Review* 107; Esty 2006 *Yale Law Journal* 1515; Adejumo-Ayibiowu 2015 *Journal of Development Studies* 6; Munzhedzi and Makwembere 2019 *Journal of Public Administration* 659; Enaifoghe *et al* 2020 *Journal of African Foreign Affairs* 35; Koenane and Mangena 2017 *African Journal of Public Affairs* 63; Mlambo and Masuku 2020 *Journal of Public Administration* 549.

⁴⁸⁴ Botchway 2001 *Florida Journal of International Law* 162.

⁴⁸⁵ See para 2.4.4 above.

⁴⁸⁶ United Nations 2021 https://treaties.un.org/Pages/Content.aspx?path=DB/titles/page1_en.xml.

⁴⁸⁷ African Union 2021 <https://au.int/en/treaties>.

governance identified were further used to guide the selection, analysis and interpretation of international and regional laws, policies and standards for this section of the study.

2.5.1 Principle 1: Democracy

The principle of democracy is complex and multifaceted.⁴⁸⁸ The core idea is that the people make their own decisions on issues that affect them or that those in power have consent from the people (citizens or the community) to make such decisions.⁴⁸⁹ Democracy manifests itself in different forms including direct, representative, participatory or constitutional democracy.⁴⁹⁰ For the purposes of this study, the discussion is limited to the concept of democracy as it relates to good governance in local government and to the direction provided by international and regional law and policy. The principle of democracy presupposes a governance system with the following components: an electoral system, public participation, responsiveness to the public's needs as well as protection and respect for specific human rights.⁴⁹¹ The section below considers these components in more detail.

2.5.1.1 Elections

It is commonly accepted that democracy implies that the governed choose who should govern them.⁴⁹² Democracy which takes a participatory and a representative form⁴⁹³ is essentially based on community consent.⁴⁹⁴ It is unsurprising then that accession to power

⁴⁸⁸ Botchway 2001 *Florida Journal of International Law* 189.

⁴⁸⁹ De Vos *et al South African Constitutional Law in Context* 86; Botchway 2001 *Florida Journal of International Law* 189; Koenane and Magena 2017 *African Journal of Public Affairs* 63; Adejumo-Ayibiowu 2015 *Journal of Development Studies* 11.

⁴⁹⁰ De Vos *et al South African Constitutional Law in Context* 86.

⁴⁹¹ Botchway 2001 *Florida Journal of International Law* 195.

⁴⁹² Botchway 2001 *Florida Journal of International Law* 189.

⁴⁹³ Aa 2(b), 5(2) and 11(2) of the *African Charter on the Values and Principles of Decentralisation, Local Governance and Development* (2014) <https://bit.ly/3fCBC5a>; Aa 2(1) and 4(1) of the *African Charter on Democracy, Elections and Governance* (2007) AU Doc AU/Dec/147/VII; UN Habitat *International Guidelines on Decentralisation and Access to Basic Services for All* (2009) para A.13.b; UN Habitat *International Guidelines on Decentralisation and the Strengthening of Local Authorities* (2009) para A.1; a 3(1) of the AUCPCC.

⁴⁹⁴ UN Human Rights Committee General Comment No. 25 *on Article 25 on the Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service* (1996) CCPR/C/21/Rev1/Add7 para 1.

should be made through fair, free and transparent elections.⁴⁹⁵ Democracy requires a legal framework within which these elections must take place.⁴⁹⁶ Of particular consequence is the requirement that local government establishes measures that ensure the effective voting participation of all eligible citizens. Special measures must be in place for the representation of women and marginalised groups.⁴⁹⁷ Effective voting participation could entail voter education, access to information (especially on citizens' right to vote through secret ballot, the right to contest election irregularities and the right to be protected from intimidation) and registration and election campaigns.⁴⁹⁸ Other positive measures should be taken to overcome specific difficulties, such as literacy, language barriers, poverty, or impediments to freedom of movement, which prevent persons entitled to vote from exercising their rights effectively.⁴⁹⁹ Information on elections should be made available in minority languages and should involve the use of photographs, symbols, and braille so that the community can understand it better.⁵⁰⁰

⁴⁹⁵ Aa 3(10) and 12 of the *African Charter on Democracy, Elections and Governance* (2007) AU Doc AU/Dec/147/VII; aa 1(b) and 1(c) of the *Protocol on Democracy and Good Governance Supplementary to the Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security* UN Doc ASP1/12/01 (2001).

⁴⁹⁶ UN Human Rights Committee General Comment no 31 on *the Nature of the General Legal Obligation Imposed on States Parties to the Covenant* (2004) CCPR/C/21/Rev1/Add13 para 8.

⁴⁹⁷ UN Habitat *International Guidelines on Decentralisation and the Strengthening of Local Authorities* (2009) paras B.1, C.1, C.2 and C.4; UN Habitat *International Guidelines on Decentralisation and Access to Basic Services for All* (2009) paras A.11, A.12, B.26.d; a 6(1) of the *African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development* (2014) <https://bit.ly/3fCBC5a>; UN Human Rights Committee General Comment no 31 on *the Nature of the General Legal Obligation Imposed on States Parties to the Covenant* (2004) CCPR/C/21/Rev1/Add13 para 8.

⁴⁹⁸ UN Habitat *International Guidelines on Decentralisation and the Strengthening of Local Authorities* (2009) paras B.1, C.1, C.2, C.4; UN Habitat *International Guidelines on Decentralisation and Access to Basic Services for All* (2009) paras A.11, A.12, B.26.d; a 6(1) of the *African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development* (2014) <https://bit.ly/3fCBC5a>; UN Human Rights Committee General Comment no 31 on *the Nature of the General Legal Obligation Imposed on States Parties to the Covenant* (2004) CCPR/C/21/Rev1/Add13 para 8.

⁴⁹⁹ A 6(1) of the *African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development* (2014) <https://bit.ly/3fCBC5a>; UN Human Rights Committee General Comment no 31 on *the Nature of the General Legal Obligation Imposed on States Parties to the Covenant* (2004) CCPR/C/21/Rev1/Add13 para 8.

⁵⁰⁰ A 13(3) of the *African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development* (2014) <https://bit.ly/3fCBC5a>; a 25 of the *International Covenant on Civil and Political Rights* (1966) 31 ILM 645; a 34 of the *African Charter on Democracy, Elections and Governance* (2007) AU Doc AU/Dec/147/VII.

2.5.1.2 Public participation

The substantive participation of the public and other stakeholders such as different government departments is also required. Decision-makers must be able to show how the participation of the public and other stakeholders contributed to decisions.⁵⁰¹ This implies a feedback element in addition to a participatory process.⁵⁰² Public participation ensures that the needs of residents inform local governance, promote an inclusive community, and advance a sense of belonging amongst residents.⁵⁰³

Public participation concerns both a right to participate and a civic responsibility of all concerned stakeholders including the youth, minority groups, traditional and community leaders, service providers and the private sector to participate in the decision-making processes.⁵⁰⁴ The participation of the public must take place in all issues affecting the community during the decision-making, the implementation and follow-up or monitoring of governance practices.⁵⁰⁵ Other rights that promote public participation, such as the right to freedom of expression and association and the right to access to information, must also be observed.⁵⁰⁶

Public participation can be achieved through structured community platforms, public debate and dialogue, neighbourhood councils, ombudsmen, public hearings, participatory planning, community councils, e-democracy, participatory budgeting, referendums or civil initiatives.⁵⁰⁷ For this purpose local governments are required to establish a framework of

⁵⁰¹ Botchway 2001 *Florida Journal of International Law* 190.

⁵⁰² Botchway 2001 *Florida Journal of International Law* 191.

⁵⁰³ See para 2.4 above.

⁵⁰⁴ A 4 of the *African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development* (2014) <https://bit.ly/3fCBC5a>.

⁵⁰⁵ UN Habitat *International Guidelines on Decentralisation and the Strengthening of Local Authorities* (2009) para A.3; *African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development* (2014) <https://bit.ly/3fCBC5a>; *International Guidelines on Decentralisation and Access to Basic Services for All* (2009) paras A.10, A.13; United Nations Agenda 2030 SDG 16.8, 11.3.

⁵⁰⁶ A 6 of the *African Charter on Values and Principles of Public Service and Administration* (2011); a 2(10) of the *African Charter on Democracy, Elections and Governance* (2007) AU Doc AU/Dec/147/VII; UN Human Rights Committee General Comment No. 25 *on Article 25 on the Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service* (1996) CCPR/C/21/Rev1/Add7 para 25; United Nations Agenda 2030 SDG 16.10; UN Habitat *International Guidelines on Decentralisation and the Strengthening of Local Authorities* (2009) para A.14.

⁵⁰⁷ Aa 12 and 13 of the *African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development* (2014) <https://bit.ly/3fCBC5a>; a 3 and 25 of the *International Covenant on*

laws, policies, administrative measures, information communication technologies and financial mechanisms that empower and encourage civic inputs.⁵⁰⁸ This framework would then reinforce the sense of the importance of public participation and make clear provision for accountability systems and measures which promote political and social dialogue.⁵⁰⁹ The public participation methods must be balanced and fair, allowing participants to express their views freely.⁵¹⁰ For example, public participation processes should include accommodating specific linguistic needs and ensuring that the language used is understandable to all.⁵¹¹

2.5.1.3 Being responsive to community needs

Political and civic freedoms in democracy are "irrelevant to a person who has no food clothing and shelter."⁵¹² This quote makes the point that democracy presupposes an electorate that is responsive to the economic and social needs of the community.⁵¹³ A democratic electorate should make an effort to establish what it expects from participatory processes in response to these needs.⁵¹⁴ The community should experience the tangible benefits derived from the practice of participatory democracy.⁵¹⁵

In line with legal scholarship, international policy determines that local government must be responsive and fulfil the needs of city residents.⁵¹⁶ Responsiveness rests on the preconditions of inclusion and respect for diversity, which require considering how to

Civil and Political Rights (1966) 31 ILM 645; UN Habitat *International guidelines on Decentralisation and the Strengthening of Local Authorities* (2009) paras A.6, A.7, A.9.

⁵⁰⁸ Aa 2(i), 4, 6(3), 12 and 13 of the *African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development* (2014) <https://bit.ly/3fCBC5a>.

⁵⁰⁹ Aa 13, 14(2) and 16(3)(d) of the *African Charter on the Values and Principles of Decentralisation, Local Governance and Development* (2014) <https://bit.ly/3fCBC5a>; UN Habitat *International Guidelines on Decentralisation and the Strengthening of Local Authorities* (2009) paras A.6, A.7, A.9; CIPFA *International Framework for Good Governance in the Public Sector* 10; aa 29(2) and 30 of the *African Charter on Democracy, Elections and Governance* (2007) AU Doc AU/Dec/147/VII.

⁵¹⁰ CIPFA *International Framework for Good Governance in the Public Sector* 10.

⁵¹¹ A 16(3)(d) of the *African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development* (2014) <https://bit.ly/3fCBC5a>; aa 30 and 31 of the *African Charter on Democracy, Elections and Governance* (2007) AU Doc AU/Dec/147/VII; a 13 of the UNCAC; UN Habitat *International Guidelines on Decentralisation and Access to Basic Services for All* (2009) paras A.10, A.17, A.22; CIPFA *International Framework for Good Governance in the Public Sector* 10.

⁵¹² Botchway 2001 *Florida Journal of International Law* 192.

⁵¹³ Botchway 2001 *Florida Journal of International Law* 189.

⁵¹⁴ Botchway 2001 *Florida Journal of International Law* 190.

⁵¹⁵ Botchway 2001 *Florida Journal of International Law* 190.

⁵¹⁶ United Nations Agenda 2030 SDG 16.7.

provide services in environmentally sensitive or privately-owned areas.⁵¹⁷ Being responsive to community needs as a principle further involves consideration of the local realities, values and customs together with local norms and standards in the exercise of the functions of governance.⁵¹⁸ Diverse community issues are supposed to be integrated into the overall process of planning, implementation and service delivery, with particular attention being paid to vulnerable groups and poor communities by developing pro-poor policies.⁵¹⁹

One of the methods that local governments use to respond to the community's needs is the delivery of public services. Local governments should strive to provide services in an effective, efficient and economical manner. The services should be of a high standard, accessible to all,⁵²⁰ and subject to continuous improvement.⁵²¹ This requires local government to find modern and innovative solutions to service delivery⁵²² such as using modern technologies and continuously developing capacity.⁵²³ In addition, societal evolution leads to the changing needs of communities that require public services to be flexible and adaptable.⁵²⁴ When providing public services, local governments should give special attention to displaced persons,⁵²⁵ vulnerable, marginalised and excluded groups

⁵¹⁷ UN Habitat *International Guidelines on Decentralisation and the Strengthening of Local Authorities* (2009) paras B.12, D.42.d, D.46.

⁵¹⁸ Consequently, recognition should be given to specific circumstances such as the cultural, religious, ethnic, physical and gender contexts of all residents in the specific geographical area. Aa 8(1), 8(2), 10(2), 10(3) and 15 of the *African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development* (2014) <https://bit.ly/3fCBC5a>.

⁵¹⁹ Aa 8(1), 8(2), 10(2), 10(3) and 15 of the *African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development* (2014) <https://bit.ly/3fCBC5a>.

⁵²⁰ Equally accessible refers to easy, equitable access to adequate services. Aa 2(8), 3(2), 5(1) and 5(2) of the *African Charter on Values and Principles of Public Service and Administration* (2011); aa 4(d), 4(e), 10(1), 10(4) and 16(4)(c) of the *African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development* (2014) <https://bit.ly/3fCBC5a>.

⁵²¹ Aa 2(2) and 7 of the *African Charter on Values and Principles of Public Service and Administration* (2011).

⁵²² Aa 2(2) and 8 of the *African Charter on Values and Principles of Public Service and Administration* (2011).

⁵²³ Aa 2(2), 2(3), 7, 8 and 9(2) of the *African Charter on Values and Principles of Public Service and Administration* (2011); a 16(3)(a) of the *African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development* (2014) <https://bit.ly/3fCBC5a>; aa 27(4), 27(5) and 27(7) of the *African Charter on Democracy, Elections and Governance* (2007) AU Doc AU/Dec/147/VII.

⁵²⁴ Aa 3(5) and 7(4) of the *African Charter on Values and Principles of Public Service and Administration* (2011).

⁵²⁵ As a result of floods, droughts, development of large projects, war, and migratory flows from neighbouring nations.

as well as poorer people. Some examples of how to provide special attention to vulnerable people include providing special tariffs and subsidies, implementing affirmative finance policies, and giving grants.⁵²⁶

2.5.1.4 Protecting, respecting, and fulfilling human rights

Certain human rights such as freedom of speech, free media and the right to vote play a vital role in democracy, for example by ensuring an effective election process.⁵²⁷ These rights make it possible for the community to vote and contest for political office, voice dissenting views, form and join strong civic organisations, promote political tolerance, and increase transparency.⁵²⁸ In this manner the protection of and respect for human rights may contribute a to democracy.⁵²⁹

For this and other reasons international and regional law requires the adoption and implementation of positive measures to ensure the enjoyment of basic human rights.⁵³⁰ It requires a community to be protected from violations of its human rights by government agents and private individuals. This implies that a community should have access to effective legal redress when such violations take place. Effective redress includes prompt, thorough and effective investigations by an independent body, such as independent courts or ombuds persons, and remedies that afford reparation.⁵³¹

2.5.2 Principle 2: Moral and ethical conduct

The concept good governance presupposes the moral and ethical conduct of the state. This acknowledges that the state has moral obligations and limits within which it should exercise its power.⁵³² Legal scholarship does not venture into the specifics of the moral

⁵²⁶ United Nations Human Rights 2019 <https://bit.ly/3IPzQ4w>; UN Habitat *International Guidelines on Decentralisation and Access to Basic Services for All* (2009) paras A.12.d, A.14.e, A.40.

⁵²⁷ Botchway 2001 *Florida Journal of International Law* 195.

⁵²⁸ Adejumo-Ayibiowu 2015 *Journal of Development Studies* 11; Botchway 2001 *Florida Journal of International Law* 195; Koenance and Mangena 2017 *African Journal of Public Affairs* 63.

⁵²⁹ Adejumo-Ayibiowu 2015 *Journal of Development Studies* 11; Koenance and Mangena 2017 *African Journal of Public Affairs* 63.

⁵³⁰ UN Human Rights Committee General Comment No. 3 on Article 2 *Implementation at National Level* (1981) paras 1, 2.

⁵³¹ ICCPR General Comment No. 31 on the *Nature of the General Legal Obligation Imposed on States Parties to the Covenant* (2004) CCPR/C/21/Rev1/Add13 paras 5, 7, 8, 15.

⁵³² Koenane and Mangena 2017 *African Journal of Public Affairs* 62.

and ethical obligations or standards of behaviour expected from the state and its public officials required for good governance.⁵³³ However, international and regional laws and policies show that moral and ethical standards of behaviour are intended to guide the proper and sustainable exercise of public power and the use of public resources as entrusted to public officials.⁵³⁴ When taken seriously and properly implemented, these laws and policies have the potential to increase and preserve the public's confidence in government actions.⁵³⁵

Elected local public offices such as those of mayors and councillors should be seen as offices meant to serve the public interest.⁵³⁶ Therefore, public officials are expected to demonstrate integrity, and respect the rules, values and codes of conduct when discharging their duties.⁵³⁷ This means that the standard of behaviour expected from public officials is higher than the minimum legal requirements and includes values such as objectivity, selflessness, honesty, neutrality or impartiality, common courtesy and responsibility.⁵³⁸ The standards for behaviour as determined by state governments should reflect public expectations of how public officials should discharge their duties.⁵³⁹ Undoubtedly one can understand why abusing public office for personal gain is condemned by international and regional law.⁵⁴⁰ Local governments can use codes of conduct, regular staff interactions, exemplary behaviour, the management of conflicts of

⁵³³ Botchway 2001 *Florida Journal of International Law* 161; Gathii 1999 *Buffalo Human Rights Law Review* 107; Esty 2006 *Yale Law Journal* 1515; Adejumo-Ayibiowu 2015 *Journal of Development Studies* 6; Munzhedzi and Makwembere 2019 *Journal of Public Administration* 659; Enaifoghe *et al* 2020 *Journal of African Foreign Affairs* 35; Koenane and Mangena 2017 *African Journal of Public Affairs* 63; Mlambo and Masuku 2020 *Journal of Public Administration* 549.

⁵³⁴ A 3(2) of the *Inter-American Convention Against Corruption* (1996) 35 ILM 724.

⁵³⁵ A 3(4) of the *Inter-American Convention Against Corruption* (1996) 35 ILM 724.

⁵³⁶ UN Habitat *International Guidelines on Decentralisation and the Strengthening of Local Authorities* (2009) para A.11.

⁵³⁷ Aa 7(1), 10 and 11 of the *African Charter on Values and Principles of Public Service and Administration* (2011); a 14(5) of the *African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development* (2014) <https://bit.ly/3fCBC5a>.

⁵³⁸ Aa 7(1), 10 and 11 of the *African Charter on Values and Principles of Public Service and Administration* (2011); a 14(5) of the *African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development* (2014) <https://bit.ly/3fCBC5a>.

⁵³⁹ Aa 7(1), 10 and 11 of the *African Charter on Values and Principles of Public Service and Administration* (2011); a 14(5) of the *African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development* (2014) <https://bit.ly/3fCBC5a>.

⁵⁴⁰ A 11 of the *African Charter on Values and Principles of Public Service and Administration* (2011); CIPFA *International Framework for Good Governance in the Public Sector* 10; UN Habitat *International Guidelines on Decentralisation and the Strengthening of Local Authorities* (2009) paras A.12, A.13; a 3(3) of the *Inter-American Convention Against Corruption* (1996) 35 ILM 724.

interest, education, performance management and reward processes to encourage the expected standard of behaviour from public officials.⁵⁴¹ For example, the standard of behaviour expected from public officials (not politically elected) should include that public officials must fulfil their functions free from any political interference or pressure.⁵⁴²

2.5.3 Principles 3 and 4: Transparency and accountability

Good governance requires structuring local government in a manner that guarantees or at least promotes responsibility and reviews the exercise of power.⁵⁴³ For this reason accountability and transparency are principles for good governance in local government.⁵⁴⁴ Transparency in local government can be understood as the provision of information required for members of the general public to be able to meaningfully scrutinise local government decisions and exercise of power,⁵⁴⁵ while accountability refers to a government's duties to explain how its powers and duties were exercised, acknowledge when a mistake was made, and inform the community of what is being done to rectify it.⁵⁴⁶ In other words accountability means accounting for and accepting

⁵⁴¹ UN Habitat *International Guidelines on Decentralisation and Access to Basic Services for All* (2009) para A.9.a.

⁵⁴² UN Human Rights Committee General Comment No. 25 *on Article 25 on the Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service* (1996) CCPR/C/21/Rev1/Add7 paras 23, 24.

⁵⁴³ Botchway 2001 *Florida Journal of International Law* 161; Gathii 1999 *Buffalo Human Rights Law Review* 107; Esty 2006 *Yale Law Journal* 1515; Adejumo-Ayibiowu 2015 *Journal of Development Studies* 6; Munzhedzi and Makwembere 2019 *Journal of Public Administration* 659; Enaifoghe *et al* 2020 *Journal of African Foreign Affairs* 35; Koenane and Mangena 2017 *African Journal of Public Affairs* 63; Mlambo and Masuku 2020 *Journal of Public Administration* 549.

⁵⁴⁴ See paras 3.3.2 and 3.3.3 below for a detailed discussion of transparency and accountability. A 3(8) of the *African Charter on Values and Principles of Public Service and Administration* (2011); a 4(h) of the *African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development* (2014) <https://bit.ly/3fCBC5a>; aa 12(1) and 13 of the *African Charter on Democracy, Elections and Governance* (2007) AU Doc AU/Dec/147/VII; a 2(5) of the AUCPCC; a 8(5) of the UNCAC; CIPFA *International Framework for Good Governance in the Public Sector* 10, 31; UN Agenda 2030 SDG 16.6; United Nations 2019 <https://bit.ly/3lGwv80>; United Nations Human Rights 2019 <https://bit.ly/3s7HZTe>.

⁵⁴⁵ Bertat, Jaeger and Grimes 2011 *Transforming Government: People, Process and Policy* 79; Park and Blenkinsopp 2011 *International Review of Administrative Sciences* 256; Brusca, Rossi and Acersano 2018 *Journal of Comparative Policy Analysis: Research and Practice* 486.

⁵⁴⁶ Koenane and Mangena 2017 *African Journal of Public Affairs* 68.

responsibility for decisions and actions taken or not taken.⁵⁴⁷ Local governments are accountable to their communities and other spheres and institutions of government.⁵⁴⁸

Transparency in local government requires public participation, as described above.⁵⁴⁹ Furthermore, this commitment to openness must be documented in a formal policy and communicated to the public.⁵⁵⁰ Additional measures which promote transparency and accountability include a system of democratic election,⁵⁵¹ the publication of annual performance reports and financial statements,⁵⁵² voluntary peer-review processes, the implementation of accounting systems,⁵⁵³ internal and external audit processes,⁵⁵⁴ the declaration of assets and interests, transparency between political leaders and penalties for non-compliance with domestic legislation.⁵⁵⁵

International and regional laws and policies pertinently require evaluation processes through reporting and monitoring to promote transparency and accountability in local government.⁵⁵⁶ These serves as a control function that identifies deviations from policy

⁵⁴⁷ Brusca, Rossi and Aversano 2018 *Journal of Comparative Policy Analysis: Research and Practice* 488; Koenane and Mangena 2017 *African Journal of Public Affairs* 68; Lindstdt and Naurin 2010 *International Political Science Review* 302; De Jager *Voice and Accountability in a One-party Dominant System: A Comparative Case Study of Mexico and South Africa* 81.

⁵⁴⁸ A 5(2) of the *African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development* (2014) <https://bit.ly/3fCBC5a>.

⁵⁴⁹ A 2(10) of the *African Charter on Democracy, Elections and Governance* (2007) AU Doc AU/Dec/147/VII; a 13 of the UNCAC; aa 1(j) and 1(k) of the *Protocol on Democracy and Good Governance Supplementary to the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security* UN Doc ASP1/12/01 (2001); the United Nations 2019 <https://www.un.org/en/sections/issues-depth/democracy/index.html>.

⁵⁵⁰ CIPFA *International Framework for Good Governance in the Public Sector* 16; UN Habitat *International Guidelines on Decentralisation and Access to Basic Services for All* (2009) para C.34.

⁵⁵¹ A 5(2) of the *African Charter on Values and Principles of Decentralisation, Local Governance and Local Development* (2014).

⁵⁵² Aa 16(3)(e) and 16(5)(g) of the *African Charter on Values and Principles of Decentralisation, Local Governance and Local Development* (2014); CIPFA *International Framework for Good Governance in the Public Sector* 10, 31.

⁵⁵³ Aa 16(3)(e) and 16(5)(g) of the *African Charter on Values and Principles of Decentralisation, Local Governance and Local Development* (2014).

⁵⁵⁴ Aa 12(1), 13, 22 and 33(2) of the *African Charter on Democracy, Elections and Governance* (2007) AU Doc AU/Dec/147/VII; CIPFA *International Framework for Good Governance in the Public Sector* 32.

⁵⁵⁵ Aa 14 and 16 of the *African Charter on Values and Principles of Decentralisation, Local Governance and Local Development* (2014); a 13 of the *African Charter on Values and Principles of Public Service and Administration* (2011); aa 12(1), 13, 22 and 33(2) of the *African Charter on Democracy, Elections and Governance* (2007) AU Doc AU/Dec/147/VII; a 8(5) of the UNCAC; CIPFA *International Framework for Good Governance in the Public Sector* 10, 31; UN Habitat *International Guidelines on Decentralisation and Access to Basic Services for All* (2009) para A.14.b.

⁵⁵⁶ Munzhezdi and Makwembere 2019 *Journal of Public Administration* 660.

objectives, leading to the recommendation and implementation of remedial action.⁵⁵⁷ Reporting and monitoring allow public sector entities to show that they fulfilled their obligations and that public resources are being used responsibly and sustainably⁵⁵⁸ and reports enable stakeholders to make judgements on performance, value for money and resource efficacy.⁵⁵⁹

International and regional law instruments have highlighted specific reporting and monitoring requirements for national and sub-national governments.⁵⁶⁰ Reports and related information should be prepared consistently, timeously, and according to accepted international standards. They should be comparable with preceding reports and reports from similar entities.⁵⁶¹ To this end, it has been stated that indicators should be developed to enable the monitoring and evaluation of service delivery.⁵⁶² Reports also allow municipalities to ensure that service providers respect their contractual obligations, and aid municipalities to monitor and adjust their programmes.⁵⁶³

Moreover, accountability in local government requires institutional capacity in the form of individual competence, as discussed in the next paragraph.⁵⁶⁴ Incompetent public officials will not have the capacity to realise when mistakes are made and would also not grasp why accountability or ethical conduct is required for good governance.⁵⁶⁵

2.5.4 Principle 5: Capacity

Good governance requires capacity, which means that local government must have the political, financial and institutional capacity to discharge its policy objectives.⁵⁶⁶ Local

⁵⁵⁷ Munzhedzi and Makwembere 2019 *Journal of Public Administration* 660.

⁵⁵⁸ CIPFA *International Framework for Good Governance in the Public Sector* 31.

⁵⁵⁹ CIPFA *International Framework for Good Governance in the Public Sector* 31.

⁵⁶⁰ UN Habitat *International Guidelines on Decentralisation and Access to Basic Services for All* (2009) paras A.14, A.18; CIPFA *International Framework for Good Governance in the Public Sector* 31.

⁵⁶¹ UN Habitat *International Guidelines on Decentralisation and Access to Basic Services for All* (2009) paras A.14, A.18; CIPFA *International Framework for Good Governance in the Public Sector* 31.

⁵⁶² UN Habitat *International Guidelines on Decentralisation and Access to Basic Services for All* (2009) paras A.14.a, A.18.

⁵⁶³ UN Habitat *International Guidelines on Decentralisation and Access to Basic Services for All* (2009) paras A.14.a, A.18.

⁵⁶⁴ Koenane and Mangena 2017 *African Journal of Public Affairs* 69.

⁵⁶⁵ Koenane and Mangena 2017 *African Journal of Public Affairs* 69.

⁵⁶⁶ Enaifoghe *et al* 2020 *Journal of African Foreign Affairs* 35; CIPFA *International Framework for Good Governance in the Public Sector* 10 and 23; aa 27(1) and 33(6) of the *African Charter on Democracy*,

government must be made capable of responding to varying policy and legal, economic, political and environmental circumstances.⁵⁶⁷ It is therefore required to undertake measures, including legislative and institutional measures, to ensure the effective, efficient and responsible use of public resources.⁵⁶⁸ To this end local government should institutionalise good economic and corporate governance through the "efficient management of public debt and prudent and sustainable utilisation of public resources."⁵⁶⁹

To increase institutional capacity, both elected and non-elected public officials should be provided with the appropriate training and education to ensure that they have the capacity to perform their functions well.⁵⁷⁰ Training and capacity building may take the form of development programmes, knowledge networks, working tools or other mechanisms for the exchange of knowledge.⁵⁷¹ In addition, specialised training programmes should be provided to raise awareness of the risks of corruption particular to the specific public official's position.⁵⁷² These programmes should make reference to the applicable codes of conduct.⁵⁷³

To further increase institutional capacity, local government should promote the right to equality regarding employment and occupation for non-political officials.⁵⁷⁴ Local government is obliged to have a policy framework that ensures that public officials are appointed, promoted, suspended or dismissed based on merit, transparency,

Elections and Governance (2007) AU Doc AU/Dec/147/VII; a 2(g) of the *SADC Charter of Fundamental Social Rights in SADC* (2003) <https://bit.ly/3IMbp8l>.

⁵⁶⁷ CIPFA *International Framework for Good Governance in the Public Sector* 10, 23.

⁵⁶⁸ A 3(9) of the *African Charter on Values and Principles of Public Service and Administration* (2011); aa 33(4) and 33(5) of the *African Charter on Democracy, Elections and Governance* (2007) AU Doc AU/Dec/147/VII; aa 16(5)(b), 16(5)(g) and 16(5)(h) of the *African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development* (2014) <https://bit.ly/3fCBC5a>; World Bank *Sub-Saharan Africa: From Crises to Sustainable Growth Strategic Priority 2*.

⁵⁶⁹ Aa 33(4) and 33(5) of the *African Charter on Democracy, Elections and Governance* (2007) AU Doc AU/Dec/147/VII.

⁵⁷⁰ UN Habitat *International Guidelines on Decentralisation and the Strengthening of Local Authorities* (2009) paras D.5, D.6; aa 7(1) and 7(2) of the UNCAC.

⁵⁷¹ UN Habitat *International Guidelines on Decentralisation and the Strengthening of Local Authorities* (2009) paras D.5, D.6; aa 7(1) and 7(2) of the UNCAC.

⁵⁷² UN Habitat *International Guidelines on Decentralisation and the Strengthening of Local Authorities* (2009) paras D.5, D.6; aa 7(1) and 7(2) of the UNCAC.

⁵⁷³ UN Habitat *International Guidelines on Decentralisation and the Strengthening of Local Authorities* (2009) paras D.5, D.6; aa 7(1) and 7(2) of the UNCAC.

⁵⁷⁴ The *UN Global Compact* (2000) <https://www.unglobalcompact.org/what-is-gc/mission/principles> principles 5, 6.

reasonableness and efficiency.⁵⁷⁵ These measures ensure that public officials are safe, protected against threats, aggression or harassment (including sexual harassment), and guarantees the recruitment of skills from the entire population of the municipal area.⁵⁷⁶

One may observe the distinction between the standards concerning financial capacity and those concerning other capacities.⁵⁷⁷ In the Chartered Institute of Public Finance and Accountancy's⁵⁷⁸ view, all decisions and activities in local government have either a direct or an indirect financial impact, which could explain the separate focus on financial capacity.⁵⁷⁹ Financial capacity has to do with financial sustainability and warrants a discussion of its own.⁵⁸⁰

2.6 The nexus between financial sustainability and good governance in local government

This section aims to show that public sector corruption threatens sustainability in South African local government to the extent that it jeopardises the financial sustainability and the governance dimension of sustainability. To this end, this section explores the meaning of financial sustainability in the context of local government and the relevant international and regional law measures.

2.6.1 Financial sustainability defined in a local government context

The previous section showed that one of the measures required for good governance is capacity (political, infrastructural and financial).⁵⁸¹ Financial sustainability is an essential

⁵⁷⁵ A 19 of the *African Charter on Values and Principles of Public Service and Administration* (2011); a 7(1) of the UNCAC; UN Human Rights Committee General Comment No. 25 *on Article 25 on the Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service* (1996) CCPR/C/21/Rev1/Add7 paras 23, 24.

⁵⁷⁶ Aa 14, 15, 16 and 17 of the *African Charter on Values and Principles of Public Service and Administration* (2011).

⁵⁷⁷ CIPFA *International Framework for Good Governance in the Public Sector* 29; UN Habitat *International Guidelines on Decentralisation and the Strengthening of Local Authorities* (2009) para D; aa 16(2), 16(3) and 16(5) of the *African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development* (2014) <https://bit.ly/3fCBC5a>.

⁵⁷⁸ Hereafter the CIPFA.

⁵⁷⁹ CIPFA *International Framework for Good Governance in the Public Sector* 29.

⁵⁸⁰ See para 2.6 below.

⁵⁸¹ See para 2.5.1.1 above.

component of financial capacity. Financial capacity forms part of financial sustainability and therefore forms part of the governance sphere of sustainability.⁵⁸²

Financial sustainability has been interpreted with reference to the exploitation of natural resources as using resources in such a manner that they are not depleted or permanently damaged.⁵⁸³ However, Burnside⁵⁸⁴ remarks that this may not be the appropriate interpretation because government's fiscal resources are not exactly analogous to mineral or physical natural resources.

Other interpretations of financial sustainability have been adapted from the Brundtland Report's version of sustainable development. They arrived at the following formulation: "fiscal sustainability is broadly understood as the ability of a government to service its debt at any point in time."⁵⁸⁵ Historically, studies on financial sustainability in central and local governments have maintained a strong focus on debt trajectories, and therefore financial sustainability became akin to a study of government's solvency.⁵⁸⁶ These studies fell short and did not consider issues such as short term liquidity risks, the plausibility of government's fiscal policy, or whether the general public endorsed the financial priorities set.⁵⁸⁷

Schoenmaker and Schramade⁵⁸⁸ argue that to define financial sustainability one must first determine the outcomes and role of the local government financial system. The most prominent role for a local government financial system in the pursuit of sustainable development should be to inform decisions on the trade-offs between economic, social and environmental goals as required for sustainable development.⁵⁸⁹ One may thus note that in addition to mere solvency, a local government's financial system should have the capacity to inform the allocation of capital, monitor such investment, facilitate

⁵⁸² See para 2.5.1.1 above.

⁵⁸³ Bolivar *et al* 2015 *Local Government Studies* 30; Burnside (ed) *Fiscal Sustainability in Theory and Practice* 11.

⁵⁸⁴ Burnside (ed) *Fiscal Sustainability in Theory and Practice* 11.

⁵⁸⁵ European Commission Economic and Financial Affairs *Financial Sustainability Report 2018* para 1.2.

⁵⁸⁶ European Commission Economic and Financial Affairs *Financial Sustainability Report 2018* para 1.2; Navarro-Galera *et al* 2016 *Applied Economics* 3961; Burnside (ed) *Fiscal Sustainability in Theory and Practice* 11; Dollery and Grant 2011 *Public and Finance Management* 34.

⁵⁸⁷ European Commission Economic and Financial Affairs *Financial Sustainability Report 2018* para 1.2.

⁵⁸⁸ Schoenmaker and Schramade *Principles of Sustainable Finance* para 1.3.

⁵⁸⁹ Schoenmaker and Schramade *Principles of Sustainable Finance* para 1.3.

diversification and risk management, mobilise savings, and ensure efficiency in the provision of services, all with the aim of promoting sustainable development.⁵⁹⁰ Considering these developments, it becomes apparent that financial sustainability in government entails more than just solvency or financial viability.

Financial sustainability should not be equated with financial viability.⁵⁹¹ Financial unsustainability refers to the unsustainability of local government's fiscal policies (revenue and expenditure) as opposed to financial viability, which refers to local government's actual financial position (solvency).⁵⁹² Local government's financial position can almost always be adjusted with increases of rates or reductions of expense, even if that is at a cost to the community.⁵⁹³ The nature of local government is such that it cannot go bankrupt in the usual commercial manner and consequently local government will always be 'financially viable'.⁵⁹⁴

The South Australian Financial Sustainability Review Board defines financial sustainability from a local government perspective as follows:

A council's long-term financial performance and position is sustainable where: (i) continuation of the council's present spending and funding policies; (ii) likely developments in the council's revenue-raising capacity and the demand for and costs of its services and infrastructure; and (iii) normal financial risks and financial shocks, altogether are unlikely to necessitate substantial increases in council rates (or, alternatively, disruptive service cuts).⁵⁹⁵

The above definition is widely used in Australian local government.⁵⁹⁶ However, the definition predominantly focusses on comparing long-term income with long-term expenditure. Dollery and Grant⁵⁹⁷ critique this definition of financial sustainability as being

⁵⁹⁰ Navarro-Galera *et al* 2016 *Applied Economics* 3961; Schoenmaker and Schramade *Principles of Sustainable Finance* para 1.3.

⁵⁹¹ Bolivar *et al* 2015 *Local Government Studies* 32; Dollery and Grant 2011 *Public Finance and Management* 42.

⁵⁹² Schick 2005 *OECD Journal on Budgeting* 108; Dollery and Grant 2011 *Public Finance and Management* 38; Bolivar *et al* 2014 *Journal of Local Self-Government* 31.

⁵⁹³ Dollery and Grant 2011 *Public Finance and Management* 39; Bolivar *et al* 2015 *Local Government Studies* 34.

⁵⁹⁴ Dollery and Grant 2011 *Public Finance and Management* 39; Bolivar *et al* 2014 *Journal of Local Self-Government* 31; Bolivar *et al* 2014 *Journal of Local Self-Government* 31.

⁵⁹⁵ As cited in Dollery and Grant 2011 *Public Finance and Management* 34.

⁵⁹⁶ Dollery and Grant 2011 *Public Finance and Management* 35.

⁵⁹⁷ Dollery and Grant 2011 *Public Finance and Management* 42.

ignorant of the tensions between local government's roles relating to local democracy and service delivery. Furthermore, the Australian approach equates financial sustainability with financial viability and as already mentioned, financial sustainability as part of sustainable development is much more complex.⁵⁹⁸

In Spain financial sustainability is deemed to be local government's ability to manage projected financial risks and shocks over the long term without needing to introduce significant or disruptive revenue adjustments.⁵⁹⁹ It is seen as the ability to meet service delivery and financial obligations by applying and maintaining the policies currently at the government's disposal without causing the debt to rise continuously.⁶⁰⁰ Here financial sustainability seems to reflect revenue, expenses and service delivery with an element of intergenerational equality in the mix.⁶⁰¹

One of the more comprehensive definitions of financial sustainability is that of the Controller and Auditor-General of New Zealand.⁶⁰² It views financial sustainability as the financial capacity to meet current obligations and withstand financial shocks (such as recessions or unforeseen emergency expenditure). Reasonable levels of service delivery, debt, and financial obligations should also be maintained, regarding both national expectations and likely future income, while maintaining public confidence.⁶⁰³ In addition, the inter-generational equality element of financial sustainability may be seen as financial management which enables government to meet its current and future obligations without placing unmanageable tax burdens on the present or future generations.⁶⁰⁴

In South Africa the White Paper determines that municipalities must ensure that their revenue should be equal to or more than their expenditure in pursuit of financial sustainability.⁶⁰⁵ This includes the provision of services at an affordable rate. However,

⁵⁹⁸ Murray and Dollery 2006 *Public Administration Today* 47; Dollery and Grant 2011 *Public Finance and Management* 42.

⁵⁹⁹ Bolivar *et al* 2015 *Local Government Studies* 30.

⁶⁰⁰ Navarro-Galera *et al* 2016 *Applied Economics* 3961; Bolivar *et al* 2015 *Local Government Studies* 34.

⁶⁰¹ Bolivar *et al* 2015 *Local Government Studies* 30.

⁶⁰² Controller and Auditor General of New Zealand *Public Sector Financial Sustainability* 7.

⁶⁰³ Controller and Auditor General of New Zealand *Public Sector Financial Sustainability* 7.

⁶⁰⁴ De Lange 2010 *IMFO* 22.

⁶⁰⁵ The White Paper of Local Government para 1.3.

this raises other questions such as what constitutes an affordable rate of services.⁶⁰⁶ Financial sustainability relating to service delivery is also defined in the *Systems Act* as the provision of services in a manner which ensures that internal and external funding resources finance the initial capital, operational, maintenance and replacement expenditure.⁶⁰⁷ The Drakenstein Local Municipality, for example, views municipal financial sustainability as a position that meets planning, budgeting, and infrastructure standards without any substantial unplanned increases in property rates, service charges or disruptive cuts to services.⁶⁰⁸

To simplify the complex nature of financial sustainability the OECD divides financial sustainability into four elements: (1) solvency, which is the ability to meet financial and service delivery obligations;⁶⁰⁹ (2) growth, which is fiscal policy that sustains growth; (3) stability, which refers to the capacity to meet obligations with the existing tax burden without a continuous increase in debt levels;⁶¹⁰ and (4) fairness, which refers to the capacity to pay current obligations without placing unmanageable tax burdens on present or future consumers.⁶¹¹ The Controller and Auditor General of New Zealand holds a view similar to that of the OECD but adds two elements to financial sustainability. These additional elements are (5) resilience, which is the capacity to withstand shocks; and (6) public confidence, which guarantees the collection of sufficient revenue to meet future obligations.

One can summarise the various definitions as discussed above by describing financial sustainability in local government as resilient financial management that enables a

⁶⁰⁶ The White Paper of Local Government para 1.3.

⁶⁰⁷ S 1 of the *Systems Act*.

⁶⁰⁸ Drakenstein Local Municipality *Long Term Financial Sustainability Policy* (2018) para 5.3.

⁶⁰⁹ This element currently appears to be the most challenging for South African municipalities. National Treasury provides a chart to enable members of the public to identify municipalities with serious financial problems. The chart is based on ss 138 and 140 of the *Local Government: Municipal Finance Management Act* 56 of 2003, which prescribes the indicators of financial problems. These indicators mostly affect the solvency of a municipality and from this chart it can be discerned that in the third quarter of 2019, 114 of 278 have triggered some of these indicators. This chart is available at National Treasury *Municipalities meeting criteria for determining serious financial problems in terms of section 138 & 140 of the MFMA*.

⁶¹⁰ This element was reaffirmed in *South Africa's Medium-Term Budget Policy Statement* for 2019, where it was stated that the continuous increase in sovereign debt levels is unsustainable.

⁶¹¹ Schick 2005 *OECD Journal on Budgeting* 108.

municipality to meet all its obligations and facilitates development without a continuous rise in debt or undue increase in service or other charges.⁶¹²

2.6.2 The critical underpinnings of financial sustainability in a local government context

Local government must have to take certain actions to achieve and maintain financial sustainability.⁶¹³ These actions should be directed at meeting both financial and service delivery obligations within the existing tax burden and without a continuous increase in debt levels.

2.6.2.1 Establish a financial management system

A financial system must be established that maintains public confidence and has the capacity to withstand financial shocks. Financial management concerns income generation,⁶¹⁴ establishing financial priorities, developing financial policies and strategies, planning and budgeting for capital and cash flow.⁶¹⁵ A strong management system for local government finance must be in place to ensure that public money (taxes and service charges) is used appropriately, economically, efficiently, and effectively.⁶¹⁶ This system should be founded on values of accountability and transparency. Therefore, the system needs to make provision for sound accounting practices, integration at all internal levels of planning and the reduction of financial risks, and should be focussed on long-, medium- and short-term outcomes.⁶¹⁷

⁶¹² Schick 2005 *OECD Journal on Budgeting* 108; Controller and Auditor General of New Zealand *Public Sector Financial Sustainability* 7; De Lange 2010 *IMFO* 22.

⁶¹³ CIPFA *International Framework for Good Governance in the Public Sector* 29; UN Habitat *International Guidelines on Decentralisation and the Strengthening of Local Authorities* (2009) para D; aa 16(2), 16(3) and 16(5) of the *African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development* (2014) <https://bit.ly/3fCBC5a>.

⁶¹⁴ Taxes, service fees, conditional and unconditional government transfers, investments, loans etc.

⁶¹⁵ CIPFA *International Framework for Good Governance in the Public Sector* 29.

⁶¹⁶ CIPFA *International Framework for Good Governance in the Public Sector* 29; UN Habitat *International Guidelines on Decentralisation and the Strengthening of Local Authorities* (2009) paras D.8, D.10, D.11.

⁶¹⁷ CIPFA *International Framework for Good Governance in the Public Sector* 29; UN Habitat *International Guidelines on Decentralisation and Access to Basic Services for All* (2009) paras B.27, B.28, B.29, B.31, D.40.b, D.41.

2.6.2.2 Establish a legal framework for financial management

Local government should develop and implement a fiscal policy that sustains growth. As a starting point, a legal framework is needed to prescribe how local government should effectively and efficiently use its fiscal resources.⁶¹⁸ This framework should include a provision for generating and collecting income and should include conditional and unconditional financial transfers.⁶¹⁹ These transfers are required to be done transparently and with a degree of predictability.⁶²⁰ Notwithstanding the need for local government to be innovative, it would be beneficial if the legislative framework were to guide the conditions under which local government may gain access to loans, financial markets and developmental assistance.⁶²¹ Principles such as local government's autonomous authority to generate and manage its own finances must enable them to use public money appropriately, economically, efficiently and effectively.⁶²² Inherent in this autonomy is that local government takes full responsibility for its finances.⁶²³

2.6.2.3 Enable local government to generate income

Local government's income must be equal to or greater than its expenses to ensure that it has adequate fiscal resources.⁶²⁴ It must therefore have access to a range of financial resources.⁶²⁵ Local government is enabled to generate its own income by charging local

⁶¹⁸ A 16(5)(c) of the *African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development* (2014) <https://bit.ly/3fCBC5a>; UN Habitat *International Guidelines on Decentralisation and the Strengthening of Local Authorities* (2009) paras D.8, D.10, D.11.

⁶¹⁹ Aa 16(5)(d), 16(5)(e) and 16(5)(f) of the *African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development* (2014) <https://bit.ly/3fCBC5a>.

⁶²⁰ Aa 16(5)(d), 16(5)(e) and 16(5)(f) of the *African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development* (2014) <https://bit.ly/3fCBC5a>.

⁶²¹ Aa 16(5)(d), 16(5)(e) and 16(5)(f) of the *African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development* (2014) <https://bit.ly/3fCBC5a>.

⁶²² A 16(5)(d) of the *African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development* (2014); UN Habitat *International Guidelines on Decentralisation and the Strengthening of Local Authorities* (2009) para D.

⁶²³ A 16(5)(d) of the *African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development* (2014) <https://bit.ly/3fCBC5a>.

⁶²⁴ The budget balance rule and expenditure rule as proposed by the 2012 *Organic Law on Budgetary Stability and Financial Sustainability*. As cited in the European Commission Economic and Financial Affairs *Financial Sustainability Report 2018* 214.

⁶²⁵ UN Habitat *International Guidelines on Decentralisation and the Strengthening of Local Authorities* (2009) para D.

taxes and service fees.⁶²⁶ The collection of such fees needs to be done in a transparent, accountable and efficient manner.⁶²⁷ In determining local taxes and service fees, local government must have due regard to accessibility for the poor and other vulnerable groups as well as intergenerational equality.⁶²⁸

Central governments must ensure that financial resources follow an assignment or delegation of tasks.⁶²⁹ However, central government grants should not remove the basic freedom of local government to exercise policy discretion. Central government grants may, however, be reserved for specific purposes.⁶³⁰ Local government may also be allowed to borrow, nationally or internationally, for capital projects (not for operating costs) within national frameworks. Such borrowing should not endanger fiscal policy aimed at the financial stability of the state.⁶³¹ For example, a public debt rule that proportionally limits the amount government is allowed to borrow against its gross domestic product may protect financial sustainability from extreme debt levels.⁶³²

⁶²⁶ Taxes and service charges must make up a significant proportion of local government's financial resources. A 7(5) of the *African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development* (2014) <https://bit.ly/3fCBC5a>; aa 33(1), 33(10) and 33(13) of the *African Charter on Democracy, Elections and Governance* (2007) AU Doc AU/Dec/147/VII; UN Habitat *International Guidelines on Decentralisation and the Strengthening of Local Authorities* (2009) para D.

⁶²⁷ A 7(5) of the *African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development* (2014) <https://bit.ly/3fCBC5a>; aa 33(1), 33(10) and 33(13) of the *African Charter on Democracy, Elections and Governance* (2007) AU Doc AU/Dec/147/VII; the *International Guidelines on Decentralisation and Strengthening of Local Authorities* (2009) para D.44; UN Habitat *International Guidelines on Decentralisation and Access to Basic Services for All* (2009) paras B.30.

⁶²⁸ Accessibility options may include free services to a threshold, cross subsidies between consumers etc. UN Habitat *International Guidelines on Decentralisation and the Strengthening of Local Authorities* (2009) para D; UN Habitat *International Guidelines on Decentralisation and Access to Basic Services for All* (2009) paras B.27, B.28, B.29, B.31, D.40.b, D.41; Bolivar, Galera and Munoz 2014 *Public Money and Management* 233.

⁶²⁹ UN Habitat *International Guidelines on Decentralisation and the Strengthening of Local Authorities* (2009) paras D.8, D.10, D.11.

⁶³⁰ UN Habitat *International Guidelines on Decentralisation and the Strengthening of Local Authorities* (2009) para D.

⁶³¹ UN Habitat *International Guidelines on Decentralisation and the Strengthening of Local Authorities* (2009) para D; UN Habitat *International Guidelines on Decentralisation and Access to Basic Services for All* (2009) paras B.27, B.28.

⁶³² Public debt is limited to 60% of GDP: 44% for national government, 13% for regional government and 3% for local government. *The Organic Law on Budgetary Stability and Financial Sustainability* 2012. As cited in the European Commission Economic and Financial Affairs *Financial Sustainability Report 2018* 214.

2.6.2.4 Establish a local government financial performance management system

A performance management system should be in place. Such a system should be aimed at developing and implementing financial strategies, cost determination, budgeting, forecasting, and financial control.⁶³³ Local government is required within its organisational structures to increase the understanding of its financial health and progress.⁶³⁴ The management system should also require municipal self-assessment or evaluation.⁶³⁵

International and regional laws and policies require central governments to supervise and monitor local government as part of performance management to ensure that it has sufficient financial capacity to discharge all its obligations.⁶³⁶ The autonomy of local government should not go unchecked; it remains the responsibility of central government to supervise local government.⁶³⁷ The presentation of uniform and complete financial records as well as transparent financial information can empower central government to exercise effective supervision.⁶³⁸ One such supervisory task is that central government should ensure that taxes and service rates are proportional to the obligations local government must fulfil.⁶³⁹

2.6.2.5 Create specialised financial facilities

Central governments also need to create specialised financial facilities for local governments where national capital markets are insufficient to facilitate the emergence of financial markets.⁶⁴⁰ In the extreme event of the factual bankruptcy of local

⁶³³ CIPFA *International Framework for Good Governance in the Public Sector* 29.

⁶³⁴ CIPFA *International Framework for Good Governance in the Public Sector* 29.

⁶³⁵ Dolley and Grant 2011 *Public Finance and Management* 38.

⁶³⁶ Dolley and Grant 2011 *Public Finance and Management* 38; Bolivar, Galera and Munoz 2014 *Public Money and Management* 233.

⁶³⁷ This completes a system of checks and balances. UN Habitat *International Guidelines on Decentralisation and the Strengthening of Local Authorities* (2009) para D.

⁶³⁸ Dolley and Grant 2011 *Public Finance and Management* 38; Bolivar, Galera and Munoz 2014 *Public Money and Management* 233; UN Habitat *International Guidelines on Decentralisation and the Strengthening of Local Authorities* (2009) para D.

⁶³⁹ UN Habitat *International Guidelines on Decentralisation and the Strengthening of Local Authorities* (2009) para D.

⁶⁴⁰ UN Habitat *International Guidelines on Decentralisation and Access to Basic Services for All* (2009) paras B.27, B.28, B.29.

government, measures are required to guarantee the continuity of services.⁶⁴¹ Here information also plays a vital role in empowering central government to detect the financial distress of local government.⁶⁴² The continuity of public service implies that the local government financial system should be based on stability.⁶⁴³

2.7 Concluding remarks

As indicated at the start of this chapter, local government in South Africa pursues sustainability for many reasons, including being able to fulfil its constitutional mandate to help improve the quality of life of people and to protect natural and other resources.⁶⁴⁴ Corruption is a hindrance, however. As a first step towards exploring ways to counter public sector corruption in the local government sphere, this chapter has identified and described the key concepts, namely public sector corruption and sustainability, as well as the interplay between them. The chapter comprised of a desktop review and is aimed at establishing the conceptual frame of what is meant by public sector corruption and how it manifests. Thereafter the meaning of sustainable development and its different dimensions with a specific focus on good governance, its five principles and financial sustainability were discussed. The nexus between the eclectic mix of concepts covered in this chapter lies therein that public sector corruption threatens sustainability in South African local government to the extent that it jeopardises the financial sustainability and the governance dimension of sustainability. The main insights garnered from the literature review in this chapter can be summarised as follows:

Public sector corruption can be distinguished from private sector corruption by looking at the following.⁶⁴⁵ One of the parties to the corrupt act must hold a public office. The Constitution determines public office in South Africa by whether or not the office requires the exercise of public power.⁶⁴⁶ In public sector corruption, public responsibility plays a

⁶⁴¹ UN Habitat *International Guidelines on Decentralisation and Access to Basic Services for All* (2009) paras B.27, B.28, B.29, B.31, D.40.b, D.41.

⁶⁴² Bolivar, Galera and Munoz 2014 *Public Money and Management* 233.

⁶⁴³ United Nations *International Financial System and Development* Gen Ass A/74/150 para 1.

⁶⁴⁴ See paras 2.1, 2.3 and 2.4 above.

⁶⁴⁵ See para 2.2.3 above.

⁶⁴⁶ See para 2.2.3 above.

central role in determining whether corrupt behaviour took place.⁶⁴⁷ The violation by public servants of formal and informal rules concerning acceptable behaviour is considered as potentially corrupt behaviour.⁶⁴⁸ In both public and private sector corruption the misuse of a position of power to obtain an advantage which one is not entitled to is a form of corruption.⁶⁴⁹ However, for public sector corruption, even accepting a benefit for the performance of an obligation also constitutes misuse.⁶⁵⁰ The last stark difference between public and private sector corruption is that the victims of public sector corruption are the general public.⁶⁵¹ The impacts of public sector corruption are widespread throughout the community and may often extend beyond local boundaries.⁶⁵² This chapter further showed that public sector corruption may be committed on a petty or a grand scale, or anywhere in between. Some corrupt acts may be legally or illegally committed in the public sector. Moreover, one can observe systemic, collective, coerced, and noble cause corruption in local government.⁶⁵³

The above discussion makes it clear that sustainable development in local government involves four dimensions: the environmental, social, economic and governance dimensions.⁶⁵⁴ It has been noted that corruption negatively impacts on all these dimensions and distorts the important balance among them. It is the governance dimension, however, that is particularly ravaged by the impacts of corruption.⁶⁵⁵ The governance dimension further ensures that all the dimensions are in balance and amicably integrated for the successful pursuit of sustainability.⁶⁵⁶ This emphasises the importance of the integrity of the governance dimension and shows that if it is distorted by the effects of corruption all other dimensions of sustainable development will also be indirectly impacted by corruption.

⁶⁴⁷ See para 2.2.3 above.

⁶⁴⁸ See para 2.2.3 above.

⁶⁴⁹ See para 2.2.3 above.

⁶⁵⁰ See para 2.2.3 above.

⁶⁵¹ See para 2.2.3 above.

⁶⁵² See para 2.2.3 above.

⁶⁵³ See para 2.2.2 above.

⁶⁵⁴ See para 2.4 above.

⁶⁵⁵ See para 2.4.4 above.

⁶⁵⁶ See para 2.4.4 above.

The governance dimension in sustainable development is particularly concerned with good governance.⁶⁵⁷ Good governance strives to achieve the most critical priorities to promote sustainable development in local government through the practice of democratic processes.⁶⁵⁸ International and regional law and policy provide multiple measures that local government can employ to mobilise good governance.⁶⁵⁹ One of the principles for good governance in local government concerns having the required capacity to perform its functions.⁶⁶⁰ Financial sustainability ensures that local government has this required fiscal capacity to meet its priorities in advancing sustainable development.⁶⁶¹

The discussion in this chapter has served to show the nexus between sustainability in local government and public sector corruption, and as such has alluded to the relevance of and need to prevent public sector corruption across the municipalities of South Africa. As the next step, the following chapter aims to identify and evaluate the possible legal avenues provided for in international and regional law to prevent and minimise public sector corruption.

⁶⁵⁷ See para 2.5 above.

⁶⁵⁸ See para 2.4.4 above.

⁶⁵⁹ See para 2.5 above.

⁶⁶⁰ See para 2.6 above.

⁶⁶¹ See para 2.6 above.

CHAPTER 3

STANDARDS FOR THE PREVENTION OF PUBLIC SECTOR CORRUPTION IN LOCAL GOVERNMENT

3.1 Introduction

Public sector corruption is multifaceted, secretive and widespread, which suggests a need for a holistic preventative approach.⁶⁶² It has been about 25 years since the prevention and combatting of public sector corruption became a major global priority,⁶⁶³ yet corruption remains a worldwide problem.⁶⁶⁴ Pieth,⁶⁶⁵ however, notes that the newsworthiness of headlines on corruption, the number of anti-corruption groups, conferences on corruption prevention, and the implementation of government compliance programmes indicates that some progress has been made towards preventing corruption.⁶⁶⁶

Corruption relies on the availability opportunities in which it can take place.⁶⁶⁷ Preventing corruption thus requires minimising opportunities for corruption, and where opportunities cannot be removed, steps must be taken to deter individuals from engaging in corruption.⁶⁶⁸ The premise of this chapter is that international and regional anti-corruption law and policy provide valuable pointers on how to prevent it. These pointers are meaningful for South Africa and its pursuit of local sustainability because it shows what the law can do to contribute to the prevention of public sector corruption.⁶⁶⁹ The purpose of this chapter is to identify anti-corruption standards that can subsequently be used to evaluate South African anti-corruption law and policy as applicable to local government,

⁶⁶² See para 2.2 above.

⁶⁶³ Heimann and Pieth *Confronting Corruption* 244.

⁶⁶⁴ Bardhan 1997 *Journal of Economic Literature* 1320; Heimann and Pieth *Confronting Corruption* 244; Dintwe 2013 *Journal of Public Administration* 556; Buscaglia and Dijk 2003 *Forum on Crime and Society* 4; Mawenya *Preventing corruption in African procurement* 3.

⁶⁶⁵ Heimann and Pieth *Confronting Corruption* 244.

⁶⁶⁶ Heimann and Pieth *Confronting Corruption* 244.

⁶⁶⁷ Graycar and Sidebottom 2012 *Journal of Financial Crime* 397.

⁶⁶⁸ Peltier-Rivest 2018 *Journal of Financial Crime* 546; Hansen and Tang-Jensen 2015 *Ephemera: Theory and Politics in Organization* 370; Everett, Neu and Rahaman 2007 *Accounting, Organizations and Society* 513; Graycar and Sidebottom 2012 *Journal of Financial Crime* 379.

⁶⁶⁹ These pointers are discussed as principles with standards in para 3.3 below.

although many of them might not be judicially enforceable. To this end international and regional anti-corruption law and policy, as well as the relevant scholarship, will be discussed from a local government perspective.

Often international and regional law presents anti-corruption measures through 'checklists' of required actions and in so doing lays down standards. As will become clear below, the evaluation of the actions and standards proposed to prevent corruption in local government shows that they complement one or more of the anti-corruption principles, namely integrity, transparency and accountability.⁶⁷⁰ The discussion below is categorically structured according to these three anti-corruption principles, and each principle is further subdivided into its complementary standards.

This chapter commences with a brief overview of the applicable international and regional anti-corruption law framework. This framework consists of instruments to which South Africa is a signatory, and others that serve to inform the international standards. The remainder of the discussion systematically analyses the anti-corruption principles of integrity, transparency, and accountability, as well as their corresponding standards (as identified from a combination of the international laws and related scholarship in this field) from the perspective of local government.

3.2 International and regional anti-corruption law

The international and regional anti-corruption legal framework is fragmented in the sense that different aspects of the quest to stop corruption are covered in different instruments. To entertain as inclusive and informative an analysis as possible, the instruments discussed below are not confined to instruments to which South Africa formally belongs.⁶⁷¹

⁶⁷⁰ A 5(1) of the UNCAC.

⁶⁷¹ The regional law analysed is also not restricted to the African Union and includes the European Union, OECD, SADC, Inter-American States, ASEAN, and UAE. BRICS does not have any official legal documents for the prevention and combatting of corruption specifically. However, many summits have affirmed Member States' commitment to other international and regional anti-corruption laws such as the UNCAC. HSE University of Anti-corruption Portal 2021 <https://anticor.hse.ru/en/main/organization/BRICS>; Department of International Relations and Cooperation *XII BRICS Summit Moscow Declaration* para 44.

The instruments were selected on the basis of their contribution to an international set of legal standards on anti-corruption.

3.2.1 United Nations Convention Against Corruption

The General Assembly of the UN adopted the UNCAC in December 2000.⁶⁷² The purpose of this convention is to address corruption and reduce the threats it poses to democracy, ethical values, justice, the rule of law and sustainability.⁶⁷³ It acknowledged the contribution other regional anti-corruption laws have made and stated that these instruments should be used to supplement the contents of the UNCAC.⁶⁷⁴

The UNCAC's main objectives are to set out anti-corruption measures, stimulate international cooperation, provide technical assistance, and advance integrity, accountability and the proper management of public affairs for the prevention and combatting of corruption.⁶⁷⁵ Therefore, one can observe a so-called 'blanket law and policy making duty' which determines that all state parties must adopt law and policy designed to prevent corruption.⁶⁷⁶ This means that state parties are expected to implement all the specific measures prescribed in the UNCAC and take any other additional legislative anti-corruption measures as required in a specific context.⁶⁷⁷ Yet, despite these many requirements, the UNCAC has been criticised on the grounds that the state parties have neglected to implement these corruption prevention measures, a fact which speaks to the oft discussed challenge of enforcing international (soft) law.⁶⁷⁸

3.2.2 United Nations Convention Against Transnational Organised Crime

The General Assembly of the UN acknowledges the adverse effects of organised crime on the economy and social well-being of communities.⁶⁷⁹ It also states that corruption is

⁶⁷² Foreword of the UNCAC.

⁶⁷³ Foreword of the UNCAC.

⁶⁷⁴ Preamble of the UNCAC.

⁶⁷⁵ A 1 of the UNCAC.

⁶⁷⁶ A 4(2) of the *SADC Protocol Against Corruption* (2001) <https://bit.ly/2VFRigI>; a 5(2) of the UNCAC.

⁶⁷⁷ These measures are discussed in detail in paras 3.3, 3.4 and 3.5 below.

⁶⁷⁸ Hottinger "Two Years Later: The Arab Revolutions in Transition" 7; Heimann and Pieth *Confronting Corruption* 245.

⁶⁷⁹ Preamble of the *United Nations Convention Against Transnational Organised Crime* (2000).

endemic in organised crime.⁶⁸⁰ In reaction the *United Nations Convention Against Transnational Organised Crime* was adopted in November 2000.⁶⁸¹ The primary purpose of this legal instrument is to prevent and control transnational organised crime, which includes corruption. Like the UNCAC, this legal instrument places a blanket legislative duty on state parties to promote integrity and prevent, detect, and prosecute corruption.⁶⁸² However, the Convention does not provide many specifics aimed at preventing corruption. It only requires corruption to be criminalised in addition to the blanket legislative duty.⁶⁸³

3.2.3 African Union Convention on Preventing and Combatting Corruption

The Member States of the AU adopted the AUCPCC in July 2003.⁶⁸⁴ The AU expressed its concern about the impact corruption has on the overall stability of Member States and the deleterious effects it has on economic and social development.⁶⁸⁵ The AUCPCC also acknowledged that corruption erodes accountability and transparency in managing public affairs.⁶⁸⁶ The AU adopted the AUCPCC in reaction to society's need to be protected from corruption and to eliminate the root causes of corruption.⁶⁸⁷ The AUCPCC has five objectives: first, to establish some ambitious standards for preventing, detecting, prosecuting and eliminating all forms of corruption;⁶⁸⁸ second, to facilitate cooperation amongst Member States to help control corruption;⁶⁸⁹ third, to promote integration and synchronisation among international, regional, and national anti-corruption law and policy;⁶⁹⁰ fourth, to remove impediments to the enjoyment of human rights;⁶⁹¹ and fifth, to establish standards to promote transparency and accountability in managing public

⁶⁸⁰ Preamble of the *United Nations Convention Against Transnational Organised Crime* (2000).

⁶⁸¹ Preamble of the *United Nations Convention Against Transnational Organised Crime* (2000).

⁶⁸² Aa 8 and 9 of the *United Nations Convention Against Transnational Organised Crime* (2000).

⁶⁸³ Aa 8 and 9 of the *United Nations Convention Against Transnational Organised Crime* (2000).

⁶⁸⁴ Preamble of the AUCPCC.

⁶⁸⁵ Preamble of the AUCPCC.

⁶⁸⁶ Preamble of the AUCPCC.

⁶⁸⁷ Preamble of the AUCPCC.

⁶⁸⁸ A 2(1) of the AUCPCC.

⁶⁸⁹ A 2(2) of the AUCPCC.

⁶⁹⁰ A 2(3) of the AUCPCC.

⁶⁹¹ A 2(4) of the AUCPCC.

affairs.⁶⁹² In brief, the AUCPCC expects Member States to use policy, law, and other measures to achieve these five objectives.⁶⁹³

3.2.4 African Charter on the Values and Principles of Public Service and Administration

The Member States of the AU adopted the *African Charter on the Values and Principles of Public Service Administration* in January 2011.⁶⁹⁴ This Charter was adopted in response to the growing need of African states to maintain the legitimacy of their public services and the need for public service to be adaptable according to evolving needs.⁶⁹⁵ The Charter aims to fulfil a multiplicity of purposes relating to promoting certain principles and values of public service and administration.⁶⁹⁶ Furthermore, the Charter specifically aims to sensitise public officials on strategies and mechanisms against corruption.⁶⁹⁷ To contribute to preventing or combatting corruption, the Charter also aims to promote public service accountability and integrity systems which promote value-based behaviour.⁶⁹⁸

3.2.5 African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development

The Member States of the AU adopted the *African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development* in 2014.⁶⁹⁹ The adoption of this Charter was inspired by the view that local authorities are essential for a democratic

⁶⁹² A 2(5) of the AUCPCC.

⁶⁹³ A 2 of the AUCPCC.

⁶⁹⁴ Preamble of the *African Charter on Values and Principles of Public Service and Administration* (2011) <https://bit.ly/3yqQJ9f>.

⁶⁹⁵ Preamble of the *African Charter on Values and Principles of Public Service and Administration* (2011) <https://bit.ly/3yqQJ9f>.

⁶⁹⁶ Preamble of the *African Charter on Values and Principles of Public Service and Administration* (2011) <https://bit.ly/3yqQJ9f>.

⁶⁹⁷ A 12 of the *African Charter on Values and Principles of Public Service and Administration* (2011) <https://bit.ly/3yqQJ9f>.

⁶⁹⁸ A 12 of the *African Charter on Values and Principles of Public Service and Administration* (2011) <https://bit.ly/3yqQJ9f>.

⁶⁹⁹ Preamble of the *African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development* (2014) <https://bit.ly/3fCBC5a>.

governance system.⁷⁰⁰ The adoption of the Charter was further motivated by an aspiration to make basic services accessible to all in Africa.⁷⁰¹ The purposes of the Charter are to promote local governance, local development and local democracy, the mobilisation of resources and local economic development, and to make provision for other incidental matters.⁷⁰² Moreover, the Charter specifically mandates national and local governments to establish mechanisms to combat corruption, which include protecting whistle-blowers.⁷⁰³

3.2.6 African Charter on Democracy, Elections and Governance

The Member States of the AU adopted the *African Charter on Democracy, Elections and Governance* in 2007.⁷⁰⁴ This particular Charter was adopted in reaction to the harsh histories and cultural conditions with which the African peoples were confronted, and out of concern for the unconstitutional changes of governments.⁷⁰⁵ The overall purpose of the Charter is to provide for conditions conducive to political stability and good governance,⁷⁰⁶ which includes promoting free and fair elections, the rule of law, an independent judiciary, sustainable development, transparency, accountability and equality.⁷⁰⁷ Furthermore, Member States are expected to commit themselves to combatting corruption, which includes institutionalising good economic and corporate governance.⁷⁰⁸

⁷⁰⁰ Preamble of the *African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development* (2014) <https://bit.ly/3fCBC5a>.

⁷⁰¹ Preamble of the *African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development* (2014) <https://bit.ly/3fCBC5a>.

⁷⁰² A 2 of the *African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development* (2014) <https://bit.ly/3fCBC5a>.

⁷⁰³ Aa 14(3) and 14(4) of the *African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development* (2014) <https://bit.ly/3fCBC5a>.

⁷⁰⁴ Preamble of the *African Charter on Democracy, Elections and Governance* (2007) AU Doc AU/Dec/147/VII.

⁷⁰⁵ Preamble of the *African Charter on Democracy, Elections and Governance* (2007) AU Doc AU/Dec/147/VII.

⁷⁰⁶ A 2 of the *African Charter on Democracy, Elections and Governance* (2007) AU Doc AU/Dec/147/VII.

⁷⁰⁷ A 2 of the *African Charter on Democracy, Elections and Governance* (2007) AU Doc AU/Dec/147/VII.

⁷⁰⁸ Aa 2(9), 3(9), 27(5), 33(3) and 33(11) of the *African Charter on Democracy, Elections and Governance* (2007) AU Doc AU/Dec/147/VII.

3.2.7 SADC Protocol Against Corruption

The Heads of Member States to the SADC adopted the *SADC Protocol Against Corruption* in August 2001.⁷⁰⁹ This decision was taken because of the destabilising impact corruption has on society.⁷¹⁰ Corruption is seen as a serious problem, one which every member state must urgently address.⁷¹¹ The SADC Member States further note that corruption undermines good governance, accountability, and transparency.⁷¹² This instrument further serves as a symbol of Member States' political will and leadership to "wage an effective war against the scourge of corruption".⁷¹³ The SADC Protocol has a trio of objectives.⁷¹⁴ It aims to provide measures to prevent, detect, prosecute, and eliminate corruption.⁷¹⁵ These measures include criminalising corruption, establishing anti-corruption institutions, implementing financial and procurement controls, improving whistle-blower protection, increasing access to information on governance issues and implementing codes of conduct.⁷¹⁶ It further promotes cooperation among Member States in controlling corruption and coordinating and harmonising the SADC Protocol with domestic anti-corruption law and policy.⁷¹⁷

3.2.8 European Union Convention Against Corruption Involving EU Officials or Officials of EU Countries

The Council of the European Union adopted the *European Union Convention Against Corruption Involving EU Officials or Officials of EU Countries* 37 ILM 12 (1998) (EU Convention Against Corruption) in June 1997.⁷¹⁸ The Council adopted this instrument because it identified a need to address corruption which involves public officials of Member States and other incidental matters.⁷¹⁹ The purpose of this convention is to

⁷⁰⁹ Preamble of the SADC Protocol.

⁷¹⁰ Preamble of the SADC Protocol.

⁷¹¹ Preamble of the SADC Protocol.

⁷¹² Preamble of the SADC Protocol.

⁷¹³ Preamble of the SADC Protocol.

⁷¹⁴ A 2 of the SADC Protocol.

⁷¹⁵ A 2(1)(a) of the SADC Protocol.

⁷¹⁶ Aa 2, 3, 4 and 6 of the SADC Protocol.

⁷¹⁷ A 2(1)(b) and 2(1)(c) of the SADC Protocol.

⁷¹⁸ Preamble of the EU Convention Against Corruption.

⁷¹⁹ Preamble of the EU Convention Against Corruption.

describe active and passive corruption.⁷²⁰ However, the instrument is limited to the criminal law aspects of controlling corruption.⁷²¹

3.2.9 Civil Law Convention on Corruption

The Member States of the Council of Europe adopted the *Civil Law Convention on Corruption* in 1999.⁷²² The fact that corruption threatens the rule of law, democracy, human rights, fairness, social justice, and economic development led to the adoption of this legal instrument.⁷²³ In addition, Member States identified a need for cooperation among each other in the fight against corruption.⁷²⁴ This legal instrument aims to provide remedies to victims of corruption and to enable them to protect their interests, including obtaining compensation.⁷²⁵

3.2.10 Criminal Law Convention on Corruption

The Member States of the Council of Europe adopted the *Criminal Law Convention on Corruption* in 1999.⁷²⁶ This legal instrument was a reaction to the realisation that deterring and controlling corruption requires a rapid and well-functioning criminal justice system.⁷²⁷ Furthermore, cooperation among states would support the functioning of such a criminal system.⁷²⁸ The main purpose of the instrument is to criminalise corruption and related offences and provide for incidental matters such as gathering evidence.⁷²⁹

3.2.11 The Twenty Guiding Principles for the Fight Against Corruption

The Committee of Ministers for the Council of Europe adopted the *Twenty Guiding Principles for the Fight Against Corruption* in October 1997.⁷³⁰ This instrument was

⁷²⁰ Aa 2 and 3 of the EU Convention Against Corruption.

⁷²¹ Aa 4 to 12 of the EU Convention Against Corruption.

⁷²² Preamble of the *Civil Law Convention on Corruption* (1999) EUR/TS/174.

⁷²³ Preamble of the *Civil Law Convention on Corruption* (1999) EUR/TS/174.

⁷²⁴ Preamble of the *Civil Law Convention on Corruption* (1999) EUR/TS/174.

⁷²⁵ A 2 of the *Civil Law Convention on Corruption* (1999) EUR/TS/174.

⁷²⁶ Preamble of the *Criminal Law Convention on Corruption* (1999) EUR/TS/173.

⁷²⁷ Preamble of the *Criminal Law Convention on Corruption* (1999) EUR/TS/173.

⁷²⁸ Preamble of the *Criminal Law Convention on Corruption* (1999) EUR/TS/173.

⁷²⁹ Aa 2 to 23 of the *Criminal Law Convention on Corruption* (1999) EUR/TS/173.

⁷³⁰ Preamble of the *Twenty Guiding Principles for the Fight Against Corruption* (1997) <https://rm.coe.int/16806cc17c>.

adopted in reaction to the threat corruption poses to the basic values of the European Union, which include democracy, the rule of law and human rights.⁷³¹ As its name suggests, the instrument delineates twenty essential principles to control corruption.⁷³²

3.2.12 Inter-American Convention Against Corruption

The Member States of the Organisation of the American States adopted the *Inter-American Convention Against Corruption* in March 1996.⁷³³ The Organisation identified corruption as a threat to the legitimacy of public institutions and democracy.⁷³⁴ The contribution fighting corruption makes to strengthening democratic institutions and the overall stability of peace and development motivated the adoption of this legal instrument.⁷³⁵ The purposes of the *Inter-American Convention Against Corruption* are twofold.⁷³⁶ First, the Convention aims to set standards for preventing, detecting, prosecuting and eliminating corruption⁷³⁷ and second, it aims to promote cooperation among Member States in controlling corruption.⁷³⁸

3.2.13 OECD Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions

The Negotiating Conference adopted the *OECD Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions* in November 1997.⁷³⁹ This instrument was adopted in reaction to the detrimental effect corruption has on economies including trade, investment, economic development, and competitive markets.⁷⁴⁰ In addition the Negotiating Conference emphasised that public officials participate too often

⁷³¹ Preamble of the *Twenty Guiding Principles for the Fight Against Corruption* (1997) <https://rm.coe.int/16806cc17c>.

⁷³² The details of these principles are discussed in greater detail in paras 3.3, 3.4 and 3.5 below. Preamble of the *Twenty Guiding Principles for the Fight Against Corruption* (1997) <https://rm.coe.int/16806cc17c>.

⁷³³ Preamble of the *Inter-American Convention Against Corruption* (1996) 35 ILM 724.

⁷³⁴ Preamble of the *Inter-American Convention Against Corruption* (1996) 35 ILM 724.

⁷³⁵ Preamble of the *Inter-American Convention Against Corruption* (1996) 35 ILM 724.

⁷³⁶ A 2 of the *Inter-American Convention Against Corruption* (1996) 35 ILM 724.

⁷³⁷ A 2(1) of the *Inter-American Convention Against Corruption* (1996) 35 ILM 724.

⁷³⁸ A 2(2) of the *Inter-American Convention Against Corruption* (1996) 35 ILM 724.

⁷³⁹ Preamble of the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* (1998) 37 ILM 1.

⁷⁴⁰ Preamble of the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* (1998) 37 ILM 1.

in corrupt activities, and that a need exists to rectify this behaviour.⁷⁴¹ It was hoped that this instrument would contribute to good governance.⁷⁴² This instrument's purpose is to criminalise the bribery of public officials and to provide corresponding sanctions.⁷⁴³ It also makes provision for some incidental matters such as regulations on how accounting records should be maintained.⁷⁴⁴

3.2.14 ASEAN Political-security Community Blueprint 2025

The ASEAN Heads of States, through the ASEAN Political-security Community, adopted the *ASEAN Political-security Community Blueprint 2025*⁷⁴⁵ in 2016. This instrument is based on the experience of seven years of the implementation of its predecessor, the *ASEAN Political-security Community Blueprint 2009-2015*.⁷⁴⁶ One of the main objectives of this blueprint is to instil a culture of integrity and anti-corruption in the public services of Member States.⁷⁴⁷ Since local government forms part of public service, this instrument provides some insight into how legal measures can help prevent public sector corruption in local government. The Blueprint expects of Member States that they should use national law and policy measures to prevent corruption in their public and private sectors.⁷⁴⁸ In addition, Member States must take measures to cooperate with other states to combat corruption and harmonise their laws and policies to align with all international anti-corruption law.⁷⁴⁹

⁷⁴¹ Preamble of the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* (1998) 37 ILM 1.

⁷⁴² Preamble of the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* (1998) 37 ILM 1.

⁷⁴³ Aa 1 and 3 of the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* (1998) 37 ILM 1.

⁷⁴⁴ A 8 of the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* (1998) 37 ILM 1.

⁷⁴⁵ Preamble of the *ASEAN Political-security Community Blueprint 2025* <https://bit.ly/2VxpV8K>.

⁷⁴⁶ *ASEAN Political-security Community Blueprint 2009-2015*.

⁷⁴⁷ *ASEAN Political-security Community Blueprint 2025* <https://bit.ly/2VxpV8K> para A.2.3.

⁷⁴⁸ *ASEAN Political-security Community Blueprint 2025* <https://bit.ly/2VxpV8K> para A.2.3.iv.

⁷⁴⁹ *ASEAN Political-security Community Blueprint 2025* <https://bit.ly/2VxpV8K> para A.2.3.

3.2.15 Arab Convention Against Corruption

The League of Arab States adopted the *Arab Convention to Fight Corruption*,⁷⁵⁰ its first anti-corruption instrument, in 2010.⁷⁵¹ In addition to promoting cooperation among states for improved corruption prevention, the Arab Convention requires Member States to criminalise corruption, enhance asset recovery from corruption, and empower civil society to hold governments accountable for corruption.⁷⁵²

3.3 Principle 1: Integrity and ethical governance

The following discussion aims to introduce integrity and ethical governance as a principle for preventing corruption. The principle is further subdivided into standards, namely complying with human rights obligations, establishing and enforcing codes of conduct, reducing political interference, strengthening systems for human resource management, and formulating and implementing a public finance management system. After introducing integrity and ethical governance generally, these standards will be explored in detail.

Integrity in this context, may be viewed as local government officials observing strict moral values and being honest.⁷⁵³ This is different from ethics, which is the study of moral values and their specific context.⁷⁵⁴ Whereas ethical governance specifically investigates what moral values should guide local governance processes, it provides answers to questions like 'responsible for what?' and 'accountable to whom?'.⁷⁵⁵ Consequently, one may say that if local governance involves making choices, ethical governance informs how to make those choices.⁷⁵⁶ To emphasise the importance of ethical governance one may also turn to the OECD, which has proposed a trio of E's to guide the improvement

⁷⁵⁰ *Arab Convention to Fight Corruption* (2010) <https://bit.ly/3AkYpum> (hereafter the Arab Convention).

⁷⁵¹ Preamble of the Arab Convention.

⁷⁵² Aa 2,4 and 10 of the Arab Convention.

⁷⁵³ Menzel 2015 *Public Integrity* 355; Huberts *The integrity of Governance: What It Is, What We Know, What Is Done and Where to Go?* 12.

⁷⁵⁴ Menzel 2015 *Public Integrity* 355; Huberts *The Integrity of Governance: What It Is, What We Know, What Is Done and Where to Go?* 12.

⁷⁵⁵ Preston and Sampford *Encouraging Ethics and Challenging Corruption* 16.

⁷⁵⁶ Preston and Sampford *Encouraging Ethics and Challenging Corruption* 16; Fawcett and Wardman "Ethical Governance in Local Government in England: A Regulator's View" 256.

of local governance, namely economy, efficiency, and effectiveness.⁷⁵⁷ More recently, however, the OECD has identified ethics, which is seen as an essential component of the solution of many contemporary local governance problems that modern governments face.⁷⁵⁸

Some scholars argue that efforts to combat corruption overlook the importance of ethical governance in local anti-corruption efforts.⁷⁵⁹ "Ethical conduct and corruption in the public sector are two sides of the same coin."⁷⁶⁰ In saying this Lekubu⁷⁶¹ notes that preventing corruption is impossible without a strong commitment from local government to ethical governance. Studies have confirmed that an omnipresent confidence deficit in local governance results from the widely publicised misconduct of public officials, including large-scale corruption.⁷⁶² The OECD believes that the crisis in deteriorating public trust in local governance is directly linked to the non-ethical conduct of public officials.⁷⁶³ Reforms promoting ethical governance can thus address misconduct such as corruption by municipal officials and the consequent confidence deficit in local governance.⁷⁶⁴

Ethical governance on the part of local government requires strong moral leadership that is also important for controlling corruption.⁷⁶⁵ Ideally leadership should inspire a high

⁷⁵⁷ Caldwell, Karri and Vollmar 2006 *Journal of Business Ethics* 214; Preston and Sampford *Encouraging Ethics and Challenging Corruption* 6; Fawcett and Wardman "Ethical Governance in Local Government in England: A Regulator's View" 255.

⁷⁵⁸ Osifo 2014 *International Journal of Public Administration* 31; Preston and Sampford *Encouraging Ethics and Challenging Corruption* 6; Mchunu and Dlamini 2020 *Journal of Public Administration* 62; Fawcett and Wardman "Ethical governance in local government in England: A regulator's view" 255.

⁷⁵⁹ Preston and Sampford *Encouraging Ethics and Challenging Corruption* 15; Park and Blenkinsopp 2011 *International Review of Administrative Sciences* 254; Mitchell 1998 *International Studies Quarterly* 109; Brusca, Rossi and Aversano 2018 *Comparative Policy Analysis: Research and Practice* 486; Gilbert 2018 *University of Chicago Legal Forum* 117.

⁷⁶⁰ Lekubu *A critique of South African Anti-corruption Strategies and Structures: A Comparative Analysis* 69; Pillay 2016 *African Journal of Public Affairs* 115.

⁷⁶¹ Lekubu *A Critique of South African Anti-corruption Strategies and Structures: A Comparative Analysis* 68; Pillay 2016 *African Journal of Public Affairs* 115.

⁷⁶² Caldwell, Karri and Vollmar 2006 *Journal of Business Ethics* 207; Naidoo 2012 *Journal of Public Administration* 657; Preston and Sampford *Encouraging Ethics and Challenging Corruption* 6; Fawcett and Wardman "Ethical Governance in Local Government in England: A Regulator's View" 256.

⁷⁶³ Preston and Sampford *Encouraging Ethics and Challenging Corruption* 7; Fawcett and Wardman "Ethical Governance in Local Government in England: A Regulator's View" 255.

⁷⁶⁴ Naidoo 2012 *Journal of Public Administration* 662; Preston and Sampford *Encouraging Ethics and Challenging Corruption* 7; Mchunu and Dlamini 2020 *Journal of Public Administration* 77; Fawcett and Wardman "Ethical Governance in Local Government in England: A Regulator's View" 256.

⁷⁶⁵ Harahap *Strategies for Preventing Corruption in Indonesia* 4, 5; Lekubu *A Critique of South African Anti-corruption Strategies and Structures: A Comparative Analysis* 68.

moral standard in local governance and by example educate the public on corruption.⁷⁶⁶ Strong leadership by the government has proven to be one of the better strategies to foster ethical governance and consequently prevent corruption.⁷⁶⁷ Conversely, poor local leadership is seen as an obstacle to an effective corruption prevention strategy and a considerable contributor to the causes of corruption.⁷⁶⁸ Political will greatly influences a local government's leadership and can substantially impact the success or failure of promoting ethical governance.⁷⁶⁹ Lessons from Hong Kong, Malaysia, Nigeria and the United Republic of Tanzania, for example, demonstrate how strong political leadership in a government can enhance ethical governance and help prevent corruption.⁷⁷⁰

3.3.1 Standard: Comply with human rights obligations

One can identify complying with human rights obligations as a standard which contributes to integrity in preventing corruption.⁷⁷¹ It is said that failing to comply with human rights obligations creates opportunities for corruption, and policies that promote human rights prevent corruption.⁷⁷²

In the local government context, the standard requires local authorities to take legislative and other measures to comply with human rights obligations.⁷⁷³ This includes making

⁷⁶⁶ Transparency International 2020 <https://www.transparency.org/en/end-corruption> and Harahap *Strategies for Preventing Corruption in Indonesia* 4, 5.

⁷⁶⁷ Naidoo 2012 *Journal of Public Administration* 660; UNDP *Institutional Arrangements to Combat Corruption: A Comparative Study* 66.

⁷⁶⁸ UNDP *Institutional Arrangements to Combat Corruption: A Comparative Study* 97.

⁷⁶⁹ Although much more can be written on how a lack of political will and leadership effects anti-corruption efforts, the law can contribute little to improve it. This thesis therefore limits itself to minimising political interference in certain governance matters. See para 3.3.3 below. UNDP *Institutional Arrangements to Combat Corruption: A Comparative Study* 48, 66; Agbor 2019 *African Journal of International and Comparative Law* 51.

⁷⁷⁰ UNDP *Institutional Arrangements to Combat Corruption: A Comparative Study* 48, 66, 71, 97.

⁷⁷¹ A 3(2) of the AUCPCC read with aa 3(7) and 4(1) of the *African Charter on Values and Principles of Public Service and Administration* (2011); a 4(c) of the *African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development* (2014) <https://bit.ly/3fCBC5a>; aa 2(1), 3(1), 4(1), 6, 7, 8(2), 27(8), 27(10), 33(7), 40, 41 and 43 of the *African Charter on Democracy, Elections and Governance* (2007) AU Doc AU/Dec/147/VII; a 1 of the *African Charter on Human and People's Rights* (1981); a 3 of the *SADC Charter of Fundamental Social Rights in SADC* (2003) <https://bit.ly/3IMbp8l>; *ASEAN Political-security Community Blueprint 2025* <https://bit.ly/2VxpV8K> para A.2.5.

⁷⁷² Gebeye *Corruption and Human Rights: Exploring the Relationships* 19.

⁷⁷³ A 3(2) of the AUCPCC read with aa 3(7) and 4(1) of the *African Charter on Values and Principles of Public Service and Administration* (2011); a 4(c) of the *African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development* (2014) <https://bit.ly/3fCBC5a>; aa 2(1),

laws and policies to safeguard these rights from the effects of public sector corruption.⁷⁷⁴ Such policies ensure that municipal governance is not exercised in a manner that infringes on human rights. For example, municipal policies should require adherence to good governance to ensure that the municipalities have continued capacity to provide the uninterrupted basic services required for the fulfilment of human rights, for example.⁷⁷⁵

Moreover, some actions to promote human rights also incidentally prevent public sector corruption;⁷⁷⁶ for example, social audits wherein the municipal department's social or human resource aspects are evaluated and reported on.⁷⁷⁷ Such reports may typically show how a municipal department can improve its social and ethical performance and consequently improve its service delivery in fulfilment of human rights.⁷⁷⁸ States can draw from examples of such actions and can guide local government by using a national or subnational law and policy framework to prevent corruption.

3.3.2 Standard: Establish and enforce codes of conduct

Integrity and ethical governance presupposes a standard to establish and enforce codes of conduct.⁷⁷⁹ Based on the premise that local government has a duty to promote a culture whereby officials act in the public interest, it is accepted that international and regional standards of behaviour for public officials apply equally to municipal officials as well.⁷⁸⁰ Therefore, a standard is set in international and regional law that codes of conduct should be established and enforced for public officials, including officials of local authorities, to

3(1), 4(1), 6, 7, 8(2), 27(8), 27(10), 33(7), 40, 41 and 43 of the *African Charter on Democracy, Elections and Governance* (2007) AU Doc AU/Dec/147/VII; a 1 of the *African Charter on Human and People's Rights* (1981); a 3 of the *SADC Charter of Fundamental Social Rights in SADC* (2003) <https://bit.ly/3IMbp8l>.

⁷⁷⁴ Kumar 2003 *Columbia Journal of Asian Law* 57.

⁷⁷⁵ See para 2.5.4 above.

⁷⁷⁶ Kumar 2003 *Columbia Journal of Asian Law* 57.

⁷⁷⁷ Sekalala, Masud and Bosco 2020 *Global Health Action* 9.

⁷⁷⁸ Sekalala, Masud and Bosco 2020 *Global Health Action* 9.

⁷⁷⁹ Aa 2(5) of the *African Charter on Values and Principles of Public Service and Administration* (2011); 4(f) of the *African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development* (2014) <https://bit.ly/3fCBC5a>; CIPFA *International Framework for Good Governance in the Public Sector* 10; a 5(1) of the UNCAC; *ASEAN Political-security Community Blueprint 2025* <https://bit.ly/2VxpV8K> para A.2.3; principle 15 of the *EU the Twenty Guiding Principles for the Fight Against Corruption* (1997); a 10 of the *Arab Anti-corruption Convention* (2010).

⁷⁸⁰ CIPFA *International Framework for Good Governance in the Public Sector* 10.

promote integrity, honesty and responsibility as part of preventing corruption.⁷⁸¹ The purpose of formulating and implementing codes of conduct is to ensure that public officials know how to conduct themselves in their official duties.⁷⁸²

Codes of conduct are required to be founded on justice, fairness, equality and integrity.⁷⁸³ This means that the normal behaviour of public officials extends beyond legal expectations and should include values such as objectivity, selflessness, honesty, neutrality or impartiality, common courtesy and responsibility.⁷⁸⁴ Accepted behaviour as captured in codes of conduct for government officials thus reflects public expectations about how public officials should discharge their duties.⁷⁸⁵ Ensuring that the behavioural standards are clearly explained and that penalties for breaches are explicitly provided for can increase the effective implementation of codes of conduct.⁷⁸⁶ The standard suggests that local government officials must demonstrate integrity and respect for all rules, values and codes of conduct when discharging their duties.⁷⁸⁷

3.3.3 Standard: Reduce political interference

Integrity as an anti-corruption principle implies a standard to reduce political interference in local governance.⁷⁸⁸ Political interference can be understood as the undue political manipulation of governance decisions, which include policy development.⁷⁸⁹ Reducing

⁷⁸¹ Aa 2(5) of the *African Charter on Values and Principles of Public Service and Administration* (2011); 4(f) of the *African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development* (2014) <https://bit.ly/3fCBC5a>; CIPFA *International Framework for Good Governance in the Public Sector* 10; a 5(1) of the UNCAC; *ASEAN Political-security Community Blueprint 2025* <https://bit.ly/2VxpV8K> para A.2.3.

⁷⁸² Preston and Sampford *Encouraging ethics and challenging corruption* 32; a 4(a) of the *SADC Protocol Against Corruption*.

⁷⁸³ Preston and Sampford *Encouraging Ethics and Challenging Corruption* 6; Fawcett and Wardman "Ethical governance in local government in England: A regulator's view" 256.

⁷⁸⁴ Aa 3(6) and 9 of the *African Charter on Values and Principles of Public Service and Administration* (2011); a 14(5) of the *African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development* (2014) <https://bit.ly/3fCBC5a>; a 8(2) of the UNCAC; CIPFA *International Framework for Good Governance in the Public Sector* 10; a 3(1) of the *Inter-American Convention Against Corruption* (1996) 35 ILM 724.

⁷⁸⁵ CIPFA *International Framework for Good Governance in the Public Sector* 10.

⁷⁸⁶ UNDP *Institutional Arrangements to Combat Corruption: A Comparative Study* 97.

⁷⁸⁷ Aa 7(1), 10 and 11 of the *African Charter on Values and Principles of Public Service and Administration* (2011); a 14(5) of the *African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development* (2014) <https://bit.ly/3fCBC5a>.

⁷⁸⁸ A 7(1) of the AUCPCC; a 8(5) of the UNCAC.

⁷⁸⁹ Fombad and Steytler *Corruption and constitutionalism in Africa: Revisiting control measures and strategies* 37.

political interference in governance decisions is part of ethical governance because it prevents public office from benefitting a political party and deters unethical conduct.⁷⁹⁰ Political interference requires managing conflicts of interest, which entails the provision of law and policy that oblige public officials, including municipal officials, to declare their assets and gifts received before assuming office and during the exercise of their office.⁷⁹¹ Political funding may lead to political interference in governance decisions. Legal prescriptions must therefore be developed to regulate political funding. The purpose of such prescriptions are to prevent the abuse of public office to fuel political agendas.⁷⁹² This standard also necessitates making key decisions, such as those involving municipal human and financial resources, on objective criteria.⁷⁹³ Furthermore, elected public officials, such as mayors and councillors, must be precluded from participating in certain municipal departments prone to corruption.⁷⁹⁴ This means that elected public officials will not be able to participate in accepting or rejecting municipal tenders, for example.⁷⁹⁵

3.3.4 Standard: Strengthen systems for human resource management

Adopting legislation and developing other measures for a system of human resource management for public officials is also seen as one of the standards which contribute to integrity and prevent corruption.⁷⁹⁶ In the local government context, human resource management helps to ensure that competent people occupy public office and that government institutions have the human resource capacity to fulfil their functions, for example.⁷⁹⁷ Public officials should be appointed, promoted, retired and retrenched according to a system founded on efficiency, transparency, objective criteria (clearly set

⁷⁹⁰ A 7(1) of the AUCPCC; a 8(5) of the UNCAC.

⁷⁹¹ A 7(1) of the AUCPCC; a 8(5) of the UNCAC.

⁷⁹² A 10 of the AUCPCC.

⁷⁹³ See paras 3.3.4 and 3.3.5 below.

⁷⁹⁴ Lindstedt and Naurin 2010 *International Political Science Review* 302; Bertot, Jaeger and Grimes 2011 *Transforming Government: People, Process and Policy* 80; a 9 of the UNCAC; a 4(b) of the *SADC Protocol Against Corruption*.

⁷⁹⁵ Lindstedt and Naurin 2010 *International Political Science Review* 302; Bertot, Jaeger and Grimes 2011 *Transforming Government: People, Process and Policy* 80; a 9 of the UNCAC; a 4(b) of the *SADC Protocol Against Corruption*.

⁷⁹⁶ A 14(6) of the *African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development* (2014) <https://bit.ly/3fCBC5a>; 8(2) of the UNCAC; CIPFA *International Framework for Good Governance in the Public Sector* 10; a 3 of the *Inter-American Convention Against Corruption* (1996) 35 ILM 724.

⁷⁹⁷ 7(1) of the UNCAC.

out in legislation), merit, equity and aptitude.⁷⁹⁸ In addition local authorities may develop and establish staff interaction, exemplary behaviour, the management of conflicts of interest, education, performance management and reward processes.⁷⁹⁹ A human resource management system should typically have an internal ethical committee *inter alia* to monitor the implementation of an ethical culture and to train public officials in ethics.⁸⁰⁰

3.3.5 Standard: Formulate and implement a public finance management system

The development and institutionalisation of an extensive public financial management system is another standard which complements integrity and ethical governance as a principle to prevent corruption.⁸⁰¹ This system should be established in national law. Its purpose is primarily to guide how public fiscal resources are used and to make provision for the maintenance of auditing and follow-up processes through timely reporting on public income and expenses, establishing oversight mechanisms, and implementing risk management.⁸⁰²

Local authorities must ensure that their internal accounting processes include records with reasonable details which accurately reflect its real income and expenditure.⁸⁰³ In addition, a set of procedures for adopting budgets must be established and

⁷⁹⁸ 7(1) of the UNCAC.

⁷⁹⁹ CIPFA *International Framework for Good Governance in the Public Sector* 10. For more specific provisions on the content of codes of conduct, consult CIPFA *International Framework for Good Governance in the Public Sector* 10; UN Habitat *International Guidelines on Decentralisation and the Strengthening of Local Authorities* (2009) paras A.12, A.13; a 3(3) of the *Inter-American Convention Against Corruption* (1996). For particular prescriptions on conflicts of interest see CIPFA *International Framework for Good Governance in the Public Sector* 14; UN Habitat *International Guidelines on Decentralisation and the Strengthening of Local Authorities* (2009) para A.12; a 7(4) of the UNCAC. For more requirements on performance management read CIPFA *International Framework for Good Governance in the Public Sector* 10; UN Habitat *International Guidelines on Decentralisation and Access to Basic Services for All* (2009) para A.14.c; aa 7(2) and 20 of the *African Charter on Values and Principles of Public Service and Administration* (2011).

⁸⁰⁰ A 7(2) of the AUCPCC.

⁸⁰¹ A 5(4) of the AUCPCC; aa 4(c) and 4(h) of the *SADC Protocol Against Corruption*; a 9(2) of the UNCAC; principle 8 of the *EU the Twenty Guiding Principles for the Fight Against Corruption* (1997).

⁸⁰² A 5(4) of the AUCPCC; aa 4(c) and 4(h) of the *SADC Protocol Against Corruption*; a 9(2) of the UNCAC.

⁸⁰³ Aa 4(c) and 4(h) of the *SADC Protocol Against Corruption*; a 8 of the *OECD Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions* (1998) 37 ILM 1.

implemented.⁸⁰⁴ Finally, corrective action must be enforced against a local government's failure to comply with public finance controls.⁸⁰⁵ This means that states must put forward clear consequences and enforcement mechanisms where local authorities do not comply with public finance controls.

Public procurement refers to the acquisition of public resources and is part of financial management.⁸⁰⁶ It has also been identified as a hotspot for corrupt activities and enjoys particular attention in the UNCAC.⁸⁰⁷ Therefore, a procurement system founded on principles of transparency, equity, efficiency, competition and objective decision making must be established.⁸⁰⁸ The standard further requires that local authorities prescribe predetermined, clear, and objective criteria to facilitate public officials' decisions regarding the acquisition of goods and services in municipalities.⁸⁰⁹ Invitations to bid must be clear and allow enough time to prepare and submit tenders.⁸¹⁰ A procurement system is to provide an effective review and appeal system to ensure legal recourse and remedies where deviations of the procurement system occurred.⁸¹¹

3.4 Principle 2: Transparency in governance

Transparency in governance is popularly considered a principle for preventing corruption.⁸¹² As with the previous section, this discussion will explore transparency as a principle for preventing corruption generally. Transparency comprises of a number of standards, namely complying with civil, political and procedural human rights, increasing access to information, and encouraging whistle blowing. These standards will be discussed in more detail after the introduction of the transparency principle.

⁸⁰⁴ A 9(2) of the UNCAC.

⁸⁰⁵ A 9(2) of the UNCAC.

⁸⁰⁶ A 9 of the UNCAC; a 10 of the *Arab Anti-corruption Convention* (2010).

⁸⁰⁷ A 9 of the UNCAC.

⁸⁰⁸ A 9 of the UNCAC; a 4(b) of the *SADC Protocol Against Corruption*.

⁸⁰⁹ A 9 of the UNCAC.

⁸¹⁰ A 9 of the UNCAC.

⁸¹¹ A 9 of the UNCAC.

⁸¹² Lindstedt and Naurin 2010 *International Political Science Review* 302; Bertot, Jaeger and Grimes 2011 *Transforming Government: People, Process and Policy* 80.

For governments, transparency equates to open government.⁸¹³ It entails releasing information that will help evaluate government institutions such as municipalities, for example.⁸¹⁴ The information required to be transparently available is typically geared towards providing clarity on government rules, regulations and decisions to the public.⁸¹⁵ In addition, this information should include reasons for government decisions.⁸¹⁶ Transparent institutions are therefore those that enable people inside and outside the institution to acquire the requisite information to form opinions about the activities and procedures in the institution.⁸¹⁷

Transparency mainly deters public officials from misusing their positions and facilitates citizens' vigilance to hold public officials accountable.⁸¹⁸ The absence of transparency renders corruption less risky and more appealing, because transparency prevents or limits opportunities to partake in corrupt behaviour.⁸¹⁹ "There can be no faith in government if our highest offices are excused from scrutiny."⁸²⁰ Public scrutiny prevents corruption and transparency makes such scrutiny possible.⁸²¹ Furthermore, transparency adds legitimacy to governments.⁸²² Public trust and the legitimacy of governments are increased by communicating what motivated the development of policies and the reasons behind government decisions.⁸²³

3.4.1 Standard: Increase access to information

A legal and policy framework that guarantees access to information held by government institutions is an important standard that should be met in preventing corruption.⁸²⁴

⁸¹³ Park and Blenkinsopp 2011 *International Review of Administrative Sciences* 256.

⁸¹⁴ A 10 of the UNCAC; Mitchell 1998 *International Studies Quarterly* 110; Lindstedt and Naurin 2010 *International Political Science Review* 302.

⁸¹⁵ Park and Blenkinsopp 2011 *International Review of Administrative Sciences* 256.

⁸¹⁶ Gilbert 2018 *University of Chicago Legal Forum* 119.

⁸¹⁷ Lindstedt and Naurin 2010 *International Political Science Review* 304.

⁸¹⁸ Park and Blenkinsopp 2011 *International Review of Administrative Sciences* 256; Bertat, Jaeger and Grimes 2011 *Transforming Government: People, Process and Policy* 79.

⁸¹⁹ Bertat, Jaeger and Grimes 2011 *Transforming Government: People, Process and Policy* 80.

⁸²⁰ Transparency International 2020 <https://voices.transparency.org/10-quotes-about-corruption-and-transparency-vol-2-802020c68574>.

⁸²¹ Gilbert 2018 *University of Chicago Legal Forum* 122.

⁸²² Brusca, Rossi and Acersano *Journal of Comparative Policy Analysis: Research and Practice* 487.

⁸²³ Brusca, Rossi and Acersano *Journal of Comparative Policy Analysis: Research and Practice* 488.

⁸²⁴ A 13 of the UNCAC.

Access to information refers to the free flow and accessibility of information on governance issues.⁸²⁵ It translates into people being able to "look into something, to see what is going on."⁸²⁶ Increasing access to information can be considered as central to transparency because it requires local authorities to share their rules, regulations, governance decisions and the reasons for them.⁸²⁷ Local authorities can increase the availability of information by adopting simple and easy procedures that enable the public to obtain information on governance issues.⁸²⁸ This information should include any information that can assist in combatting corruption, including how decisions are made in public administration, the movement of money⁸²⁹ and the day-to-day functioning of public organisations.⁸³⁰ In the provision of information, due regard must be given to the protection of privacy and personal data.⁸³¹

Providing information only on request is no longer considered sufficient to facilitate transparency.⁸³² Law and policy must compel local governments to proactively disclose relevant information such as budgets and reports on local government expenditure.⁸³³ This information must stand a reasonable chance of reaching the public.⁸³⁴ Law and policy can prescribe when, on which platforms and in which format government information is shared, which can provide the public a reasonable opportunity to access this information.⁸³⁵ Local authorities can also approach the media to help disseminate information to the general public.⁸³⁶

Often information proactively disclosed on decisions of local authorities is presented in a report format. Information contained in certain documents such as reports on government financial management and public official's performance management

⁸²⁵ Park and Blenkinsopp 2011 *International Review of Administrative Sciences* 256.

⁸²⁶ Lindstedt and Naurin 2010 *International Political Science Review* 304.

⁸²⁷ Mitchell 1998 *International Studies Quarterly* 110; Lindstedt and Naurin 2010 *International Political Science Review* 304.

⁸²⁸ A 10 of the UNCAC.

⁸²⁹ A 7(2) of the *United Nations Convention Against Transnational Organized Crime* (2001) 40 ILM 335.

⁸³⁰ A 10 of the UNCAC; a 9 of the AUCPCC; a 4(d) of the *SADC Protocol Against Corruption*.

⁸³¹ A 10 of the UNCAC; A 5(8) of the AUCPCC; a 4(j) of the *SADC Protocol Against Corruption*; Park and Blenkinsopp 2011 *International Review of Administrative Sciences* 256.

⁸³² Park and Blenkinsopp 2011 *International Review of Administrative Sciences* 256.

⁸³³ Park and Blenkinsopp 2011 *International Review of Administrative Sciences* 256.

⁸³⁴ Lindstedt and Naurin 2010 *International Political Science Review* 302.

⁸³⁵ Lindstedt and Naurin 2010 *International Political Science Review* 302.

⁸³⁶ A 12 of the AUCPCC; a 4(i) of the *SADC Protocol Against Corruption*; a 13 of the UNCAC.

provides the community with details that may help them to detect corruption.⁸³⁷ Local authorities can use policies to establish official communication channels where the public may access such reports.⁸³⁸

3.4.2 Standard: Encourage whistle blowing

Transparency as an anti-corruption principle implies a standard to encourage whistle-blowing.⁸³⁹ The existence and enforcement of an adequate whistle-blowing municipal policy framework significantly improve transparency in government and contribute towards curbing corruption.⁸⁴⁰ For example, local authorities can facilitate whistle-blowing by establishing hotlines for complaints of alleged corruption.⁸⁴¹ These channels to report corruption must be easily accessible for both public officials and the community.⁸⁴² Effective reporting channels make it easier for individuals to blow the whistle on corruption and, therefore, significantly increase the detection of corruption.⁸⁴³

However, in reporting corruption individuals make themselves vulnerable to retaliation from those engaged in the corruption.⁸⁴⁴ Fear of retaliation has discouraged the public from reporting instances of corruption and consequently lowering the risk of exposing corruption.⁸⁴⁵ Therefore, local governments must protect whistle blowers, witnesses of corruption, and any other person who in good faith provides information involving corrupt acts.⁸⁴⁶ This can be done by cooperating with national witness protection programmes, for example. Whistle blower protection should extend to include relatives and other people close to them, because retaliation is seldom aimed at the whistle blowers

⁸³⁷ UNDP *Institutional Arrangements to Combat Corruption: A Comparative Study* 33, 34.

⁸³⁸ A 10 of the UNCAC.

⁸³⁹ A 14 of the *Arab Anti-corruption Convention* (2010).

⁸⁴⁰ A 5(5) of the AUCPCC; a 4(e) of the *SADC Protocol Against Corruption*; aa 8(4), 32 and 33 of the UNCAC.

⁸⁴¹ UNDP *Institutional Arrangements to Combat Corruption: A Comparative Study* 71.

⁸⁴² A 5(6) of the AUCPCC; aa 8(4) and 33 of the UNCAC.

⁸⁴³ A 5(5) of the AUCPCC; a 4(e) of the *SADC Protocol Against Corruption*; aa 8(4), 32 and 33 of the UNCAC.

⁸⁴⁴ A 5(5) of the AUCPCC; a 4(e) of the *SADC Protocol Against Corruption*; aa 8(4), 32 and 33 of the UNCAC.

⁸⁴⁵ UNDP *Institutional Arrangements to Combat Corruption: A Comparative Study* 80.

⁸⁴⁶ A 5(5) of the AUCPCC; a 4(e) of the *SADC Protocol Against Corruption*; aa 8(4), 32 and 33 of the UNCAC; a 9 of the *Civil Law Convention on Corruption* (1999) EUR/TS/174.

themselves.⁸⁴⁷ Local government whistle-blower protection policies may typically include the establishment of procedures to secure the physical safety of whistle blowers and procedures to conceal their identity or whereabouts.⁸⁴⁸ Local policies should provide for sanctions such as fines where false and malicious accusations are made against innocents to avoid the abuse of a reporting system.⁸⁴⁹ It must also be emphasised that whistle-blowing relies heavily on other measures such as access to information and civic education for its effective contribution to controlling corruption.⁸⁵⁰

3.5 Principle 3: Accountability in governance

The following section introduces accountability in governance as a principle to prevent corruption. Many standards on accountability can be identified from international and regional law and policy. Each of these standards are explored in further detail after accountability has been introduced.

Accountability acts as a safeguard against corruption where public officials have abused their power and is also a vital component of any anti-corruption agenda.⁸⁵¹ Accountability implies that public officials have to account for how and why public resources were spent and what results were achieved.⁸⁵² The propensity for abusing power necessitates safeguards against governments who exercise power.⁸⁵³ It makes governments answerable for their actions and has been regarded as forming part of "the social contract between citizens and the state which is key to wellbeing and progressive change."⁸⁵⁴ Accountability, therefore, goes hand in hand with transparency.⁸⁵⁵ For transparency to be

⁸⁴⁷ A 32 of the UNCAC.

⁸⁴⁸ A 32 of the UNCAC.

⁸⁴⁹ A 5(7) of the AUCPCC; a 4(f) of the *SADC Protocol Against Corruption*.

⁸⁵⁰ A 5(5) of the AUCPCC; a 4(e) of the *SADC Protocol Against Corruption*; aa 8(4), 32 and 33 of the UNCAC.

⁸⁵¹ Dube *Enhancing Democratic Accountability Through Constitutionalism in South Africa* 37; Chuah, Loayza and Myers *The Fight Against Corruption: Taming Tigers and Swatting Flies* 3; Harahap *Strategies for Preventing Corruption in Indonesia* 4; Lekubu *A Critique of South African Anti-corruption Strategies and Structures: A Comparative Analysis* 69.

⁸⁵² Brusca, Rossi and Aversano 2018 *Journal of Comparative Policy Analysis: Research and Practice* 488.

⁸⁵³ Dube *Enhancing Democratic Accountability Through Constitutionalism in South Africa* 37.

⁸⁵⁴ Brusca, Rossi and Aversano 2018 *Journal of Comparative Policy Analysis: Research and Practice* 488; Lekubu *A Critique of South African Anti-corruption Strategies and Structures: A Comparative Analysis* 54.

⁸⁵⁵ Brusca, Rossi and Aversano 2018 *Journal of Comparative Policy Analysis: Research and Practice* 488.

effective, the public must have some sanctions at their disposal.⁸⁵⁶ It thus involves more than just exposing the actions of public officials.⁸⁵⁷

3.5.1 Standard: Increase access to evidence

Access to evidence as a standard forms part of accountability in as far as it enables prosecutions of corruption. States must establish law and policy measures to enable competent authorities to "search, identify, trace, administer and freeze or seize the instrumentalities and proceeds of corruption."⁸⁵⁸ For local authorities this means that they can use policies that require public officials to cooperate with corruption-related investigations.⁸⁵⁹ Such measures should enable officials investigating corruption to gather evidence on corrupt activities.⁸⁶⁰ Access to evidence increases the risk of perpetrators getting caught 'with their hands in the cookie jar' and therefore helps prevent corruption.⁸⁶¹ Law and policy measures should empower officials to access evidence and prescribe simple and easy procedures to do so.⁸⁶²

3.5.2 Standard: Remove legal immunities

The United Nations Development Programme shows that in the past, accountability has been hindered by certain legal immunities which served as shields from prosecution.⁸⁶³ Governments must ensure that any legal immunities granted to public officials will not create an obstacle to effective investigation and prosecution of corruption.⁸⁶⁴ Criminal and civil immunities offered to some public officials such as mayors indemnify them from civil or criminal legal action arising from conduct (proper or improper) engaged in during their employment.⁸⁶⁵ Local authorities can contribute to the removal of legal immunities by

⁸⁵⁶ Lindstdt and Naurin 2010 *International Political Science Review* 302.

⁸⁵⁷ Lindstdt and Naurin 2010 *International Political Science Review* 302; De Jager *Voice and Accountability in a One-party Dominant System: A Comparative Case Study of Mexico and South Africa* 81.

⁸⁵⁸ A 16 of the AUCPCC. Also see a 8 of the *SADC Protocol Against Corruption*; a 31 and Chapter V of the UNCAC; a 11 of the *Civil Law Convention on Corruption* (1999) EUR/TS/174.

⁸⁵⁹ Cain *et al* 2001 *Crime, Law and Social Change* 409; Dickson 2014 *ERA Forum* 52.

⁸⁶⁰ Cain *et al* 2001 *Crime, Law and Social Change* 409; Dickson 2014 *ERA Forum* 52.

⁸⁶¹ Cain *et al* 2001 *Crime, Law and Social Change* 409; Dickson 2014 *ERA Forum* 52.

⁸⁶² Cain *et al* 2001 *Crime, Law and Social Change* 409; Dickson 2014 *ERA Forum* 52.

⁸⁶³ UNDP *Institutional Arrangements to Combat Corruption: A Comparative Study* 92; principle 5 of the *EU the Twenty Guiding Principles for the Fight Against Corruption* (1997).

⁸⁶⁴ A 7(5) of the AUCPCC; a 16 of the *Criminal Law Convention on Corruption* (1999) EUR/TS/173.

⁸⁶⁵ A 7(5) of the AUCPCC.

using municipal policies. Such policies should describe how local authorities will conduct investigations of alleged corruption and that declarations of public officials will be communicated to the community. For example, anti-corruption efforts in Thailand have been hindered by classifying the declarations of public officials regarding their assets and liabilities as secret by law.⁸⁶⁶ It is difficult to detect illicit enrichment without access to such declarations.⁸⁶⁷

3.5.3 Standard: Provide legal redress

Accountability presupposes a standard on providing legal redress for the victims of corruption. In order to enhance accountability governments, including local authorities, should adopt laws that ensure that legal redress is available where corruption took place.⁸⁶⁸ Legal redress should be in the form of a sanction imposed on the perpetrator and a remedy for the victims of the specific corrupt act.⁸⁶⁹ Often legal redress as part of consequence management plays a crucial role in deterring people from engaging in corrupt activities and thus also forms an important component of efforts to prevent corruption.⁸⁷⁰ Legal redress may involve reparation,⁸⁷¹ restitution, rehabilitation and other

⁸⁶⁶ UNDP *Institutional Arrangements to Combat Corruption: A Comparative Study* 92.

⁸⁶⁷ UNDP *Institutional Arrangements to Combat Corruption: A Comparative Study* 92.

⁸⁶⁸ Lindstdt and Naurin 2010 *International Political Science Review* 302; UN Human Rights Committee General Comment No. 31, the *Nature of the General Legal Obligation Imposed on States Parties to the Covenant* (2004) CCPR/C/21/Rev1/Add13 paras 2, 4, 5.

⁸⁶⁹ Lindstdt and Naurin 2010 *International Political Science Review* 302; UN Human Rights Committee General Comment No. 31, the *Nature of the General Legal Obligation Imposed on States Parties to the Covenant* (2004) CCPR/C/21/Rev1/Add13 paras 2, 4, 5; a 3 of the *OECD Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions* (1998) 37 ILM 1; aa 5 and 6 of the *European Union Convention Against Corruption Involving EU Officials or Officials of EU Countries* (1997); aa 3, 4, 5 and 6 of the *Criminal Law Convention on Corruption* (1999) EUR/TS/173; a 4 of the *Arab Anti-corruption Convention* (2010).

⁸⁷⁰ Brusca, Rossi and Aversano 2018 *Journal of Comparative Policy Analysis: Research and Practice* 488; Lindstdt and Naurin 2010 *International Political Science Review* 302; UN Human Rights Committee General Comment No. 31, the *Nature of the General Legal Obligation Imposed on States Parties to the Covenant* (2004) CCPR/C/21/Rev1/Add13 paras 2,4 and 5.

⁸⁷¹ Reparation and restitution include processes for the forfeiture of the proceeds of corrupt activities. UNDP *Institutional Arrangements to Combat Corruption: A Comparative Study* 80. For example, in paras 31 and 36 of *Corruption Watch (NPC) (RF) v Chief Executive Officer of the South African Social Services and Others* [2018] ZAGPPHC 7, the South African High Court ordered a contractor to refund a substantial amount of money to the government institution responsible for providing social grants because of a deviation from fair process in public procurement which may very well have been a symptom of corruption.

measures aimed at bringing perpetrators to justice.⁸⁷² Other examples are public apologies, public memorials, guarantees of non-repetition and changes in laws.⁸⁷³ Local authorities, for example, must use disciplinary procedures and litigation for the recovery of losses as legal redress options.⁸⁷⁴

3.5.4 Standard: Establish and strengthen anti-corruption institutions

Anti-corruption institution(s) and a specialised unit in law enforcement to hold government officials accountable for engaging in corruption is considered a standard for accountability.⁸⁷⁵ Local authorities may establish institutions which complement the functions of national anti-corruption institutions.⁸⁷⁶ It is increasingly argued that local-level anti-corruption institutions, rather than national institutions, should be used to prevent and control corruption.⁸⁷⁷ The reasoning behind this argument lies in the prevalence of corruption in local service delivery.⁸⁷⁸ The decentralisation of government further increases the powers and authority of sub-national government, which creates opportunities for innovative ways to control and prevent corruption.⁸⁷⁹ Because they are the level of government closest to the ground, local authorities are best suited to address corruption in a diverse state population.⁸⁸⁰

⁸⁷² UN Human Rights Committee General Comment No. 31, the *Nature of the General Legal Obligation Imposed on States Parties to the Covenant* (2004) CCPR/C/21/Rev1/Add13 paras 2,4, 5; principle 4 of the *EU the Twenty Guiding Principles for the Fight Against Corruption* (1997); a 7 of the *Arab Anti-corruption Convention* (2010).

⁸⁷³ The UNDP observed that Singapore's inclusion of the possibility of terminating employment, pension and other benefits has also been effective in preventing corruption. UNDP *Institutional Arrangements to Combat Corruption: A Comparative Study* 80; UN Human Rights Committee General Comment No. 31, the *Nature of the General Legal Obligation Imposed on States Parties to the Covenant* (2004) CCPR/C/21/Rev1/Add13 paras 5, 7, 8.

⁸⁷⁴ A 7(3) of the AUCPCC; a 8(6) of the UNCAC.

⁸⁷⁵ A 5(3) of the AUCPCC; a 4(g) of the *SADC Protocol Against Corruption*; aa 6, 13(2) and 36 of the UNCAC; a 7(1) of the *United Nations Convention Against Transnational Organized Crime* (2001) 40 ILM 335; a 20 of the *Criminal Law Convention on Corruption* (1999) EUR/TS/173.

⁸⁷⁶ Masters and Graycar 2016 *Public Integrity* 50.

⁸⁷⁷ Michael and Mendes 2012 *International Journal of Law and Management* 27; Masters and Graycar 2016 *Public Integrity* 50.

⁸⁷⁸ Michael and Mendes 2012 *International Journal of Law and Management* 27; Masters and Graycar 2016 *Public Integrity* 50.

⁸⁷⁹ Michael and Mendes 2012 *International Journal of Law and Management* 27; Masters and Graycar 2016 *Public Integrity* 50.

⁸⁸⁰ Michael and Mendes 2012 *International Journal of Law and Management* 27; Masters and Graycar 2016 *Public Integrity* 50.

Legislation and policy must make provision for these institutions to be able to function independently and exercise their functions freely without any undue influence.⁸⁸¹ Independence can be improved by providing anti-corruption institutions with the authority to appoint, dismiss and train their staff.⁸⁸² Anti-corruption institutions often rely on investigators from the police force, which may compromise some of the institution's independence.⁸⁸³ Consequently, independence also implies having the necessary competence to investigate and prosecute instances of corruption independently.⁸⁸⁴ The independence of anti-corruption institutions may be vulnerable to abuse and should thus be subject to some form of oversight.⁸⁸⁵

Anti-corruption institutions must have a clear mandate to prevent, detect, punish and eliminate corruption.⁸⁸⁶ Efforts to prevent corruption should include the implementation and coordination of relevant legislation.⁸⁸⁷ An independent anti-corruption institution's effectiveness relies on the scope of its mandate.⁸⁸⁸ In Singapore, for example, powers to effectively investigate and provide punishment have ensured the anti-corruption institution's success.⁸⁸⁹ Anti-corruption institutions should have a balanced mandate paying equal attention to prevention, education and investigation (also referred to as the three-pronged approach) of corruption.⁸⁹⁰

In addition to a carefully balanced mandate, anti-corruption institutions should be backed by adequate legal powers and resources.⁸⁹¹ Therefore, governments should provide anti-corruption institutions with resources such as specialised staff, infrastructure and other

⁸⁸¹ Aa 13(2) and 36 of the UNCAC.

⁸⁸² UNDP *Institutional Arrangements to Combat Corruption: A Comparative Study* 47.

⁸⁸³ Tangri and Mwenda 2006 *Journal of Modern African Studies* 103; UNDP *Institutional Arrangements to Combat Corruption: A Comparative Study* 33, 34.

⁸⁸⁴ UNDP *Institutional Arrangements to Combat Corruption: A Comparative Study* 47.

⁸⁸⁵ Doig and Riley 1998 *Corruption and Integrity Improvement Initiatives in Developing Countries* 46; UNDP *Institutional Arrangements to Combat Corruption: A Comparative Study* 37, 38.

⁸⁸⁶ A 4(g) of the *SADC Protocol Against Corruption*.

⁸⁸⁷ Aa 6 and 13(2) of the UNCAC.

⁸⁸⁸ Doig and Riley 1998 *Corruption and Integrity Improvement Initiatives in Developing Countries* 46; UNDP *Institutional Arrangements to Combat Corruption: A Comparative Study* 76, 80.

⁸⁸⁹ UNDP *Institutional Arrangements to Combat Corruption: A Comparative Study* 76, 80.

⁸⁹⁰ Kuris 2017 *Policy and Society* 127; UNDP *Institutional Arrangements to Combat Corruption: A Comparative Study* 33, 34, 37, 38, 62.

⁸⁹¹ Tangri and Mwenda 2006 *Journal of Modern African Studies* 103; UNDP *Institutional Arrangements to Combat Corruption: A Comparative Study* 47.

material resources necessary to fulfil their mandates,⁸⁹² as limitations in this regard have somewhat stifled anti-corruption efforts.⁸⁹³

Government entities and stakeholders have a responsibility to provide support to anti-corruption institutions.⁸⁹⁴ It is a reality that not all local authorities have the resources and capacity to establish their own anti-corruption institution.⁸⁹⁵ In this instance, local authorities have to support national anti-corruption institutions, which may include sharing relevant information.⁸⁹⁶ Shared responsibility should be fostered for ensuring a 'corruption-free public sector'.⁸⁹⁷ This speaks *inter alia* to a coordinated approach in government in controlling corruption. This approach implies having a set framework or guide for governments to combat corruption.⁸⁹⁸

3.5.5 Standard: Facilitate stakeholder cooperation

Governments, including local authorities, are required to facilitate cooperation among a wide range of stakeholders.⁸⁹⁹ Cooperation amongst these stakeholders is important to ensure accountability, because it can increase transparency through sharing information.⁹⁰⁰ A legislative framework for cooperation to control corruption helps to ensure that anti-corruption efforts are coordinated and that jurisdictional boundaries are not blurred.⁹⁰¹ Local authorities should interpret and translate this legislative framework into what it means for them practically.⁹⁰² For example, municipalities may use policies to prescribe how information should be shared among different departments and describe

⁸⁹² Aa 13(2) and 36 of the UNCAC.

⁸⁹³ Naidoo 2013 *Journal of Contemporary African Studies* 525; UNDP *Institutional Arrangements to Combat Corruption: A Comparative Study* 33, 34, 52.

⁸⁹⁴ A 13 of the UNCAC; a 2(3) of the AUCPCC; aa 2(c) and 7 of the *SADC Protocol Against Corruption*; UNDP *Institutional Arrangements to Combat Corruption: A Comparative Study* 52.

⁸⁹⁵ UNDP *Institutional Arrangements to Combat Corruption: A Comparative Study* 33.

⁸⁹⁶ UNDP *Institutional Arrangements to Combat Corruption: A Comparative Study* 33.

⁸⁹⁷ UNDP *Institutional Arrangements to Combat Corruption: A Comparative Study* 33.

⁸⁹⁸ A 2(3) of the AUCPCC; aa 2(c) and 7 of the *SADC Protocol Against Corruption*; UNDP *Institutional Arrangements to Combat Corruption: A Comparative Study* 52.

⁸⁹⁹ Aa 6, 13, 36, 37, 38 and 39 of the UNCAC; aa 2, 12, 18, 19, 20 and 21 of the AUCPCC; aa 16 and 17 of the *Arab Anti-corruption Convention* (2010).

⁹⁰⁰ Lindstdt and Naurin 2010 *International Political Science Review* 302; De Jager *Voice and Accountability in a One-party Dominant System: A Comparative Case Study of Mexico and South Africa* 81; a 9 of the *European Union Convention Against Corruption Involving EU Officials or Officials of EU Countries* (1997); a 21 of the *Criminal Law Convention on Corruption* (1999) EUR/TS/173.

⁹⁰¹ A 2(3) of the AUCPCC; aa 2(c) and 7 of the *SADC Protocol Against Corruption*.

⁹⁰² Michael and Mendes 2012 *International Journal of Law and Management* 27.

municipal officials' anti-corruption responsibilities and powers.⁹⁰³ Another benefit of cooperation among government institutions is that shared information makes prosecutions simpler, because it increases access to evidence.⁹⁰⁴ Cooperation extends beyond different levels of government and includes cooperation amongst other stakeholders like NGOs, the public, foreign governments, and private entities.⁹⁰⁵

The media is one such valuable stakeholder, particularly in disseminating anti-corruption messages and reporting or exposing alleged instances of corruption.⁹⁰⁶ Governments should therefore take care to embrace and nurture this partnership.⁹⁰⁷ However, the media should not be seen as a replacement for face-to-face contact between local authorities and the community.⁹⁰⁸ Face-to-face contact plays a central role in creating awareness of local reporting mechanisms.⁹⁰⁹ Hong Kong, for example, established a network of offices to maintain direct contact with the different sections in the community.⁹¹⁰ These offices are the contact points between local authorities and the community and provide information while serving as report centres.⁹¹¹ As with good governance, platforms can be created to exchange best practices and experiences regarding the prevention of corruption in local government.⁹¹²

Anti-corruption policies and legislation on all levels of government should be coordinated and harmonised.⁹¹³ Such harmonisation provides a safeguard against those corrupt

⁹⁰³ Michael and Mendes 2012 *International Journal of Law and Management* 27.

⁹⁰⁴ Aa 2(2), 18 and 19 of the AUCPCC; a 2(b) of the *SADC Protocol Against Corruption*; aa 2(b), 37, 38, 39 and 43 of the UNCAC; a 7(4) of the *United Nations Convention Against Transnational Organized Crime* (2001) 40 ILM 335.

⁹⁰⁵ 2(b), 37, 38, 39 and 43 of the UNCAC; a 7(4) of the *United Nations Convention Against Transnational Organized Crime* (2001) 40 ILM 335.

⁹⁰⁶ UNDP *Institutional Arrangements to Combat Corruption: A Comparative Study* 48; principle 16 of the *EU the Twenty Guiding Principles for the Fight Against Corruption* (1997). This study does not evaluate or expound on the role of the media, because the objective is to identify the principles and standards of anti-corruption as entrenched in international and regional law only. See also the following source for an in-depth discussion on the media as an important stakeholder in preventing and controlling corruption: Sohail and Cavill *Partnering to Combat Corruption in Infrastructure Services: A Toolkit* 129.

⁹⁰⁷ UNDP *Institutional Arrangements to Combat Corruption: A Comparative Study* 48.

⁹⁰⁸ UNDP *Institutional Arrangements to Combat Corruption: A Comparative Study* 48.

⁹⁰⁹ UNDP *Institutional Arrangements to Combat Corruption: A Comparative Study* 48.

⁹¹⁰ UNDP *Institutional Arrangements to Combat Corruption: A Comparative Study* 48.

⁹¹¹ UNDP *Institutional Arrangements to Combat Corruption: A Comparative Study* 48.

⁹¹² Aa 2(9) and 2(10) of the *African Charter on Values and Principles of Public Service and Administration* (2011).

⁹¹³ A 2(3) of the AUCPCC; aa 2(c) and 7 of the *SADC Protocol Against Corruption*.

officials who would extort a misaligned legal framework.⁹¹⁴ This section shows the need for stronger linkages between government, civil society and the private sector as part of the anti-corruption agenda.⁹¹⁵

3.5.6 Standard: Promote the participation of society

Accountability requires society to participate in local governance.⁹¹⁶ Governments need to facilitate public identification with an anti-corruption agenda if it is to be successful.⁹¹⁷ Legislation and policies should thus reflect the reality that the public is an integral part of the checks and balances of power.⁹¹⁸ Public support can be gained by ensuring that the community is aware of the state's vision and mission regarding corruption.⁹¹⁹ Law and policy must be used to provide for public hearings to be used to highlight corruption prosecutions and expose areas where procedures, laws and policies can be improved.⁹²⁰ The visibility of other anti-corruption efforts, such as publicising reports of corruption investigations, can further increase public trust.⁹²¹ In addition, it is required that law and policy mandate education that fosters integrity and honesty among the youth, because it is vital for the next generation of public officials to be well versed in the value of continued anti-corruption efforts.⁹²²

Law and policy which promote participatory governance enable the public to evaluate government action and detect corruption.⁹²³ Participatory governance "seeks to deepen citizen participation in the governmental process."⁹²⁴ Participatory governance is based on the premise that an informed public is better enabled to detect warning signs of

⁹¹⁴ UNDP *Institutional Arrangements to Combat Corruption: A Comparative Study* 52.

⁹¹⁵ UNDP *Institutional Arrangements to Combat Corruption: A Comparative Study* 97.

⁹¹⁶ Harahap *Strategies for Preventing Corruption in Indonesia* 5; UNDP *Institutional Arrangements to Combat Corruption: A Comparative Study* 47; a 11 of the *Arab Anti-corruption Convention* (2010).

⁹¹⁷ Harahap *Strategies for Preventing Corruption in Indonesia* 5; UNDP *Institutional Arrangements to Combat Corruption: A Comparative Study* 47.

⁹¹⁸ Florez *et al Five Principles for Engaging Citizens in Anti-corruption Mechanisms* 7-10.

⁹¹⁹ UNDP *Institutional Arrangements to Combat Corruption: A Comparative Study* 97.

⁹²⁰ UNDP *Institutional Arrangements to Combat Corruption: A Comparative Study* 33, 34.

⁹²¹ Johnston 2002 *Corruption, Integrity and Law Enforcement* 29; UNDP *Institutional Arrangements to Combat Corruption: A Comparative Study* 57.

⁹²² UNDP *Institutional Arrangements to Combat Corruption: A Comparative Study* 47; principle 1 of *EU the Twenty Guiding Principles for the Fight Against Corruption* (1997).

⁹²³ Fischer "Participatory Governance: From Theory to Practice" 457.

⁹²⁴ Fischer "Participatory Governance: From Theory to Practice" 457.

corruption and hold accountable individuals in power.⁹²⁵ Policies of local authorities which seek to promote participatory governance must prescribe education programmes aimed at the average member of the general public.⁹²⁶ For example, these education programmes may take the form of outreach sessions addressing corruption (including the consequences and costs thereof).⁹²⁷ They can educate the public on the role that ordinary citizens can play in preventing corruption and address issues such as where and how to report corruption.⁹²⁸

Communication enables the public to meaningfully participate in governance-related matters. Information communication technology⁹²⁹ were used to improve transparency and accountability in governance as early as in the 1960s.⁹³⁰ However, since the 1960s older ICT methods such as cable television and telephone conferencing are no longer effective communication channels between municipalities and their communities.⁹³¹ Websites have recently increased in popularity and are now deemed as important platforms to communicate with the public and facilitate governance.⁹³²

Websites can be considered as serving citizens because they provide instant access to a variety of governance-related information (reflecting government priorities and strategies). They allow this regardless of the resident's location, time, or physical limitations and contain platforms for two-way communication.⁹³³ The information available on websites is important in promoting accountable, transparent and

⁹²⁵ Gilbert 2018 *University of Chicago Legal Forum* 121.

⁹²⁶ A 5(8) of the AUCPCC; a 4(j) of the *SADC Protocol Against Corruption*.

⁹²⁷ UNDP *Institutional Arrangements to Combat Corruption: A Comparative Study* 37, 38.

⁹²⁸ UNDP *Institutional Arrangements to Combat Corruption: A Comparative Study* 47.

⁹²⁹ Hereafter ICT.

⁹³⁰ Feeney and Brown 2017 *Government Information Quarterly* 62; D'Agostino *et al* 2011 *Public Administration Quarterly* 10.

⁹³¹ D'Agostino *et al* 2011 *Public Administration Quarterly* 10; Feeney and Brown 2017 *Government Information Quarterly* 62.

⁹³² D'Agostino *et al* 2011 *Public Administration Quarterly* 9.

⁹³³ Feeney and Brown 2017 *Government Information Quarterly* 65; D'Agostino *et al* 2011 *Public Administration Quarterly* 11.

participatory governance.⁹³⁴ Increased accountability and transparency, in turn, reduce corruption.⁹³⁵

3.5.7 Standard: Hold periodic government elections

Accountability requires of communities to hold elected governments accountable through periodic government elections.⁹³⁶ Governments should ensure that provision is made in their laws for periodic elections that are transparent, free and fair.⁹³⁷ Periodic elections give the community the power to remove an elected government from office should the majority of the members of the community feel that the currently elected government is no longer serving the public interest or engaging in corruption.⁹³⁸

National law and policy must make provision for a number of things, including that every person is afforded the right to participate in such elections.⁹³⁹ In addition, provision needs to be made for detailed to-do's, how-to's, and not-to's relating to elections (including local government elections) such as how voter's lists should be prepared, and that voting should take place freely, periodically and through secret ballots.⁹⁴⁰

⁹³⁴ D'Agostino *et al* 2011 *Public Administration Quarterly* 11; Feeney and Brown 2017 *Government Information Quarterly* 65.

⁹³⁵ D'Agostino *et al* 2011 *Public Administration Quarterly* 11.

⁹³⁶ Aa 2(b), 5(2) and 11(2) of the *African Charter on the Values and Principles of Decentralisation, Local Governance and Development* (2014) <https://bit.ly/3fCBC5a>; aa 2(1) and 4(1) of the *African Charter on Democracy, Elections and Governance* (2007) AU Doc AU/Dec/147/VII; A.13.b of the UN Habitat *International Guidelines on Decentralisation and Access to Basic Services for All* (2009); UN Habitat *International Guidelines on Decentralisation and the Strengthening of Local Authorities* (2009) para A.1; a 3(1) of the AUCPCC.

⁹³⁷ A 25 of the *International Covenant on Civil and Political Rights* (1966) 31 ILM 645; aa 2, 3, 5, 6 and 7 of the *Protocol on Democracy and Good Governance Supplementary to the Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security* UN Doc ASP1/12/01 (2001); a 13 of the *African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development* (2014) <https://bit.ly/3fCBC5a>; aa 2(3), 2(4), 2(13), 3(3), 3(4), 17, 29(3) and 34 of the *African Charter on Democracy, Elections and Governance* (2007) AU Doc AU/Dec/147/VII; a 25 of the *International Covenant on Civil and Political Rights* (1966) 31 ILM 645.

⁹³⁸ UN Human Rights Committee General Comment No. 25 *on Article 25 on the Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service* (1996) CCPR/C/21/Rev1/Add7 paras 1, 2, 7, 11, 12, 20, 21.

⁹³⁹ A 25 of the *International Covenant on Civil and Political Rights* (1966) 31 ILM 645.

⁹⁴⁰ A 25 of the *International Covenant on Civil and Political Rights* (1966) 31 ILM 645; aa 2, 3, 5, 6 and 7 of the *Protocol on Democracy and Good Governance Supplementary to the Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security* UN Doc ASP1/12/01 (2001); a 13 of the *African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development* (2014) <https://bit.ly/3fCBC5a>; aa 2(3), 2(4), 2(13), 3(3), 3(4), 17, 29(3) and 34 of the *African Charter on Democracy, Elections and Governance* (2007) AU Doc

Similar to good governance,⁹⁴¹ preventing corruption requires that local government establish measures that ensure the effective participation of all eligible citizens and special measures for the representation of women and marginalised groups.⁹⁴² As previously stated, ensuring effective participation could entail voter education, providing access to information (especially on citizens' right to vote through secret ballot, the right to contest election irregularities and the right to be protected from intimidation), voter registration and election campaigns.⁹⁴³

3.6 Concluding remarks

International and regional law and policy provide a telling-set of standards aimed at the improvement of integrity, transparency, and accountability of local government in the context of preventing corruption. The fourteen standards identified in this chapter offer a valuable benchmark against which South African anti-corruption law and policy can be evaluated (see chapter 4) and eventually inform recommendations for the prevention of public sector corruption in local government. The key features of this set of standards as they may find application to the South African local government context are the following:

- Local authorities must comply with human rights obligations by adopting policies aimed at ensuring uninterrupted basic services.⁹⁴⁴
- Local authorities are required to establish and enforce codes of conduct to guide the behaviour of public officials.⁹⁴⁵

AU/Dec/147/VII; a 25 of the *International Covenant on Civil and Political Rights* (1966) 31 ILM 645; UN Human Rights Committee General Comment No. 25 *on Article 25 on the Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service* (1996) CCPR/C/21/Rev1/Add7 paras 1, 2, 7, 11, 12, 20, 21; United Nations 2019 <https://www.un.org/en/sections/issues-depth/democracy/index.html>.

⁹⁴¹ See para 2.5.1.1 above.

⁹⁴² A 13(3) of the *African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development* (2014) <https://bit.ly/3fCBC5a>; a 25 of the *International Covenant on Civil and Political Rights* (1966) 31 ILM 645; a 34 of the *African Charter on Democracy, Elections and Governance* (2007) AU Doc AU/Dec/147/VII.

⁹⁴³ See para 2.5.1.1 above. A 13(3) of the *African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development* (2014) <https://bit.ly/3fCBC5a>; a 25 of the *International Covenant on Civil and Political Rights* (1966) 31 ILM 64; a 34 of the *African Charter on Democracy, Elections and Governance* (2007) AU Doc AU/Dec/147/VII.

⁹⁴⁴ See para 3.3.1 above.

⁹⁴⁵ See para 3.3.2 above.

- Political interference in local government matters must be reduced by adopting policies that require public officials to declare their personal interests and prohibit elected officials (politicians) from participating in certain processes prone to corruption, such as public procurement.⁹⁴⁶
- Local authorities should strengthen and establish systems for human resource management that extend beyond appointments and that make provision for training, performance management and debriefing processes.⁹⁴⁷
- Local authorities should implement a strong financial management system.⁹⁴⁸ This system must provide specifics pertaining to the adoption of budgets, accounting standards and public procurement.⁹⁴⁹
- Access to municipal information must be increased. Local authorities must proactively provide the community with information on important issues such as government finances.⁹⁵⁰
- Local authorities can encourage whistle-blowing by establishing channels to report corruption, such as hotlines.⁹⁵¹ Furthermore, with the support of national government local government must contribute to government procedures for the physical safety of whistle-blowers, including the concealment of their identities.⁹⁵²
- For local government, increasing access to evidence means that local policies must be used to describe the investigations processes of alleged corruption.⁹⁵³
- Local authorities must remove legal immunities which hinder accountability for corruption by requiring that declarations of interests of public officials be made public.⁹⁵⁴

⁹⁴⁶ See para 3.3.3 above.

⁹⁴⁷ See para 3.3.4 above.

⁹⁴⁸ See para 3.3.5 above.

⁹⁴⁹ See para 3.3.5 above.

⁹⁵⁰ See para 3.4.1 above.

⁹⁵¹ See para 3.4.2 above.

⁹⁵² See para 3.4.2 above.

⁹⁵³ See para 3.5.1 above.

⁹⁵⁴ See para 3.5.2 above.

- Provision must be made for legal redress where corruption took place, which means that local authorities must use disciplinary action and litigation for the recovery of losses as methods of legal redress.⁹⁵⁵
- It has been argued that local-level anti-corruption institutions are better suited to control corruption than national-level institutions.⁹⁵⁶ However, local authorities do not always have the resources or capacity to establish an anti-corruption institution, in which case they should support national-level institutions.⁹⁵⁷
- In cooperating with other stakeholders, local government should use policies to prescribe how information should be shared among different municipal departments.⁹⁵⁸ This also means that local government is to cultivate a 'sharing information' relationship with the media. In addition, local authorities must ensure that local policies are harmonised with national anti-corruption laws and policies.⁹⁵⁹
- The participation of society in governance matters should be promoted through local policies which promote participatory governance.⁹⁶⁰ Such policies must specifically be aimed at enabling community members to contribute to decisions on governance matters.⁹⁶¹
- Elected local governments must comply with the national election system and engage in voter education efforts.⁹⁶²

In the next chapter, South African law and policy to prevent corruption in local government is evaluated against the standards identified in this chapter.

⁹⁵⁵ See para 3.5.3 above.

⁹⁵⁶ See para 3.5.4 above.

⁹⁵⁷ See para 3.5.4 above.

⁹⁵⁸ See para 3.5.5 above.

⁹⁵⁹ See para 3.5.5 above.

⁹⁶⁰ See para 3.5.6 above.

⁹⁶¹ See para 3.5.6 above.

⁹⁶² See para 3.5.7 above.

CHAPTER 4

SOUTH AFRICAN LAW AND POLICY ON THE PREVENTION OF PUBLIC SECTOR CORRUPTION IN LOCAL GOVERNMENT

4.1 Introduction

The standards identified in chapter 3 (many of which are not judicially enforceable) serve to inform the content and implementation of South African national law and policy. One should note, however, that not all the standards identified speak to the enactment of legislation and would consequently not have made their way into domestic legislation. Some standards speak directly to the executive branch of government and subsequently do not form part of this chapter's analysis. The objective of this chapter is to evaluate South African anti-corruption law against the standards. This is done to determine, whether the standards are provided for in South Africa's existing law and policy. The evaluation is two-pronged: 1) to critically review the extent to which the South African law and policy framework for the prevention of public sector corruption in local government measures up to the identified international standards; and 2) to identify and gauge the duties of local government in terms of the said law and policy framework.

The chapter commences by discussing some of the key legal developments in government's prevention and control of public sector corruption in South Africa. The second part of this chapter provides an overview of the anti-corruption regulatory framework. The third part evaluates this framework against the standards that were identified in chapter 3. This is also done along the lines of the established anti-corruption principles of integrity, transparency and accountability. The final part of the chapter addresses the duties of local government and areas of the legal framework in need of improvement.

4.2 The evolution of anti-corruption law and policy in South Africa

Legal developments on anti-corruption efforts can be traced back to as early as 1958, when the South African government enacted its first legislation criminalising corruption

in the form of the *Prevention of Corruption Act* 6 of 1958.⁹⁶³ This Act was later replaced by the *Corruption Act* 94 of 1992, which codified the common law crime of bribery of a person in a position of authority.⁹⁶⁴ However, it acknowledged only active corruption and not passive corruption.⁹⁶⁵ From 1993 onwards South Africa made significant progress in developing an anti-corruption law and policy framework. Some key developments during this period include the following. The Constitution was enacted in 1996 and affirmed many anti-corruption values such as the transparency and accountability upon which the South African legal system is founded.⁹⁶⁶ The White Paper on Local Government, also referred to as the "mini-Constitution for local government",⁹⁶⁷ was adopted in 1998.⁹⁶⁸ The White Paper on Local Government specifically addresses the duty of municipalities to improve municipal accountability, *inter alia* by improving the control of corruption.⁹⁶⁹ South Africa signed the SADC Protocol Against Corruption and established the National Anti-Corruption Forum in 2001. The Forum is made up of various actors from civil society, business and government to provide a cross-sectoral response to corruption and improve integrity in public service.⁹⁷⁰

Moreover, in 2002 Cabinet adopted the *Public Service Anti-Corruption Strategy*, which made nine proposals, one of which was that government should review and consolidate South Africa's anti-corruption legislative framework.⁹⁷¹ The MFMA was enacted in 2003 for local government specifically, with one of its objectives being to reduce corruption for improved financial health in South African municipalities.⁹⁷² In 2004 South Africa also signed and committed to the AUCPCC and the UNCAC, which imposes several obligations on national government to prevent and control corruption.⁹⁷³ The *Prevention and Combating of Corrupt Activities Act* was enacted in 2004 and provided a more

⁹⁶³ *Prevention of Corruption Act* 6 of 1958.

⁹⁶⁴ Preamble of the *Corruption Act* 94 of 1992.

⁹⁶⁵ See para 2.2.1.2 above for an explanation of passive and active corruption. S 1 of the *Corruption Act* 94 of 1992; Naidoo 2013 *Journal of Contemporary African Studies* 526.

⁹⁶⁶ Preamble of the Constitution.

⁹⁶⁷ Foreword of the White Paper on Local Government.

⁹⁶⁸ White Paper on Local Government.

⁹⁶⁹ S 6.1 of the White Paper on Local Government.

⁹⁷⁰ Budhram and Geldenhuys 2018 *SACJ* 39; National Anti-Corruption Forum 2007 <https://www.nacf.org.za/about-nacf/>.

⁹⁷¹ Department of Public Service and Administration *Public Service Anti-Corruption Strategy* (2002) 3.

⁹⁷² Preamble of the MFMA.

⁹⁷³ Camerer *Corruption and Reform in Democratic South Africa* 359.

comprehensive definition of corruption, than the definition of the *Corruption Act* 94 of 1992 which it repealed, by criminalising both passive and active corruption.⁹⁷⁴ In 2008 the Hawks, a specialised unit in the SAPS, was established to investigate and help prevent high priority crime such as corruption.⁹⁷⁵ In addition, the 2009 *Local Government Turnaround Strategy* was implemented, and one of the priorities identified was the enhancement of anti-corruption efforts within municipalities.⁹⁷⁶

The National Development Plan of 2012 highlights the commitment to combatting corruption,⁹⁷⁷ listing part of South Africa's vision as being to achieve "a corruption-free society, a high adherence to ethics throughout society and a government that is accountable to its people."⁹⁷⁸ In addition, the National Development Plan dedicates an entire chapter to fighting corruption, highlighting some points on how to build a resilient anti-corruption system.⁹⁷⁹ One can particularly observe 2015 as a turning point for anti-corruption policy in South African local government. During this year the *Back to Basics Policy*, the *Municipal Integrity Management Framework*⁹⁸⁰ and the *Local Government Anti-Corruption Strategy* were adopted. Some other actions indicating of a commitment to combat corruption include the establishment of the Special Investigating Unit⁹⁸¹ in 2017 and that of the Zondo Commission (the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State) in 2018.⁹⁸²

The adoption of the *Public Audit Amendment Act* 5 of 2018, which expanded the Auditor-General's powers to take remedial action where irregularities took place involving government expenditure, further emphasised the commitment to combatting corruption. President Ramaphosa further illustrated the South African government's commitment to

⁹⁷⁴ S 4 of the PreCCA.

⁹⁷⁵ Camerer *Corruption and Reform in Democratic South Africa* 359.

⁹⁷⁶ CoGTA *Local Government Turnaround Strategy* (2009); Camerer *Corruption and Reform in Democratic South Africa* 359.

⁹⁷⁷ National Planning Commission *National Development Plan 2030: Our Future Make It Work*.

⁹⁷⁸ National Planning Commission *National Development Plan 2030: Our Future Make It Work* 75.

⁹⁷⁹ For a detailed discussion see section 4.3 below. National Planning Commission *National Development Plan 2030: Our Future Make It Work* 444.

⁹⁸⁰ Hereafter the MIMF.

⁹⁸¹ Bruce *Accountability for Corruption: The Role of the Special Investigating Unit*.

⁹⁸² GeN 396 in GG 41436 of 9 February 2018.

anti-corruption in his 2021 State of the Nation Address, stating that "we must fight corruption."⁹⁸³ The commitment to ensuring that only "properly qualified officials" are appointed in local government can also be interpreted as an effort to prevent local government corruption, considering that human resource management is particularly vulnerable in this respect.⁹⁸⁴

4.3 Overview of South African anti-corruption law and policy

The South African anti-corruption law and policy framework is fragmented and consists of approximately 25 pieces of primary legislation, 19 pieces of secondary legislation and seven policies.⁹⁸⁵ The framework is founded on the Constitution and its principles, which include transparency and accountability.⁹⁸⁶ Many pieces of legislation, regulations and policies central to local government form part of the anti-corruption regulatory framework. These include the MFMA, the Systems Act, the Structures Act and the White Paper on Local Government. This local government framework also includes more general public law legislation and regulations such as those concerning Chapter 9 institutions, including the Auditor General and the Public Protector.⁹⁸⁷ In addition, legislation is key to fulfilling some procedural human rights such as the right to information. Just administrative action and peaceful protesting also form a key part of the anti-corruption legal framework for local government.⁹⁸⁸

It should also be stated that no anti-corruption framework is complete without criminal law and criminal procedural law, in so far as they help regulate important issues, namely law enforcement, access to evidence and investigations. While the criminal law aspects of corruption are not the focus of this study, some key points will be mentioned in the

⁹⁸³ See para 1.1 above; Ramaphosa *State of the Nation Address 2021* <https://bit.ly/3fl5JOz>.

⁹⁸⁴ Ramaphosa *State of the Nation Address 2021* <https://bit.ly/3fl5JOz>.

⁹⁸⁵ Lekubu *A Critique of South African Anti-Corruption Strategies and Structures: A Comparative Analysis* 81.

⁹⁸⁶ S 1 of the Constitution.

⁹⁸⁷ *Competition Act* 89 of 1998; the PreCCA; *Prevention of Organised Crime Act* 121 of 1998; *Protected Disclosures Act* 26 of 2000; *Promotion of Access to Information Act* 2 of 2000; *Promotion of Administrative Justice Act* 3 of 2000; *Witness Protection Act* 112 of 1998; *Political Party Funding Act* 6 of 2018; *Electoral Act* 73 of 1998; *Local Government; Municipal Electoral Act* 27 of 2000.

⁹⁸⁸ *Promotion of Access to Information Act* 2 of 2000; *Promotion of Administrative Justice Act* 3 of 2000; *Regulation of Gatherings Act* 205 of 1993.

section to follow. This will include legislation such as the PreCCA and the *Prevention of Organised Crime Act* 121 of 1998.

Some law and policy were not enacted with the explicit intention of controlling corruption but nonetheless contribute to the prevention thereof. For example, the *Competition Act*, which was enacted to promote a fair market and economic development, contains provisions to address corruption in public procurement.⁹⁸⁹

The anti-corruption regulatory framework also contains a number of policies,⁹⁹⁰ some of which concern the strategic planning⁹⁹¹ of the South African local government, while other policies specifically involve preventing and controlling corruption, and integrity in the public service. Like the analysis conducted in chapter 3, the analysis of the South African anti-corruption regulatory framework will be presented from the perspective of the three anti-corruption principles of integrity, transparency, and accountability.

4.4 The principles of integrity, transparency, and accountability manifesting in South African anti-corruption law and policy

4.4.1 Integrity

The standards identified in chapter 3 of this study call for national laws and policies that contribute to integrity.⁹⁹² Such law and policy would usually deal with ethical governance. The 'blanket law and policy-making duty' imposed *inter alia* by the UNCAC requires the South African government to take the law and policy anti-corruption measures necessary to address corruption.⁹⁹³ There is also the expectation that international and regional human rights obligations will be complied with, codes of conduct for public officials will be established and enforced, political interference in governance matters will be reduced,

⁹⁸⁹ Ss 4 and 5 of the *Competition Act* 89 of 1998.

⁹⁹⁰ MIMF; *Local Government Anti-Corruption Strategy* (2015); CoGTA *Back to Basics Policy* (2015); White Paper on Local Government; GN 1227 in GG 16838 of 24 November 1995 (*White Paper on the Transformation of the Public Service*); *Public Service Anti-Corruption Strategy* (2002); *National Anti-Corruption Strategy for South Africa* (2020).

⁹⁹¹ Strategic planning entails identifying various stakeholders, the opportunities and challenges of local government and enables short-, medium- and long-term objectives to be determined, and accordingly the formulation of strategies to improve the efficiency of local government. Iglesias 2015 *Strategic Public Management Journal* 41.

⁹⁹² See para 3.2 above.

⁹⁹³ See paras 3.2.1 and 3.2.4 above.

human resource management systems will be strengthened and a public financial management system will be designed and implemented.⁹⁹⁴

4.4.1.1 Compliance with human rights obligations

Complying with human rights obligations is required to promote integrity, accountability and transparency in government and in so doing prevent corruption.⁹⁹⁵ In South Africa all organs of state and spheres of government are further obliged to respect, protect, promote and fulfil all rights as enshrined in the Bill of Rights.⁹⁹⁶ These rights may be limited under certain circumstances and per stringent requirements.⁹⁹⁷ Human rights are justiciable and generous provision is made for *locus standi*, ensuring that interested and affected people can approach a court to address human rights violations.⁹⁹⁸ In addition, provisions are made for independent institutions responsible for monitoring compliance with human rights obligations and they can receive complaints from the public.⁹⁹⁹ Reports submitted by municipalities to the South African Human Rights Commission may serve as social audit reports on what a municipality has done to fulfil human rights and should show what was done to limit the risk of corruption.¹⁰⁰⁰

The Constitution, national legislation and policies in South Africa mandate municipalities to contribute towards the realisation of human rights.¹⁰⁰¹ Service delivery plays a big part in local government's realising human rights.¹⁰⁰² Responding to people's needs forms one of the basic principles of public service and municipal service delivery.¹⁰⁰³ To this end processes must be put in place to identify those needs.¹⁰⁰⁴ Some of the current needs of

⁹⁹⁴ See para 3.3 above.

⁹⁹⁵ Although this standard is discussed as forming part of integrity, it must be emphasised that these standard forms part of all three principles. See para 3.2.1 above.

⁹⁹⁶ S 7 and 36 of the Constitution.

⁹⁹⁷ S 7 and 36 of the Constitution.

⁹⁹⁸ S 38 of the Constitution; Fuo *Local Government's Role in the Pursuit of the Transformative Constitutional Mandate of Social Justice in South Africa* 128.

⁹⁹⁹ Chapter 9 of the Constitution.

¹⁰⁰⁰ See para 3.2.1 above.

¹⁰⁰¹ S 195(1)(e) of the Constitution; s 73 of the Systems Act; GN 1227 in GG 16838 of 24 November 1995 (*White Paper on the Transformation of the Public Service*) para 11.1.

¹⁰⁰² S 195(1)(e) of the Constitution; s 73 of the Systems Act; GN 1227 in GG 16838 of 24 November 1995 (*White Paper on the Transformation of the Public Service*) para 11.1.

¹⁰⁰³ S 195(1)(e) of the Constitution; s 73 of the Systems Act; GN 1227 in GG 16838 of 24 November 1995 (*White Paper on the Transformation of the Public Service*) para 11.1.

¹⁰⁰⁴ White Paper on Local Government para B.2.

the community are household services, liveable and integrated settlements and community empowerment.¹⁰⁰⁵ Municipalities should consider implementing participatory governance, integrated development planning, budgeting and performance management to help meet these needs.¹⁰⁰⁶ In a diverse community such as South Africa, municipal councils represent many different views and interests on the needs of residents.¹⁰⁰⁷ It is their responsibility to take active steps to ensure that those views and interests, often marginalised, are represented.¹⁰⁰⁸

Municipalities must realise human rights by using their resources to address the needs of residents through service delivery.¹⁰⁰⁹ Municipalities and their local communities are in a partnership and must be committed to finding sustainable ways to meet the economic, social and other needs of residents together.¹⁰¹⁰ Some options are available for municipalities to deliver services, like public-private partnerships, municipal entities or outsourcing.¹⁰¹¹ One of the tools municipalities can use to prevent public resources from being lost to corrupt practices is developing and implementing a risk management policy for the prevention and control of corruption. This risk management policy must dedicate a section to efforts aimed at preventing corruption. The *Municipal Integrity Management Framework* identifies supply chain, financial, human resource and land use management, together with housing allocation, infrastructure projects, permits and licences as areas particularly vulnerable to corruption in municipal administration.¹⁰¹² Because of their vulnerability, these areas should at the very least be considered in a municipality's risk management.¹⁰¹³

The fulfilment of some human rights contributes directly to the prevention and control of corruption. These rights include the right to just administrative action, the right to vote,

¹⁰⁰⁵ White Paper on Local Government para B.2.

¹⁰⁰⁶ White Paper on Local Government paras B.2 and B.3.1.3. Also see paras 4.4.4.2 and 4.4.4.4 below for a detailed discussion of the South African law and policy framework on performance management and participatory governance.

¹⁰⁰⁷ White Paper on Local Government para 1.

¹⁰⁰⁸ The White Paper on Local Government para 1.

¹⁰⁰⁹ See para 3.1 above; s 195(1)(e) of the Constitution; schedule 1 of the Systems Act.

¹⁰¹⁰ The White Paper on Local Government para B.1.

¹⁰¹¹ The White Paper on Local Government para F.2.1.

¹⁰¹² MIMF 9; s 42 of the *Financial Intelligence Centre Act* 38 of 2001.

¹⁰¹³ MIMF 9; s 42 of the *Financial Intelligence Centre Act* 38 of 2001.

the right to access information, the right to a fair trial, the right to protest and the right to freedom of expression. Accountability is explicitly promoted by the right to access courts, the right to freedom of expression and the right to vote. The right to access courts and have a fair trial involves allowing people to approach the courts where the executive and legislative branches of government fail the public.¹⁰¹⁴ A fair trial guarantees that the judiciary will independently and without prejudice adjudicate such matters.¹⁰¹⁵ The right to freedom of expression and protest empowers the public to voice their opinion on government-related matters, including pointing out corruption in local government.¹⁰¹⁶ However, these rights depend on other rights that facilitate transparency, such as the right to just administrative action and the right to access information.

The right to just administrative action involves administrative action "that is lawful, reasonable and procedurally fair."¹⁰¹⁷ It further involves being entitled to written reasons for adversely affecting a person's rights through administrative action.¹⁰¹⁸ This right also implies that people whose rights have been affected by administrative action have access to an independent and impartial forum to review administrative decisions.¹⁰¹⁹ National law prescribes detailed procedures and requirements on how administrative decisions must be made and when and what administrative action may be taken.¹⁰²⁰

The *Promotion of Access to Information Act 2 of 2000*¹⁰²¹ is the principal law that gives substantive content to the constitutional right to access information.¹⁰²² However, because international and regional law and policy specifically deem access to information as an integral part of a law and policy framework that reflects transparency, it will be discussed as a measure on its own below.¹⁰²³

¹⁰¹⁴ S 38 of the Constitution.

¹⁰¹⁵ Ss 38 and 165(2) of the Constitution.

¹⁰¹⁶ Ss 16 and 17 of the Constitution; *Print Media South Africa v Minister of Home Affairs* 2012 6 SA 443 (CC) paras 39, 42, 46 and 47.

¹⁰¹⁷ S 33(1) of the Constitution; ss 3 and 4 of the *Promotion of Administrative Justice Act 3 of 2000*.

¹⁰¹⁸ S 33(2) of the Constitution; s 5 of the *Promotion of Administrative Justice Act 3 of 2000*.

¹⁰¹⁹ S 33(3)(a) of the Constitution; s 7 of the *Promotion of Administrative Justice Act 3 of 2000*.

¹⁰²⁰ Ss 3 and 4 of the *Promotion of Administrative Justice Act 3 of 2000*.

¹⁰²¹ Hereafter the PAIA.

¹⁰²² Preamble of the PAIA.

¹⁰²³ See para 4.4.3.3 below.

4.4.1.2 Establish and enforce codes of conduct

Codes of conduct must be established and enforced to ensure integrity in public service.¹⁰²⁴ South African law and policy affirm that a professional ethos is sought to prevent corrupt activities.¹⁰²⁵ The Constitution sets the basic standard of ethical behaviour expected from all public officials,¹⁰²⁶ which includes performing their duties impartially, fairly, equitably and without bias.¹⁰²⁷ South African law and policy describe the duties of different municipal officials in relative detail, and various codes of conduct describe how to perform them.¹⁰²⁸ Some codes of conduct differentiate between the different offices which public servants may occupy, such as supply chain management officials, mayors, municipal managers, accounting officers, senior managers, chief financial officers, professional financial officials and councillors.¹⁰²⁹ However, most are in consensus that public resources must be used efficiently to benefit the community, that their duties should be fulfilled diligently, that integrity and honesty should be promoted, and that the authority of public office should not be abused.¹⁰³⁰ These codes of conduct further afford some guidelines on regulating the relationship between different municipal departments, employees, and the public.¹⁰³¹ They further give guidance on how municipal officials should perform their duties and act with respect to their private interests.¹⁰³² When read

¹⁰²⁴ See para 3.3.2 above.

¹⁰²⁵ Ss 195(1)(a), 195(1)(f) and 197(1) of the Constitution; National Planning Commission *National Development Plan 2030: Our Future Make it Work* 451; MIMF paras 4.1, 4.2; GN 1227 in GG 16838 of 24 November 1995 (*White Paper on the Transformation of the Public Service*) para 15.1; National Planning Commission *National Anti-corruption Strategy 2020-2030* 26.

¹⁰²⁶ S 195 of the Constitution.

¹⁰²⁷ S 195 of the Constitution.

¹⁰²⁸ Ss 4, 54 and 55 of the Systems Act; ss 21, 29 and 44 of the *Local Government: Municipal Structures Act* 117 of 1998 (the Structures Act); s 3 of the *Public Service Act*, 1994; r 46 of the GenN 868 in GG 27636 of 30 May 2005 (*Municipal Supply Chain Management Regulations*); ss 52, 60, 61, 78, 81 and 83 of the MFMA.

¹⁰²⁹ Ss 4, 54 and 55 of the Systems Act; ss 21, 29 and 44 of the Structures Act; s 3 of the *Public Service Act*, 1994; r 46 of the GenN 868 in GG 27636 of 30 May 2005 (*Municipal Supply Chain Management Regulations*); ss 52, 60, 61, 78, 81 and 83 of the MFMA.

¹⁰³⁰ S 195 of the Constitution; s 78 of the MFMA; s of the 19 of the Structures Act; s 50 of the Systems Act; Munzhedzi 2016 *Journal of Transport and Supply Chain Management* 1997.

¹⁰³¹ *The Public Service Regulations* (2001) as cited in Munzhedzi 2016 *Journal of Transport and Supply Chain Management* 1997.

¹⁰³² *The Public Service Regulations* (2001) as cited in Munzhedzi 2016 *Journal of Transport and Supply Chain Management* 1997.

collectively, South African law and policy favour a governance environment that stigmatises corrupt activities.¹⁰³³

A higher standard of ethical behaviour is expected from senior municipal officials such as municipal managers and mayors.¹⁰³⁴ Leadership throughout governance structures has been identified as being particularly vulnerable to public sector corruption in South Africa.¹⁰³⁵ As mentioned in Chapter 3, top management plays a crucial strategic role in establishing and maintaining an ethical culture resulting in the prevention and combatting of corruption.¹⁰³⁶

Municipalities are required to develop and implement a number of policies aimed at promoting integrity.¹⁰³⁷ Municipal policies enunciate the strategic intentions of municipal councils.¹⁰³⁸ Such policies are thus indicative of the political direction of a municipality, and must describe clearly the objectives of municipalities and what administrative measures will be employed to reach these objectives.¹⁰³⁹ As such, integrity-related policies are an important indicator of a municipality's commitment to stem corruption.¹⁰⁴⁰

South African local government policy acknowledges that municipal leadership should set the overall tone for ethical governance and anti-corruption efforts.¹⁰⁴¹ Therefore, a developmental local government as envisaged in the Constitution requires leadership dedicated to the community,¹⁰⁴² which is reflective of its diverse constituent interests and views.¹⁰⁴³ Local political leadership in a diverse community often requires building

¹⁰³³ Ss 4, 54 and 55 of the Systems Act; ss 21, 29 and 44 of the Structures Act; s 3 of the *Public Service Act*, 1994; s 46 of the GenN 868 in GG 27636 of 30 May 2005 (*Municipal Supply Chain Management Regulations*); ss 52, 60, 61, 78, 81 and 83 of the MFMA.

¹⁰³⁴ *Public Service Anti-corruption Strategy* (2002) para 2.6.

¹⁰³⁵ National Anti-Corruption Strategy Steering Committee *Towards a National Anti-Corruption Strategy for South Africa: Discussion Document* 25; Naidoo 2012 *Journal of Public Administration* 678.

¹⁰³⁶ See para 3.1 above.

¹⁰³⁷ MIMF 11.

¹⁰³⁸ The White Paper on Local Government para E.1; Greater Tzaneen 2020 www.greatertzaneen.gov.za/documents/policies/policy%20and%20procedures.pdf; Gormley 2007 *Annual Review of Political Science* 297.

¹⁰³⁹ The White Paper on Local Government para E.1; Greater Tzaneen 2020 www.greatertzaneen.gov.za/documents/policies/policy%20and%20procedures.pdf; Gormley 2007 *Annual Review of Political Science* 297.

¹⁰⁴⁰ MIMF para 4.2.

¹⁰⁴¹ MIMF 4.

¹⁰⁴² S 153 of the Constitution.

¹⁰⁴³ The White Paper on Local Government para 1.

coalitions of common interest. Their ability to do so emanates from community engagement which deepens their understanding of local dynamics.¹⁰⁴⁴ The MIMF¹⁰⁴⁵ places specific leadership responsibilities on councillors and accounting officers, and also mandates the nomination of an integrity champion who is a member of senior management.¹⁰⁴⁶ The integrity champion must be mandated to implement and coordinate integrity initiatives in municipalities.¹⁰⁴⁷

The MIMF instructs councillors to set the ethical tone in a municipality and focus on the community's best interests.¹⁰⁴⁸ For example, councillors could affirm their commitment to ethical governance by acknowledging this commitment at each council meeting.¹⁰⁴⁹ Accounting officers are mandated to provide ethical leadership in the administration of a municipality and the MIMF must form part of all accounting officers' performance contracts.¹⁰⁵⁰ It is the responsibility of accounting officers to oversee the establishment and implementation of a strong programme aimed at combatting corruption, promoting integrity, and allocating the required resources to implement the MIMF.¹⁰⁵¹ This person may enlist the support of other officials, units or departments in the municipality to implement these integrity initiatives.¹⁰⁵² If a municipality does not have the adequate internal capacity it may consider shared service arrangements with a district municipality, for example.¹⁰⁵³

In addition, the Public Service Commission¹⁰⁵⁴ acts as an ethical board of sorts that is focussed on promoting the values and principles as set out in section 195 of the Constitution.¹⁰⁵⁵ The PSC is further tasked with monitoring and evaluating the personnel practices of the public service.¹⁰⁵⁶ It can be said that the PSC should monitor the

¹⁰⁴⁴ The White Paper on Local Government para 1.

¹⁰⁴⁵ CoGTA *Municipal Integrity Management Framework* (2015).

¹⁰⁴⁶ MIMF paras 1.1, 1.2, 3.4.

¹⁰⁴⁷ MIMF paras 3.4 and 3.5.

¹⁰⁴⁸ MIMF para 1.1.

¹⁰⁴⁹ MIMF para 1.1.

¹⁰⁵⁰ MIMF para 1.2.

¹⁰⁵¹ MIMF para 1.2.

¹⁰⁵² MIMF paras 3.4 and 3.5.

¹⁰⁵³ MIMF paras 3.4 and 3.5.

¹⁰⁵⁴ Hereafter the PSC.

¹⁰⁵⁵ Other institutions such as National Treasury and the Auditor-General will be discussed in paras 4.4.4.1, 4.4.3.2 and 4.4.3.1 below. S 196(4) of the Constitution.

¹⁰⁵⁶ S 196(4) of the Constitution.

implementation of the prescripts of national law and policy involving the ethical behaviour and leadership of public officials in local government.

4.4.1.3 Reduce political interference

As discussed above, reducing political interference in governance matters is pivotal to preventing public office from being abused for the benefit of a political party or interest group.¹⁰⁵⁷ Political party funding is a vital part of promoting a multi-party democracy and in so doing strengthening democracy.¹⁰⁵⁸ Therefore, governments should develop a law and policy framework to regulate political party funding and ensure that public office is not susceptible to corruption or unduly influenced by political agendas.¹⁰⁵⁹ The Constitution makes provision for regulating political funding matters, but focusses on the provincial and national legislatures alone, omitting local legislatures.¹⁰⁶⁰ However, the funding of political parties participating in local government elections is regulated by other legislation such as the *Political Party Funding Act* 6 of 2018, which came into operation on 1 April 2021.¹⁰⁶¹ Some key provisions playing a particular role in preventing corruption concern donations to political parties and the disclosure thereof.¹⁰⁶² Political parties may not receive donations from certain people, *inter alia* state-owned enterprises or other state organs.¹⁰⁶³ Members of political parties are also not allowed to accept any donation unless it is on behalf of the party or for party political purposes.¹⁰⁶⁴ Any donations to political parties above a prescribed threshold must be disclosed to the Electoral Commission in the prescribed manner.¹⁰⁶⁵ Moreover, the Constitutional Court has

¹⁰⁵⁷ See para 3.2.3 above.

¹⁰⁵⁸ Steytler 2009 *Law, Democracy and Development* 244.

¹⁰⁵⁹ A 10 of the AUCPCC.

¹⁰⁶⁰ S 236 of the Constitution.

¹⁰⁶¹ S 1 of the *Political Party Funding Act* 6 of 2018; s 1 of the *Electoral Act* 73 of 1998.

¹⁰⁶² Ss 1, 8, 9 and 10 of the *Political Party Funding Act* 6 of 2018; s 1 of the *Electoral Act* 73 of 1998.

¹⁰⁶³ S 8(1) of the *Political Party Funding Act* 6 of 2018.

¹⁰⁶⁴ S 10 of the *Political Party Funding Act* 6 of 2018.

¹⁰⁶⁵ S 9 of the *Political Party Funding Act* 6 of 2018. Political funding is a complex topic and often contested. For more detailed discussions see Dube *Enhancing Democratic Accountability through Constitutionalism in South Africa* para 4.2.4.4.1; Steytler 2009 *Law, Democracy and Development* 227; Camay and Gordon 2001 *Indicator South Africa*; Klaaren 2018 *Law, Democracy and Development*; Maphunye and Motubatse 2019 *Journal for Transdisciplinary Research in Southern Africa* 1817.

indicated that the public has the right to obtain information relating to political party funding to enable it to make informed choices when voting.¹⁰⁶⁶

International standards guide what governments should do to prevent and manage conflicts of interest.¹⁰⁶⁷ Employees in public service may not be favoured or prejudiced based on their political affiliation or views.¹⁰⁶⁸ There are also several provisions that forbid any person from interfering in key processes of municipalities, such as supply chain management.¹⁰⁶⁹ One of the provisions is to contribute to the impartiality and integrity of municipal supply chain management. South African law precludes any person (or the director, manager, principal shareholder or stakeholder of a juristic person) in public service from receiving a tender award.¹⁰⁷⁰ In addition, tender awards of more than R 2 000.00 made to family relatives of people in public service must be declared in the annual financial statements of municipalities or municipal entities.¹⁰⁷¹ Furthermore, it is considered an offence punishable by imprisonment, to acquire a private interest in a contract or investment of a public body that originates from their employment of that public body.¹⁰⁷² No (prospective) service provider of a municipality may give or offer a gift or reward to any official of a municipality or other role player involved in procurement or the implementation of supply chain management.¹⁰⁷³ In this situation, both the giver and receiver will be considered guilty of an offence and the giver may also be listed on National Treasury's register of people prohibited from engaging in any business activities with public service.¹⁰⁷⁴

Councillors, who make up the political leadership of a municipality, are prohibited from participating in certain administrative functions to prevent conflicts of interest. These include serving on bid committees responsible for procurement-related decisions.¹⁰⁷⁵ On

¹⁰⁶⁶ *My Vote Counts NPC v Minister of Justice and Correctional Services and Another* 2018 5 SA 380 (CC) para 14.

¹⁰⁶⁷ Aa 7(4) and 8(5) of the UNCAC; aa 7(1) and 10 of the AUCPCC.

¹⁰⁶⁸ S 197(3) of the Constitution.

¹⁰⁶⁹ S 118(a) of the MFMA.

¹⁰⁷⁰ S 44 of the GenN 868 in GG 27636 of 30 May 2005.

¹⁰⁷¹ S 45 of the GenN 868 in GG 27636 of 30 May 2005.

¹⁰⁷² S 17 of the PreCCA.

¹⁰⁷³ Ss 3 and 4 of the PreCCA; s 47 of the GenN 868 in GG 27636 of 30 May 2005.

¹⁰⁷⁴ Ss 3 and 4 of the PreCCA; s 47 of the GenN 868 in GG 27636 of 30 May 2005.

¹⁰⁷⁵ S 117 of the MFMA.

the other hand, the political rights of the administrative leadership, municipal managers, and those directly accountable to them, are limited by the Systems Act.¹⁰⁷⁶ Administrative leadership is disqualified from holding any political office in a political party, regardless of the duration or acting capacity of such office.¹⁰⁷⁷

Municipalities are required to adopt policies in which they describe how conflicts of interests will be managed.¹⁰⁷⁸ This policy should address how interests such as gifts and external remunerative work must be disclosed.¹⁰⁷⁹ The notes on municipal financial statements are required to reflect certain disclosures on information involving councillors, directors, officials, chief financial officers or other prescribed senior managers.¹⁰⁸⁰ These notes must document municipal officials' salaries, allowances and benefits and whether or not any arrears are owed for rates and services.¹⁰⁸¹ Senior managers are also required to declare their personal financial interests including their assets, and a failure to do so is considered misconduct.¹⁰⁸² Public officials may perform external remunerative work only with written permission from the executive authority of the relevant department, implying the requirement of the disclosure of such work.¹⁰⁸³ This provides an opportunity for the executive authority to consider whether it could be reasonably foreseen that the external remunerative work would interfere with or impede the performance of the public official's duties.¹⁰⁸⁴ Sponsorships are also considered as interests which must be documented.¹⁰⁸⁵ Accounting officers are to promptly inform National Treasury of any sponsorship promised, offered or granted to the municipality or municipal entity, if the sponsorship is from a person involved with municipal procurement.¹⁰⁸⁶

¹⁰⁷⁶ S 57A of the Systems Act.

¹⁰⁷⁷ S 57A of the Systems Act.

¹⁰⁷⁸ MIMF 11.

¹⁰⁷⁹ MIMF 11.

¹⁰⁸⁰ Ss 66 and 124(1) of the MFMA.

¹⁰⁸¹ Ss 66 and 124(1) of the MFMA.

¹⁰⁸² Public Service Regulations as cited in Munzhedzi 2016 *Journal of Transport and Supply Chain Management* 1997.

¹⁰⁸³ S 30 of the *Public Service Act*, 1994.

¹⁰⁸⁴ S 30 of the *Public Service Act*, 1994.

¹⁰⁸⁵ S 48 of the GenN 868 in GG 27636 of 30 May 2005.

¹⁰⁸⁶ S 48 of the GenN 868 in GG 27636 of 30 May 2005.

4.4.1.4 Strengthen systems of human resource management

International standards require that a human resource management system be based on standards of efficiency, transparency, objective criteria (clearly set out in legislation), merit, equity and aptitude to prevent corruption.¹⁰⁸⁷ In South Africa the Constitution accepts that human resources form an intrinsic part of the suitability of governance structures and should be founded on ability, equity, objectivity and fairness.¹⁰⁸⁸ In addition, the *Back to Basics Policy* for local government requires that employees with the appropriate skills for their office be appointed. The *Back to Basics Policy* also aims to ensure that employees are equipped to discharge their duties effectively and are able to address any challenges involving local governance, including corruption.¹⁰⁸⁹ Thus, South African laws and policies prescribe a strong system of human resource management which involves having a workforce with the proper skills (including training), prescriptions on conditions of employment, maximising human potential and performance management.¹⁰⁹⁰

4.4.1.5 Formulate and implement a public finance management system

As discussed above, international and regional standards require governments to formulate and implement elaborate public financial management systems.¹⁰⁹¹ In South African law and policy, a public finance management system ensures the efficient and effective use of public resources and helps to prevent corruption.¹⁰⁹² The White Paper on Local Government and the Constitution envisions a local government that uses its fiscal resources to the maximum benefit of the local community.¹⁰⁹³ Therefore, each

¹⁰⁸⁷ See para 3.2.4 above.

¹⁰⁸⁸ S 195(1)(i) of the Constitution; *Khumalo v MEC for Education, KwaZulu-Natal* 2014 5 SA 579 (CC) para 63.

¹⁰⁸⁹ CoGTA *Back to Basics* 12.

¹⁰⁹⁰ Ss 195(1)(i) and 219 of the Constitution; s 119 of the MFMA; s 2 of the GN R493 in GG 29967 of 15 June 2007; s 4 of the *Public Service Act*, 1994; s 1 of the *Labour Relations Act* 66 of 1995; ss 67 and 68 of the *Systems Act*; the White Paper on Local Government para 5; MIMF 9; *Khumalo v MEC for Education, KwaZulu-Natal* 2014 5 SA 579 (CC) para 63; National Planning Commission *National Anti-corruption Strategy 2020-2030* 27.

¹⁰⁹¹ See para 3.2.5 above.

¹⁰⁹² Ss 4, 54 and 55 of the *Systems Act*; ss 21, 29 and 44 of the *Structures Act*; s 3 of the *Public Service Act*, 1994; s 46 of the GenN 868 in GG 27636 of 30 May 2005 (*Municipal Supply Chain Management Regulations*); ss 52, 60, 61, 78, 81 and 83 of the MFMA.

¹⁰⁹³ S 195 of the Constitution; the White Paper on Local Government para E.1.

municipality should employ financial management that is concerned with efficiency, effectiveness, value for money and service quality.¹⁰⁹⁴ Municipalities must justify how and why local taxpayers' money was spent, and these decisions should be open for public inspection.¹⁰⁹⁵ To this end, municipalities are required to establish and maintain financial management systems which include supply chain management.

A financial management system must be founded on transparency, accountability, responsibility, expenditure control, and generally accepted accounting practices.¹⁰⁹⁶ The MFMA emphasises that a sound and sustainable financial management system must be implemented in order for local government to be successful in fulfilling its functions.¹⁰⁹⁷ Sustainable financial management implies that municipalities have balanced budgets, making sure that service delivery costs are equal to or less than the income generated from services.¹⁰⁹⁸ Services must, however, remain affordable and accessible to poor households.¹⁰⁹⁹

A municipality's basic institutional financial management arrangements must include a capable treasury office which consists of a chief financial officer as designated by an accounting officer supported with sufficient staff.¹¹⁰⁰ The chief financial officer and accounting officer must comply with certain minimum competency levels to guarantee that these officials have the required expertise to oversee the effective and efficient management of municipal finances. A financial management system consists of the management of municipal revenue, expenditure as well as assets and liabilities.¹¹⁰¹ Although municipalities have the authority to impose rates and taxes as a means of generating revenue, they may not exercise it in a way that materially or unreasonably prejudices overall economic activities across municipal boundaries.¹¹⁰²

¹⁰⁹⁴ S 195 of the Constitution; the White Paper on Local Government para E.1.

¹⁰⁹⁵ The White Paper on Local Government para G.1.3.

¹⁰⁹⁶ S 216(1) and 216(2) of the Constitution; ss 2 and 54 of the MFMA; the White Paper on Local Government para G.1.3; s 2 of the GenN 317 in GG 42514 of 7 June 2019.

¹⁰⁹⁷ S 2 of the MFMA and CoGTA *Back to Basics* 11.

¹⁰⁹⁸ The White Paper on Local Government para G.1.3.

¹⁰⁹⁹ The White Paper on Local Government para G.1.3.

¹¹⁰⁰ S 80 of the MFMA.

¹¹⁰¹ Ss 2(b), 63, 64 and 65 of the MFMA; ss 3, 4, 5 and 6 of the GN R308 in GG 27431 of 1 April 2005.

¹¹⁰² S 229(1) and 229(2) of the Constitution.

Municipal financial management must also make provision for performance and consequence management and facilitate an ethical culture.¹¹⁰³ An integrity champion must be appointed from top management to spearhead all integrity and anti-corruption efforts, while accounting officers are ultimately responsible for ensuring compliance and implementation of the *Local Government Anti-Corruption Strategy* and the MIMF.¹¹⁰⁴ It is further required that an internal audit unit and audit committee be established, which must function independently from the municipal administration.¹¹⁰⁵ Lastly, information technology systems must be employed to establish and maintain different databases to facilitate evidence-based decision making.¹¹⁰⁶

The financial management system includes a periodic review of the financial health of a municipality,¹¹⁰⁷ which will enable the early detection of any financial problems which a municipality might face, and suggest how to address such problems.¹¹⁰⁸ The MFMA also provides guidelines on how to manage impending shortfalls, overspending and overdrafts.¹¹⁰⁹

A financial management system should provide for the specifics on the adoption of budgets.¹¹¹⁰ The MFMA prescribes how municipal budgets should be developed, adopted and implemented.¹¹¹¹ These processes must be founded on transparency, accountability and effective financial management.¹¹¹² The budgetary development process also follows an approach that is in agreement with the principle of basing governance on community needs.¹¹¹³ For example, the mayor should consider the integrated development plan,¹¹¹⁴ an instrument which reflects the community's strategic needs,¹¹¹⁵ when tabling the

¹¹⁰³ MIMF 9.

¹¹⁰⁴ MIMF 9.

¹¹⁰⁵ MIMF 9.

¹¹⁰⁶ MIMF 9.

¹¹⁰⁷ S 54(1)(e) of the MFMA.

¹¹⁰⁸ Ss 54(1)(e), 55, and 135 of the MFMA.

¹¹⁰⁹ S 70 of the MFMA.

¹¹¹⁰ A 9 of the UNCAC.

¹¹¹¹ Ss 16, 17, 21, 24, 53, 68 and 69 of the MFMA; s 2 of the GenN 393 in GG 32141 of 17 April 2009.

¹¹¹² S 215(1) of the Constitution; the White Paper on Local Government para G.1.3.

¹¹¹³ See para 4.4.2.1 above.

¹¹¹⁴ Hereafter the IDP.

¹¹¹⁵ National Anti-Corruption Strategy Steering Committee *Towards a National Anti-Corruption Strategy for South Africa: Discussion Document* 24.

budget.¹¹¹⁶ Consideration of the budget tabled must also be subject to public scrutiny, which means *inter alia* that the mayor must duly consider the inputs from the community when assessing the municipal budget.¹¹¹⁷ The budget must be accompanied by a service delivery and budget implementation plan,¹¹¹⁸ which in essence explains how the budget will be executed.¹¹¹⁹ Municipalities are required to submit an annual performance review report on the implementation of the municipal budget.¹¹²⁰ This report, together with the IDP, SDBIP and municipal budget, must be made publicly available.¹¹²¹

In the MFMA, PreCCA and the MIMF South African local government law forbids certain conduct which involves public finances. Municipalities may not participate in any commercial activities that do not involve the powers and functions ascribed to them by the Constitution or national and provincial legislation.¹¹²² Some regulations also give direction on how and when municipalities may invest and enter into debt to prevent reckless lending and investments.¹¹²³ In agreement with the UNCAC and AUCPCCC, many acts are classified as financial misconduct and are often accompanied by harsh sanctions such as fines or imprisonment.¹¹²⁴ These actions include deliberately or grossly negligently incurring unauthorised, irregular or fruitless and wasteful expenditure, participating in corrupt activities as envisaged in the PreCCA, or interfering in the financial management responsibilities of an accounting officer or the chief accounting officer.¹¹²⁵

All these processes and procedures involving financial management are designed to promote transparency, accountability and the integrity of public finances.¹¹²⁶ Moreover, the detailed prescriptions concerning financial management further make it possible to verify the 'correctness' of decisions and actions taken concerning public money.¹¹²⁷ A

¹¹¹⁶ Ss 21, 53 and 68 of the MFMA; the White Paper on Local Government para 4.

¹¹¹⁷ Ss 22 and 23 of the MFMA; the White Paper on Local Government para G.1.3.

¹¹¹⁸ Hereafter the SDBIP.

¹¹¹⁹ S 54(1)(b) of the MFMA.

¹¹²⁰ S 54(1) of the MFMA; the White Paper on Local Government para 4; GenN 393 in GG 32141 of 17 April 2009.

¹¹²¹ Ss 22 and 23 of the MFMA; the White Paper on Local Government para G.1.3.

¹¹²² S 164(1)(a) of the MFMA.

¹¹²³ S 6 of the GN R308 in GG 27431 of 1 April 2005; the GN R492 in GG 29966 of 15 June 2007.

¹¹²⁴ S 173 of the MFMA; ss 3 and 12 of PreCCA; MIMF 17; aa 15, 17, 18 and 20 of the UNCAC; a 4 of the AUCPCCC.

¹¹²⁵ S 173 of the MFMA; s 3 of PreCCA; MIMF 17.

¹¹²⁶ A 9(2) of the UNCAC.

¹¹²⁷ A 9 of the UNCAC.

sound system of financial management should enhance the detection and prevention of corruption.

Like budgeting, public procurement has also been identified by both the AU and the UN as an area particularly vulnerable to corruption.¹¹²⁸ It is thus considered that sound public procurement is essential to the prevention of corruption.¹¹²⁹ Municipalities are specifically required to ensure that measures to combat fraud, corruption, favouritism and unfair or irregular practices are included in public procurement management. Public procurement in South Africa is founded on fairness, equity, transparency, competition, and cost-effectiveness.¹¹³⁰ A municipality must establish a department responsible for its supply chain management per its Supply Chain Management Policies (SCMP).¹¹³¹ Each municipality is required to develop and implement a supply chain management system based on these values.¹¹³² A municipal SCMP should specify what procurement methods the municipality may use, when it may use them and what principles should guide procurement-related decisions.¹¹³³ The accounting officer has an the obligation to oversee the implementation of this policy and the MFMA determines that no person may interfere with the performance of this obligation.¹¹³⁴

A SCMP must contain measures to prevent the abuse of supply chain management, like anonymous reporting channels for employees.¹¹³⁵ The SCMP may require that suppliers sign an 'ethics commitment for suppliers' as part of standard bidding documentation, before the municipality conducts business.¹¹³⁶ As part of standard procurement practice, suppliers should be pre-screened against National Treasury's Register for Tender Defaulters,¹¹³⁷ the Register of Restricted Suppliers and the Municipality's Financial

¹¹²⁸ A 9 of the UNCAC; a 5(4) of the AUCPCC.

¹¹²⁹ A 9 of the UNCAC; a 5(4) of the AUCPCC.

¹¹³⁰ S 217 of the Constitution.

¹¹³¹ S 7 of the GenN 868 in GG 27636 of 30 May 2005.

¹¹³² Ss 112, 115, 116 and 120 of the MFMA; s 2 of the GN R309 in GG 27431 of 1 April 2005; ss 2, 7, 9 and 12 of the GenN 868 in GG 27636 of 30 May 2005; s 32 of the Systems Act; MIMF 11.

¹¹³³ S 112 of the MFMA.

¹¹³⁴ S 115 of the MFMA.

¹¹³⁵ S 38(1) of the GenN 868 in GG 27636 of 30 May 2005.

¹¹³⁶ MIMF 8.

¹¹³⁷ It should be noted that on 19 October 2021, National Treasury's website shows that there are currently no tender defaulters. The correctness of the Register is questionable given the past reports of the Auditor General and newspaper articles on public procurement. This is one example which illustrates the extent of the gap between enacted anti-corruption law and policy, and the implementation thereof.

Declaration Database, to ensure that the municipality is not prohibited from entering into a contract with them.¹¹³⁸ These measures include how allegations of fraud, corruption, favouritism, unfair or irregular practices in supply management will be investigated and resolved.¹¹³⁹ This section of the supply chain management policy is an important enabling tool for accounting officers to take all reasonable steps to prevent corruption in this high-risk area of local governance.¹¹⁴⁰

The accounting officer should keep a register that contains accredited prospective service providers which a municipality may approach for smaller contracts via verbal or written quotations. These providers must comply with predetermined criteria, and must not be listed as persons which must be prohibited from participating in public procurement.¹¹⁴¹ For larger contracts, municipalities must use competitive bidding based on objective criteria, and independent committees must evaluate, adjudicate, and specify bids.¹¹⁴² Further, municipal procurement should provide for effective appeal and review mechanisms that act as valuable oversight for supply chain management.¹¹⁴³ However, despite of all the detailed processes and prescriptions involving supply chain management already in place, the NDP reiterates that corruption remains a challenge in public procurement.¹¹⁴⁴

4.4.2 Transparency

The discussion in chapter 3 shows that, for any government to prevent corruption, it should adopt and implement a legal framework that promotes transparency.¹¹⁴⁵ In addition, under the 'blanket law and policy-making duty',¹¹⁴⁶ South African law and policy require that certain government institutions such as National Treasury prescribe auditing,

National Treasury 2021
<http://www.treasury.gov.za/publications/other/Register%20for%20Tender%20Defaulters.pdf>.

¹¹³⁸ MIMF 11.

¹¹³⁹ S 12 of the PreCCA; s 38(1)(b) of the GenN 868 in GG 27636 of 30 May 2005.

¹¹⁴⁰ S 38(1)(a) of the GenN 868 in GG 27636 of 30 May 2005.

¹¹⁴¹ S 14 of the GenN 868 in GG 27636 of 30 May 2005.

¹¹⁴² S 83 of the Systems Act; ss 12, 21, 22, 23, 25, 26, 27 and 28 of the GenN 868 in GG 27636 of 30 May 2005.

¹¹⁴³ Ss 26(c) and 49 of the GenN 868 in GG 27636 of 30 May 2005.

¹¹⁴⁴ National Planning Commission *National Development Plan 2030: Our Future Make it Work* 450.

¹¹⁴⁵ See paras 3.1 and 3.3 above.

¹¹⁴⁶ See para 3.1 above.

oversight and standard accounting practices for increased transparency in governance matters.¹¹⁴⁷ A clear commitment to transparency is visible in the Constitution and the *National Anti-Corruption Strategy*.¹¹⁴⁸ One of the founding values of the Constitution is openness in governance.¹¹⁴⁹ The Constitution requires many governance functions to be conducted openly.¹¹⁵⁰ The National Development Plan communicates the government's aspiration to create a "transparent, responsive and accountable public service."¹¹⁵¹ The discussion below will expand on how South African law and policy reflect transparency and will evaluate if they meet the expectations created by international and regional anti-corruption standards.

4.4.2.1 Prescribe auditing, oversight, and standard accounting practices

When law and policy provide for structured auditing, oversight and standard accounting practices they increase the availability of information on government's inner workings and, by implication, also promote transparency.¹¹⁵² South African anti-corruption law and policy concerning local government provide for auditing, oversight and standard accounting practices of municipal finances in municipalities and external institutions.

National Treasury, the Auditor-General and the Member of Executive Council¹¹⁵³ for Local Government are identified as being responsible for exercising external oversight over municipal financial affairs and conducting regular audits to evaluate municipal financial performance.¹¹⁵⁴ South African law and policy nominates National Treasury as responsible for establishing a framework for best accounting practices and standards to simplify subsequent audits performed in municipal affairs by either the municipality or an external institution such as the Auditor-General.¹¹⁵⁵ The Auditor-General has the main responsibility for reviewing, auditing and reporting on the financial records and management of local

¹¹⁴⁷ S 216 of the Constitution; ss 129(4), 132(5) and 168 of MFMA; ss 105 and 106 of the Systems Act.

¹¹⁴⁸ S 1(d) and 195(1)(g) of the Constitution; National Anti-Corruption Strategy Steering Committee *Towards a National Anti-Corruption Strategy for South Africa: Discussion Document 22*.

¹¹⁴⁹ S 1(d) of the Constitution.

¹¹⁵⁰ Ss 39(1)(a), 59(1)(b), 59(2), 72(1)(b), 118(1)(b) and 160(7) of the Constitution; Dube *Enhancing Democratic Accountability through Constitutionalism in South Africa* 202.

¹¹⁵¹ National Planning Commission *National Development Plan 2030: Our Future Make it Work* 447, 452.

¹¹⁵² A 5(4) of the AUCPCC; aa 4(c) and 4(h) of the *SADC Protocol Against Corruption*; a 9(2) of the UNCAC.

¹¹⁵³ Hereafter the MEC.

¹¹⁵⁴ S 216 of the Constitution; ss 122 and 131 of the MFMA.

¹¹⁵⁵ S 216 of the Constitution.

government.¹¹⁵⁶ There are several obligations on municipalities to empower the Auditor-General to conduct these audits.¹¹⁵⁷ These obligations are to prepare financial statements that contain information on the performance against the municipal budget (i.e., how revenue, expenditure, assets and liabilities were managed), what business activities were conducted, prescribed disclosures (see paragraph 4.4.2.3) and the overall financial position at the end of the fiscal year.¹¹⁵⁸ Upon auditing a municipality, the Auditor-General may raise certain issues, such as suspicions of corrupt activities in the relevant municipality. These issues must be addressed by the municipality and the mayor carries the primary responsibility to do so.¹¹⁵⁹ The MEC for local government plays a supervisory role through its assessment of all financial statements with the corresponding audit reports and the municipal responses thereto.¹¹⁶⁰ Through this assessment, the MEC should determine whether the issues raised by the Auditor-General have been addressed adequately, and if not, should report such shortcoming(s) to the provincial legislature.¹¹⁶¹

The MFMA is the primary law with respect to auditing, oversight and determining good accounting practices by municipalities themselves. Municipalities are required to conduct internal audits at shorter intervals by an established internal audit unit.¹¹⁶² The internal audit unit must develop a risk-based internal audit plan and programme for every financial year.¹¹⁶³ The purpose of these audits is to provide advice and information to the accounting officer on performance, loss control, MFMA compliance, risk management, the accounting procedures followed, etcetera.¹¹⁶⁴ The audit unit must include an audit committee.¹¹⁶⁵ The audit committee is an independent body expected to provide advice to the municipal council, the accounting officer and the municipal staff on various finance-

¹¹⁵⁶ Ss 188(1)(b) and 188(3) of the Constitution.

¹¹⁵⁷ S 122 of the MFMA.

¹¹⁵⁸ S 122 of the MFMA.

¹¹⁵⁹ S 131(1) of the MFMA.

¹¹⁶⁰ S 131(2)(a) of the MFMA.

¹¹⁶¹ S 131(2)(b) of the MFMA.

¹¹⁶² S 165 of the MFMA.

¹¹⁶³ S 165(2)(a) of the MFMA; MIMF 12.

¹¹⁶⁴ S 165(2) of the MFMA.

¹¹⁶⁵ Ss 121 and 166(1) of the MFMA; MIMF 6.

related issues.¹¹⁶⁶ The necessary financial records (and relevant information) must be available to the audit committee.¹¹⁶⁷

In addition to an audit committee, a municipal public accounts committee, ethics committee or council disciplinary committee should also be established to ensure that standards of ethical behaviour in all financial matters are upheld.¹¹⁶⁸ The audit committee is further concerned with providing strategic guidance and oversight of the implementation of the anti-corruption and integrity management policy.¹¹⁶⁹ Municipal councils carry the primary duty of overseeing investigations of all allegations of financial misconduct, including public sector corruption, and ensuring that allegations are resolved.¹¹⁷⁰ However, considering the relationship between public sector corruption and undue political influence, it is arguable that this provision may create an opportunity to cover up corrupt activities undertaken by political office bearers.

A municipality's internal oversight may include developing a policy that establishes effective investigation processes for corruption matters.¹¹⁷¹ Effective investigations increase the risk of corrupt officials getting caught and ensure that evidence is collected involving corrupt activities.¹¹⁷² As a starting point, an investigation policy must be developed and provide for procedures on how matters detected involving corruption will be addressed by the municipality.¹¹⁷³ Special measures must be in place to secure the independence of investigations where senior managers, municipal managers and councillors are implicated.¹¹⁷⁴ Where municipalities cannot guarantee adequate independence, they should turn to external institutions like the Special Investigations Unit.¹¹⁷⁵ Municipalities should be able to manage investigations concerning capacity

¹¹⁶⁶ S 166(2) of the MFMA.

¹¹⁶⁷ S 166(3) of the MFMA.

¹¹⁶⁸ S 79 of the Systems Act; MIMF 6.

¹¹⁶⁹ MIMF 6.

¹¹⁷⁰ MIMF 6.

¹¹⁷¹ CoGTA *Local Government Anti-Corruption Strategy* (2015) para F.6.

¹¹⁷² See para 3.3.3 above.

¹¹⁷³ MIMF 14.

¹¹⁷⁴ MIMF 14.

¹¹⁷⁵ MIMF 14.

adequately.¹¹⁷⁶ All legitimate allegations of corruption must be investigated and receive adequate independent attention.¹¹⁷⁷

4.4.2.2 Increase access to information

In agreement with international and regional standards, South African law and policy make provision for accessing information on governance-related matters upon request, and determine that government institutions must proactively make certain local government information available to the general public.¹¹⁷⁸ As mentioned in the previous paragraph, the primary law which gives content to the constitutional right to access to information is the PAIA.¹¹⁷⁹

In addition to the PAIA, other law and policy provide access to more specific kinds of local government-related information such as municipal budgets.¹¹⁸⁰ With all the information that municipalities must make publicly available,¹¹⁸¹ municipalities must have information accessible to the public and other entities on issues considered particularly vulnerable to corruption.¹¹⁸² This includes open access on the municipality's website to financial information like procurement awards, service delivery agreements, long-term borrowing contracts, supply chain management contracts, the disposal of assets, public-private partnerships and performance agreements.¹¹⁸³ Where municipalities are unable to maintain a website, the South African Local Government Association's¹¹⁸⁴ website should be used to communicate the mandated information.¹¹⁸⁵ South African law establishes an

¹¹⁷⁶ CoGTA *Local Government Anti-Corruption Strategy* (2015) para F.6; MIMF 14.

¹¹⁷⁷ MIMF 14.

¹¹⁷⁸ See para 3.3.2 above.

¹¹⁷⁹ See para 4.4.3.2 above.

¹¹⁸⁰ See para 4.4.3.2 above.

¹¹⁸¹ See para 4.4.2.5 above.

¹¹⁸² MIMF 12.

¹¹⁸³ S 75 of the MFMA; GenN 194 in GG 27365 of 11 March 2005; GN R430 in GG 37699 of 30 May 2014; GenN 393 in GG 32141 of 17 April 2009; GN R309 in GG 27431 of 1 April 2005.

¹¹⁸⁴ Hereafter the SALGA.

¹¹⁸⁵ S 75 of the MFMA; GenN 194 in GG 27365 of 11 March 2005; GN R430 in GG 37699 of 30 May 2014; GenN 393 in GG 32141 of 17 April 2009; GN R309 in GG 27431 of 1 April 2005.

information regulator responsible for adjudicating appeals when access to the information requested is denied.¹¹⁸⁶

South African law and policy provide for the compilation and dissemination of various municipal performance and financial reports to many stakeholders, including the general public.¹¹⁸⁷ These reports play a key role in effecting transparency in local governance matters.¹¹⁸⁸ Municipalities must prepare and adopt annual performance reports and also report on their integrity management and corruption responses annually.¹¹⁸⁹

Municipalities must, through law and policy, establish an effective information management system to ensure proper and appropriate information is stored and reported, which will enable municipalities to provide information to stakeholders.¹¹⁹⁰ A municipal legal framework is envisioned to guide how relevant information is kept in electronic databases and how these databases are maintained to simplify functions such as reporting.¹¹⁹¹ Databases should keep information that can assist the municipality in detecting corrupt activities.¹¹⁹² This information should include *inter alia* disclosures of interests, external remunerative work applications, gift registers, municipal vendors, financial information, the Companies and Intellectual Property Commission database and outstanding municipal rates and taxes.¹¹⁹³ In addition, information should regularly be analysed to detect any warning signs of corruption, such as conflicts of interest or frauds.¹¹⁹⁴

The reports of the Auditor-General are valuable sources of data and statistics which may provide some insights on municipal financial performance and indicators of public sector corruption.¹¹⁹⁵ It is also expected of municipalities to develop and implement an electronic

¹¹⁸⁶ Chapter 5 of the PAIA; National Planning Commission *National Development Plan 2030: Our Future Make it Work* 447.

¹¹⁸⁷ S 122 of the MFMA; MIMF 17.

¹¹⁸⁸ MIMF 17.

¹¹⁸⁹ S 121 of the MFMA; MIMF 17.

¹¹⁹⁰ MIMF 17.

¹¹⁹¹ MIMF 20.

¹¹⁹² MIMF 12.

¹¹⁹³ MIMF 12.

¹¹⁹⁴ MIMF 12.

¹¹⁹⁵ S 20 of the *Public Audit Act* 25 of 2004.

case management system.¹¹⁹⁶ This system must enable the end-user to store all reported allegations of corruption and the investigation thereof, track the progress of investigations and provide a trend analysis.¹¹⁹⁷

Despite what is required by national law and policy on providing governance-related information, the information provided with the purpose of preventing corruption in South African local government has many shortcomings. For one, no public body has been established to monitor whistle blowers, and consequently no data or statistics are available on the amount or success of whistle-blowing.¹¹⁹⁸ There are also no statistics on the current state of corruption. The common sources of statistics on corruption are often in the form of an international perceptions indexes,¹¹⁹⁹ measuring how corrupt the public perceives government to be, and such statistics are not a true reflection of the extent of corruption in a particular government. In South Africa, the Annual Victims of Crime Survey also endeavours to provide statistics on the number of corruption incidents that have occurred, based on a continuous household-based survey series countrywide.¹²⁰⁰ However, these statistics are reliant on how well the community is informed on corruption-related issues (for instance, do they see corruption as defined in paragraph 2.2.3 or as defined in PreCCA?). Some non-governmental organisations also have statistics available, but as these organisations advocate specific political agendas, the statistics may be presented from a biased perspective, and they should be used with caution. Regardless, those statistics provided by Corruption Watch may be the most comprehensive data on the areas of government where corruption is most prevalent, and on whether corruption is increasing or decreasing.¹²⁰¹

¹¹⁹⁶ MIMF 14.

¹¹⁹⁷ MIMF 14.

¹¹⁹⁸ National Planning Commission *National Development Plan: Our Future 2030* 450; s 18 of the GN R430 in GG 37699 of 30 May 2014.

¹¹⁹⁹ For example, the Corruption Perceptions Index and the Global Corruption Barometer Africa.

¹²⁰⁰ Statistics South Africa *Victims of Crime Survey* para 3.

¹²⁰¹ Corruption Watch 2020 <https://www.corruptionwatch.org.za/>.

4.4.2.3 Encourage whistle-blowing

As discussed in chapter 3, protecting and encouraging whistle-blowers helps to prevent corruption.¹²⁰² For this reason South African local government must establish structures in law to report corruption, or whistle-blowing structures in order to encourage the exposure of corruption.¹²⁰³ Furthermore, residents have the right to lodge complaints and to contribute to the decisions of municipalities through mechanisms provided per the Systems Act.¹²⁰⁴ Residents further have the right to promptly receive a response from the municipality regarding the complaint lodged.¹²⁰⁵ The MIMF mandates municipalities to have a whistle-blowing policy in place containing at least the available reporting structures, how reports will be investigated, and how whistle-blowers will be protected from retaliation.¹²⁰⁶ This policy should explain what whistle-blowing structures are available and could suggest the use of hotlines or ombudsmen.¹²⁰⁷ These whistle-blowing structures should be constructed in a manner that provides for the whistle-blower's anonymity.¹²⁰⁸

It has been experienced that public sector corruption in the local government often involves elected public officials, the municipal councillors.¹²⁰⁹ To encourage whistle-blowing, the public must be well-versed on the limits of municipal councillors' involvement in municipal administration and investigations flowing from the reports of whistle-blowers.¹²¹⁰ Additionally, an avenue must be made available for residents and public officials to escalate a complaint if they believe that municipal councillors exceeded the limits of their powers.¹²¹¹

¹²⁰² See para 3.4.2 above.

¹²⁰³ See para 3.4.2 above; National Planning Commission *National Anti-corruption Strategy 2020-2030* 27.

¹²⁰⁴ S 1 of the Systems Act.

¹²⁰⁵ S 5(1)(b) of the Systems Act.

¹²⁰⁶ MIMF 13.

¹²⁰⁷ S 17 of the GN R430 in GG 37699 of 30 May 2014; MIMF 5, 13.

¹²⁰⁸ S 17 of the GN R430 in GG 37699 of 30 May 2014; MIMF 13.

¹²⁰⁹ See para 2.2.3 above.

¹²¹⁰ MIMF 7.

¹²¹¹ MIMF 7.

South African law and policy afford a great deal of protection to witnesses and the integrity of the evidence concerning corruption and related offences.¹²¹² The protection of witnesses is comprised of many components. They are protected from improper influence by imposing criminal sanctions for impairing the integrity of their testimony.¹²¹³ A witness protection programme is also established for any person that may have to provide evidence in court proceedings.¹²¹⁴ The protection of witnesses may include relocation, changing the witness' identity, and related assistance.¹²¹⁵

Special domestic legislative arrangements are in place for employees who have information relating to their employer that shows or may show the presence of a crime.¹²¹⁶ This protection is also extended to public officials who make a protected disclosure against political office bearers.¹²¹⁷ The primary objective of the *Protected Disclosures Act* 26 of 2000 is to protect any employee of a public or private entity from being victimised as a result of making a protected disclosure.¹²¹⁸ Remedies are available for any occupational detriment suffered because of making a protected disclosure. These may include paying compensation for actual damages suffered, an interdict, or the taking of remedial steps.¹²¹⁹ Where there are reasonable grounds to believe that the whistle blower may be adversely affected, the employee must upon request be transferred to another post (the terms and conditions of employment may not be less favourable) if employed by the state.¹²²⁰ Immunity from civil and criminal liability arising from a protected disclosure is afforded to those who made it.¹²²¹

Despite the *National Anti-Corruption Strategy* devoting particular attention to whistle blowers, whistle blower protection, particularly in corruption-related cases, is considered

¹²¹² Ss 1 and 2 of the *Witness Protection Act* 112 of 1998; s 73 of the *Competition Act* 89 of 1998; ss 11 and 18 of the PreCCA.

¹²¹³ S 73 of the *Competition Act* 89 of 1998; ss 11 and 18 of the PreCCA. See generally the *Criminal Procedure Act* 51 of 1977.

¹²¹⁴ Ss 1 and 2 of the *Witness Protection Act* 112 of 1998.

¹²¹⁵ Ss 1 and 4(1) of the *Witness Protection Act* 112 of 1998.

¹²¹⁶ S 1 of the *Protected Disclosures Act* 26 of 2000; s 18 of the GN R430 in GG 37699 of 30 May 2014.

¹²¹⁷ S 18 of the GN R430 in GG 37699 of 30 May 2014.

¹²¹⁸ A protected disclosure includes information on corrupt activities committed by the employer. Ss 1 and 2 of the *Protected Disclosures Act* 26 of 2000.

¹²¹⁹ Ss 2 and 4 of the *Protected Disclosures Act* 26 of 2000; s 18 of the GN R430 in GG 37699 of 30 May 2014.

¹²²⁰ S 3(4) of the *Protected Disclosures Act* 26 of 2000; s 18 of the GN R430 in GG 37699 of 30 May 2014.

¹²²¹ S 9A of the *Protected Disclosures Act* 26 of 2000; s 18 of the GN R430 in GG 37699 of 30 May 2014.

inadequate and too narrow.¹²²² A survey indicated that people are generally not prepared to act as whistle blowers when necessary.¹²²³ The *Protected Disclosures Act* only applies to occupational detriment and excludes any commercial relationships.¹²²⁴ Furthermore, only disclosures made to the Public Protector or the Auditor-General enjoy protection, thereby excluding other bodies competent to investigate and prosecute corruption.¹²²⁵ No protection is expressly afforded to the direct victims of corruption, if they did not report the corrupt activity themselves.

In general, whistle-blowing is considered to be voluntary, but there are certain circumstances where reporting corruption is considered mandatory. The PreCCA creates a general duty for all individuals who know or should reasonably have known or suspected that corrupt activities (as in the PreCCA) were taking place to report the fact to the SAPS.¹²²⁶ Accounting officers are required to report to the MEC for local government and the Auditor-General any unauthorised, irregular or fruitless and wasteful expenditure and the details of the investigation thereof.¹²²⁷ When it is suspected that the expenditure constitutes a criminal offence, the accounting officer must report it to the SAPS.¹²²⁸ Also, any reasonable suspicion that financial misconduct took place must be reported to the appropriate person (the municipal council or the accounting officer).¹²²⁹ In addition to its being reported to the South African Police Service, this allegation must be tabled by the mayor at a municipal council sitting.¹²³⁰ It is expected of the municipality to follow up on the progress of investigations and the outcome of criminal prosecutions where allegations are reported to the South African Police Service.¹²³¹ If the allegation is against a councillor of the municipality, the report must be made to the Minister and the MEC for finance.¹²³² A specific format is prescribed for reports to the South African Police Service for financial

¹²²² National Anti-Corruption Strategy Steering Committee *Towards a National Anti-Corruption Strategy for South Africa: Discussion Document* 21.

¹²²³ National Planning Commission *National Development Plan 2030: Our Future Make it Work* 449.

¹²²⁴ National Planning Commission *National Development Plan 2030: Our Future Make it Work* 449.

¹²²⁵ National Planning Commission *National Development Plan 2030: Our Future Make it Work* 449.

¹²²⁶ S 34 of the PreCCA.

¹²²⁷ S 32(4) of the MFMA.

¹²²⁸ S 32(6) of the MFMA; s 10 of the GN R430 in GG 37699 of 30 May 2014.

¹²²⁹ Ss 3 and 9 of the GN R430 in GG 37699 of 30 May 2014.

¹²³⁰ Ss 3, 9 and 10 of the GN R430 in GG 37699 of 30 May 2014.

¹²³¹ MIMF para 7.4.

¹²³² Ss 3 and 9 of the GN R430 in GG 37699 of 30 May 2014.

misconduct and offences in municipalities.¹²³³ The outcomes and reports of disciplinary proceedings must also be reported to the mayor, accounting officer, MEC for local government, relevant national government, provincial treasury, National Treasury and the Auditor-General.¹²³⁴

Just as whistle-blowers enjoy legal protection, so do individuals enjoy protection from malicious reporting. It is prohibited to intentionally make a false allegation of corruption, knowing it is not true.¹²³⁵ In certain instances such an allegation is a punishable offence.¹²³⁶

4.4.3 Accountability

The South African courts remarked that: "Constitutionalism, accountability and the rule of law constitute the sharp and mighty sword that stands ready to chop the ugly head of impunity off its stiffened neck."¹²³⁷ Several international and regional instruments speak to promoting accountability as a principle to prevent corruption. The South African government illustrates a commitment to accountability through the NDP, which identifies strengthening accountability and the responsibility of public officials as one of the priorities of government.¹²³⁸ In addition to transparency, accountability is also deemed a founding value of the Constitution.¹²³⁹ The constitutional constructs which promote accountability include the rule of law, constitutional supremacy, the separation of powers and checks and balances on public power.¹²⁴⁰ By making provision for accountability, the Constitution is engineered to protect the community from the tendency of public officials to abuse public power, thereby combatting corruption.¹²⁴¹

Municipalities are expressly required to have due regard to accountability when exercising governance functions.¹²⁴² The *White Paper on the Transformation of the Public Service*

¹²³³ S 14 of the GN R430 in GG 37699 of 30 May 2014.

¹²³⁴ S 16 of the GN R430 in GG 37699 of 30 May 2014.

¹²³⁵ S 9B of the *Protected Disclosures Act* 26 of 2000; s 73 of the *Competition Act* 89 of 1998.

¹²³⁶ S 9B of the *Protected Disclosures Act* 26 of 2000; s 73 of the *Competition Act* 89 of 1998.

¹²³⁷ *Economic Freedom Fighters v Speaker, National Assembly* 2016 (3) SA 580 (CC) para 1.

¹²³⁸ National Planning Commission *National Development Plan 2030: Our Future Make it Work* 447.

¹²³⁹ S 1(d) of the Constitution. See para 3.2.3 above.

¹²⁴⁰ Dube *Enhancing Democratic Accountability Through Constitutionalism in South Africa* 43.

¹²⁴¹ Dube *Enhancing Democratic Accountability Through Constitutionalism in South Africa* 37.

¹²⁴² S 195(1)(f) of the Constitution; ss 6(2)(b), 51(b), 53(5)(b) and 81(2)(v) of the Systems Act; ss 2(a), 82(2) and 121(2)(c) of the MFMA.

indicates that accountability must be enhanced to discharge the obligation to serve the public.¹²⁴³ Public servants must be held legally accountable in their personal capacity for their actions, especially where public resources were involved.¹²⁴⁴ Accountability must be improved in local government to prevent public sector corruption and thereby ensure that the municipal council's aspirations reflect those of the local community.¹²⁴⁵ The discussion below explores the standards identified in chapter 3 as relevant to the principle of accountability.¹²⁴⁶

4.4.3.1 Increase access to evidence

As discussed above, access to evidence is necessary for accountability because it enables the prosecution of corruption.¹²⁴⁷ Access to evidence enables the effective investigation and detection of corruption, which is needed for adjudicators to bring the perpetrators to account.¹²⁴⁸ Several provisions in South African law and policy provide specific institutions with the authority and competence to search and seize evidence.¹²⁴⁹ Included in these powers are the powers to enter and search any premises, seize any item, make copies of any document and require any person to provide testimony.¹²⁵⁰ The PreCCA and other laws determine that tampering with any documentation, accounting records, expert witnesses etcetera is an offence.¹²⁵¹

¹²⁴³ GN 1227 in GG 16838 of 24 November 1995 (*White Paper on the Transformation of the Public Service*) paras 12.1, 12.2.

¹²⁴⁴ National Planning Commission *National Development Plan 2030: Our Future Make it Work 2030* 447.

¹²⁴⁵ The White Paper on Local Government para E.1.

¹²⁴⁶ See para 3.5 above.

¹²⁴⁷ See para 3.5.1 above.

¹²⁴⁸ See para 3.5.1 above.

¹²⁴⁹ Ss 46, 47, 48 and 49 of the *Competition Act* 89 of 1998; chapters 2 and 24 of the *Criminal Procedure Act* 51 of 1977; ss 15 and 16 of the *Public Audit Act* 25 of 2004; s 7A of the *Public Protector Act* 23 of 1994; s 16 of the *South African Human Rights Commission Act* 40 of 2013; s 15A of the *South African Police Service Act* 68 of 1995; s 70 of the *Financial Intelligence Centre Act* 38 of 2001.

¹²⁵⁰ Ss 46, 47, 48 and 49 of the *Competition Act* 89 of 1998; chapters 2 and 24 of the *Criminal Procedure Act* 51 of 1977; ss 15 and 16 of the *Public Audit Act* 25 of 2004; s 7A of the *Public Protector Act* 23 of 1994; s 16 of the *South African Human Rights Commission Act* 40 of 2013; s 15A of the *South African Police Service Act* 68 of 1995; s 70 of the *Financial Intelligence Centre Act* 38 of 2001. However, one cannot fully rely on the provisions of the *South African Police Service Act* 68 of 1995 because the purpose of the search must be to achieve the object as stated in s 215 of the Constitution, which relates to budgetary arrangements.

¹²⁵¹ Ss 11, 18 and 19 of the PreCCA; s 73 of the *Competition Act* 89 of 1998; s 24(9) of the *Magistrates Court Rules*; s 36(9) of the *Uniform Court Rules* and *Gentiruco AG v Firestone SA (Pty) Ltd* 1972 (1) SA 589 (A) para 616H. See generally the *Criminal Procedure Act* 51 of 1977.

4.4.3.2 Remove legal immunities

As discussed in 3.3.4 above, transparency can sometimes be hindered by law and policy.¹²⁵² This is especially the case where access to certain information such as income tax records is legally limited. Certain legal immunities are granted to those officials entrusted with public service responsibilities.¹²⁵³ For this reason international and regional law and policy have stressed the importance of states limiting legal immunities and mandate them to ensure that their laws do not hamper access to evidence.¹²⁵⁴

In South Africa, public officials are granted immunity from civil and criminal actions that may arise from the performance of their official duties.¹²⁵⁵ However, for municipal officials this immunity is not constitutionally entrenched; it is only permitted.¹²⁵⁶ Although the MFMA provides for such immunity concerning financial management, for example, this immunity is limited to powers exercised and functions performed in good faith.¹²⁵⁷ The Structures Act in addition allows for some protection of freedom of speech in municipal councils.¹²⁵⁸

Although South African law and policy make extensive provision for access to potential sources of evidence, very few measures are in place to ensure that South African laws and policies aimed to protect classified information for purposes such as national security are not misused to conceal the presence of corruption.¹²⁵⁹ One of the only safeguards in this regard is the fact that although information is classified as secret or classified, it does not prevent him or her from communicating any audit findings on unauthorised, irregular

¹²⁵² See para 3.3.4 above.

¹²⁵³ See para 3.3.4 above.

¹²⁵⁴ See para 3.3.2 above.

¹²⁵⁵ S 161 of the Constitution.

¹²⁵⁶ Mathenjwa 2015 *Obiter* 669.

¹²⁵⁷ S 176(1) of the MFMA; Mathenjwa 2015 *Obiter* 669.

¹²⁵⁸ See Mathenjwa 2015 *Obiter* 669 for an extensive discussion on the nature and limits of the civil and criminal immunities for councillors as interpreted by the South African judiciary. S 28 of the Structures Act.

¹²⁵⁹ This extensive provision include ss 46, 47, 48 and 49 of the *Competition Act* 89 of 1998; Chapters 2 and 24 of the *Criminal Procedure Act* 51 of 1977; ss 15 and 16 of the *Public Audit Act* 25 of 2004; s 7A of the *Public Protector Act* 23 of 1994; s 15A of the *South African Police Service Act* 68 of 1995; s 70 of the *Financial Intelligence Centre Act* 38 of 2001.

or fruitless and wasteful expenditure, or any other irregular or criminal conduct involving financial affairs.¹²⁶⁰

4.4.3.3 Provide legal redress

The establishment of deterrent mechanisms is emphasised in international and regional law and policy as an integral part of preventing public sector corruption.¹²⁶¹ Consequence management is a vital component of such mechanisms and is ultimately how perpetrators can be held accountable.¹²⁶² As discussed in Chapter 3, a proper consequence management system contains methods for performance management and legal redress in an acceptable time frame.¹²⁶³

Performance management is considered a vital component in ensuring that plans, strategies and policies are being implemented.¹²⁶⁴ It further ensures that these instruments have the desired impact and that resources are applied appropriately.¹²⁶⁵ For municipalities, a performance management system must be established.¹²⁶⁶ Performance management takes place on two different levels. On the one hand the overall performance of the municipality as an institution is measured annually.¹²⁶⁷ On the other hand, the performance of municipal officials is measured individually.¹²⁶⁸ The purpose of a performance management system is (a) to ensure that municipal officials know for what they are accountable, (b) to measure performance against outputs, (c) to use performance assessment to establish if the official is performing within the expectations applicable to the office occupied, and (d) to address underperformance appropriately (consequence management).¹²⁶⁹ The performance management system must contain key performance indicators for municipal officials' duties, against which performance is

¹²⁶⁰ S 18 of the *Public Audit Act* 25 of 2004.

¹²⁶¹ See para 3.5.3 above.

¹²⁶² See para 3.5.3 above.

¹²⁶³ See para 3.5.3 above.

¹²⁶⁴ The White Paper on Local Government para B.3.2; Nkuna "Performance Management in South African Local Government: Is It a Matter of a System, Model or Measurement?" 65-80.

¹²⁶⁵ The White Paper on Local Government para B.3.2.

¹²⁶⁶ S 38 of the Systems Act.

¹²⁶⁷ See paras 4.4.3.1 and 4.4.3.2 above.

¹²⁶⁸ S 26 of the GN R805 in GG 29089 of 1 August 2006.

¹²⁶⁹ Ss 23, 25, 26, 32(3) of the GN R805 in GG 29089 of 1 August 2006.

measured in the municipality.¹²⁷⁰ Some key policies such as the municipality's supply chain policy must provide for internal monitoring systems of retrospective analysis to establish whether the relevant officials complied with these policies.¹²⁷¹

Legal remedies must be created for instances where public sector corruption took place.¹²⁷² As discussed in chapter 3, effective remedies may involve sanctions, reparation, restitution, rehabilitation and other measures such as apologies, public memorials, guarantees of non-repetition and changes in laws.¹²⁷³ The most popular avenue for legal redress in South African law appears to be criminal sanctions.¹²⁷⁴ Depending on the specifics of the instance of public sector corruption that occurred, a perpetrator can face harsh sentences, including imprisonment or the imposition of a fine.¹²⁷⁵

Legal redress for corrupt activities involving procurement can be in the form of rejecting a bid or the recommendation for the award of a bid, or the cancelling of a contract.¹²⁷⁶ A perpetrator may also then be listed in the Register for Tender Defaulters¹²⁷⁷ as established by the PreCCA.¹²⁷⁸

Corrupt activities which involve the financial management of a municipality may be addressed through either criminal, civil or disciplinary proceedings. Municipal officials may be held individually accountable for unauthorised, irregular and wasteful and fruitless expenditure (which includes expenditure resulting from public sector corruption).¹²⁷⁹ Where serious financial conduct such as corruption has taken place, disciplinary steps must be taken against the municipal official liable.¹²⁸⁰ Such steps may include suspension

¹²⁷⁰ S 41 of the Systems Act; ss 8, 9 and 10 of the GN R796 in GG 22605 of 24 August 2001.

¹²⁷¹ S 42 of the GenN 868 in GG 27636 of 30 May 2005.

¹²⁷² See para 3.5.3 above.

¹²⁷³ See para 3.5.3 above.

¹²⁷⁴ S 73 of the *Competition Act* 89 of 1998; ss 3, 4 and 26 of the PreCCA; ss 173 and 174 of the MFMA; MIMF para 7.3.

¹²⁷⁵ S 73 of the *Competition Act* 89 of 1998; ss 3, 4 and 26 of the PreCCA; ss 173 and 174 of the MFMA; MIMF para 7.3.

¹²⁷⁶ S 38 of the GenN 868 in GG 27636 of 30 May 2005; MIMF para 7.5; ss 28 and 29 of the PreCCA.

¹²⁷⁷ See note 1135 above. It seems that in practice only National Treasury's Database of Restricted Suppliers is used, because it is the only register that contains information as on 19 October 2021. National Treasury 2021 <http://www.treasury.gov.za/publications/other/Database%20of%20Restricted%20Suppliers.pdf>.

¹²⁷⁸ S 38 of the GenN 868 in GG 27636 of 30 May 2005; ss 28 and 29 of the PreCCA.

¹²⁷⁹ S 32(1) of the MFMA; Dullah Omar Institute 2020 <https://bit.ly/3A5Vsya>.

¹²⁸⁰ S 171 of the MFMA; MIMF para 7.1.

without remuneration, demotion, transfer to another position, the reduction of the official's remuneration package, or an appropriate fine.¹²⁸¹ For this purpose a disciplinary board must be established by the municipal council.¹²⁸² The names of employees who were dismissed because of financial misconduct (such as corruption) must be reported to the Minister of local government for inclusion in a national database.¹²⁸³

A municipality must recover all losses suffered by the municipality due to unauthorised, irregular and wasteful and fruitless expenditure (including through corruption) from the official liable.¹²⁸⁴ Anybody who is knowingly in possession of property linked to any illegal activity may be charged with racketeering, which is punishable by imprisonment.¹²⁸⁵ The *Prevention of Organised Crime Act* further makes provision for the forfeiture of the proceeds of illegal activities, including statutory corruption.¹²⁸⁶ The *Municipal Integrity Management Framework* determines that a municipality should always request prosecutors to ask for restitution where public sector corruption matters are heard in court.¹²⁸⁷ Where criminal proceedings are not instituted, the municipality must initiate civil proceedings to recover losses suffered due to public sector corruption.¹²⁸⁸ In addition to recovery, forfeiture or restitution, municipalities must take positive steps to prevent recurrences of corruption.¹²⁸⁹ These steps to prevent corruption must form part of a municipality's risk management policy.¹²⁹⁰

Accountability requires the "timely, fair and complete resolution of corruption matters."¹²⁹¹ The complete resolution of corruption matters further presupposes that perpetrators are brought to account, that losses are recovered and that recurrences are prevented.¹²⁹²

¹²⁸¹ S 171 of the MFMA; s 67 and item 14A of Schedule 2 of the Systems Act; MIMF para 7.1.

¹²⁸² S 4 of the GN R430 in GG 37699 of 30 May 2014.

¹²⁸³ MIMF para 7.6.

¹²⁸⁴ S 32(2) of the MFMA; ss 74 and 75 of the GenN 393 in GG 32141 of 17 April 2009; MIMF para 7.2.

¹²⁸⁵ S 2(1) of the *Prevention of Organised Crime Act* 121 of 1998.

¹²⁸⁶ S 2(1) and Chapter 5 of the *Prevention of Organised Crime Act* 121 of 1998.

¹²⁸⁷ S 300 of the *Criminal Procedure Act* 51 of 1977

¹²⁸⁸ Recently the Nelson Mandela Bay Metropolitan Municipality followed this route to recover from an ex-public official losses suffered due to wasteful expenditure which may have been symptomatic of corruption taking place. Dullah Omar Institute 2020 <https://bit.ly/3A5Vsya>; MIMF 17.

¹²⁸⁹ MIMF para 7.6.

¹²⁹⁰ National Anti-Corruption Strategy Steering Committee *Towards a National Anti-Corruption Strategy for South Africa: Discussion Document* 29. See para 4.4.2.2 above.

¹²⁹¹ MIMF 16.

¹²⁹² MIMF 16.

Municipalities are specifically required to communicate public sector corruption matters that were successfully resolved to contribute to the deterrent effect of legal redress.¹²⁹³ The NDP has indicated that one of the obstacles to preventing corruption is the slow justice system.¹²⁹⁴ Some recommendations in the NDP include creating dedicated teams of prosecutors or specialised courts to expedite public sector corruption matters.¹²⁹⁵

4.4.3.4 Establish and strengthen anti-corruption institutions

International and regional anti-corruption standards, as identified above, require the establishment of an anti-corruption institution with easy access to the public, having the necessary resource capacity, legal mandate and independence to prevent, detect, investigate, punish and eliminate corruption.¹²⁹⁶ Additionally, the established institution(s) should be mandated to implement international and regional anti-corruption standards.¹²⁹⁷ Although not intentionally so designed, South African law and policy provide for a multi-agency anti-corruption structure (consisting of more than 11 different institutions) instead of a single anti-corruption authority.¹²⁹⁸ The NDP argues that a single anti-corruption agency is not resilient because it would be susceptible to political capture which could compromise the independence of the anti-corruption system.¹²⁹⁹ A multi-agency approach contains checks and balances, which is a vital necessity for resilience in the current South African political climate.¹³⁰⁰

¹²⁹³ MIMF 18.

¹²⁹⁴ National Planning Commission *National Development Plan 2030: Our Future Make it Work* 448.

¹²⁹⁵ National Planning Commission *National Development Plan 2030: Our Future Make it Work* 448.

¹²⁹⁶ See para 3.5.4 above; National Planning Commission *National Anti-corruption Strategy 2020-2030* 27.

¹²⁹⁷ See para 3.5.4 above.

¹²⁹⁸ National Planning Commission *National Anti-corruption Strategy 2020-2030* 21; ss 179, 182, 184, 188, 196(4), 205(1) and 205(3) of the Constitution; ss 4, 5, 21(1) and 27(1) of the *Competition Act* 89 of 1998; ss 17C and 64A of the *South African Police Service Act* 68 of 1995; s 2 of the *Financial Intelligence Centre Act* 38 of 2001. The multi-agency anti-corruption structure is made up of the Anti-Corruption Inter-Ministerial Committee, the National Prosecuting Authority, the Public Protector, the South African Human Rights Commission, the Public Service Commission, the South African Police Service, the municipal police service, the Auditor General, the Competition Commission, the Competition Tribunal, the Directorate of Priority Crime Investigation, the Financial Intelligence Centre, the NDPP Investigating Directorate and the Judiciary. One could arguably also add the Electoral Commission to this list because it is mandated to ensure that corruption does not take place in national and provincial or municipal elections.

¹²⁹⁹ National Planning Commission *National Development Plan 2030: Our Future Make it Work* 448.

¹³⁰⁰ National Planning Commission *National Development Plan 2030: Our Future Make it Work* 448; MIMF 16.

Anti-corruption institutions have a wide scope of application that extends well beyond public sector corruption in local government. Nevertheless, these institutions are all equally important and support the prevention and control of public sector corruption in local government. Each institution is a specialist body with its own mandated area and functions beyond local government politics, making all of them instrumental in preventing and controlling public sector corruption in local government. There is also nothing in South African law and policy that prevents any municipality from establishing its own anti-corruption institution responsible for preventing and controlling corruption in that municipality. For example, the Cape Town Metropolitan Municipality has established a City Ombudsman responsible for addressing complaints of maladministration, including corruption in the municipality.¹³⁰¹

Each anti-corruption institution has its own scope of powers and functions. The general criminal justice system (the National Prosecuting Authority and the South African Police Service) is responsible for preventing, combatting, investigating and prosecuting crime, which includes statutory offences of corruption.¹³⁰² The Directorate for Priority Crime Investigation (also known as the Hawks), the Assets Forfeiture Unit, the National Director of Public Prosecutions' Investigating Directorate (NDPP Investigating Directorate), and the municipal police service are situated in the general justice system.¹³⁰³

The Directorate for Priority Crime Investigation, often considered the principal anti-corruption agency in South Africa, has the duties to prevent, combat and investigate national priority offences, including statutory offences of corruption.¹³⁰⁴ No express mandate is given to it to detect and punish corruption as envisaged by international and regional law and policy. Although the powers of the municipal police service are quite limited, it has a general duty to prevent crime, including statutory offences of corruption.¹³⁰⁵ The Assets Forfeiture Unit is particularly concerned with recovering the

¹³⁰¹ City of Cape Town *Ombudsman Policy* (2014).

¹³⁰² Ss 179 and 205(3) of the Constitution; s 20 of the *National Prosecuting Authority Act* 32 of 1998.

¹³⁰³ S 17C and 64A of the *South African Police Service Act* 68 of 1995.

¹³⁰⁴ S 17D of the *South African Police Service Act* 68 of 1995; Berning and Montesh 2012 *SA Crime Quarterly* 7.

¹³⁰⁵ S 64E(c) of the *South African Police Service Act* 68 of 1995.

proceeds of crime.¹³⁰⁶ The NDPP Investigating Directorate is considered as a unit with specialist knowledge in the National Prosecuting Authority.¹³⁰⁷ It is tasked with investigating and prosecuting statutory offences of corruption including those arising from the Zondo Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector, the Nugent Commission of Inquiry into Tax Administration and Governance by the South African Revenue Service and the Mpati Commission of Inquiry into Allegations for Impropriety regarding the Public Investment Corporation.¹³⁰⁸

The *South African Police Service Act* 68 of 1995 is the principal legislation regulating the SAPS, the Directorate for Priority Crime Investigation and the municipal police service. It should be noted that this Act has not been thoroughly updated since the adoption of the Constitution, and therefore does not refer to the correct constitutional provisions. This may cause enforcement difficulties when the Act is challenged in court. For example, the Act still refers to chapter 3 of the Constitution as containing the Bill of Rights and section 13(8) of the Act refers to section 215 of the Constitution (which relates to budget-related matters) as the authoritative constitutional provision for the objective of the South African Police Service. Such legislative mistakes can potentially endanger the legitimacy of the entire anti-corruption framework.

Other institutions may, in certain circumstances, investigate and report on public sector corruption as defined in paragraph 3.2.3.¹³⁰⁹ For instance, the South African Human Rights Commission has the competence to investigate matters involving human rights. Therefore, it may investigate and report on corrupt activities which adversely affect human rights.¹³¹⁰ The Special Investigations Unit (sometimes referred to as the Snakes)

¹³⁰⁶ Chapters 5 and 6 of the *Prevention of Organised Crime Act* 121 of 1998.

¹³⁰⁷ Ss 7(1) and 28(1)(b) of the *National Prosecuting Authority Act* 32 of 1998; ProcN 3 in GG 41403 of 25 January 2018; ProcN 24 in GG 41562 of 24 May 2018; ProcN 30 in GG 41979 of 17 October 2018; South African Government 2020 <https://www.gov.za/speeches/president-cyril-ramaphosa-proclaims-ndpp-investigating-directorate-strengthen-fight-against>; National Prosecuting Authority 2020 https://www.npa.gov.za/Investigating_Directorate/home.

¹³⁰⁸ Ss 7(1) and 28(1)(b) of the *National Prosecuting Authority Act* 32 of 1998; ProcN 3 in GG 41403 of 25 January 2018; ProcN 24 in GG 41562 of 24 May 2018; ProcN 30 in GG 41979 of 17 October 2018; South African Government 2020 <https://www.gov.za/speeches/president-cyril-ramaphosa-proclaims-ndpp-investigating-directorate-strengthen-fight-against>; National Prosecuting Authority 2020 https://www.npa.gov.za/Investigating_Directorate/home.

¹³⁰⁹ See para 3.2.3 above.

¹³¹⁰ S 184 of the Constitution; s 15 of the *South African Human Rights Commission Act* 40 of 2013.

was established by presidential proclamation and is specifically tasked to investigate and report on corruption.¹³¹¹ Both the Public Protector and the Public Service Commission have the authority to investigate and report on matters involving improper conduct, including public sector corruption in public service and administration.¹³¹² However, the powers of all these institutions are limited regarding the punishment of corruption. They can only make recommendations for possible remedial action.¹³¹³ When reporting and auditing government institutions, the Auditor-General can detect, report on, and take certain actions involving corruption identified from the financial records.¹³¹⁴

South African laws further provide for institutions supporting the other anti-corruption organisations with information or with adjudicating cases involving corrupt activities.¹³¹⁵ The South African courts are responsible for adjudicating, punishing and resolving corruption by imposing appropriate legal remedies.¹³¹⁶ The Financial Intelligence Centre was established mainly to process, analyse and interpret financial information, primarily to identify the proceeds of crime and combat money laundering.¹³¹⁷ However, the Financial Intelligence Centre has proven instrumental in past endeavours in detecting and obtaining evidence for corrupt activities.¹³¹⁸

A specialist body has also been established to deal with corrupt activities which adversely affect the economic market.¹³¹⁹ These corrupt activities include price-fixing, insider trading, tender collusion etcetera.¹³²⁰ The Competition Commission and Competition Tribunal have the authority to investigate and adjudicate instances of procurement-

¹³¹¹ S 2(2)(f) of the *Special Investigating Units and Special Tribunals Act* 74 of 1996; Bruce *Accountability for Corruption: The Role of the Special Investigating Unit* 7.

¹³¹² Ss 182 and 196(4) of the Constitution; Naidoo 2012 *Journal of Public Administration* 667; *Economic Freedom Fighters v Speaker, National Assembly* 2016 (3) SA 580 (CC) para 52.

¹³¹³ S 7 of the *Public Protector Act* 23 of 1994; s 10 of the *Public Service Commission Act* 46 of 1997; Naidoo 2012 *Journal of Public Administration* 667.

¹³¹⁴ S 188 of the Constitution; ss 5A and 5B of the *Public Audit Act* 25 of 2004; Naidoo 2012 *Journal of Public Administration* 667.

¹³¹⁵ Ss 165(1) and 166 of the Constitution; ss 3 and 4 of the *Financial Intelligence Centre Act* 38 of 2001.

¹³¹⁶ Ss 165(1) and 166 of the Constitution.

¹³¹⁷ Ss 3 and 4 of the *Financial Intelligence Centre Act* 38 of 2001.

¹³¹⁸ Chapter 2 of the *Competition Act* 89 of 1998.

¹³¹⁹ Ss 4 and 5 of the *Competition Act* 89 of 1998.

¹³²⁰ Ss 4 and 5 of the *Competition Act* 89 of 1998.

related corruption concerning restrictive vertical and horizontal practices and impose an appropriate remedy.¹³²¹

On occasion the South African judiciary has shown the importance of the independence of anti-corruption institution and stated that it is vital for them to exercise their powers and functions correctly.¹³²² The NDP shows the need to protect anti-corruption institutions from any political pressure and undue interference.¹³²³ The autonomy of anti-corruption agencies should be reinforced to contribute to their independence.¹³²⁴ South African law and policy determine that the Public Protector, the Auditor-General and the South African Human Rights Commission, the Public Service Commission, the Competition Commission and the National Prosecuting Authority are independent, subject only to the Constitution and the law.¹³²⁵ They must perform their duties without fear, favour and prejudice.¹³²⁶ Laws explicitly prohibit any other institutions from interfering with the functions of these anti-corruption institutions.¹³²⁷ To reinforce their independence they are given the power to manage their own human resources and are precluded from any civil and criminal liability which may arise from exercising their duties.¹³²⁸ The Constitutional Court has discussed at length what is required to bolster the independence of anti-corruption institutions and determined that the measures necessary include the power to control

¹³²¹ Ss 21(1) and 27(1) of the *Competition Act* 89 of 1998.

¹³²² *Glenister v President of the Republic of South Africa and Others* 2011 3 SA 347 (CC) para 118.

¹³²³ National Planning Commission *National Development Plan 2030: Our Future Make it Work* 448.

¹³²⁴ National Anti-Corruption Strategy Steering Committee *Towards a National Anti-Corruption Strategy for South Africa: Discussion Document* 28; National Planning Commission *National Development Plan: Our Future 2030* 448.

¹³²⁵ Ss 179(4), 181(2) and 196(4) of the Constitution; s 3 of the *Public Audit Act* 25 of 2004; s 4 of the *South African Human Rights Commission Act* 40 of 2013; s 32 of the *National Prosecuting Authority Act* 32 of 1998; s 20 of the *Competition Act* 89 of 1998.

¹³²⁶ Ss 179(4), 181(2) and 196(4) of the Constitution; s 3 of the *Public Audit Act* 25 of 2004; s 4 of the *South African Human Rights Commission Act* 40 of 2013; s 32 of the *National Prosecuting Authority Act* 32 of 1998; s 20 of the *Competition Act* 89 of 1998.

¹³²⁷ Ss 179(4), 181(2) and 196(4) of the Constitution; s 3 of the *Public Audit Act* 25 of 2004; s 4 of the *South African Human Rights Commission Act* 40 of 2013; s 32 of the *National Prosecuting Authority Act* 32 of 1998; s 20 of the *Competition Act* 89 of 1998.

¹³²⁸ S 12 of the *Public Audit Act* 25 of 2004; ss 2 and 5(3) of the *Public Protector Act* 23 of 1994; ss 19 and 21(3) of the *South African Human Rights Commission Act* 40 of 2013; s 42 of the *National Prosecuting Authority Act* 32 of 1998.

their own budgets and human resource management, measures to reduce intimidation from senior public officials, and a clear jurisdiction.¹³²⁹

The NDP notes that the other anti-corruption institutions, the South African Police Service including the Directorate for Priority Crime Investigation and the municipal police services are accountable to the Executive.¹³³⁰ This arrangement may increase their vulnerability to political pressure and interference.¹³³¹ The South African judiciary has shown that in practice political pressures still on occasion interfere with the functions of anti-corruption bodies despite the existence of many guarantees of their independence in the Constitution and other legislation.¹³³² In addition, it may also be prudent to note that only the Public Protector is expected to be easily accessible to the public, as envisaged in international and regional law and policy.¹³³³ This may cause difficulties for stakeholders, including the public, to report corruption and participate in anti-corruption efforts.

4.4.3.5 Facilitate stakeholder cooperation

The cooperation of a wide range of stakeholders must be promoted to prevent and combat corruption.¹³³⁴ Accordingly, South African law and policy maintain a particular emphasis on shared responsibility and cooperation among various stakeholders in this respect.¹³³⁵

One of the principles that facilitates cooperation among various stakeholders in government is cooperative governance, which dictates how the different spheres, departments and institutions in these spheres should work together.¹³³⁶ The Constitution envisions all spheres of government supporting and strengthening one another to fulfil their distinctive functions.¹³³⁷ The same can be said for anti-corruption efforts. All

¹³²⁹ *Helen Suzman Foundation v President of the Republic of South Africa* 2015 2 SA 1 (CC) paras 40, 43, 49, 94.

¹³³⁰ National Planning Commission *National Development Plan 2030: Our Future Make it Work* 448.

¹³³¹ National Planning Commission *National Development Plan 2030: Our Future Make it Work* 448.

¹³³² *Corruption Watch v President of the Republic of South Africa* [ZACC] 23 paras 18, 19, 21.

¹³³³ S 182(4) and 182(5) of the Constitution.

¹³³⁴ See para 3.4.3 above.

¹³³⁵ Ss 40, 41, 154, 181(3) and 181(4) of the Constitution; ss 34, 35, 37 and 44 of the MFMA; s 3 of the Systems Act; the White Paper on Local Government para C.1; MIMF paras 6.3, 6.4; National Planning Commission *National Development Plan: Our Future 2030* 448.

¹³³⁶ Ss 40, 41 and 154(1) of the Constitution; s 3 of the Systems Act.

¹³³⁷ Ss 40, 41 and 154(1) of the Constitution.

government spheres, departments and institutions share the responsibility of combatting corruption.¹³³⁸ This principle could be extended to include cooperation among the municipal council, all the departments within the municipal administration, and the community.¹³³⁹

Cooperative governance "recognises the complex nature of government in a modern society" and is deemed to be part of providing an accountable government for South Africa as a whole.¹³⁴⁰ Cooperative governance is considered a form of governance where public resources are harnessed and utilised as a whole for the achievement of the goal of communities.¹³⁴¹ The Planning Commission identifies poor coordination between government departments and institutions as an obstacle to the successful implementation of anti-corruption efforts.¹³⁴² Weak cooperation in governance is further seen as a hindrance to the successful investigation and prosecution of corruption.¹³⁴³

A key component of cooperative governance is to see that law and policy are coordinated and harmonised. It is particularly expected that organised local government and municipalities are allowed to give inputs on any draft national and provincial legislation that impacts on the status, powers, or functions of local government.¹³⁴⁴

Different government departments and institutions should inform one another and consult with one another on matters which involve common interest, such as public sector corruption.¹³⁴⁵ They must also provide support to anti-corruption institutions through legislative and other measures.¹³⁴⁶ This support should ensure the "independence, impartiality, dignity and effectiveness" of the anti-corruption institutions.¹³⁴⁷

¹³³⁸ MIMF para 6.4.

¹³³⁹ MIMF para 6.4.

¹³⁴⁰ S 41(1)(c) of the Constitution and the White Paper of Local Government para C.1. For a more detailed discussion on the theoretical foundation and constitutional constructs of cooperative governance see generally De Vos *et al South African Constitutional Law in Context* 271.

¹³⁴¹ The White Paper on Local Government para C.1.

¹³⁴² National Planning Commission *National Development Plan 2030: Our Future Make it Work* 448.

¹³⁴³ National Planning Commission *National Development Plan 2030: Our Future Make it Work* 448.

¹³⁴⁴ S 154(2) of the Constitution.

¹³⁴⁵ S 41(1)(h)(iii) of the Constitution and the National Anti-Corruption Strategy Steering Committee *Towards a National Anti-Corruption Strategy for South Africa: Discussion Document* 22.

¹³⁴⁶ Ss 181(3) and 181(4) of the Constitution.

¹³⁴⁷ S 181(4) of the Constitution; s 20(3) of the *Competition Act* 89 of 1998.

Organised local government, in this instance the South African Local Government Association,¹³⁴⁸ is instructed to develop exemplary governance processes and practices to promote local government as a distinct sphere in government.¹³⁴⁹ Municipalities can through SALGA improve cooperation by assisting each other and sharing limited resources.¹³⁵⁰ Cooperative governance also requires SALGA to find solutions for problems affecting local government generally, such as public sector corruption.¹³⁵¹ Moreover, SALGA must promote compliance with the principles of cooperative governance amongst municipalities.¹³⁵²

Through cooperation, valuable information and expertise can be shared to affect the punishment of corruption. Accordingly, many provisions are aimed at sharing information involving corrupt activities.¹³⁵³ For instance, the Accounting Officer is required to inform the SAPS of all cases involving irregular expenditure that took place in municipal finances that constitutes an offence, fraud or theft.¹³⁵⁴

Local residents are considered stakeholders in preventing and controlling corruption and are an important component of the necessary checks and balances in a system of cooperative governance.¹³⁵⁵

4.4.3.6 Promote participation of society

International and regional law and policy highlight that promoting the participation of society is vital to prevent corruption.¹³⁵⁶ Local communities are considered the owners of municipalities and are thus entitled to be empowered to partake in local governance

¹³⁴⁸ Hereafter SALGA.

¹³⁴⁹ S 3(3)(a) of the Systems Act.

¹³⁵⁰ S 3(3)(b) of the Systems Act.

¹³⁵¹ S 3(3)(c) of the Systems Act.

¹³⁵² S 3(3)(d) of the Systems Act.

¹³⁵³ National Anti-Corruption Strategy Steering Committee *Towards a National Anti-Corruption Strategy for South Africa: Discussion Document 22*.

¹³⁵⁴ MIMF para 6.3; ss 32(6) and 32(7) of the MFMA.

¹³⁵⁵ The White Paper on Local Government para G.1.3. Also see para 4.4.3.6 below.

¹³⁵⁶ UNDP *Institutional Arrangements to Combat Corruption: A Comparative Study* 47. See para 3.3.1 above for a more detailed discussion on the international and regional law and policy framework on building public confidence through empowering communities.

matters and prevent public sector corruption.¹³⁵⁷ Participatory governance is viewed as vital to the attempt to improve local governance.¹³⁵⁸ The White Paper on Local Government describes local government as being in a partnership with the community and requires leadership willing to build partnerships and coalitions.¹³⁵⁹ One of the main aims of the *Back to Basics Policy* is to provide community members with some tools which they can use to prevent public sector corruption in local government.¹³⁶⁰

However, these tools cannot be used unless the community is provided with adequate education and access to the appropriate information.¹³⁶¹ As a starting point the *Back to Basics Policy* indicators must be published for public use. Surveys of residents' satisfaction and other community engagement plans can be used to improve community involvement in local governance.¹³⁶² Public education and awareness programmes, specifically on the effect of corruption on delivering services and corruption reporting structures, are needed for communities.¹³⁶³

The NDP calls attention to the fact that there is no public body with the explicit mandate of providing advice or promoting public awareness on matters concerning corruption.¹³⁶⁴ However, the MIMF obliges municipalities to increase communities' awareness of their right to accessible, transparent and trustworthy information in local governance matters, their right to just administrative action, the methods of recourse for infringement of these rights, and lastly, what constitutes corruption and where to report it.¹³⁶⁵ Ward councillors and municipal officials are particularly required to play a key role in raising awareness on these matters.¹³⁶⁶ In addition, community policy forums and boards are to liaise with

¹³⁵⁷ MIMF 5; CoGTA *Local Government Anti-Corruption Strategy* (2015) 6; National Planning Commission *National Anti-corruption Strategy 2020-2030* 26.

¹³⁵⁸ CoGTA *Back to Basics Policy* (2015) 11; MIMF 5.

¹³⁵⁹ The White Paper on Local Government para E.1.

¹³⁶⁰ CoGTA *Back to Basics Policy* (2015) 9.

¹³⁶¹ CoGTA *Back to Basics Policy* (2015) 9.

¹³⁶² CoGTA *Back to Basics Policy* (2015) 9.

¹³⁶³ National Anti-Corruption Strategy Steering Committee *Towards a National Anti-Corruption Strategy for South Africa: Discussion Document 21*; National Planning Commission *National Development Plan: Our Future 2030* 448.

¹³⁶⁴ National Planning Commission *National Development Plan 2030: Our Future Make it Work* 450.

¹³⁶⁵ MIMF 5, 7.

¹³⁶⁶ MIMF 5.

communities to promote joint problem identification, like public sector corruption, to and consider potential solutions to the problems identified.¹³⁶⁷

The community must have access to timely, accessible and accurate information involving public service.¹³⁶⁸ Some information must be accessible to the public by default, while other types of information must be made available to the community on request. By default, the public should have easy access to the reports of the Auditor-General and the Public Protector (these reports often contain important information relating to the presence of public sector corruption in local governance).¹³⁶⁹ The Register for Tender Defaulters must also be open and accessible to the general public.¹³⁷⁰ The media also play a vital role in facilitating access to information for the public concerning public sector corruption in local government.¹³⁷¹ The constitutionally guaranteed freedom of expression of the media is important to preventing public sector corruption.¹³⁷²

A trusted channel for reporting a suspicion of corruption must be established and diligently advertised to the public.¹³⁷³ Effective communication channels must be established, including reporting or complaint mechanisms and methods of distributing urgent information.¹³⁷⁴ Communication channels must make provision for disseminating official documents and invitations for public inputs on these documents.¹³⁷⁵ To instil an ethos of community participation in municipalities, the Systems Act obliges them to provide the community with information on what communication channels are available and how to use them.¹³⁷⁶ All information open for public comment must be in an understandable format and easily accessible.¹³⁷⁷ Municipalities are required to develop an official website that must contain an assortment of information and documents such as

¹³⁶⁷ S 18(1)(e) of the *South African Police Service Act* 68 of 1995.

¹³⁶⁸ S 195(1)(g) of the Constitution.

¹³⁶⁹ Ss 182(5) and 188(3) of the Constitution; s 8 of the *Public Protector Act* 23 of 1994.

¹³⁷⁰ S 32 of the PreCCA.

¹³⁷¹ A 12 of the AUCPCC; a 4(i) of the *SADC Protocol Against Corruption*; a 13 of the UNCAC.

¹³⁷² Ss 16 and 192 of the Constitution.

¹³⁷³ MIMF 13.

¹³⁷⁴ CoGTA *Back to Basics Policy* (2015) 11.

¹³⁷⁵ CoGTA *Back to Basics Policy* (2015) 11.

¹³⁷⁶ Ss 16, 17, 18, 19, 20 and 21 of the Systems Act.

¹³⁷⁷ Ss 16, 17, 18, 19, 20 and 21 of the Systems Act.

their budgets, integrated development plans, policies and information relating to public procurement.¹³⁷⁸

A municipality's key strategic planning instruments such as the budget, the SDBIP, and the IDP must be made available to the community.¹³⁷⁹ Provision is also made for the public to have access to and participate in council meetings when these instruments are developed and adopted.¹³⁸⁰ The budget must be accompanied by supporting information such as easy-to-understand summaries, ward-specific information, and the budget's financial and service delivery implications.¹³⁸¹ In order to enable the community to monitor municipal performance, the public must have access to monthly budget statements, quarterly reports on the implementation of the budget, and mid-year budget and performance assessments.¹³⁸² The MIMF requires that all information that municipalities makes available to the public is easily accessible, including its being written in a clear and understandable format.¹³⁸³ Codes of conduct and the standards of behaviour expected from public officials should also be available to the public.¹³⁸⁴

Subject to a few requirements, all community members have a right to access to the records of public bodies.¹³⁸⁵ To this end, municipalities are required to develop a manual in three different official languages containing information on the functions of the municipality, the contact details of the information officer and the deputy information officer, an index of the types of records held by the municipality, and how to gain access to such records.¹³⁸⁶ Municipalities must also ensure that an adequate number of employees is designated as information officers, as is necessary to render information as accessible to the community as is reasonably possible.¹³⁸⁷

¹³⁷⁸ Ss 21A and 21B of the Systems Act. Information which must be available the municipality's official website includes the Back to Basics Policy; codes of conduct; monthly budget statement; annual budget; policies and by-laws; PAIA guidelines; tenders; notices; and anti-corruption or fraud reporting structure.

¹³⁷⁹ Ss 18, 19, 30, 32 and 34 of the GenN 393 in GG 32141 of 17 April 2009; s 21A of the Systems Act.

¹³⁸⁰ S 130 of the MFMA; the White Paper on Local Government para B.3.3.

¹³⁸¹ S 21 of the Systems Act; s 18 of the GenN 393 in GG 32141 of 17 April 2009.

¹³⁸² S 30, 32 and 34 of the GenN 393 in GG 32141 of 17 April 2009.

¹³⁸³ MIMF 5.

¹³⁸⁴ MIMF 7.

¹³⁸⁵ S 11 of the PAIA; s 32 of the Constitution.

¹³⁸⁶ Ss 14 and 18 of the PAIA.

¹³⁸⁷ S 17 of the PAIA.

4.4.3.7 Hold periodic government elections

Accountability requires a system for government elections.¹³⁸⁸ The South African judiciary has highlighted that increased accountability is one of the purposes of a common voters' roll and a multi-party system of democratic government.¹³⁸⁹ Local government elections can be seen as one of the main methods of holding government accountable. During local government elections the public can hold an underperforming government accountable by not electing them for an additional term.¹³⁹⁰ A system of government elections must be periodic and founded on the values of freedom and fairness.¹³⁹¹ The Constitution provides the basis for the periodic re-election of municipal councils.¹³⁹² Details on how and when elections should occur can be found in the Structures Act.¹³⁹³

Local governments must ensure the public's effective participation, which involves increasing voter participation, ensuring access to registration, and engaging in election campaigns.¹³⁹⁴ Some methods of facilitating this could be to increase voter education, overcome mobility challenges, address language barriers and provide assistance to people with disabilities.¹³⁹⁵

South African law and policy allow for certain qualified persons to act as voter educators for municipal elections.¹³⁹⁶ The only real parameters for voter education in municipal elections are that education should be given impartially and independently and must be conducive to free and fair elections.¹³⁹⁷ No other specifics are set out to guide voter education.¹³⁹⁸ Examples would be what should be included in voter education, the right to vote by secret ballot, the type of assistance available for voters, or what political parties

¹³⁸⁸ See para 3.4.5. above.

¹³⁸⁹ *Kham and Others v Electoral Commission and Another* 2016 2 SA 338 (CC) para 2.

¹³⁹⁰ Ss 157, 160 and 190 of the Constitution; ss 22 and 23 of the Structures Act; the White Paper on Local Government para E.3.1.

¹³⁹¹ See para 3.5.7 above.

¹³⁹² Ss 157 and 160 of the Constitution.

¹³⁹³ Chapter 3 of the Structures Act.

¹³⁹⁴ See para 3.4.5 above.

¹³⁹⁵ See para 3.4.5 above.

¹³⁹⁶ S 43(3) of the *Local Government: Municipal Electoral Act 27 of 2000*.

¹³⁹⁷ S 43(3) of the *Local Government: Municipal Electoral Act 27 of 2000*.

¹³⁹⁸ S 43(3) of the *Local Government: Municipal Electoral Act 27 of 2000*.

are available to vote for. Voter education is also not considered as mandatory by South African law and policy.¹³⁹⁹

To facilitate effective participation in municipal elections, the *Local Government: Municipal Electoral Act 27* of 2000 states that voting officers must assist voters who have a physical disability, including blindness, or a person who requests assistance.¹⁴⁰⁰ No empowering provisions are available in law and policy for voting officers to assist voters where language barriers exist, but the typical design of the South African municipal voters roll (including the use of illustrations) overcomes most challenges associated with language barriers.¹⁴⁰¹ There is also nothing in South African electoral law and policy designed to address language, physical and mobility obstacles for effective participation in general municipal elections.

Mobility challenges must be addressed to improve effective participation in general government elections. One of the measures South African law and policy provides for in addressing mobility challenges is using mobile voting stations.¹⁴⁰² These stations must follow a pre-communicated route and an estimated time-table to enable voters to determine when and where the mobile voting station will be receiving votes.¹⁴⁰³ South African law and policy further enable people who are imprisoned to be able to vote in national and provincial government elections.¹⁴⁰⁴ Voters who are ordinarily resident in South Africa are also able to participate in national elections even if they find themselves abroad when the elections take place. However, no equivalent exists for local government elections.¹⁴⁰⁵ Arguably the reason for this lack may be that inmates of prisons and residents outside of South Africa are not members of 'local society'.

Although the intention is for local government elections to promote the accountability of councillors, some doubt exists as to whether they are effective. For example, the

¹³⁹⁹ S 43(3) of the *Local Government: Municipal Electoral Act 27* of 2000.

¹⁴⁰⁰ S 39(2) of the *Electoral Act 73* of 1998; s 48 of the *Local Government: Municipal Electoral Act 27* of 2000.

¹⁴⁰¹ S 44 of the *Electoral Act 73* of 1998; s 22 of the *Local Government: Municipal Electoral Act 27* of 2000.

¹⁴⁰² S 44 of the *Electoral Act 73* of 1998; s 22 of the *Local Government: Municipal Electoral Act 27* of 2000.

¹⁴⁰³ S 22(1) of the *Local Government: Municipal Electoral Act 27* of 2000.

¹⁴⁰⁴ S 24B of the *Electoral Act 73* of 1998.

¹⁴⁰⁵ S 6 of the *Electoral Act 73* of 1998.

Constitutional Court has shown that irregularities such as false voter registrations often occur in local government elections.¹⁴⁰⁶ For this reason the court has emphasised the need for bodies such as the Independent Electoral Commission to ensure that elections remain free and fair.¹⁴⁰⁷ An empirical study done by De Kadt and Lieberman has also found evidence to support the view that local government elections are not utilised to hold local government accountable for service delivery failure or corruption.¹⁴⁰⁸ The study has shown that loyalty to liberation parties such as the ANC remains a determining factor in the outcome of local government elections.¹⁴⁰⁹ However, the study also showed that dissatisfaction with service delivery is increasing in importance when people decide for whom to vote.¹⁴¹⁰ Another reason why electoral accountability may not always be successful lies in the voters' choice to vote based on the promises political parties make before elections instead of founding the choice on past performance.¹⁴¹¹

4.5 Concluding remarks

Contrary to the seeming prevalence of public sector corruption, a steadfast commitment to preventing public sector corruption may be observed in South African law and policy.¹⁴¹² The purpose of this chapter was to evaluate South African anti-corruption law and policy against the standards identified in the previous chapter. This chapter has incidentally also shown that South African municipalities have several anti-corruption obligations emanating from national law and policy. The analysis followed a similar structure to that of chapter 3 in that it discussed South African anti-corruption law and policy measures according to their contribution to integrity, transparency and accountability.¹⁴¹³ However, the South African anti-corruption law and policy framework for local government is fragmented, a fact that gives rise to various challenges. One such challenge is the strong

¹⁴⁰⁶ *Kham and Others v Electoral Commission and Another* 2016 2 SA 338 (CC) paras 3, 83.

¹⁴⁰⁷ *Kham and Others v Electoral Commission and Another* 2016 2 SA 338 (CC) paras 3, 83.

¹⁴⁰⁸ De Kadt and Lieberman 2017 *British Journal of Political Science* 45.

¹⁴⁰⁹ De Kadt and Lieberman 2017 *British Journal of Political Science* 47; Lieberman, Martin and McMurry *Do Party Elites Impede Accountability? Evidence From South African Local Government Elections* 46.

¹⁴¹⁰ De Kadt and Lieberman 2017 *British Journal of Political Science* 47; Lieberman, Martin and McMurry *Do Party Elites Impede Accountability? Evidence From South African Local Government Elections* 46.

¹⁴¹¹ Lieberman, Martin and McMurry *Do Party Elites Impede Accountability? Evidence From South African Local Government Elections* 46.

¹⁴¹² See paras 4.2 and 4.3 above.

¹⁴¹³ See para 4.4.1 above.

possibility of overlooking some measures that could prevent public sector corruption.¹⁴¹⁴ The discussion above shows that South African anti-corruption law and policy are mostly in accordance with the international and regional standards.

Many laws and policies are designed to contribute to integrity in government and ethical governance.¹⁴¹⁵ Legislation and policies explicitly provide for codes of conduct for municipal officials.¹⁴¹⁶ These laws and policies also distinguish between certain levels of public office in local government.¹⁴¹⁷ A human resource management system is in place, and municipalities are mandated to appoint public officials who have the appropriate skills and to ensure skills development to contribute to a capable local government. Among these skills should be the expertise to combat corruption.¹⁴¹⁸

Besides service delivery, the duties of local government relative to human rights are met through the implementation of measures that increase access to information and encourage whistle-blowing. These help in promoting transparency.¹⁴¹⁹ In the context of the constitutional right to access to information and other legislative provisions, South African law may be adjudged to be taking a liberal approach to granting the general public access to various official records and documents.¹⁴²⁰ However, upon closer examination, information which must legally be made available by default, such as monthly budget statements or supply chain related information are in actuality often not available to the public. In such instances members of the public have to request access to the information, and the procedure to be followed is often very tedious.¹⁴²¹

Auditing contributes greatly to transparency, especially in financial matters.¹⁴²² However, internal auditing arrangements can be potentially vulnerable to improper political interference and corruption because their only reporting obligation is to a political office-

¹⁴¹⁴ See para 4.4.1 above.

¹⁴¹⁵ See para 4.4.2 above.

¹⁴¹⁶ See para 4.4.2.3 above.

¹⁴¹⁷ See para 4.4.2.3 above.

¹⁴¹⁸ See para 4.4.2.5 above.

¹⁴¹⁹ See para 4.4.3 above.

¹⁴²⁰ See para 4.4.3.3 above.

¹⁴²¹ See para 4.4.2.2 above.

¹⁴²² See para 4.4.3.1 above.

bearer.¹⁴²³ Also, audit outcomes are not seen as important instruments that highlight municipal management areas that are susceptible to corruption.¹⁴²⁴ Although the reporting burden for municipalities is quite extensive, with few exceptions no obligation is placed on those reviewing audit reports to do more than consider them.¹⁴²⁵ An opportunity is missed to recommend and enforce appropriate remedial action based on these reports.

Empowering and protecting whistle-blowers are considered vital parts of promoting transparency.¹⁴²⁶ Whistle-blowers must be encouraged to make disclosures.¹⁴²⁷ In this regard the NDP observes that the protection of whistle blowers is inadequate and must be improved to an extent beyond occupational detriment, and to include disclosures made to entities other than the Public Protector and Auditor-General.¹⁴²⁸ Also, general witness protection is available only in very limited circumstances.¹⁴²⁹ Given that corruption often manifests itself in extensive and dangerous networks, disclosures will be encouraged if witness protection is made more accessible.

Law and policy which promote accountability include increasing access to evidence, providing legal redress, removing legal immunities, establishing and strengthening anti-corruption institutions, facilitating stakeholder cooperation, promoting public participation and holding periodic government elections.¹⁴³⁰ The mandate to combat corruption does not vest in a single anti-corruption authority. Instead, it vests in a vast network of more than fourteen institutions with splintered competencies.¹⁴³¹ Except for the Public Protector, anti-corruption institutions are not mandated to be easily accessible to the public and no anti-corruption institution is required to provide education and increase the awareness of corruption.¹⁴³² However, nothing in law and policy prevents municipalities from establishing their own anti-corruption institution responsible for preventing and

¹⁴²³ See para 4.4.3.1 above.

¹⁴²⁴ AGSA *Consolidated General Report: MFMA 2018/19* 154. As can be seen from the lack of remedial actions which auditors may take, except for the Auditor-General.

¹⁴²⁵ See para 4.4.3.1 above.

¹⁴²⁶ See para 4.4.3.6 above.

¹⁴²⁷ See para 4.4.3.6 above.

¹⁴²⁸ See para 4.4.3.6 above.

¹⁴²⁹ See para 4.4.3.6 above.

¹⁴³⁰ See para 4.4.4 above.

¹⁴³¹ See para 4.4.4.2 above.

¹⁴³² See para 4.4.4.2 above.

controlling corruption in that municipality.¹⁴³³ Furthermore, the autonomy of municipalities empowers them to do just that. However, one may want to turn to the existing variety of national anti-corruption institutions and learn from their experiences on how to construct an anti-corruption institution best suited for a particular municipality's needs.

This chapter has painted a picture of what municipalities must do to prevent corruption as a contribution to sustainability in local government. Of particular consequence for the analysis in chapter 5 are thirty-eight duties, which can be summarised as follows:¹⁴³⁴

- Every municipality should have a website.
- Codes of conduct for municipal officials must be accessible on the municipality's website.
- Monthly budget statements of the municipality must be accessible on its website.
- The annual budget adopted by the municipality must be accessible on its website.
- The municipality's policies must be accessible on its website.
- The municipality's website must refer to its anti-corruption hotline.
- The PAIA guidelines and manuals must be accessible in three different official languages on the municipality's website.
- Public notices must be accessible on the municipality's website.
- SCM-related information such as tender notices must be accessible on the municipality's website.
- Municipalities must have communication channels to report unethical behaviour and misconduct. The municipality's website must refer to these communication channels.
- The municipality's website or policies must refer to an internal audit committee or unit.
- Municipalities must have a department of finance.
- Municipalities must have an integrity champion.
- Municipalities must have an integrity management policy.
- Municipalities must have a SCM policy.

¹⁴³³ See para 4.4.4.2 above.

¹⁴³⁴ See table 1 below for more details on the origins of each of these duties.

- Municipalities must have a conflict-of-interests policy which;
- provides for a process whereby officials are required to declare their personal interests before commencing employment;
- provides for a process whereby officials are required to declare personal interests during employment; and,
- provides for a process whereby officials are required to declare gifts received during employment.
- Municipalities must have a human resources management policy.
- Municipalities must have a whistle-blowing policy; which
- provides for a process where officials or the public can report misconduct;
- requires the relevant officials to provide feedback on the reports received from whistle-blowers;
- provides for the protection of whistle-blowers; and
- sets out clear consequences for those who retaliate against whistle-blowers.
- Municipalities must have a communications policy that allows the municipality to monitor official communications for signs of corruption.
- Municipalities must have an investigations policy; which
- sets out the process for investigating misconduct;
- sets out measures to ensure the independence of the investigators; and
- sets out the roles and responsibilities of all the stakeholders involved in investigations.
- Municipalities must have a disciplinary policy.
- Municipalities must have a risk management policy.
- Municipalities must have an anti-corruption policy; which
- defines corruption;
- sets out measures to prevent corruption;
- sets out measures to detect corruption;
- sets out measures to investigate corruption; and
- sets out measures to resolve corruption.

Furthermore, municipalities are required to create awareness of and access to certain information for their respective communities.¹⁴³⁵ Appropriate channels of communication must thus be established between municipalities and their communities.¹⁴³⁶ Communities must be taught what communication channels are available and how to make use of them.¹⁴³⁷ Although different combinations of communication channels may be used, communities must always have easy access to prescribed information in an understandable format.¹⁴³⁸ Legislation mandates the use of websites as an official channel of communication for municipalities.¹⁴³⁹ Where municipalities cannot afford a service provider for the development of a website, the information should be loaded onto SALGA's website.¹⁴⁴⁰ Based on what municipalities must do to prevent corruption according to the national anti-corruption legislative and policy framework, it is possible to go a step further to determine if municipalities have implemented these measures.

¹⁴³⁵ See para 4.4.3.3 above.

¹⁴³⁶ See paras 4.4.3.3 and 4.4.4.4 above.

¹⁴³⁷ See paras 4.4.3.3 and 4.4.4.4 above.

¹⁴³⁸ See paras 4.4.3.3 and 4.4.4.4 above.

¹⁴³⁹ S 21B of the Systems Act.

¹⁴⁴⁰ S 21B of the Systems Act; Dullah Omar Institute *How transparent are municipal websites about the goods and services that municipalities procure?* 3. Also see para 4.4.3.4 above.

CHAPTER 5

CORRUPTION PREVENTION MEASURES IN SELECTED SOUTH AFRICAN MUNICIPALITIES

5.1 Introduction

This chapter moves away from an analysis of the South African national law and policy framework to question whether municipalities have fulfilled their legally prescribed duties in terms of this framework. The analysis specifically focusses on aspects of providing information and formulating and implementing local integrity policies. The objective is to identify areas that may need improvement, especially considering what is required for sustainability in local government as well as to distil some learning points for other municipalities in the country.

It may be prudent to note that South African municipalities in general are not in good financial shape and that some elements required for financial sustainability as discussed in chapter 2 are not present.¹⁴⁴¹ National Treasury shows that in the third quarter of 2021 about 206 of 257 South African municipalities are finding themselves in financial crises or serious financial difficulties.¹⁴⁴² In addition, the Auditor-General's reports from the past few years have highlighted expenditure problems which may be indicative of corruption, which exacerbates the financial strain on municipalities.¹⁴⁴³ Fulfilling the anti-corruption duties as highlighted in chapter 4 requires the monetary resources to fund the appointment of the necessary skilled people to help develop integrity policies, for example.¹⁴⁴⁴ Financial constraints may therefore potentially be an impediment to the fulfilment of these duties. It must be emphasised, however, that the primary responsibility to fulfil these duties to prevent corruption will remain the responsibility of municipalities.

¹⁴⁴¹ See para 2.6 above.

¹⁴⁴² National Treasury *Municipalities Meeting Criteria for Determining Serious Financial Problems in Terms of Sections 138 and 140 of the MFMA 2*.

¹⁴⁴³ AGSA *MFMA Consolidated General Report on the Local Government Audit Outcomes 2018/19* 8; AGSA *MFMA Consolidated General Report on the Local Government Audit Outcomes 2019/20* 11.

¹⁴⁴⁴ See para 4.5 above.

Municipalities should thus where necessary enlist the support of provincial government and SALGA, in accordance with the principles of cooperative governance, to fulfil their duties to prevent corruption.¹⁴⁴⁵

The first part of this chapter is devoted to empirical research aimed at developing an overall idea of whether municipalities in South Africa have discharged their legal duties as identified in chapter 4 to prevent corruption, by interpreting the results of a self-designed quantitative content analysis. Knowing which of these duties are not discharged means knowing where municipalities may have to improve. Considering the limited nature of a desktop study, only the legal duties the implementation of which can be determined from documented (published) information-based platforms such as local policies and official municipal websites are considered in this chapter. These duties include for example the duty of municipalities to develop an integrity policy framework and to communicate specified information via an official website.

The first part of the chapter starts with an explanation of the design, implementation and outcome of the desktop quantitative content analysis conducted by the researcher for all 257 municipalities in South Africa between 1 October 2020 and 31 December 2020 to determine the extent to which they have discharged the legal duties as identified in chapter 4.

The second part of the chapter considers what municipalities have done in terms of municipal policy-making to help prevent public sector corruption. This section looks specifically at municipal policies as opposed to municipal bylaws, for three reasons. First, municipal bylaws are used to regulate matters prescribed by national law as the competence of municipalities.¹⁴⁴⁶ On the other hand, the primary function of municipal policies is to regulate governance matters internal to the organisational part of the municipality, its administration and its council.¹⁴⁴⁷ Second, a municipality's policies outline how the municipal council and administration intend to strategically govern municipal matters, including what the municipality's (the governing institution's) attitude is toward

¹⁴⁴⁵ See also para 4.4.3.5 above.

¹⁴⁴⁶ Gormley 2007 *Annual Review of Political Science* 297.

¹⁴⁴⁷ Gormley 2007 *Annual Review of Political Science* 297.

corruption.¹⁴⁴⁸ Third, municipal policies are documents that describe the municipality's objectives (including preventing corruption) and guide municipal officials on how to exercise their powers to fulfil these objectives.¹⁴⁴⁹ Municipal policies are deemed to illustrate a municipality's commitment to govern itself and its community in a particular way, *inter alia* whether it tolerates corruption or aims to prevent and control it.¹⁴⁵⁰

The research identified Molemole Local Municipality, the Cape Winelands District Municipality and the Cape Town Metropolitan Municipality as the municipalities which discharged most of the legal duties identified in chapter 4.¹⁴⁵¹ The second part of this chapter discusses these three municipalities by way of desktop case studies focussing on peculiar vulnerabilities to corruption, essential anti-corruption policy frameworks, and what innovative local policy efforts have been used. The objective is to show how corruption can be prevented in municipalities by using innovative policies, and ultimately how municipal anti-corruption measures may contribute to financial sustainability and good governance in local government as a contribution to local sustainability.

5.2 Municipalities fulfilling their legal duties to prevent corruption

5.2.1 Quantitative content analysis of municipal websites and policies

This part of the thesis is based on empirical research.¹⁴⁵² The purpose was to establish, within the boundaries of a desktop study, whether municipalities have fulfilled their duties to prevent corruption as identified in chapter 4.¹⁴⁵³ The researcher had to create an original dataset through a quantitative content analysis (QCA) of municipal websites and

¹⁴⁴⁸ The White Paper on Local Government para E.1; Greater Tzaneen 2020 www.greatertzaneen.gov.za/documents/policies/policy%20and%20procedures.pdf; Garcea *Studying Public Policy: Policy Cycles and Policy Systems*; Dye *Understanding Public Policy*; Gormley 2007 *Annual Review of Political Science*.

¹⁴⁴⁹ The White Paper on Local Government para E.1; Greater Tzaneen 2020 www.greatertzaneen.gov.za/documents/policies/policy%20and%20procedures.pdf; Garcea *Studying Public Policy: Policy Cycles and Policy Systems*; Dye *Understanding Public Policy*; Gormley 2007 *Annual Review of Political Science*.

¹⁴⁵⁰ MIMF para 4.2.

¹⁴⁵¹ See para 4.5 above.

¹⁴⁵² "Empirical legal research is the use of systematically collected data to describe or otherwise analyse some legal phenomenon." Cane and Kritzer (eds) *The Oxford Handbook of Empirical Legal Research* 883; Getman 1985 *Journal of Legal Education* 489.

¹⁴⁵³ See Annexure "A" for a detailed survey.

policies to answer this research question.¹⁴⁵⁴ The researcher acted in accordance with the principle of empirical research, collecting as much data as resources and time allow.¹⁴⁵⁵ This part of the research did not opt to study only a representative sample pool. Instead it was aimed at all 257 South African municipalities.¹⁴⁵⁶ The QCA was designed around 38 variables or indicators derived from the 38 duties of municipalities to prevent corruption identified in chapter 4 (See table 1 below).¹⁴⁵⁷

Table 1: List of variables used for the QCA

	Origin of duty	Variable	Question
	Category 1		
1	Ss 21A and 21B of the Systems Act; CoGTA <i>Back to Basics Policy</i> (2015) 11; MIMF 12.	There is an up-to-date website.	Does the municipality have an up-to-date website?
2	MIMF 12.	Codes of conduct are accessible on the municipality's website.	Are its codes of conduct accessible on the municipality's website?
3	S 75 of the MFMA; MIMF 12; GenN 194 in GG 27365 of 11 March 2005; GN R430 in GG 37699 of 30 May 2014; GenN 393 in GG 32141 of 17 April 2009; GN R309 in GG 27431 of 1 April 2005.	Monthly budget statements are accessible on the municipality's website.	Are its monthly budget statements accessible on the municipality's website?
4	S 75 of the MFMA; MIMF 12; GenN 194 in GG 27365 of 11 March 2005; GN R430 in GG 37699 of 30 May 2014; GenN 393 in GG 32141 of 17 April 2009; GN R309 in GG 27431 of 1 April 2005.	The annual budget is accessible on the municipality's website.	Is the annual budget accessible on the municipality's website?
5	MIMF 12.	Municipal policies are accessible on the municipality's website.	Are all the municipality's policies accessible on its website?

¹⁴⁵⁴ Content analysis refers to the process whereby a determined set of sources such as newspapers is systematically analysed according to determined variables or indicators. Hutchinson *Researching and Writing in Law* 123.

¹⁴⁵⁵ Cane and Kritzer (eds) *The Oxford Handbook of Empirical Legal Research* 910.

¹⁴⁵⁶ McConville and Chui (eds) *Research Methods for Law* 56; Cane and Kritzer (eds) *The Oxford Handbook of Empirical Legal Research* 910; Hutchinson *Researching and Writing in Law* 137.

¹⁴⁵⁷ See para 4.5 above. Bryman *Social research methods* 164; McConville and Chui (eds) *Research Methods for Law* 56; Cane and Kritzer (eds) *The Oxford Handbook of Empirical Legal Research* 911; Epstein *et al* 2006 *Vanderbilt Law Review* 59.

6	CoGTA <i>Back to Basics Policy</i> (2015) 11; MIMF 12 and 13.	Reference is made to an anti-corruption hotline on the municipality's website.	Does the municipality refer to its anti-corruption hotline on its website?
7	MIMF 12.	The PAIA guidelines and manuals of the municipality are in three official languages.	Does the municipality publish the PAIA guidelines and manuals in three official languages?
8	MIMF 12.	The PAIA guidelines and manuals are accessible on the municipality's website.	Are the PAIA guidelines and manuals accessible on the municipality's website?
9	S 75 of the MFMA; MIMF 12.	Public notices are accessible on the municipality's website.	Are public notices accessible on the municipality's website?
10	S 75 of the MFMA; MIMF 12; GenN 194 in GG 27365 of 11 March 2005; GN R430 in GG 37699 of 30 May 2014; GenN 393 in GG 32141 of 17 April 2009; GN R309 in GG 27431 of 1 April 2005.	SCM-related information such as tender notices is accessible on the municipality's website.	Is supply chain management-related information such as tender notices accessible on the municipality's website?
11	Ss 16, 17, 18, 19, 20 and 21 of the Systems Act; CoGTA <i>Back to Basics Policy</i> (2015) 11; GN R430 in GG 37699 of 30 May 2014; MIMF 12 and 13.	A reporting mechanism for reporting unethical behaviour and misconduct is available on the municipality's website.	Does the municipality have a reporting mechanism to report any unethical behaviour and misconduct?
	Category 2		
12	Ss 165 and 166 of the MFMA; MIMF 9.	The municipal website and policies refer to an internal audit committee or unit.	Does the municipality have an internal audit committee or unit?
13	S 80 of the MFMA.	The municipal website and policies refer to a department of finance.	Does the municipality have a department of finance?
14	MIMF 9.	The municipal website and policies refer to an integrity champion.	Does the municipality have an integrity champion?
	Category 3		
15	CoGTA <i>Local Government Anti-Corruption Strategy</i> (2015) Section F at 6	The municipal website and policies refer to the existence of an integrity management policy.	Does the municipality have an integrity management policy?
16	CoGTA <i>Local Government Anti-Corruption Strategy</i> (2015) Section F at 6	The municipal website and policies refer to the existence of a fraud or	Does the municipality have a fraud or

		corruption prevention policy/plan/agenda/strategy.	corruption prevention policy?
17	Ss 111 and 112 of the MFMA; GenN 868 in GG 27636 of 30 May 2005.	The municipal website and policies refer to an SCM policy.	Does the municipality have a supply chain management policy?
	MIMF 11.	The municipal website and policies refer to a conflict-of-interest policy.	Does the municipality have a conflict-of-interest policy.
18	MIMF 11.	The municipality's conflict-of-interest policy provides for a process whereby officials are required to declare personal interests before commencing employment.	Does the conflict-of-interest policy provide for a process to declare personal interests before employment?
19	MIMF 11.	The municipality's conflict-of-interest policy provides for a process whereby officials are required to declare personal interests during employment.	Does the conflict-of-interest policy provide for a process to declare personal interests after employment?
20	MIMF 11.	The municipality's conflict-of-interest policy provides for a process whereby officials are required to declare gifts received during employment.	Does the conflict-of-interest policy provide for a process to declare gifts?
21	MIMF 11.	The municipality's conflict-of-interest policy provides for a process whereby officials are required to apply for written consent when engaging in external remunerative work.	Does the conflict-of-interest policy provide for a process to gain written consent for external remunerative work?
22	S 67 of the Systems Act; MIMF 9.	The municipal website and policies refer to a human resource management policy.	Does the municipality have a human resource management policy?
	CoGTA <i>Local Government Anti-Corruption Strategy</i> (2015) Section F at 6.	The municipal website and policies refer to a whistle-blowing policy.	Does the municipality have a whistle-blowing policy?
23	GN R430 in GG 37699 of 30 May 2014; MIMF 13.	The municipality's whistle-blowing policy provides for a process where officials or the public can report misconduct.	Does the whistle-blowing policy have a process to report misconduct?

24	GN R430 in GG 37699 of 30 May 2014; MIMF 13.	The municipality's whistle-blowing policy requires the relevant officials to provide feedback to whistle blowers on the reports received.	Does the whistle-blowing policy have a process to provide feedback for reports to whistle blowers?
25	GN R430 in GG 37699 of 30 May 2014; MIMF 13.	The municipality's whistle-blowing policy provides for the protection of whistle blowers.	Does the whistle-blowing policy provide protection for whistle blowers?
26	GN R430 in GG 37699 of 30 May 2014; MIMF 13.	The municipality's whistle-blowing policy sets out clear consequences for those who retaliate against whistle blowers.	Does the whistle-blowing policy provide consequences for those who retaliate against whistle blowers?
27	CoGTA <i>Local Government Anti-Corruption Strategy</i> (2015) Section F at 6.	The municipal website and policies refer to a communications policy that allows the municipality to monitor official communications for signs of corruption.	Does the municipality have a communications policy that allows the municipality to monitor official communications for signs of corruption?
	MIMF 14; CoGTA <i>Local Government Anti-Corruption Strategy</i> (2015) Section F at 6.	The municipal website and policies refer to an investigations policy.	Does the municipality have an investigations policy?
28	MIMF 14.	The municipality's investigations policy sets out the process for investigating misconduct.	Does the investigations policy set out the process for investigating misconduct?
29	MIMF 14.	The municipality's investigations policy sets out the measures to ensure the independence of the investigators.	Does the investigations policy provide for measures to ensure the independence of investigators?
30	MIMF 14; CoGTA <i>Local Government Anti-Corruption Strategy</i> (2015) Section F at 6.	The municipality's investigations policy sets out the roles and responsibilities of all the stakeholders involved in investigations.	Does the investigations policy set out the roles and responsibilities of all the stakeholders involved in investigations?
31	S 67 of the Systems Act; MIMF 9.	The municipal website and policies refer to a disciplinary policy.	Does the municipality have a disciplinary policy?
32	MIMF 9.	The municipal website and policies refer to any other policies which contribute to integrity such as performance management.	Does the municipality have a performance management policy and system?

33	MIMF 9.	The municipal website and policies refer to a risk management policy.	Does the municipality have a risk management policy?
	Category 4		
34	CoGTA <i>Local Government Anti-Corruption Strategy</i> (2015) Section F at 6	The municipality's anti-corruption policy defines corruption.	Does the anti-corruption policy define corruption?
35	CoGTA <i>Local Government Anti-Corruption Strategy</i> (2015) Section F at 6	The municipality's anti-corruption policy sets out measures to prevent corruption.	Does the anti-corruption policy have measures to prevent corruption?
36	CoGTA <i>Local Government Anti-Corruption Strategy</i> (2015) Section F at 6	The municipality's anti-corruption policy sets out measures to detect corruption.	Does the anti-corruption policy have measures to detect corruption?
37	CoGTA <i>Local Government Anti-Corruption Strategy</i> (2015) Section F at 6	The municipality's anti-corruption policy sets out measures to investigate corruption.	Does the anti-corruption policy have procedures to investigate corruption?
38	CoGTA <i>Local Government Anti-Corruption Strategy</i> (2015) Section F at 6	The municipality's anti-corruption policy sets out measures to resolve corruption.	Does the anti-corruption policy have procedures to resolve corruption?

The QCA targeted the websites and policies of all 257 South African municipalities (local, district and metropolitan municipalities) between 1 October and 31 December 2020. The QCA investigated whether some or all of the 38 variables are present on each municipality's website or in their policies (hereafter referred to as "the data collected").

The data collected were then coded into a coding scheme which was developed beforehand.¹⁴⁵⁸ The coding scheme assigned values to each variable for every municipality.¹⁴⁵⁹ The coding scheme was developed in Microsoft Excel because it was unnecessary to employ complex strategies to draw statistical inferences.¹⁴⁶⁰ The data set

¹⁴⁵⁸ See Annexure A for the detailed coding scheme and results of the QCA.

¹⁴⁵⁹ Bryman *Social Research Methods* 164; Cane and Kritzer (eds) *The Oxford Handbook of Empirical Legal Research* 913; McConville and Chui *Research methods for law* 56; Epstein and Martin "Coding Variables" 15 and 25; Epstein *et al* 2006 *Vanderbilt Law Review* 1811; Epstein and Martin *Introduction to Empirical Legal Research* 95; Hutchinson *Researching and Writing in Law* 137.

¹⁴⁶⁰ Cane and Kritzer (eds) *The Oxford Handbook of Empirical Legal Research* 914; McConville and Chui *Research Methods for Law* 56.

created did not have the complexities of a representative sample pool requiring calculations to determine how well the results represented the target group.¹⁴⁶¹ The target group was small and the numerical values assigned to each variable simple.¹⁴⁶² Each variable was assigned values, full compliance (2), partial compliance (1) or null compliance (0), depending on whether the corresponding duty was fulfilled.¹⁴⁶³ The corresponding numerical value was then coded into the coding scheme.¹⁴⁶⁴

This allowed the researcher to analyse the variables systemically and to quantifiably express whether municipalities have fulfilled their duties to prevent corruption.¹⁴⁶⁵ If a municipality discharged all 38 duties measured, the variables were assigned the value full compliance, and the total numerical value of all 38 variables together would add up to 76. This means that each municipality's fulfilment of the 38 duties to prevent corruption was quantifiably expressed out of a numerical value of 76.¹⁴⁶⁶

The data collected were also interpreted according to how many times a variable had been assigned a specific value.¹⁴⁶⁷ This interpretation would show how many municipalities had fulfilled each duty.¹⁴⁶⁸ Using the same coding scheme, the study was then able to establish which of the 38 duties to prevent corruption was most neglected by the municipalities.¹⁴⁶⁹ This method enabled the researcher to determine how public

¹⁴⁶¹ Cane and Kritzer (eds) *The Oxford Handbook of Empirical Legal Research* 914; McConville and Chui *Research Methods for Law* 56.

¹⁴⁶² Cane and Kritzer (eds) *The Oxford Handbook of Empirical Legal Research* 914; McConville and Chui *Research Methods for Law* 56.

¹⁴⁶³ The assignment of values is explained in detail in Annexure A below.

¹⁴⁶⁴ Bryman *Social research methods* 164; Cane and Kritzer (eds) *The Oxford Handbook of Empirical Legal Research* 913; McConville and Chui *Research Methods for Law* 56; Epstein and Martin "Coding Variables" 15, 25; Epstein *et al* 2006 *Vanderbilt Law Review* 1811; Epstein and Martin *Introduction to Empirical Legal Research* 95; Hutchinson *Researching and Writing in Law* 137.

¹⁴⁶⁵ Bryman *Social research methods* 164; Cane and Kritzer (eds) *The Oxford Handbook of Empirical Legal Research* 913; McConville and Chui *Research methods for law* 56; Epstein and Martin "Coding Variables" 15, 25; Epstein *et al* 2006 *Vanderbilt Law Review* 1811; Epstein and Martin *Introduction to Empirical Legal Research* 95; Hutchinson *Researching and Writing in Law* 137.

¹⁴⁶⁶ Bryman *Social research methods* 164; Cane and Kritzer (eds) *The Oxford Handbook of Empirical Legal Research* 913; McConville and Chui *Research Methods for Law* 56; Epstein and Martin "Coding Variables" 15, 25; Epstein and Martin *Introduction to Empirical Legal Research* 95.

¹⁴⁶⁷ See Annexure A below.

¹⁴⁶⁸ See Annexure A below.

¹⁴⁶⁹ See Annexure A below.

sector corruption could be better prevented in local government by showing where municipalities may have to improve to fulfil their duties.¹⁴⁷⁰

5.2.2 Results of the quantitative content analysis

5.2.2.1 Overview

The QCA showed that only three municipalities scored above 65, indicating that only three municipalities had fulfilled more than 32 of their 38 duties to prevent corruption.¹⁴⁷¹ Twelve municipalities fulfilled between 30 and 32 of their duties, while 19 municipalities fulfilled between 27 and 29 of their duties.¹⁴⁷² Eighteen municipalities fulfilled between 25 and 27 of their duties and 26 municipalities fulfilled between 20 and 24 of their duties.¹⁴⁷³ Sixteen municipalities fulfilled between 15 and 19 of their duties.¹⁴⁷⁴ Forty-one municipalities fulfilled only between 10 and 14 of their 38 duties, while 92 municipalities fulfilled only 5 and 9 of their duties.¹⁴⁷⁵ Fifteen municipalities fulfilled only 1 and 4 duties, while 9 did not fulfil any duties, or the researcher could not find any information.¹⁴⁷⁶ These results show that more than half of all 257 municipalities fulfilled 14 of their 38 duties or less,¹⁴⁷⁷ which indicates that 157 municipalities could prevent corruption by fulfilling the remaining 14 neglected duties.¹⁴⁷⁸

Molemole Local Municipality fulfilled 33 of its duties, making it the local municipality that fulfilled the most duties to prevent corruption.¹⁴⁷⁹ The Cape Winelands District Municipality also fulfilled 33 of its duties, which means it is the district municipality that fulfilled most of its duties to prevent corruption.¹⁴⁸⁰ Finally, the metropolitan municipality that

¹⁴⁷⁰ See para 4.5 and Table 1 above.

¹⁴⁷¹ See Annexure A below.

¹⁴⁷² See Annexure A below.

¹⁴⁷³ See Annexure A below.

¹⁴⁷⁴ See Annexure A below.

¹⁴⁷⁵ See Annexure A below.

¹⁴⁷⁶ See Annexure A below.

¹⁴⁷⁷ See Annexure A below.

¹⁴⁷⁸ See Annexure A below.

¹⁴⁷⁹ See Annexure A below.

¹⁴⁸⁰ See Annexure A below.

discharged most of its duties is the Cape Town Metropolitan Municipality, which fulfilled 29 of its duties.¹⁴⁸¹

The individual variables were categorised, and the interpretation of results will be provided according to 1) the website with the prescribed information, 2) the organisational structure, 3) the prescribed integrity policy framework, and 4) the anti-corruption policy. This will provide structure to the discussion.

5.2.2.2 Website with the prescribed information

As discussed in chapter 4, South African municipalities are legally required to have functional websites containing prescribed information, or where the municipality cannot afford such a website the prescribed information must be available on the official website of the South African Local Government's Association.¹⁴⁸² This first category of the results of the QCA shows that although much information is accessible on municipal websites, more is needed for the provision of transparency and accountability, such as monthly budget statements. During the data collection process some unique and innovative practices were observed concerning keeping the community informed on governance matters. The Makhado Local Municipality's website made use of pop-up notifications to draw attention to urgent governance matters, for example.¹⁴⁸³ Furthermore, Hessequa Local Municipality ran a survey on how informed their community is on local governance matters and the community's preferred method of communication.¹⁴⁸⁴ The results also showed that the PAIA guidelines and manuals, codes of conduct and complaints procedures were the duties most neglected by municipalities.¹⁴⁸⁵ These are areas particularly in need of improvement to help prevent corruption.¹⁴⁸⁶ The following few paragraphs explore the detailed results of the first category of variables.

¹⁴⁸¹ See Annexure A below.

¹⁴⁸² See para 4.4.3.6 above. Ss 21 A and 21B of the Systems Act; S 75 of the MFMA; CoGTA *Back to Basics Policy* (2015) 11. See paras 4.4.2.2, 4.4.2.5, and 4.4.3.4 above.

¹⁴⁸³ Makhado Local Municipality 2020 <http://www.makhado.gov.za/>.

¹⁴⁸⁴ Hessequa Local Municipality 2020 <http://www.hessequa.gov.za/>.

¹⁴⁸⁵ See Annexure A below.

¹⁴⁸⁶ See Annexure A below.

Two hundred and forty-four of 257 municipalities had an accessible website which had been updated in 2020.¹⁴⁸⁷ Only one municipality's website had not been updated in 2020, one municipality's website was difficult to locate, and three municipalities' websites had been hijacked.¹⁴⁸⁸ Nine municipalities did not have websites at all, and their information was also not available on the official website of SALGA.¹⁴⁸⁹

Only 102 of 257 had more than 10 policies accessible on their websites, while 84 municipalities had fewer than 10 but more than 5 policies accessible on their website.¹⁴⁹⁰ Forty of 257 municipalities had codes of conduct and 181 municipalities had no codes of conduct on their municipal websites or policies.¹⁴⁹¹ Thirty-five municipalities had codes of conduct annexed to other policies or had policies that referred to the codes of conduct in the Systems Act.¹⁴⁹²

Only 8 of 257 municipalities had the PAIA guidelines and manuals available in 3 languages, while 36 had them available only in English.¹⁴⁹³ Two hundred and twelve municipalities did not have the PAIA guidelines and manuals accessible at all.¹⁴⁹⁴ Forty-three municipalities had the PAIA guidelines and manuals accessible on their websites, and 208 had not published the PAIA guidelines and manuals or mentioned them in their policies or on their websites.¹⁴⁹⁵

The results also showed that 136 of 257 municipalities did not publish an accessible monthly budget statement. Seventy-four of 257 Municipalities did publish an accessible monthly budget statement not newer than October 2020, however.¹⁴⁹⁶ In addition, 203 of 257 municipalities made the 2019/20 or 2020/21 annual budget of the municipality

¹⁴⁸⁷ See Annexure A below.

¹⁴⁸⁸ See Annexure A below. The term 'hijacked' refers to where municipal websites were littered by pop-up adds of gambling or other websites, or where one was automatically referred to another website.

¹⁴⁸⁹ See Annexure A below.

¹⁴⁹⁰ See Annexure A below.

¹⁴⁹¹ See Annexure A below.

¹⁴⁹² See Annexure A below.

¹⁴⁹³ See Annexure A below.

¹⁴⁹⁴ See Annexure A below.

¹⁴⁹⁵ See Annexure A below.

¹⁴⁹⁶ See Annexure A below.

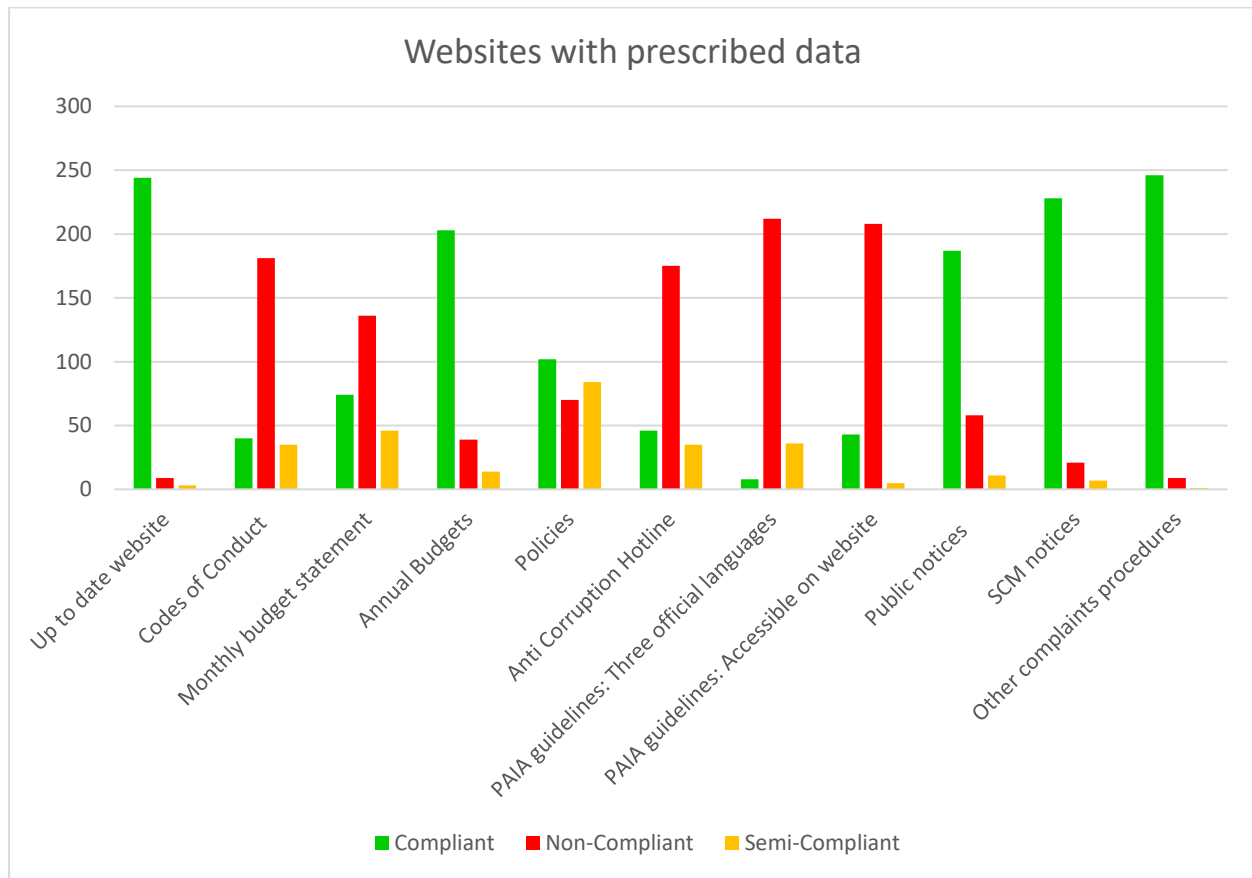
available on their website.¹⁴⁹⁷ Unfortunately, 39 municipalities had no annual budgets on their websites.¹⁴⁹⁸

From January 2020, 187 of 257 municipalities listed public notices on their websites.¹⁴⁹⁹ Fifty-eight municipalities had no public notices listed on their websites.¹⁵⁰⁰ Two hundred and twenty-eight municipalities had supply chain management-related information newer than January 2020 listed and accessible on their website.¹⁵⁰¹ Seven municipalities had outdated (older than January 2020) information, while 21 municipalities had no information listed on their websites.¹⁵⁰²

Forty-six municipalities referred to the municipal hotline to report fraud and corruption, 35 municipalities referred to the national hotline, while 175 did not refer to any hotline.¹⁵⁰³ Additionally, 9 of 257 municipalities referred to a communication channel to report unethical behaviour or misconduct on their website, while 134 municipalities had a feedback option or a detailed contact list.¹⁵⁰⁴

¹⁴⁹⁷ See Annexure A below.
¹⁴⁹⁸ See Annexure A below.
¹⁴⁹⁹ See Annexure A below.
¹⁵⁰⁰ See Annexure A below.
¹⁵⁰¹ See Annexure A below.
¹⁵⁰² See Annexure A below.
¹⁵⁰³ See Annexure A below.
¹⁵⁰⁴ See Annexure A below.

Figure 1: Municipal websites with prescribed information



5.2.2.3 Organisational structure

Municipalities are required to have a capable treasury department, an internal audit committee and an integrity champion at a minimum.¹⁵⁰⁵ Although 144 municipalities had information on their internal audit units, the QCA showed that 112 Municipalities either did not have an internal audit unit or did not list it as part of their organisational structure on their website.¹⁵⁰⁶ Two hundred and forty-six municipalities had information available on their website concerning their financial departments.¹⁵⁰⁷ However, one municipality indicated that some key offices in the financial department were vacant and had been so for more than three months, while 9 municipalities did not have any information relating to their financial department.¹⁵⁰⁸ Two hundred and twelve of 257 Municipalities had no

¹⁵⁰⁵ Ss 80, 121 and 166(1) of the MFMA; MIMF paras 3.4, 3.5; s 79 of the Systems Act.

¹⁵⁰⁶ See Annexure A below.

¹⁵⁰⁷ See Annexure A below.

¹⁵⁰⁸ See Annexure A below.

information about an integrity champion listed in any municipal policy or their websites.¹⁵⁰⁹ Forty-four municipalities referred to an integrity champion or risk management champion mandated to drive integrity and the management of corruption risk.¹⁵¹⁰

In addition to these structures, municipalities use other bodies such as ombudspersons, ethics committees, disciplinary committees or other committees to support other structures in preventing and combatting corruption.¹⁵¹¹ From the QCA it is discernible that 8 municipalities referred to using disciplinary committees, 13 municipalities referred to ethics committees and 69 municipalities referred to other committees (ombudspersons, anti-fraud and corruption committees, risk management committees, fraud risk management committees, audit and performance committees and audit and risk committees) in their policies or websites.¹⁵¹²

The second category of the QCA showed that in many instances municipalities do not have the necessary individual drivers for implementing anti-corruption efforts. However, the majority (144 of 257) of the municipalities have an internal auditing function in place and therefore should, in theory, have access to corruption risk management and a means to assure the appropriate behaviour of public officials.¹⁵¹³

¹⁵⁰⁹ See Annexure A below.

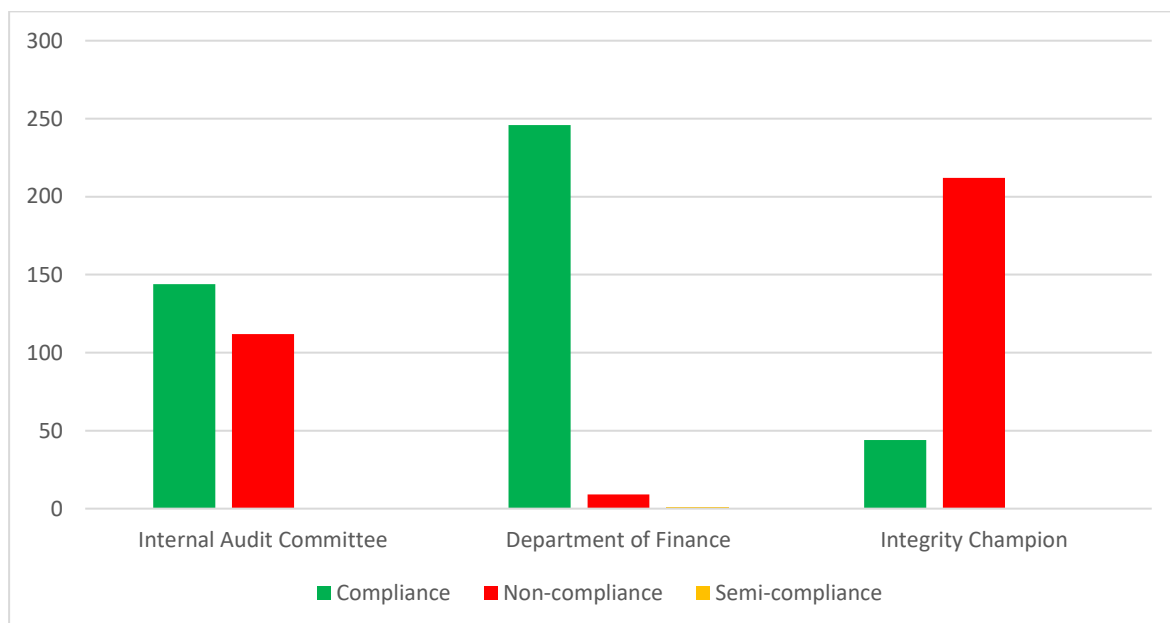
¹⁵¹⁰ See Annexure A below.

¹⁵¹¹ S 79 of the Systems Act and MIMF 6.

¹⁵¹² See Annexure A above.

¹⁵¹³ See Annexure A above.

Figure 2: Municipalities with a treasury department, an internal audit unit and an integrity champion



5.2.2.4 Prescribed integrity policy framework

The third category of the QCA evaluated whether municipalities have the prescribed integrity policy framework in place. This integrity policy framework should address the following: integrity or ethical values, fraud and corruption prevention, supply chain management, conflicts of interest, human resource practices (including pre-screening), whistle-blowing, communications monitoring, investigations, disciplinary matters and risk management.¹⁵¹⁴ The QCA was conducted on the presumption that all accessible policies on integrity were valid regardless of their stated date of adoption. The third part of the survey shows that most municipalities do not have the minimum prescribed policy framework in place to prevent and combat corruption.¹⁵¹⁵ Many of the accessible policies were outdated and some were dated as far back as 2007.¹⁵¹⁶ Most of the policies accessed were in English, although some policies were accessible only in Afrikaans.¹⁵¹⁷ It can be

¹⁵¹⁴ MIMF para 4.2.

¹⁵¹⁵ See Annexure A and figure 3 below.

¹⁵¹⁶ See Annexure A.

¹⁵¹⁷ Laingsburg Local Municipality 2020 <https://www.laingsburg.gov.za/resource-category/policies-and-laws>; Namakwa District Municipality 2020 <https://www.namakwa-dm.gov.za/budget-related-policies/>; Hessequa Local Municipality 2020 <http://www.hessequa.gov.za/document-library/>.

inferred that since policies indicate the commitment of municipal councils to specific intents, there is no strong commitment from most municipal councils to prevent and combat public sector corruption.¹⁵¹⁸

One hundred and fifty-nine of 257 municipalities do not have a policy, strategy or action plan addressing corruption and fraud.¹⁵¹⁹ One hundred and eighty-six municipalities do not have any policies referring to an ethical culture, codes of conduct or any other administrative measures to promote integrity.¹⁵²⁰ One hundred and seventy-one municipalities do not have pre-employment screening in place to determine if there are conflicts of interest.¹⁵²¹ One hundred and ninety municipalities do not require a declaration of private interests before appointment and 192 do not provide for the continuous in-service declaration of personal interests.¹⁵²² In addition, 205 municipalities do not have policies in place to declare gifts received, and 222 municipalities do not have processes in place to obtain consent to conduct external remunerative work.¹⁵²³ However, 181 municipalities have SCM policies in place.¹⁵²⁴

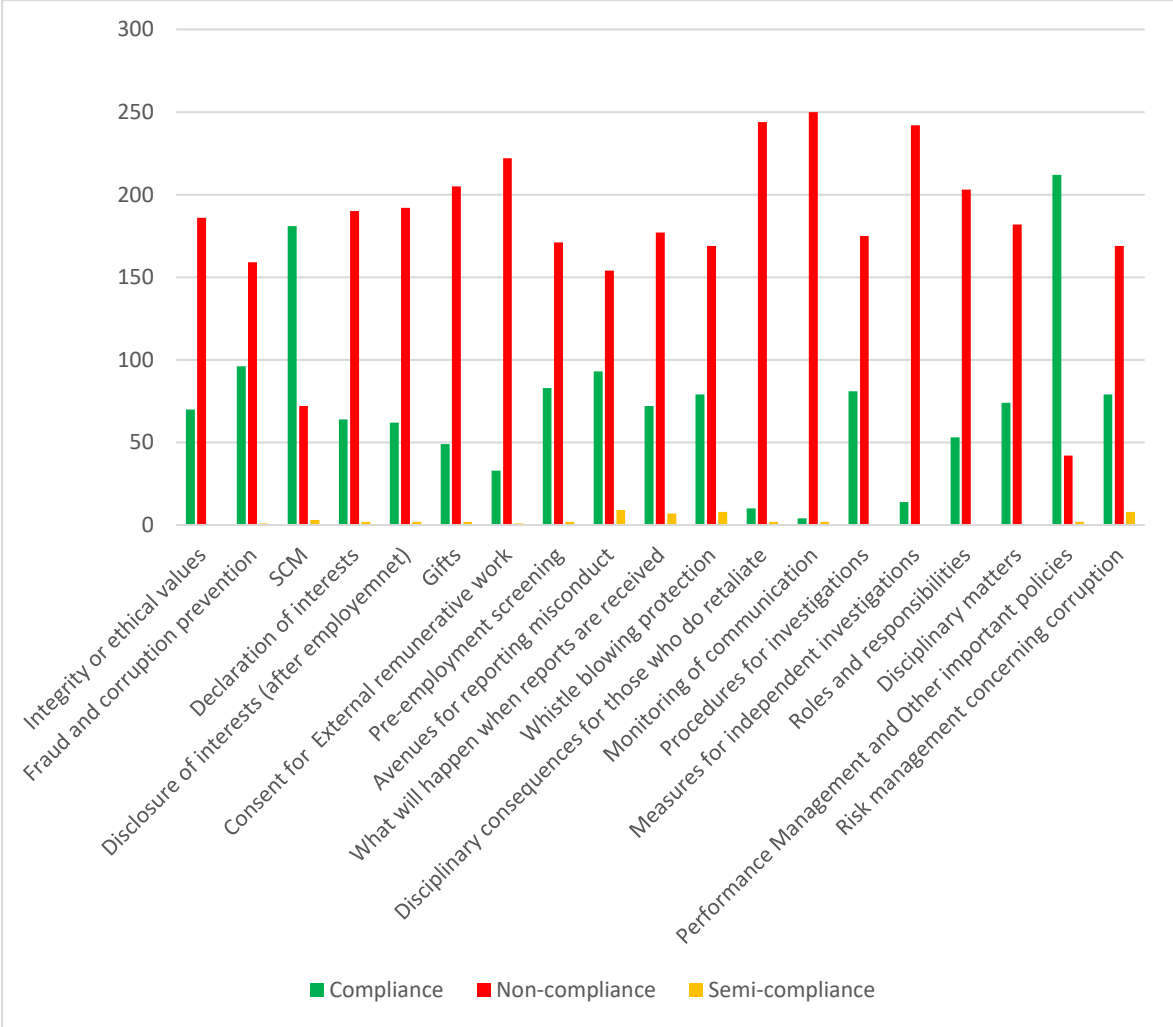
One hundred and fifty-four municipalities were found not to have whistle-blowing policies in place.¹⁵²⁵ Only 93 municipalities had avenues to report the misconduct of public officials and 72 municipal policies had procedures describing how reports would be dealt with.¹⁵²⁶ In addition, while 79 municipalities were committed to protecting whistle-blowers, only 10 had sanctions in place for those who retaliated against whistle blowers.¹⁵²⁷

Just 4 municipalities' policies made provision for monitoring official communication channels for suspicious activity.¹⁵²⁸ Eighty-one municipalities' policies provided for procedures to investigate allegations and suspicions of misconduct of public officials.¹⁵²⁹

¹⁵¹⁸ See Annexure A below.
¹⁵¹⁹ See Annexure A above.
¹⁵²⁰ See Annexure A above.
¹⁵²¹ See Annexure A above.
¹⁵²² See Annexure A above.
¹⁵²³ See Annexure A above.
¹⁵²⁴ See Annexure A above.
¹⁵²⁵ See Annexure A above.
¹⁵²⁶ See Annexure A above.
¹⁵²⁷ See Annexure A above.
¹⁵²⁸ See Annexure A above.
¹⁵²⁹ See Annexure A above.

Fifty-three municipalities' policies stipulated the different roles and responsibilities for investigating the misconduct of public officials,¹⁵³⁰ whereas only 14 municipalities had policies to ensure the independence of the persons responsible for conducting these investigations. Seventy-four municipalities' had policies that described discipline-related matters.¹⁵³¹

Figure 3: Municipalities with a prescribed integrity policy framework



¹⁵³⁰ See Annexure A above.

¹⁵³¹ See Annexure A above.

5.2.2.5 Anti-corruption policy

Part of the minimum prescribed policy framework to prevent and combat corruption is a municipal policy, strategy or plan (hereafter, any reference to policy includes strategy or plan) specifically dedicated to combatting and preventing fraud and corruption.¹⁵³² Out of the total of 257 municipalities, only 96 had anti-corruption and fraud policies.¹⁵³³ The final part of the QCA took a closer look at the details of the accessible anti-corruption and fraud policies.¹⁵³⁴ It evaluated whether municipal anti-corruption and fraud policies contained definitions of fraud and corruption, and measures to prevent, detect, investigate and resolve all corruption and fraud-related matters.¹⁵³⁵

Overall, the municipalities that had anti-corruption and fraud policies in place also had all the evaluated parts to the policies, namely the definition of corruption, and measures to prevent, detect, investigate and resolve corruption. Ninety-one of 96 municipalities defined corruption and fraud in their policies and many even contained examples of specific acts which the municipalities deemed to constitute corruption and fraud.¹⁵³⁶ Only 4 municipalities did not provide definitions for corruption and fraud, and one municipality referred to the definition of corruption in the PreCCA.¹⁵³⁷

The most comprehensive section of the policies was that on measures aimed at preventing corruption and fraud.¹⁵³⁸ Eighty municipalities had measures to prevent corruption, while 2 only referred to preventing corruption and 14 did not contain anything related to preventing corruption.¹⁵³⁹ Twenty-four municipalities even paid specific attention to identified vulnerable areas, namely supply chain management, financial

¹⁵³² MIMF para 4.2.

¹⁵³³ See para 5.3.3.4 above.

¹⁵³⁴ See Table 1 above.

¹⁵³⁵ See Table 1 above.

¹⁵³⁶ See Annexure A above.

¹⁵³⁷ See Annexure A above.

¹⁵³⁸ Alfred Duma Local Municipality *Fraud Prevention Plan 2019/2020*; Breede Valley Local Municipality *Fraud and Corruption Prevention Policy 2015*; City of Cape Town Metropolitan Municipality *Fraud Prevention Policy and Fraud Response Plan 2008*; City of Johannesburg Metropolitan Municipality *Anti-fraud and Anti-corruption Policy and Response Plan 2017*; Drakenstein District Municipality *Fraud and Risk Management Policy 2020*; Elundini Local Municipality *Fraud Risk Management Strategy and Implementation Plan 2011*.

¹⁵³⁹ See Annexure A above.

management, human resource management and housing allocation.¹⁵⁴⁰ However, no municipality's anti-corruption policy had specific measures to prevent corruption in other vulnerable areas, including land matters (such as rezoning), infrastructure projects, licensing or permits.¹⁵⁴¹ In addition, 54 municipalities had good extensive risk management policies, including corruption and fraud risk management.¹⁵⁴²

Seventy-eight of the 96 Policies supplied methods to detect corruption and fraud.¹⁵⁴³ The detection methods described in many statements of policy were limited to internal audits.¹⁵⁴⁴ Eighty policies described the processes used to investigate corruption and fraud, but only 14 made provision for the independence of the investigators.¹⁵⁴⁵ Seventy municipalities had policies that described how corruption and fraud matters would be resolved.¹⁵⁴⁶ Apart from disciplinary steps and referring corruption and fraud to SAPS or other authorities, little was provided to resolve corruption and fraud.¹⁵⁴⁷

¹⁵⁴⁰ See Annexure A above.

¹⁵⁴¹ Alfred Duma Local Municipality *Fraud Prevention Plan 2019/2020*; Breede Valley Local Municipality *Fraud and Corruption Prevention Policy 2015*; City of Cape Town Metropolitan Municipality *Fraud Prevention Policy and Fraud Response Plan 2008*; City of Johannesburg Metropolitan Municipality *Anti-fraud and Anti-corruption Policy and Response Plan 2017*; Drakenstein District Municipality *Fraud and Risk Management Policy 2020*; Elundini Local Municipality *Fraud Risk Management Strategy and Implementation Plan 2011*.

¹⁵⁴² See Annexure A above.

¹⁵⁴³ See Annexure A above.

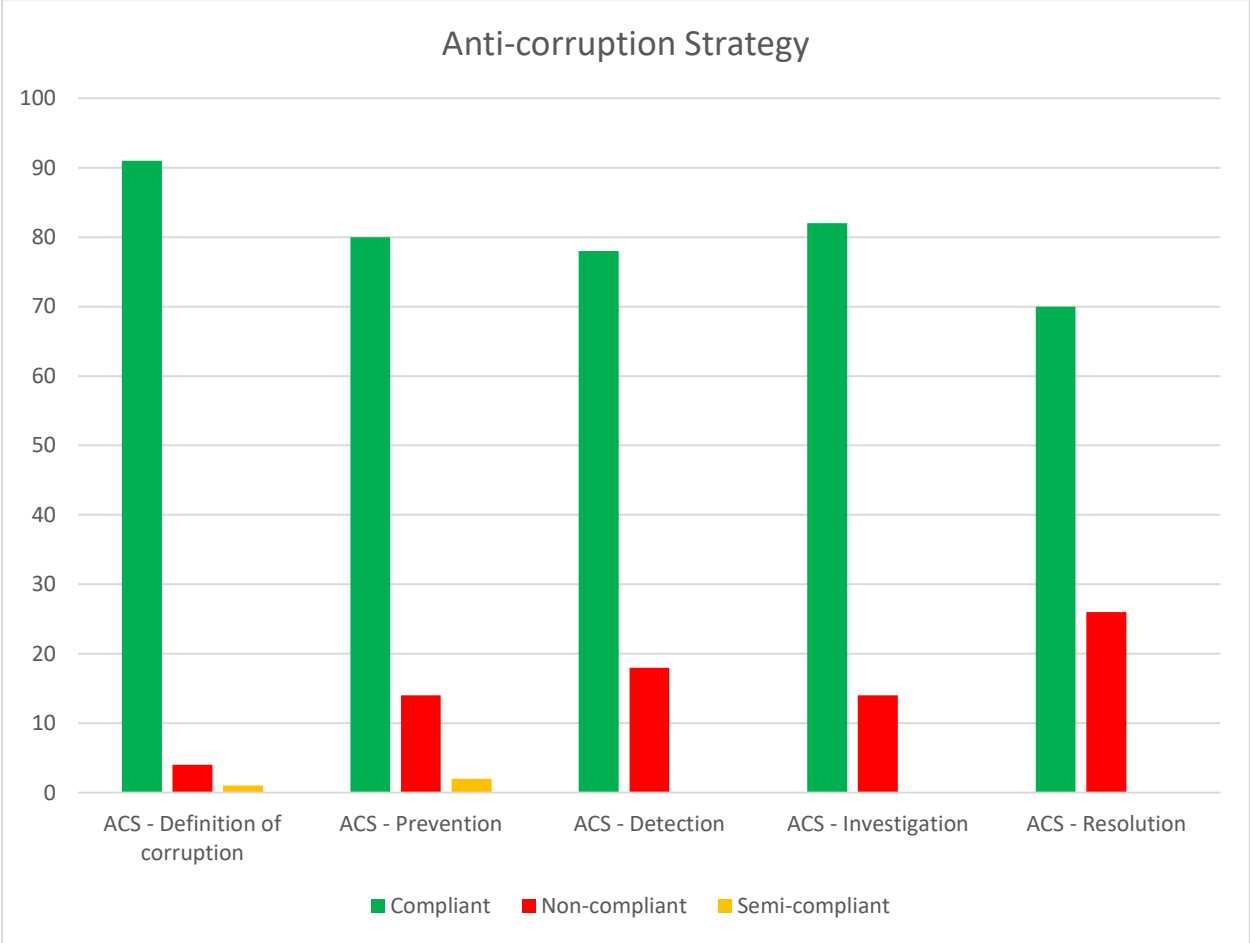
¹⁵⁴⁴ See Annexure A above.

¹⁵⁴⁵ See Annexure A above.

¹⁵⁴⁶ See Annexure A above.

¹⁵⁴⁷ Alfred Duma Local Municipality *Fraud Prevention Plan 2019/2020*; Breede Valley Local Municipality *Fraud and Corruption Prevention Policy 2015*; City of Cape Town Metropolitan Municipality *Fraud Prevention Policy and Fraud Response Plan 2008*; City of Johannesburg Metropolitan Municipality *Anti-fraud and Anti-corruption Policy and Response Plan 2017*; Drakenstein District Municipality *Fraud and Risk Management Policy 2020*; Elundini Local Municipality *Fraud Risk Management Strategy and Implementation Plan 2011*. See para 4.4.3.3 above. Municipalities should *inter alia* provide for measures to recover losses suffered due to corruption.

Figure 4: Municipalities' anti-corruption policies



5.3 Municipal policies aimed at preventing public sector corruption

The local, district and metropolitan municipalities which fulfilled the most of their duties to prevent corruption, as measured in the QCA are: the Molemole Local Municipality, the Cape Winelands District Municipality and the Cape Town Metropolitan Municipality.¹⁵⁴⁸ These municipalities are subsequently discussed by way of desktop case studies. Some demographic and socio-economic backgrounds will be provided together with descriptions of the municipality's unique vulnerabilities to corruption to give context to each case study. This will also show how these municipalities innovatively discharge their policy-making duties as prescribed by the national anti-corruption law discussed in chapter 4 of

¹⁵⁴⁸ See para 5.2.2.1 above.

this thesis. Finally, the innovativeness of the policy measures are evaluated in relation to their peers' policy making efforts. The objective is to establish how local policies can be used to prevent corruption and in so-doing contribute to the improvement of good governance and financial sustainability as part of sustainability in local government.

5.3.1 Molemole Local Municipality

5.3.1.1 Background

Molemole Local Municipality is located in Limpopo and aims "to provide essential and sustainable services in an efficient and effective manner."¹⁵⁴⁹ It consists of 37 settlements and 13 wards, and covers an area of over 3 347 km².¹⁵⁵⁰ This municipality has an estimated population of 109 441 (52,7% under the age of 20) making up about 27 889 households.¹⁵⁵¹ However, there is low political diversity as both Limpopo and Molemole Local Municipality are governed by the ANC.¹⁵⁵²

With 46% of the households earning less than R1 100 per month, more than half of all households in the municipality qualify for indigent services discounts (free basic services). Consequently, this municipality also functions within severe financial constraints.¹⁵⁵³ However, 76% of the population has access to clean water and other infrastructure.¹⁵⁵⁴ Despite almost half of the population being indigent discount dependent and other financial constraints, Molemole Local Municipality is not considered to be in financial distress, is currently not subject to a provincial intervention, nor are any MFMA triggers present.¹⁵⁵⁵ Molemole Local Municipality received an "unqualified with findings" opinion

¹⁵⁴⁹ Molemole Municipality 2020 <https://bit.ly/3tFgksS>; Wazimap 2020 <https://bit.ly/3ruOqy0>; Municipal Money 2020 <https://bit.ly/2N6IJaN>.

¹⁵⁵⁰ Molemole Municipality 2020 <https://bit.ly/3tFgksS>; Wazimap 2020 <https://bit.ly/3ruOqy0>; Municipal Money 2020 <https://bit.ly/2N6IJaN>.

¹⁵⁵¹ Molemole Municipality 2020 <https://bit.ly/3tFgksS>; Wazimap 2020 <https://bit.ly/3ruOqy0>; Municipal Money 2020 <https://bit.ly/2N6IJaN>.

¹⁵⁵² Molemole Municipality 2020 <https://bit.ly/3tFgksS>; Wazimap 2020 <https://bit.ly/3ruOqy0>; Municipal Money 2020 <https://bit.ly/2N6IJaN>.

¹⁵⁵³ Molemole Municipality 2020 <https://bit.ly/3tFgksS>; Wazimap 2020 <https://bit.ly/3ruOqy0>; Municipal Money 2020 <https://bit.ly/2N6IJaN>.

¹⁵⁵⁴ Molemole Municipality 2020 <https://bit.ly/3tFgksS>; Wazimap 2020 <https://bit.ly/3ruOqy0>; Municipal Money 2020 <https://bit.ly/2N6IJaN>.

¹⁵⁵⁵ MFMA triggers are the criteria or factors listed in ss 138 and 140 of the MFMA which serve as indicators of the presence of serious financial problems or financial crises. Municipalities of South Africa 2020

from the Auditor-General for 2019/20.¹⁵⁵⁶ This means that the municipality's audited documents did not contain any misstatements. The Auditor-General raised concerns in its reports relating to the non-compliance with legislation.¹⁵⁵⁷

5.3.1.2 Corruption vulnerabilities

Despite having fulfilled many of the duties as measured in the QCA, the Auditor-General's reports and media reports show that corruption may still take place in Molemole Local Municipality. The report of the Auditor-General for the financial year of 2018/17 identified areas in Molemole Local Municipality that may be particularly vulnerable to corruption. The audit report showed that several material misstatements were made in the municipality's annual performance report.¹⁵⁵⁸ The Auditor-General also indicated that the municipality failed to declare that municipal officers had business interests in contracts awarded, as required by the Systems Act.¹⁵⁵⁹ Some of the irregular expenditure incurred by the Municipality was not investigated to determine who was liable for the expenditure as required in section 32 of the MFMA.¹⁵⁶⁰ It may be inferred from this Auditor-General's report that Molemole Local Municipality has some shortcomings in their ethics and integrity management and their reporting structures. Non-accurate reporting also influences reliable information and data.

While media reports should be approached cautiously, they may hint at facts. Molemole Local Municipality has featured in some media reports relating to tender corruption amounting to R 4,8 million.¹⁵⁶¹ The municipal manager at the time was allegedly one of the four accused in the report.¹⁵⁶² If the allegations are deemed accurate, it shows that

<https://municipalities.co.za/> and National Treasury 2020
http://mfma.treasury.gov.za/Media_Releases/s71/1920/4th_1920/Pages/excel.aspx.

¹⁵⁵⁶ Auditor General 2020 <https://bit.ly/3rz29UE>.

¹⁵⁵⁷ Auditor-General 2020 <https://www.agsa.co.za/AuditInformation/AuditTerminology.aspx>.

¹⁵⁵⁸ Auditor-General 2020 <https://bit.ly/36Tzba3> para 28.

¹⁵⁵⁹ Auditor-General 2020 <https://bit.ly/2N1Pb2G> para 33.

¹⁵⁶⁰ Auditor-General 2020 <https://bit.ly/3p4pI5P> para 35.

¹⁵⁶¹ News24 2020 <https://www.news24.com/news24/southafrica/news/former-anc-mp-others-appear-in-court-over-r48m-tender-scam-theft-case-in-limpopo-20201005>; Business Insider South Africa 2020 <https://www.businessinsider.co.za/these-are-all-the-high-profile-arrests-made-in-the-last-week-2020-10> and Jacarandafm 2020 <https://www.jacarandafm.com/news/news/limpopo-official-arrested-allegedly-awarding-tender-his-wife/>.

¹⁵⁶² News24 2020 <https://www.news24.com/news24/southafrica/news/former-anc-mp-others-appear-in-court-over-r48m-tender-scam-theft-case-in-limpopo-20201005>; Business Insider South Africa 2020

Molemole Local Municipality had weak leadership and was vulnerable to tender corruption.

5.3.1.3 Key local anti-corruption responses

Currently, Molemole Local Municipality has many policies, including a SCMP, as part of its key anti-corruption responses. The municipality developed a code of conduct for all its employees, to promote an ethical culture and prevent conflicts of interest. The code of conduct pays specific attention to prohibiting personal gain, not misusing official information or assets, preventing undue influence, and disclosing benefits, rewards, gifts, and favours.¹⁵⁶³ There is also a gift policy in place relating to how gifts are managed and accounted for in the municipality.¹⁵⁶⁴

A risk management strategy and risk management policy form a detailed risk management (including corruption risk) framework.¹⁵⁶⁵ They contain elaborate criteria on how to determine corruption risks in the municipality.¹⁵⁶⁶ The *Risk Management Policy* also provides a risk management committee (responsible for supervising and monitoring risk management), risk management implementers, risk management supporting staff, and risk management assurance providers (responsible for reviewing risk management, and including internal and external auditors).¹⁵⁶⁷

Molemole Local Municipality also has a fraud prevention policy, a fraud prevention strategy, and a fraud prevention plan reviewed and updated annually. These instruments illustrate a commitment to the municipality's anti-corruption efforts and a zero-tolerance policy for fraud, corruption, maladministration or any other activities involving dishonesty.¹⁵⁶⁸ The *Fraud Prevention Strategy* (2018/19) especially shows a commitment to good governance and protecting the municipality's funds, resources and other assets

<https://www.businessinsider.co.za/these-are-all-the-high-profile-arrests-made-in-the-last-week-2020-10> and Jacarandafm 2020 <https://www.jacarandafm.com/news/news/limpopo-official-arrested-allegedly-awarding-tender-his-wife/>.

¹⁵⁶³ Molemole Local Municipality *Code of Conduct for Molemole Local Municipal Employees* (2020) para 4.

¹⁵⁶⁴ Molemole Local Municipality *Gift Policy* (2019/20) para 1.

¹⁵⁶⁵ Molemole Local Municipality *Risk Management Policy* (2018/19) para 1; Molemole Local Municipality *Risk Management Strategy* (2018/19) para 1.

¹⁵⁶⁶ Molemole Local Municipality *Risk Management Policy* (2018/19) para 6.

¹⁵⁶⁷ Molemole Local Municipality *Risk Management Policy* (2018/19) para 6.

¹⁵⁶⁸ Molemole Local Municipality *Fraud Prevention Policy* (2018/19) para 2.2.

against corruption for the benefit of the community.¹⁵⁶⁹ The municipality is also committed to pursue, investigate and prosecute all allegations of corruption vigorously.¹⁵⁷⁰ Together with the municipality's whistle-blowing policy, this trilogy of instruments makes up the measures for the prevention, investigation, detection and resolution of corruption-related matters.¹⁵⁷¹

5.3.1.4 Some innovative local anti-corruption responses

Molemole Local Municipality has enacted integrity policies that can be considered innovative when judged against the policies of other municipalities, their peers. One of the more innovative approaches to anti-corruption efforts of Molemole Local Municipality can be found in its *Fraud Prevention Strategy*,¹⁵⁷² especially its reporting structure. Instead of just establishing a reporting structure for corruption as prescribed by the *Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings* and the MIMF, the strategy sets out in detail how corruption and other similar conduct should be reported.¹⁵⁷³ Different reporting processes are in place depending on the surrounding circumstances and who is making the disclosure.¹⁵⁷⁴ For example, where a senior manager is involved in alleged corrupt activities, the fraud prevention strategy provides for people to report to other than a member of management.¹⁵⁷⁵ Two different channels are also provided for anonymous whistle-blowing.¹⁵⁷⁶ A whistle-blower may report any suspicion of corruption to his or her immediate supervisor, other members of management, the risk officer or the mayor.¹⁵⁷⁷ Whistle blowers may also make use of the anti-corruption hotlines listed in the policy.¹⁵⁷⁸ The municipality thus goes a little beyond just establishing one reporting channel and making sure that provision is made for anonymous reporting.

¹⁵⁶⁹ Molemole Local Municipality *Fraud Prevention Strategy* (2018/19) para 1.

¹⁵⁷⁰ Molemole Local Municipality *Fraud Prevention Policy* (2018/19) para 2.2; Molemole Local Municipality *Fraud Prevention Strategy* (2018/19) para 1.

¹⁵⁷¹ Molemole Local Municipality *Fraud Prevention Policy* (2018/19) para 2.2; Molemole Local Municipality *Fraud Prevention Strategy* (2018/19) para 1.

¹⁵⁷² Molemole Local Municipality *Fraud Prevention Strategy* (2018/19).

¹⁵⁷³ Molemole Local Municipality *Fraud Prevention Policy* (2018/19) para 2.2; Molemole Local Municipality *Fraud Prevention Strategy* (2018/19) para 1.

¹⁵⁷⁴ Molemole Local Municipality *Fraud Prevention Strategy* (2018/19) para 5.1.

¹⁵⁷⁵ Molemole Local Municipality *Fraud Prevention Strategy* (2018/19) para 5.1.

¹⁵⁷⁶ Molemole Local Municipality *Fraud Prevention Strategy* (2018/19) para 5.4.

¹⁵⁷⁷ Molemole Local Municipality *Fraud Prevention Strategy* (2018/19) para 6.1.

¹⁵⁷⁸ Molemole Local Municipality *Fraud Prevention Strategy* (2018/19) para 6.1.

In addition to a good reporting structure, Molemole Local Municipality also has a good feedback process in place. The *Fraud Prevention Strategy* determines exactly how allegations of corruption should be investigated.¹⁵⁷⁹ The municipal manager must provide feedback on reports of corruption, which is not explicitly mandated by law.¹⁵⁸⁰ The municipal manager must acknowledge receipt of the concern(s) raised in writing, inform the whistle-blower whether or not an investigation will occur (providing reasons if no investigation will take place), and provide an estimate of the expected duration of the investigation.¹⁵⁸¹

Another innovative anti-corruption response of Molemole Local Municipality is how it seeks to resolve matters of corruption. The *Fraud Prevention Strategy* (2018/19) obliges the municipality's accounting officer to consider whether the circumstances warrant that the specifics of the instance of corruption and how the municipality decided to resolve it should be made public.¹⁵⁸² Moreover, the accounting officer must, where possible, initiate proceedings to recover all losses suffered by the municipality as a result of the corrupt conduct.¹⁵⁸³

5.3.2 Cape Winelands District Municipality

5.3.2.1 Background

Located in the Western Cape, the Cape Winelands District Municipality consists of five local municipalities and stretches over 21 472,67km².¹⁵⁸⁴ The municipality's population is about 866 001 (57% of whom are between the ages of 20 and 59 years), which makes up 235 908 households.¹⁵⁸⁵ The average household income is R2 450 monthly and children head about 400 households.¹⁵⁸⁶ This shows that a significant portion of the local population is dependent on indigent discounts to gain access to municipal services.¹⁵⁸⁷

¹⁵⁷⁹ Molemole Local Municipality *Fraud Prevention Strategy* (2018/19) para 6.

¹⁵⁸⁰ Molemole Local Municipality *Fraud Prevention Strategy* (2018/19) para 7.

¹⁵⁸¹ Molemole Local Municipality *Fraud Prevention Strategy* (2018/19) para 7.

¹⁵⁸² Molemole Local Municipality *Fraud Prevention Strategy* (2018/19) para 9.

¹⁵⁸³ Molemole Local Municipality *Fraud Prevention Strategy* (2018/19) para 8.

¹⁵⁸⁴ Cape Winelands District Municipality 2020 <https://bit.ly/36U1WDp>; Municipal Money 2020 <https://bit.ly/39XbmzY>.

¹⁵⁸⁵ Wazimap 2020 <https://bit.ly/3a0xM3r>; Municipal Money 2020 <https://bit.ly/39XbmzY>.

¹⁵⁸⁶ Wazimap 2020 <https://wazimap.co.za/profiles/district-DC2-cape-winelands/>.

¹⁵⁸⁷ Wazimap 2020 <https://wazimap.co.za/profiles/district-DC2-cape-winelands/>.

Nevertheless, at least two thirds of all community members have access to basic municipal services such as electricity, clean drinking water, waste removal, and flush or chemical toilets.¹⁵⁸⁸

As with Molemole Local Municipality, there is low political diversity in the Cape Winelands District Municipality. The municipal and the provincial government are governed (with a majority) by the Democratic Alliance Party.¹⁵⁸⁹ The Cape Winelands District Municipality is currently not subject to a provincial intervention, is not considered to be in financial distress, and no financial triggers are present.¹⁵⁹⁰ This municipality is also one of the few that has received clean audits for more than seven consecutive years.¹⁵⁹¹

5.3.2.2 Corruption vulnerabilities

The Auditor-General's 2018/19 annual report applauds the Cape Winelands District Municipality for having strong leadership and a controlled environment that is conducive to preventing and detecting material errors in financial management.¹⁵⁹² The recent 2019/20 report also commended the Cape Winelands District Municipality's management for their active involvement in implementing actions plans which *inter alia* address preventing corruption.¹⁵⁹³ Similarly, no obvious areas in the Cape Winelands District Municipality were identified as particularly susceptible to corruption within the limits of the desktop study . The municipality, however, remains vulnerable to corruption in the areas generally considered as being susceptible to corruption in local government.¹⁵⁹⁴ These areas include procurement, human resource practices, licensing, and land-use and planning.¹⁵⁹⁵

¹⁵⁸⁸ Wazimap 2020 <https://wazimap.co.za/profiles/district-DC2-cape-winelands/>.

¹⁵⁸⁹ Wazimap 2020 <https://wazimap.co.za/profiles/district-DC2-cape-winelands/>.

¹⁵⁹⁰ Municipalities of South Africa 2020 <https://municipalities.co.za/> and National Treasury 2020 http://mfma.treasury.gov.za/Media_Releases/s71/1920/4th_1920/Pages/excel.aspx.

¹⁵⁹¹ AGSA *MFMA Consolidated General Report on the Local Government Audit Outcomes 2019/20* 153; Municipal Money 2020 <https://bit.ly/39XbmzY>.

¹⁵⁹² AGSA *MFMA Consolidated General Report on the Local Government Audit Outcomes 2018/19* 126.

¹⁵⁹³ AGSA *MFMA Consolidated General Report on the Local Government Audit Outcomes 2019/20* 47.

¹⁵⁹⁴ See para 5.2 above.

¹⁵⁹⁵ See para 5.2 above.

5.3.2.3 Key local anti-corruption responses

The Cape Winelands District Municipality has responded to corruption vulnerabilities through adopting various policies. One of the first of these, adopted in 2008, is the *Anti-Corruption Policy*.¹⁵⁹⁶ This policy is directed at creating an ethical culture intolerant of fraud and corruption. It includes measures to deter, prevent, detect and investigate fraud and corruption.¹⁵⁹⁷ The *Anti-corruption Policy* also provides for appropriate action to be taken where fraud and corruption has taken place, like disciplinary action, the recovery of losses, prosecution, black-listing, or prohibition from further employment.¹⁵⁹⁸ The Cape Winelands District Municipality's *Anti-corruption Policy* has a detailed section describing reporting and investigating fraud and corruption allegations.¹⁵⁹⁹ Interestingly, the Anti-corruption Policy specifically has anti-corruption preventative measures for vulnerable areas such as human resource management, finance systems, procurement and housing (including housing subsidies and housing allocation).¹⁶⁰⁰ The policy describes in detail the different roles of all stakeholders to strengthen anti-corruption efforts and promote implementation.¹⁶⁰¹

Other policies are also in place to support the *Anti-corruption Policy*. One of these policies is the *Recruitment and Selection Policy*, which has the objective of ensuring consistent, transparent, procedurally and substantively fair recruitment and selection procedures.¹⁶⁰² The *Expenditure Policy* together with the *Unauthorised, Fruitless and Wasteful and Irregular Expenditure Policy* ensures that any loss suffered by the municipality because of fraud or corruption is appropriately resolved (which must include recovering such losses from the person liable) and reported to the SAPS, the Auditor-General, the mayor and accounting officer.¹⁶⁰³ The codes of conduct in the Systems Act have also been

¹⁵⁹⁶ Cape Winelands District Municipality *Anti-Corruption Policy* (2008).

¹⁵⁹⁷ Cape Winelands District Municipality *Anti-Corruption Policy* (2008) para 15.

¹⁵⁹⁸ Cape Winelands District Municipality *Anti-Corruption Policy* (2008) para 15.

¹⁵⁹⁹ Cape Winelands District Municipality *Anti-Corruption Policy* (2008) paras 7, 8, 9, 14.

¹⁶⁰⁰ Cape Winelands District Municipality *Anti-Corruption Policy* (2008) paras 18-22.

¹⁶⁰¹ Cape Winelands District Municipality *Anti-Corruption Policy* (2008) para 27-33.

¹⁶⁰² Cape Winelands District Municipality *Recruitment and Selection Policy* (2010) paras 1.1, 1.6.

¹⁶⁰³ Cape Winelands District Municipality *Expenditure Policy* (2015) para 5.10 and Cape Winelands District Municipality *Unauthorised, Fruitless and Wasteful and Irregular Expenditure Policy* (2015) para 6.

adopted for municipal employees and councillors to ensure an ethical culture and prevent conflicts of interest.¹⁶⁰⁴

5.3.2.4 Some innovative local anti-corruption responses

One of the notable policy anti-corruption measures of the Cape Winelands District Municipality is the *Private Work and Declaration of Interests Policy* (2017). Unlike most policies of other municipalities dealing with preventing and managing conflicts of interest, the Cape Winelands District's *Private Work and Declaration of Interests Policy* does not merely state that conflicts of interests, gifts and external remunerative employment are to be disclosed.¹⁶⁰⁵ It aims to promote mutual trust, respect and a business environment founded on integrity, fairness and reasonability.¹⁶⁰⁶ The policy aspires to limit the risks associated with private work and the non-disclosure of private or familial interests.¹⁶⁰⁷ The policy determines in detail the specifics for handling applications to partake in external remunerative work.¹⁶⁰⁸ As part of oversight, a system to monitor private work is also provided for in the policy, and a procedure is in place to oblige all employees and other interested parties to declare their financial interests annually.¹⁶⁰⁹

Another anti-corruption response is a policy that contains a set of prescribed human resource practices. The *Anti-corruption Policy* outlines measures to limit public sector corruption throughout all stages of human resource management and employment, from the point where vacant positions are advertised to exit procedures upon retirement or resignation.¹⁶¹⁰ These measures include subjecting each prospective employee to a pre-screening process to establish *inter alia* whether the prospective employee is listed as a person precluded from public employment.¹⁶¹¹ Newly appointed employees are further

¹⁶⁰⁴ Schedules 1 and 2 of the Systems Act.

¹⁶⁰⁵ Cape Winelands District Municipality *Private Work and Declaration of Interests Policy* (2017).

¹⁶⁰⁶ Cape Winelands District Municipality *Private Work and Declaration of Interests Policy* (2017) paras 1.1, 1.3.

¹⁶⁰⁷ Cape Winelands District Municipality *Private Work and Declaration of Interests Policy* (2017) para 3.4.

¹⁶⁰⁸ Cape Winelands District Municipality *Private Work and Declaration of Interests Policy* (2017) paras 3.1, 3.2.

¹⁶⁰⁹ Cape Winelands District Municipality *Private Work and Declaration of Interests Policy* (2017) paras 3.3, 3.6.

¹⁶¹⁰ Cape Winelands District Municipality *Anti-Corruption Policy* (2008) para 18.2.

¹⁶¹¹ Cape Winelands District Municipality *Anti-Corruption Policy* (2008) para 18.2.2.

subjected to mandatory induction programmes.¹⁶¹² These programmes are aimed at introducing employees to the work ethic and culture of the Cape Winelands District Municipality.¹⁶¹³ Organisation strategy, business ethics and behavioural standards all form part of the mandatory induction programme.¹⁶¹⁴ The Cape Winelands District Municipality undertakes ongoing lifestyle audits during employment, and senior managers are obliged to declare their personal assets and private business interests annually at a minimum.¹⁶¹⁵ The municipality also prescribes mandatory leave periods to limit the risk of over-worked employees whose exhaustion could lead to non-compliance, fraud, or corruption.¹⁶¹⁶ Exit procedures for employees include the return of assets and an exit interview.¹⁶¹⁷ Clear timelines, including follow-up timeframes, are in place to ensure that assets are returned promptly.¹⁶¹⁸ The exit interview is used to assess amongst other things the employee's perceptions of the municipality's culture of business ethics and behavioural standards.¹⁶¹⁹ This is especially important to identify areas for improvement in the municipality's integrity framework.¹⁶²⁰

5.3.3 Cape Town Metropolitan Municipality

5.3.3.1 Background

This municipality covers an area of more or less 2 446,40 km².¹⁶²¹ As with the previous two municipalities, political diversity is low because the Democratic Alliance (hereafter the DA) governs both the municipality (with a two-thirds majority) and the province.¹⁶²² The Cape Town Metropolitan Municipality received an unqualified audit with findings, is

¹⁶¹² Cape Winelands District Municipality *Anti-Corruption Policy* (2008) para 18.2.5.

¹⁶¹³ Cape Winelands District Municipality *Anti-Corruption Policy* (2008) para 18.2.5.

¹⁶¹⁴ Cape Winelands District Municipality *Anti-Corruption Policy* (2008) para 18.2.5.

¹⁶¹⁵ Cape Winelands District Municipality *Anti-Corruption Policy* (2008) para 18.2.4.

¹⁶¹⁶ Cape Winelands District Municipality *Anti-Corruption Policy* (2008) para 18.2.6.

¹⁶¹⁷ Cape Winelands District Municipality *Anti-Corruption Policy* (2008) para 18.2.7.

¹⁶¹⁸ Cape Winelands District Municipality *Anti-Corruption Policy* (2008) para 18.2.7.

¹⁶¹⁹ Cape Winelands District Municipality *Anti-Corruption Policy* (2008) para 18.2.7.

¹⁶²⁰ Cape Winelands District Municipality *Anti-Corruption Policy* (2008) para 18.2.7.

¹⁶²¹ Municipal Money 2020 <https://bit.ly/2OkieID>; Wazimap 2020 <https://bit.ly/36TFR8a>.

¹⁶²² Independent Elections Committee 2020 <https://www.elections.org.za/IECOnline/Reports/National-and-Provincial-reports>; Municipalities South Africa 2020 <https://municipalities.co.za/overview>.

not subject to a provincial intervention, is currently not considered in financial distress, but has one financial trigger present.¹⁶²³

The Cape Town Metropolitan Municipality scored the highest among all municipalities in quality and satisfactory service delivery, administrative performance and economic development in three recent surveys.¹⁶²⁴ The municipality is situated in the Western Cape and has a population of about 4 005 015; 57% are between the ages of 20-59.¹⁶²⁵ Its population makes up about 1 264 950 households, 40% of which are headed by women.¹⁶²⁶ The average household income is R4 775 monthly, which is slightly more than that of the previous two municipalities.¹⁶²⁷ However, two thirds of all child-headed households in the Western Cape are located in the Cape Town Metropolitan Municipality (3104 households).¹⁶²⁸ Judged statistically, the municipality is doing well in delivering services with more than four-fifths of the community having access to basic municipal services including flush toilets.¹⁶²⁹

5.3.3.2 Corruption vulnerabilities

Land development in the Cape Town Metropolitan Municipality has been identified as an area particularly vulnerable to corruption.¹⁶³⁰ Olver¹⁶³¹ shows that many major land development projects such as the Foreshore Freeway project, Maidens Cove development and the developments in the Philippi Horticultural Area were unduly influenced by political interference. He further illustrates how the whistle-blowing system in the Cape Town

¹⁶²³ Municipalities of South Africa 2020 <https://municipalities.co.za/>; National Treasury 2020 http://mfma.treasury.gov.za/Media_Releases/s71/1920/4th_1920/Pages/excel.aspx and AGSA 2020 <https://bit.ly/3p0IZGv>.

¹⁶²⁴ The Citizen Satisfaction Index, Composite Service Delivery Index and Good Governance Africa Governance Ranking as cited in Olver *Rents and repurposing in two South African cities: Towards a typology of city governance regimes* 6.

¹⁶²⁵ Wazimap 2020 <https://bit.ly/36TFR8a>; Municipal Money 2020 <https://bit.ly/2OkieID>.

¹⁶²⁶ Wazimap 2020 <https://wazimap.co.za/profiles/municipality-CPT-city-of-cape-town/>.

¹⁶²⁷ Wazimap 2020 <https://wazimap.co.za/profiles/municipality-CPT-city-of-cape-town/>.

¹⁶²⁸ Wazimap 2020 <https://wazimap.co.za/profiles/municipality-CPT-city-of-cape-town/>.

¹⁶²⁹ Wazimap 2020 <https://wazimap.co.za/profiles/municipality-CPT-city-of-cape-town/>.

¹⁶³⁰ Olver *Rents and repurposing in two South African cities: Towards a typology of city governance regimes* 7, 8.

¹⁶³¹ Olver *Rents and repurposing in two South African cities: Towards a typology of city governance regimes* 7, 8.

Metropolitan Municipality urgently requires improvements to protect municipal employees who report irregularities.¹⁶³²

The Cape Town Metropolitan Municipality received an 'unqualified with findings' audit outcome for the year 2019/20.¹⁶³³ The City's audit report for the financial year 2018/19 highlighted some issues, which may indicate areas vulnerable to corruption. Close familial interests in contracts awarded by the municipality were not disclosed¹⁶³⁴ and some contractors' performances were not reviewed monthly.¹⁶³⁵ The Cape Town Metropolitan Municipality also did not disclose the particulars of the non-compliance with provisions of the MFMA.¹⁶³⁶ These are indicators of a lack of diligence in reporting and poor internal control, which creates opportunities for corruption.¹⁶³⁷

Despite receiving an unqualified audit with findings, the Cape Town Metropolitan Municipality was one of the top three contributors (R669 million) to the total irregular expenditure incurred by local government.¹⁶³⁸ The Auditor-General called attention to the fact that the municipality had not taken reasonable steps to prevent the irregular expenditure.¹⁶³⁹ Most of the expenditure was caused by deviating from supply chain management regulations in non-permissible circumstances.¹⁶⁴⁰ In addition, bid specifications were drafted in a biased manner which did not allow all prospective suppliers to offer their goods or services. The Auditor-General emphasised that this was a particular recurring problem.¹⁶⁴¹ These are indicators of a particular vulnerability to corruption in supply chain management in the Cape Town Metropolitan Municipality.

¹⁶³² Olver *Rents and Repurposing in Two South African Cities: Towards a Typology of City Governance Regimes* 7, 8.

¹⁶³³ AGSA *MFMA Consolidated General Report on the Local Government Audit Outcomes 2019/20* 153.

¹⁶³⁴ Auditor-General 2020 <https://bit.ly/36Vm34d> para 35.

¹⁶³⁵ Auditor-General 2020 <https://bit.ly/36Vm34d> para 33.

¹⁶³⁶ Auditor-General 2020 <https://bit.ly/36Vm34d> para 13.

¹⁶³⁷ Auditor-General 2020 <https://bit.ly/36Vm34d> para 13.

¹⁶³⁸ AGSA *MFMA Consolidated General Report on the Local Government Audit Outcomes 2019/20* 154.

¹⁶³⁹ Auditor-General 2020 <https://bit.ly/36Vm34d> para 27.

¹⁶⁴⁰ Auditor-General 2020 <https://bit.ly/36Vm34d> para 27.

¹⁶⁴¹ Auditor-General 2020 <https://bit.ly/36Vm34d> para 29.

5.3.3.3 Key local anti-corruption responses

The Cape Town Metropolitan Municipality's commitment to preventing and combatting corruption is evident from a selection of local policies. An ethical culture is supported by policies such as the codes of conduct for staff and councillors, the *Declaration of Financial Interests Policy* (2003) and the *Councillors' Gift Giving Policy* (2013).¹⁶⁴² These policies prescribe conditions conducive to an ethical attitude to work and the performance of duties.¹⁶⁴³ As with the previous two case studies, detailed procedures are provided for the circumstances warranting a disclosure of interests and the details to be disclosed.¹⁶⁴⁴ Another noteworthy provision is the municipality's dedication to ensuring that giving and receiving gifts is not perceived as the solicitation of bribes.¹⁶⁴⁵

The *Fraud Prevention Policy* (2008) and *Fraud Response Plan* (2008) are the prime anti-corruption and fraud policy instruments of the Cape Town Metropolitan Municipality and are regularly reviewed.¹⁶⁴⁶ The overall objective of the *Fraud Prevention Policy* (2008) is to provide detailed responsibilities involving the prevention of fraud and what procedures should be followed when crime is detected or suspected.¹⁶⁴⁷ Provision is made for an extensive reporting structure which include anonymous reporting and a commitment to protect whistle-blowers.¹⁶⁴⁸ Interestingly, the Cape Town Metropolitan Municipality uses forensic practitioners to take the lead in all investigations and efforts to recover assets or other losses incurred.¹⁶⁴⁹ The *Fraud Response Plan* (2008) probably contains the most detailed provisions on the responsibilities of all stakeholders concerning anti-corruption efforts, simplifying the task of holding individuals accountable when corruption occurs.¹⁶⁵⁰ The Integrated Risk Management Policy sets out detailed criteria to assess risks, including risks to corruption, and provides risk management advisory bodies, risk management

¹⁶⁴² City of Cape Town *Fraud Prevention Policy* (2008); City of Cape Town *Declaration of Financial Interests Policy* (2003); City of Cape Town *Councillors' Gift Giving Policy* (2013).

¹⁶⁴³ City of Cape Town *Fraud Prevention Policy* (2008); City of Cape Town *Declaration of Financial Interests Policy* (2003); City of Cape Town *Councillors' Gift Giving Policy* (2013).

¹⁶⁴⁴ City of Cape Town *Declaration of Financial Interests Policy* (2003) paras 5, 6, 7.

¹⁶⁴⁵ City of Cape Town *Councillors' Gift Giving Policy* (2013) para 5.

¹⁶⁴⁶ City of Cape Town *Fraud Prevention Policy* (2008); City of Cape Town *Fraud Response Plan* (2008).

¹⁶⁴⁷ City of Cape Town *Fraud Prevention Policy* (2008) para 5.1.

¹⁶⁴⁸ City of Cape Town *Whistle Blowing Policy* (2014) paras 11.2, 11.4, 11.6, 11.7; City of Cape Town *Fraud Response Plan* (2008) paras 1.4-1.9, 2, 3.

¹⁶⁴⁹ City of Cape Town *Fraud Response Plan* (2008) paras 3.1.4, 3.1.7.

¹⁶⁵⁰ City of Cape Town *Fraud Response Plan* (2008) para 9.

committees, risk management implementers, and risk management support staff.¹⁶⁵¹ This risk management system plays a considerable role in strengthening the municipality's anti-corruption efforts.

The municipality's anti-corruption efforts include policies prescribing some human resource practices. Human resource practices policies prescribe practices founded on equity, equality, fairness, transparency, respect for diversity, professionalism, access to information and sustainability.¹⁶⁵² The work ethic and high performance standards are reinforced by the Performance Management Framework Policy, which is periodically reviewed.¹⁶⁵³ A high standard of performance is further facilitated through a strong system of consequence management.¹⁶⁵⁴ The *Consequence Management Policy* (2019) was developed and adopted in 2019 to provide a suitable framework to address accountability and responsibility, including non-compliance and misconduct.¹⁶⁵⁵ The consequence management structure provides for reporting, control activities, the dissemination of information, monitoring and remedial action.¹⁶⁵⁶ It further describes the duties and roles of all relevant stakeholders.¹⁶⁵⁷

5.3.3.4 Some innovative local anti-corruption responses

Many innovative anti-corruption efforts can be found in the policies of the Cape Town Metropolitan Municipality. In addition to the standard supply chain management policy as required by the MFMA, the City also adopted a *Combating Abuse of Supply Chain Management System Policy*¹⁶⁵⁸ which serves as an additional safeguard to ensure the integrity of supply chain management.¹⁶⁵⁹ The municipality established and maintains a register of tender and contract defaulters which allows it to preclude defaulters from participating in the municipality's procurement.¹⁶⁶⁰ Tenders will also be rejected

¹⁶⁵¹ City of Cape Town *Integrated Risk Management Policy* (2016).

¹⁶⁵² City of Cape Town *Recruitment and Selection of Workers from the Community by Council and its Service Providers Policy* (2011) para 4.

¹⁶⁵³ City of Cape Town *Performance Management Framework Policy* (2011).

¹⁶⁵⁴ City of Cape Town *Consequence Management Policy* (2019) para 5.2.

¹⁶⁵⁵ City of Cape Town *Consequence Management Policy* (2019) para 5.2.

¹⁶⁵⁶ City of Cape Town *Consequence Management Policy* (2019) para 11.6.

¹⁶⁵⁷ City of Cape Town *Consequence Management Policy* (2019) para 10.

¹⁶⁵⁸ City of Cape Town *Combating Abuse of Supply Chain Management System Policy* (2011).

¹⁶⁵⁹ City of Cape Town *Combating Abuse of Supply Chain Management System Policy* (2011) para 1.

¹⁶⁶⁰ City of Cape Town *Combating Abuse of Supply Chain Management System Policy* (2011) para 3.

automatically if the prospective supplier has been convicted of fraud and corruption in five years preceding the invitation to tender in question.¹⁶⁶¹ Prospective suppliers are also screened against the Register of Tender Defaulters, National Treasury's database for persons prohibited from doing business with the public sector, and against the City's Register for Tender Defaulters.¹⁶⁶² Where irregularities occur in the supply chain management system, the accounting officer should take suitable action, which includes informing the National Treasury and the relevant provincial treasury.¹⁶⁶³

Cape Town Metropolitan Municipality has established the only municipal Ombudsman.¹⁶⁶⁴ The City Ombudsman's primary duty is to help the municipality fulfil its obligation to provide an accountable, democratic, and transparent government.¹⁶⁶⁵ The Ombudsman enables the public to formally report maladministration committed by municipal officials.¹⁶⁶⁶ The policy assures that each and every complaint is independently investigated and resolved efficiently and effectively in accordance with the principles of administrative justice.¹⁶⁶⁷ Ombudsman officials are required to provide service courteously, with dignity, honesty and integrity.¹⁶⁶⁸ All roles, responsibilities, procedures and processes for investigating and resolving reports of maladministration are set out in detail in the Ombudsman Policy.¹⁶⁶⁹ Clear guidelines are in place to help Ombudsman officials decide on how to resolve reports of maladministration and what corrective action should be taken.¹⁶⁷⁰ Such action may include public apologies, compensation, negotiation for redress, disciplinary steps and referrals to appropriate bodies.¹⁶⁷¹

5.4 Concluding remarks

Public sector corruption in local government can be found in public procurement, vote buying, gateway politics, human resource practices, land-use management, licensing,

¹⁶⁶¹ City of Cape Town *Combating Abuse of Supply Chain Management System Policy* (2011) para 4.

¹⁶⁶² City of Cape Town *Combating Abuse of Supply Chain Management System Policy* (2011) para 4.

¹⁶⁶³ City of Cape Town *Combating Abuse of Supply Chain Management System Policy* (2011) paras 14, 15.

¹⁶⁶⁴ See Annexure A for detailed survey.

¹⁶⁶⁵ City of Cape Town *Ombudsman Policy* (2014) para 1.1.

¹⁶⁶⁶ City of Cape Town *Ombudsman Policy* (2014) para 1.2.

¹⁶⁶⁷ City of Cape Town *Ombudsman Policy* (2014) paras 2.2, 2.3.

¹⁶⁶⁸ City of Cape Town *Ombudsman Policy* (2014) para 2.2.

¹⁶⁶⁹ City of Cape Town *Ombudsman Policy* (2014) para 2.5.

¹⁶⁷⁰ City of Cape Town *Ombudsman Policy* (2014) para 2.6.

¹⁶⁷¹ City of Cape Town *Ombudsman Policy* (2014) para 7.5.

housing allocation, and water service delivery.¹⁶⁷² Local government is mandated by national law to enact a range of policies and provide prescribed information to prevent and minimise public sector corruption.¹⁶⁷³ The QCA shows where municipalities should make improvements to fulfil their duties and in so-doing help prevent corruption.¹⁶⁷⁴ In addition, the case studies show in more detail what municipal integrity policies to prevent corruption look like.¹⁶⁷⁵ Finally, the case studies further illustrate what municipalities can do to prevent corruption over and above their duties as identified in chapter 4.¹⁶⁷⁶

The QCA of 257 municipalities shows that municipalities have done a lot to fulfil the duties imposed by national law to prevent public sector corruption.¹⁶⁷⁷ The most prominent observation which can be drawn from the QCA is that 63% of all municipalities could improve their efforts to prevent corruption by fulfilling their duties as identified in chapter 4.¹⁶⁷⁸ The local, district and metropolitan municipalities which fulfilled most of the duties are the Molemole Local Municipality, the Cape Winelands District Municipality and the Cape Town Metropolitan Municipality.¹⁶⁷⁹

The discussion of the results of each variable was presented in terms of four categories.¹⁶⁸⁰ The QCA showed that most municipal websites published information relating to their governance, including information relating to the prevention of corruption, but that they must improve their communication with communities in such matters as how public records can be accessed, to increase transparency and accountability.¹⁶⁸¹ One hundred and forty-four municipalities referred to an internal audit unit, but only 44 referred to an integrity champion, illustrating a need for municipalities to employ a committee or person mandated to spearhead integrity efforts in the municipality.¹⁶⁸² The duties most neglected by municipalities are developing and

¹⁶⁷² See para 1.1 above.

¹⁶⁷³ See para 4.5 above.

¹⁶⁷⁴ See para 5.2.2 above.

¹⁶⁷⁵ See para 5.3 above.

¹⁶⁷⁶ See para 5.3 above.

¹⁶⁷⁷ See para 5.2.2 above.

¹⁶⁷⁸ See para 5.2.2.1 above.

¹⁶⁷⁹ See para 5.2.2.1 above.

¹⁶⁸⁰ See para 5.2.1 and table 1 above.

¹⁶⁸¹ See para 5.2.2.2 above.

¹⁶⁸² See para 5.2.2.3 above.

implementing prescribed policies relating to integrity management (risk management, disciplinary matters, managing conflicts of interests, anti-fraud and corruption, supply chain management and whistle blowing).¹⁶⁸³

The QCA identified Molemole Local Municipality, the Cape Winelands District Municipality and the Cape Town Metropolitan Municipality as being especially progressive in preventing public sector corruption.¹⁶⁸⁴ The case studies of these municipalities highlighted some areas in each municipality particularly vulnerable to public sector corruption and what the key responses were to address public sector corruption.¹⁶⁸⁵ It also helped identify some innovative ways in which the subjects of the case study discharged their policy-making obligations involving the prevention of corruption. Molemole Local Municipality uses a very elaborate corruption investigation process and has clear timeframes in place with the guarantee that feedback regarding the investigation will be made public.¹⁶⁸⁶ The Cape Winelands District Municipality uses a rather remarkable set of human resource practices to control conflicts of interests and promote integrity, ranging from the advertisement of vacancies to the exit procedures.¹⁶⁸⁷ The Cape Town Metropolitan Municipality is the only municipality that makes use of an ombudsperson with a specific mandate to help the municipality achieve an accountable, democratic, and transparent government.¹⁶⁸⁸

This chapter has shown that to prevent corruption and in so-doing promote local sustainability municipalities must improve access to legally prescribed information, develop and enforce local policies which promote integrity and prevent corruption, and appoint integrity champions. The case studies have provided some learning points for other municipalities in the country and have also shown how local policies can be used to improve local sustainability by preventing corruption.

¹⁶⁸³ See paras 5.2.3.4 and 5.2.3.5 above.

¹⁶⁸⁴ See para 5.3 above.

¹⁶⁸⁵ See paras 5.3.1.2, 5.3.2.2 and 5.3.3.2 above.

¹⁶⁸⁶ See para 5.3.1.4 above.

¹⁶⁸⁷ See para 5.3.2.4 above.

¹⁶⁸⁸ See para 5.3.3.4 above.

CHAPTER 6

CONCLUSION

6.1 Background to the study

Corruption is a widespread problem.¹⁶⁸⁹ It is seen to stunt efforts to promote sustainable development, including in the South African context.¹⁶⁹⁰ Local governments play a unique role in pursuing sustainable development because of their proximity to people and because of their responsibility for some of the typical threats to sustainability, such as urbanisation and natural resource-dependent service delivery.¹⁶⁹¹ One can especially observe the corrosive role of public sector corruption on good governance and financial sustainability in local government.¹⁶⁹² Herein lies the urgency for local governments and the related stakeholders to engage in anti-corruption efforts.¹⁶⁹³ For this reason, this study set out to investigate how public sector corruption in local government can be prevented and minimised to promote sustainability in South African municipalities.¹⁶⁹⁴

6.2 Scope, method, and limitations of the study

This study is not the first to explore the different legal options which can be used to prevent public sector corruption. Many have embarked on this task.¹⁶⁹⁵ However, a significant number of previous studies have been focussed on one particular legal measure to prevent public sector corruption and few¹⁶⁹⁶ have delved into the detail of the

¹⁶⁸⁹ See para 1.1 above.

¹⁶⁹⁰ See para 1.1 above.

¹⁶⁹¹ See para 1.3 above.

¹⁶⁹² See para 1.4 above.

¹⁶⁹³ See para 1.5 above.

¹⁶⁹⁴ See para 1.6 above.

¹⁶⁹⁵ See para 1.1 above. Bukovansky 2006 *Review of International Political Economy* 183; Hansen and Tang-Jensen 2015 *Ephemera: Theory and Politics in Organization* 370; Peltier-Rivest 2018 *Journal of Financial Crime* 546; Everett, Neu and Rahaman 2007 *Accounting, Organizations and Society* 513; Ericson 2007 *Crime in an Insecure World* 27; Shamir 2008 *Economy and Society* 6; Bertat, Jaeger and Grimes 2011 *Transforming Government: People, Process and Policy* 79; Park and Blenkinsopp 2011 *International Review of Administrative Sciences* 256; Brusca, Rossi and Acersano 2018 *Journal of Comparative Policy Analysis: Research and Practice* 486.

¹⁶⁹⁶ Some of these studies include: Akinola and Uzodike 2014 *Ubuntu: Journal of Conflict and Social Transformation* 35; April and Sebola 2016 *African Insight* 5; Asare 2009 *International Journal on Governmental Financial Management* 15; Berning and Montesh 2012 *SA Crime Quarterly* 6; Budhram 2018 *Journal of Public Administration* 120.

South African anti-corruption law and policy framework from the perspective of sustainability and local government.¹⁶⁹⁷ This study has investigated anti-corruption measures as extending beyond the context of criminal law.

The study predominantly took the form of a literature review, which included scholarly works, international and regional law, policy and standards, and South African legal sources (primary and secondary) to unearth what can be done to prevent and minimise public sector corruption in South African local government.¹⁶⁹⁸ The study was limited to a legal perspective on public sector corruption in relation to sustainable development, while scholarly resources of non-legal disciplines (e.g. politics, public governance, economics, psychology, and environmental studies) were consulted only insofar as they could enrich the researcher's background knowledge of the topics under discussion.¹⁶⁹⁹ International and regional anti-corruption law and policy were analysed against the background of the theory on sustainable development and public sector corruption.¹⁷⁰⁰ South African anti-corruption law and policy were subsequently evaluated against international and regional law and policy provisions and aims (standards). A definite limitation to the study was the desktop-only analyses – this method could only assist to establish whether all necessary law and policy aimed at preventing public sector corruption in South African local government actually exists on paper.¹⁷⁰¹ Consequently the study could not investigate whether the law and policy translate into effective legal measures to prevent public sector corruption.¹⁷⁰² Neither could the study arrive at findings on the successful implementation of the existing law and policy measures.¹⁷⁰³

6.3 Concept clarification

From an extensive literature review of the scholarly works and legal definitions some key concepts were defined that underpinned the subsequent stages of the study: public sector

¹⁶⁹⁷ See para 1.1 above.

¹⁶⁹⁸ See para 1.11 above.

¹⁶⁹⁹ See para 1.11 above.

¹⁷⁰⁰ See para 1.11 above.

¹⁷⁰¹ See para 1.11 above.

¹⁷⁰² See para 1.11 above.

¹⁷⁰³ See para 1.11 above.

corruption, sustainable development in local government, good governance and financial sustainability.

6.3.1 Public sector corruption

For the purposes of this study it was accepted that corruption means the abuse of office for private gain.¹⁷⁰⁴ Public sector corruption can be distinguished from private sector corruption and other crimes by looking at some characteristics: 'office' refers to holding public office. In South African law, this is determined with reference to whether or not it serves a public function.¹⁷⁰⁵ Responsibility to serve the public interest is vital to determining whether a violation of formal and informal rules on acceptable behaviour for public servants took place.¹⁷⁰⁶ Together with a deviation from acceptable behaviour and an intent to corrupt, a 'misuse' must take place, meaning that the perpetrator must have used his/her position of power to obtain an advantage he/she would ordinarily not be entitled to.¹⁷⁰⁷ Furthermore, the victims of public sector corruption are the general public as opposed to a small identifiable group or a person, as in the case of private sector corruption.¹⁷⁰⁸

6.3.2 Sustainable development in local government

For the purposes of this study, sustainable development in local government comprises four dimensions. The environmental dimension requires local authorities to use resources in a sustainable manner and to protect the natural environment.¹⁷⁰⁹ The social dimension requires local authorities to enable populations to grow sustainably, to provide decent living conditions, to facilitate residents' well-being, to improve social inclusivity, and to increase human security.¹⁷¹⁰ In addition, local government should be involved in fulfilling the needs of the present and future generations.¹⁷¹¹ The economic dimension in a local government context relates to local authorities, which should be innovative and focussed

¹⁷⁰⁴ See para 2.2.3 above.

¹⁷⁰⁵ See para 2.2.3 above.

¹⁷⁰⁶ See para 2.2.3 above.

¹⁷⁰⁷ See para 2.2.3 above.

¹⁷⁰⁸ See para 2.2.3 above.

¹⁷⁰⁹ See para 2.3 above.

¹⁷¹⁰ See para 2.3 above.

¹⁷¹¹ See para 2.3 above.

on cultivating economic growth and development.¹⁷¹² The fourth dimension, governance, refers to local government exercising good governance through sound and strong government institutions, infrastructure and financial management.¹⁷¹³ All four dimensions must reflect the needs of the present and future generations, which means that local authorities must plan beyond local government's budget and election cycles, for example.¹⁷¹⁴

6.3.3 Good governance

Good governance for sustainable development in local government can be described as local governance which strives to deliver on the most critical aspects of sustainable development in a community through democratic processes,¹⁷¹⁵ where the critical aspects of sustainable development can be summarised as:

(a) Being socially and environmentally inclusive, just, and equitable. (b) Focussing on fulfilling the needs reflected in the present and future, beyond the city's next budget or election cycle. (c) Providing a liveable environment which promotes human well-being which includes advancing economic growth and development and having a sustainable growth rate. (d) Utilising resources sustainably, which includes conserving the natural environment and, being continuously evolving and innovative. (e) Safeguarding human security. (f) And governing by way of sound government institutions.¹⁷¹⁶

6.3.4 Financial sustainability

Financial sustainability in local government can be understood as resilient financial management that enables a municipality to meet all its obligations and facilitates development without a continuous rise in debt or undue increase in service or other charges.¹⁷¹⁷ Financial sustainability comprises of the following elements:¹⁷¹⁸

(1) solvency, which is the ability to meet financial and service delivery obligations; (2) growth, which is fiscal policy that sustains growth; (3) stability, which refers to the capacity to meet obligations with the existing tax burden without a continuous increase in debt levels; and (4) fairness, which refers to the capacity to pay current obligations

¹⁷¹² See para 2.3 above.

¹⁷¹³ See para 2.3 above.

¹⁷¹⁴ See para 2.3 above.

¹⁷¹⁵ See para 2.4.4 above.

¹⁷¹⁶ See para 2.4.4 above; Van der Berg *Municipal Planning Law and Policy for Sustainable Cities in South Africa* 52.

¹⁷¹⁷ See para 2.6 above.

¹⁷¹⁸ See para 2.6 above.

without placing unmanageable tax burdens on present or future consumers). The Controller and Auditor-General of New Zealand hold a similar view to the OECD but add two elements which form part of financial sustainability. These two additional elements are (5) resilience, which is the capacity to withstand shocks; and (6) public confidence, which serves as a guarantee that enough revenue can be collected for future obligations.¹⁷¹⁹

6.4 The contribution of this study

Unlike previous studies that focussed on sustainable development or preventing corruption, this study introduced the two issues in parallel. It illustrated the impact corruption has on sustainable development and, drawing on this relationship, justified why preventing corruption should be an important priority for local government in South Africa.¹⁷²⁰ The analysis of international and regional law and South African anti-corruption law is novel because it was not limited to a few limited measures to prevent corruption.¹⁷²¹ Instead, this analysis looked at as many measures in law which could be used to prevent corruption in local government within the available resources and time at the disposal of the researcher. The study also provided a South African local government perspective on how to prevent corruption, an area of study scantily covered in the available literature.¹⁷²² This study further provides some practical solutions that may help prevent public sector corruption as a contribution to local sustainability in the South African context.¹⁷²³

6.5 Main findings

To achieve its overarching objective as set out above, the study had a set of secondary objectives. The first was to discuss and describe some key concepts relevant to the study, namely public sector corruption, sustainable development, good governance and financial sustainability.¹⁷²⁴ Understanding these concepts enabled the researcher to establish a theoretical framework for preventing public sector corruption while formulating a starting point of reference to evaluate South African anti-corruption law and policy.¹⁷²⁵

¹⁷¹⁹ See para 2.6 above; Dollery and Grant 2011 *Public Finance and Management* 34.

¹⁷²⁰ See para 2.1 above.

¹⁷²¹ See chapters 3 and 4 above.

¹⁷²² See chapters 3 and 4 above.

¹⁷²³ See para 6.6 below.

¹⁷²⁴ See para 1.11 above.

¹⁷²⁵ See para 1.7 above.

The next secondary objective was to evaluate South African national law and policy aimed at preventing public sector corruption, specifically in municipalities, against international and regional anti-corruption law and policy.¹⁷²⁶ This was done to establish whether South African national law and policy contained the standards as identified from international and regional law and policy. This assisted the researcher to identify the duties placed on South African municipalities to prevent public sector corruption.¹⁷²⁷ Lastly the study set out to establish the extent to which municipalities have developed some integrity policies as per their legal obligations to prevent public sector corruption. The main findings of this study are briefly outlined below.¹⁷²⁸

6.5.1 Preventing corruption is necessary for sustainable development in the South African local government context

Corruption adversely impacts all the dimensions of sustainable development. Corruption degrades the environment and endangers the conservation of valuable natural resources.¹⁷²⁹ In South African local government, corruption (specifically bribery and favouritism) often leads to regulations concerned with air pollution and the reduction of harmful emissions being bypassed.¹⁷³⁰ Land-use planning and management are important local government tools for conserving vulnerable ecosystems and ecosystem services, but perpetrators of corruption often abuse these tools.¹⁷³¹ Consequently land-use planning, zoning applications and business licence applications processes are sometimes distorted to the detriment of the natural environment.¹⁷³²

The effects of corruption on the social dimension of sustainable development can be seen in increased poverty and slow development as a result of reduced spatial justice and increasing existing inequalities.¹⁷³³ Where public sector corruption prevails in law enforcement, the community perceives it as threatening the personal security of the

¹⁷²⁶ See para 1.7 above.

¹⁷²⁷ See para 1.7 above.

¹⁷²⁸ See para 1.7 above.

¹⁷²⁹ See para 2.4.1 above.

¹⁷³⁰ See para 2.4.1 above.

¹⁷³¹ See para 2.4.1 above.

¹⁷³² See para 2.4.1 above.

¹⁷³³ See para 2.4.2 above.

public.¹⁷³⁴ Moreover, to the extent that public sector corruption often diverts valuable public resources, it can be said that corruption threatens local government's ability to provide essential (basic) services to the community.¹⁷³⁵ For example, infrastructure necessary for water services is sabotaged by corrupt officials to create procurement opportunities for emergency water services provision through water trucks and smaller water tanks.¹⁷³⁶ Another example is poorly executed repair work on municipal roads by companies that pay kickbacks to city officials in return for being awarded tenders to repair the same roads in the future.¹⁷³⁷

The impacts of public sector corruption on the economic dimension of sustainable development can be observed in various ways, one of which is increased taxes to close the gap in public funding.¹⁷³⁸ It is popularly believed that consumers have to pay more for public goods and services because of public sector corruption.¹⁷³⁹ Another consequence of corruption is that it discourages essential foreign investment aimed at local upliftment such as the expansion of essential public infrastructure.¹⁷⁴⁰ For example, when funds meant for infrastructure development and sanitation services are siphoned off by corruption, towns become filthy and services unsustainable, which pose investment risks. This may discourage investors and professionals who could enhance capacity in those towns.

Public sector corruption also negatively affects the governance dimension of sustainable development.¹⁷⁴¹ Through public sector corruption, many key positions in local government have not been filled by people with adequate skills, thereby diminishing the human skills capacity.¹⁷⁴² Public procurement has also been adversely affected by

¹⁷³⁴ See para 2.4.2 above.

¹⁷³⁵ See para 2.4.2 above.

¹⁷³⁶ See paras 1.1 and 2.4.1 above.

¹⁷³⁷ See paras 1.1 and 2.4.1 above.

¹⁷³⁸ See para 2.4.3 above.

¹⁷³⁹ See para 2.4.3 above.

¹⁷⁴⁰ See para 2.4.3 above.

¹⁷⁴¹ See para 2.4.4 above.

¹⁷⁴² See para 2.5 above.

corruption which contributes to the ineffective use of public resources.¹⁷⁴³ Finally, public sector corruption is often accompanied by wasteful and unnecessary expenditure.¹⁷⁴⁴

The study confirms that public sector corruption is an obstacle to sustainable development in local government.¹⁷⁴⁵ This suggests that preventing public sector corruption is an (often understated) means of contributing to sustainable development in local government.¹⁷⁴⁶

6.5.2 International and regional standards help direct the prevention of corruption in South Africa

A number of international and regional laws places a 'blanket law and policy-making duty' on states, to adopt law and policy to prevent corruption.¹⁷⁴⁷ This duty is part of the international and transnational response to the different vulnerabilities states may have to corruption.¹⁷⁴⁸ This study found that the established standards to prevent corruption include measures to increase integrity, ethical governance, transparency and accountability in local governance.¹⁷⁴⁹

International and regional law and policy dictate that measures to increase integrity and ethical governance should include the following. Local authorities should establish and enforce codes of conduct for public servants.¹⁷⁵⁰ Political interference in governance should be reduced by managing conflicts of interests, monitoring political funding and restricting political influence in crucial governance decisions.¹⁷⁵¹ Local authorities should strengthen systems for human resource management.¹⁷⁵² A public finance management system should be formulated and implemented. Local government must comply with international and regional human rights obligations.¹⁷⁵³

¹⁷⁴³ See para 2.5 above.

¹⁷⁴⁴ See para 2.6 above.

¹⁷⁴⁵ See para 2.7 above.

¹⁷⁴⁶ See para 2.7 above.

¹⁷⁴⁷ See para 3.1 above.

¹⁷⁴⁸ See para 3.1 above.

¹⁷⁴⁹ See para 3.3, 3.4 and 3.5 above.

¹⁷⁵⁰ See para 3.3.2 above.

¹⁷⁵¹ See para 3.3.3 above.

¹⁷⁵² See para 3.3.4 above.

¹⁷⁵³ See para 3.3.5 above.

Local government should also promote transparency.¹⁷⁵⁴ This requires that local government increase access to information. In addition, local governments should encourage whistleblowing, which means increasing whistle-blower protection and establishing reporting channels.¹⁷⁵⁵

Accountability should be promoted.¹⁷⁵⁶ Local governments should ensure that avenues for legal redress exist to hold officials accountable for corruption. Measures should be put in place to ensure that municipal officials cannot abuse their legal immunities to avoid accountability for corruption. In addition, local authorities must aid in increasing access to evidence of corruption, facilitating stake-holder cooperation, promoting the participation of society, and having periodic government elections.¹⁷⁵⁷

Anti-corruption institutions should be established. This study found that international and regional standards do not prescribe how many (as a quantifiable number) anti-corruption institutions states must establish or the level of government on which they are expected to operate.¹⁷⁵⁸ It was argued that local governments could also establish anti-corruption institutions.¹⁷⁵⁹

6.5.3 South African anti-corruption law and policy have specific shortcomings

This study found that there are specific shortcomings in South African law and policy aimed at preventing public sector corruption.¹⁷⁶⁰ The South African anti-corruption law and policy framework is highly fragmented and there are many government institutions responsible for one or more aspects of preventing corruption.¹⁷⁶¹ Some measures to prevent corruption have also been overlooked, such as raising awareness and educating the community (public society) on public sector corruption.¹⁷⁶²

¹⁷⁵⁴ See para 3.4 above.

¹⁷⁵⁵ See para 3.4.1 above.

¹⁷⁵⁶ See para 3.4 above.

¹⁷⁵⁷ See para 3.4 above.

¹⁷⁵⁸ See para 3.4.2 above.

¹⁷⁵⁹ See para 3.5 above.

¹⁷⁶⁰ See para 4.1 above.

¹⁷⁶¹ See para 4.4.4.2 above.

¹⁷⁶² See para 4.4.1 above.

This study found that for the most part South African law and policy have everything necessary for a successful anti-corruption agenda except for a few observations. Despite the existence of many laws pertaining to the proactive disclosure of local governance related information,¹⁷⁶³ accessing it remains tedious. A lack of information impairs transparency.¹⁷⁶⁴ In addition, a lack of information makes it difficult for stakeholders, including members of the community, to hold local government accountable for corruption, because information helps in the detection of corruption.¹⁷⁶⁵

Municipalities have an extensive reporting burden, but no enforceable obligation is placed on those who review the annual performance, audit and other reports to duly consider and act on potential vulnerabilities to public sector corruption as indicated in these reports.¹⁷⁶⁶ Many of these mandatory reports could reveal corruption and enable supervisory and monitoring institutions to act. However, anti-corruption law and policy do not require such institutions to duly consider and act on the information contained in said reports.

Furthermore, it was found that South African law and policy which make provision for whistle-blower protection are too restrictive and afford protection only for disclosures made in the course of employment, and that programmes such as witness protection are only used under exceptional circumstances.¹⁷⁶⁷

6.5.4 The majority of municipalities in South Africa fail in their legal duty to prevent corruption

This study showed that municipalities have many obligations concerning the prevention of corruption in terms of South African law and policy.¹⁷⁶⁸ Thirty-eight of these duties were considered in detail in chapter 5. It was found that not a single municipality has discharged all of these duties. The results of the QCA showed that municipalities still have

¹⁷⁶³ Such as the PAIA, s 32 of the Constitution, and ss 75 of the MFMA.

¹⁷⁶⁴ See para 4.5 above.

¹⁷⁶⁵ See para 4.5 above.

¹⁷⁶⁶ See para 4.5 above.

¹⁷⁶⁷ See para 4.5 above.

¹⁷⁶⁸ See para 5.2.1 above.

much to do regarding the development of integrity policies to prevent corruption.¹⁷⁶⁹ The study also found that although many municipalities have websites containing some information on governance-related matters, municipalities should improve access to information on governance matters.¹⁷⁷⁰ It was also found that although municipalities have structured financial systems with dedicated financial departments and internal audit units, very few have integrity champions (designated officials responsible to implement and develop local integrity policies) or other structures to support integrity management.¹⁷⁷¹

6.5.5 Prevention of corruption in local government goes beyond legal compliance

The case studies of Molemole Local Municipality, the Cape Winelands District Municipality and Cape Town Municipality showed that municipalities can employ innovative policy measures to prevent corruption internally.¹⁷⁷² Instead of merely describing a simple process for investigating reports of alleged misconduct in the municipality, local authorities can prescribe clear timeframes and processes for the different stages of internal investigations relating to alleged misconduct.¹⁷⁷³ In addition to municipalities' duties to manage conflicts of interest, municipalities can develop policies that require newly employed public officials to undergo an orientation programme aimed at instilling an ethical working culture.¹⁷⁷⁴ Such a local policy could also provide an ongoing lifestyle audit during employment and an exit interview to ensure ethical behaviour until the last day of employment.¹⁷⁷⁵ Lastly, it was found that municipalities can establish their own local anti-corruption institutions.¹⁷⁷⁶

¹⁷⁶⁹ See para 5.2.3 above.

¹⁷⁷⁰ See para 5.2.3.2 above.

¹⁷⁷¹ See para 5.2.3.3 above.

¹⁷⁷² See para 5.4 above.

¹⁷⁷³ See para 5.3.1.4 above.

¹⁷⁷⁴ See para 5.3.2.4 above.

¹⁷⁷⁵ See para 5.3.2 above.

¹⁷⁷⁶ See para 5.4 above.

6.6 Recommendations

6.6.1 Rectification of the specific shortcomings in South African law and policy

6.6.1.1 Initiate a review of anti-corruption law and policy

To address the identified shortcomings in paragraph 6.5.3, the following is recommended. South African anti-corruption law and policy may have to be reviewed by the South African Law Reform Commission and relevant executives. The purpose of such a review would be to fill some specific gaps: Firstly, more robust safeguards against political interference in local governance must be provided for in the Systems Act, the Structures Act and the MFMA. Secondly, amendments must be made to require all anti-corruption institutions, such as the Public Service Commission, the Competition Commission, the Human Rights Commission, and the Auditor-General to be easily accessible to the public. Thirdly, additions must also be made to existing anti-corruption law to give one of the many anti-corruption institutions the mandate to educate the community on corruption matters. For this purpose, the South African Law Reform Commission may consider amending the *Public Protector Act 23 of 1994* and the *South African Human Rights Commission Act 40 of 2013* to mandate the Public Protector and the Human Rights Commission to educate the public on corruption and raise awareness of the impacts thereof.

6.6.1.2 Increase access to municipal information

To address the need for improved access to municipal information, the following is recommended. The national legislature and relevant executives should enact law and policy measures to increase access to public information. The PAIA, MIMF and MFMA must stipulate what municipal records should proactively be made available and that it should be done so in an easily understandable format. This recommendation specifically refers to municipal records required to empower stakeholders to detect corruption, such as tender awards, individual performance reports of municipal officials, and expenditure reports. The amended laws and policies must include a requirement for municipalities to publish all declarations of interest of municipal officials and municipal councillors.

Measures for increased access to municipal records must be accompanied with enforcement mechanisms which will ensure that municipalities that do not adhere to such measures can be held accountable. Moreover, the PAIA, MFMA, and MIMF must make provision for the distribution of municipal records on various platforms, including websites, social media, and local announcement boards.

6.6.1.3 Provide for follow-up mechanisms for mandatory reports

The national legislature and relevant executives are recommended to review law and policy such as the MFMA, the MIMF, and the Systems Act to provide for legal mechanisms to require monitoring and supervisory institutions of municipalities to follow up on the content of municipal reports. Typically, these reports include the annual Auditor-General's Report and the annual municipal performance report as per section 121 of the MFMA. It is recommended that additions must be made to the mentioned laws and policies¹⁷⁷⁷ which oblige supervisory and monitoring institutions to thoroughly review all municipal reports and duly consider their contents with the specific purpose of detecting potential acts of corruption. Furthermore, these laws and policies should be amended to include provision for procedures on how reasonable suspicions of corruption based on municipal reports should be dealt with by the supervisory and monitoring institutions of local government.

6.6.1.4 Improve whistle-blower protection

Whistle-blower protection should be improved. It is specifically recommended that the national legislature amends the definition of protected disclosures as in section 1 of the *Protected Disclosures Act* 26 of 2000 to include disclosures made by people who are not in an employment relationship with the accused. Witness protection as described in section 7 of the *Witness Protection Act* 112 of 1998 must also be amended to protect people who have witnessed corruption and their family and other closely associated people, but who are not yet considered witnesses in court proceedings. A further recommendation is that an anti-corruption or law enforcement institution, such as SAPS

¹⁷⁷⁷ The MFMA; the MIMF; the Systems Act.

or the National Prosecuting Authority be mandated to monitor and oversee whistle-blower and witness protection for corruption related matters.

6.6.2 Provide support for policy-based non-compliance

Law and policy, for example the MIMF, which require municipalities to have a specific anti-corruption policy framework in place, should make provision for other institutions such as SALGA, the MEC for Local Government or the Provincial Treasury to provide support to municipalities to develop and implement the mandatory policy framework. In addition, provision must be made in law and policy to appoint a responsible person or institution, such as the MEC of Local Government or the Provincial Treasury, to supervise and monitor the development and implementation of the mandatory anti-corruption policy framework. It is further recommended that law and policy determine that the nominated institution or person has enforcement mechanisms at its disposal when municipalities refuse to develop and implement the required anti-corruption policy framework.

6.6.3 Initiate a national peer learning initiative for improved corruption prevention in local government

The study recommends that the MIMF and the *Local Government Anti-Corruption Strategy* (2015) be amended to establish a national peer learning initiative. Some municipalities have employed innovative policy measures to prevent corruption. The national department responsible for local government in South Africa should, through the MIMF and the *Local Government Anti-Corruption Strategy* (2015), encourage a national peer learning initiative, similar to the SALGA Anti-Corruption Summit 2013,¹⁷⁷⁸ to enable and oblige municipalities to share their experiences on what measures were employed to prevent corruption and what successes were achieved. Anti-corruption experiences in this sense relate to what anti-corruption measure was used, how it was implemented,

¹⁷⁷⁸ This summit was a once-off event. It is unclear why the summit did not take place after the one in 2013. It is therefore not possible to make a value judgement on the success of this summit in preventing and controlling corruption in local government. A once-off summit, or peer learning initiative such as this would not suffice to make a noticeable difference, it is therefore that the study recommends an annual or bi-annual peer learning initiative. Persistence and consistency is required to successfully prevent and combat corruption.

whether and why it was effective and if changes should be made to the anti-corruption measure. For example, a peer learning initiative could take the form of an annual and bi-annual summit involving the senior managers of municipalities, researchers, the SALGA, and other stakeholders. Another option policy makers may consider is creating a policy measure that requires municipalities to summarise their anti-corruption experiences and publish them in an online depository.

6.7 Remaining areas of research

The field of public sector corruption as it relates to local government and sustainability is vast. This study was scoped to cover only specific aspects of this field. Remaining areas of research include the following:

6.7.1 The nature and impact of corruption in specific municipal sectors

This research was founded on the limited existing literature on the scope and nature of corruption in the different sectors in local government. A research project is needed that focusses on the peculiarities and scope of corruption in sectors often neglected in corruption studies, such as land use, water service delivery and infrastructure management, and what should be done to better shield these sectors from the public sector corruption as a method to improve local sustainability.

6.7.2 The effectiveness of the existing anti-corruption law and policy framework in South Africa

This study focussed on whether the necessary law and policy were in place to prevent public sector corruption in South African local government and not how additional law and policy measures can be employed to prevent corruption. Much value would be added to this topic should future research explore if and how this legal framework is implemented. Knowing if the existing anti-corruption measures in law and policy are implemented could indicate whether other law and policy anti-corruption measures are required to prevent public sector corruption in local government. Preventing public sector corruption in local government consists of more than law and policy anti-corruption

measures; this study field might thus be enriched by research on the non-legal gaps in preventing corruption, such as political will.

6.7.3 Empirical perspectives on the meaning of corruption

A study of corruption raises many questions of a philosophical nature. Many of these questions relate to the sense of morality of a specific community. What is considered corruption in a specific community? Are all acts of corruption considered morally wrong, or must a degree of seriousness accompany these acts? Does the community want to prevent all acts of corruption or just some? Is corruption necessary in a specific community to promote the healthy functioning of healthy public governing systems? Many studies have been done to explore questions of this type, but they do not rely on factual and empirical data on corruption in local government. These studies are needed to establish context-specific information on the extent of corruption, the costs of corruption and the success of anti-corruption efforts. Without this knowledge the task of establishing what should be done and what is being done to prevent corruption in the name of local sustainability remains a difficult one.

6.8 Conclusion

Public sector corruption must be prevented in order to increase sustainability in South African local government.¹⁷⁷⁹ It is based on this premise that the study investigated how, from the perspective of law, public sector corruption in local government can be prevented in the pursuit of sustainability in South African municipalities.¹⁷⁸⁰ Fourteen standards to prevent corruption can be identified from international and regional law and policy. When evaluated against these standards, it was found that South Africa has a good basis of law and policy measures to prevent corruption.¹⁷⁸¹ However, it was argued that some minor improvements to these measures could greatly contribute to the prevention of corruption.¹⁷⁸² In addition, it was shown that many municipalities do not share legally prescribed information or have a mandatory integrity policy framework in

¹⁷⁷⁹ See para 1.1 above.

¹⁷⁸⁰ See para 1.6 above.

¹⁷⁸¹ See para 3.1 above.

¹⁷⁸² See para 4.5 above.

place to prevent corruption. It was found, therefore, that before any novel policy measures to prevent corruption are considered, municipalities must first implement what is available.¹⁷⁸³ Without the proper implementation of existing law and policy measures to prevent corruption in all spheres of government one cannot accurately evaluate whether additional measures are required to prevent corruption.¹⁷⁸⁴

It is trusted that this study has contributed to the body of academic literature dedicated to municipal governance and the prevention of public sector corruption as part of municipalities' pursuit of sustainable development. It is believed that if the recommendations are implemented, by the various addressees, South African local government will increasingly be enabled to make inroads on its journey towards a more sustainable work and living environment for every member of society.

¹⁷⁸³ See para 5.2.3 above.

¹⁷⁸⁴ See para 5.5 above.

ANNEXURE A: RESULTS OF THE QCA

The QCA was conducted by the author of this thesis. The QCA considered the websites and accessible policies of all 257 South African municipalities (local, district and metropolitan) between 1 October and 31 December 2020.¹⁷⁸⁵

Assignment of values to variables:

The boxes marked with an "x" are to indicate that no information was available on the municipal website on that variable.

Variable 1: Does the municipality have an up-to-date website?¹⁷⁸⁶ Full compliance (2) was assigned if the municipality had a website that was updated in 2020. Partial compliance (1) was assigned to municipalities that had a website which was not updated in 2020. Null compliance (0) was assigned if no website was found or if a link to a website was found but the page was not accessible.

Variable 2: Are codes of conduct available on the municipality's website?¹⁷⁸⁷ Full compliance (2) was assigned if the municipality had formulated its own codes of conduct according to schedules 1 and 2 of the Systems Act. Partial compliance (1) was assigned if any reference could be found on municipal websites or policies to a code of conduct or if reference was made to schedules 1 or 2 of the Systems Act. Null compliance (0) was assigned where nothing related to codes of conduct was found on municipal websites or in policies.

¹⁷⁸⁵ The findings tabled in this annexure may be contradictory to other studies and research on the performance of municipalities. It must be noted that many different methods and criteria exist which can be used to classify municipalities as the 'best' or 'worst'. For example, when a municipality is considered to be the worst in terms of service delivery related criteria, such a ranking may be indicative of a lack of capacity and skills, and not necessarily a lack in policy measures to prevent corruption. The findings of this table only shows us which municipalities have the required policies in place to prevent corruption and which municipalities have legally prescribed information available on their websites.

¹⁷⁸⁶ See Table 1 above.

¹⁷⁸⁷ See Table 1 above.

Variable 3: Are monthly budget statements accessible on the municipality's website?¹⁷⁸⁸ Full compliance (2) was assigned where municipalities had an accessible monthly budget statement newer than October 2020. Partial compliance (1) was assigned if any monthly budget statement was accessible irrespective of the date. Null compliance (0) was assigned if no monthly budget statements could be found on the municipality's website.

Variable 4: Is the annual budget of the municipality available on the municipality's website?¹⁷⁸⁹ Full compliance (2) was assigned if the municipality's annual budget was accessible for the financial year 2019/20 or 2020/21. Partial compliance (1) was assigned to municipalities if annual budgets were accessible on the municipality's website. Null compliance (0) was assigned if no annual budget was accessible on the municipality's website.

Variable 5: Are the municipality's policies accessible on its website?¹⁷⁹⁰ Full compliance (2) was assigned to municipalities that had more than ten policies accessible on its website. Partial compliance (1) was assigned to municipalities that had more than five policies but fewer than ten accessible on their website. Null compliance (0) was assigned where a municipality had fewer than 5 policies accessible on its website.

Variable 6: Does the municipality refer to its anti-corruption hotline on its website?¹⁷⁹¹ Full compliance (2) was assigned for the municipal website referring to the municipality's hotline to report fraud and corruption. Partial compliance (1) was assigned for the municipal

¹⁷⁸⁸ See Table 1 above.

¹⁷⁸⁹ See Table 1 above.

¹⁷⁹⁰ See Table 1 above.

¹⁷⁹¹ See Table 1 above.

website referring to the national hotline to report fraud and corruption. Null compliance (0) was assigned where no reference was made to any hotline to report fraud and corruption.

Variable 7: Does the municipality have PAIA guidelines and manuals in three official languages?¹⁷⁹² Full compliance (2) was assigned where PAIA guidelines and manuals were available in three official languages or if references were made to them on the municipality's website or in municipal policies. Partial compliance (1) was assigned where PAIA guidelines and manuals were available in one official language or if references were made to them on the municipality's website or in municipal policies. Null compliance (0) was assigned where no PAIA guidelines or manuals could be found and no reference were made to them on the municipality's website or in municipal policies.

Variable 8: Are the PAIA guidelines and manuals accessible on the municipality's website?¹⁷⁹³ Full compliance (2) was assigned if the PAIA guidelines and manuals were accessible on the municipality's website. Partial compliance (1) was assigned where the researcher could find any reference to PAIA guidelines or manuals on the municipality's website or in municipal policies. Null compliance (0) was assigned if PAIA guidelines or manuals were not accessible on the municipality's website or where no reference was made to them.

Variable 9: Are public notices such as excluding public procurement matters accessible on the municipality's website?¹⁷⁹⁴ Full compliance (2) was assigned if the newest public notices listed on the website were not older than 2020. Partial compliance (1) was assigned if

¹⁷⁹² See Table 1 above.

¹⁷⁹³ See Table 1 above.

¹⁷⁹⁴ See Table 1 above.

public notices were accessible on the municipality's website, but they were older than January 2020. Null compliance (0) was assigned if no public notices could be found on the municipality's website.

Variable 10: Is SCM-related information such as tender notices accessible on the municipality's website?¹⁷⁹⁵ Full compliance (2) was assigned if the newest SCM-related information listed on the website was not older than 2020. Partial compliance (1) was assigned if SCM-related information was accessible on the municipality's website but was older than January 2020. Null compliance (0) was assigned if no SCM-related information could be found on the municipality's website.

Variable 11: Does the municipality have a reporting channel to report any unethical behaviour and misconduct?¹⁷⁹⁶ Full compliance (2) was assigned where a communication channel specifically dedicated to reporting any unethical behaviour and misconduct was available on the municipality's website. Partial compliance (1) was assigned for any feedback option, detailed contact lists or any other methods which would make reporting a concern relating to misconduct and unethical behaviour of municipal officials possible. Null compliance (0) was assigned where no dedicated reporting channel, no feedback option or any other method for reporting concerns was found on the municipality's website and where only poor contact lists were available on the municipality's website.

Variable 12: Does the municipality have an internal audit committee or unit?¹⁷⁹⁷ Full compliance (2) was assigned where a municipality listed an internal audit committee on the website as part of the municipality's institutional structure or where the municipality's policies referred to such a committee. Partial compliance (1) was assigned where a municipality showed that key positions in the internal audit

¹⁷⁹⁵ See Table 1 above.

¹⁷⁹⁶ See Table 1 above.

¹⁷⁹⁷ See Table 1 above.

committee were vacant. Null compliance (0) was assigned where no reference could be found to the existence of an internal audit committee on the municipality's website or in its policies.

Variable 13: Does the municipality have a department of finance?¹⁷⁹⁸ Full compliance (2) was assigned where a municipality provided information on its financial department on the website as part of the municipality's institutional structure. Partial compliance (1) was assigned where a municipality showed that key positions in the financial department were vacant. Null compliance (0) was assigned where no information could be found on the municipality's financial department on its website.

Variable 14: Does the municipality have an integrity champion?¹⁷⁹⁹ Full compliance (2) was assigned where a municipality listed an integrity champion or a risk management officer on the website as part of the municipality's institutional structure or where the municipality's policies referred to such a person. Partial compliance (1) was assigned where reference to any integrity management structure was found on the municipality's website or in its policies. Null compliance (0) was assigned where no reference could be found to the existence of an integrity champion on the municipality's website or in its policies.

Variable 15: Does the municipality have an integrity management policy?¹⁸⁰⁰ Full compliance (2) was assigned where a municipality referred to integrity management, instilling ethics or improving ethics in the municipality's policies. Partial compliance (1) if no reference was made to integrity management, instilling ethics or improving ethics in the municipality's policies, but reference was made to codes

¹⁷⁹⁸ See Table 1 above.

¹⁷⁹⁹ See Table 1 above.

¹⁸⁰⁰ See Table 1 above.

of conduct. Null compliance (0) if no reference was made to integrity management, instilling ethics, improving ethics or codes of conduct in the municipality's policies.

Variable 16: Does the municipality have a fraud or corruption prevention policy?¹⁸⁰¹ Full compliance (2) was assigned where a municipality had an accessible fraud or corruption policy. Partial compliance (1) was assigned where the municipal website referred to a fraud or corruption policy, but the policy was not accessible. Null compliance (0) was assigned where the municipality's website did not refer to a fraud or corruption policy and such a policy could not be found.

Variable 17: Does the municipality have an SCM policy?¹⁸⁰² Full compliance (2) was assigned where a municipality had an accessible SCM policy. Partial compliance (1) was assigned where the municipal website referred to an SCM policy, but the policy was not accessible. Null compliance (0) was assigned where the municipality's website did not refer to an SCM policy and such a policy could not be found.

Variable 18: Does the conflict-of-interest policy provide for a process to declare personal interests before employment?¹⁸⁰³ Full compliance (2) was assigned where the municipality's conflict-of-interest policy made provision for a process to declare personal interests before employment. Partial compliance (1) was assigned where the codes of conduct referred to declaring interests or where the conflict-of-interest policy is not accessible. Null compliance (0) was assigned where the conflict-of-interest policy did not make provision for such a process or no policy could be found.

¹⁸⁰¹ See Table 1 above.

¹⁸⁰² See Table 1 above.

¹⁸⁰³ See Table 1 above.

Variable 19: Does the conflict-of-interest policy provide for a process to declare personal interests after employment?¹⁸⁰⁴ Full compliance (2) was assigned where the municipality's conflict-of-interest policy made provision for a process to declare personal interests during employment. Partial compliance (1) was assigned where the codes of conduct referred to declaring interests or where the conflict-of-interest policy was not accessible. Null compliance (0) was assigned where the conflict-of-interest policy did not make provision for such a process or no policy could be found.

Variable 20: Does the conflict-of-interest policy provide for a process to declare gifts?¹⁸⁰⁵ Full compliance (2) was assigned where the municipality's conflict-of-interest policy made provision for a process to declare gifts. Partial compliance (1) was assigned where the codes of conduct referred to declaring interests or where the conflict-of-interest policy was not accessible. Null compliance (0) was assigned where the conflict-of-interest policy did not make provision for such a process or no policy could be found.

Variable 21: Does the conflict-of-interest policy provide for a process to gain written consent for external remunerative work?¹⁸⁰⁶ Full compliance (2) was assigned where the municipality's conflict-of-interest policy made provision for a process to obtain written consent for external remunerative work. Partial compliance (1) was assigned where the codes of conduct referred to declaring interests or where the conflict-of-interest policy was not accessible. Null compliance (0) was assigned where the conflict-of-interest policy did not make provision for such a process or no policy could be found.

¹⁸⁰⁴ See Table 1 above.

¹⁸⁰⁵ See Table 1 above.

¹⁸⁰⁶ See Table 1 above.

Variable 22: Does the municipality have a human resource management policy?¹⁸⁰⁷ Full compliance (2) was assigned where a municipality had an accessible human resource management policy. Partial compliance (1) was assigned where the municipal website referred to a human resource management policy, but the policy was not accessible. Null compliance (0) was assigned where the municipality's website did not refer to a human resource management policy and such a policy could not be found.

Variable 23: Does the whistle-blowing policy have a process to report misconduct?¹⁸⁰⁸ Full compliance (2) was assigned where the municipality's whistle-blowing policy made provision for a process to report misconduct. Partial compliance (1) was assigned where the whistle-blowing policy was not accessible. Null compliance (0) was assigned where the whistle-blowing policy did not make provision for such a process or no policy could be found.

Variable 24: Does the whistle-blowing policy have a process to provide feedback for reports to whistle blowers?¹⁸⁰⁹ Full compliance (2) was assigned where the municipality's whistle-blowing policy made provision for a process to provide feedback for reports to whistle blowers. Partial compliance (1) was assigned where the whistle-blowing policy was not accessible. Null compliance (0) was assigned where the whistle-blowing policy did not make provision for such a process or no policy could be found.

Variable 25: Does the whistle-blowing policy provide protection for whistle blowers?¹⁸¹⁰ Full compliance (2) was assigned where the municipality's whistle-blowing policy made provision for the protection of whistle blowers. Partial compliance (1) was assigned where

¹⁸⁰⁷ See Table 1 above.

¹⁸⁰⁸ See Table 1 above.

¹⁸⁰⁹ See Table 1 above.

¹⁸¹⁰ See Table 1 above.

the whistle-blowing policy was not accessible. Null compliance (0) was assigned where the whistle-blowing policy did not make provision for such a process or no policy could be found.

Variable 26: Does the whistle-blowing policy provide consequences for those who retaliate against whistle-blowers?¹⁸¹¹ Full compliance (2) was assigned where the municipality's whistle-blowing policy made provision for a process to provide for consequences against those who retaliated against whistle blowers. Partial compliance (1) was assigned where the whistle-blowing policy was not accessible. Null compliance (0) was assigned where the whistle-blowing policy did not make provision for such a process or no policy could be found.

Variable 27: Does the municipality have a communications policy that allows the municipality to monitor official communications for signs of corruption?¹⁸¹² Full compliance (2) was assigned where a municipality had an accessible communications monitoring policy that allows monitoring of official communications for signs of corruption. Partial compliance (1) was assigned where the municipal website referred to a communications monitoring policy, but the policy was not accessible. Null compliance (0) was assigned where the municipality's website did not refer to a communications monitoring policy and such a policy could not be found.

Variable 28: Does the investigations policy set out the process for investigating misconduct?¹⁸¹³ Full compliance (2) was assigned where the municipality had an accessible investigations policy that sets out the process for investigating misconduct. Partial compliance (1) was assigned where the municipal website referred to an investigations policy, but the policy was not accessible or where another policy made provision for an investigation process such as a fraud or corruption policy. Null compliance (0) was assigned where the

¹⁸¹¹ See Table 1 above.

¹⁸¹² See Table 1 above.

¹⁸¹³ See Table 1 above.

municipality's website did not refer to an investigations policy, such a policy could not be found and no other policy made provision for an investigation process for allegations of misconduct.

Variable 29: Does the investigations policy provide for measures to ensure the independence of investigators?¹⁸¹⁴ Full compliance (2) was assigned where the municipality had an accessible investigations policy providing for measures to ensure the independence of investigations. Partial compliance (1) was assigned where the municipal website referred to an investigations policy, but the policy was not accessible or where another policy made provision for the independence of investigators such as a fraud or corruption policy. Null compliance (0) was assigned where the municipality's website did not refer to an investigations policy, such a policy could not be found, and no other policy made provision for the independence of investigators.

Variable 30: Does the investigations policy set out the roles and responsibilities of all the stakeholders involved in investigations?¹⁸¹⁵ Full compliance (2) was assigned where the municipality had an accessible investigations policy that sets out the roles and responsibilities of all the stakeholders involved in investigations. Partial compliance (1) was assigned where the municipal website referred to an investigations policy, but the policy was not accessible or where another policy made provision the roles and responsibilities of all the stakeholders involved in investigations such as a fraud or corruption policy. Null compliance (0) was assigned where the municipality's website did not refer to an investigations policy, such a policy could not be found, and no other policy made provision for the roles and responsibilities of all the stakeholders involved in investigations.

¹⁸¹⁴ See Table 1 above.

¹⁸¹⁵ See Table 1 above.

Variable 31: Does the municipality have a disciplinary policy?¹⁸¹⁶ Full compliance (2) was assigned where a municipality had an accessible disciplinary policy. Partial compliance (1) was assigned where the municipal website referred to a disciplinary policy, but the policy was not accessible. Null compliance (0) was assigned where the municipality's website did not refer to a disciplinary policy and such a policy could not be found.

Variable 32: Does the municipality have a performance management policy and system?¹⁸¹⁷ Full compliance (2) was assigned where a municipality had an accessible performance management policy. Partial compliance (1) was assigned where the municipal website referred to a performance management policy, but the policy was not accessible. Null compliance (0) was assigned where the municipality's website did not refer to a performance management policy and such a policy could not be found.

Variable 33: Does the municipality have a risk management policy?¹⁸¹⁸ Full compliance (2) was assigned where a municipality had an accessible risk management policy. Partial compliance (1) was assigned where the municipal website referred to a risk management policy, but the policy was not accessible. Null compliance (0) was assigned where the municipality's website did not refer to a risk management policy and such a policy could not be found.

Variable 34: Does the anti-corruption policy have a definition of corruption?¹⁸¹⁹ Full compliance (2) was assigned where the municipality had an accessible anti-corruption policy that describes corruption. Partial compliance (1) was assigned where the municipal policy only

¹⁸¹⁶ See Table 1 above.

¹⁸¹⁷ See Table 1 above.

¹⁸¹⁸ See Table 1 above.

¹⁸¹⁹ See Table 1 above.

referred to the PreCCA definition of corruption. Null compliance (0) was assigned where the municipality's policy provided no description of corruption.

Variable 35: Does the anti-corruption policy have measures to prevent corruption?¹⁸²⁰ Full compliance (2) was assigned where the municipality had an accessible anti-corruption policy that sets out measures to prevent corruption. Partial compliance (1) was assigned where the municipal policy only referred to the prevention of corruption. Null compliance (0) was assigned where the municipality's policy provided nothing relating to the prevention of corruption.

Variable 36: Does the anti-corruption policy have measures to detect corruption?¹⁸²¹ Full compliance (2) was assigned where the municipality had an accessible anti-corruption policy that sets out measures to detect corruption. Partial compliance (1) was assigned where the municipal policy only referred to the detection of corruption. Null compliance (0) was assigned where the municipality's policy provided nothing relating to the detection of corruption.

Variable 37: Does the anti-corruption policy have procedures to investigate corruption?¹⁸²² Full compliance (2) was assigned where the municipality had an accessible anti-corruption policy that sets out measures to investigate corruption. Partial compliance (1) was assigned where the municipal policy only referred to the investigation of corruption. Null compliance (0) was assigned where the municipality's policy provided nothing relating to the investigation of corruption.

¹⁸²⁰ See Table 1 above.

¹⁸²¹ See Table 1 above.

¹⁸²² See Table 1 above.

Variable 38: Does the anti-corruption policy have procedures to resolve corruption?¹⁸²³ Full compliance (2) was assigned where the municipality had an accessible anti-corruption policy that sets out measures to resolve corruption. Partial compliance (1) was assigned where the municipal policy only referred to the resolution of corruption. Null compliance (0) was assigned where the municipality's policy provided nothing relating to the resolution of corruption.

Municipalities are arranged according to province and their district municipalities according to the list as on <https://municipalities.co.za/>.

Municipality	Website with prescribed information						Organisation	Minimum policy framework										Anti-corruption strategy							
	Up to date website	Documents accessible on website	Anti-Corruption Hotline	PAIA guidelines and manuals	Public notices	SCM and procurement		Channel to report unethical	Internal Audit Committee/	Department of Finance	Integrity Champion	Integrity management	Fraud and corruption	Supply Chain Management	Managing conflicts of interest	Human resource	Whistleblowing	Monitoring official	Investigations of all misconduct	Disciplinary matters	Other important policy	Risk management	Definition of corruption	Measures to prevent	Measures to detect

¹⁸²³ See Table 1 above.

Ephraim Mogale Local	2	0	2	2	1	0	0	0	2	2	2	0	2	0	0	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	
Fetakgomo Tubatse Local	2	1	0	2	2	0	0	0	2	2	0	2	2	0	2	2	2	2	2	2	2	2	2	2	0	2	2	2	2	2	2	2	2	2	2	2	2	
Makhuduth amaga Local	2	0	0	2	1	0	0	0	2	2	2	2	2	0	0	0	2	2	2	0	2	2	0	0	0	0	2	2	2	2	2	0	0	0	0	0	0	
Vhembe District	2	0	2	2	0	0	0	0	2	2	0	2	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0		
Collins Chabane Local	1	0	0	1	1	0	0	0	2	2	2	2	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	
Makhado Local	2	0	0	2	2	2	0	0	2	2	0	2	2	0	0	2	2	0	0	0	0	0	2	2	2	0	0	2	0	0	0	2	2	2	2	2	2	0
Musina Local	2	1	0	2	2	0	0	0	2	2	2	2	2	0	0	2	2	2	2	2	2	2	2	2	0	2	2	2	2	2	1	2	2	2	2	2	2	
Thulamela Local	2	0	0	2	0	0	0	0	2	2	0	x	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Waterberg District	2	1	0	2	2	0	0	0	2	2	0	2	2	0	2	2	2	2	0	0	0	2	2	2	2	0	0	2	2	2	2	2	1	2	2	2	2	0
Bela-Bela Local	2	0	0	2	1	0	0	0	2	2	0	x	x	0	0	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Lephalale Local	2	0	0	2	1	2	0	0	2	2	0	2	2	0	0	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0
Modimolle-Mookgophong Local	2	0	0	2	1	0	0	0	2	2	2	x	2	0	0	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0
Mogalakwena Local	2	0	0	0	1	0	0	0	2	2	2	x	2	0	0	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0
Thabazimbi Local	2	0	0	0	1	0	0	0	2	2	2	x	2	0	0	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ehlanzeni District	2	0	0	2	0	0	0	0	0	2	2	0	2	0	0	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Bushbuckridge Local	2	0	0	1	1	0	0	0	2	2	2	x	2	0	0	0	2	0	0	0	0	0	0	0	0	2	0	0	0	0	2	0	0	0	0	0	0	0
City of Mbombela Local	2	1	1	2	2	2	2	2	2	2	2	2	2	0	2	2	2	0	0	0	0	2	2	2	2	0	2	2	2	2	2	2	2	2	2	2	2	
Nkomazi Local	2	0	0	2	1	2	0	0	2	2	2	2	2	0	0	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0
Thaba Chweu Local	2	0	1	1	1	0	1	2	2	2	0	x	2	0	0	0	2	0	0	2	2	2	2	0	2	0	0	0	0	2	0	0	0	0	0	0	0	0

Thembelihle Local	2	0	0	2	2	0	0	0	2	2	0	x	x	0	0	0	2	0	0	0	0	2	0	0	0	0	0	0	0	0	2	2	0	0	0	0			
Ubuntu Local	2	0	0	2	2	0	0	0	2	2	2	2	2	0	0	2	2	0	0	0	0	2	2	0	0	0	2	0	2	0	2	1	1	0	0	0	0		
Umsobomvu Local	2	1	0	2	2	1	0	0	2	2	2	2	2	0	2	2	2	2	2	0	2	2	2	2	0	0	2	0	2	2	2	1	2	2	2	2	2		
ZF Mgcawu District	2	2	2	2	2	0	0	0	2	2	2	2	2	0	2	2	2	0	0	0	2	2	0	2	0	0	2	0	2	2	2	1	2	2	0	2	0		
!Kheis Local	2	0	1	2	2	1	0	0	0	2	2	2	2	0	0	2	2	0	0	0	0	0	2	2	2	0	0	2	0	0	0	2	1	2	0	0	2	0	
Dawid Kruiper Local	2	0	2	2	2	1	0	0	2	2	0	2	2	0	2	2	2	0	0	0	0	2	2	2	0	0	0	2	0	0	2	2	2	2	2	2	2	2	
Kai !Garib Local	2	0	1	2	0	0	0	0	2	2	0	x	2	0	0	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	
Kgatelopele Local	2	0	0	2	1	0	0	0	0	2	2	x	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	
Tsantsabane Local	2	0	0	2	1	0	0	0	2	2	0	x	2	0	0	2	2	0	0	0	0	0	2	0	2	0	0	0	0	0	2	0	2	0	0	2	2	2	
Bojanala Platinum District	2	0	0	2	2	0	0	0	2	2	0	x	2	0	0	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	
Kgetlengrivier Local	2	1	0	2	1	0	0	0	2	2	0	2	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	
Madibeng Local	2	2	0	2	2	1	0	0	2	0	2	2	2	0	2	2	0	2	2	2	2	2	2	2	2	0	2	0	0	0	2	2	2	2	2	2	2	2	
Moretele Local	2	0	0	2	0	2	0	0	2	2	0	x	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	
Moses Kotane Local	2	0	2	2	0	0	0	0	2	2	2	x	x	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	0	
Rustenburg Local	2	0	2	0	1	0	0	0	2	2	0	x	x	0	0	0	2	0	0	2	0	2	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	
Dr Kenneth Kaunda District	2	0	0	2	0	0	0	0	2	2	2	2	x	0	0	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	
City of Matlosana Local	2	1	1	2	1	0	1	2	2	2	2	2	2	2	2	2	0	2	2	0	0	2	2	2	2	0	0	2	0	0	2	2	1	2	2	2	2	2	
JB Marks Local	2	0	2	2	0	0	0	0	2	2	2	x	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	0	
Maquassi Hills Local	2	1	0	0	0	0	0	0	2	2	2	2	2	0	0	2	0	0	0	0	0	0	0	2	2	2	0	0	2	0	2	0	0	0	2	2	2	2	2

West Coast District	2	1	1	2	2	0	1	2	2	2	2	2	2	2	0	2	2	2	2	0	0	0	2	0	2	0	2	0	2	2	0	2	2	0	0				
Bergrivier Local	2	1	2	2	2	1	1	2	2	2	2	2	2	0	0	2	2	2	2	2	0	2	2	2	2	0	0	2	2	2	2	2	2	0	0				
Cederberg Local	2	2	2	2	2	1	1	2	2	2	0	2	2	2	2	2	2	2	2	0	2	2	2	2	0	0	2	2	2	2	2	2	2	2	0				
Matzikama Local	2	0	2	2	0	0	0	0	2	2	0	x	2	0	0	0	2	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0				
Saldanha Bay Local	2	0	2	2	1	0	1	2	2	2	2	x	2	0	0	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0			
Swartland Local	2	0	2	2	1	0	1	2	2	2	2	2	2	0	0	2	2	0	0	0	0	2	2	2	2	0	0	0	0	2	2	2	1	2	0	2	0	2	
eThekweni Metropolitan	2	1	2	2	2	2	2	2	2	2	2	2	2	0	0	2	2	0	0	0	0	0	2	0	2	0	0	2	0	0	0	0	0	2	0	0	2	2	
Amajuba District	2	0	0	2	0	0	0	0	2	2	0	2	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0		
Dannhauser Local	2	0	0	2	0	0	0	0	0	2	0	x	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		
eMadlangeni Local	2	0	0	2	0	0	0	0	0	0	2	2	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0		
Newcastle Local	2	0	1	2	0	2	0	0	2	2	2	2	2	0	0	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	
Harry Gwala District	2	1	2	2	2	0	0	0	0	2	2	2	2	2	0	0	2	2	2	2	0	0	0	2	2	2	0	0	2	0	2	2	2	0	2	2	2	2	
Dr Nkosazana Dlamini Zuma Local	2	0	2	0	0	0	0	0	0	2	2	2	2	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	
Greater Kokstad Local	2	0	0	2	2	2	0	0	2	2	0	2	2	0	2	2	2	2	2	0	0	2	2	2	0	0	0	2	0	2	2	2	2	2	2	2	2	2	
Ubuhlebezwe Local	1	0	2	2	2	1	0	0	2	2	0	2	2	0	0	2	2	0	0	0	0	0	2	0	0	0	0	0	0	0	0	2	0	2	2	2	0	0	0
uMzimkhulu Local	2	0	2	2	0	0	0	0	0	2	0	2	2	0	0	2	0	0	0	0	0	2	2	2	2	0	0	2	0	2	0	2	2	2	2	2	0	0	
iLembe District	2	0	0	2	1	2	0	0	2	2	2	2	2	0	0	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	
KwaDukwa Local	2	0	0	2	2	1	0	0	2	2	2	2	2	2	2	2	2	0	0	0	0	0	2	2	2	0	0	0	0	2	2	2	2	2	2	2	0	0	
Mandeni Local	2	0	0	2	1	2	0	0	2	1	2	2	2	0	0	0	2	0	0	0	0	2	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	

Maphumulo Local	2	0	1	2	1	2	0	0	2	2	2	2	2	0	0	2	0	0	0	0	0	0	2	0	2	0	0	2	0	2	0	2	0	0	2	0	2	0
Ndwedwe Local	2	0	1	2	1	0	0	0	2	2	2	2	2	0	0	0	2	0	0	0	0	2	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0
King Cetshwayo District	2	0	1	2	1	2	0	0	0	2	2	x	2	0	0	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	
City of uMhlathuze Local	2	0	1	2	1	2	2	2	2	2	2	2	2	0	0	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	
Mthonjane ni Local	2	0	0	0	2	2	0	0	2	2	2	x	2	0	0	0	2	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	
Nkandla Local	2	0	0	0	1	0	0	0	2	2	0	x	2	0	0	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
uMfolozi Local	2	0	0	2	0	0	1	2	2	2	0	x	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	
uMlalazi Local Municipality	2	0	0	2	2	0	0	0	2	2	2	2	2	2	0	0	2	0	0	2	0	0	2	2	2	0	0	0	0	2	1	0	0	0	0	0	0	
Ugu District	2	0	1	2	0	2	0	0	2	2	0	x	2	0	0	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0
Ray Nkonyeni Local	2	0	0	2	0	0	0	0	2	2	0	x	2	0	0	0	2	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	
Umdoni Local	2	0	1	2	1	2	0	0	2	2	2	x	2	0	0	0	2	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	
Umuziwabantu Local	2	0	1	2	2	0	0	0	1	2	0	x	2	0	0	2	2	0	0	0	0	0	2	2	2	0	0	2	0	2	2	2	0	2	0	0	2	2
Umzambe Local	2	0	0	2	0	0	0	0	2	2	2	x	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	
uMgungundlovu District	2	0	0	2	1	0	0	0	0	2	2	2	2	0	0	0	2	0	0	2	2	2	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	0
Impendle Local	2	0	0	2	1	0	0	0	2	2	0	x	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	0
Mkhambathini Local	2	0	0	0	0	2	0	0	2	0	0	x	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	0	
Mpofana Local	2	0	0	0	0	0	0	0	0	2	2	x	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Msunduzi Local	2	0	2	2	0	0	0	0	2	2	2	x	2	0	0	0	2	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	0
Richmond Local	2	0	1	2	1	0	0	0	2	2	2	0	2	0	0	0	2	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	0

uMngeni Local	2	0	0	1	1	0	1	2	2	2	2	2	2	0	0	0	2	0	0	0	2	2	0	0	0	0	0	0	2	2	0	0	0	0	0	0	0
uMshwathi Local	2	0	0	2	1	0	1	2	1	2	2	x	x	0	0	0	2	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	
uMkhanyakunde District	2	0	0	0	0	0	0	0	0	2	2	x	x	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0		
Big 5 Hlabisa Local	2	0	0	2	0	0	0	0	0	2	2	2	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Jozini Local	2	1	2	2	1	0	0	0	2	2	0	x	2	0	2	2	2	0	0	0	0	2	0	2	2	0	0	0	0	2	0	2	2	2	2	2	0
Mtubatuba Local	2	0	2	2	0	0	0	0	2	2	2	x	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	
uMhlabuyalingana Local	2	0	0	2	0	0	0	0	2	2	2	x	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
uMzinyathi District	2	0	0	2	1	0	0	0	2	2	2	x	2	0	0	0	2	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	
Endumeni Local	2	2	0	2	2	0	1	2	2	2	2	2	2	0	2	0	2	0	0	0	0	2	0	0	0	0	0	0	2	2	0	0	0	0	0	0	
Nquthu Local	2	0	0	2	0	0	0	0	0	2	2	2	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	1	0	0	0	0	0	0	
uMisinga Local	2	0	1	2	2	1	0	0	2	2	0	2	2	2	2	2	2	2	2	2	2	0	2	2	2	0	0	2	0	2	2	2	2	2	2	2	2
Umvoti Local	2	0	0	2	0	0	1	2	2	2	0	x	x	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
uThukela District	2	0	2	2	1	2	0	0	2	2	2	0	2	0	0	0	2	0	0	0	0	0	2	0	2	0	0	0	2	2	2	0	0	0	0	0	
Alfred Duma Local	2	1	0	2	2	2	0	0	0	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	0	0	2	0	2	2	2	2	2	2	2	2	
Inkosi Langalibalele Local	2	2	1	2	2	0	0	0	2	2	2	2	2	0	2	2	2	0	0	0	0	2	2	0	0	0	0	2	0	2	2	2	1	2	2	2	2
Okhahlamba Local	2	0	0	2	0	0	0	0	0	2	2	x	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	
Zululand District	2	0	0	2	1	0	0	0	2	2	0	x	2	0	0	0	2	0	0	0	0	0	0	0	0	0	0	0	2	1	0	0	0	0	0	0	
AbaQulusi Local	2	2	1	2	1	0	1	2	0	0	2	2	2	0	2	0	2	2	2	2	2	2	0	0	0	0	0	0	2	0	0	0	0	0	0	0	
eDumbe Local	2	2	1	2	0	0	0	0	2	2	2	x	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	
Nongoma Local	2	0	0	0	0	0	0	0	0	2	2	x	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	

Ngwathe Local	2	2	0	2	2	0	0	0	2	0	2	2	2	2	2	0	2	2	2	0	0	2	2	0	2	0	0	0	0	2	2	2	0	0	0	0		
Lejweleputswa District	2	0	0	2	0	0	0	0	0	2	2	x	2	0	0	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0		
Masilonyana Local	2	0	0	2	0	0	0	0	2	2	2	2	2	0	0	0	2	2	2	0	2	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0		
Matjhabeng Local	2	0	1	2	2	0	0	0	2	2	0	2	2	0	0	2	2	2	2	2	0	2	0	2	0	0	2	0	2	0	2	2	2	0	0	2	0	
Nala Local	2	0	0	0	0	0	0	0	0	0	0	x	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		
Tokologo Local	2	0	0	0	0	1	0	0	1	2	0	2	2	2	0	2	0	0	0	0	0	0	2	2	2	0	0	2	0	0	0	0	1	2	2	2	2	0
Tswelopele Local	2	0	1	2	1	0	0	0	2	2	2	2	2	2	0	2	0	2	2	0	2	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	
Thabo Mofutsanyana District	2	0	1	2	0	0	0	0	2	2	2	2	2	2	0	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	2	1	0	0	0	0	0	
Dihlabeng Local	2	0	0	2	1	0	0	0	2	2	0	x	2	0	0	0	2	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	
Maluti-A-Phofung Local	0	0	0	0	0	0	0	0	0	0	0	x	x	x	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Mantsopa Local	2	1	1	1	2	1	0	0	2	2	2	2	2	2	2	2	0	0	0	2	2	2	2	2	2	0	0	0	2	2	2	1	2	2	2	2	2	
Nketoana Local	2	0	0	2	2	0	0	0	2	2	2	2	2	0	2	2	2	2	2	0	0	2	2	2	0	0	0	2	0	2	2	2	1	2	2	2	2	
Phumelela Local	0	0	0	0	0	0	0	0	0	0	0	x	x	x	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Setsoto Local	2	2	1	2	2	0	1	2	2	2	1	2	2	2	2	2	2	2	0	0	2	2	2	2	0	0	2	0	0	2	2	0	2	2	2	2	2	
Xhariep District	2	0	0	1	2	1	0	0	0	2	0	2	2	2	0	2	2	2	2	2	0	2	2	2	2	0	0	2	0	2	2	2	1	2	2	2	2	2
Kopanong Local	2	0	0	2	1	0	0	0	0	2	2	x	2	0	0	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0
Letsemeng Local	2	2	0	2	2	0	0	0	2	2	2	2	2	2	2	2	0	0	0	0	0	2	2	2	0	0	0	2	0	0	2	2	2	2	2	2	2	2
Mohokare Local	2	0	1	2	2	0	1	2	2	2	0	2	2	0	0	2	2	0	0	0	0	0	2	0	0	0	0	2	0	2	0	2	0	2	0	0	2	0
Buffalo City Metropolitan	2	0	2	2	1	2	1	2	2	2	2	x	2	0	0	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0
Nelson Mandela Bay	2	2	1	2	2	2	0	0	0	2	0	2	2	2	2	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	2	2	0	0	0	0	0	0

Joe Gqabi District	2	1	0	2	1	0	0	0	2	2	0	x	2	0	0	2	2	2	2	2	0	2	2	2	2	0	0	2	0	0	2	2	0	2	2	2	2	2	2
Elundini Local	2	0	0	2	1	0	0	0	0	2	2	2	2	0	2	2	2	2	2	0	0	2	2	2	0	0	0	2	0	0	2	2	0	2	2	2	2	2	2
Senqu Local	2	1	1	2	1	1	0	0	2	2	2	2	2	0	0	2	0	2	2	2	2	2	2	2	2	0	2	0	0	2	2	0	2	2	2	2	2	2	2
Walter Sisulu Local	2	0	0	0	0	0	0	0	2	0	0	x	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
OR Tambo District	2	0	0	2	1	0	0	0	0	2	0	x	2	0	0	0	2	0	0	0	0	0	0	2	0	2	0	0	0	0	2	0	0	0	0	0	0	0	0
Ingquaza Hill Local	2	2	0	1	1	1	0	0	0	2	2	2	2	2	2	2	2	2	2	2	2	0	2	2	2	0	0	2	0	0	0	2	0	2	2	0	2	0	0
King Sabata Dalindyebo Local	2	0	0	2	1	0	0	0	2	2	2	x	2	0	0	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0
Mhlontlo Local	2	2	1	2	2	1	0	0	2	2	2	2	2	0	2	2	2	2	2	2	0	0	2	2	2	0	0	2	2	2	2	2	2	2	2	0	0	2	2
Nyandeni Local	2	0	0	2	2	0	0	0	0	2	0	x	2	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	0	2	2	0	0	0	0	0	0	0
Port St Johns Local	1	0	0	0	0	0	0	0	2	2	0	x	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Sarah Baartman District	2	0	1	2	2	0	0	0	0	2	0	2	2	2	0	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	0
Blue Crane Route Local	2	0	2	2	1	0	0	0	2	2	2	x	2	0	0	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Dr Beyers Naude Local	2	0	0	2	1	0	0	0	2	2	0	x	2	0	0	0	2	0	0	2	0	2	0	0	0	0	0	0	0	0	2	2	0	0	0	0	0	0	0
Kouga Local	2	1	2	2	2	0	0	0	0	0	0	2	2	0	2	2	2	2	2	0	0	2	2	2	0	0	0	2	0	0	2	2	2	2	2	2	2	2	2
Koukamma Local	2	0	0	2	1	0	0	0	0	2	0	x	2	0	0	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	0
Makana Local	2	0	1	2	1	1	0	0	2	2	0	2	2	0	0	2	2	0	0	0	0	0	2	2	2	0	0	2	0	0	0	2	1	2	0	0	2	0	0
Ndlambe Local	2	0	2	2	2	0	0	0	2	0	2	2	2	0	0	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	0
Sundays River Valley Local	2	0	1	2	1	0	0	0	0	2	0	x	2	0	0	0	2	0	0	0	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

BIBLIOGRAPHY

Literature

Abhijt, Sendhil and Rema *Corruption*

Abhijt B, Sendhil M and Rema H *Corruption* (National Bureau of Economic Research Princeton 2012)

Adams *Green Development: Environment and Sustainability in the Third World*

Adams WM *Green Development: Environment and Sustainability in the Third World* (Routledge England 2003)

Adejumo-Ayibiowu 2015 *Journal of Development Studies*

Adejumo-Ayibiowu D "A Theoretical Basis for Good Governance" 2015 *Journal of Development Studies* 1-27

Agatiello 2008 *Management Decision*

Agatiello OR "Ethical Governance: Beyond Good Practices and Standards" 2008 *Management Decision* 1132-1145

Agbor 2019 *African Journal of International and Comparative Law*

Agbor A "Cameroon and the Corruption Conundrum: Highlighting the Need for Political will in Combatting Corruption in Cameroon" 2019 *African Journal of International and Comparative Law* 50-75

Agere *Promoting Good Governance: Principles, Practices and Perspectives*

Agere S *Promoting Good Governance: Principles, Practices and Perspectives* (London Commonwealth Secretariat London 2000)

AGSA *MFMA Consolidated Report for 2017/18*

AGSA *MFMA Consolidated Report for 2017/18* (AGSA 2018)

AGSA *Consolidated General Report: MFMA 2018/19*

AGSA *Consolidated General Report: MFMA 2018/19* (AGSA 2019)

AGSA *Consolidated General Report: MFMA 2019/20*

AGSA *Consolidated General Report: MFMA 2019/20* (AGSA2020)

Agyeman *Introducing Just Sustainabilities: Policy, Planning and Practice*

Agyeman J *Introducing Just Sustainabilities: Policy, Planning and Practice* (Zed Books London 2013)

Agyeman 2008 *Journal of Media & Cultural Studies*

Agyeman J "Toward a 'Just' Sustainability?" 2008 *Journal of Media & Cultural Studies* 751-756

Akinola and Uzodike 2014 *Ubuntu: Journal of Conflict and Social Transformation*

Akinola AO and Uzodike UO "Combating or Condoning Corruption? The Two Faces of Anti-corruption Agencies" 2014 *Ubuntu: Journal of Conflict and Social Transformation* 35-61

Alfred Duma Local Municipality *Fraud Prevention Plan 2019/2020*

Alfred Duma Local Municipality *Fraud Prevention Plan 2019/2020* available at <https://bit.ly/3l497AX> accessed on 15 June 2021

Allen and You (eds) *Sustainable Urbanisation: Bridging the Green and Brown Agendas*

Allen A and You N (eds) *Sustainable Urbanisation: Bridging the Green and Brown Agendas* (UN Habitat 2002)

Ani 2015 *South African Journal of Philosophy*

Ani EI "Combating Corruption with Public Deliberation" 2015 *South African Journal of Philosophy* 13-28

April and Sebola 2016 *African Insight*

April FY and Sebola M "A Comparative Analysis of Corruption in South Africa and China: Evidence From Application of Governance Theory" 2016 *African Insight* 1-46

Argandona 2003 *Journal of Business Ethics* 255

Argandona A "Fostering Values in Organizations" 2003 *Journal of Business Ethics* 15-28

Arminen and Menegaki 2019 *Energy Economics*

Arminen H and Menegaki NM "Corruption, Climate and the Energy-Environment-Growth Nexus" 2019 *Energy Economics* 621-634

Asante 2014 *University of Ghana Law Journal*

Asante SKB "Good Governance and Sustainable National Development: The Imperatives" 2014 *University of Ghana Law Journal* 181-199

Asare 2009 *International Journal on Governmental Financial Management*

Asare T "Internal Auditing in the Public Sector: Promoting Good Governance and Performance Improvement" 2009 *International Journal on Governmental Financial Management* 15-28

Asiedu and Deffor 2017 *International Journal of Auditing*

Asiedu KF and Deffor EW "Fighting Corruption by Means of Effective Internal Audit Function: Evidence From the Ghanaian Public Sector" 2017 *International Journal of Auditing* 82-99

Asmis 2004 *History of Political Thought*

Asmis E "The State as a Partnership: Cicero's Definition of Res Publica in His Work on the State" 2004 *History of Political Thought* 569-598

Atkinson *Local Government, Local Governance and Sustainable Development*

Atkinson D *Local Government, Local Governance and Sustainable Development* (Human Sciences Research Council Pretoria 2002)

Bacio-Terracino 2010 *American Society of International Law Proceedings*

Bacio-Terracino J "Lurking Corruption and Human Rights" 2010 *American Society of International Law Proceedings* 243-246

Bajpai and Myers *Enhancing Government and Effectiveness and Transparency: The Fight Against Corruption*

Bajpai R and Myers B *Enhancing Government and Effectiveness and Transparency: The Fight Against Corruption* (World Bank Washington 2020)

Bardhan 1997 *Journal of Economic Literature*

Bardhan P "Corruption and Development: A Review of Issues" 1997 *Journal of Economic Literature* 1320-1346

Bauer 2005 *Journal for Contemporary History*

Bauer C "The Disease Called Corruption" 2005 *Journal for Contemporary History* 51-68

Berning and Montesh 2012 *SA Crime Quarterly*

Berning J and Montesh M "Countering Corruption in South Africa: The Rise and Fall of the Scorpions and Hawks" 2012 *SA Crime Quarterly* 3-10

Beresford 2015 *African Affairs*

Beresford A "Power, Patronage, and Gatekeeper Politics in South Africa" 2015 *African Affairs* 226-248

Blundo *et al* *Everyday Corruption and the State*

Blundo G *et al* *Everyday Corruption and the State* (Zed Books London 2013)

Bolivar "Financial Sustainability"

Bolivar PR "Financial Sustainability" in Farazmand A (ed) *Global Encyclopedia of Public Administration, Public Policy and Governance* (Springer International Publishing Switzerland 2016) 2288-1 -8

Bolivar, Galera and Munoz 2014 *Public Money and Management*

Bolivar PR, Galera AN and Munoz LA "New Development: The Role of Accounting in Assessing Local Government Sustainability" 2014 *Public Money and Management* 233-236

Bolivar *et al* 2015 *Local Government Studies*

Bolivar PR *et al* "Risk Factors and Drivers of Financial Sustainability in Local Government: An Empirical Study" 2015 *Local Government Studies* 29-51

Boström 2012 *Sustainability: Science, Practice, and Policy*

- Boström PR "A Missing Pillar? Challenges in Theorizing and Practicing Social Sustainability" 2012 *Sustainability: Science, Practice and Policy* 3-14
- Bosselman *The Principle of Sustainability: Transforming Law and Governance*
Bosselman K *The Principle of Sustainability: Transforming Law and Governance*
(Taylor & Francis England 2016)
- Bosselman, Engel and Taylor *Governance for Sustainability: Issues, Challenges and Successes*
Bosselman K, Engel R and Taylor P *Governance for Sustainability: Issues, Challenges and Successes* (IUCN Switzerland 2008)
- Botchway 2001 *Florida Journal of International Law*
Botchway FN "Good Governance: The Old, the New, the Principle, and the Elements"
2001 *Florida Journal of International Law* 159-210
- Bovaird 2003 *International Review of Administrative Sciences*
Bovaird T "Evaluating the Quality of Public Governance: Indicators, Models and Methodologies" 2003 *International Review of Administrative Sciences* 313-328
- Breede Valley Local Municipality *Fraud and Corruption Prevention Policy* 2015
Breede Valley Local Municipality *Fraud and Corruption Prevention Policy* 2015
available at <https://bit.ly/3rB2IE4> accessed on 15 June 2021
- Bruce *Accountability for Corruption: The Role of the Special Investigating Unit*
Bruce D *Accountability for Corruption: The Role of the Special Investigating Unit* (ISS Southern Africa Report Pretoria 2019)
- Brugmann 1996 *Environment Impact Assessment Review*
Brugmann J "Planning for Sustainability at the Local Government Level" 1996
Environment Impact Assessment Review 363-379
- Brusca, Rossi and Acersano 2018 *Journal of Comparative Policy Analysis: Research and Practice*

Brusca I, Rossi FM, and Acersano N "Accountability and Transparency to Fight Against Corruption: An International Comparative Analysis" 2018 *Journal of Comparative Policy Analysis: Research and Practice* 486-504

Bryman *Social Research Methods*

Bryman A *Social Research Methods* (Oxford University Press United Kingdom 2016)

Budhram 2018 *Journal of Public Administration*

Budhram T "The Role of Investigative Ethics and Good Governance in Addressing Corruption" 2018 *Journal of Public Administration* 120-133

Budhram and Geldenhuys 2018 *SACJ*

Budhram T and Geldenhuys N "Corruption in South Africa: The Demise of a Nation? New and Improved Strategies to Combat Corruption" 2018 *SACJ* 26-57

Bukovansky 2006 *Review of International Political Economy*

Bukovansky M "The Hollowness of Anti-corruption Discourse" 2006 *Review of International Political Economy* 181-209

Bulkeley and Betsill 2005 *Environmental Politics*

Bulkeley H and Betsill M "Rethinking Sustainable Cities: Multilevel Governance and the Urban Politics of Climate Change" 2005 *Environmental Politics* 42-63

Burnaby, Howe and Muehmann 2011 *Journal of Forensic and Investigative Accounting*

Burnaby P, Howe M and Muehmann BW "Detecting Fraud in the Organization: An Internal Audit Perspective" 2011 *Journal of Forensic and Investigative Accounting* 195-233

Burnside (ed) *Fiscal Sustainability in Theory and Practice*

Burnside C (ed) *Fiscal Sustainability in Theory and Practice* (The World Bank Washington 2005)

Buscaglia and Dijk 2003 *Forum on Crime and Society*

Buscaglia E and Dijk M "Controlling Corruption and Organized Crime" 2003 *Forum on Crime and Society* available at <https://bit.ly/3xx5zJU> accessed on 7 August 2021

Busieka 2018 *African Journal of Public Affairs*

Busieka M "The African Charter: An Enabler of Good Governance" 2018 *African Journal of Public Affairs* 44-59

Caiden and Caiden 1977 *Public Administration Review*

Caiden GE and Caiden NJ "Administrative Corruption" 1977 *Public Administration Review* 301-309

Cain *et al* 2001 *Crime, Law and Social Change*

Cain P *et al* "Filing for Corruption: Transparency, Openness and Record-keeping" 2001 *Crime, Law and Social Change* 409-425

Caldwell, Karri and Vollmar 2006 *Journal of Business Ethics*

Caldwell C, Karri R and Vollmar P "Principal Theory and Principle Theory: Ethical Governance From the Follower's Perspective" 2006 *Journal of Business Ethics* 207-223

Camay and Gordon 2001 *Indicator South Africa*

Camay A and Gordon A "Political Party Funding: A Plea for Legislative Reform" 2001 *Indicator South Africa* 13-20

Camerer *Corruption and Reform in Democratic South Africa* 359

Camerer MI *Corruption and Reform in Democratic South Africa* (PhD thesis University of the Witwatersrand 2009)

Cane and Kritzer (eds) *The Oxford Handbook of Empirical Legal Research*

Cane P and Kritzer H (eds) *The Oxford Handbook of Empirical Legal Research* (Oxford University Press Oxford 2012)

Cape Winelands District Municipality *Anti-corruption Policy* (2008)

Cape Winelands District Municipality *Anti-corruption Policy* (2008) available at <https://bit.ly/3aKc3Mp> accessed 10 January 2021

Cape Winelands District Municipality *Expenditure Policy* (2015)

Cape Winelands District Municipality *Expenditure Policy* (2015) available at <https://bit.ly/3jIcXgB> accessed 10 January 2021

Cape Winelands District Municipality *Private Work and Declaration of Interests Policy* (2017)

Cape Winelands District Municipality *Private Work and Declaration of Interests Policy* (2017) available at <https://bit.ly/3aMULy7> accessed 12 January 2021

Cape Winelands District Municipality *Recruitment and Selection Policy* (2010)

Cape Winelands District Municipality *Recruitment and Selection Policy* (2010) available at <https://bit.ly/3a2gGSU> accessed 12 January 2021

Cape Winelands District Municipality *Unauthorised, Fruitless and Wasteful and Irregular Expenditure Policy* (2015)

Cape Winelands District Municipality *Unauthorised, Fruitless and Wasteful and Irregular Expenditure Policy* (2015) available at <https://bit.ly/36Vq9cq> accessed 10 January 2021

Carvajal 1999 *Systemic Practice and Action Research* 339

Carvajal R "Large-Scale Corruption: Definition, Causes, and Cures" 1999 *Systemic Practice and Action Research* 335-353

Castle, Berrens and Polasky 1996 *Natural Resources Journal*

Castle EN, Berrens RP and Polasky S "The Economics of Sustainability" 1996 *Natural Resources Journal* 715-730

CIPFA *International Framework: Good Governance in the Public Sector*

CIPFA *International Framework: Good Governance in the Public Sector* (CIPFA IFAC United Kingdom 2014)

City of Cape Town *Combating Abuse of Supply Chain Management System Policy* (2011)

City of Cape Town *Combating Abuse of Supply Chain Management System Policy* (2011) available at <https://bit.ly/3cQGBYJ> accessed 14 January 2021

City of Cape Town *Consequence Management Policy* (2019)

City of Cape Town *Consequence Management Policy* (2019) available at <https://bit.ly/2LAXLoM> accessed 14 January 2021

City of Cape Town *Councilors' Gift Giving Policy* (2013)

City of Cape Town *Councilors' Gift Giving Policy* (2013) available at <https://bit.ly/3aJCMJ2> accessed on 14 January 2021

City of Cape Town *Declaration of Financial Interests Policy* (2003)

City of Cape Town *Declaration of Financial Interests Policy* (2003) available at <https://bit.ly/2YWfXwb> accessed on 15 January 2021

City of Cape Town *Fraud Prevention Policy* (2008)

City of Cape Town *Fraud Prevention Policy* (2008) available at <https://bit.ly/3tI1gLP> accessed on 11 January 2021

City of Cape Town *Fraud Response Plan* (2008)

City of Cape Town *Fraud Response Plan* (2008) available at <https://bit.ly/3a3rxMe> accessed on 14 January 2021

City of Cape Town *Integrated Risk Management Policy* (2016)

City of Cape Town *Integrated Risk Management Policy* (2016) available at <https://bit.ly/3p1SjZL> accessed on 10 January 2021

City of Cape Town *Ombudsman Policy* (2014)

City of Cape Town *Ombudsman Policy* (2014) available at <https://bit.ly/3p3DMNc> accessed on 12 January 2021

City of Cape Town *Performance Management Framework Policy* (2011)

City of Cape Town *Performance Management Framework Policy* (2011) available at <https://bit.ly/2ObNeRI> accessed on 14 January 2021

City of Cape Town *Recruitment and Selection of Workers from the Community by Council and its Service Providers Policy* (2011)

City of Cape Town *Recruitment and Selection of Workers from the Community by Council and its Service Providers Policy* (2011) available at <https://bit.ly/3a0wIfS> accessed on 11 January 2021

City of Cape Town *Whistle Blowing Policy* (2014)

City of Cape Town *Whistle Blowing Policy* (2014) available at <https://bit.ly/3q4Wzc7> accessed 10 January 2021

City of Johannesburg Metropolitan Municipality *Anti-fraud and Anti-corruption Policy and Response Plan* (2017)

City of Johannesburg Metropolitan Municipality *Anti-fraud and Anti-corruption Policy and Response Plan* (2017) available at <https://bit.ly/2WtoVD7> accessed on 15 June 2021

Cloete *et al Improving Public Policy for Good Governance*

Cloete F *et al Improving Public Policy for Good Governance* (Van Schaik Pretoria 2018)

Coetzee 2014 *Journal of Public Administration*

Coetzee J "The Impact of Corruption on Development" 2014 *Journal of Public Administration* 821-835

CoGTA *Back to Basics* (2015)

CoGTA *Back to Basics* (2015) available at <https://bit.ly/36XWn73> accessed on 17 April 2020

CoGTA *Local Government Anti-Corruption Strategy* (2015)

CoGTA *Local Government Anti-Corruption Strategy* (2015) available at <https://bit.ly/3tQeA0i> accessed 17 April 2020

CoGTA *Municipal Integrity Management Framework* (2015)

CoGTA *Municipal Integrity Management Framework* (2015) available at <https://bit.ly/36QOpN5> accessed 30 October 2020

CoGTA *Turnaround Strategy* (2009)

CoGTA *Turnaround Strategy* (2009) available at <https://bit.ly/2N6Yxub> accessed on 17 April 2020

Controller and Auditor-General of New Zealand *Public Sector Financial Sustainability*
Controller and Auditor-General of New Zealand *Public Sector Financial Sustainability*
(2013) available at <https://bit.ly/3aLpCey> accessed on 17 April 2020

Cooper 2012 *Policing and Society*

Cooper JA "Noble Cause Corruption as a Consequence of Role Conflict in the Police Organisation" 2012 *Policing and Society* 169-184

Corruption Watch *Annual Report: Upholding Democracy*

Corruption Watch *Annual Report: Upholding Democracy* (2018) available at <https://bit.ly/3tNSICP> accessed on 17 April 2020

Corruption Watch *ACT Report 2019*

Corruption Watch *ACT Report 2019* available at <https://bit.ly/3aP5CYi> accessed 2 November 2021

Corruption Watch *The Writing is on the Wall*

Corruption Watch *The Writing is on the Wall* available at <https://bit.ly/36VtaK0> accessed 3 November 2021

Cuervo-Cazurra 2006 *Journal of International Business Studies*

Cuervo-Cazurra A "Who Cares About Corruption?" 2006 *Journal of International Business Studies* 807-822

D'Agostino *et al* 2011 *Public Administration Quarterly*

D'Agostino M *et al* "A Study of E-government and E-governance: An Empirical Examination of Municipal Websites" 2011 *Public Administration Quarterly* 3-25

Dassah 2018 *The Journal for Transdisciplinary Research in Southern Africa*

Dassah MO "Theoretical Analysis of State Capture and Its Manifestation as a Governance Problem in South Africa" 2018 *The Journal for Transdisciplinary Research in Southern Africa* 1-10

De Lange 2010 *IMFO*

De Lange D "Should Municipalities Be Reporting on Long Term Financial Sustainability" 2010 *IMFO* 22-24

De Kadt and Lieberman 2017 *British Journal of Political Science*

De Kadt D and Lieberman ES "Nuanced Accountability: Voter Responses to Service Delivery in Southern Africa" 2017 *British Journal of Political Science* 1-31

Dempsey *et al* 2011 *Sustainable Development*

Dempsey N *et al* "The Social Dimension of Sustainable Development: Defining Urban Social Sustainability" 2011 *Sustainable Development* 289-300

Department of Environmental Affairs and Tourism *National Framework on Sustainable Development in South Africa*

Department of Environmental Affairs and Tourism *National Framework on Sustainable Development in South Africa* (2008) available at <https://bit.ly/3cTqjFk> accessed on 17 April 2020

Department of International Relations and Cooperation *XII BRICS Summit Moscow Declaration*

Department of International Relations and Cooperation *XII BRICS Summit Moscow Declaration* (2020) available at <http://www.dirco.gov.za/docs/2020/brics1126.pdf> accessed on 2 August 2021

De Vos *et al* *South African Constitutional Law in Context*

De Vos P *et al* *South African Constitutional Law in Context* (Oxford University Press Oxford 2014)

Dickson 2014 *ERA Forum*

Dickson DJ "Cross Border Investigation and Prosecution of Bribery and Corruption Offences" 2014 *ERA Forum* 51-68

Dillard, Dujon and King *Understanding the Social Dimension of Sustainability*

Dillard J, Dujon V and King MC *Understanding the Social Dimension of Sustainability* (Routledge England 2008)

Dintwe 2003 *Journal of Public Administration*

Dintwe S "Audit Committees in the Public Sector are They Effective" 2003 *Journal of Public Administration* 217-229

Dollery and Grant 2011 *Public and Finance Management*

Dollery B and Grant B "Financial Sustainability and Financial Viability in Australian Local Government" 2011 *Public and Finance Management* 29-47

Drakenstein District Municipality *Fraud and Risk Management Policy* (2020)

Drakenstein District Municipality *Fraud and Risk Management Policy* (2020) accessed at <https://bit.ly/3ieAuql> on 15 June 2021

Drakenstein District Municipality *Long Term Financial Sustainability Policy* (2018)

Drakenstein District Municipality *Long Term Financial Sustainability Policy* (2018) available at <https://bit.ly/2Z1rlXs> accessed on 17 April 2020

Dube *Enhancing Democratic Accountability Through Constitutionalism in South Africa*

Dube F *Enhancing Democratic Accountability Through Constitutionalism in South Africa* (PhD Thesis North-West University 2019)

Du Plessis *Fulfilment of South Africa's Constitutional Environmental Right in the Local Government Sphere*

Du Plessis AA *Fulfilment of South Africa's Constitutional Environmental Right in the Local Government Sphere* (Wolf Legal Publishers Netherlands 2009)

Du Plessis (ed) *Environmental Law and Local Government in South Africa*

Du Plessis A (ed) *Environmental Law and Local Government in South Africa* 2nd ed (Juta Cape Town 2021)

Du Plessis 2015 *PELJ*

Du Plessis A "The 'Brown' Environmental Agenda and the Constitutional Duties of Local Government in South Africa: a Conceptual Introduction" 2015 *PELJ* 1846-1880

Du Plessis and Du Plessis "Striking the Sustainability Balance in South Africa"

Du Plessis W and Du Plessis A "Striking the Sustainability Balance in South Africa" in Faure M and Du Plessis W (eds) *The Balancing of Interests in Environmental Law in Africa* (Pretoria University Law Press Pretoria 2011)

Dullah Omar Institute *How Transparent Are Municipal Websites About the Goods and Services That Municipalities Procure?*

Dullah Omar Institute *How Transparent Are Municipal Websites About the Goods and Services That Municipalities Procure* accessed at <https://bit.ly/3f6Tm8v> on 15 June 2021

Dye *Understanding Public Policy*

Dye P *Understanding Public Policy* (Red Globe Press United Kingdom 2019)

Elder 1990 *McGill Law Journal*

Elder PS "Sustainability" 1990 *McGill Law Journal* 831-836

Ellis and Whyte *Redefining corruption: Public Attitudes to the Relationship Between Government and Business*

Centre for Crime and Justice Studies *Redefining Corruption: Public Attitudes to the Relationship Between Government and Business* (2016) available at <https://bit.ly/3tJYYdP> accessed 22 March 2021

Elundini Local Municipality *Fraud Risk Management Strategy and Implementation Plan* (2011)

Elundini Local Municipality *Fraud Risk Management Strategy and Implementation Plan* (2011) accessed at <https://bit.ly/3x9GswA> on 15 June 2021

Enaifoghe *et al* 2020 *Journal of African Foreign Affairs*

Enaifoghe AO *et al* "Africa's Underdevelopment Amidst Global Pressures: Is Good Governance Attainable?" 2020 *Journal of African Foreign Affairs* 31-53

Epstein *et al* 2006 *Vanderbilt Law Review*

Epstein L *et al* "On the Effective Communication of the Results of Empirical Studies" 2006 *Vanderbilt Law Review* 1811-1872

Epstein and Martin *Introduction to Empirical Legal Research*

Epstein L and Martin AD *Introduction to Empirical Legal Research* (Oxford University Press Oxford 2014)

Ericson 2007 *Crime in an Insecure World*

Ericson R 2007 *Crime in an Insecure World* (Polity United Kingdom 2007)

European Commission Economic and Financial Affairs *Financial Sustainability Report 2018*

European Commission Economic and Financial Affairs *Financial Sustainability Report 2018* (2019) available at <https://bit.ly/3tEYdDs> accessed on 17 April 2020

Evans *et al* *Governing Sustainable Cities*

Evans B *et al* *Governing Sustainable Cities* (Earthscan United Kingdom 2005)

Everett, Neu and Rahaman 2007 *Accounting, Organizations and Society*

Everett J, Neu D and Rahaman AS "Accounting and the Global Fight Against Corruption" 2007 *Accounting, Organizations and Society* 513-542

Fan and Grossman 2001 *Policy Reform*

Fan CS and Grossman HI "Incentives and Corruption in Chinese Economic Reform" 2001 *Policy Reform* 195-206

Farazmand (ed) *Global Encyclopedia of Public Administration, Public Policy and Governance*

Farazmand A (ed) *Global Encyclopedia of Public Administration, Public Policy and Governance* (Springer International Publishers Switzerland 2018)

Fawcett and Wardman "Ethical Governance in Local Government in England: A Regulator's View"

Fawcett G and Wardman M "Ethical Governance in Local Government in England: A Regulator's View" in *Ethics and Integrity of Governments: Perspectives Across Frontiers* (Edward Elgar United Kingdom 2008) 123-142

Fazekas 2017 *Crime Law and Social Change*

- Fazekas M "Red Tape, Bribery and Government Favoritism: Evidence from Europe" 2017 *Crime Law and Social Change* 403-429
- Feeney and Brown 2017 *Government Information Quarterly*
 Feeney MK and Brown A "Are Small Cities Online? Content, Ranking, and US Municipal Websites" 2017 *Government Information Quarterly* 62-74
- Fischer "Participatory Governance: From Theory to Practice"
 Fischer F "Participatory Governance: From Theory to Practice" in the *Oxford Handbook of Governance* (Oxford University Press Oxford 2012) 457-471
- Fombad and Steytler (eds) *Corruption and Constitutionalism in Africa*
 Fombad CM and Steytler N (eds) *Corruption and Constitutionalism in Africa* (Oxford University Press Oxford 2020)
- Frug and Barron 2006 *The Urban Lawyer*
 Frug GE and Barron DJ "International Local Government Law" 2006 *The Urban Lawyer* 1-62
- Fuo "Funding and Good Financial Governance as Imperatives for Cities' Pursuit of SDG 11"
 Fuo O "Funding and Good Financial Governance as Imperatives for Cities' Pursuit of SDG 11" in Aust HP and Du Plessis A (eds) *The Globalisation of Urban Governance* (Routledge New York 2019) 87-107
- Garcea *Studying Public Policy: Policy Cycles and Policy Systems*
 Garcea J *Studying Public Policy: Policy Cycles and Policy Systems* (Oxford University Press Oxford 1995)
- Gathii 2009 *University of Pennsylvania Journal of International Law*
 Gathii JT "Defining the Relationship Between Corruption and Human Rights" 2009 *University of Pennsylvania Journal of International Law* 1-95
- Gathii 1999 *Buffalo Human Rights Law Review*

Gathii JT "Good Governance as a Counter Insurgency Agenda to Oppositional and Transformative Social Projects in International Law" 1999 *Buffalo Human Rights Law Review* 107-174

Gebeye *Corruption and Human Rights: Exploring the Relationships*

Gebeye BA *Corruption and Human Rights: Exploring the Relationships* accessed at <https://bit.ly/375ERh2> on 15 June 2021

GGLN *Local Government Bulletin*

GGLN *Local Government Bulletin* (date unknown) available at <https://bit.ly/3q4tnSK> accessed on 17 April 2020

GGLN *Understanding the Impact of Corruption on Service Delivery in Local Government*

GGLN *Understanding the Impact of Corruption on Service Delivery in Local Government* (2008) available at <https://bit.ly/2MQC9oO> accessed on 17 April 2020

Gilbert 2018 *University of Chicago Legal Forum*

Gilbert MD "Transparency and Corruption: A General Analysis" 2018 *University of Chicago Legal Forum* 117

Githahu *Independent Online*

Githahu M "Western Cape Department Considering Special Court for Municipal Corruption Cases" *Independent Online* (29 January 2021) 1

Gong 2002 *Communist and Post-Communist Studies*

Gong T "Dangerous Collusion: Corruption as a Collective Venture in Contemporary China" 2002 *Communist and Post-Communist Studies* 85-103

Gormley 2007 *Annual Review of Political Science*

Gormley WT "Public Policy Analysis: Ideas and Impacts" 2007 *Annual Review of Political Science* 297-313

Gough, Scott and Stables 2000 *International Research in Geographical and Environmental Education*

- Gough S, Scott W and Stables A "Beyond O'Riordan: Balancing Anthropocentrism and Ecocentrism" 2000 *International Research in Geographical and Environmental Education* 36-47
- Gray, Whyte and Curry 2018 *The Ecological Citizen*
- Gray J, Whyte I and Curry P "Ecocentrism: What it Means and What it Implies" 2018 *The Ecological Citizen* 130-131
- Graycar and Sidebottom 2012 *Journal of Financial Crime*
- Graycar A and Sidebottom A "Corruption and Control: A Corruption Reduction Approach" 2012 *Journal of Financial Crime* 384-399
- Griessler and Littig 2005 *International Journal for Sustainable Development*
- Griessler E and Littig B "Social Sustainability: A Catchword Between Political Pragmatism and Social Theory" 2005 *International Journal for Sustainable Development* 65-79
- Grindle 2007 *Development Policy Review*
- Grindle M "Good Enough Governance Revisited" 2007 *Development Policy Review* 553-574
- Grindle 2017 *Governance: An International Journal of Policy, Administration, and Institutions*
- Grindle MS "Good Governance, R.I.P.: A Critique and Alternative" 2017 *Governance: An International Journal of Policy, Administration, and Institutions* 17-22
- Grobler and Joubert 2004 *Acta Criminologica*
- Grobler E and Joubert SJ "Corruption in the Public Sector: The Elusive Crime" 2004 *Acta Criminologica* 90-102
- Gutmann and Lucas 2018 *Social Indicators Research* 749
- Gutmann J and Lucas V "Private Sector Corruption: Measurement and Cultural Origins" 2018 *Social Indicators Research* 747-770
- Guy and Marvin 1999 *European Urban & Regional Studies*

Guy S and Marvin S "Understanding Sustainable Cities: Competing Urban Futures"
1999 *European Urban & Regional Studies* 268-275

Hansen and Tang-Jensen 2015 *Ephemera: Theory and Politics in Organisation*

Hansen HK and Tang-Jensen MH "Making up Corruption Control: Conducting Due Diligence in a Danish Law Firm" 2015 *Ephemera: Theory and Politics in Organisation* 365-364

Harahap *Strategies for Preventing Corruption in Indonesia*

Harahap RM *Strategies for Preventing Corruption in Indonesia* (1999) available at <https://bit.ly/2YVLApy> accessed 16 September 2021

Hassall *Towards Sustainability in South Africa: A Study of Local Government Sustainability Planning in the Cape Metropolitan Area*

Hassall ZL *Towards Sustainability in South Africa: A Study of Local Government Sustainability Planning in the Cape Metropolitan Area* (MSc-Dissertation University of Cape Town 2000)

Haughton and Hunter *Sustainable Cities*

Haughton G and Hunter C *Sustainable Cities* (Routledge London 2003)

Heimann and Pieth *Confronting Corruption*

Heimann F and Pieth M *Confronting Corruption* (Oxford University Press Oxford 2017)

Hellman and Kaufmann 2001 *Finance and Development*

Hellman J and Kaufmann D "Confronting the Challenge of State Capture in Transition Economies" 2001 *Finance and Development* 31-35

Hellman, Jones and Kaufmann *Seize the State, Seize the Day*

Hellman JS, Jones G and Kaufmann D *Seize the State, Seize the Day: State Capture, Corruption, and Influence in Transition* (World Bank Washington 2000)

Hoffman and Sandelands 2005 *Organization Environment*

Hoffman AJ and Sandelands LE "Getting Right With Nature: Anthropocentrism, Ecocentrism and Theocentrism" 2005 *Organization Environment* 141-162

Holzer and Kim *Digital Governance in Municipalities Worldwide*

Holzer M and Kim S *Digital Governance in Municipalities Worldwide* (The E-Governance Institute 2005)

Hottinger 2013 *Emerging Trends in Asset Recovery*

Hottinger A "Two Years Later: The Arab Revolutions in Transition" 2013 *Emerging Trends in Asset Recovery* 3-16

Huberts *The Integrity of Governance: What It is, What We Know, What is Done and Where To Go?*

Huberts L *The Integrity of Governance: What It is, What We Know, What is Done and Where To Go?* (Palgrave Macmillan New York 2014)

Hutchinson *Researching and Writing in Law*

Hutchinson T *Researching and Writing in Law* (Thomas Lawbook Co Sydney 2006)

Iglesias 2015 *Strategic Public Management Journal*

Iglesias A "Making Strategic Planning Work in Local Government: An Empirical Study of Success and Failure" 2015 *Strategic Public Management Journal* 40-55

Institute of Directors *King IV Report on Corporate Governance for South Africa*

Institute of Directors *King IV Report on Corporate Governance for South Africa* (Institute of Directors Sandton 2016)

Jain 2001 *Journal of Economic Surveys*

Jain AK "Corruption: A Review" 2001 *Journal of Economic Surveys* 71-121

Jeppesen 2019 *The British Accounting Review*

Jeppesen KK "The Role of Auditing in the Fight Against Corruption" 2019 *The British Accounting Review* 798-809

Jiang, Geertman and Witte 2020 *Regional Science Policy and Practice*

Jiang H, Geertman S and Witte P "Smartening Urban Governance: An Evidence-Based Perspective" 2020 *Regional Science Policy and Practice* 744-758

Katsamunskaja 2016 *Economic Alternatives*

- Katsamunská P "The Concept of Governance and Public Governance Theories" 2016 *Economic Alternatives* 133-141
- Kaufman and Vicente 2011 *Economics & Politics*
Kaufman D and Vicente PC "Legal corruption" 2011 *Economics & Politics* 195-219
- Kim 2018 *Journal of Global Scholars of Marketing Science*
Kim J "Social Dimension of Sustainability: From Community to Social Capital" 2018 *Journal of Global Scholars of Marketing Science* 175-181
- Kleinig 2002 *International Journal of Police Science & Management*
Kleinig J "Rethinking Noble Cause Corruption" 2002 *International Journal of Police Science & Management* 287-314
- Ko and Weng 2011 *Journal of Contemporary China*
Ko K and Weng C "Critical review of conceptual definitions of Chinese corruption: A formal-legal perspective" 2011 *Journal of Contemporary China* 359-378
- Kocmanová, Hřebíček and Dočekalová 2011 *Ekonomika ir Vadyba*
Kocmanová A, Hřebíček J and Dočekalová M "Corporate Governance and Sustainability" 2011 *Ekonomika ir Vadyba* 543-550
- Koenane and Mangena 2017 *African Journal of Public Affairs*
Koenane ML and Mangena F "Ethics, Accountability, and Democracy as Pillars of Good Governance – Case of South Africa" 2017 *African Journal Public Affairs* 61-73
- Kondlo 2010 *Journal of Public Administration*
Kondlo K "Towards a Review of South Africa's Research on Corruption in the Public Sector, 1994 to 2009: Trends, Gaps and Implications for Public Policy" 2010 *Journal of Public Administration* 320-330
- Kopnina *et al* 2018 *Journal of Agricultural and Environmental Ethics* 113
Kopnina H *et al* "Anthropocentrism: More Than Just a Misunderstood Problem" 2018 *Journal of Agricultural and Environmental Ethics* 109-127
- Kortenkamp and Moore 2001 *Journal of Environmental Psychology*

Kortenkamp KV and Moore CF "Ecocentrism and Anthropocentrism: Moral Reasoning About Ecological Commons Dilemmas" 2001 *Journal of Environmental Psychology* 261-272

Kratcoski and Edelbacher *Fraud and Corruption: Major Types, Prevention, and Control*
Kratcoski PC and Edelbacher M *Fraud and Corruption: Major Types, Prevention, and Control* (Springer Switzerland 2018)

Kroukamp 2006 *Journal of Public Administration*

Kroukamp H "Corruption in South Africa with Particular Reference to Public Sector Institutions: Evil of All Evils" 2006 *Journal of Public Administration* 206-217

Kumar 2003 *Columbia Journal of Asian Law*

Kumar CR "Corruption and Human Rights: Promoting Transparency in Governance and the Fundamental Right to Corruption-free Service in India" 2003 *Columbia Journal of Asian Law* 17-31

Lekubu *A Critique of South African Anti-corruption Strategies and Structures: A Comparative Analysis*

Lekubu BK *A Critique of South African Anti-corruption Strategies and Structures: A Comparative Analysis* (PhD-thesis UNISA 2019)

Lessig 2013 *Institutional Corruption and the Pharmaceutical Industry*

Lessig L "Institutional Corruption Defined" 2013 *Institutional Corruption and the Pharmaceutical Industry* 554-552

Lewis 2016 *Journal of Disaster Risk Studies*

Lewis J "Social Impacts of Corruption Upon Community Resilience and Poverty" 2016 *Journal of Disaster Risk Studies* 1-8

Lieberman, Martin and McMurry *Do Party Elites Impede Accountability? Evidence From South African Local Government Elections*

Lieberman ES, Martin P and McMurry N *Do Party Elites Impede Accountability? Evidence From South African Local Government Elections* (2018) accessed at <https://bit.ly/3BR4b8y> on 15 June 2021

Lindstedt and Naurin 2010 *International Political Science Review*

Lindstedt C and Naurin D "Transparency is Not Enough: Making Transparency Effective in Reducing Corruption" 2010 *International Political Science Review* 301-322

Lodge "Political Corruption in South Africa from Apartheid to Multiracial State"

Lodge T "Political Corruption in South Africa from Apartheid to Multiracial State" in Heidenheimer AF and Johnston M (eds) *Political corruption: Concepts and context* (Transaction Publishers London 2002)

Lodge 1998 *African Affairs*

Lodge T "Political Corruption in South Africa" 1998 *African Affairs* 157-187

Madonsela 2019 *African Studies*

Madonsela S "Critical Reflections on State Capture in South Africa" 2019 *African Studies* 113-130

Maggio 1997 *Journal of Environmental Law*

Maggio GF "Recognizing the Vital Role of Local Communities in International Legal Instruments for Conserving Biodiversity" 1997 *Journal of Environmental Law* 179-226

Manion *Corruption by Design*

Manion M *Corruption by Design* (Harvard University Press Harvard 2004)

Maphunye and Motubatse 2019 *Journal for Transdisciplinary Research in Southern Africa*

Maphunye KJ and Motubatse KN "Consequences of (Un)regulated Party Funding in South Africa Between 1994 and 2017" 2019 *Journal for Transdisciplinary Research in Southern Africa* 1-10

Martin and Solomon 2016 *Southern African Peace and Security Studies*

Martin ME and Solomon H "Understanding the Phenomenon of 'State Capture' in South Africa" 2016 *Southern African Peace and Security Studies* 21-35

Masters and Graycar 2016 *Public Integrity*

Masters AB and Graycar A "Making corruption disappear in local government" 2016
Public Integrity 42-58

Mathenjwa 2015 *Obiter*

Mathenjwa MJ "Reconsidering the Privileges and Immunities of Municipal Councils"
2015 *Obiter* 661-678

Mawenya *Preventing Corruption in African Procurement*

Mawenya AS *Preventing Corruption in African Procurement* (SAIIA Occasional Paper
Series 2008)

McGranahan and Satterthwaite "Environmental Health or Ecological Sustainability?
Reconciling the Brown and Green Agendas in Urban Development"

McGranahan G and Satterthwaite D "Environmental Health or Ecological
Sustainability? Reconciling the Brown and Green Agendas in Urban Development" in
Pugh C (ed) *Sustainable Cities in Developing Countries* (Earthscan United Kingdom
2000) 73-90

McGranahan and Satterthwaite 2003 *Annual Review of Environment and Resources*

McGranahan G and Satterthwaite D "Urban Centres: An Assessment of Sustainability"
2003 *Annual Review of Environment and Resources* 243-274

Mchunu and Dlamini 2020 *Journal of Public Administration*

Mchunu N and Dlamini S "Wavering Ethical Leadership in Local Governance: Kwa-
Zulu Natal Department of Cooperative Governance and Traditional Affairs" 2020
Journal of Public Administration 62-81

McConville and Chui *Research Methods for Law*

McConville M and Chui WH *Research Methods for Law* (Edinburgh University Press
Edinburgh 2007)

Menzel 2015 *Public Integrity*

Menzel DC "Research on Ethics and Integrity in Public Administration: Moving
Forward, Looking Back" 2015 *Public Integrity* 343-370

Merrington *et al* 2014 *International Journal of Management and Administrative Sciences*
Merrington S *et al* "An Exploratory Study of Noble Cause Corruption: The Wood Royal
Commission New South Wales, Australia 1994-1997" 2014 *International Journal of
Management and Administrative Sciences* 18-29

Mitchell 1998 *International Studies Quarterly*

Mitchell RB "Sources of Transparency: Information Systems in International Regimes"
1998 *International Studies Quarterly* 109-130

Mlambo and Masuku 2020 *Journal of Public Administration*

Mlambo VH and Masuku MM "Governance, Corruption and COVID-19: The Final Nail
in the Coffin for South Africa's Dwindling Public Finances" 2020 *Journal of Public
Administration* 549-565

Mle 2012 *Africa's Public Service Delivery and Performance Review*

Mle TR "Professional and Ethical Conduct in the Public Sector" 2012 *Africa's Public
Service Delivery and Performance Review* 26-37

Mohamed *Malaysian Local Government's Role Towards Sustainable Development
Focusing on Knowledge Transfer Practices Framework*

Mohamed S *Malaysian Local Government's Role Towards Sustainable Development
Focusing on Knowledge Transfer Practices Framework* (PhD-thesis University Tun
Hussein Onn Malaysia 2014)

Molemole Local Municipality *Fraud Prevention Policy* (2018/19)

Molemole Local Municipality *Fraud Prevention Policy* (2018/19) available at
<https://bit.ly/2N6qrGG> accessed 5 January 2021

Molemole Local Municipality *Fraud Prevention Strategy* (2018/19)

Molemole Local Municipality *Fraud Prevention Strategy* (2018/19) available at
<https://bit.ly/3tF24k3> accessed 7 January 2021

Molemole Local Municipality *Gift Policy* (2019/20)

Molemole Local Municipality *Gift Policy* (2019/20) available at <https://bit.ly/3juRuHE>
accessed 5 January 2021

Molemole Local Municipality *Risk Management Policy* (2018/19)

Molemole Local Municipality *Risk Management Policy* (2018/19) available at <https://bit.ly/3a26c5R> accessed 8 January 2021

Molemole Local Municipality *Risk Management Strategy* (2018/19)

Molemole Local Municipality *Risk Management Strategy* (2018/19) available at <https://bit.ly/2YZI2E4> accessed 3 January 2021

Montision *Gateways and gatekeepers: Walking through everyday international relations*

Montision JM *Gateways and gatekeepers: Walking through everyday international relations* (PhD-Thesis McMaster University 2009)

Muller *Money Down the Drain: Corruption in South Africa's Water Sector*

Muller *Money Down the Drain: Corruption in South Africa's Water Sector* (Corruption Watch 2020)

Murray and Dollery 2006 *Public Administration Today*

Murray DR and Dollery BE "An Evaluation of Performance Measurement and the Identification of 'At Risk' Municipal Councils in NSW Local Government" 2006 *Public Administration Today* 46-61

Munzhedzi 2016 *Journal of Transport and Supply Chain Management*

Munzhedzi PH "South African Public Sector Procurement and Corruption: Inseparable Twins?" 2016 *Journal of Transport and Supply Chain Management* 1-8

Munzhedzi and Makwembere 2019 *Journal of Public Administration*

Munzhedzi PH and Makwembere S "Good Governance as a Solution to Local Economic Development Challenges in South African Municipalities" 2019 *Journal of Public Administration* 659-676

Naidoo 2012 *Journal of Public Administration*

Naidoo G "The Critical Need for Ethical Leadership to Curb Corruption and Promote Good Governance in the South African Public Sector" 2012 *Journal of Public Administration* 656-683

Naidoo 2013 *Journal of Contemporary African Studies*

Naidoo V "The Politics of Anti-corruption Enforcement in South Africa" 2013 *Journal of Contemporary African Studies* 523-542

National Anti-Corruption Strategy Steering Committee *Towards a National Anti-Corruption Strategy for South Africa: Discussion Document*

National Anti-Corruption Strategy Steering Committee *Towards a National Anti-Corruption Strategy for South Africa: Discussion Document* available at <https://bit.ly/3a0RcoO> accessed 23 December 2020

National Planning Commission *National Development Plan: Our Future Make It Work 2030*

National Planning Commission *National Development Plan: Our Future Make It Work 2030* available at <https://bit.ly/2LE2uGk> accessed 10 December 2020

National Institute of Law Enforcement and Criminal Justice *Prevention, Detection, and Correction of Corruption in Local Government*

National Institute of Law Enforcement and Criminal Justice *Prevention, Detection, and Correction of Corruption in Local Government* available at <https://bit.ly/3tDhISl> accessed 14 December 2020

National Treasury *Municipalities meeting criteria for determining serious financial problems in terms of section 138 & 140 of the MFMA*

National Treasury *Municipalities meeting criteria for determining serious financial problems in terms of section 138 & 140 of the MFMA* (2019) available at http://mfma.treasury.gov.za/Media_Releases/s71/1819/3rd_1819/Pages/pdf.aspx accessed 17 April 2020

Navarro-Galera *et al* 2016 *Applied Economics*

Navarro-Galera A *et al* "Measuring the Financial Sustainability and Its Influential Factors in Local Governments" 2016 *Applied Economics* 3961-3975

Ncala *Unearthing Corruption in the Land Sector*

Ncala *Unearthing Corruption in the Land Sector* (Corruption Watch 2019)

Nel and Kotzé "Environmental Management: An introduction"

Nel JG and Kotzé LJ "Environmental Management: An Introduction" in Strydom HA and King ND (ed) *Environmental Management in South Africa* (Juta Cape Town 2009) 1-33

Nijman "The Future of the City and the International Law of the Future"

Nijman JE "The Future of the City and the International Law of the Future" in Muller S *et al* (eds) *Law of the Future and the Future of Law* (Torkel Opsahl EPublisher Belgium 2011)

Nkuna "Performance Management in South African Local Government: Is It a Matter of a System, Model or Measurement?" 65-80

Nkuna NW "Performance Management in South African Local Government: Is It a Matter of a System, Model or Measurement?" in *SAAPAM Limpopo Chapter 2nd Annual Conference: The Challenges of Local Government in South Africa* (15-16 August 2013 Polokwane) 65-80

O'Connor 2006 *Ecological Complexity*

O'Connor M "The "Four Spheres" Framework for Sustainability" 2006 *Ecological Complexity* 285-292

OECD *Corruption-Free Cities of the Future*

OECD *Corruption-Free Cities of the Future* (2017) available at <https://bit.ly/3a2kqUf> accessed 17 April 2020

Olver 2018 *Area Development and Policy*

Olver C "Patronage and Politics in a South African City: A Case Study of Nelson Mandela Bay" 2018 *Area Development and Policy* 275-292

Olver *Rents and Repurposing in Two South African Cities: Towards a Typology of City Governance Regimes*

Olver C (2019) *Rents and Repurposing in Two South African Cities: Towards a Typology of City Governance Regimes* available at <https://bit.ly/3a27NzB> accessed 26 October 2020

Osifo 2014 *International Journal of Public Administration*

Osifo OC "An Ethical Governance Perspective on Anti-corruption Policies and Procedures: Agencies and Trust in Cameroon, Ghana, and Nigeria Evaluation" 2014 *International Journal of Public Administration* 308-327

Osrecki 2015 *Ephemera: Theory and Politics in Organisation*

Osrecki F "Fighting Corruption With Transparent Organizations: Anti-corruption and Functional Deviance in Organizational Behaviour" 2015 *Ephemera: Theory and Politics in Organisation* 337- 364

Owosuyi 2015 *PELJ*

Owosuyi IL "The Pursuit of Sustainable Development Through Cultural Law and Governance Frameworks: A South Africa Perspective" 2015 *PELJ* 2010-2059

Park and Blenkinsopp 2011 *International Review of Administrative Sciences*

Park H and Blenkinsopp J "The Roles of Transparency and Trust in the Relationship Between Corruption and Citizen Satisfaction" 2011 *International Review of Administrative Sciences* 254-274

Parkhurst *The Politics of Evidence: From Evidence-based Policy to the Good Governance of Evidence*

Parkhurst J *The Politics of Evidence: From Evidence-based Policy to the Good Governance of Evidence* (Taylor & Francis Oxfordshire 2017)

Pearson *An International Human Rights Approach to Corruption*

Pearson Z *An International Human Rights Approach to Corruption* (Centre for Democratic Institutions Melbourne 1999)

Peltier-Rivest 2018 *Journal of Financial Crime*

Peltier-Rivest D "A Model for Preventing Corruption" 2018 *Journal of Financial Crime* 545-561

Perritt 2004 *University of Pennsylvania Journal of International Economic Law*

Perritt HH "Economic Sustainability and Final Status for Kosovo" 2004 *University of Pennsylvania Journal of International Economic Law* 259-319

Philp 2008 *International Peacekeeping*

Philp M "Peacebuilding and corruption" 2008 *International Peacekeeping* 310-327

Pillay 2016 *African Journal of Public Affairs*

Pillay P "Ethics and Accountability in South African Municipalities: The Struggle Against Corruption" 2016 *African Journal of Public Affairs* 115-126

Pillay 2017 *African Journal of Public Affairs*

Pillay P "Public Trust and Good Governance: A Comparative Study of Brazil and South Africa" 2017 *African Journal of Public Affairs* 31-47

Pillay 2004 *IJPSM*

Pillay S "Corruption – the Challenge to Good Governance: A South African Perspective" 2004 *IJPSM* 586-605

Preston and Sampford *Encouraging Ethics and Challenging Corruption*

Preston N and Sampford CJ *Encouraging Ethics and Challenging Corruption* (Federation Press Australia 2002)

Porras 2009 *Fordham Urban Law Journal*

Porras IM "The City and International Law: In Pursuit of Sustainable Development" 2009 *Fordham Urban Law Journal* 537-601

Preuss 2007 *Business Strategy and the Environment*

Preuss L "Buying Into Our Future: Sustainability Initiatives in Local Government Procurement" 2007 *Business Strategy and the Environment* 354-365

Pring and Vrushi *Global Corruption Barometer Africa 2019: Citizens' Views and Experiences of Corruption*

Pring C and Vrushi J *Global Corruption Barometer Africa 2019: Citizens' Views and Experiences of Corruption* (Transparency International Germany 2019)

Pugh (ed) *Sustainable Cities in Developing Countries*

Pugh C (ed) *Sustainable Cities in Developing Countries* (Earthscan New York 2000)

Redish and Dawson 2012 *William & Mary Bill of Rights Journal*

Redish MH and Dawson EN "Worse than the disease: The Anti-Corruption principle, free expression and the democratic process" 2012 *William & Mary Bill of Rights Journal* 1053-1084

Rose and Peiffer *Bad Governance and Corruption*

Rose R and Peiffer C *Bad Governance and Corruption* (Springer Publishing New York 2018)

Routley *Negotiating Corruption: NGOs, Governance, and Hybridity in West Africa*

Routley L *Negotiating Corruption: NGOs, Governance, and Hybridity in West Africa Anti-Corruption Framework* (Routledge England 2015)

SACN *State of South African Cities Report 2016*

SACN *State of South African Cities Report 2016* (South African Cities Network Johannesburg 2016)

Safina 2015 *Procedia Economics and Finance*

Safina D "Favouritism and Nepotism in an Organization: Causes and Effects" 2015 *Procedia Economics and Finance* 630-634

Salimen *Ethical Governance: A Citizen Perspective*

Salimen A *Ethical Governance: A Citizen Perspective* (VAASA 2010)

Sampford *et al Measuring Corruption*

Sampford A *et al Measuring Corruption* (Routledge England 2016)

Sartor and Beamish 2019 *Journal of Business Ethics*

Sartor MA and Beamish PW "Private Sector Corruption, Public Sector Corruption and the Organizational Structure of Foreign Subsidiaries" 2019 *Journal of Business Ethics* 1-20

Sayed and Bruce 1998 *African Security Review*

Sayed T and Bruce D "Police Corruption: Towards a Working Definition" 1998 *African Security Review* 3-14

Scheurer and Newman *Vauban: A European Model Bridging the Green and Brown Agendas*

Scheurer J and Newman P *Vauban: A European Model Bridging the Green and Brown Agendas* (2009) available at <http://www.unhabitat.org/grhs/2009> accessed 17 April 2020

Schick 2005 *OECD Journal on Budgeting*

Schick A "Sustainable Budget Policy: Concepts and Approaches" 2005 *OECD Journal on Budgeting* 107-126

Schoenmaker and Schramade *Principles of Sustainable Finance*

Schoenmaker D and Schramade W *Principles of Sustainable Finance* (2019) available at <https://ssrn.com/abstract=3283599> accessed on 17 April 2020

Schopf 2015 *Journal of Comparative Asian Development*

Schopf JC "Deterring Extortive Corruption in Korea Through Democratization and the Rule of Law" 2015 *Journal of Comparative Asian Development* 279-318

Seghezzeo 2009 *Environmental Politics*

Seghezzeo L "The Five Dimensions of Sustainability" 2009 *Environmental Politics* 539-556

Sekalala, Masud and Bosco 2020 *Global Health Action*

Sekalala S, Masud H and Bosco RT "Human Rights Mechanisms for Anti-corruption, Transparency and Accountability: Enabling the Right to Health" 2020 *Global Health Action* 3-12

Sen *Development as Capacity Expansion*

Sen A *Development as Capacity Expansion* available at <https://bit.ly/39YtyJz> accessed on 6 May 2020

Skelcher, Mathur and Smith 2005 *Journal of Public Administration*

Skelcher C, Mathur N and Smith M "The Public Governance of Collaborative Spaces: Discourse, Design and Democracy" 2005 *Journal of Public Administration* 573-596

Søreide *Corruption and Criminal Justice*

Søreide T *Corruption and Criminal Justice* (Edward Elgar United Kingdom 2016)

South African Government *National Anti-Corruption Strategy for South Africa: Discussion Document*

South African Government *National Anti-Corruption Strategy for South Africa: Discussion Document* (2016) available at <https://bit.ly/3jy8VqF> accessed on 5 January 2021

South Africa's *Medium-Term Budget Policy Statement for 2019*

South Africa's *Medium-Term Budget Policy Statement for 2019* available at <https://bit.ly/3p4juDh> accessed 6 June 2020

Spangenberg 2005 *International Journal for Sustainable Development*

Spangenberg JH "Economic Sustainability of the Economy: Concepts and Indicators" 2005 *International Journal for Sustainable Development* 47-64

Statistics South Africa *Victims of Crime Survey*

Statistics South Africa *Victims of Crime Survey* (2018) available at <https://bit.ly/3p1UMDv> accessed on 17 April 2020

Stevenson and Waite (eds) *Concise Oxford English Dictionary*

Stevenson A and Waite M (eds) *Concise Oxford English Dictionary* (Oxford University Press New York 2011)

Steytler 2009 *Law, Democracy and Development*

Steytler N "District Municipalities: Giving Effect to Shared Authority in Local Government" 2009 *Law, Democracy and Development* 227-242

Sustainable Cities Project 1990 UN Habitat

Sustainable Cities Project 1990 available at UN Habitat (date unknown) <http://bit.ly/2h5EIh7> accessed on 17 April 2020

Szekely 2014 *Jus et Civitas*

Szekely C "Good Governance in the Contemporary Society" 2014 *Jus et Civitas* 17-22

Szpak 2016 *Athenaeum: Polish Political Science Studies*

Szpak A "The Growing Role of Cities and Their Networks in the International Relations and International Security" 2016 *Athenaeum: Polish Political Science Studies* 54-77

Taylor *et al* 2020 *Conservation Biology*

Taylor B *et al* "The Need for Ecocentrism in Biodiversity Conservation" 2020 *Conservation Biology* 1089-1096

Taylor 2000 *The International Journal of Public Sector Management*

Taylor DW "Facts, Myths and Monsters: Understanding the Principles of Good Governance" 2000 *The International Journal of Public Sector Management* 108-124

Teachout 2009 *Cornell Law Review*

Teachout Z 2009 "The Anti-corruption Principle" *Cornell Law Review* 294-341

Teachout 2013 *Northwestern University Law Review* 200-217

Teachout Z "Constitutional Purpose and the Anti-corruption Principle" 2013 *Northwestern University Law Review* 200-217

Ten Have *Environmental Ethics and International Policy*

Ten Have H *Environmental Ethics and International Policy* (UNESCO Publishers Paris 2006)

Thatcher *HFSD Working Paper*

Thatcher A *HFSD Working Paper* (2013) available at <https://bit.ly/3tzeJF4> accessed on 17 April 2020

Tillman 2012 *Northwestern University Law Review*

Tillman SB "Citizens United and the Scope of Professor Teachout's Anti-corruption Principle" 2012 *Northwestern University Law Review* 399-422

UN Habitat *International Guidelines on Decentralisation and Access to Basic Services for All* (2009)

UN Habitat *International Guidelines on Decentralisation and Access to Basic Services for All* (2009) available at https://www.uclg.org/sites/default/files/guidelines_0.pdf accessed 15 June 2021

UN Habitat *International Guidelines on Decentralisation and the Strengthening of Local Authorities* (2009)

UN Habitat *International Guidelines on Decentralisation and the Strengthening of Local Authorities* (2009) accessed at https://www.uclg.org/sites/default/files/guidelines_0.pdf on 15 June 2021

UN Habitat *Sustainable Urbanisation: Bridging the Green and Brown Agendas*

UN Habitat *Sustainable Urbanisation: Bridging the Green and Brown Agendas* (The Development Planning Unit University College London 2002)

United Cities and Local Governments *The Sustainable Developments Goals: What Local Governments Need to Know*

United Cities and Local Governments *The Sustainable Developments Goals: What Local Governments Need to Know* available at <https://bit.ly/2YZIEtm> accessed 18 August 2020

UNDP *Institutional Arrangements to Combat Corruption: A Comparative Study*

UNDP *Institutional Arrangements to Combat Corruption: A Comparative Study* available at <https://bit.ly/3a1KL4K> accessed 17 August 2020

Van der Berg *Municipal Planning Law and Policy for Sustainable Cities in South Africa*

Van der Berg A *Municipal Planning Law and Policy for Sustainable Cities in South Africa* (PhD-thesis North-West University 2019)

Van der Merwe *City Government Resilience: Towards a Diagnostic Instrument*

Van der Merwe L *City Government Resilience: Towards a Diagnostic Instrument* (PhD-Thesis North-West University 2018)

Van Kersbergen and Van Waarden 2004 *European Journal of Political Research*

Van Kersbergen K and Van Waarden F "'Governance' as a Bridge Between Disciplines: Cross disciplinary Inspiration Regarding Shifts in Governance and Problems of

Governability, Accountability and Legitimacy" 2004 *European Journal of Political Research* 143-171

Van Vuuren *Apartheid Grand Corruption, Assessing the Scale of Crimes of Profit in South Africa from 1976 to 1994*

Van Vuuren H *Apartheid Grand Corruption, Assessing the Scale of Crimes of Profit in South Africa from 1976 to 1994* (2006) accessed at <https://bit.ly/3yhcmc0> on 15 June 2021

Venter "State Capture, corruption and constitutionalism in South Africa"

Venter F "State Capture, corruption and constitutionalism in South Africa" in Fombad CM and Steytler N (eds) *Corruption and Constitutionalism in Africa* (Oxford University Press Oxford 2020) 69-89

Vogelpohl and Aggestam 2012 *European Journal of Forest Research*

Vogelpohl T and Aggestam F "Public Policies as Institutions for Sustainability: Potentials of the Concept and Findings from Assessing Sustainability in the European Forest Based Sector" 2012 *European Journal of Forest Research* 57-71

Vyas-Doorgapersad 2007 *Journal of Public Administration* 288

Vyas-Doorgapersad S "Corruption in the Public Sector: A Comparative Analysis" 2007 *Journal of Public Administration* 285-299

Washington *et al* 2017 *The Ecological Citizen*

Washington H *et al* "Why Ecocentrism is the Key Pathway to Sustainability" 2017 *The Ecological Citizen* 35-41

Williams 1997 *Geography*

Williams SW "The Brown Agenda: Urban Environmental Problems and Policies in the Developing World" 2010 *International Journal of Urban Sustainable Development* 17-26

World Bank *Governance and Development*

World Bank *Governance and Development* (World Bank Washington 1992)

World Bank *Sub-Saharan Africa: From Crises to Sustainable Growth*

World Bank *Sub-Saharan Africa: From Crises to Sustainable Growth* (date unknown)
available at <https://bit.ly/3a01Iwu> accessed on 17 April 2020

Yang *Has Corruption Peaked in China?*

Yang DL *Has Corruption Peaked in China?* (East Asian Institute National University of Singapore 2004)

Zafarullah and Siddiquee 2001 *Public Organization Review: A Global Journal*

Zafarullah H and Siddiquee NA "Dissecting Public Sector Corruption in Bangladesh: Issues and Problems of Control" 2001 *Public Organization Review: A Global Journal* 465-486

Case Law

Corruption Watch (NPC) (RF) v Chief Executive Officer of the South African Social Services and Others [2018] ZAGPPHC 7

Economic Freedom Fighters v Speaker, National Assembly 2016 3 SA 580 (CC)

Gentiruco AG v Firestone SA (Pty) Ltd 1972 1 SA 589 (A)

Glenister v President of the Republic of South Africa and Others 2011 3 SA 347 (CC)

Helen Suzman Foundation v President of the Republic of South Africa 2015 2 SA 1 (CC)

Kham and Others v Electoral Commission and Another 2016 2 SA 338 (CC)

Khumalo v MEC for Education, KwaZulu-Natal 2014 5 SA 579 (CC)

Mlokoti v Amathole District Municipality 2009 6 SA 354 (E)

My Vote Counts NPC v Minister of Justice and Correctional Services and Another 2018 5 SA 380 (CC)

Print Media South Africa v Minister of Home Affairs 2012 6 SA 443 (CC)

S v Mofomme 2018 1 SACR 213 (GP)

S v Phillips 2017 1 SACR 373 (SCA)

S v Scholtz 2018 2 SACR 526 (SCA)

S v Selebi [2010] ZAGPJHC 53

S v Wang and Another 2018 1 SACR 426 (NWM)

Legislation

Competition Act 89 of 1998

Constitution of the Republic of South Africa, 1996

Corruption Act 94 of 1992

Criminal Procedure Act 51 of 1977

Electoral Act 73 of 1998

Financial Intelligence Centre Act 38 of 2001

Insider Trading Act 135 of 1998

Labour Relations Act 66 of 1995

Local Government: Municipal Systems Act 32 of 2000

Local Government: Municipal Finance Management Act 56 of 2003

Local Government: Municipal Structures Act 117 of 1998

National Environmental Management Act 107 of 1998

National Environmental Management: Air Quality Act 39 of 2004

National Prosecuting Authority Act 32 of 1998

Political Party Funding Act 6 of 2018

Prevention and Combating of Corrupt Activities Act 12 of 2014

Prevention of Corruption Act 6 of 1958

Prevention of Organised Crime Act 121 of 1998

Promotion of Access to Information Act 2 of 2000

Promotion of Administrative Justice Act 3 of 2000

Protected Disclosures Act 26 of 2000

Protection of Personal Information Act 4 of 2013

Public Administration Management Act 11 of 2014

Public Audit Act 25 of 2004

Public Protector Act 23 of 1994

Public Service Act 103 of 1994

Public Service Commission Act 46 of 1997

South African Human Rights Commission Act 40 of 2013

South African Police Service Act 68 of 1995

Spatial Planning and Land Use Management Act 16 of 2013

Special Investigating Units and Special Tribunals Act 74 of 1996

The Organic Law on Budgetary Stability and Financial Sustainability 2012

<https://OECD.org/gov/budgeting/Spain.pdf>

Water Services Act 108 of 1997

Witness Protection Act 112 of 1998

International Instruments

African Charter on Democracy, Elections and Governance (2007) AU Doc AU/Dec/147/VII

African Charter on Human Peoples' Rights (1982) 21 ILM 58

African Charter on the Values and Principles of Decentralisation Local Governance and Local Development (2014) <https://bit.ly/3fCBC5a>

African Charter on the Values and Principles of Public Service and Administration (2011) <https://bit.ly/3yqQJ9f>

African Union Agenda 2063: The Africa We Want (2015) <https://www.un.org/en/africa/osaa/pdf/au/agenda2063.pdf>

African Union Convention on Preventing and Combating Corruption (2004) 43 ILM 1

Arab Convention to Fight Corruption (2010) <https://bit.ly/3AkYpum>

ASEAN Political-security Community Blueprint 2025 <https://bit.ly/2VxpV8K>

Civil Law Convention on Corruption (1999) EUR/TS/174

Criminal Law Convention on Corruption (1999) EUR/TS/173

Declaration of the United Nations Conference on the Human Environment (1972) <https://bit.ly/2X7mUNd>

European Union Convention Against Corruption Involving EU Officials or Officials of EU Countries 37 ILM 12 (1998)

European Charter of Local Self-Government (1985) ETS 122

Habitat III New Urban Agenda UN Doc A/RES/71/256 (2017)

Habitat Agenda Istanbul Declaration on Human Settlements UN Doc A/CONF165/14 (1996)

Inter-American Convention Against Corruption (1996) 35 ILM 724

International Covenant on Civil and Political Rights (1966) 31 ILM 645

OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1998) 37 ILM 1

OECD Good Practice Guidance on Internal Controls, Ethics and Compliance (2010)
<https://bit.ly/3yrFaP4>

Protocol on Democracy and Good Governance Supplementary to the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security UN Doc ASP1/12/01 (2001)

SADC Charter of Fundamental Social Rights in SADC (2003) <https://bit.ly/3IMbp8l>

SADC Principles and Guidelines Governing Democratic Elections (2015)
<https://bit.ly/3isgjFl>

SADC Protocol Against Corruption (2001) <https://bit.ly/2VFRigI>

Twenty Guiding Principles for the Fight Against Corruption (1997)
<https://rm.coe.int/16806cc17c>

UN Global Compact (2000) <https://www.unglobalcompact.org/what-is-gc/mission/principles>

United Nations Agenda 21 (1992) 31 ILM 874

United Nations Conference on Environment and Development (1992) 31 ILM 814

United Nations Convention Against Corruption 2003 43 ILM 5

United Nations Convention Against Transnational Organized Crime (2001) 40 ILM 335

United National Convention on Biological Diversity (1992) 31 ILM 818

United Nations Convention on the Eradication of Discrimination against Women GA Res 34/180, UN Doc A34/46 (1979)

United Nations Convention on the International Trade of Endangered Species of Wild Fauna and Flora (1974) 12 ILM 1085

United Nations Convention on the Rights of the Child (1989) 28 ILM 1448

United Nations Framework Convention on Climate Change (1992) 31 ILM 848

UN Human Rights Committee *General Comment no. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant* (2004) CCPR/C/21/Rev1/Add13

UN Human Rights Committee *General Comment no. 3 on Article 2 Implementation at National Level* (1981)

UN Human Rights Committee *General Comment no. 25 on Article 25 on the Right to Participate in Public Affairs, Voting Rights, and the Right of Equal Access to Public Service* (1996) CCPR/C/21/Rev1/Add7

UN Human Rights Committee *General Comment no. 28 on Article 3 on the Equal Right of Men and Women to the Enjoyment of all Civil and Political Rights* (2000) CCPR/C/21/Rev1/Add10

United Nations Gen Ass International Financial System and Development GA Res 71/243, UN Doc A74/150 (2020)

United Nations Transforming Our World: the 2030 Agenda for Sustainable Development GA Res 70/1 (2015)

Universal Declaration of Human Rights (1948)

UN Reform Strengthening of the United Nations: An Agenda of Further Change GA Res 57/300, UN Doc A57/387 (2002)

WCED *The Brundtland Report: Our Common Future* (1987) <https://bit.ly/3jBabd0>

Government Publications

GenN 194 in GG 27365 of 11 March 2005

GenN 393 in GG 32141 of 17 April 2009

GenN 396 in GG 41436 of 9 February 2018

GenN 868 in GG 27636 of 30 May 2005 (*Municipal Supply Chain Management Regulations*)

GN R308 in GG 27431 of 1 April 2005

GN R309 in GG 27431 of 1 April 2005

GN 1227 in GG 16838 of 24 November 1995 (*White Paper on the Transformation of the Public Service*)

GN R388 in GG 1459 of 1 October 1997 (*Batho Pele White Paper*)

GN R423 in GG 18739 of 13 March 1998 (*White Paper on Local Government*)

GN R430 in GG 37699 of 30 May 2014

GN R492 in GG 29966 of 15 June 2007

GN R493 in GG 29967 of 15 June 2007

GN 757 in GG 34695 of 19 October 2011 (*National Climate Change Response White Paper*)

GN R796 in GG 22605 of 24 August 2001

GN R805 in GG 29089 of 1 August 2006

Proc 3 in GG 41403 of 25 January 2018

Proc 17 in GG 41562 of 24 May 2018

Proc 30 in GG 41979 of 17 October 2018

Internet Sources

AGSA 2019 <https://www.agsa.co.za/AuditInformation/AuditTerminology.aspx>

AGSA 2019 <https://www.agsa.co.za/AuditInformation/AuditTerminology.aspx>
accessed 13 April 2019

African Union 2021 <https://au.int/en/treaties>

African Union 2021 <https://au.int/en/treaties> accessed 15 June 2021

Auditor General 2020 <https://bit.ly/3jqvduE>

Auditor General 2020 <https://bit.ly/3jqvduE> accessed 25 March 2020

Auditor General 2020 <https://bit.ly/2MJQR0Y>

Auditor General 2020 <https://bit.ly/2MJQR0Y> accessed 18 January 2021

Auditor General 2020 <https://bit.ly/3juvixx>

Auditor General 2020 <https://bit.ly/3juvixx> accessed 22 January 2021

Bauer 2005 <http://journals.ufs.ac.za/index.php/jch/article/download/463/443>

Bauer 2005 <http://journals.ufs.ac.za/index.php/jch/article/download/463/443>
accessed 25 May 2020

Business Insider South Africa 2020 <https://www.businessinsider.co.za/these-are-all-the-high-profile-arrests-made-in-the-last-week-2020-10>

Business Insider South Africa 2020 <https://www.businessinsider.co.za/these-are-all-the-high-profile-arrests-made-in-the-last-week-2020-10> accessed 7 January 2021

Cape Winelands District Municipality 2020
<http://www.capewinelands.gov.za/Pages/Cape%20Winelands%20District%20Municipality.aspx>

Cape Winelands District Municipality 2020
<http://www.capewinelands.gov.za/Pages/Cape%20Winelands%20District%20Municipality.aspx> accessed 19 January 2020

CoGTA 2009 http://www.foundation-development-africa.org/africa_local_economic_development/lgtas_final_november_2009.pdf

CoGTA 2009 http://www.foundation-development-africa.org/africa_local_economic_development/lgtas_final_november_2009.pdf
accessed 30 November 2020

CoGTA 2015 http://www.cogta.gov.za/cgta_2016/wp-content/uploads/2016/06/The-Presidential-Local-Government-Summit.pdf 5. See para 3.3.3 for a detailed discussion on the status quo of corruption in South African local government

CoGTA 2015 http://www.cogta.gov.za/cgta_2016/wp-content/uploads/2016/06/The-Presidential-Local-Government-Summit.pdf 5. See para 3.3.3 for a detailed discussion on the status quo of corruption in South African local government accessed 21 September 2020

Corruption Watch 2020 <https://www.corruptionwatch.org.za/>

Corruption Watch 2020 <https://www.corruptionwatch.org.za/> accessed 22 June 2020

Corruption Watch 2020 <https://www.corruptionwatch.org.za/collusion-is-corruption/#:~:text=Collusion%20%E2%80%93%20an%20agreement%20between%20competitors,a%20conspiracy%20against%20the%20public>

Corruption Watch 2020 <https://www.corruptionwatch.org.za/collusion-is-corruption/#:~:text=Collusion%20%E2%80%93%20an%20agreement%20between%20competitors,a%20conspiracy%20against%20the%20public> accessed 28 June 2020

Corruption Watch 2020 <https://www.corruptionwatch.org.za/learn-about-corruption/what-is-corruption/our-definition-of-corruption/>

Corruption Watch 2020 <https://www.corruptionwatch.org.za/learn-about-corruption/what-is-corruption/our-definition-of-corruption/> accessed 27 June 2020

Fisher and Taub *The New York Times* 2019 <https://nyti.ms/3tCnYV8>

Fisher and Taub *The New York Times* 2019 <https://nyti.ms/3tCnYV8> accessed 18 April 2020

Greater Tzaneen 2020 www.greatertzaneen.gov.za/documents/policies/policy%20and%20procedures.pdf

Greater Tzaneen 2020 www.greatertzaneen.gov.za/documents/policies/policy%20and%20procedures.pdf accessed 19 January 2020

Hessequa Local Municipality 2020 <http://www.hessequa.gov.za/document-library/>
Hessequa Local Municipality 2020 <http://www.hessequa.gov.za/document-library/>
accessed 15 June 2021

HSE University of Anti-corruption Portal 2021
<https://anticor.hse.ru/en/main/organization/BRICS>

HSE University of Anti-corruption Portal 2021
<https://anticor.hse.ru/en/main/organization/BRICS> accessed 02 August 2021

Independent Elections Committee 2020
<https://www.elections.org.za/IECOnline/Reports/National-and-Provincial-reports>

Independent Elections Committee 2020
<https://www.elections.org.za/IECOnline/Reports/National-and-Provincial-reports>
accessed 23 December 2020

Institute for Security Studies 2019 <https://bit.ly/3rvpYws>

Institute for Security Studies 2019 <https://bit.ly/3rvpYws> accessed 17 April 2020

Jacarandafm 2020 <https://www.jacarandafm.com/news/news/limpopo-official-arrested-allegedly-awarding-tender-his-wife/>

Jacarandafm 2020 <https://www.jacarandafm.com/news/news/limpopo-official-arrested-allegedly-awarding-tender-his-wife/> accessed 14 January 2021

Laingsburg Local Municipality 2020 <https://www.laingsburg.gov.za/resource-category/policies-and-laws>

Laingsburg Local Municipality 2020 <https://www.laingsburg.gov.za/resource-category/policies-and-laws> accessed 15 June 2021

Merriam Webster Dictionary 2020 <https://www.merriam-webster.com/dictionary/corruption>

Merriam Webster Dictionary 2020 <https://www.merriam-webster.com/dictionary/corruption> accessed 28 April 2020

Molemole Local Municipality 2020 <http://www.molemole.gov.za/index.php?page=vision>

Molemole Local Municipality 2020
<http://www.molemole.gov.za/index.php?page=vision> accessed 19 January 2020

Municipalities of South Africa 2020 <https://municipalities.co.za/>
Municipalities of South Africa 2020 <https://municipalities.co.za/> accessed 23
December 2020

Municipal Money 2020 <https://bit.ly/3p6YMCQ>
Municipal Money 2020 <https://bit.ly/3p6YMCQ> accessed 19 January 2020

Namakwa District Municipality 2020 <https://www.namakwa-dm.gov.za/budget-related-policies/>
Namakwa District Municipality 2020 <https://www.namakwa-dm.gov.za/budget-related-policies/> accessed 15 June 2021

National Anti-Corruption Forum 2007 <https://www.nacf.org.za/about-nacf/>
National Anti-Corruption Forum 2007 <https://www.nacf.org.za/about-nacf/> accessed
15 June 2021

National Prosecuting Authority 2020
https://www.npa.gov.za/Investigating_Directorate/home
National Prosecuting Authority 2020
https://www.npa.gov.za/Investigating_Directorate/home accessed 22
August 2020

National Treasury 2020
http://mfma.treasury.gov.za/Media_Releases/s71/1920/4th_1920/Pages/excel.asp
National Treasury 2020
[http://mfma.treasury.gov.za/Media_Releases/s71/1920/4th_1920/Pages/excel.as
p](http://mfma.treasury.gov.za/Media_Releases/s71/1920/4th_1920/Pages/excel.asp) accessed 3 January 2021

News24 2020 [https://www.news24.com/news24/southafrica/news/former-anc-mp-
others-appear-in-court-over-r48m-tender-scam-theft-case-in-limpopo-20201005](https://www.news24.com/news24/southafrica/news/former-anc-mp-others-appear-in-court-over-r48m-tender-scam-theft-case-in-limpopo-20201005)

News24 2020 <https://www.news24.com/news24/southafrica/news/former-anc-mp-others-appear-in-court-over-r48m-tender-scam-theft-case-in-limpopo-20201005>
accessed 20 January 2021

Ramaphosa *State of the Nation Address* 2020 <https://bit.ly/3a0NICK>

Ramaphosa C *State of the Nation Address* 2020 <https://bit.ly/3a0NICK> accessed 24
October 2020

Ramaphosa *State of the Nation Address* 2021 <https://bit.ly/2NABrwg>

Ramaphosa C *State of the Nation Address* 2021 <https://bit.ly/2NABrwg> accessed 7
February 2021

South African Parliament 2020 <https://www.parliament.gov.za/about-parliament>

South African Parliament 2020 <https://www.parliament.gov.za/about-parliament>
accessed 11 October 2020

South African Government 2020 <https://www.gov.za/speeches/president-cyril-ramaphosa-proclaims-ndpp-investigating-directorate-strengthen-fight-against>

South African Government 2020 <https://www.gov.za/speeches/president-cyril-ramaphosa-proclaims-ndpp-investigating-directorate-strengthen-fight-against>
accessed 22 October 2020

Transparency International 2020 <https://voices.transparency.org/10-quotes-about-corruption-and-transparency-vol-2-802020c68574>

Transparency International 2020 <https://voices.transparency.org/10-quotes-about-corruption-and-transparency-vol-2-802020c68574> accessed 5 January 2021

Transparency International 2020 <https://knowledgehub.transparency.org/>

Transparency International 2020 <https://knowledgehub.transparency.org/> accessed
2 February 2020

Transparency International Corruption Perceptions Index 2018
<https://www.transparency.org/country/ZAF>

Transparency International Corruption Perceptions Index 2018
<https://www.transparency.org/country/ZAF> accessed 30 March 2020

U4 Anti-Corruption 2020 <https://www.u4.no/terms>

U4 Anti-Corruption 2020 <https://www.u4.no/terms> accessed 7 March 2020

U4 Anti-Corruption Resource Centre 2020 <https://www.u4.no/topics/anti-corruption-basics/basics>

U4 Anti-Corruption Resource Centre 2020 <https://www.u4.no/topics/anti-corruption-basics/basics> accessed 7 March 2020

United Nations Human Rights 2019
<https://www.ohchr.org/EN/Issues/Development/GoodGovernance/Pages/GoodGovernanceIndex.aspx>

United Nations Human Rights 2019 *Good Governance and Human Rights*
<https://www.ohchr.org/EN/Issues/Development/GoodGovernance/Pages/GoodGovernanceIndex.aspx> accessed 30 March 2020

United Nations 2019 <https://www.un.org/en/sections/issues-depth/democracy/index.html>

United Nations 2019 *Democracy* <https://www.un.org/en/sections/issues-depth/democracy/index.html> accessed on 30 March 2020

United Nations 2019 <https://www.un.org/development/desa/undesavoiced/more-from-undesava/2019/05/44903.html>

United Nations 2019 *What Makes Effective Governance?*
<https://www.un.org/development/desa/undesavoiced/more-from-undesava/2019/05/44903.html> accessed on 30 March 2020

UN Global Compact (2000) <https://www.unglobalcompact.org/what-is-gc/mission/principles>

UN Global Compact (2000) <https://www.unglobalcompact.org/what-is-gc/mission/principles> accessed on 28 October 2020

UNODC 2019 <https://bit.ly/3tF4Pli>

UNODC 2019 <https://bit.ly/3tF4Pli> accessed on 30 March 2020

US Legal 2020 <https://definitions.uslegal.com/c/corporate-fraud/>

US Legal 2020 <https://definitions.uslegal.com/c/corporate-fraud/> accessed 8 March 2020

Wazimap 2020 <https://bit.ly/2YZcv3C>

Wazimap 2020 <https://bit.ly/2YZcv3C> accessed on 21 January 2021