

## Perspective on the impact and effect of corruption in the local sphere of government in South Africa

**Leshoto Sefara**

*University of Limpopo, South Africa*

**Kola O. Odeku**

*University of Limpopo, South Africa*

### Abstract

This paper looks at the impact and the effect of corruption in the local sphere of government stemming from the administrative, economy and political facets. The paper posits that there is an endemic corruption being perpetrated at the local sphere of government mainly by the local government officials and elected politicians in collaboration with the private sector. Methodologically, literature review approach was deployed and utilised to identify, expose and address the problems. The paper revealed that due to endemic corruption at all these facets, the needy, the poor and the indigents who are supposed to benefit from quality basic services could not due mainly to corrupt enterprises and activities of those that have been saddled with the responsibility to provide and render basic services. The paper found that due to corruption and maladministration, most of the local governments have been bankrupt, most times there were no service deliveries and where they seemed to be, poor services were being delivered. The overall impact and effect of all these vices result to increase in poverty and the local people become more disgruntled and disadvantaged as a result of corruption and ineptitude of officials saddled with the responsibility to provide. The paper strongly stressed on the need for consequences for failure of poor deliveries and hold perpetrators accountable.

**Keywords:** endemic corruption; local government; public officials; private sector; private people; accountability; South Africa.

### Introduction

In the case of *Glenister v President of the Republic of South Africa and Others* (CCT 48/10) [2011] ZACC 6; 2011 (3) SA 347 (CC); 2011 (7) BCLR 651 (CC), the court vehemently pronounced that “there can be no gainsaying that corruption threatens to fall at the knees of virtually we hold dear and precious in our hard-won constitutional order. It bluntly threatens the democratic echoes, the institution of democracy, the rule of law and the foundation values of our nascent constitutional project. It fuels maladministration and public fraudulence and imperils the capacity of the state to fulfil its obligations to respect, promote, protect and fulfil all the rights enriched in the bill of rights. When corruption and organised crime flourish, sustainable development and economic growth are stunted. And in turn, the stainability and security of society is put at risk.” This observation still holds true and relates to the local government sphere which is mandated to deliver services to ensure that the most vulnerable are catered for by meeting their basic needs. The most revealing corruption is found in the reports of the Auditor General where it was reported that the local government audit outcomes for the 2017/2018 financial year revealed that

R2.94 billion was incurred in irregular expenditure by the Local Governments in Kwazulu Natal in South Africa. The specifics of this report details how some of the money deposited into the Local Governments was not used in accordance with the provisions of the Municipal Finance Management Act No. 56 of 2003 (MFMA) and The Public Finance Management Act No.1 of 1999 (PFMA). These Acts aim to secure sound and sustainable management of the financial affairs of, *inter alia*, municipalities in the local sphere of government; and to place specific obligations on organs of state to investigate corruption within the sphere of public procurement. Corruption impedes developmental projects awarded to private companies which used corrupt routes to win overpriced contracts or the local government. This is tantamount to looting of public money.

This paper examines oversight mechanisms to hold corrupt officials accountable for corruption or the failure or lack thereof in the local sphere of government pertaining to the public facets-the administrative facet and the economic facet of corruption and how these facets of corruption inhibit the delivery of basic services to the needy and people in the local government.

### **The Administrative Facet of Corruption**

The Local Government Municipal Systems Act, 2000 (LGMSA) provides for the objectives for local governments to deliver efficient and effective services. Service delivery is a mandate of the local government, provided for by the Constitution of Republic of South Africa in terms of Section 152(1). The core principle of local government is to ensure that there is a progressive move towards social and economic enhancement of local communities, and to ensure that there is universal access to affordable essential services. To this end, the most affordable but effective and quality services should be sort after for procurement as demonstrated in case of *Viking Pony Africa Pumps (Pty) Ltd t/a Tricom Africa v Hidro-Tech Systems (Pty) Ltd and Another* CCT 34/10 [2010] ZACC 21; 2011 (1) SA 327 (CC) ; 2011 (2) BCLR 207 (CC) which involved the preferential procurement policy of the local government, where Viking Pony Africa Pumps received tenders from municipalities on an 80% scale more than Hidro-Tech Systems did. Even though Hidro-Tech Systems submitted a lower tender score than Viking Pony Africa Pumps did on three occasions, they still lost the bid. This prompted an investigation to probe how Viking Pony Africa Pumps had gained the upper hand. The Constitutional Court found that Viking Pony Africa Pumps had received the tenders fraudulently as the company's prices where above the prices set by local government in terms of Preferential Procurement Policy Framework Act (2005). As such, Viking Pony Africa Pumps were not entitled to the tenders they had received from the local government.

In Viking's case, the Constitutional Court held that organs of state must take steps against companies that obtain tenders fraudulently. The main essence of procurement policies is to ensure that services are brought to the people in a manner that is both affordable to the community and to the local government in order to ensure that basic services are delivered. Local government must empower the poor by developing a system that take their needs into account, which is achieved by ensuring that there is

community participation that enables the community to have their say on that which they lack. Local governments must strive to do everything possible that foster the development of local governments and the communities. Such as creating conducive environment for the private enterprises to invest in local economic development in order to create jobs and alleviate poverty. When local governments advertise for people to tender, the local small businesses should be prioritised and be given preferences in order to empower them and alleviate poverty. Thus, it is stated in the Municipal Systems Act, 2000 that local government must ensure that there is human resource development.

One of the functions of local government is to facilitate the growth in the social development of the communities in which they operate. Another function of the local government is to meet the needs of the poor in a cost-effective manner. However, corruption has derailed these core functions of local government as a result of political interference. Public servants with the right credentials, and who possess experiences for years on the job are usually overlooked when it comes to promotion. Most times, junior counterparts with political connections are promoted to serve as a conduit to influence who to award tenders to during adjudications. For instance, among some of the more notable cases was the investigation into the R1.60 billion leasing of a building to the South African Police Services (SAPS) under former Police Commissioner, Bheki Cele. The investigation centred on the procurement practices followed by the SAPS with regard to the leasing of the building (Madonsela 2014). Public Protector Madonsela found that in the case of the SAPS leasing agreement, procurement procedures were flawed and in violation of the PFMA. Cele was found guilty of maladministration and was subsequently dismissed from his position.

Improper and irregular appointments may impact service delivery within the local sphere of government and result in an abuse of power. For example, in a report titled '*Not above Board*', the Public Protector said that the CEO of the Eastern Cape Gambling and Betting Board (the Board), Mr Zwane, was irregularly appointed. On the 22<sup>nd</sup> of February 2010, Mr R lodged in a complaint with the Public Protector that stated that Mr Zwane should not have been appointed as the CEO because he failed to disclose that he was in an intimate relationship with a public employee at the time he applied for the position. Moreover, when he was dismissed because of this, the matter was referred to the Commission for Conciliation, Mediation and Arbitration (CCMA), and the Chairperson of the board settled the matter improperly, without a Board resolution.

It was further alleged that the board had failed to comply with the findings and recommendations of an external investigation, which directed that the board take disciplinary action, and lay criminal charges, against Mr Zwane. The CEO position also required the relevant candidate to have a Bachelor's degree or equivalent qualification, with at least 5 years' experience (preferably) in administration, leadership or management at a senior management level. Mr Zwane had a National Diploma which he obtained in 1997 and the required years of applicable experience, which met the requirements as advertised. Based on those allegations, the Public Protector found that:

(a) The allegation that Mr Zwane was appointed despite having failed to disclose

information that disqualified him from appointment to the position of CEO in terms of section 6(k) of the Gambling and Betting Act has merit. Although section 6 deals with Board members who are appointed by the responsible Member whereas the CEO is a member by reason of his position, nothing in the Act seems to distinguish his position from other Board members. The Board's actions in this regard were improper and constitute maladministration

(b) At the time of appointment, Mr Zwane had a National Diploma obtained in 1997 and the required years of applicable experience, which meets the requirements as advertised. The advertised requirement was a bachelor's degree or equivalent qualification with at least 5 years' experience (preferably) in Administration, Leadership or management at a senior management level'. The allegation that Mr Zwane did not meet the minimum requirements for the position of CEO as advertised is accordingly, without merit.

(c) The Board did not authorise the then Chairperson to act on its behalf at the CCMA as required under section 11(5) of the Gambling Board Act, 1997, and as a result the settlement agreement was finalised improperly, without the required authority. The conduct of the chairperson was accordingly unlawful, and the settlement reached invalid. The Chairperson's conduct was accordingly improper and constitutes maladministration

(d) The Board failed to properly consult with the MEC on the appointment of Mr Zwane and this amounts to non-compliance with the provisions of section 12(1)(a) of the Gambling and Betting Act. The Board's conduct was improper and constitutes maladministration. (f) The allegation that Mr Zwane's appointment was improper has been substantiated. The Board's appointment of Mr Zwane constitutes improper conduct and an act of maladministration.

Another issue which has led the degradation of service delivery is the issue of ghost employees and ghost companies. In 2015, former North West Premier, Supra Mahumapelo, revealed that 36 000 ghost employees, including retired, deceased or non-existent staff in the local municipalities, were on the database of the people who receive monthly payments by officials. These payments amounted to R19 billion. Chris Hattingh, alluded to the fact that North West, as a province, suffered from poor quality education and health care centres which, due to the corrupt activities by officials, who created extra income by means of ghost workers, would only deepen the crises the province was facing. In essence, the money that was allocated to ghost workers was detrimental to social justice. This money, if it was used for the betterment of improving hospital and educational facilities, could have played a major role in enhancing service delivery in the province.

The Alfred Nzo District local government was placed under provincial administration due to its weak financial base and poor service delivery performance (Magenu 2009). The local government controversially paid performance bonuses to its executive managers. More recently, the officials were allegedly involved in a fraud case involving R28 million meant for rural development in Mount. Ayliff. Ten of the accused officials were arrested. Computers, laptops and files were confiscated by the police, so that further investigations could be conducted. Similarly, Investigations had been going on since 2005 when irregularities were detected in a R52 million

sanitation project called Siyazakha. It was discovered that ghost companies were being awarded tenders. Corruption in the form of ghost worker entrenches poverty. Monies that could be used for social security, for instance, find their way into the pockets of officials. In 2008, money was made available in order to develop systems that could detect ghost workers, but the problem seems to be growing.

According to the findings of the UN Committee on Human Development and Civil Society, the declining professional standards globally are primarily fuelled by gratuitous disregard for ethical practices of accountability by public managers and civil servants, resulting in an ethical deficit. Lack of integrity in the local governments has resulted in the honest employees feeling isolated to such an extent that they disassociate themselves from local government and find employment elsewhere. An example of this is that of former Chairperson of the Public Administration Portfolio Committee of Parliament, Makhosi Khoza, who tendered her resignation due to the corruption that was on display, protected by the ruling African National Government (ANC) (Tshetlo 2017). Consequently, the moving of honest employees to other corporates results in a brain drain (Mirugi-Mukundi 2006). The brain drain is catalysed by the pursuit for greener pastures, especially when professionals are not compensated commensurate with their worths, mainly as a result of the corrupt practices that continuously enrich a few to the detriment of the general public (Mcveigh 2006). This brain drain has a negative impact on the local government as those who leave use their expertise to advance other corporations, which leaves institutions such as the local government lacking skilled employees to deliver better services.

The Protection of Disclosure Act authorises public servants (PDA) that work within the local government to report impropriety and corruption. Section 1 of the PDA deals with disclosure, which means “any disclosure of information regarding any conduct of employer, or an employee of that employer, made by an employee who has reason to believe that the information concerned shows or tends to show one or more of inter alia that a criminal offence has been committed, is being committed or is likely to be committed that a person has failed is failing or is likely to fail comply with any legal obligation to which the person is subject, or that a miscarriage of justice has occurred, is occurring or is likely to occur.” The PDA acts as a road map to enhance transparency and accountability in order to curb corruption. However, due to lack of protection in practice, employees fear for their lives as a result of whistle-blowing. Such is the unfortunate case of the VBS Bank whistle-blower, Phophi Mukhodobwane, which led to the murder of two whistle blowers after they called for those implicated in the VBS to be prosecuted (Malatji 2019). Mukhodobwane, the bank’s former head of treasury and capital management, received death threats that read “It is about time for us to destroy your family. It’s about time my man. You can run but you can’t hide” (Malatji 2019). This was at the time of his decision to come clean of the corruption activities between the bank’s officials, government officials and politicians which led to the liquidation of the bank. Whistle-blowers are essential in the fight against corruption and the upliftment of democracy because they expose wrongdoings by government officials (Malatji 2019). The same also occurs within developed countries, for example, when John Fitzgerald (Clayton (2005), an environmental analyst with the United

States Agency for International Development (USAID), had his employment contract terminated when he drew attention to the Chad-Cameroon oil pipeline. This pipeline is of the largest of such projects in the region and lacked detailed plans for dealing with oil spills and invasive species from tanker ballast (Mirugi-Mukundi 2006).

Leaders have also been at the centre of impropriety and unethical conducts. The biggest scandal that had the effect of devaluing the leadership was the Nkandla dilemma which involved former President Jacob Zuma, involving security installations at his private residence, which was investigated by the Public Protector in 2014 (Madonsela 2014). The complaint that paved the way for the Public Protector's investigation came about as a result of R246 million that was spent on Zuma's home. Moreover, what was stressed during the investigation was whether some installations were warranted and justifiable as 'security installations' or whether they amounted to impropriety and unethical conduct (Mathekga 2017). At the centre of the investigations, and what was taken more seriously, was whether the guidelines and the laws provided for in the PFMA were followed by those who exhausted the public funds in the Nkandla matter (Mathekga 2017).

The Nkandla expenditure was approved by the Department of Public Works, which is authorised to provide housing for public officials (Mathekga 2017). The Department of Defence, hand in hand with the SAPS, gave inputs as to the essential equipment that would be needed for the security of the President. The Public Protector had a duty to establish how funds spent on Nkandla were allocated and the procurement processes that took place. The Public Protector found that some of the installations and construction at Nkandla were not justifiable. These included installations such as the swimming pool, cattle kraal and tuck shop (Mathekga 2017). The Public Protector noted that the amounts of money used for the project were excessive in nature and amounted to a contravention of the law. The Public Protector commented that this was because of 'unconditional and unlimited authority for the procurement of goods and services' (Madonsela 2014). The Public Protector further to comment that "The excessive nature in which the Nkandla Project was implemented went a long way to beautify the president's private residence and to add comfort to its infrastructure, which was not the objective of security measures that had to be implemented for his protection" (Madonsela 2014). The report vehemently noted that government departments involved in the Nkandla installations 'failed dismally' to comply with procurement regulations, including the PMFA. Regarding the nature of the responsibilities to the payments for some of the installations, the Public Protector said that "as the president tacitly accepted the implementation of all measures at his residence and has unduly benefited from the enormous capital investment from the non-security installations at his private residence, a reasonable part of the expenditure towards the installations that were not identified as security measures in the list compiled by security experts in pursuit of the security evaluation, should be borne by him and his family" (Madonsela 2014).

The Public Protector's remedial action directed the President, National Treasury and the SAPS to engage in discussions regarding the amount which the president would be required to pay back. Post these discussions, the President had to report to the National Treasury the amount agreed upon and the action to be taken, as per her

report (Madonsela 2015). The findings that the President had to pay a determined amount for the improvements at Nkandla played an important role in the direction that Parliament opted to follow regarding the Public Protector's report.

As the spearhead of the country, the President must take care of the public resources of the country and guard against wasteful expenditure. The actions by the President with regard to Nkandla provides a sense that the President undermined that responsibility. On that note, the President had to account to Parliament regarding expenditure on Nkandla as a way of demonstrating accountability. A set of procedures and processes were to be undertaken with regard to the Nkandla report, namely:

- There ought to be investigations undertaken by the police and relevant authorities regarding the flaunting of procurement processes and the motive behind excessive expenditure on the project;
- The National Treasury, together with the SAPS, were required to determine a 'reasonable amount' that President Zuma had to pay back on non-security-related installations in Nkandla; and
- Parliament was expected to undertake a process of engaging with the Public Protector's report as part of its responsibility to ensure accountability in regard to the use of public funds (Madonsela 2015).

On the basis of the Public Protector's report, no alternative engagements had to be instituted regarding the findings of the Public Protector, which parliament tried to pursue. Therefore, parliament ignored the findings of the Public Protector and recommended a new investigation into Nkandla, one which did not take into consideration any amount of money which the President had to pay back. Police Minister, Nkosinathi Nhleko instituted a new enquiry based on the installations which had already been investigated and reported on by the Public Protector.

Thuli Madonsela, who was the Public Protector at the time, stated on a show called *Straight Talk* that, "The police minister has no authority to enquire as to whether or not the president has to pay a certain amount in relation to Nkandla expenditure; his mandate in relation to this is limited to determining an appropriate amount. The manner in which the Nkandla report was handled is subject to court litigation after the opposition party Economic Freedom Fighters approached the court to force President Zuma to comply with the public protector 's office and pay back some of the money spent on Nkandla" (Madonsela 2015).

Madonsela was a party to the court proceedings as an *amicus curia* (friend of the court). The Nkandla case showcased how impropriety and unethical behaviour in government institutions start from the leaders of the country and from the public officials who perform their duties at the local government level, showing how they engage in unethical behaviour that damages service delivery. The excessive expenditure which was demonstrated by the Former President, by installing unnecessary buildings and equipment at Nkandla, could have been used to develop the Nkandla village, as people from this village lack basic needs, such as water and electricity. It also goes to show how leaders disregard laws and regulations regarding procurement so that they can inflate their lavish lifestyles by using state resources that ought to benefit the people who depend on them.

Moreover, the Nkandla matter provides positive and negative insights with respect to

the scope of South Africa's anti-corruption institutional framework (Mathekga 2017). The case illustrated how accountability plays an important role as an anti-corruption initiative. It is imperative to note that most of the Public Protector's findings were not provided for by the Prevention and Combatting of Corrupt Activities Act but rather by Public Finance Management Act, which it is the law that governs the use of public funds in South Africa. Moreover, the Public Protector was also guided by National Treasury regulations and the procurement guidelines for the departments she investigated. This goes to show that South Africa has laws and regulations that promote ethics and that cater for the executive members of parliament with respect to internal procurement guides within respective departments.

The Public Protector's power is notable in the public sector as an anti-corruption instrument. However, the same cannot be said in the private sector as institutions within this sector fall outside of the Public Protector's jurisdiction. This makes it more necessary to be strict on the public sector when carrying out their duties in order to reduce the trend of the private sector benefiting illegally from the public sector.

The negative side that emanates from the Nkandla matter is the notion that public officials believe that they can rely on democratic institutions in order to disregard the findings of the Public Protector in a way that is legal (Mathekga 2017). This can be noted from the manner in which Parliament handled the Nkandla report that was provided by the Public Protector. Moreover, the Nkandla matter also revealed how political inference subverts anti-corruption initiatives in order to protect the leaders (Mathekga 2017). The ANC, as the party that is in the majority in Parliament, expressed their notions that the Public Protector 'mised the nation' on Nkandla and this was done simply to tarnish the name of the party and the President (Hartley 2015). The opposition parties unsuccessfully made applications to 'derail the ANC's push to absolve President Jacob Zuma from repaying any of the R246 million spent on his Nkandla home (Hartley 2015).

Parliament has the responsibility to ensure that accountability for Nkandla follows through as a top pillar of accountability within the legal frameworks of South Africa. However, parliament has no right to disregard the findings of the Public Protector (Mathekga 2017). The only route to take in order to set aside the Public Protector's findings is by a review that will be adjudicated by a court of law. Parliament's decision to accept the Police Minister's report, which said that the President must not pay back the money, implicitly undermined the Public Protector's findings and Parliament took over the function of the court by reviewing the findings of the Public Protector, which leaves a strong notion that Parliament also undermined the separation of powers (Mathekga 2017).

The Nkandla matter goes to show how political parties will do all that is possible to protect their leaders, even when they are trampling on their duties provided for by the Constitution, and embarrassing the findings of a Chapter 9 institution, by disregarding these findings, as it did, by failing to hold President Jacob Zuma accountable for improper Nkandla expenditure. The courts are, however, being utilised by opposition parties to hold leaders accountable, for example, the cases of *Economic Freedom Fighters v Speaker of the National Assembly and Others* (CCT 143/15; CCT 171/15) [2016] ZACC 11; 2016 (5) BCLR 618 (CC); *Democratic Alliance v Speaker*

of the National Assembly and Others (CCT 143/15; CCT 171/15) [2016] ZACC 11; 2016 (5) BCLR 618 (CC); 2016 (3) SA 580 (CC) (31 March 2016), in which the Constitutional Court stated that Section 167(4)(e) of the Constitution provides that “only the Constitutional Court may decide that parliament or the President has failed to fulfil a constitutional obligation.” Moreover, the EEf argued that failure by the President to act accordingly as directed by the Public Protector amounts to a breach of Section 83 of the Constitution which imposes certain obligations on the President, in particular to uphold, defend and respect the Constitution as the supreme law of the Republic. The actions of the President and parliament to second guess the findings of the Public Protector was a failure to fulfil the mandates of the Constitution, as the powers of the Public Protector are provided for by the Constitution in terms of Section 182(1)(c) and Section 181(3). Thus, the courts act as the gatekeeper to ensure that the Constitution is upheld at all times.

The Nkandla matter encouraged the arms of government to step on each other’s responsibilities, in that Parliament evoked a protection mechanism and, by so doing, tried to free the President from being held accountable. The courts had to come in to remind Parliament that they have no right to encroach on the responsibilities of the Judiciary. In so doing, the courts proceeded to hold the President to account and to forced him to pay back the money.

### **The Economic Facet of Corruption at the Local Government Level**

The 2018 Auditor General’s report stated that over 70% of the country’s municipalities could not account for the revenue they had received. In simple terms it means local government could not substantiate where the money received went to, who did they pay and for what. This implies that money that could have been used to enhance service delivery was not used properly. This has an impact on the economy of the country in that it increases poverty and inequality. Anderson et al., (2003) provides the following insights into how corruption cripples the economy within the spectrum of local government:

- Corruption leads to lower investors’ confidence, and in turn, to lower domestic and foreign investment. Since sustained growth generally provides rising incomes for the poor, the retardation of growth due to corruption limits opportunities for countries to eliminate poverty;
- Politicization and the purchasing of public positions translates into misallocation of talent, including underutilization of key segments of society;
- Widespread corruption within government agencies interacting with the private sector clouds the business environment, hampering enterprise growth;
- Corruption has been linked to the unofficial economy, resulting in lower tax revenues which the state might otherwise use for stimulating economic development or direct poverty reduction measures;
- The rent-seeking, associated with corruption, leads to distortions in budget allocations, for example, away from pro-poor investments in primary education and in favour of largescale, and arguably more corruptible, public works projects. This misallocation of public funding and public investment leads in turn to the

deterioration of the existing physical infrastructure;

- Corruption reduces public revenues and weakens rule of law;
- State capture by the corporate elite biases the laws and policies of a country, allowing few to obtain selective benefits at the expense of the rest of the society, undermining the growth of output and investment of the enterprise sector and exacerbating inequality;
- Mis-governance and corruption act as regressive taxes on households and firms;
- Corruption is associated with lower quality of public service provision;
- Poor governance accounts for a large proportion of the difference not only in income levels among countries but also in voter turnout and civil participation, with the latter undermining the very foundations of civil society (Anderson et al. 2003).

From above, it is notable that corruption within the local government results in essential services that ought to uplift communities being lost. A case which can support this is the Vrede dairy farm project in the Free State, South Africa. One hundred black emerging farmers were told to sell their cows and, in return, they would receive better cows that produced better milk in order to develop these farmers and to improve agriculture. However, these farmers never received the cattle. E.S. Magashule, Premier of the Free State Province, commented that “Vrede Dairy Project: The Department of Agriculture is establishing an Integrated Dairy Project at Vrede in the Eastern Free State under the Mohoma-Mobung initiative in partnership with the private sector. The project is unfolding in phases. This state-of-the-art certified facility will be constructed with the initial processing capacity of 100,000 litres per day and an initial targeted milk intake of 40,000 litres per day. Products to be produced at the Vrede Dairy project will include liquid milk, UHT milk, cheese and other products.” Government official said that the people in the community would own the farm having 51% stake but till date not a single person has received anything.

It was found that the implementing agent of the project was using public money and profiting from government’s R342 million contribution. In the 2012 alone, R114 million was given to Estina and the agreement blatantly benefitted the private sector partner, Estina, to the detriment of taxpayers and beneficiaries. During 2017, hundreds of thousands of emails revealed the Gupta family’s seemingly corrupt business dealings with the state and politicians known as the GuptaLeaks.

In the case of *Vrede Dairy Project: PP vs DA & CASAC: High Court judgment (DA v Public Protector; CASAC v Public Protector [Case 11311/2018 & 13394/2018]* the court observed that these emails were reported on at length by investigative journalists. They corroborated the earlier 2013 reports that the project was tainted, not only by serious irregularities, but also possibly by corruption.

The case shows how corruption, therefore, not only robs the state the much-needed revenue when tax is evaded through corrupt officials, but also hampers the development of local industries and economies. The beneficiaries of this project are now left in destitute as they sold the cows on which they depended for their basic needs. As a result, the economy suffered because inequality is increased due to the fact that public revenue is mis-spent. The municipalities that are to provide essentials

become distressed as funds are directed to benefit the elite. The growth of business is tainted and runs at a loss to the extent that small enterprises start retrenching employees, and even close down, because they cannot afford to pay their employees. Corruption at the local government level forces them to be placed under administration in terms of section 139 of the Constitution which provides that provincial government must intervene by placing municipalities under administration for failure to fulfil their obligations, such as rendering services and maintaining economic unity. Administration is brought about by an audit which shows the poor financial state of the municipality and the irregular processes of awarding tenders and lease agreements, all of which negatively impacted on service delivery. An audit of the Mbombela local government in Mpumalanga, moreover, revealed gross financial mismanagement, fraud, corruption and officials not following procurement processes. The local government was placed under provincial administration due to poor service delivery as a result of the alleged corruption. In the Mbombela local government attempted to force out an impoverished community of farm workers from their 118-hectare land with the intention of constructing the R1 billion Mpumalanga 2010 stadium. The land was valued at R63 million and the local government allegedly bought it from the community for R1 million following a secret negotiation (Ntsaluba 2008). The chairman of the Matsefane Trust, Terry Mdluli, and the then Mayor, Justice Ntsibande, failed to declare that they were business partners in a tourism company, along with another municipal official. The community won the case in the Pretoria High Court where the sale and transfer of the land was declared to have been grossly illegal. The encumbrances of corruption, thus, take away assets that carry economic value, such as land. The fundamental disgrace of corruption is the fact that government is supposed to help the community to develop their resources in order to ensure that communities advance economically and, moreover, that jobs are created. However, the same local government that is mandated to cater to the community is, in fact, robbing the community by preferring outsiders to buy them out a price that is illegal. Corruption, thus, promotes non-compliance as, economically, it distorts the efficiency of both government and businesses. In the Makhado local government, the South African local government Workers Union led a protest march demanding the immediate suspension of the mayor and other high-ranking municipal officials who were allegedly involved in the awarding of a tender at Waterval to Renkie Building Construction. It was alleged that the owner of the company received almost R2 million more than he originally tendered for, yet he never completed the work he was contracted to do (De Swardt 2008). Public procurement or contracting was designed as a method of buying or producing goods and services that should benefit citizens (Mirugi-Mukundi 2006). However, the advent of corruption in public contracting has led to a distortion of fair competition, a waste of scarce resources and neglect of basic needs and services, perpetuating poverty (Mirugi-Mukundi 2006). According to Transparent International 2003 (TI) report, by the 1990s it was assumed that African countries would be strong economically but, due to the advancement of poor governance with burgeoning corruption, this has not been the result. For instance, the Sundays River Valley local government in the Eastern Cape, the Maxhoba Trading and Vuma Co-operatives (some of the listed service providers)

were awarded contracts for which they had never tendered. They were allegedly contracted to install ceilings and plaster about 1728 houses in Nomathamsanqa in Addo. Both companies did not appear in the minutes of the bid evaluation committee meeting held in December 2007 (Dimbaza, 2009). In another case, Mr Joseph Saki was paid R450 000, apparently for construction services rendered to the local government, but there is no evidence of any contract between him and the local government. In another contractual dispute, the local government paid a Mr Banzi an amount of R350 000 out of court. The payment, according to the audit report, was considered as fruitless expenditure (Dimbaza, 2009). The weak oversight by provincial and national government to ensure that tenders are awarded to bidders who qualify has been a problem that has enhanced corruption within the local government. This disregards service delivery, as local governments lose money by paying for something that has not even been done.

### **The Political Facet of Corruption at the Local Government**

Corruption has become the centre of political power in South Africa. Mathekga (2017) asserts that this is triggered by corruption having an influence on politics in the country, in that corruption is resorted to as a means to attain political influence. For instance, in order to have a favourable outcome in politics, politicians make promises to the elite people in business that they will be given certain tenders, resources and money if they fund and support them. Secondly, corruption has an impact on the effectiveness and legitimacy of state institutions (Mathekga 2017). In other words, state institutions, such as municipalities, are being milked by politicians who waste money by inflating the prices of tenders and, as a result, service delivery is hampered as some services cannot be paid for due to lack of funds and resources.

State institutions tasked with investigating corruption have had their credibility attacked by politicians so that these institutions disregard their corrupt activities. These institutions have also been used as a wrestling arena for politicians to discredit each other and their statuses, which has the effect of diminishing the value of these state institutions. Moreover, investigations by these institutions are seen by some people as being fake and that these institutions are being used as weapons to settle scores, such as the case of Former President Thabo Mbeki, and then ANC Deputy President, Jacob Zuma. This has left the impression that, at times, state institutions can be used to wage political battles and that anti-corruption institutions are conveniently available for such a task (Mathekga 2017).. A case of note that is centred around political interference is one where the Directorate of Priority Crime Investigations (DCPI) suspended its head, Anwar Dramat, after it was alleged that he was involved in the illegal rendition of four Zimbabweans in November 2010. In the case of *Helen Suzman Foundation v Minister of Police and Others* (1054/2015) [2015] ZAGPPHC 4. Helen Suzman Foundation (HSF) made an application to court to rescind the decision by the Police Minister, Nkosinathi Nhleko, to suspend Dramat. The HSF maintained that this decision was brought about because Dramat was investigating certain cases, including the Nkandla expenditure case. This raises a discomfort that suggests that the DPCI is not independent. If the head of the DPCI can be suspended like that

without proper channels being followed, individuals within the DPCI would be reluctant to do certain investigations out of fear that they will suffer the same fate as Dramat.

In terms of section 17(c)3 the South African Police Service Amendment Ac 2008, the Minister ought to consult with Parliament when he appoints a head of the Directorate and, implicitly, also when he dismisses or suspends the head. Therefore, the Minister accounts to Parliament. The court held that the Minister's power to suspend or remove the head is 'subject to the prior start of the proceedings of the committee of the national assembly for the removal and passing of resolution calling for the removal of head by a two-thirds majority. Parliament must ascertain whether the Minister is not abusing his powers when taking action to dismiss or suspend a head of department. The court ruled that the Minister must involve Parliament when electing to dismiss or suspend a head of department. The court found that to do so alone, not taking Parliament into his confidence, was tantamount to acting unlawfully and unconstitutionally. The Minister's decision was set aside. The court's ruling provides that Ministers who do not follow legislative provisions must be brought to court as courts have regard for the 'structural and operational' independence that should be afforded to anti-corruption institutions. This structural and operational independence is also recognized by international conventions on anti-corruption and by the country's Constitution. In order to protect public institutions that were created, *inter alia*, to fight corruption, our courts must prevent any action by public officials that hampers the integrity of these anti-corruption institutions. If the courts do not intervene, then the commitment to fight corruption will be disrupted.

The essence of democracy is to encourage fairness, openness and access in electing leaders. In order to level the playing fields, all leaders should have equal resources that they use in pursuit of political influence. The use of corruption has been the qualification for becoming politically powerful. The ANC has been in the spotlight for appointing members as ministers from those who have been named in corruption scandals. For instance, the North West Premier, Supra Mahumapelo, has been accused of imposing a senior government official on the health department to rubber-stamp tenders in which he has interests (Modjadji 2018). Moreover, Andrew Thabo Lekalakala landed a R1.5 million job as the head of a department without there being a background check done, allegedly at the behest of Mahumapelo (Modjadji 2018).

The Makhado local government's technical team is allegedly composed of the Mayor's relatives and people from her home area, with allegations that 30 employees were unfairly dismissed in order to create vacancies for her relatives and the friends of the municipal manager (Skenjana et al. 2010). The conception of this conduct has been defined as political corruption. Political corruption is the result of using money, power and influence within the political circle to obtain an advantage against ordinary citizens. This undermines democratic processes and the rule of law. For instance, Section 11 of Municipal Finance Management Act 56, of 2003, which is centred around supply chain management, provides that municipalities must create and implement SCM policies that are consistent with the Act. However, due to corruption as a result of politics, local government do not adhere to these policies. A notable example of is that of the Ekurhuleni Metro. An internal forensic audit into the affairs of the

Ekurhuleni Metro is said to have revealed that the Metro was paying more than R10 million too much for an information and communication technology (ICT) tender (Institute for Security Studies 2008:6). It is alleged that the circumstances surrounding the awarding of the tender were fraught with controversy. The local government's former executive director of ICT and later Chief Financial Officer, Colin Pillay, is said to have been both a shareholder of the offending company and one of its directors. The local government's executive mayor, Duma Nkosi was reported to have resigned after being implicated in acts of corruption involving maladministration, improper dealings with public money, financial misconduct, gross negligence, dishonesty and dereliction of duty (Vos 2008). Conduct of this nature plagues our democracy in that there is no fair competition, which devalues our Constitution's mandate that states that everyone is equal before the law.

The lack of any law regulating of political party funding has exacerbated corruption in the political sphere. Donors to political parties have leveraged a *quid pro quo* situation with political parties by making pledges to political parties that will back them financially. However, this comes at a price to state resources. The President of the Republic of South Africa, Cyril Ramaphosa, has been found to have breached paragraph 2.3(a) of Executive Ethics Code 1998, by deliberately or inadvertently misleading the legislature when he denied that he and his son, Andile Ramaphosa, had any illegal dealings with African Globe Operations (formerly known as BOSASA) after he was asked in parliament by the leader of the DA, Mmusi Maimane, whether an amount of R500 000.00 was paid from the direct account of Gavin Watson, the CEO of the African Globe Operations (formerly known as BOSASA) to a company known as Miotoo Trading, which is associated with BOSASA, into the trust foundation account of Andile Ramaphosa. In his response, President Ramaphosa said that he had asked his son whether the money was obtained illegally and whether the money was for a service his son's business rendered to BOSASA.

Subsequently, on the 16<sup>th</sup> of November 2018, President Ramaphosa sent a letter to the Speaker of the National Assembly to rectify himself, based the answer he gave to the National Assembly ten days earlier. He said that the R 500 000.00 was a donation to his campaign to be elected as the ANC President at Nasrac (Mkhwebane 2020). There is an assumption of an improper relationship between the President and his family, on the one side, and that of the African Globe Operations (AGO) (formerly known as BOSASA) on the other side. This concern of an improper relationship emerged as a result of the nature of the payment, which was hidden from intermediaries and seemed likely to be an illegal payment. This raised a suspicion of money laundering. The backdrop of this was the fact that African Globe Operations had received state tenders in an outward manner (Mkhwebane 2020).

The Public Protector's report stated that President Ramaphosa exposed himself to the risk of conflict between the office that he holds and that of his private interests. When he received the donation, President Ramaphosa was the Deputy President of South Africa and, thus, a Member of Parliament. As a Member of Parliament, he must make visible any financial benefit he received when he was campaigning. Failure to do so is a material breach of the codes of Ethics and is, thus, inconsistent with the code. The fact that the money was not directly paid to him and had to go through other

channels was notable of an improper relationship with AGO(Mkhwebane 2020). Section 96(1)(2) of the Constitution provides that “members of Parliament must act accordingly with the code of ethics prescribed by the national legislature, and may not act in any way that is inconsistent with their office, or expose themselves in any situation involving the risk of conflict between their official responsibilities and private interest. This section was inserted into the Constitution as a way of avoiding the situation where members of cabinet create a culture of not disclosing information. This could end up affecting their public offices to such an extent that they are controlled by third parties who furnish them with, for example, donations. In other words, the Constitution requires the cabinet to be transparent in order to eliminate any uncertainties that may suggest that our democracy is dysfunctional. Moreover, paragraph 2.1 (a)-(d) of the Executive Ethics Code states that members of the executive must act in good faith and in the best interests of good governance; and they must act in all respects in a manner that is consistent with the integrity of their office. The essence of this code is to curb political party leaders from receiving bribes from the corrupt in return for favours and protection against investigations, and in so doing, acting in a manner that compromises their duties as prescribed by the Constitution.

In the case *Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others* (CCT 143/15; CCT 171/15) [2016] ZACC 11; 2016 (5) BCLR 618 (CC); 2016 (3) SA 580 (CC), Justice Mogoeng dealt with the obligations of the President by stating that “the President is the Head of State and Head of the National Executive. His is indeed the highest calling to the highest office in the land. He is the first citizen of this country and occupies a position indispensable for the effective governance of our democratic country. Only upon him has the constitutional obligation to uphold, defend and respect the Constitution as the supreme law of the Republic been expressly imposed. The promotion of national unity and reconciliation falls squarely on his shoulders. As does the maintenance of orderliness, peace, stability and devotion to the well-being of the Republic and all of its people. Whoever and whatever pose a threat to our sovereignty, peace and prosperity he must fight. To him is the executive authority of the entire Republic primarily entrusted. He initiates and gives the final stamp of approval to all national legislation. And almost all the key role players in the realisation of our constitutional vision and the aspirations of all our people are appointed and may ultimately be removed by him. Unsurprisingly, the nation pins its hopes on him to steer the country in the right direction and accelerate our journey towards a peaceful, just and prosperous destination, which all other progress-driven nations strive towards on a daily basis. He is a constitutional being by design, a national pathfinder, the quint-essential commander-in-chief of state affairs and the personification of this nation’s constitutional project.

In the case of *Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others* (CCT 143/15; CCT 171/15) [2016] ZACC 11; 2016 (5) BCLR 618 (CC); 2016 (3) SA 580 (CC) the court held that the President must at all times act in line with the Constitution in order to avoid any one of the cabinet members from falling short of acting in a way that is prohibited

by the Constitution. As the head of state, all the other spheres of government must imitate his conduct, that of dignity, respect and serving the people of the country. It is in this that the President must account to the Constitution and, if he starts hiding things, it questions his respect for the Constitution. President Ramaphosa's answer to Mr Maimane was a breach of the Constitution and, if anything, he should have decided to launch an investigation into the matter before answering the question as nothing precluded him from doing so.

The challenge is that information pertaining to who funds political parties is not available to the public. No law that regulates the funding to political parties and so, corruption will always be on the rise as every individual will want a kickback. The people's services will always come second to the wants of the individuals who fund political parties. The danger of this is that accountability suffers, as the public cannot not know whom to interrogate and cannot evaluate whether political parties are, indeed, serving the interests of the public or rather the interests of those who fund the parties. This opens the door for procurement processes being disregarded in that political parties will inflate prices when giving tenders to the donors in order for them to fund the parties. The Democratic Alliance and the African National Congress have blatantly refused to produce documents that show the individuals who fund them. One would think that this encroaches on section 32 of the Constitution of the Republic of South Africa, which provides for access to information, stating that everyone has the right to any information held by the state. The state is the African National Congress, as they dominate the decisions that are taken in our country. However, in the case of *My Vote Counts NPC v President of the Republic of South Africa and Others* [2017] ZAWCHC 105 (MVC2) the court held that information about the people who fund political parties is needed in order for the public to exercise their to vote effectively and that the, with reference of obtaining the information of those who fund political parties, is unconstitutional as it does not provide for continuous and systematic recording and disclosure of this funding information.

The reason for this is that political parties do not form part of public or private bodies in terms of PAIA. Even if a political party was to be described as a private body, the PAIA does not make a provision for continuous disclosure of private funding information. The PAIA has limited mechanisms and processes and would encroach the fundamental constitutional rights. The positive side is that Political Party Funding Act 2021 creates regulation on funding that is made to both public and private parties and, further, to mandate political parties to disclose donations to the Electoral Commission, who will make public who the donors are.

## Conclusion

Corruption destabilizes proper governance where accountability and the rule of law are being disregarded. Taking and receiving kickback and bribery are prominent by the local government officials. One of the reasons for this is that the people who are supposed to protect state resources are the ones who are looting state coffers. This is the reason why the concepts of transparency, accountability and integrity are mystified and undermined in the local government. Public officials are constitutionally and

legislatively mandated discharge and carry out their functions and tasks in a manner that justifies integrity, without bias or maladministration. The Constitution provides that “public service be provided impartially, fairly, equitably and without bias. The public service should also be accountable and transparent in the provision of efficient, economic and effective resources. However, due to politicisation, ethics and professionalism have fallen short. Whenever anti-corruption institutions investigate public officials, they face suspensions, such as that of Anwar Dramat. The judiciary usually come to the aid of wrongfully or illegally dismissed public officials by politicians. The need to protect whistle-blowers is also a route to enhance efforts to curb corruption. Whistle blowing is not about informing in a negative anonymous sense. rather it is about a concern about malpractice within an organisation.

## References

- Anderson, J., Kaufmann, D., Recanatini, Francesca (2003). Service Delivery, Poverty and Corruption Common Threads from Diagnostic. [http://documents1.worldbank.org/curated/en/114571468781754043/310436360\\_20050276022113/additional/28010.pdf](http://documents1.worldbank.org/curated/en/114571468781754043/310436360_20050276022113/additional/28010.pdf)(accessed December 14, 2020).
- Camerer, L. 2000. Protecting whistle blowers in South Africa: The Protected Disclosures Act, no 26 of 2000' Occasional Paper No 47 (2001)Anti-Corruption Strategies Institute for Security Studies.<http://www.iss.co.za/Pubs/Papers/47/Paper47.html#Anchor-41018>(accessed February 11 2021).
- Clayton, Mark. 2005. Hard job of blowing the whistle gets harder <https://www.csmonitor.com/2005/0120/p13s02-sten.html>(accessed October 4, 2020).
- De Swardt, R. 2008. SAMWU Shouts Corruption, Nepotism. <http://www.zoutnet.co.za/details.asp?StoNum=>(accessed October 11, 2020).
- Dimbaza, S. 2009. Addo Residents Want Mayor Fired. The Eastern Cape Herald. <http://www.theherald.co.za>(accessed January 4, 2021).
- Hartley, W. 2015. ANC rides roughshod over House on Nkandla. Business Day. (accessed October 14, 2020).<https://www.sowetanlive.co.za/news/south-africa/2018-01-12-ycl-accuses-supra--of-corruption/>(accessed October 14, 2020).
- Madonsela, Marvelous. 2014. Five cases that put the Public Protector in the spotlight. t <http://www.thedailyvox.co.za/marvelous-madonsela-five-cases-that-put-the-public-protector-in-the-spotlight/> (accessed September 16, 2020).
- Magenu, K. 2009. Alfred Nzo Municipality Dissolved.<http://www.feveronline.co.za/details.asp?StoNum=3683> (accessed December 16, 2020).
- Mathekga, R. 2017. Effectiveness of anti-corruption agencies in Southern Africa “A review by Open Society Initiative for Southern Africa. [https://www.corruptionwatch.org.za/wp-content/uploads/2017/08/osisa\\_acc\\_text\\_29mar1130\\_web2.pdf](https://www.corruptionwatch.org.za/wp-content/uploads/2017/08/osisa_acc_text_29mar1130_web2.pdf)(accessed October 4, 2020).
- Mirugi-Mukundi, Gladys T.. 2006. The Impact of corruption on governance: An Appraisal of the Practice of the Rule of Law in Kenya. [https://repository.up.ac.za/bitstream/handle/2263/1222/mirugi-mukundi\\_gt\\_1.pdf](https://repository.up.ac.za/bitstream/handle/2263/1222/mirugi-mukundi_gt_1.pdf)? (accessed January 06, 2021).
- Mkhwebane, B. 2020. [Public Protector Report on President Cyril Ramaphosa/Bosasa](https://www.polity.org.za/article/public-protector-report-on-president-cyril-ramaphosabosasa-2019-07-19). <https://www.polity.org.za/article/public-protector-report-on-president-cyril-ramaphosabosasa-2019-07-19> Report 37 of 2019/20 of the Public Protector report(accessed January 14, 2020).
- Ngwako, Modjadji. 2018. YCL accuses Supra Mahumapelo of corruption. <https://www.sowetanlive.co.za/news/south-africa/2018-01-12-ycl-accuses-supra--of->

corruption/(accessed October 14, 2020).

Ntsaluba, G. 2008. R1 Land' Battle Heads to Court. [http://www.news24.com/content.South Africa/ Politics/1057](http://www.news24.com/content/South Africa/ Politics/1057)(accessed August 14, 2020).

Pope, J. 2000. 'The national integrity system' in: The Source Book Confronting Corruption: the elements of a national integrity system. [https://books.google.co.za/books/about/Confronting\\_corruption.html?id=ev0UAQAIAAJ&redir\\_esc=y](https://books.google.co.za/books/about/Confronting_corruption.html?id=ev0UAQAIAAJ&redir_esc=y) (accessed September 20, 2020).

Skenjana, N., Ngamlana, N., Mabhula, T., Mgwebi G., Sokupa, T., and Kimemia T, Afesis-corplan (2010). Understanding the impact of corruption on service delivery in the local government. <https://ggln.org.za/media/k2/attachments/SoLG.2010-Afesis-corplan.pdf> (accessed June 14, 2020).

Tshetlo, Mmakgomo. 2017. She says President Zuma was uncomfortable with her and her decisions which saw changes to the ANC and Motsoeneng ousted.. [www.702.co.za/articles/273557/listen-makhosi-khoza-spills-the-beans-on-why-she-quit-the-anc](http://www.702.co.za/articles/273557/listen-makhosi-khoza-spills-the-beans-on-why-she-quit-the-anc) (accessed January 16, 2021).

Vos, U. 2008. Ekurhuleni Purse Minus Millions. The Citizen. <http://www.citizen.co.za/index/article.aspx?pDesc=73886,1,22> (accessed October 14, 2020).