CRITICAL ASSESSMENT OF CORRUPTION IN MUNICIPALITIES AND ITS IMPACT IN SERVICE DELIVERY: CASE STUDY BUFFALO CITY METROPOLITAN MUNICIPALITY

BY: PRICE MIKE BASOPU

A DISSERTATION SUBMITTED TO THE SCHOOL OF GOVERNMENT, UNIVERSITY OF FORT HARE, IN FULFILLMENT OF REQUIREMENTS FOR THE DEGREE OF DOCTOR OF PUBLIC ADMINISTRATION

SUPERVISOR
PROFESSOR D. R. THAKHATHI

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Together in Excellence
ABSTRACT

Many African countries including Africa South have been experiencing many challenges such as corruption, fraud and misappropriation of fund in this new democratic dispensation. In this regard, the municipalities are viewed as the most affected institutions, with the Eastern Cape Province identified as culprit number one engaging in corrupt activities.

There are a number of contributing factors, as attributed in the study, but most prevalent among these are capacity issues in most of these municipalities, with fewer personnel and less capacity. Challenges of corruption in municipalities are perpetrated mainly by municipal officials, councilors and members of the public.

This study, identified corruption as one of the challenges facing municipalities in the Eastern Cape. It involves both the achievements and limitations that have been experienced; and indeed, there are still numerous issues to be addressed and accomplished. It discusses some critical issues such as how corruption has been the mother of the day in South Africa and its effect on the public sector in general. In addition, misappropriation of public resources and corruption immersed the nation as a whole into a greater challenge rather than focusing on service delivery issues.

There are situations, within municipalities, where the majority of senior officials, who may be in possession of valuable information, are always under suspension. The findings of the study also show that all the municipalities operating in this new democratic dispensation have not been able to prepare a transparent annual financial year report at the end of the year. In fact, the majority of them always obtain disclaimer or adverse reports from the Office of Auditor-General (AG), despite numerous attempts and interventions by the AG’s office and the Provincial Treasury to rectify the situation.

The challenges of leadership crises in some of these municipalities, both administratively and politically have been critically examined. The findings show that between 2012 and 2015 financial years, some of these municipalities have been without full-time Accounting Officers; people were only seconded or in acting capacity, and some of them were under administration, which is section 139 (c) of the constitution.
There were numerous attempts of interventions by the national leadership of the ANC in the ANC regional structures which in many instances were the root cause of the problems or divisions, as well as in municipalities where in Buffalo City Metro and Nelson Mandela Metro respectively there were leadership changes or redeployments.

The issue of corruption in the municipalities is compromising and impact negatively in the service delivery. It can be concluded that municipalities are characterized by a number of instances of corruption perpetrated mainly by municipal officials, councilors and members of society. Bribery, fraud, nepotism, and systematic corruption are some of the forms of corruption that take place in municipalities in South Africa.

There are systems in place to fight corruption, but the reality is that they are very weak and ineffective. The anti-corruption strategies put in municipalities have general functioned poorly hence the prevailing the situation. There is glaring non-compliance with the Municipal Finance Management Act (MFMA), the Treasury Regulations and their own Procurement Procedures and Procurement Policies.

It is evident that despite the achievement by an ANC led government for almost over 21 years of democracy, there remain many political and administrative challenges especial in municipalities. The fundamental question need to be posed and address therefore is, how best these challenges can be addressed and turn around service delivery to a tangible outcome.

The Constitution of the Republic of South Africa provides for the promotion and maintenance of a high standard of professional ethics in the public service. Public resources are vulnerable to abuse by unscrupulous elements, both inside and outside government and therefore requires careful monitoring and control.

The existing legislative framework is solid but fragmented and requires review and consolidation to improve its efficiency.

To achieve that government requires an approach that is developmental in nature. Governance should be able to take control of the organization’s systems and at the same time adaptable to the environment in a way strengthens the capacity to achieve goals.
DECLARATION

I, Price Mike Basopu, hereby declare that this dissertation, submitted to the University of Fort Hare, for the Degree of Doctor in Public Administration, has never been previously submitted by me for a degree, at this or any other university; that this is my own work in design and execution and that all material contained therein has been duly acknowledged.

Signed________________________________________

Date__________________________________________
DEDICATION

I dedicate this study to my family members, my wife Philiswa who supported me throughout the academic journey. My late father Milton and my mother Novikile who was brutally killed by her grandson in December 25 2014, for growing me up under extremely difficult conditions, their encouragement and support in ensuring that I go to school selling sorghum beer (umpampampa) to raise funds for my school tuition though they themselves have never been schooled. As well as my brothers, sisters and friends.

To the official of the Buffalo City Metropolitan Municipality who supported me unreservedly in the research process.

To my former lecturer on Local Government and Public Administration at the University of Fort Hare, the late Ms B.H. Skakane.

To my late friend, a comrade, a communist, a true revolutionary until the end and a former MEC for Social Development in the Eastern Cape Province, Ms Ncumisa Chwayita Kondlo who inspired me through my life under extreme conditions.

To all those, who contributed towards the realization of this achievement.
ACKNOWLEDGEMENTS

A special word of gratitude to my supervisor, Professor D. R. Thakhathi, who has been instrumental in guiding and encouraging me throughout this research process. His patience and supportive style of supervision did not discourage me, but gave me more strength and confidence. Without his support and guidance, this document would not have been realised.

I appreciate the effort of Dr T.R. Mle for the foundation he laid and the encouragement he provided for me at the beginning of this programme; such as the partnership between the Eastern Cape Provincial Legislature, University of Fort Hare and European Union for members of the Eastern Cape Provincial legislature. My gratitude also goes to Professor Hendrick Kanyane for his support throughout this programme.

The former Premier of the Eastern Cape Provincial Government and now the Speaker of the Provincial Legislature, Ms Noxolo Kiviet, who initiated this programme and being part of it herself.

The Chairperson of Buffalo City Metropolitan Municipality Municipal Public Accounts Committee, Mr Sakhumzi Caga for his assistance in obtaining some of the information.
DEFINITIONS

**Bribery** can be described as the offering of something which is most often money, but can also be goods or services in order to gain unfair advantage. Common advantage can be to sway a person’s opinion, action or decision or change outcome of legal processes. The offering of gifts or money to a public functionary thereby influencing the functionary to act undeservedly in favour of the giver.

**Fraud** implicates actions or behavior by public servants, other persons or entities, fooling others into providing a benefit that would not normally accrue to the relevant public servants.

**Embezzlement** is the illegal taking or appropriation of money or property that has been entrusted to a person but is actually owned by another. In political terms this is called graft which is when a political office bearer unlawfully uses public funds for personal gains or purposes.

**Nepotism** is the practice or inclination to favour a group or person who is a relative when giving promotion or jobs. This is often based on concept of familism which is believing that a person must always respect and favour family in all institutions. This lead some political officials to give privileges and positions of authority to relatives based on relationships and regardless of their actually abilities.

**Extortion** is threatening or inflicting harm to a person, their reputation, or their property in order to unjustly obtain money, actions, services, or other goods from the person. Blackmailing is another form of extortion.

**Patronage Systems** consist of the granting favours, contacts, or appointment to positions by local office bearer or candidate for political office in return for political support. Many times patronage is used to gain support and votes in elections or passing legislation. Patronage systems disregard the formal rules of municipalities and use personal instead of formalized channels to gain an advantage.
Abuse of Power comprises a public servant using the relevant vested authority to benefit another public servant, person or entity, improperly. For example, during a tender process, before the actual selection of a successful contractor, a specific individual is earmarked to obtain the contract, or the head of the department expresses a personal wish to see the contract awarded to a specific person. Using authority to give orders excessively or for unlawful purpose.

Accountability in essence means to be answerable for one’s actions, having the obligation to answer questions regarding decisions and or actions taken. Accountability goes beyond reporting of the facts and figures, but asks for explanations and justification, therefore it enquires not just what was done, but why was it done.

Transparency delineates openness. It is a process of doing things in a candid and frank manner.

Efficiency demarcates producing satisfactory results without wasting time or energy. This is one of the tools used in government departments, to measure performance of government officials. It entails maximum output with minimum input. Production of goods and rendering of services without wasting money, material and labour.

Effectiveness defines producing the intended results. It further allocates making a striking impression and finishing on time. It entails achieving goals set. Satisfactory output of goods or services to achieve set objectives.

Corruption, a dishonest, bribable, fraudulent or dishonorable action by a public official, office-bearer or any other person. Corruption will always take place where a person makes an offer of a gift, payment of sum of money or other benefit to influence the recipient to act dishonestly and thus commit an offence.

Disciplinary code, the document which prescribes the conduct expected of public officials and lists punishable misdeeds.

Disciplinary action, the action taken by an employer against an employee who acted improperly in the performance of his work and thus committed misconduct.
*Ethics*, in public administration ethics is the collection of moral principles, norms, values and obligations that serve as conduct rules to be observed by political office bearers and officials to ensure that actions remain focused on the promotion of the general welfare of all members of the population.

*Favouritism*, the unfair giving of preference, at the cost of others, to person or group by a political office bearer or an official. Favouritism leads to the favoured person receiving unjust benefits.

*Misconduct*, unacceptable conduct or behavior caused by intentional wrongdoing.

*Misappropriation*, unauthorized use or spending of another’s money. Embezzling or stealing of the money of another person or an institution.

*Conflict of interest*, this involves a public servant acting or failing to act on a manner where the public servant has an interest.
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<td>Asset Forfeiture Unit</td>
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<td>ALGA</td>
<td>Australian Local Government Association</td>
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<td>AG</td>
<td>Auditor General</td>
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<td>ATT</td>
<td>Anti-Corruption Task Team</td>
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<td>ANC</td>
<td>African National Congress</td>
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<td>BAC</td>
<td>Bid Adjudication Committee</td>
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<td>BEC</td>
<td>Bid Evaluation Committee</td>
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<td>BEE</td>
<td>Black Economic Empowerment</td>
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<td>BBBEE</td>
<td>Broad Based Black Economic Empowerment</td>
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<td>CBA</td>
<td>Cost Benefit Analysis</td>
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<td>CCA</td>
<td>Country Corruption Assessment</td>
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<td>CIPC</td>
<td>Companies and Intellectual Property Commission</td>
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<td>COGTA</td>
<td>Cooperative Governance and Traditional Affairs</td>
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<td>CBOs</td>
<td>Community Based Organisations</td>
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<td>CCMA</td>
<td>Commission for Conciliation, Mitigation and Arbitration</td>
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<td>CFO</td>
<td>Chief Executive Officer</td>
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<td>COPE</td>
<td>Congress of the People</td>
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<tr>
<td>COSATU</td>
<td>Congress of South African Workers Union</td>
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<td>CSOs</td>
<td>Civil Society Organisations</td>
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<tr>
<td>DA</td>
<td>Democratic Alliance</td>
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<td>DORA</td>
<td>Division of Revenue Act</td>
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DPLG  Department of Provincial and Local Government
DPW  Department of Public Works
DBSA  Development Bank of Southern Africa
DG  Director General
DOD  Department of Defence
DOE  Department of Education
DPSA  Department of Public Service and Administration
ECDC  Eastern Cape Development Corporation
EFT  Electronic Funds Transfer
EU  European Union
ECPG  Eastern Cape Provincial Government
FCC  Financial and Fiscal Commission
FIFA  Federation Internationale de Football Association
FIU  Forensic Investigation Unit
FPP  Fraud Prevention Plan
GRAP  Generally, Recognised Accounting Practices
GAAP  Generally Accepted Accounting Practices
GAMAP  Generally Accepted Municipal Accounting Practices
GEAR  Growth, Employment and Redistribution Strategy
GSLN  Governing the States and Localities Newsletter
HDI  Historical Disadvantage Individuals
HOD  Head of the Department
ICT  Information and Communication Technology
IGF  Intergovernmental Forum
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<tr>
<td>IGR</td>
<td>Intergovernmental Relations</td>
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<td>IDP</td>
<td>Integrated Development Plan</td>
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<td>IMF</td>
<td>International Monetary Fund</td>
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<td>IPID</td>
<td>Independent Police Investigative Directorate</td>
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<td>KSD</td>
<td>King Sabata Dalindyebo Local Municipality</td>
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<tr>
<td>LGTAS</td>
<td>Local Government Turn Around Strategy</td>
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<td>LED</td>
<td>Local Economic Development</td>
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<td>LRA</td>
<td>Labour Relations Act</td>
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<td>MCLM</td>
<td>Merafong City Local Municipality</td>
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<tr>
<td>MEC</td>
<td>Member of the Executive Council</td>
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<td>MIG</td>
<td>Municipal Infrastructure Grant</td>
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<td>MINMEC</td>
<td>Minister and Member of Executive Council</td>
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<td>M &amp; E</td>
<td>Monitoring and Evaluation</td>
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<td>MFMA</td>
<td>Municipal Finance Management Act</td>
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<td>MLRF</td>
<td>Marine Living Resources Fund</td>
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<td>MM</td>
<td>Municipal Manager</td>
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<td>MPL</td>
<td>Memer of Provincial Legislature</td>
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<td>MSA</td>
<td>Municipal Systems Act</td>
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<td>Municipal Structures Act</td>
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<td>MSCM</td>
<td>Municipal Supply Chain Management</td>
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<td>MTEF</td>
<td>Medium Term Expenditure Framework</td>
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<td>MUNIMEC</td>
<td>Municipalities and Member of Executive Council</td>
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<td>NACF</td>
<td>Anti-Corruption Forum</td>
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<td>NCOP</td>
<td>National Council of Provinces</td>
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</table>
NDPP  National Directorate of Public Prosecution
NPA  National Prosecuting Authority
NEDLAC  National Economic Development and Labour Council
NGOs  Non-Governmental Organisations
NMB  Nelson Mandela Bay
NPC  National Planning Commission
OPEX  Operational Expenditure
OTP  Office of the Premier
PAC  Pan Africanist Congress
PCC  Presidential Coordinating Council
PEC  Provincial Executive Committee
PFMA  Public Finance Management Act
PMU  Project Management Unit
PPT  Provincial Planning Treasury
PRASA  Passenger Rail Agency of South Africa
PRC  Presidential Review Commission
PSC  Public Service Commission
PSCBC  Public Service Coordinating and Bargaining Council
PSR  Public Service Regulations
PWC  Price Water Coopers
RDP  Reconstruction and Development Plan
REC  Regional Executive Committee
RSC  Regional Services Council
SAA  South African Airways
<table>
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<tr>
<th>Acronym</th>
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<tr>
<td>SACN</td>
<td>South African Cities Network</td>
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<td>SACP</td>
<td>South African Communist Party</td>
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<td>SALGA</td>
<td>South African Local Government Association</td>
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<tr>
<td>SAMEA</td>
<td>South African Monitoring and Evaluation Association</td>
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<td>SAPS</td>
<td>South African Police Service</td>
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<tr>
<td>SARC</td>
<td>South African Rail Commuters Corporation</td>
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<td>SARS</td>
<td>South African Revenue Services</td>
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<td>SASSA</td>
<td>South African Social Security Agency</td>
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<td>SATAWU</td>
<td>South African Transport Workers Union</td>
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<tr>
<td>SCOPA</td>
<td>Standing Committee on Public Accounts</td>
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<tr>
<td>SDBIP</td>
<td>Service Delivery and Budget Implementation Plan</td>
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<tr>
<td>SIU</td>
<td>Special Investigation Unit</td>
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<td>SMS</td>
<td>Senior Management Service</td>
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<td>SSA</td>
<td>State Security Agency</td>
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<td>UDM</td>
<td>United Democratic Movement</td>
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<td>UN</td>
<td>United Nations</td>
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<tr>
<td>UNCDF</td>
<td>United Nations Capital Development Fund</td>
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<tr>
<td>USA</td>
<td>United States of America</td>
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<td>VAT</td>
<td>Value Added-Tax</td>
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CHAPTER ONE: INTRODUCTION AND GENERAL ORIENTATION

1.1 INTRODUCTION AND BACKGROUND

Chapter 7, section 153 of the Constitution of the Republic of South Africa, Act 106 requires that a municipality ‘must structure and manage its administration, budgeting and planning processes to give priority to the basic needs of community, and to promote the social and economic development of the community’. It further states that the national and provincial governments, by legislative and measures, must support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their functions.

Buffalo City Metropolitan Municipality (BCMM) is the key urban Centre of the Eastern Cape Province, East London being a primary node followed by King Williams Town. King Williams Town and Bhisho are headquarters of Eastern Cape Provincial Administration. According to the Statistic South Africa (Stats SA 2011) the total population of Buffalo City Metro was at 789 454. It acquired a status of being a metro in 2011.

According to Thornhill (2012: 31), for municipal elections of 2011, municipalities which had not performed satisfactory were abolished and re-demarcated into other municipalities. For example, the Kungwini Local Municipality and the Metsweding District Municipality were incorporated into metropolitan municipality. Two additional metropolitan municipalities were also established in 2011, namely, Mangaung (including Bloemfontein) and Buffalo City (including East London).

After 1994 breakthrough people had high expectations for change and betterment of their lives. Voters wanted to see government living up to its election promises to improve their lives. Similarly, communities have the right to demand basic services from the government. But unfortunately things could not go the way people expected to happen for a number of reasons.

According to the National Anti-Corruption Forum (NACF) 2001, South Africa is a relatively new democracy that emerged in 1994 after decade of struggle. During the years of struggle, South Africa was a fragmented country and the majority of its people were subjected to a corrupt political, social, economical and moral regime.
After 1994 the government that was democratically elected embarked upon a programme to develop the country to the benefit of all her people. The Reconstruction and Development Programme (RDP) was fraught with obstacles and legacies created by the apartheid system, one such obstacle was the prevalence of corruption.

According to the State of the Nation address (1999:9), the late former and the first president of the new dispensation Dr Nelson Mandela, in his opening address to Parliament, said “Our hope for the future depends on our resolution as a nation in dealing with the scourge of corruption. Success will require an acceptance that, in many respects, we are a sick society. It is perfectly correct to asset that all this was spawned by apartheid. No amount of self-induced amnesia will change the reality of history.

But it is also a reality of the present that among the new cadres in various levels of government you will find individuals who are as corrupt as, if not more as those they find in government. When a leader in a provincial legislation siphons off resources meant to fund service by legislators to the people; when employees of a government institution set up to help empower those who were excluded by apartheid defraud it for their own enrichment, then we must admit that we are a sick society. This problem manifests itself in all areas of life.” (State of the Nation Address 1999:9)

Also the former President of the Republic of South Africa after Dr Mandela, Mr Thabo Mbeki, delivering his key note address in the Second National Anti-Corruption Summit in March (2005:1), indicated that “corruption is inimical to development, it constraints the ability to fight poverty, negatively affects the economic developments, damages social values, undermines democracy and good governance. Responding to all that in the last ten years’ laws, policies and programmes have been put in place to root out corruption in the society, partnerships among social partners were established and collaborated with regional, continental and international partners. Yet more will have to be done fight corruption and confident that the Summit will give more impetus to ongoing work and help everybody to overcome whatever weaknesses that may exist in the programmes and systems design to fight corruption.”
According to the Consolidated General Report on the Audit Outcomes of Local Government (CGRAOLG) 2010/2011 local municipalities are struggling with a number of constraints and challenges which hamper their ability to deliver services.

These challenges include the followings (CGRAOLG 2010/11)

- Lack of capacity and lack of the requisite skills has left many municipalities inadequately staffed, with grave implications for service delivery;
- Public confidence in government’s ability to deliver being undermined by corruption and maladministration;
- The appointment of people without necessary skills or qualifications in senior position under the pretext of a cadre deployment;
- Lack of discipline, an absence of commitment to serving the public interest and non-adherence to the code of conduct for municipal officials is a challenge;
- The biggest challenge for local government, especially the smaller ones with no reliable revenue base, is to attract and retain competent persons across all areas of administration;
- The instability before and after elections means more acting persons and vacancies that are not filled timeously, which in turn impacts negatively on financial management and service delivery; and
- The glaring Auditor-General's report on handling of finances by municipalities especially in the Eastern Cape Province.

With regard to this research, corruption can be described as any conduct or behavior in relation to a person, entrusted with responsibilities in the public office, who violates the designated duties as a public official, aiming to obtain undue qualification of any kind for him/herself or others.

Section 4.5.3 of the code of conduct for Public Service states that an employee should not neither use his/her official position to obtain private gifts or benefits for him/herself during performance of duties nor should accept any gifts or bribes when offered, as these may be construed as bribes.
There are many factors that may contribute towards corruption, one of the most factors among these is the low economic development which has been found to be an encouraging factor for political corruption. Poverty in most cases is a known factor that encourages corruption in municipalities.

Officials who get lower wages that are not enough to provide for their necessities, they will many times become corrupt and try something like embezzling money that may entrusted to them in the supply chain management section or treasury.

On the other hand, some researchers can argue that the more money a municipality has to spend, the tendency it will have to do inefficiently, which can lead to corruption. Buffalo City Metropolitan Municipality is one example according to Auditor-General’s report 2010/11 financial year. Since it was established in 2000, Buffalo City Metro has had four full time municipal managers and a string of others on acting capacity. All of them without exception became victims of political bickering and meddling in the ruling party. Mr Andile Fani was the latest victim where he was fired by the council according to the Daily Dispatch dated the 29th September 2016. It stated that Fani was fired with immediate effect following a disciplinary process that found him guilty of illegally appointing a Cape Town-based Construction company to build houses in Reeston and supply top structures at the cost of R74-million. Also it was resolved that the Executive Mayor, Mr Xola Phakati should report the matter to the police.

There are several types of political corruption that occur in municipalities. Local governments may be more susceptible to corruption because interactions between private individuals and officials happen at a greater level of intimacy and with more frequency at decentralized levels. Forms of corruption pertaining to money like bribery, extortion, embezzlement and graft are found in municipality systems.

Other forms of political corruption are nepotism and patronage systems, influencing processes of appointing friends, relatives or girlfriends under the pretext of cadre deployment, as well as rigging of votes during national elections or political parties’ conferences to favour certain political parties, groupings or individuals.
Patronage systems disregard the formal rules of municipalities and use personal instead of formalized channels to gain an advantage.

Currently and general, corruption is rife in South Africa. This is not because there was no corruption in the past, but because in the context of democracy there is a greater awareness of the need for transparency and accountability. In addition, the Constitution of the Republic of South Africa, Act 108 of 1996 provides the legal basis for combating corruption, promoting good governance and moving away from apartheid and colonial bondages.

South Africa has committed itself to a range of multi-lateral anti-corruption agreements and has acceded to various international instruments on anti-corruption.

Kanyane (2010:77), argues that like any African Government after independence, South Africa was not immune to corruption. And he further argues that corruption has disoriented the ambitions of the democratic government to reconstruct and develop the country for a better life for all.

Instead of being able to focus on delivering quality services to people on the ground, the government has had to spend time combating corruption- through creating a democratic organizational ethos, and establishing a new work ethic and a shared vision in all spheres of government. Kanyane also argues that since 1994, while there has been transformation, this has also created opportunities for corruption and other social ills, which deprive the South African people of their rightful basic public services and benefits. Kanyane concludes by saying, even Zuma administration needs to aggressively address the issue of corruption and go further than that by making public service delivery meaningful and impactful.

It is evident that despite the strides and achievements of the ANC led government for almost over 22 years of democracy, there remain many political and administrative challenges especially in municipalities. The fundamental question to be posed and address therefore is, how best these challenges can be addressed and turn around service delivery to tangible outcomes?
The protest mass actions and strikes are showcase of the impatience of the citizens and in turn continue to frustrate the efforts of government to act responsible. Community dissatisfaction due to poor service delivery has led to protest marches and spontaneous mass actions that resulted to many causalities and the unfortunate death of Andries Tatane in the Free State Province in the hands of South African Police Services (SAPS) and in other parts of the country, (Mail & Guardian, April 13, 2011).

Municipalities cannot function effectively if the public believes that the officials are corrupt, even if they may not. There are increasing expectations from the public that municipalities should promote good governance and high standards of integrity in the public service and this fairly covered in various legislative prescripts and the Constitution of the Republic of South. All the municipalities are therefore obliged to put mechanisms in place that would promote an understanding that they are functioning with integrity hence this study.

According to Municipal Finance Management Act 2003, Section 62, (1) the Accounting Officer of a municipality is responsible for managing the financial administration of the municipality, and must for this purpose take all reasonable steps to ensure:

That the resources of the municipality are used effectively, efficiently and economically;
That full and proper records of the financial affairs of the municipality are kept in accordance with any prescribed norms and standards;
That the municipality has and maintains effective, efficient and transparent systems, of financial and risk management and internal control;
That unauthorized, irregular or fruitless and wasteful expenditure and other losses are prevented; and
That disciplinary or, when appropriate, criminal proceedings are instituted against any official of the municipality who has allegedly committed an act of financial misconduct.
Section 171 (1), states that the Accounting Officer of a municipality commits an act of financial misconduct if he/she deliberately or negligently contravenes a provision of this Act, makes, permits, or instructs another official of the municipality to make unauthorized, irregular, fruitless or wasteful expenditure.

Section 172, (3), (a) of this Act, requires a municipality to investigate allegations of financial misconduct against the Accounting Officer or any municipal official suspected of being involved in fraudulent activities.

Then, Section 173 (1), concludes that the Accounting Officer of a municipality is guilty of an offence if he/she deliberately or in a grossly negligently way contravenes or fails to comply with a provision of relevant sections, fails to take reasonable steps to implement the municipality’s supply chain management policy, to prevent unauthorized, irregular or fruitless and wasteful expenditure, or fails to take all reasonable steps to prevent corruptive practices in the management of the municipality’s assets or receipt of money or in the implementation of the municipality’s supply chain management policy.

1.2 STATEMENT OF THE PROBLEM

Municipalities throughout the country are entangled in corrupt activities on one way or another, mainly perpetrated by municipal officials, politicians and members of the public.

Indications are that there are serious problems of corruption in most municipalities throughout the country. The Consolidated General Report on the Audit Outcome of Local Government 2010/2011 is the testimony to that. The Report of the Auditor-General to the Eastern Cape Provincial Legislature and the Council of Buffalo City Metropolitan Municipality 2010/2011 is reflecting no-compliance with laws and regulations.

The Forensic Investigations that were conducted at both Metros of Nelson Mandela 2010 and Buffalo City 2011 retrospectively, are clear indications that problems of corruption are glaring and impacting negatively on service delivery.

Bribery, fraud, nepotism and systematic corruption are some of the forms of corruption that takes place in municipalities. There are a number of issues contributing thereof, among those are people who were not part of the system previously, and are now in
control of the state power in a context where the state is a major mechanism of accumulation of resources. This may manifest a promise for a favour in return for something else, which in itself constitutes corruption.

Having identified the key critical issues, the following questions are raised:

To what extent is Buffalo City Metro affected by corruption?
To what extent is corruption itself affecting service delivery?
What are possible ways to tackle the fight against corruption in Buffalo City Metro?

1.3 OBJECTIVES OF THE STUDY

The general objectives of the study are to analyze the effectiveness of the anti-corruption strategy in Buffalo City Metropolitan Municipality. Also is to critically assess the impact of corruption in service delivery.

More specifically the objectives of this study are to:

Examine the nature and extent of corruption in the municipality;
Examine the role of municipality in dealing with corruption, in order for this study to provide insight into what is expected from the municipality to fight the disease;
Identify and analyze the achievements, limitations and constraints pertaining to the formulation and implementation of Anti-Corruption Strategy within the municipality;
Provide practical and implementable recommendations for improving the fight against public service corruption in the Buffalo City Metro in particular and municipalities in general;
To assess the capacity of the Metro in dealing with fraud and corruption; and
To come up with clear mechanisms that can be used to uproot corruption and assess its impact on service delivery.

1.4 SIGNIFICANCE OF THE STUDY

The study will assist the ruling party to assess its deployment strategy and ensuring that systems are in place in all municipalities as an important sphere of governance for effective service delivery.
This study will contribute in raising public awareness on issues of corruption in municipalities. Furthermore, it enlarges the proliferation of corruption literature in the field of public administration.

This study will also contribute to policy development in an attempt to curb fraud and corruption within municipalities. In this way, the new ideas obtained will enhance the study of public administration.

1.5 CHAPTER OUTLINE/STUDY PLAN

This dissertation document has been organized in the following manner:

Chapter One: Introduction and Background

Chapter one is the introduction of the dissertation proposal. It comprises of the background, the problem statement, objectives of the study, hypothesis and significance of the study.

Chapter Two: Literature Review

Chapter two has provided a theoretical platform, from which to answer the research questions. It has provided the organization of literature in relation to the problem, presentation of literature, summary of literature, statement of hypothesis and in addition, highlight aspects used in the study.

Chapter Three: Research Methodology

Chapter three is the research methodology, which outlines and justifies the design that has been selected.

Chapter Four: Data Presentation and Analysis

Chapter four is the data presentation and analysis. This is the presentation and analysis of findings. Findings are linked to the literature and some conclusion have been drawn.
Chapter Five: Conclusions and Recommendations

Chapter five provides conclusions on all major findings and recommendations to address the challenges identified within the context of corruption, its impact on service delivery and protest mass action.

1.6 FIELD OF STUDY

The study is on Public Administration focusing on Public Finance Management.

1.7 LIMITATIONS OF THE STUDY

The situation in municipalities is so complex with the fact that in they differ in sizes depending on their capacities on the revenue bases. Those smaller ones depend mainly on conditional grants from national government.

Therefore, the information required for the study was not readily available. Also in most of the municipalities the majority of senior officials, who may be in possession of valuable information, were on suspension.

In order to overcome these obstacles, the researcher had to utilize the provisions of the Access to Information Act 2000, which allows the constitutional rights to access to any information held by public institutions and any information that is held by another person.

The Municipal Managers as Accounting Officers of the municipalities were to be sensitized on procedures followed in this regard, in order to avoid any misunderstanding or confrontation.

1.8 ETHICAL CONSIDERATION

According to Welman, Kruger and Mitchell (2005:181), ethical behaviour is important in research, as in any other field of human activity. Certain ethical considerations, concerned with such matters as plagiarism and honesty in reporting of results, arise in all research, but additional issues arise when research involves human subjects, in both the biological and social sciences. The principal underlying research ethics are universal and concern issues such as honesty and respect for the rights of individuals.
Ethical issues have been looked at in this study as required by code of ethics in order to protect people’s identities. The study has been conducted in an unbiased manner. Findings have been reported as they are and there are no manipulations to serve any body’s or party’s interests whatsoever.

1.9 LITERATURE REVIEW

According to Newman (1991:110-111), reviewing the accumulated knowledge about a question is an essential early step in research process, no matter which approach to social science one adopt. As in the area of life, it is best to find out what already known about a question before trying to answer it yourself. It begins by looking at various purposes the review can serve and also to discuss what the literature is, where to find it and what it contains.

According to Newman, goals of literature review are:

- To demonstrate a familiarity with a body knowledge and establish credibility;
- Tells a reader that the researcher knows the research in an area and knows major issues;
- To show the path of prior research and how a current project is linked to it;
- To integrate and summarize what is known in an area;
- Pulls together and synthesizes different results;
- To learn from others and stimulate new ideas;
- Tells what others have found so that a researcher can benefit from the efforts of others;
- It collects what is known up to a point in time and indicates direction for future research, and
- It divulges procedures, techniques, and research designs worth copying so that a researcher can better focus hypotheses and gain new insights.

Literature review provides a critical analysis of the literature available and identifies gaps in the literature in relation to the topic. It also provides you with an opportunity to explain what contribution the researcher is making to research in general and the field of study.
The information for the literature study was obtained from relevant books, policy documents, journal articles, media scripts, official reports and Acts.

1.10 RESEARCH METHODOLOGY

Neuman, (79-80:1991) while describing the meaning of methodology, indicates that there are three approaches, namely: Positivist Social, Interpretive Social Science and Critical Social Science.

Neuman argues that Positivist Social science is used widely, and *positivism*, broadly defined is the approach of natural science. Interpretive Social Science can be traced to German sociology Max Weber (1864:1920) and German philosopher Wilhem Diltney (1833-1911).

Weber argued that social science needed to study social action with purpose. Weber further argue that Interpretive researcher often use participant observation and field research. Critical Social Science versions are called dialectical materialism, class analysis and structuralism and this can be traced to Karl Max (1818-1883), according to him.

Research methodology is general concerned with formulating systematic and logically coherent sets of methods for acquiring knowledge and information. In this study beside targeting to meet the criteria of rigor and replication the methodology design had to meet the following criteria: (Weber)

The issues raised, obviously were potential sensitive, controversial and emotive by their nature. This therefore had demanded a need for careful attention to item construction and quality assurance in respect of disclosure of confidentiality and reliability.

Levels of participation were expected to be low given the nature of the study, where some cases being *sub judice*. But endorsement was sorted from those in authority for the purpose of the study.

The purpose of the study relates to specific aims to be assessed and explained. In addressing this phenomenon, two components were to be used, namely:
A theory construction component based on literature study, and
A theory testing components where research questionnaire and survey were conducted.

There are two types of social research, namely qualitative and quantitative research. According to Newman (1991:13), although both share basic principles of science, the two approaches differ in significant ways. Each has its strengths and limitations.

The researcher had used qualitative research. In this approach procedures are not strictly formalized, while the scope is more likely to be defined and more philosophical mode of operation is adopted.

Qualitative research is primarily exploratory research. It is used to gain an understanding of underlying reasons, opinions, and motivations. It provides insights into the problem or helps to develop ideas or hypotheses for potential quantitative research. Qualitative research is also used to uncover trends in thought and opinions, and dive deeper into the problem. Qualitative data collection methods vary using unstructured or semi-structured techniques.

Some common methods include focus groups (group discussions), individual interviews, and articulation or observations. The sample size is typically small, and respondents are selected to fulfill a given quota.

Quantitative research is used to quantify the problem by way of generating numerical data or data that can be transformed into useable statistics. It is used to quantify attitudes, opinions, behaviors, and other defined variables and generalize results from a larger sample population. Quantitative research uses measurable data to formulate facts and uncover patterns in research. Quantitative data collection methods are much more structured than qualitative data collection methods. Quantitative data collection methods include various forms of surveys, paper surveys, mobile surveys and kiosk surveys, face-to-face interviews, telephone interviews, longitudinal studies, website interceptors, and systematic observations.
Also observations are determined by information richness of the settings, and types of observations used are modified to enrich understanding. The qualitative researcher is likely to collect, analyze, and interpret data simultaneously, going back and forth between these steps, tends to build new theory as well as draw on existing theory during these steps.

According to Creswell (1994: 10) in qualitative research the rules and procedures are not fixed. Qualitative research is open and emerging, and therefore this design calls for an individual who is willing to take risk inherent in an ambiguous procedure.

Clear processes and skilled planning of the research are therefore crucial aspects of qualitative research. Winter (2012:270), in Peters and Pierre, argues that while the first and second generations of implementation studies have been helpful in directing attention to implementation problems and identifying implementation barriers and factors that might ease implementation, the research had not succeeded in sorting out the relative importance of the explanatory variables.

A substantial part of the studies could be criticized as merely presenting, often long, checklist of variables that might affect implementation. Malcom Goggin (1986) pointed out that because implementation research had been dominated by single case studies, it was plagued by the problem of ‘too few cases and too many variables’ or by over determination, where two or more variables explain variation in the independent equally well.

The single study approach did not allow for any control of third variables. According to Goggin this problem had hampered the development of implementation theory. He therefore called for third generation of implementation studies that would test theories on the basis of more comparative case studies and statistical research designs which could increase the number of observations and allow control for third variables.

1.11 CONCLUSION

According to the report of the Auditor-General to the Eastern Cape Provincial Legislature and Council on the Buffalo City Metropolitan Municipality 2013/2014, unauthorized,
irregular, fruitless and wasteful expenditure incurred by the municipality was not always investigated to determine whether any person was liable for the expenditure, as required by section 32(2)(a)(ii) of MFMA. Reasonable steps were not taken to prevent authorized, irregular, fruitless and wasteful expenditure as required by MFMA. Council certified irregular expenditure as irrecoverable without conducting an investigation into every award made, as required MFMA.

Reasonable steps were not taken to prevent unauthorized, irregular, fruitless and wasteful expenditures as required by MFMA. Quotations were accepted from prospective providers who were not registered on the list of accredited prospective providers and did not meet the listing requirements prescribed by Supply Chain Management policy.

For prior period awards identified through the audit no effective steps were taken to prevent or combat the abuse of the SCM processes in accordance with SCM regulation. Awards were made to providers whose directors or members were in the service of the municipality, as well as providers who were in the service of other state institutions. Persons in the service of the municipality or close family members who had a private or business interest in contracts awarded by municipality failed to disclose such interest as required by SCM regulation.

Also contracts and quotations were awarded to bidders who had not submitted declaration on whether they were employed by the state or connected to any person employed by the state as required by SCM regulation.

The performance management system and its related controls were inadequate as it did not describe and represent the processes of performance.

Leadership had not instituted all disciplines necessary to enable oversight and monitoring that promote efficiency and effectiveness in financial management, service delivery reporting and compliance with laws and regulation.

The leadership did not implement effective human resource management to ensure that adequately and sufficiently skilled resources are in place as a number of key positions within top and middle management were vacant for extended periods of time.
The continued absence of permanent officials to lead and guide the municipality compromised the effectiveness and stability of the control environment.

Bribery, fraud, nepotism and systemic corruption are some of the forms of corruption that are taking place in municipalities. There are systems in place to curb corruption, but they are weak and ineffective. The anticorruption strategies, put in place in the Buffalo City Metropolitan Municipality, have in general, functioned poorly. There is glaring non-compliance with the Municipal Finance Management Act (MFMA), the National Treasury Regulations, the Procurement Procedures of the municipality et cetera, within Buffalo City Metropolitan Municipality. In addition, ongoing monitoring and supervision to enable an assessment of the effectiveness of internal control over financial reporting were not undertaken. The root cause of these deficiencies was due to inadequate monitoring of Supply Chain Management processes.

There were serious challenges facing the leadership of Buffalo City Metropolitan Municipality during the era of Ncitha and Fani, both politically and administratively. However, after the deployment of Mr Mtsi as an Executive Mayor and Mr Xola Phakathi as his Deputy things have drastically changed and there is a relevant stability. The unfortunate part is that the Accounting Officer is on suspension and there is no full time Municipal Manager. The organisational structure of the municipality does not address areas of responsibility and lines of reporting to support effective control over financial reporting. Management’s philosophy and operating style do not promote effective control over financial reporting. There is inadequate segregation of duties to prevent fraudulent data and asset misappropriation.

There are situations where the majority of senior officials in the municipality, who may be in possession of valuable information, are always under suspension. These challenges therefore highlight the need for capacity building on anti-corruption programmes, as required by the legislation within the municipality.
CHAPTER TWO: LITERATURE REVIEW

2.1 INTRODUCTION

According to Newman (1991:110-111), reviewing the accumulated knowledge about a question is an essential early step in research process, no matter which approach to social science one adopt. As in the area of life, it is best to find out what already known about a question before trying to answer it yourself. It begins by looking at various purposes the review can serve and also to discuss what the literature is, where to find it and what it contains.

According to him, goals of literature review are:

- To demonstrate a familiarity with a body knowledge and establish credibility;
- Tells a reader that the researcher knows the research in an area and knows major issues;
- To show the path of prior research and how a current project is linked to it;
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- Pulls together and synthesizes different results;
- To learn from others and stimulate new ideas;
- Tells what others have found so that a researcher can benefit from the efforts of others;
- It collects what is known up to a point in time and indicates direction for future research; and
- It divulges procedures, techniques, and research designs worth copying so that a researcher can better focus hypotheses and gain new insights.

Literature review provides a critical analysis of the literature available and identifies gaps in the literature in relation to the topic. It also provides you with an opportunity to explain what contribution the researcher is making to research in general and the field of study. The information for the literature study was obtained from relevant books, policy documents, journal articles, media scripts, official reports and Acts. Legislation and other regulatory instruments related to public financial management are explained below.
2.2 LEGISLATIVE AND REGULATORY FRAMEWORK
In this section legislative and regulatory frameworks will be discussed, scrutinised and analysed as they they relate to the study.

According to this Act, councilors must disclose to the municipal council, or to any committee of which that councilor is a member, any direct or indirect personal or private business interest that councilor or spouse, partner or business associate of that councilor may have in any matter before the council or committee. A councilor must withdraw from proceedings of the council or committee when the matter is considered by the council, unless the council or committee decides that the councilor's direct or indirect interest in the matter is trivial or irrelevant. A councilor who, or whose spouse, partner, business associate or close family member, has or acquires any direct benefit from a contract concluded with the municipality, must disclose full particulars of the benefit of which the councilor is aware at the first meeting of the municipal council at which it is possible for the councilor to make the disclosure.

In Buffalo City Metropolitan Municipality, the councilors did not disclose to the municipal council according to the Auditor General’s report as required by this Act.

The aim of the Municipal Structures Act is to provide for the establishment of municipalities in accordance with the requirements relating to categories and types of municipalities; to establish criteria for determining the category of municipality to be establish in the area; to define the types of municipality that may be established within each category; to provide for an appropriate division of functions and powers between categories of municipality; and to regulate the internal systems, structures and office-bearers of municipalities.

According to this Act, provincial legislation must determine for each category of municipality the different types of municipality that maybe established in that category in province.

Internal systems were not properly regulated in the BCM as required by this Act.
2.2.3 The Municipal Finance Management Act 2003, (Act 56 of 2003)

In terms of this Act, the accounting officer of a municipality is responsible for managing the financial administration of the municipality, and must for this purpose take all reasonable steps to ensure that, resources of the municipality are used effectively, efficiently and economically.

Importantly, the Accounting Officer of municipality must also ensure that all proper records of the financial affairs of the municipality are kept in accordance with any prescribed norms and standards. That unauthorized, irregular or fruitless and wasteful expenditure and other losses are prevented.

Also that disciplinary or, when appropriate, criminal proceedings are instituted against any official of the municipality who has allegedly committed an act of financial misconduct.

Section 171(1), states that an Accounting Officer of a municipality commits an act of financial misconduct if he/she deliberately or negligently contravenes a provision of this Act, makes, permits, or instructs another official of the municipality to make unauthorized, irregular, fruitless or wasteful expenditure.

Section 172 (3), (a) of this Act requires a municipality to investigate allegations of financial misconduct against the Accounting Officer or any municipal official suspected of being involved in fraudulent activities.

Then, section 173 (1), concludes that the Accounting Officer of a municipality is guilty of an offence if he/she deliberately or in a grossly negligently way contravenes or fails to comply with a provision of relevant sections, fail to take reasonable steps to implement the municipality’s supply chain management policy.

If found guilty a person is liable on conviction of an offence in terms of section 173 to imprisonment for a period not exceeding five years or to an appropriate fine determined in terms of applicable legislation according to this Act.

The accounting officer must act with fidelity, honesty, integrity, and in the best interest of the municipality in managing its financial affairs.
The Accounting Officer must disclose to the municipal council and the mayor all material facts which are available to him or her and seek, within the sphere of influence of the accounting officer, to prevent any prejudice to the financial interest of the municipality. An accounting officer may not act in any way that is inconsistent with the duties assigned to him/her in terms of this Act.

In BCM as much as councilors are exempted to participate in procurement processes according to sections 117 and 118 of this Act, they do influence the process by collaborating with corrupt officials who in turn will be assured of the renewal of their contracts or promotions.

Financial administration has not been properly managed in this municipality as required by this act, hence the finances are in shambles. The Accounting Officer of this municipality did not act with fidelity, honesty, integrity and in the best interest of the municipality in managing its financial affairs hence he was suspended for contravening or failure to comply with the relevant sections of this Act.

2.2.4 The Public Finance Management Act 1999, (Act 1 of 1999)

Chapter ten of this Act defines financial misconduct, and deals with the procedures for disciplining those public officials guilty of financial misconduct. It also includes a provision for criminal prosecution to apply where there is gross financial misconduct.

BCM has only now complied with the provision of this Act after the intervention of the ANC Provincial Executive Committee by deploying Mr Mtsi as Executive Mayor and Mr Xola Phakathi as his Deputy, which resulted with the suspension of Municipal Manager and other senior officials of the municipality.


Section 195 of the constitution lays down the values and principles that govern public administration. These values and principles include:

- A high standard of professional ethics;
- Efficient, economic and effective use of resources;
- Services must be provided impartially, fair equitably and without bias,
Public administration must be accountable; and
Transparency must be fostered by providing the public with timely, accessible and accurate information.

In addition to the above values and principles, the constitution contains further requirements related to employment and procurement. It is also very important to stress that Section 197 (3) states that no public service employee may be favoured or prejudice because an employee supports a particular party or cause. Section 217 (1) requires that all organs of the state national, provincial and local spheres of government or any other institution identified in national legislation to contract for goods or services in accordance with system which is fair, equitable, transparent, competitive and cost-effective.

Section 139 (1) states that, when a municipality cannot or does not fulfill an executive obligation in terms of the constitution or legislation, the relevant provincial executive may intervene by taking any appropriate steps to ensure fulfillment of that obligation, including-

Issuing a directive to the Municipal Council, describing the extent of the failure to fulfill its obligations and stating any steps required to meet its obligation;

Assuming responsibility for the relevant obligation in that municipality to the extent necessary to-

i. Maintain essential national standards or meet established minimum standards for the rendering of a service,

ii. Prevent the Municipal Council from taking unreasonable action that is prejudicial to the interests of another municipality, or

iii. Dissolving the Municipal Council and appointing an administrator until a newly elected Municipal Council has been declared elected, if exceptional circumstances warrant such a step.

Again having this provision of the Constitution after 22 years of democracy not one municipality was ever dissolved, reasons therefore are political and of cause is an expensive exercise. Also BCM as an institution has never comply with values and principles that govern the public administration as stipulated in this constitution.
2.2.6 The Protected Disclosures Act 2000, (Act 26 of 2000)

This Act sets out clear and simple framework to promote possible whistle-blowing by:

- Reassuring workers that silence is not the only safe option,
- Providing strong protection for workers who raise concerns internally,
- Reinforcing and protecting the right to report concerns to public protection agencies such as Public Protector, Auditor-General and Law Enforcement Agencies, and
- Protecting more general disclosures provided that there is a valid reason for going wider and that the particular disclosure is reasonable one.

Also as provided by this Act BCM has never comply with its provisions, which was supposed to assist the institution a great deal.

2.2.7 The Promotion to Access Information Act 2000, (Act 2 of 2000)

The purpose of this Act is to give effect to the constitutional right access to any information held by the state and any information that is held by another person and that is required for the exercise or protection of any rights, and provide for matters connected therewith. To establish voluntary and mandatory mechanisms or procedures to give effect that is right in a manner which enables persons to obtain access to records of public or private bodies as swiftly, inexpensively and effortlessly as reasonable possible. To promote transparency, accountability and effective governance of all public and private bodies, including but not limited to, empowering and educating everyone. Buffalo City Metropolitan Municipality did not promote transparency, accountability and effective governance and educating its staff and councilors as required by this Act.

2.2.8 The Promotion of Administrative Justice Act 2000, (Act 3 of 2000)

The purpose of this Act is to give effect to the right to administrative action that is lawful, reasonable and procedural fair and to the right to written reasons for administrative action as contemplated in section 33 of the Constitution of the Republic of South Africa, 1996, and to provide for matters incidental thereto. Any person may institute proceedings in a court or tribunal for the judicial review of an administrative action.
2.2.7 The Financial Intelligence Centre Act 2001, (Act 38 of 2001)

In terms of this Act, a Financial Intelligence Centre and Money Laundering Advisory Council need to be established in order to combat money laundering activities and financing of terrorist and related activities; to impose certain duties on institutions and other persons who might be used for money laundering purposes and the financing of terrorist and the related activities.

Also a Financial Intelligence Centre will be established as an institution outside the public service but within the public administration as envisaged in section 195 of the constitution.

Objectives of the Centre include:

- To assist in identification of the proceeds of an unlawful activities and combating of money laundering activities and financing of terrorist and related activities,
- To make information collected by it available to investigating authorities, the intelligence services and South African Revenue Service to facilitate the administration and enforcement of the laws of the Republic,
- To exchange information with similar bodies in other countries regarding money laundering activities and similar offences.

Buffalo City Municipality did not comply with the provisions of this Act, hence in the Mandela Scandal there were also people outside BCM implicated in the case.

2.2.9 The prevention and Combating of Corrupt-Activities Act 2004, (Act 12 of 2004)

The purpose of this Act includes:

- To provide for the strengthening of measures to prevent and combat corruption and corrupt activities;
- To provide for the offence of corruption and offences relating to corrupt activities,
- To provide for investigative measures in respect of corruption and related corrupt activities;
To provide for the establishment and endorsement of a Register in order to place certain restrictions on persons and enterprises convicted of corrupt activities related to tenders and contracts;
To place a duty on certain persons holding a position of authority to report certain corrupt transactions;
To provide for extraterritorial jurisdiction in respect of the offence of corruption and offences relating to corrupt activities; and
To provide for matters connected therewith.

Buffalo City Metropolitan Municipality did not make provision for the establishment and endorsement of a Register in order to place certain restrictions on persons and enterprises convicted of corrupt activities related to tenders and contracts as required by this Act. That resulted to a situation where people who were previously convicted for the same offences awarded tenders.

2.2.10 The Public Protector Act 1994, (Act 23 of 1994)

According to this Act the Public Protector is a functionary to whom the public has recourse. This functionary is guaranteed independence by the constitution. The Public Protector is required to be impartial and exercise his/her powers functions without fear, favour or prejudice.

In terms of section 182 of the Constitution of the Republic of South Africa, the Public Protector has the power as regulated by national legislation to:

Investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice.
To report that conduct; and
Take appropriate remedial action.
The Act provides for matters necessary to establish and operate the Office of the Public Protector as contemplated in the Constitution. Section 6, for example, sets out the powers of the Public Protector. In terms of section 6(4) the Public Protector is competent to investigate, on his/her initiative or on receipt of a complaint, any alleged:

- Maladministration in connection with the affairs of government at any level;
- Abuse or unjustifiable exercise of power or unfair, capricious, discourteous or improper conduct or undue delay by a person performing a public function;
- Improper or dishonest act; or omission or corrupt, with respect to public money;
- Improper or unlawful enrichment, or receipt of any improper advantage, by a person as result of an act or omission in the public administration.

Section 7(4), (5) give the Public Protector the right to subpoena any person to submit an affidavit or affirmed declaration or appear before him/her to give evidence or to produce any document in his/her possession or under control which has a bearing on the matter being investigated, and to examine such a person.

Immediately after the Mandela Scandal was in the public domain, the office of Public Protector indicated that they will make investigation on the matter as provided in this Act. What is not clear is whether it will continue with the investigation though the matter as it is in a court law now.

### 2.2.11 Investigation and Prosecution of Persons Involved in Corruption

The South African Police Service is empowered by section 25 of the Constitution to prevent, combat and investigate crime, to maintain public order, and to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law.

In terms of the South African Police Service Act 68 of 1995, the SAPS investigates crimes including corruption and bribery.

### 2.2.12 The Courts and Prosecuting Authority

Cases of corruption are tried in the Magistrates Court. The jurisdiction of these courts is prescribed in the Magistrates’ Court Act 32 of 1994, and in the High Courts, the jurisdiction of which prescribed in the Supreme Court 59 of 1959.
In terms of section 162 of the Constitution, the judiciary authority of the Republic is vested in the courts. The courts are independent and subject only to the Constitution and the law, which must apply impartially and without fear, favour or prejudice.

2.2.13 The National Prosecuting Authority

The National Director of Public Prosecutions is appointed by the President in terms of National Prosecuting Authority Act 32 of 1998, and reports to Parliament. Section 179 of the Constitution provides for single prosecuting authority.

The prosecuting authority is the only institution with the power to institute criminal proceedings on behalf of the state. All investigations of corruption cases, whether investigated by SAPS or any other agency, have to be referred to the prosecuting authority for criminal prosecutions.

After intense investigation on Mandela Scandal in BCM by Hawks, the matter was referred to the Provincial Director of Public Prosecutions to look at the prospects of the case to continue with the prosecution or not. In deed there were fertile grounds to proceed as a results some of the accused have since turned to be state witnesses.


Section 4.5.3 of the code of conduct for Public Service states that an employee should not use his/her official position to obtain private gifts or benefits for him/herself during performance of duties nor should accept any gifts or bribes when offered, as these may be construed as bribes.

The code should act as a guideline to employees as to what is expected of them from an ethical point of view, both in their individual conduct and their relationship with others. Compliance with the code can be expected to enhance professionalism and help to ensure confidence in the Public Service.

According to this code of conduct an employee should:

Be faithfully to the Republic and honours the constitution and abides thereby in the execution of his/her daily tasks;
Puts the public interest first in the execution of his/her duties;
Loyally executes the policies of the government of the day in the performance of his/her official duties as contained in all statutory and other prescripts;
Co-operates with public institutions established under legislation and the constitution in promoting public interest;
Serve the public in an unbiased and impartial manner in order to create confidence in the public service;
Not abuse his/her position in the public service to promote or prejudice the interest of any political or interest group and;
Refrains from favouring relatives and friends in work-related activities.

Given the state of affairs in BCM, is a clear indication that this Act had not been adhered to by the municipality as well as its employees.

2.2.15 Public Service Anti-Corruption Strategy 2002

According to this strategy, it is proposed that a holistic and integrated approach to fight corruption be established. This requires a strategic mix of preventative and combative activities and a consolidation of the institutional and legislative capabilities of government.

The strategy contains nine considerations that are inter-related and mutually supportive, as follows:

Review and consolidation of legislative framework to fight corruption be established and implemented and must provide:

- A new corruption Act that provides a workable definition of corruption, that will reinstate the common law crime of bribery, that creates presumption of *prima facie* proof to facilitate prosecution, that extends the scope of the Act to all public officials and private citizens and their agents;
- A range of offences and obligations;
- A holistic approach to fight corruption;
- Compliance with regional and international conventions;
- Civil recovery of proceeds and the ability to claim for damages; and
Prohibition of corrupt individuals and business.

It is further proposed that the courts, existing institutions and departmental capabilities be improved for optimal functioning. In particular it is proposed that:

That the efficacy of existing departments and agencies be improved through the establishment of appropriate mechanisms to coordinate and integrate anti-corruption work;
Departments create a minimum capacity to fight corruption;
Improved access to report wrongdoing and protection of whistleblowers and witnesses;
Prohibition of corrupt individuals and businesses.

The purpose of the Public Service Anti-Corruption Strategy is to prevent and combat corruption through a multiplicity of supportive actions.

The Public Service Anti-Corruption Strategy is informed by the following principles to root out corruption:

The need for holistic and integrated approach to fight corruption, with a balanced mixture of prevention, investigation, prosecution and public participation as the platform for strategy;
Constitutional requirements for the criminal justice system,
Public Service tailor-made strategies are required that operate independently but complementary to national strategies, particularly with regard to detection, investigation, prosecution and adjudication of acts of corruption, as well as the recovery of the proceeds of corruption; and
Acts of corruption are regarded as criminal acts and these acts can be dealt with either in the administrative or criminal justice system, or both if need be.

There is no holistic and integrated approach to fight corruption in BCM, with a balanced mixture of prevention, investigation, prosecution and public participation as the platform for this strategy.
2.2.16 Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings 2014

According to these regulations any person must report an allegation of financial misconduct against the Accounting Officer, a Senior Manager, or the Chief Financial Officer of a municipality. The person to whom an allegation of financial misconduct has been reported must ensure that the report is treated in a confidential manner. An official against whom an allegation of financial misconduct is made must be given an opportunity to make written representation to the municipality or municipal entity as to why he/she should not be suspended within seven days of being notified of the allegation.

A municipality must establish a disciplinary board to investigate allegations of financial misconduct in the municipality. A disciplinary board is an independent advisory body that assists the council with the investigation of allegations of financial misconduct, and provide recommendations on further steps to be taken.

After completion of a full investigation, the investigator must compile a report on the investigation and submit it to the council for implementation.

Buffalo City Metro Municipality has never taken upon itself to acquaint itself about these regulations, hence the situation is so chaotic in that municipality.


This Act provides for the following:

- That any person who is in charge of a business undertaking has to report activities relating to unlawful activities or proceeds;
- Makes it an offence to belong to a criminal gang or aid any criminal activity by a criminal gang; and
- The obtaining of restraint orders by NDPP against any person charged or to be charged with offence from dealing with property specified in the order.

2.2.18 Witness Protection Order 56 of 2000

This Act encourages state witnesses to give evidence in trial proceedings and commissions of enquiry by providing them with protection.

According to this Act a person is guilty of an offence if he/she corruptly uses official information for the purpose of obtaining any gift, loan, fee, reward, or advantage whatsoever for himself or any other person. Corruptly communicates official information to any other person with a view of enabling any person to obtain any gift, loan, fee, reward, or advantage whatsoever.

2.2.20 **Public Service Act 103 of 1994, (Act 103 of 1994)**

This Act confers powers on Minister for Public Service and Administration to make policy, and to set a frame work of norms and standard relating to employment, including the promotion of broad representation, human resource management and development, compensation and labour relations. The norms and standards are extremely covered in the Public Service Regulations that deal with all employment matters.

Buffalo City Metro overlooked this Act, wherein friends and relatives were offered jobs and promoted to higher positions, some of them without relevant qualifications according to AG’s report

2.2.21 **The Commissions Act 8, (Act 8 of 1947)**

This Act makes provision for the conferring of certain powers on commissions appointed by the President for the purposes of investigating matters of public concern, including corruption. Commissions are empowered to require persons and documents to appear before them.

2.2.22 **The Criminal Law Amendment Act 105, (Act 105 of 1997)**

This Act provides for imposition of minimum sentences in respect of certain serious offences, including corruption, where a case involves amounts of more than R500 000, or where a case involves amounts more than R100 000 if committed by syndicate or a group of persons, or where a case involves more than R10 000 if committed by a law enforcement officer, must be sentenced to a minimum of 15 years’ imprisonment.
2.2.23 Public Administration Management Act 214 (Act 11 of 2014)

The objects of this Act are to:

- Promote and give effect to the values and principles in section 195(1) of the Constitution;
- Provide for the transfer and secondment of employees;
- Promote a high standard of professional ethics in the public administration;
- Promote the use of information and communication technologies in the public administration;
- Promote efficient service delivery in the public administration;
- Facilitate the eradication and prevention of unethical practices in the public administration; and
- Provide for the setting of minimum norms and standards to give effect to the values and principles of section 195(1) of the Constitution.

The basic values and principles governing this Act are to:

- Promote and maintain a high standard of professional ethics;
- Promote efficient, economic and effective use of resources;
- Be development oriented;
- Provide such services impartially, fairly, equitably and without bias;
- Respond to people’s needs and encourage public participation in policymaking;
- Be accountable to the public;
- Foster transparency by providing the public with timely, accessible and accurate information; and
- Ensure good human resource management and career development practices to maximise human potential.

2.2.24 Buffalo City Fraud and Corruption Mitigation Strategy 2012

The strategy was introduced to change features that allow corruption to occur, go unnoticed or unreported. To address issues such as accountability, efficiency and effective administration. It focuses on measures to improve systems and procedures,
change attitudes of staff, and improve the overall integrity and performance of the municipality.

The important factors in this framework include:

- Management commitment,
- Staff commitment,
- Resources, and
- Networking.

According this strategy all managers are required to be aware of the importance of fraud mitigation and be committed to it. Managerial attitudes play a significant role in shaping the ethical culture of the municipality. The staff should part of the processes, see the benefits for themselves (and organization) and understand that management is serious about preventing corruption. Also adequate resources should be made available.

Also according to this strategy, staff members of municipality at all times are expected to:

- Loyally execute the lawful policies of the municipal council;
- Perform the functions of office in good faith, diligently, honesty and in a transparent manner;
- Act in such a way that the spirit, purport and objects of section 50 are promoted;
- Act in the best interest of the municipality and in such a way that the credibility and integrity of the municipality are not compromised; and
- Act impartially and treat all people, including other staff members, equally without favour or prejudice.

A staff member of a municipality is a public servant in a developmental local system, and must accordingly-

- Implement the provisions of section 50 (2);
- Foster a culture of commitment to serving the public and a collective sense of responsibility for performance in terms of standards and targets;
- Promote and seek to implement the basic values and principles of public administration described in section 195 (1) of the constitution;
Obtain copies of or information about the municipality’s integrated development plan, as far as possible within the ambit of staff member’s job description, seek to implement the objectives set out in the IDP, and achieve the performance targets set for each performance indicator; and

Participate in the overall performance management system for the municipality, as well as the staff member’s individual performance appraisal and reward system, if such exists, in order to maximize the ability of the municipality as a whole to achieve its objectives and improve the quality of life of its people.

It is also stated that staff members may not use their positions or privileges or confidential information for private gains or to improperly benefit another person. They may not unduly influence or attempt to influence the council of the municipality with a view of obtaining any appointment, promotion, privilege, advantage or benefit. They may not be involved in a business venture with the council without the prior consent of the council of the municipality.

In this case Buffalo Metro City flouted its own strategy and engaged in fraudulent activities as a result putting the municipality into disrepute. One can conclude that the development of this strategy by implications was a fruitless expenditure. The question to be asked therefore, is what was the purpose of developing this strategy but to be ignored?

2.2.25 Fraud and Corruption Control- Guidelines for Best Practices March 2005

According to Fraud and Corruption Control-Guidelines for Best Practices 2005, fraud and corruption pose serious risks to the public sector and these risks cannot be ignored. The potential damage extends well beyond any financial losses, and the threats to organisational integrity are a constant challenge for public sector management.

In a rapidly changing business environment, it is vital to develop an integrated fraud and corruption control strategy to address these risks. Implementing effective fraud and corruption control measures is part of good governance and management practice.
For many agencies it will involve no more than reviewing and consolidating existing agency policies and practices in relation to risk management, codes of conduct, reporting mechanisms, investigation, training and awareness.

Fraud and corruption can take many forms. Fraud is normally characterised by some form of deliberate deception to facilitate or conceal the misappropriation of assets, whereas corruption involves a breach of trust in the performance of official duties. Fraudulent and corrupt conduct by public officials may fall within the category of 'official misconduct' under the *Crime and Misconduct Act 2001*.

Official misconduct is defined as conduct by a public official, related to the official’s duties, that is dishonest or lacks impartiality, involves a breach of trust, or is a misuse of officially obtained information. The conduct must amount to a criminal offence or be serious enough to be justified. Many forms of fraud and corruption are offences under the *Criminal Code 1899*. These include offences such as extortion, false claims, stealing, misappropriation of property, false pretence, receipt or solicitation of secret commissions, forgery, revenue evasion, election fraud, currency violation and drug dealing. This publication does not treat fraud and corruption separately, nor does it give one priority over the other. Similarly, it does not deal with all the possible dimensions of fraud and corruption.

**2.2.26 Oxfordshire County Council Anti-Fraud and Corruption Strategy 2013**

According to this strategy the County Council is one of the largest business organisations in Oxfordshire. In administering its responsibilities; the Council has a duty to prevent fraud and corruption, whether it is attempted by someone outside or within the Council such as another organisation, a resident, an employee or Councillor. The Council is committed to an effective Anti-Fraud and Corruption culture, by promoting high ethical standards and encouraging the prevention and detection of fraudulent activities.

The Assistant Chief Executive & Chief Finance Officer as the “Section 151 Officer” has a statutory responsibility under section 151 of the Local Government Act 1972 to ensure the proper arrangements for the Council’s financial affairs and has developed financial
codes of practice and accounting instructions. The Chief Finance Officer exercises a quality control on financial administration through delegation of responsibilities to the Head of Corporate Finance, Assistant Heads of Finance and the Finance Business Partners.

The Monitoring Officer and Head of Law and Governance, has a statutory responsibility to advise the Council on the legality of its decisions and to ensure that the Council's actions do not give rise to illegality or maladministration. It is therefore essential for employees to follow the Council's policies and procedures to demonstrate that the Council is acting in an open and transparent manner.

Oxfordshire County Council will thoroughly investigate all suggestions of fraud, corruption or theft, both from within the Council and from external sources, which it recognises can:

- Undermine the standards of public service that the Council is attempting to achieve;
- Reduce the level of resources and services available for the residents of Oxfordshire; and
- Result in consequences which reduce public confidence in the Council.

The aims and objectives of the Anti-Fraud and Corruption Strategy are to:

- Ensure that the Council is protected against fraud and loss.
  - Protect the Council’s valuable resources by ensuring they are not lost through fraud but are used for improved services to Oxfordshire residents and visitors.
  - Create an “anti-fraud” culture which highlights the Council's zero tolerance of fraud, corruption and theft, which defines roles and responsibilities and actively engages everyone (the public, Councillors, staff, managers and policy makers).
To provide a best practice ‘counter-fraud’ service which:

- Proactively deters, prevents and detects fraud, corruption and theft;
- Investigate suspected or detected fraud, corruption and theft;
- Enables the Council to apply appropriate sanctions and recovery of losses; and
- Provides recommendations to inform policy, system and control improvements, thereby reducing the Council’s exposure to fraudulent activity.

The principles are that:

The Council will not tolerate abuse of its services or resources and has high expectations of propriety, integrity and accountability from all parties identified within this strategy. The Council will ensure that the resources dedicated to “counter-fraud” activity are sufficient and all those involved are trained to deliver a professional “counter-fraud” service to the highest standards.

All fraudulent activity is unacceptable, and will result in consideration of legal action being taken against the individual(s) concerned. The Council will also pursue the repayment of any financial gain from individuals involved in malpractice and wrongdoing. The Council will ensure consistency, fairness and objectivity in all its “counter-fraud” work and that everyone is treated equally. This strategy encourages those detailed in section 3.1 to report any genuine suspicions of fraudulent activity. However, malicious allegations or those motivated by personal gain will not be tolerated and, if proven, disciplinary or legal action may be taken. Sections 8.3 and 8.4 detail the reporting arrangements in relation to incidents of fraud or irregularity. The Council will work with its partners (such as the Police, District Councils and other investigative bodies) to strengthen and continuously improve its arrangements to prevent fraud and corruption.

Corruption can be defined as the deliberate use of one’s position for direct or indirect personal gain. “Corruption” covers the offering, giving, soliciting or acceptance of an inducement or reward, which may influence the action of any person to act inappropriately, according to this strategy.
2.2.27 Westonaria Local Municipality Anti-Fraud and Corruption Policy 2014

According to this policy Westonaria Local Municipality takes its duty to ensure stewardship of public money very seriously. Council is therefore committed to the prevention, detection and investigation of all forms of fraud and corruption whether these are attempted from within or external to the organisation. Council is also committed to creating an environment that is based on the prevention of fraud and corruption which is achieved by promoting openness and honesty in all council activities.

Fraudulent and corrupt practices undermine the basic values and principles governing public administration as set out in chapter 10 of the Constitution. Criminal and other irregular conduct is detrimental to good, effective, accountable and transparent governance and can hamper the service delivery capacity of the Municipality. Procedures are provided in terms of which employees and councilors may without fear of reprisals, disclose information relating to suspected or alleged criminal or other irregular conduct.

This policy also provides guidelines for all employees and councilors of the Municipality, including external stakeholders, to prevent and combat fraud and/or corruption and other acts of theft and maladministration. This Policy applies to all Municipal employees and prohibits all acts of fraud and corruption or any other dishonest activities of a similar nature impacting or having a potential prejudice to the Municipality or members of the public.

This policy shall be applied with due observance of the Municipality's policy with regard to delegated powers. Such delegations refer to delegations between the Municipal Manager and other responsible officials; the Council and the Executive Mayor as well as between the Council and the Municipal Manager. Any investigation required will be conducted without regards to the suspected wrongdoer's length of service, position/title, seniority or relationship to Westonaria Local Municipality.

This policy:

- Sets out the stance of the Municipality with regard to fraud and corruptions, as well as reinforcing existing legislation aimed at preventing, reacting to, and reducing
the impact of fraud, corruption, theft and maladministration, where these dishonest acts exist.

- Aims to develop and foster an environment, where all employees and councilors shall strive for the ultimate eradication of fraud, corruption, theft and maladministration by means of the application of the full spectrum of both pro-active and re-active measures at their disposal.
- Prescribes appropriate prevention and detection controls, including, but not limited to, the disclosure of unlawful or irregular acts or conduct as prescribed by the Protected Disclosures Act.
- Requires the responsibility to take reasonable steps to ensure that “whistleblowers”, who disclose such information, are protected from any reprisals as a result of such disclosure.
- To operate policies and systems which minimize fraud and corruption or any other dishonest activities of a similar nature.
- To develop partnership with other stakeholders in the fight against fraud and corruption.
- To ensure that management is aware of its responsibilities for identifying exposures to fraudulent and corrupt activities or any other dishonest activities of a similar nature and for establishing controls and procedures for preventing such fraudulent and/or corrupt activity and detecting such fraudulent or corrupt activity when it occurs.
- To provide guidance to employees and members of the public as to what action should be where they suspect any fraudulent or corrupt activity.
- To provide a clear statement to staff or any other persons having business with the municipality, for bidding any illegal activity.
- To provide a clear guidance as to responsibilities for detecting and reporting investigations into fraudulent and or corrupt activities.
- To provide assurances that any reasonable suspicion of fraudulent and or corrupt activity will be fully investigated.
- Provide for a swift investigation of fraudulent and corrupt activities.
• To provide adequate protection and guidance as to appropriate action to employees in circumstances where they are victimised as a consequence of reporting or being a witness to fraudulent and or corrupt activities.
• To provide a suitable environment for employees to report matters that they suspect may concern corrupt and fraudulent conduct.

It is the policy of the municipality that fraud, corruption, theft and maladministration or any other dishonest activities of a similar nature will not be tolerated. In addition, these acts will be investigated and followed up by the application of all remedies available within the full extent of the law. Appropriate prevention and detection controls will be applied. These include the existing controls and checking mechanisms as prescribed by existing policies and procedures, and systems of internal control.

It is the responsibility of all employees and councillors of the Municipality to report incidents of fraud, corruption, theft, maladministration or any other dishonest activity. If an employee is not comfortable reporting such matters to his/her immediate supervisor or manager, he/she should report the matter to the next level of management, with final recourse being to the Municipal Manager.

Appropriate lines of authority should be utilized in line with the Municipality’s policy on delegated authority. Executive Managers are responsible for the detection, prevention and investigation of fraud, corruption, theft, maladministration, or other dishonest activities within their directorates.

2.2.28 Fraud and Corruption Awareness Handbook 2013

According to this handbook, every year, vast sums of taxpayers’ funds are spent on public goods and services by national and sub-national entities. An unknown percentage of these funds, unfortunately, are not used for their intended purposes because funds are illegally diverted. According to a 2013 study commissioned by the European Anti-Fraud Office, the direct public loss encountered within five selected sectors of the economy where EU funds are spent in eight member States amounts to 18% of the overall project budgets concerned.
Considering the scale of the problem of fraud and corruption in public procurement, pessimists argue that the idea that it can be prevented from happening seems futile. There is, indeed, no fail-proof solution against the hidden schemes, whose organizers always seem to be one step ahead of the corruption hunters. However, public officials and other concerned stakeholders have been successfully improving their ability to detect, prevent, and punish fraud and corruption, where it is uncovered.

The procurement process has proven particularly vulnerable to fraud and corruption, because that is the point in the investment cycle where money changes hands. In order to prevent misconduct, one must have a keen understanding of the inner workings of the many fraud and corruption schemes that occur.

This handbook offers some insights about fraud and corruption in public investments in Poland as well as in World Bank-financed projects; how it happens and how it can be detected before it negatively impacts investments. Early detection through paying specific attention to red flags in the procurement process can prevent the corrupt parties from succeeding, as multiple examples over the past years have shown.

Much of what we know about fraud and corruption is the direct result of the reporting of alleged fraud and corruption by public sector employees; they are the first-and best line of defence when it comes to protecting funds from misuse. Bidders, civil society representatives and other stakeholders as well are an important source of complaints, which underscores the crucial role of effective complaint handling mechanisms to elicit, channel and respond to complaints.

This handbook was written with the intent to raise awareness and encourage public sector employees to be alert to potential malfeasance in the management of public investments. Published in 2011 by the World Bank’s Integrity Vice-Presidency, this publication builds on the experiences gained by Poland’s Anti-Corruption Bureau and the World Bank with a view to share lessons learned from investigative activities of both organizations. Bringing integrity to our public investments requires a shared commitment.
It provides some insights into how fraud and corruption schemes work in public investments. The handbook identifies a range of fraud and corruption indicators, or red flags, and relevant schemes that may become apparent during the life of an investment, from design to implementation.

The primary focus of this handbook is fraud and corruption in procurement, with some coverage of general governance issues. It is based on the experience of Poland’s Central Anti-Corruption Bureau and the World Bank’s Integrity Vice-Presidency, and it presents examples referring both to public investments implemented under Polish public procurement law and international competitive bidding. While carrying out the tasks imposed by the legislature, the Central Anti-Corruption Bureau seeks to draw attention to irregularities that may occur while spending public funds for the purchase of goods and services, and investment projects. Non-observance by the procuring entity of the provisions regulating public spending may have negative economic consequences for the unit finances and may result in disciplinary measures and possible criminal prosecution. This handbook aims to provide support to the managers of procuring entities in conducting public procurement by identifying frequently occurring irregularities and suggesting methods of preventing them.

Government officials, companies or their agents, and supervision consultants most frequently engage in the corruption schemes. These actors play various roles as illustrated below:

*Government officials* often play a central role in corruption schemes by being in a position to influence the award of contracts, the processing of invoices for payment, and the signing of licenses and approvals.

*Local and international companies* (contractors and sub-contractors) organize or participate in illicit arrangements in order to win contracts. They divert project funds to project officials, with the bribes usually disguised as ‘legitimate’ payments for goods, works or services. Frequently, subcontractors—actual or fictitious—are used to channel funds to project officials.
Contractors’ independent agents may play a role in brokering the illicit arrangements and shielding the contractors from legal action.

Supervision consultants may also be corruptly induced or pressured to sign-off on substandard work.

Senior government officials may provide protection or seek their share of the corrupt payments.

A corruption scheme often involves more than one type of misconduct. A corrupt scheme in procurement often begins with a demand for, or offer of payment, followed by bid rigging and finally fraud to cover up the scheme:

**Demand for payment.** A government official demands a bribe or kickback from a firm or individual, or a firm or individual offers a bribe, in exchange for a contract award. In most cases, the corrupt official will permit the bribe payer to inflate the price to cover the bribe and preserve its profits;

**Bid rigging.** To ensure that the contract will be awarded to the bribe-paying firm (whose prices are now inflated to cover the cost of the bribe), government officials manipulate the bidding process to exclude other (presumably cheaper) competitors; and

**Fraud.** To recover the cost of the bribe, and to exploit the corrupt relationship, the firm, usually with the knowledge and complicity of government officials, inflates prices, bills for work not performed, fails to meet contract specifications or delivers substandard product during implementation. This often requires further corrupt payments to inspectors or auditors.

While it is difficult to prove that someone has paid a bribe, there are related activities that can be uncovered more easily. Complaints from disgruntled [losing] bidders and the paper trail left by a government official steering a contract to a favoured bidder are common starting points.

The following section in this handbook deals with indicators, or red flags, which public officials can look for when supervising contract awards. A combination of certain red flags should alert them that a bid rigging scheme may be affecting their investment.
Corrupt practices and bid rigging can take place at any stage during the procurement cycle. Sophisticated planning of corrupt activity usually starts at the project design stage when the activities are determined and contracts planned. Officials generally have a level of discretion in drafting specifications or qualification criteria, which provides the opportunity to steer contracts to the favoured bidder.

For each procurement action leading up to the contract award, this section highlights the red flags that can be identified as well as related fraud and corruption schemes. The following bid rigging schemes will be presented:

- Unnecessary items
- Unjustified sole source awards
- Contract splitting
- Inappropriate bundling
- Restricted circulation, short notice, inadequate information
- Unnecessary or inappropriate line items
- Rigged specifications
- Biased evaluation criteria
- Unbalanced bidding
- Leakage of confidential information
- Inappropriate contractual terms
- Hidden interest in a company
- Exclusion of qualified bidders
- Late bids, bid tampering and other forms of manipulation

Finally, the handbook has the following suggestions that:

Ensure the prequalification or expression of interest contains sufficient information for the prospective companies to determine their eligibility. Assess the qualifications criteria used for short-listing in order to determine whether they are in line with the contract requirements. Review the prequalification and short list evaluation report to ensure that the short-listed companies or firms have the required expertise.
According to this framework, South Kesteven District Council (SKDC) is determined to maintain its reputation as a Council, which will not tolerate theft, fraud, corruption, bribery or abuse of position for personal gain in any area of its organisation or activities.

The Council has therefore adopted this Counter-Fraud, Corruption and Bribery Framework which is designed to:

- Promote a culture of openness, integrity and accountability on the part of its Members and employees,
- Eliminate, as far as possible, opportunities for theft, fraud, corruption, bribery and abuse of position to take place,
- Establish effective arrangements for the detection and investigation of any malpractice
- Provide suitable information and training for Members and employees to ensure that they are aware of their duty and responsibility to assist the Council to achieve these objectives.

The framework applies to all employees, contractors and any persons or organisations doing business with the council. It applies to all aspects of the council’s business. The council may actively involve the police, pursue prosecution and consider disciplinary action against employees where fraud, corruption and bribery are suspected or identified.

The council will act swiftly and firmly to deal with any person who is suspected of theft, fraud, corruption, bribery or abuse of their position. Disciplinary action will be taken as necessary and the Police will be involved where appropriate.

The council will always seek to ensure that persons subject to investigation are treated fairly and will comply with all applicable legal safeguards.

Maintaining effective corporate governance, the council is committed to promoting an environment of effective corporate governance (the way in which it manages its affairs) through the openness, integrity and accountability of its Members and employees. Members and employees are expected to adhere at all times to legally sound and honest procedures and practices.
The Counter Fraud, Corruption and Bribery Framework underpins the commitment already made by the Council to provide the highest quality of services to all of our residents and customers by:

Promoting clear and positive community leadership,
Consulting with and listening to local people in its planning and decision making,
Making the most efficient and effective use of public resources through the rigorous application of value for money principles,
Encouraging co-operative and partnership working with public, private and voluntary organisations,
Supporting, valuing and developing its Members and staff thereby enabling them to contribute to the continuous improvement of the quality of services.

Elected Members set the tone for the Council as a whole. By being seen to take seriously all matters involving financial probity and standards of personal conduct. Members will provide a clear lead to all persons involved with the Council in any capacity. The following senior officers have statutory responsibilities for regulating the conduct of the Council according to this framework:

The Chief Executive Officer responsible for the overall management and direction of the Council,
The Section 151 Officer responsible for the financial management and financial probity of the Council,
The Monitoring Officer responsible for the legal probity of the Council,

The Chief Executive Officer, Strategic Directors and Heads of Service have responsibility for the proper organisation and conduct of their services. The Council expects them to maintain an environment in which employees and others feel comfortable in raising issues relating to the way in which business is conducted.

The Council expects and requires all of its employees to display honesty and integrity in their personal dealings with the Council, both as members of staff and as users of Council services.
The good sense and alertness of employees can also prove vital in drawing management attention to any areas of systems weakness which could provide opportunities for fraud.

The Council also expects and requires all individuals and organisations (such as contractors, voluntary bodies and service users) with which it comes into contact to act towards the Council with honesty and integrity.

All Members and employees must ensure always that they avoid situations where there is potential for a conflict of interest. Such situations can arise with externalisation of services, licensing, tendering and planning and land issues.

Effective role separation will ensure that decisions are seen to be based on impartial advice and avoid concern about the improper disclosure of confidential information.

Anyone who has a genuine concern about potential fraud, corruption, bribery, or weak financial systems within the Council is encouraged to bring it to the Council’s attention in confidence through any of the following channels:

The Chief Executive Officer,
The Section 151 Officer,
Head of Finance,
The Monitoring Officer,
Any other Strategic Director or Head of Service,
Governance & Risk Officer, and
The Council's internal auditors.

All of the above are required by the Council to take such concerns seriously and to ensure that they are properly investigated. If you are not certain as to the extent of the problem, you have identified you should still report it. What appears, on initial consideration, to be only a minor incident can sometimes turn out to be much more serious after investigation. The only circumstance in which someone raising an issue could face criticism or (in the case of employees) disciplinary action is where they have made a malicious or vexatious allegation which they know to be untrue.
Also the Council recognises that prevention is better than cure. Fraud, corruption and bribery will be minimised where proper procedures are followed, sound financial systems are in place and effective arrangements are made for oversight and monitoring. The Council has developed a comprehensive network of procedures and systems to provide deterrence against fraud, corruption and bribery and to assist in their detection. These arrangements will be reviewed and developed as necessary to keep pace with future developments.

All Members of the Council are required to comply with relevant legislation, with the Member Code of Conduct and with the Council’s Standing Orders including those relating to Finance and Contracts. These are set out in the Council’s Constitution. Members sign to indicate that they have read and understood the Member Code when they take office. Conduct and ethical matters are specifically covered within Members’ induction and refresher training.

Members are required to register disclosable pecuniary interests in the Register of Members’ Interests maintained by the Monitoring Officer. Members are responsible for ensuring that the information recorded about them in the Register is kept up to date. Members are required, at the earliest opportunity, to declare disclosable pecuniary interests in respect to matters being discussed at meetings of full Council, the Cabinet, Committees, Boards and Panels.

They are also expected to comply with the Member Code when representing the Council on external bodies. Members are required to declare the receipt of all gifts and hospitality over the value of £50 in a separate Register maintained by the Monitoring Officer. Items of a lower value can also be entered in the Voluntary Register. Member behaviour is also governed by the Planning Code of Good Practice and the Member/Officer Relationship Protocol, which form part of the Constitution.

Finally, the Council co-operates with other local authorities and other bodies in combating fraud, corruption and bribery. Data may be exchanged with these organisations where appropriate and subject to compliance with the Data Protection Act 1998. These bodies include:
The Council’s External Auditor,
Chartered Institute of Public Finance and Accountancy,
The Local Government Ombudsman,
HM Revenue and Customs,
Lincolnshire Constabulary,
The Department for Work & Pensions,
Department of Communities and Local Government, and
Other local authorities.

Information obtained direct from members of the public is also important in bringing issues to the Council’s attention. This can include complaints lodged under the Council’s complaints procedure and questions raised with the External Auditor during the audit of the Council’s accounts.

Any Service within the Council that receives money from an external person or body is potentially vulnerable to a money laundering operation. The need for vigilance is vital and if there is any suspicion concerning the appropriateness of a cash transaction this must be reported to the Head of Finance, the Council’s nominated Money Laundering Reporting Officer, without alerting the payee.

The possibility of money laundering through corporate borrowing and lending is minimised through the application of best practice in the Council’s Treasury Management Function. The Council’s Treasury Management Strategy complies with the CIPFA (Chartered Institute of Public Finance & Accountancy) publication, Treasury Management in the Public Services – Code of Practice and Cross Sectoral Guidance Notes. The Council’s Legal Services have their own professional guidance in relation to Money Laundering which places a duty on solicitors to report any suspicions. These may override their legal professional privilege and confidentiality.

Internal control procedures are designed to deter fraud and can also provide indicators of where fraudulent activity may be occurring.
Where large amounts of data are involved, statistical analysis can also highlight individual transactions that fall outside normally expected parameters and are worthy of examination. It is often the alertness of members, employees and members of the public to potential fraud that enables detection to occur and appropriate action to take place.

All employees have a duty to report suspected irregularities to their Service Manager or through the other channels that are set out in this framework. It is essential that these channels are seen to be fully supported by all managers.

### 2.2.30 Explanatory Manual on the Code of Conduct for the Public Service 2002

The purpose of this manual is to explain the contents of the Code of Conduct more fully. The phrasing of the official Code required brevity, precision and official terminology. This manual is aimed at making the Code more understandable to all public servants.

The manual does not introduce any new principles and follows the same structure and numbering of the principles as in the Code, to allow for easy comparison. When using this manual, departments should try to add examples of their own, related to their particular environment.

It should be emphasised that the development of this manual is a dynamic process and that it may require revision from time to time, like the Code itself, according to its introduction.

In order to promote a high standard of professional ethics in the workplace according this manual, public servants should be encouraged to think and behave ethically. This manual should therefore serve as an aid in developing and presenting short training courses for all employees. This manual also contains many examples which illustrate ethical complexities in the work environment, which may serve as a basis for training and case studies.

As a companion to the Code, this manual can assist in maintaining public confidence in the integrity and impartiality of the Public Service by providing minimum expectations
about acceptable behaviour and benchmarks for ethical practices. It is an accepted fact that human beings learn by observation and experience.

A special responsibility is therefore placed on the employer, namely the executing authorities (Ministers and Members of the Executive Council) at the political level, and Public Service managers at all levels, to create an appropriate environment in which values are established and exemplary models are set for all employees.

Section 195(1) (a) of the Constitution requires that “a high standard of professional ethics must be promoted and maintained” in public administration generally. In terms of the collective agreement (Public Service Co-ordinating Bargaining Council Resolution 2 of 1999) all the employees in the Public Service have the responsibility to comply with the prescribed Code of Conduct. As this forms the main basis on which pro-active, corrective and even disciplinary action rests, the employer must do everything possible to ensure that the contents of the Code of Conduct are known to all employees.

An employee must put the public interest first in the execution of his/her duties. This stipulates that where decisions have to be made or discretion has to be exercised, due consideration should be given to putting the interests of the public first. The public servant’s own interests or any other sectarian interest must always be placed subordinate to the public interest which is a challenge in the society.

According to this manual, the Public Service is required to appoint, promote and reward personnel who, irrespective of their political opinion or affiliation, family ties or position in the community, have the abilities to render a service.

The following practices are unacceptable:

Favouritism — this means that certain singled out employees are appointed, promoted, transferred, or given generous treatment based on subjective considerations such as friendship, returning a favour, etc.
Nepotism — this implies that an employee is appointed, promoted, transferred, or given some or other advantage purely based on the fact that he or she has family or other ties with the person in a position to authorise such actions or to manipulate/influence the system.

In order to bring about and maintain trust in the Public Service, all employees are expected to serve in a loyal and dedicated manner. This requires employees not to get involved, either on or off duty, in matters or activities that could:

- Be regarded as being fraud or theft;
- Interfere with the carrying out of their duties;
- Influence the way in which they do their work;
- Influence their objectivity in making decisions;
- Create embarrassment for the State as employer; or
- Be perceived to potentially prejudice or favour certain parties.

Employees’ behaviour on and off duty should be such that the government of the day and members of the public will trust them to loyal do their work, with the objective being the interest of the community.

Lastly an employee in the course of his or her official duties, shall report to the appropriate authorities, fraud, corruption, nepotism, maladministration and any other act which constitutes an offence, or which is prejudicial to the public interest.

Corruption refers to widespread moral deterioration especially bribery or fraud. It often goes hand in hand with other criminal practices, for example influence peddling, drug trafficking, ghost workers, fraud and organised crime which may threaten a legitimate economy.

Firstly, it is a factor of social disintegration and is extremely harmful to any community. It is always underpinned by a “get rich quick” social ethos. Secondly, it undermines the legitimacy of a political system by destroying trust and confidence, for when an administration loses its credibility a climate for instability and lawlessness is created.
Thirdly, it frustrates the economic system. It does this by acting as a disincentive to investment, whether by foreign or local entrepreneurs. Corruption eats away at the very fabric of public trust and confidence in our democracy. It is the duty of all employees to report any illegal actions, dishonest behaviour or corrupt practices to their Supervisors or a relevant authority as soon as they become aware of them. Corrupt practices are often fed by lack of work ethic, absence of public accountability and responsibility, as well as nepotism.

Likewise, potential service providers in the private sector should be made aware of the fact that the Public Service, in procuring services/goods, are bound by the principles contained in the Constitution regulating public administration which require the highest possible level of professional conduct. Offers of gifts, sponsorships, promotional material, luncheon invitations, etc. should thus not form part of their promotional activities in regard to the Public Service as it inevitably creates the impression/perception of improper influencing of decision takers and also makes for unfair competition where small service providers cannot afford to undertake such activities.

As this is always a highly contentious matter, the following is intended to serve as guidelines in directing departments’ actions in this regard. It is impossible to provide departments with comprehensive guidelines and departments should approach the Public Service Commission for advice should they be in doubt regarding the handling of certain situations which may arise.

The acceptance of any gifts or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by performance of employee’s duties can only be accepted within the express written approval of the Head of Department (HOD). It is important to note that gifts and hospitality from a source other than a family member need to be declared. The gifts/benefits to be declared must be in excess of R350. Employees may also consult the Public Service Commission where doubts exist with regard to the acceptance of gifts.
2.2.31 Public Sector Integrity Management Framework 2011

The purpose for introducing the Public Sector Integrity Management Framework is to strengthen measures and standards for managing integrity and promotes ethical conduct in the public service. This Framework provides provisions for managing unethical conduct that can arise as a result of financial interests, gifts, hospitality and other benefits, post public employment and remunerative work outside the public service. Further proposals are made in respect of deployment of ethics officers in the public service and minimum conduct requirements. Some of these measures will require legislation to become enforceable.

The Department of Public Service and Administration (DPSA) will also conduct communication and awareness workshops to explain all measures contained in the Framework and assist departments with implementation through developing implementation guidelines. The Public Sector Integrity Management Framework is applicable to the following public Servants:

- All persons employed in terms of the Public Service Act, 1994 (Proclamation 103 of 1994), as amended;
- Members of the SAPS, Correctional Services, Defence and Intelligence Services and educators only in so far as they are not contrary to the laws governing their employment;
- Senior managers contemplated in (a) and (b) above, for a period of a maximum period after they have left the public service; and
- Persons employed by municipalities, to the extent provided in the laws governing their employment.

According to this framework, a myriad of challenges is apparent in the public service as far as implementation of ethical and anti-corruption measures is concerned, chief among them is non compliance with legislation and lack of enforcement. A summary of these measures dealing with a compendium of ethical and good governance measures is contained in Section 7 of this Framework.
There is a great frustration about the delayed response of departments in preventing and combating corruption. Sometimes it takes several months for disciplinary processes to even be started. Officials are often suspended on full pay for months, if not years. Furthermore, there are significant inconsistencies in the type of sanctions applied. Allegations of corruption reported to the anti-corruption hotline are referred back to departments for follow-up, but because departments do not have sufficient investigative capacity, initial investigations are never completed.

The ineffectiveness of the Protected Disclosure Act, 2000 has also resulted in the lack of confidence in blowing the whistle against unethical conduct and corruption. Furthermore, the Country Corruption Assessment (CCA) conducted in 2002, amongst others, highlighted gaps in our knowledge of corruption in relation to incidents, trends, perceptions, causes as well as anti-corruption measures in place to fight corruption. The lack of a central database of cases of corruption was also highlighted.

Implementation of anti-corruption and good governance measures has not been satisfactory including the review to assess impact thereof. Some of the implementation gaps include:

- Limited implementation and adherence to the Code of Conduct. The conduct of some public servants as highlighted in the various government reports have identified a culture of unethical and undesirable conduct by some public servants,
- Non-compliance with the Financial Disclosure Framework. Since the inception of the Financial Disclosure Framework in April 2000 and subsequent expanded application to all senior managers in 2001, a hundred percent (100%) compliance rate has not been achieved. Disciplinary action against officials who fail to submit their financial disclosure forms has also never been instituted.
- Weak enforcement of anti-corruption measures perpetuates non-compliance. This is also exacerbated by the lack of follow-up on recommendations of the Public Service Commission by some Executing Authorities on non-compliance with the Financial Disclosure Framework;
Non-compliance with Section 30 of the Public Service Act dealing with remunerative work outside the public service and Section 31 dealing with recovery of losses;

Non-compliance with the Minimum Anti-Corruption Capacity Requirements;

Supply chain management prescripts are not adhered to which results in tender related malpractices, fraud and corruption as a result of improperly awarded tenders, goods and services provided at grossly inflated prices, officials benefiting from government contracts, unnecessary purchases and payments for services not rendered;

Weak enforcement and inconsistent application of disciplinary measures;

Resignation and transfer to other departments before disciplinary processes could be instituted or concluded; and

Ineffective implementation of the Protected Disclosures Act, 2000.

The policy gaps which exist are as result of limited implementation of the measures which results in the measure not been fully effective. These gaps are as follows:

a) The ambiguity with regard to the acceptance of gifts found in the Code of Conduct (Chapter 2 of the Public Service Regulations, 2001, as amended, and the Financial Disclosure Framework (Chapter 3 of the mentioned Regulations. In terms of the Code of Conduct, a public servant is prohibited from using his/her position to obtain private gifts or benefits. The financial disclosure framework prescribes that members of the Senior Management Service (SMS) must disclose gifts valued at R350.00 or more;

b) Limited application of the Financial Disclosure Framework has resulted in ‘unregulated public servants’ having business interests which are in conflict with public interest. In terms of the Financial Disclosure Framework, only members of the SMS are required to disclose their financial interests annually to the relevant Executive Authority. Recent government reports on the implementation of the financial disclosure framework have pointed a policy gap in the disclosure system.
According to the Public Service Commission and the Auditor General reports, the majority of public servants with business interests are officials on salary levels 4 to 8 and are excluded by the financial disclosure framework; and
c) Despite the Public Service Anti-Corruption Strategy identifying the need to regulate post-public employment when it was introduced in 2002, no measures have been put in place in this regard.

In order to close the policy gaps and strengthen implementation of ethical and good governance measures, the following additional measures are proposed that:

- Public servants be prohibited from directly or indirectly soliciting or accepting gifts, hospitality or private benefits of any value from any person (natural and juristic) that is contracted to the department to which the public servant is an employee;
- Any person, when rendering service to departments in the public service be prohibited from offering gifts, hospitality or private benefits to employees or their immediate families and relatives;
- Public servants be prohibited from accepting or soliciting any gifts, hospitality and private benefits from any person in return for performing or not performing his or her official duties.

The prohibitions of gifts exclude all tokens that may be offered or accepted within normal standards of courtesy or protocol by any entity. This will include tokens such as conference packages (pens, bags, t-shirts, etc) and any promotional materials or gifts that are often offered at functions and events; and

- In situations where public servants cannot decline a token of appreciation because it might be considered culturally disrespectful, such tokens must be declared and registered in the departmental gift register 6.1.6. These gifts will be registered in the Special Anticorruption Unit web site to promote transparency;
- An employee whose spouse, partner, business associate or close family member, stand to acquire any direct benefit from a contract concluded with their department, must disclose in writing full particulars of the benefit to the Ethics Officer and withdraw from participating in any manner whatsoever in the process relating to that contract;
Department to appoint/designate Ethics Officer/s depending on the size of the department to scrutinise, assess and analyse the disclosure forms of all employees in their respective department;

An employee to forward his or her disclosure form to the designated Ethics Officer;

An employee to disclose every time there is a change of status as opposed to annually as is currently required;

The Head of Department be assigned the responsibility to oversee the approval of disclosure reports compiled by Ethics Officers;

The disclosure forms of Ethics Officer/s be forwarded to their respective Head of Department for submission to the Public Service Commission;

The disclosure forms of Heads of Departments be forwarded to their respective Executive Authorities for submission to the Public Service Commission;

The financial disclosure form be amended to include a requirement to attach a copy of the approval received to perform any remunerative work outside the public service;

The financial disclosure form be amended to include job description, Identity number of the public servant and for property declaration include ERF No and Unit No;

The financial disclosure form be amended to include income tax and company registration no, attach the certificate of registration, and specify the sector/s in which interests are held.

An employee with private business interests to first seek approval from the Executive Authority before conducting business with government. The Executive Authority or designated official must take into consideration:

The nature of goods or services to be supplied to Government by the entity concerned;

The nature and extent of the business interest of the employee concerned in that entity;

The nature and extent of any adverse financial, operational and other circumstances for the state, the employee concerned or members of the public if the application is not approved, and

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Whether the approval of the application will be consistent with a fair, equitable, transparent, competitive and cost effective procurement of goods or services; and Applicable national treasury procurement regulations and policies.

No employee shall perform or engages himself or herself to perform remunerative work outside his of her employment in the relevant department, except with the written permission of the executive authority of the department.

The Executive Authority shall scrutinise the disclosure to ensure that there is no conflict of interest between the officials functions in the public service during the period of one year prior to the termination of their service and the new functions outside the public service; according to the framework.

2.2.32 Special Investigating Units and Special Tribunals Act 1996, (Act 74 of 1996)

This Act was enacted to provide the establishment of Special Investigating Units for the purposes of investigating serious malpractices or maladministration in connection with the administration of the state institutions, state assets and public money as well as any conduct which may seriously harm the interests of public, and for the establishment of Special Tribunals so as to adjudicate upon civil matters emanating from investigations by Special Investigating Units; and to provide for matters incidental thereto.

According to this Act the following allegations may be investigated:

- Serious maladministration in connection with the affairs of any state institution;
- Improper or unlawful conduct by employees of any state institution;
- Unlawful appropriation or expenditure of public money or property;
- Unlawful, irregular or unapproved acquisitive act, transaction, measure or practise having bearing on state property;
- Intentional or negligent loss of public money or damage to public property; and
- Unlawful or improper conduct by any person which has caused or may cause serious harm to the interests of public or any category thereof.

The functions of a Special Investigating Unit are, within the framework of its terms of reference as set out in the proclamation referred to in section 2 (1)-
To investigate all allegations regarding the matter concerned;
To collect evidence regarding acts or omissions which are relevant to its investigation and, if applicable, to institute proceedings in a Special Tribunal against the parties concerned;
To present evidence in proceedings brought before a Special Tribunal;
To refer evidence regarding or which points to the commission of an offence to the relevant prosecuting authority;
To perform such functions which are not in conflict with the provisions of this Act, as the President may from time to time request;
From time to time as directed by the President to report on the progress made in the investigation and matters brought before the Special Tribunal concerned;
Upon the conclusion of the investigation, to submit a final report to the President; and
To at least twice a year submit a report to Parliament on the investigations by and activities, composition and expenditure of such unit.

This Act is established to give effect to the provisions of the Constitution establishing and assigning functions to the Auditor-General, to provide for the auditing of institutions in public sector, to provide accountability arrangements of Auditor-General to repeal certain obsolete legislation; and to provide matters connected therewith. The Auditor- General has a constitutional mandate and, as the Supreme Audit Institution of the country, and it exists to strengthen the country’s democracy by enabling oversight, accountability and good governance in the public sector through auditing, thereby building public confidence.

According to this Act, the functions of the Auditor-General among others, are:

To carry out an appropriate investigation or special audit of any public institution, if the Auditor-General considers it to be in public interest or upon the receipt of a complaint or request;
May, in public interests, report any matter within the functions of AG and submit
such report to the relevant legislature and any other organ of state with a direct
interest in the matter;
Inspect, and question any person about any such document, book or written or
electronic record or information;
Direct a person to disclose; either orally or in writing, any information that may be
relevant for the audit including any confidential, secret or classified information;
and
Compliance with requirement of this section is not a breach of any applicable
legislation imposing the relevant obligation of secrecy or confidentiality or non-
disclosure.

When performing an audit according to this Act, the Auditor-General has all reasonable
times full and unrestricted access to:

Any document, book or written or electronic record or information of the
institution being audited;
Any of the assets of or under the control of the institution, or
Any staff member or representative of the institution in question; and
Enter any property, premises under the control of auditee.

Finally, a person is guilty of an offence if that person:

Hinders or interferes with AG or any person exercising a power or carry out
a duty in terms of this Act;
Refuses or fails to comply with a request of AG or authorized auditors in
terms of section 15;
Furnishes false or misleading information when complying with request the
AG or an authorized auditor; and
Contravenes section 50.
2.3 OFFICIAL REPORTS

2.3.1 Consolidated General Report on Audit Outcome of Local Government 2009/2010

According to the Consolidated General Report on the Audit Outcomes of Local Government 2009/2010 local municipalities are struggling with a number of constraints and challenges which hamper their ability to deliver services.

The followings can be attributed to that:

- Lack of capacity and lack of the requisite skills has left many municipalities inadequately staffed, with grave implications for service delivery.
- Public confidence in government’s ability to deliver being undermined by corruption and maladministration.
- The appointment of people without necessary skills or qualifications in senior position under the pretext of a cadre deployment.
- Lack of discipline, an absence of commitment to serving the public interest and non-adherence to the code of conduct for municipal officials is a challenge.
- The biggest challenge for local government, especially the smaller ones with no reliable revenue base, is to attract and retain competent persons across all areas of administration.
- The instability before and after elections means more acting persons and vacancies that are not filled timeously, which in turn impacts negatively on financial management and service delivery.
- The glaring Auditor-General’s report on handling of finances by municipalities especially in the Eastern Cape Province.

2.3.2 Consolidated General Report on the Audit Outcomes of Local Governments 2010/2011

According to the Constitution of the Republic of South Africa, Act 108 of 1996, the Auditor-General has a constitutional mandate and, as Supreme Audit Institution, exists to strengthen the country’s democracy by enabling oversight, accountability and good governance in the public sector, thereby building public confidence.
According to this report there were absolutely no improvement compared to the previous year though recommendations were made to improve the situation.

This could be attributed to following:

Not all political leaders took these matters seriously and accepted their accountability in this regard;
Most municipalities did not take the AG’s recommendations seriously;
There were also limited consequences for the failure of Accounting Officers and municipal officials to comply, even though there were clear remedies in legislation to deal with transgressions;
Skills level and experience of staff appointed in the finance department, especially with regard to compilation of financial statements that comply with GRAP were not adequate;
Consultants were often appointed close to a year end and data used by or provided to consultants to prepare financial statements was often not reliable;
The lack of improvement in the areas such as Supply Chain Management, which received much attention from AG, points to a disregard for laws and regulations.

As is always the case, there were findings that were picked up in the report of which some of them were the same as in the previous report:

Three price quotations were not in all instances obtained from prospective service providers and deviations were not approved by a properly delegated official or committee as required by legislation;
Competed bids were not always invited and deviations were not approved by properly delegated officials;
Awards were made to suppliers without proof from South African Revenue Services that their tax matters were in order;
The declarations were not always submitted by the service providers, as a results the auditees did not have sufficient information to to identify conflicts of interests and prohibited awards;
Bids were advertised for a shorter period and no approval of deviation;
Bids were not adjudicated by a properly constituted adjudication committee;
Prospective supplier’s list was not administered in accordance with the requirements;
Bids were not evaluated by properly constituted evaluation committee;
Goods and services were received and payments made to suppliers without a written, signed contracts being in place;
Contracts were not prepared in accordance with general conditions of contract as prescribed by National Treasury Regulations;
Some officials involved in the implementation of SCM policies were not adequately trained to perform their duties effectively;
Contracts were not adequate to ensure that officials declared whether they or their close family members, partners and associates had interests in suppliers or contract to awarded;
Supply Chain Management policies or procedures were in conflict with applicable legislation; and
Supply Chain Management officials were not aware of supply chain management policies and/or did not understand roles and responsibilities.

2.3.3 The Report of the Auditor-General to the Eastern Cape Provincial Legislature and council of Buffalo City Metropolitan Municipality 2010/2011


The following irregularities among others were detected:

- The municipality incurred expenditure in excess of the limits provided in the votes with the approved budget. This was in contravention of section 15 of the MFMA.
- Awards were made to service providers based on criteria which differed from those stipulated in the original bid documents.
- Quotations were accepted from prospective service providers who were not on the list of accredited prospective providers and not meet the listing requirements prescribed by the supply chain management policy.
• Awards were made to service providers whose tax matters had not been declared by the South African Revenue Services to be in order as required by the supply chain regulation.
• Awards were made to providers based on criteria which differed from those stipulated in the original bid documents.
• Awards were made to providers who are persons in service of the municipality which contravenes SCM regulations, and they failed to declare that they were in service of the state.
• The prospective providers list for procuring goods and services through quotations was not updated at least quarterly to include new suppliers that qualify for listing.
• The Accounting Office did not take all reasonable steps to ensure that the municipality had and maintained an effective system of expenditure control, including procedures for the approval, authorization, withdrawal and payment of funds, as required by section 65 (2) (a) of the MFMA.
• Investigations were not always conducted into all allegations of financial misconduct against officials of the municipality, as required by section 171(4)(a) of the MFMA.
• Lastly, the fraud prevention plan was last reviewed in 2003. The significance of not reviewing the plan was evident by the numerous fraud cases uncovered by management subsequent to the last review performed.

In the year under review, the permanent filling of key leadership positions remained a challenge in the Buffalo City Metropolitan Municipality. For the third consecutive year, the critical positions of the City Manager and the Chief Financial Officer remained vacant.

The suspension of three directors was only lifted in June 2011 and cases against these individuals were not yet finalized according to the report.

Key leadership vacancies have directly contributed towards the weakening of the general control environment of the municipality during the past three years.

General delegations were only approved by the council during May 2011.
The municipality therefore operated without approved delegations for most of the financial year and no sub delegation to lower ranks were in place at the year end. This had a severe impact on the operational and organizational efficiency of the municipality.

The disregard for approved financial policies and procedures, specifically the municipality’s supply chain management policy was an area of concern. The staff at supply chain management unit were not capacitated to fulfill and execute their duties and responsibilities. The lack of segregation of duties between the procurement and payment functions at the supply chain management unit has contributed towards the weakening of control environment.

The municipality again did not introduce an appropriate system to detect, monitor, report and discipline staff who failed to observe the municipal’s supply chain management policy.

Finally, according to this report, the investigation in respect of allegations leveled against former Acting Municipal Manager was concluded after year-end, and a number of officials and councilors were implicated in the report. At the time of conducting the research, the council was still in the process of assessing and implementing the finding and recommendations of the report. Irregular expenditure of R75.1 million in respect of this matter was detected. But it was clear that the report had divided the council given that some heavy weights were being implicated.

### 2.3.4 The Report of the Auditor-General to the Eastern Cape Provincial Legislature and Buffalo City Metropolitan Municipality 2011/2012

According to this report the municipality incurred expenditure in excess of the limits provided for in the votes with the approved budget. This was in contravention of section 15 of the MFMA, as a result an unauthorized expenditure of R8, 1 million was disclosed.

The Accounting Officer did not timeously submit the monthly budget statements to the mayor and provincial treasury as required by section 71(1) of MFMA.
Sufficient appropriate audit could not be obtained that goods and services with a transaction value between R10 000 and R200 000 were procured by means of obtaining written price quotations from at least three different prospect service providers as per the requirement of supply chain management regulation 17 (a) and (c).

Quotations were accepted from prospective providers who were not on the list of accredited prospective providers and which were not stipulated in the original bid documents as the requirements of SCM regulations.

The annual performance report for the year under review did not include the performance of the municipality and external service providers, a comparison of the performance with set targets. An audit committee was not in place for the full year as required by MFMA, as a result there were no audit committee meeting. Disciplinary hearings did not commence within three month of the resolution to institute disciplinary action, as required by Disciplinary Regulation for Senior Managers.

The following irregularities were detected on procurement and contract management in the year under review:

- Goods and services with a transaction value below R200 000 were procured without obtaining the required price quotations as required by SCM.
- Quotations were accepted from prospective providers who were not registered on the list of accredited prospective providers and did not meet the listing requirements prescribed by SCM policy.
- The performance of contractors and providers was not monitored on a monthly basis as required by MFMA.
- Awards were made to providers who were persons in service of municipality or whose directors are persons in the service of the municipality, in contravention of SCM Regulation.
- Persons in the service of the municipality who had a private or business interests in contracts awarded by the municipality failed to disclose such interests, as well as their close family members.
- Allegations of fraud or corruption and improper conduct and failure to comply with the SCM system laid against role players in the SCM were not investigated as required by SCM.

- Sufficient appropriate audit evidence could not be obtained that all contracts and quotations were awarded in accordance with the legislative requirements and procurement process which was fair, equitable, transparent and competitive, as some of the information submitted was incomplete.

On leadership the following challenges were identified:

- The political and administrative leadership did not take full ownership of the internal control environment and did not insist on daily disciplines to ensure efficiency and effectiveness in financial management, service delivery execution and compliance with laws and regulation, thus not setting the correct tone for the credibility of all reports of administration.

- Top and middle management positions were vacant for extended periods. This included the Chief Financial Officer’s position which was vacant for more than 33 months at the time of the report, while the Accounting Officer’s position was only filled in March 2012. The continued absence of permanent finance professional to lead and guide the municipality compromised sound financial management.

- The leadership did not address the challenges faced by municipality’s SCM Unit during the past four years and did not implement its SCM policy.

- This was largely as a result of inadequate capacity within the unit to implement the SCM policy, which was further aggravated by inadequate planning by the different directorates within municipality. This was evidenced by the large amount of irregular expenditure incurred and the amount by which the budget was underspent.

2.3.5 The Report of the Auditor-General to the Eastern Cape Provincial Legislature and Buffalo City Metropolitan Municipality 2012/2013

According to this report the following observations were identified:
The municipality did not have adequate systems in place to identify and disclose all irregular expenditures incurred during the year under review as required by MFMA. Due to the lack of adequate systems and non-availability of sufficient appropriate audit evidence for all awards, it was impracticable to determine the full extent of the understatement of irregular expenditure disclosed at R781.1m.

The municipality’s performance management system was not in line with priorities, objectives, indicators and targets contained in its IDP. The municipality did not have and maintain effective, efficient and transparent systems of financial and risk management and internal controls as required by MFMA.

Measures to combat the abuse of the SCM system were not implemented as per the requirements of SCM regulations as declarations of interest were not submitted to assess whether awards were not made to providers who:

- During the last five years had failed to perform satisfactory on previous contracts with the municipality or municipal entity or other organ of state.
- Committed a corrupt or fraudulent act in competing for the contract.
- Abused the SCM system of the municipality.
- Had been convicted of fraud or corruption during the past five years.

Goods and services with a transaction value of below R200 000 were procured without obtaining the required price quotations as required by Municipal Supply Chain Management regulation. Sufficient appropriate audit evidence could not be obtained that contracts and quotations were only awarded to and accepted from bidders who submitted a declaration on whether they are employed by the state or connected to any person employed by the state as required by SCM. An effective system of expenditure control, including procedures for the withdrawal and payment of funds was not in place as required by MFMA.

The municipality did not comply with requirements of the MFMA regarding the following:

- Fruitless and wasteful expenditure incurred by the municipality was not investigated to determine whether any person was liable for the expenditure.
The municipality did not adequately follow up on Council and Municipal Public Accounts Committee reports which determine whether any person is liable for fruitless and wasteful expenditure incurred resulting in action not being taken to recover such funds.

Council reports in which an assessment is made regarding the recoverability of the irregular and fruitless and wasteful expenditure was not produced.

Leadership did not sufficiently address the challenges faced by the municipality’s SCM. This had resulted in inadequate capacity within the unit, which was further aggravated by poor planning by the different directorates within the municipality. Top and middle management positions were vacant for extended periods of time. The continued absence of permanent officials to lead and guide the municipality compromised the effectiveness of the control environment.

There was a lack of processes in place to ensure compliance with laws and regulation, as a result management did not effectively monitor and address areas of non-compliance.

2.3.6 The Report of the Auditor-General to the Eastern Cape Provincial Legislature and Buffalo City Metropolitan Municipality 2013/2014

According this report the municipality did not have adequate system in place to identify and disclose all irregular expenditure incurred during the current and previous financial periods as required by section 125 (2) (d) (i) of the MFMA. Due to these inadequate systems it was impracticable to determine the full extent of the understatement. The municipality was a defendant in a number of law suits to the amount of R166 million. The outcome of these law suits could not be determined at the time as litigation was still in progress.

The consolidated financial statement submitted for auditing were not prepared in all material respects in accordance with requirements of section 122 of the MFMA. Asset management was inadequate as a perpetual asset register was not in place. The accounting and information systems did not support internal controls for assets as required by section 63(2)(a) and (c) of the MFMA.
Unauthorized, irregular, fruitless and wasteful expenditure incurred by the municipality was not always investigated to determine whether any person was liable for the expenditure, as required by section 32(2)(a)(ii) of MFMA. Reasonable steps were not taken to prevent authorized, irregular, fruitless and wasteful expenditure as required by MFMA.

Council certified irregular expenditure as irrecoverable without having conducted an investigation into every award made, as required MFMA. Reasonable steps were not taken to prevent unauthorized, irregular, fruitless and wasteful expenditures as required by MFMA. Quotations were accepted from prospective providers who were not registered on the list of accredited prospective providers and did not meet the listing requirements prescribed by Supply Chain Management policy.

For prior period awards identified through the audit no effective steps were taken to prevent or combat the abuse of the SCM processes in accordance with SCM regulation. Awards were made to providers whose directors or members were in the service of the municipality, as well as providers who were in the service of other state institutions. Persons in the service of the municipality or close family members who had a private or business interest in contracts awarded by municipality failed to disclose such interest as required by SCM regulation. Also contracts and quotations were awarded to bidders who had not submitted declaration on whether they were employed by the state or connected to any person employed by the state as required by SCM regulation.

The performance management system and its related controls were inadequate as it did not describe and represent the processes of performance. Leadership had not instituted all disciplines necessary to enable oversight and monitoring that promote efficiency and effectiveness in financial management, service delivery reporting and compliance with laws and regulation. The leadership did not implement effective human resource management to ensure that adequately and sufficiently skilled resources are in place as a number of key position within top and middle management were vacant for extended periods of time. The continued absence of permanent officials to lead and guide the municipality compromised the effectiveness and stability of the control environment.
Leadership did not sufficiently address the previously reported challenges faced by municipality’s SCM unit. This was largely as result of inadequate capacity within the SCM unit which resulted in poor record keeping and monitoring thought the year under review. This was further aggravated by poor planning, implementation and monitoring of contracts by user directorates within the municipality.

The municipality did not fully implement and monitor all required daily and monthly financial, performance and compliance disciplines to verify the credibility of in-year-monitoring reporting. This resulted in key reconciliations and processing only being performed after the financial year-end. The municipality did not implement an effective performance management system that enables leadership to hold all officials accountable for the work they perform on a daily basis.

There was a lack of processes in place to ensure compliance with laws and regulation. As a result, management did not effectively monitor and address areas of no-compliance.

Finally, according to this report MEC for Local Government and Traditional Affairs, and the Directorate of Priority Crime Investigation were investigating allegations of irregularities with respect to the state funeral procurement.

2.3.7 The Report on the Investigation into the alleged irregularities in Respect of Buffalo City 2010 FIFA World Cup by Ernst and Young 2011

In the report the following irregularities were detected in the appointment of service providers:

The Buffalo City Metro SCM Unit was not requested to assist in the appointment of the local service providers.

Media Led and Enterstage were subcontracted by Phumaf and Alliance without following a process to verify their credentials.

However, when the contracts were cancelled the payments relating to services were not yet rendered and were not recovered.

The scope of work for Enterstage, a service provider appointed to provide equipment in King William’s Town, was extended to include the provision of
equipment and related services in Douw Sports Grounds in Chalumna for the work which was previously contracted to Media Led.

Media Led and Enterstage were paid for the same services, which amounts to double payments in respect of the same work.

In the same report, the Price Water Coopers report dated 11th October 2010 revealed that various potential irregularities relating to the local service providers subcontracted by Alliance. They included the following:

- Non-compliance with VAT. In this regard there were instances where incorrect VAT numbers were supplied by service providers.
- No VAT numbers were supplied on certain invoices.
- Certain individuals owned numerous entities that Alliance appointed as subcontractors.
- Manual modification occurred in respect of bank details on certain invoices, and inconsistent bank accounts were provided in invoices by certain entities.

There were media reports that the present Executive Mayor, Ms Zukiswa Ncitha wanted an external body to look into the recommendations of the report. But the unfortunate part was that the report implicated some senior officials and politicians, hence it has taken so long to be auctioned. Ultimately a multiparty committee was tasked to handle the matter.

### 2.3.8 Buffalo City Metro IDP/Budget Process Plan 2013/2014

In this plan the metro has identified six overarching strategic objectives:

- To be a well structured and capacitated institution that renders effective and efficient services to all by 2016.
Having these plans in place of which are not the first of its kind, starting from the constitution, legislation that are in place, the anti-corruption structures etc, but still we continue to have these corrupt related activities in this municipality. The conclusion therefore would be a human factor.

2.3.9 Public Service Commission Annual Report 2011/2012
The Public Service Commission is tasked, among other things to undertake public administration investigations, promote a high standard of ethical conduct among public servants and contribute to preventing and combating corruption in the public service. It is responsible to investigate public administration practices and make recommendations to the departments. Also it is responsible for monitoring and evaluation of financial misconduct cases and maintains a database.

2.3.10 The Third National Anti-Corruption Summit Report 2008
According this report the following resolutions were taken:

a) The Ethical Practices in Social and Economic Life
   i. That the NACF establish a task team to urgently consolidate and articulate the National Integrity System.
   ii. To call on political parties and Parliament to expedite the regulation of transparency in party political funding and to consider a sanctions mechanism.
   iii. To urge political parties in all three spheres of government to disclose their business interests.
   iv. To continue to strengthen monitoring and accountability mechanisms with respect to all tender processes in the public sector.
   v. To support the swift regulation of post-public sector employment for all elected and appointed public officials and its implementation.
   vi. To strengthen the current system of disclosure of interests for all elected and appointed public officials.
   vii. To develop systems of disclosure of interests for business and civil society.
viii. To support legislative and other measures to ensure that companies found guilty of offences of price-fixing, market allocation and collusive tendering are prohibited from state tenders for a determined period.

ix. To strengthen the enforcement provisions of the Competition Act including holding individuals accountable for price-fixing, market-allocation and collusive tendering.

x. To urge the business community to investigate self-regulating mechanisms to improve ethical conduct in practice.

xi. To reaffirm that ethics must be infused in all aspects of the education system including the curriculum at all levels.

xii. To reaffirm that schools of Business and Public Management must provide courses on professional ethics and anti-corruption.

xiii. To call for the strengthening of the institutional capacity of the private sector to detect and prevent corruption.

xiv. To complete the implementation of continental and international anti-corruption legal instruments and promote the enforcement thereof in national law.

b) Strengthening Accountability, Coordination and Oversight

i. To strengthen anti-corruption bodies and improve coordination among them.

ii. That all allegations of corruption must be investigated and prosecuted without fear or favour, in accordance with past and present anti-corruption legislation.

iii. To reaffirm that sectors and professional bodies must adopt sector and profession-specific codes of conduct and/or ethics as well as a training and communications regime to support their application.

iv. That the private sector must mainstream anti-corruption practices and report on them in Annual Reports in an accessible and transparent manner.

v. To promote national anti-corruption values and interests continentally and internationally.

vi. To call for improved financial accountability and transparency of civil society organizations.
vii. To strengthen the powers of oversight bodies for the business sector and promote coordination of their activities.

viii. To promote the National Anti-Corruption Hotline and support the further development of capacity to respond to reported corruption.

c) Access to Services Through Participatory Governance

i. That all state entities improve service delivery through inter-alia eliminating corrupt practices, encouraging whistle blowing and complying with the National Integrity System.

ii. That services are offered to all citizens equitably and fairly.

iii. That the NACF supports the urgent finalization of the review of the Protected Disclosures Act and initiates a national conversation on building a culture of whistle blowing.

iv. That participatory governance must be promoted to ensure that corruption and the abuse of power are addressed at the site of service delivery.

v. To implement effective anti-corruption communication and awareness programmes at community level, within the business sector and across civil society.

vi. That public officials in all spheres of government must be trained in ethics, conflict of interest principles, constitutional and administrative law and the principles of Batho Pele.

d) National Anti-Corruption Forum

i. That all three sectors ie state, business and civil society must fully commit and take ownership of the NACF and the chair must rotate.

ii. To strengthen the NACF and undertake a review of institutional arrangements including the role of leadership, composition, expanded participation and whether or not the NACF should become a statutory body.

iii. To call on universities and professional bodies to expand their participation in the NACF.

iv. That the NACF promotes dialogue within the sectors.
2.3.11 The Fourth National Anti-Corruption Summit Report 2011

The primary function of this Summit was to report back on the implementation of the resolutions and to pass new ones for further implementation. The Summit was also used to reflect on the nature and state of corruption in the country and the initiatives and efforts needed to put in place to deal with corruption.

According to this summit report the following resolutions were taken:

- To reaffirm the original vision of the NACF, as set out in the Memorandum of Understanding on its Establishment, as the primary platform for the development of a national consensus through the coordination of sectoral strategies against corruption.
- Sector representatives commit to securing the renewed commitment of their leadership to give effect to the vision and objectives of the NACF.
- To reaffirm the commitment to holding accountable to report regularly on effective implementation of sectoral and joint strategies.
- To commit to engage with every respective constituencies and with each other to revise the National Anti-Corruption Strategy and implementation modalities.
- Sector representatives undertake to review their sectoral anti-corruption initiatives and programmes aimed at realising an agreed National Anti-Corruption Strategy.
- Each sector commits to review and where necessary reconstitute its representation on the NACF.
- To develop a comprehensive education, awareness and communication campaign to promote an ethical culture, develop an improved understanding of the many facets of corruption, and the contributions being made to combat this scourge.
- To reaffirm the resolutions adopted at previous Summits that remain unimplemented, call on all sectors to take urgent and decisive action to demonstrate their commitment to both their previous joint undertakings and to this shared Forum, and to include them in the National Anti-Corruption Programme. Previous resolutions are attached for ease of reference.
To commit everyone to engage to consider options for the implementation of and respect for the Constitutional Court’s ruling requiring the establishment of independent anti-corruption capacity.

Noting reference in the Preamble to the review of the PDA, a call for comprehensive protection for whistle-blowers, and the right to access to information in line with the national Constitution.

To recognize that to give to the vision, objectives and programmes of the NACF it is necessary to identify and secure adequate resources to review and capacitate its structures at local, provincial and national.

The NACF is tasked to urgently produce a strategic programme of action supported by a business plan, including timeframes, to give effect to all resolutions.

2.3.12 Report on an Investigation into Allegation of Maladministration on Financial Mismanagement, Tender and Appointment Irregularities against PRASA 2015

According to the report conducted by the office of Public Protector, Passenger Rail Agency of South Africa (PRASA) an organ of state reported an accumulated loss of R1 billion for 2014/2015 financial year. The budget allocation from government for the Medium Term-Expenditure Framework (MTEF) period 2015-2018 was R17.2 billion.

There were 37 cases reported by the Complainant mostly dealing with alleged procurement irregularities with the amount involved being more than R2.8 billion. As the report was finalized by the office further allegations of procurement irregularities at PRASA were reported.

In the process it was reported that South African Transport and Allied Workers Union (SATAWU) attempted to withdraw its complaint something that discomforted the investigation as Passenger Rail Agency of South Africa management was also reluctant to cooperate with the investigation process, using the withdrawal as the basis for questioning the continued investigation by the Office of Public Protector.

There were also allegations of victimization of whistle-blowers, current and former employees of PRASA as well as member of the executive of SATAWU.
The allegations were as follows:

- PRASA improperly cancelled all contracts for cleaning services on the 15\textsuperscript{th} March 2012, and improperly appointed Reakgona Commercial and Industry Hygiene and Katanga Cleaning Services on contract valued the R500 000 threshold in contravention of the Treasury Regulations and Supply Chain Management Policies of PRASA.
- Reakgoma Commercial and Industry Hygiene was awarded a contract due to its association with the Group Chief Executive Officer’s close business associate.
- PRASA appointed Sidas Security Company improperly at a higher rate on tender 525/2010/GAU/PS to replace National Force Security on instructions of the General Chief Executive Officer (GCEO), but improperly terminated the contract 9 months after its appointment.
- Proper procurement processes were not followed in the appointment of Vimtsire Security Services Company which allegedly failed to meet the minimum requirements for appointment. Royal Security was also allegedly appointed on the same tender in 2009 and allegedly billed PRASA R2.8-million instead of the agreed amount of R2.5 million per month.
- The appointment of Royal Security on tender concerned was irregular, as its original contract WM/FIN/CA/7/24/06 was terminated by PRASA due to its underperformance.
- An amount of R600 000, alleged to have been improperly authorized by PRASA’s Head: Corporate Services, was improperly paid in advance to Enlightened Security for a contract for the Tshwane Metropolitan Municipality Region prior to its appointment on tender TSH/RISK/436/10/2008.
- A tender for the installation of high speed passenger gates worth R800-million was awarded to certain contractor in 2009/2010 financial year for the Doornfontein station but was later improperly extended to other stations nationally without following proper tender processes.
- PRASA improperly incurred an upfront payment, to a developer of the City Mall for the construction of an underground train station (Bridge City Project), without going on a bidding process and without proper authorisation during the periods 2008 to 2010;
• PRASA improperly appointed a media company to produce *Hambanathi* during 2008/2009;
• A PRASA Board member, Mr Vusi Twala, was improperly awarded a tender by Intersite, a subsidiary of PRASA, to provide CCTV cameras;
• A Change Management Consultant, Mr Ezra Ndwandwe, was appointed at a cost of R2 million without following proper procurement processes during 2008/2009;
• The GCEO improperly awarded a tender amounting to an estimated R10 million to the erstwhile CEO of the South African Rail Commuters Corporation (SARCC), Mr Edwin Lekota, for the development of a contingency emergency preparedness programme for Metrorail without following proper procurement processes;
• Umjanji Consortium, a company formed and incorporated after the closing date for submission of tenders on tender HO/CA/739/02/2010, was improperly awarded a tender on Media Advertising and Broadcasting Concession Agreement in March 2011 without following proper procurement processes in contravention of the PRASA Supply Chain Management Policies;
• The GCEO improperly awarded a contract for the provision of professional advisory service on the signalling project to a friend, Mr Makhensa Mabunda of Siyaya DB, who did not possess the necessary skills and experience and without following proper procurement processes;
• A tender amounting to R22 million for the Park Station for Park Station Development Framework was allegedly not advertised but recommended for approval to be awarded to a contractor named ARUP. Associated to a member of PRASA Board in November 2009.
• Between the years 2008 and 2010, PRASA engaged construction companies in the 2010 Soccer World Cup Station Building Project, the Capex Project and renovation of existing stations without following proper procurement processes and an overspending of R2 billion amounting to fruitless and wasteful expenditure
• In April 2010, Autopax concluded an irregular security contract with Futuris Guarding (PTY) amounting to R54 337.20 per month;
• PRASA was delaying to pay Rasakanya Builders, the service provider to PRASA Corporate Real Estate Solutions (PRASA Cres), and has improperly served a notice
of termination of the contract, thereby leaving 36 employees of Rasakanya Builders without pay for services rendered;

- The GCEO/PRASA incurred irregular and/or fruitless and wasteful expenditure relating to the following transactions: upfront payment of an amount of R80 million for the FIFA World Cup sponsorship without proper approval; budget and/or allocated funds which resulted in fruitless and wasteful expenditure; and to this end, the GCEO invested funds with FIFA based on the agreement that PRASA would recoup the expenditure through the sales of tickets to commuters/soccer fans and it is asserted that the money was never recovered;

- Brand Leadership was awarded the new PRASA branding contract to the value of R9 million. However, the contract amount was improperly inflated to R19 million, thereby resulting in irregular/fruitless and wasteful expenditure of R10 million;

- During the period 2009/2010, the GCEO allegedly requested R1 billion funding from the National Treasury on the pretext that it would be used during the taking over of operations of Shosholoza Meyl. It is alleged that National Treasury paid R500 million, and nevertheless, the funds were never used for their intended purpose;

- During the period 2009/2010, the GCEO allegedly requested R1 billion funding from the National Treasury on the pretext that it would be used during the taking over of operations of Shosholoza Meyl. It is alleged that National Treasury paid R500 million, and nevertheless, the funds were never used for their intended purpose;

- PRASA Operational Expenditure (OPEX) budget was improperly overspent by R2.2 billion without the approval of the PRASA Board during the period 2009/2010;

- PRASA Head Office staff vacated its Offices at Jorissen Building 14 months before the expiry of the lease agreement but PRASA continued to pay rental, which constituted fruitless and wasteful expenditure;

- After vacating Jorissen Building, PRASA acquired Umjantshi House Building to accommodate its Head Office staff without following proper procurement processes and without a proper budget approval;

- The GCEO instructed PRASA Management at the Intersite Building in Woodmead to vacate the premises 20 months prior to the expiry of the lease agreement, but continued to pay for the lease, thereby constituting fruitless and wasteful expenditure;
• The GCEO dismissed five Senior Executives unlawfully during the years 2008 and 2011 and the CCMA ordered their reinstatement, which he rejected and instead compensated them with an estimated R5 million, which constituted fruitless and wasteful expenditure.

• The Group Executive HR was replaced improperly by the GCEO’s uncle, Mr Mphefo Ramutloa, without proper recruitment processes being followed;

• During February 2010, an unlawful Electronic Funds Transfer (EFT) was uncovered in a forensic report by Deloitte, in which R8.1 million was fraudulently transferred in the Durban and Tshwane Regions but no action was taken against those implicated in the transaction.

• During the period 24 to 27 September 2009, Mr Montana undertook a leisure trip in a Blue Train to Cape Town together with 10 female companions and returned in a South African Airways (SAA) flight costing PRASA R17 000.00. The total cost of the trip was allegedly an estimated R170 000.00 which constituted fruitless and wasteful expenditure;

• During 2008/2009, the Executive Corporate Affairs Manager, Mr P Mabe, allegedly received salaries from PRASA despite having left its service and Mr Montana allegedly misled the Exco and the PRASA Board that the employee was not on PRASA’s payroll.

• PRASA disregards the labour relations processes and conditions of employment when dealing with labour issues thereby costing the entity enormous amounts of money that resulted in fruitless and wasteful expenditure. To this end it is alleged that:

  i. Mr Stephen Ngobeni, Mr Montana’s cousin in the employment of PRASA, was improperly appointed as a Training Contractor to provide training services on the handling of People with Disability. He was later allegedly improperly transferred without a disciplinary process being instituted against him; and

  ii. Mr Montana unlawfully engages yearly in a series of suspending employees perpetually with payment of salaries costing PRASA an estimated R3.35 million in fruitless and wasteful expenditure.
• The Complainant further raised allegations of conflict of interests relating to the following members of the PRASA Board:

i. A member of the PRASA Board, Dr Bridgette Gasa, who is also a Director of ARUP, a company alleged to be contracted to provide advisory services to PRASA, and a Director in another company that is also providing consultancy services to PRASA, is benefiting improperly as her involvement in these companies while serving as a member of the PRASA Board constitutes a conflict of interest;

ii. The Chairman of the PRASA Board, Mr Sfiso Buthelezi is alleged to be the Chief Executive Officer of Makana, a subsidiary of Cadiz, a company allegedly providing advisory service to PRASA on the Rolling Stock Recapitalisation Project. His alleged involvement is asserted to constitute a conflict of interest; and

iii. The wife of Mr Bushy Boshielo was appointed as a General Manager of Autopax without following proper recruitment processes during Mr Boshielo’s tenure as a member of PRASA Board.

iv. During 2008/2009, Mr Montana improperly appointed Mr Chimanda as a Special Advisor at PRASA at a cost of R2 million, without following proper recruitment processes and in contravention of the PRASA Recruitment Policy.

v. About 17 tenders/contracts collectively exceeding R2.8 billion were specifically identified by the Complainant for investigation of supply chain irregularities, including non-competitive processes, cronyism, scope creep, cost overruns, overpayments and fruitless and wasteful expenditure.

Given the magnitude of the problem within PRASA, indications were that there would be a second round of the investigation.
2.3.13 Report on Investigation into Alleged Maladministration by the Nala Local Municipality 2013

According to this report of the office of Public Protector, most of the systemic service delivery failures and maladministration complaints were substantiated, including the failure to expeditiously implement the recommendations of the forensic investigation report of KPMG. The Municipal Manager at the time, received KPMG report during 2010 and failed to table it in the council or to release the findings of a KPMG forensic investigation that was conducted in respect of the Nala Local Municipality. The executive summary was only tabled in the council on the 14th November 2011, whereas the report was received by the Municipal Manager on the 20th September 2010, which was in contravention of Municipal Systems Act 2000.

The former Municipal Manager did not adhere to Supply Chain Management policies and in some cases engaged in incidents amounting to manipulation of SCM processes such as in the case of the Bucket Eradication Phase 3 tender. Which was also in contravention of the Municipal Finance Management Act 2003. The Municipal Manager and the Mayor and the council failed to take the required steps to implement the recommendations of the KPMG report. Also the Municipal Manager failed to ensure that disciplinary proceedings were conducted in respect of the officials implicated in the report.

2.3.14 Report on Investigation into Allegation of Unethical Conduct Relating to Installation and Implementation of Security Measures in the Private Residence of President Zuma at Inkandla 2014

According to this report, “Secure in Comfort” is the report of Public Protector on investigation conducted into allegations of impropriety and unethical conduct relating to installation and implementation of security and related measures and the private residence of the President of the Republic of South Africa Mr Jacob Zuma at Inkandla in KwaZulu Natal Province.

The cost estimation for the project was R145 million at the time according to the Architectural Services of the Department of Public Works. At the time of concluding the report it is said that R215 million had been spent while the total cost to conclude the project was conservatively estimated at R246 million.
The investigation was carried out in response to seven complaints lodged between December 2011 and November 2012. The earliest concerns regarding excessive expenditure at the private residence of President Zuma were expressed on the 04\textsuperscript{th} of December 2009 by the Mail and Guardian at cost of R65 million then. Apart from the release of a statement by the presidency denying that government was footing the bill, nothing seems to have been done by government to verify the allegations or attempt to arrest the costs which the article predicted would continue to rise. Three years later and a year after a complaint was lodged with Public Protector’s office, the Minister of Public Works appointed a Task Team of officials composed of departments involved in the project, to investigate specified matters in relation therewith.

The Task Team report was released to public in December 2013. More items were added to the project after the concerns were raised in 2009, bringing the costs from R65 million to R215, which had since been spent, whilst outstanding was estimated at R36 million bringing the envisaged total costs to R246 million.

A number of questions were raised according to this report e.g.:

Where was the money coming from and how had it been approved;
Whether undue political influence was placed on the Department of Public Works to allocate these funds;
Who issued the instruction for the allocation of these funds;
Whether these funds had been properly budgeted for;
Whether any funds had been transferred from other much needed projects for this revamp to place;
Whether the allocation of funds for which is essential a private home which will not remain within the state’s ownership-represents irregular expenditure;
How can this amount of money be spent on a private residence of any government employee;
The additional complaints raised issues regarding the possible abuse of Executive privileges, impropriety, extending benefits to relatives and misleading Parliament, and
Included in the complaints were the following significant statements according to the report:

*I do not understand how this money can be spent on a private residence of any government employee, especially when that employee has two residences at his disposal in Cape Town and Pretoria. Whether this construction is being performed for President Zuma as President of SA or as a favour as ANC President, I would suggest it is misuse of state funds to the benefit of a private individual, possibly to curry political favour for the Minister of Public Works or a DG. When the President is no longer the incumbent he is not entitled to state housing but he will enjoy the benefits of the modifications to his private estate in perpetuity. While the majority of people in this country still struggle and fight for survival it is deeply disturbing to discover that the President and some of his close senior supporters feel that it is all right to abuse their positions to benefit themselves and each other at the expense of the nation and all her citizens. These individuals, in their capacities as servants of the people, should be held to task if they are in any way guilty of wrongdoing, abuse of power or corruption. If the allegations in the press on what is happening with the President’s private homestead in Nkandla are true, then the President and those involved in facilitating these massive renovations are possibly guilty of a number of transgressions and should be held accountable.”* (Public Protector 2014: 7-8)

It would appear that the course of events changed significantly around August 2009, when Mr Makhanya, the President’s private architect who had been involved in the President’s non-security construction works, was brought in, without going on tender, to act as the Department of Public Work’s (DPW) Principal Agent in respect of the entire Nkandla Project, while retaining his position as the President’s Principal Agent and architect. This is the period when the scale of work increased exponentially, leading to installations that were not recommended in any of the authorizing instruments or Security Evaluation Reports and the cost of works escalating to over R215 million. It is also the point at which
the Director: Architectural Services at the DPW expressed concerns about moving from “humble beginnings to establishing a full township.

By installing measures that were not based on the outcome of any of the 2 security evaluations carried out using the Minimum Physical Security Standards as required and not quantifying and approving the scope of measures before approaching service providers, the process that ensued from August 2009 did not fully comply with the Cabinet Policy of 2003, from which the authority to install security measures was derived.

The Cabinet Policy of 2003 requires:

- Request by the President or Presidency for security measures;
- Security evaluation by the SAPS and State Security Agency;
- A proposal to the Inter-Departmental Security Co-ordinating Committee or technical;
- Cost estimate prepares by DPW;
- The SAPS to advise the Minister of Police on the proposed security measures including the cost;
- Communication to the President on the approved security measures for his or consent; and
- Implementation by the DPW.

If the Cabinet Policy of 2003 was not complied with, how about the National Key Points Act? The Presidency and SAPS have since argued that there was no need to comply with the National Key Points Act. This was despite the fact that in submissions to Parliament and media statements, the National Key Points Act was used, primarily by the Minister of Public Works, to justify the installations and related expenditure at President Zuma’s private residence.

According to the Declaration Certificate issued by the Minister of Police, Mr Nathi Mthethwa, on 08 April 2010, the security installations at the President’s residence were
supposed to be handled in terms of the National Key Points Act. Since work was already in progress, the directive in the declaration was to presumably apply from that date onwards. Unfortunately, the organs of state involved have failed to address the Public Protector on what was intended arguing, in a very strange way that the act of bringing in the National Key Points Act was to secure what had already been built in the name of security.

The office of the Public Protector had the following findings according to the report that:

It is common cause the expenditure of an amount in excess of R215 million that was spent by the DPW on the Nkandla Project, the prescribed open tender process was not utilized for the procurement of the goods and services required at any stage of the project. Treasury requirements require that all goods and services between R10 000 and R500 000 be subjected to three quotations and above R500 000, to an open tender process. Most of the deviations from the prescribed open tender process were justified in internal memoranda and minutes of meetings citing:

The fact that a particular service provider was appointed by the President and that there was a need to integrate the project with the President’s private works;
Security;
Instructions from the Minister of Public Works;
Urgency; and
Indications that the service/product required was only available from one supplier.

The investigation had own limitations according to the report which caused some delays.
The investigation took approximately two years, which exceeded the one year target the Public Protector South Africa team had set for complex investigations. The delays could be attributed to the following:

- Internal capacity constraints;
- Access to classified information;
- Access to the report of the internal Task Team appointed by the Minister of Public Works;
- Objection lodged by the Minister of Police on 22 March 2013, later supported by the Ministers of Public Works and State Security with the assistance of the Acting State Attorney and the Chief State Law Advisor to the investigation;
- General delays in access to information held by some departments involved in the Nkandla Project also.
- Requests for extensions to submit responses to notices issued in terms of section 7(9) of the Public Protector Act.

When the Executive Members’ Ethics Act dimension was added in December 2012, the 30-day period stipulated in this Act could not be met, primarily because this was an addition to an existing extensive investigation in terms of the Public Protector Act. Furthermore, the abovementioned delays exacerbated the situation;

Some of the parties that appeared to have been implicated by the investigation were assisted by attorneys and advocates in their responses and a total of 7 attorneys and 5 advocates were involved, some of whom tried to turn the investigation into adversarial proceedings. Threats of interdicts were frequently made.

The following jurisdictional and process issues were raised by respondent organs of state and implicated persons:
- The authority of the Public Protector to conduct the investigation at the same time while the Executive had decided on the agencies it wanted to conduct the investigation;
- The authority to investigate the conduct of a private consultant contracted by the state;
The access to, scrutiny and review of the evidence and information obtained during the investigation; and
The process followed during the investigation. In some cases, there was a lack of proper understanding of the provisions of the Public Protector Act.

The security nature of the project in question required an extensive consideration of the legislation and other prescripts that regulate the security classified information. In terms of the provisions of the Minimum Information Security Standards Policy (MISS), this means that the information is regarded as being of such a nature that its unauthorized disclosure/exposure can be used by malicious/opposing/hostile elements to neutralize the objectives and functions of institutions and/or the state.

In essence the Public Protector had to strike a balance between security on the one hand and accountability and openness. She took into account the provisions of section 1(d) of the Constitution, entrenching accountability, responsiveness and openness among other founding values of democracy. Her office took drastic measures to ensure that information that was sensitive and classified was secured throughout the investigation.

In relating to the ethical considerations, she was faced with asking the President the same questions that she had to ask of the former Minister of Cooperative Governance and Traditional Affairs, the late Mr S Sicheka, and the Minister of Police, Mr N Mthethwa, when I investigated allegations of unethical conduct against them, i.e. did he raise any concerns about obvious extravagant and expensive measures that were being implemented by the state at his private residence? In Mr Mthethwa’s case he questioned obvious excessive expenditure and took steps to remedy the impropriety.

Her approach to the investigation was to consider and evaluate what happened, what should have happened and whether there was a discrepancy between the two that constituted improper conduct and maladministration, to rectify or remedy the impact.

Finally, the office of the Public Protector had the following findings on the investigations:
The key violation in this regard was the failure to follow the processes outlined in the Cabinet Policy and the deviation from the 16 security measures that were recommended in the Second Security Evaluation by SAPS. This constituted improper conduct and maladministration.

With the National Key Points Act having been inexplicably dragged in halfway through the implementation of the Nkandla Project, its provisions had to be complied with. This did not happen. Neither was there compliance with the contents of the declaration of the Nkandla Residence as a National Key Point, as signed by the Minister of Police on 08 April 2010.

In relation to installations at the request of the Surgeon General on behalf of the Department of Defence (DOD) and South African Medical Health System (SAMHS), there appears to be no instrument specifically authorizing the construction of brick and mortar installations at or for a private household. The installations were justified on generic military doctrines aimed at installations built in pursuit of public services and the general power given to the SAMHS to provide health services to the President, Deputy President, Minister and Deputy Minister of Defence and, at the request of the Minister of International relations, foreign dignitaries.

The organs of state involved in the Nkandla Project failed dismally to follow Supply Chain Management prescripts, such as section 217 of the Constitution, PFMA, Treasury Regulations, the Department of Public Works (DPW) Supply Chain Management policy, key omissions including: the absence of demand management; improper delegations; failure to procure services and goods costing above R500,000 through a competitive tender process; failure to conduct due diligence leading to the engagement of service providers such as the Principal Agent without the necessary qualifications or capacity for security measures; failure to ensure security clearance for service providers, and allowing “scope creep” leading to exponential scope and cost escalations. The conduct of all organs of state involved in managing the Nkandla Project, particularly officials from the DPW, who unduly failed to comply with Supply Chain Management prescripts was unlawful and constitutes improper conduct and maladministration.
The DOD and SAPS officials failed to comply with Treasury Regulation 16A.3.2 imposing the responsibility for demand management on client departments, which include ensuring cost effective measures and budgeting, appropriately for such.

A number of the measures, including buildings and other items constructed and installed by the DPW at the President’s private residence went beyond what was reasonably required for his security. Some of these measures can be legitimately classified as unlawful and the acts involved constitute improper conduct and maladministration.

Measures that should never have been implemented as they are neither provided for in the regulatory instruments, particularly the Cabinet Policy of 2003, the Minimum Physical Security Standards and the SAPS Security Evaluation Reports, nor reasonable, as the most cost effective to meet incidental security needs, include the construction inside the President’s residence of Visitors’ Centre, an expensive cattle kraal with a culvert and chicken run, a swimming pool, an amphitheater, marquee area, some of the extensive paving and the relocation of neighbours who used to form part of the original homestead, at an enormous cost to the state. The relocation was unlawful as it did not comply with section 237 of the Constitution. The implementation of these installations involved unlawful action and constitutes improper conduct and maladministration.

The expenditure incurred by the state in respect of the measures taken, including buildings and other items constructed or installed by the DPW at the request of the SAPS and DOD, many of which went beyond what was reasonably required for the President’s security, was unconscionable, excessive, and caused a misappropriation of public funds. The failure to spend state funds prudently was a contravention of section 195 (1)(b) of the Constitution and section of the Public Finance Management Act. The acts and omissions involved were, accordingly, unlawful and constitute improper conduct and maladministration.

President Zuma told Parliament that his family had built its own houses and the state had not built any for it or benefited them. This was not true. It was common cause that in the name of security, government built for the President and his family in his private a Visitors’
Centre, cattle kraal and chicken run, swimming pool and amphitheatre among others. The president and his family clearly benefited from the project according to the report.

### 2.3.15 Profiling and Analysis of the Most Common Manifestations of Corruption and its Related Risks in the Public Service Report 2011

According to this report it is stated that corruption is a global concern that seriously hampers development and diverts resources from where they are needed most. South Africa has responded actively to the fight against corruption. Apart from comprehensive anti-corruption legislation, a wide range of instruments have been introduced to deepen integrity and to strengthen the fight against corruption.

The indicated that corruption is a global concern that seriously hampers development and diverts resources from where they are needed most. The unfortunate reality is that are the poor who suffered most. South Africa has responded actively to the fight against corruption according to this report. Apart from comprehensive anti-corruption legislation, a wide range of instruments have been introduced to deepen integrity and to strengthen the fight against corruption.

The report had the following findings:

- 10% of departments had clear written objectives which were well integrated with other objectives and evidence of planning and monitoring against objectives;
- 45% of departments had written objectives for addressing corruption;
- The areas of greatest concern to departments were those where officials could use their discretion to decide whether or not to investigate cases of alleged corruption;
- Officials tended to request the closure of cases even before they are investigated;
- Only 15% of the departments were found to have basic investigative capacity;
- Departments were often lenient in imposing disciplinary sanction against officials found guilty of fraud and corruption; and
- Also disciplinary enquiries were very time consuming and that departments took too long to finalize enquiries against officials suspected of fraud and corruption.
On the basis of these findings, the following recommendations were made:

- Internal controls in areas of procurement and financial management should be strengthened;
- Departments should periodically conduct surprise procurement audits of selected projects to identify weaknesses and malpractices in procurement processes;
- Accounting Officers must specifically focus on and analyse corruption risks as part of the risk management required in terms of the MFMA and implement fraud prevention plans;
- The provinces should establish centralized Anti-Corruption Investigative Units;
- The offices of the Premiers in the provinces should commit as much resources as possible to the investigation of corruption;
- Integrity Management Units should be created through the appointment of appropriately skilled persons and through the training of officials in the discipline of Forensic Investigation;
- The investigative capacities in the local sphere of government which is currently fragmented needs coordination and integration; and
- Departments and public entities should conduct an in-depth assessment of its fraud risk management framework and strategies. The outcome of such assessment should prevent over-investment sub-optimal anti-fraud area.

General findings were that cases of procurement irregularities involve collusion between a person issuing a tender and an associate which is often a family member or friends seeking to win the tender by all means. Such practices place a strain on government resources and increase the cost of public services. The area of procurement is a high risk area in the public service, according to the report.

Again in the process of investigation the following challenges were identified:
- Inadequate records were kept of investigations conducted;
Lack of support by management during the investigation of cases of the alleged corruption, for instance, investigators were intimidated by officials while pursuing cases of alleged corruption;
Anti-Corruption Investigative Units established in the provincial departments were dysfunctional;
Departments did not have time limits for investigation of cases of the alleged corruption; and
Departments stopped investigation of certain cases of the alleged corruption without valid reasons.

2.3.16 Special Investigating Unit Annual Report 2011/2012

According to this report, Special Investigating Unit was mandated by Proclamation R62 to investigate claims of irregularities at the Tshwane Metropolitan Municipality among other things. These included the appointment of staff to positions they were not qualified or best suited for, the mismanagement of the affairs of municipal entities and mismanagement of the municipality’s finances and assets.

Further issues were the irregular procurement of goods and services, as well as interference by the City Manager in pending disciplinary proceedings against employees of the municipality. The investigation found that 66 officials had conflicts of interests and failed to disclose these to the municipality as required by the MFMA. The matters involving these officials were referred to the municipality for disciplinary action. Recommendations on the improvement of systems and controls were also made.

Eight procurement investigations were finalised. R104 million in irregular, fruitless and wasteful expenditure was identified in seven of the investigations. The SIU had also finalized investigations in respect of 83 deviations where work was allocated to service providers without the supply chain management procedures being followed. In most of these matters, it was established that lack of planning resulted in the need to deviate from formal procedures. A total of the 43 matters to the value of R430 million are under investigation. An investigation against a senior procurement official in the Metro Police
was referred to the ACTT as a result of payments being made in excess of R90 million to seven companies with which the official has links.

Preliminary findings revealed a possible R140 million in unauthorised expenditure in a contract awarded for the installation of CCTV cameras. Site inspections being conducted to verify whether the actual number of cameras, as invoiced for, have in fact been delivered and installed.

Investigations to date have revealed that the municipality had made payments in excess of R1.9 billion on 22 746 transactions on its one-time vendor account. This account was established to pay service providers who provided a once-off service to the municipality and who were not registered on the preferred supplier database. A report detailing systemic recommendations on how to manage the account was in draft, as no checks and balances existed.

The invoices and action reports of 300 3G users were reviewed. Of these, 189 accounts were identified as being used excessively and recommendations were subsequently made for them to be deactivated, pending the finalization of the investigation. From those deactivated, only nine users requested activation. Due to the deactivation of the cards six months ago, the Tshwane Metropolitan Municipality had reported total savings of R502 778 to date.

An investigation was being conducted to verify the qualifications held by all officials occupying positions in management level 1 to 3. It had been proven that five senior officials submitted fraudulent qualifications. Two of these officials have already been found guilty and have been dismissed. Criminal cases were being registered. The disciplinary matters in respect of the other three were underway.

In the investigation into fraudulent identity numbers, the Department of Home Affairs (DHA) confirmed that eight officials had more than one identity number linked to them. In 11 instances, the identity numbers used by officials on the municipal payroll database did not exist on the DHA database. The investigation of irregularities with regard to
officials using identity numbers belonging to persons classified as deceased on the DHA database was finalised and systemic recommendations were made to the municipality. A total of 212 employees have been identified with fraudulent driving licences. Investigations on 60 of them had been finalised and the SIU recommended the cancellation of their licences and instituting disciplinary action.

Investigations of the 164 Metro Police officials with convictions were finalised. Thirteen officials with convictions and who are awaiting trials for other offences have been redeployed, pending the finalisation of their cases. The SIU was currently preparing disciplinary case files.

2.4 STATUS OF MUNICIPALITIES

2.4.1 Overview

In terms of Chapter 7 of the Constitution of the Republic of South Africa, the local sphere of government consists of municipalities, which must be established for the whole of territory of the Republic. The executive and legislative authority of a municipality is vested in its Municipal Council. A municipality has the right to govern, on its own initiative, the local government affairs of its community, subject to national and provincial legislation as provided by the constitution.

The national or provincial government may not compromise or impede a municipality's ability or right to exercise its power or perform its functions.

Section 139(c) of the constitution states that, when a municipality cannot or does not fulfill an executive obligation in terms of the constitution or legislation, the relevant provincial executive may intervene by taking appropriate steps to ensure fulfillment of that obligation, including among other things, dissolving the Municipal Council and appointing an administrator until a newly elected Municipal Council has been declared elected, if exceptional circumstances warrant such steps. This is the last step after all other avenues have been exhausted.
2.4.2 Objectives of Local Government

According to section 152 of the constitution, the objectives of local government are:

- To promote democratic and accountable government for local municipalities,
- To ensure the provision of service to communities in a sustainable manner,
- To promote social and economic development,
- To promote a safe and healthy environment, and
- To encourage the involvement of communities and organs of civil society in the matters of local government.

Above all the national government and provincial governments by legislation and other measures are required to support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their functions.

2.4.3 Categories of Municipalities

Municipalities are categorized into three, namely:

a) Category A; a municipality that has exclusive municipal executive and legislative authority in its area. But there is no explicit separation of powers as compared with provincial legislature and the national assembly.

b) Category B; a municipality that shares municipal executive and legislative authority in its area with category C municipalities within whose area falls. Those who are very small are called plenary, in that the mayor is also a speaker without executive authority, and

c) Category C; a municipality that has municipal executive and legislative authority in the area that includes more than one municipality, and are called district municipalities.

2.5 THE NATURE OF CORRUPTION – DEFINITIONS AND FORMS

Corruption can be defined as act of bribery, maladministration, fraud, unethical conduct, embezzling of funds, nepotism, extortion, abuse of power etc. Also corruption can be defined as offering, giving, soliciting or acceptance of inducement or reward, which may improperly influence the action of any person.
2.5.1 Bribery

Bribery can be described as the offering of something which is most often money, but can also be goods or services in order to gain unfair advantage. Common advantage can be to sway a person’s opinion, action or decision or change outcome of legal processes. The offering of gifts or money to a public functionary thereby influencing the functionary to act undeservedly in favour of the giver.

2.5.2 Fraud

Fraud implicates actions or behavior by public servants, other persons or entities, fooling others into providing a benefit that would not normally accrue to the relevant public servants.

2.5.3 Embezzlement

Embezzlement is the illegal taking or appropriation of money or property that has been entrusted to a person but is actually owned by another.

In political terms this is called graft which is when a political office bearer unlawfully uses public funds for personal gains or purposes.

2.5.4 Nepotism

Nepotism is the practice or inclination to favour a group or person who is a relative when giving promotion or jobs. This is often based on concept of familism which is believing that a person must always respect and favour family in all institutions.

This lead some political officials to give privileges and positions of authority to relatives based on relationships and regardless of their actually abilities.

2.5.5 Extortion

Extortion is threatening or inflicting harm to a person, their reputation, or their property in order to unjustly obtain money, actions, services, or other goods from the person. Blackmailing is another form of extortion.
2.5.6 Patronage Systems

Patronage Systems consist of the granting favours, contacts, or appointment to positions by local office bearer or candidate for political office in return for political support. Many times patronage is used to gain support and votes in elections or passing legislation. Patronage systems disregard the formal rules of municipalities and use personal instead of formalized channels to gain an advantage.

2.5.7 Abuse of Power

Abuse of Power comprises a public servant using the relevant vested authority to benefit another public servant, person or entity, improperly. For example, during a tender process, before the actual selection of a successful contractor, a specific individual is earmarked to obtain the contract, or the head of the department expresses a personal wish to see the contract awarded to a specific person. Using authority to give orders excessively or for unlawful purpose.

2.5.8 Accountability

Accountability in essence means to be answerable for one’s actions, having the obligation to answer questions regarding decisions and or actions taken. Accountability goes beyond reporting of the facts and figures, but asks for explanations and justification, therefore it enquires not just what was done, but why was it done.

2.5.9 Transparency

Transparency delineates openness. It is a process of doing things in a candid and frank manner.

2.5.10 Efficiency

Efficiency demarcates producing satisfactory results without wasting time or energy. This is one of the tools used in government departments, to measure performance of government officials. It entails maximum output with minimum input. Production of goods and rendering of services without wasting money, material and labour.
2.5.11 Effectiveness

Effectiveness defines producing the intended results. It further allocates making a striking impression and finishing on time. It entails achieving goals set. Satisfactory output of goods or services to achieve set objectives.

2.5.12 Corruption

Corruption, a dishonest, bribable, fraudulent or dishonorable action by a public official, office-bearer or any other person.

Corruption will always take place where a person makes an offer of a gift, payment of sum of money or other benefit to influence the recipient to act dishonestly and thus commit an offence.

2.5.13 Disciplinary Code

Disciplinary code, the document which prescribes the conduct expected of public officials and lists punishable misdeeds.

2.5.14 Disciplinary Action

Disciplinary action, the action taken by an employer against an employee who acted improperly in the performance of his work and thus committed misconduct.

2.5.15 Ethics

Ethics, in public administration ethics is the collection of moral principles, norms, values and obligations that serve as conduct rules to be observed by political office bearers and officials to ensure that actions remain focused on the promotion of the general welfare of all members of the population.

2.5.16 Favouritism

Favouritism, the unfair giving of preference, at the cost of others, to person or group by a political office bearer or an official. Favouritism leads to the favoured person receiving unjust benefits.
2.5.17 Misconduct

Misconduct, unacceptable conduct or behavior caused by intentional wrongdoing

2.5.18 Misappropriation

Misappropriation, unauthorized use or spending of another’s money. Embezzling or stealing of the money of another person or an institution.

2.5.19 Conflict of Interests

Conflict of interest, this involves a public servant acting or failing to act on a manner where the public servant has an interest.

Corruption is often described interchangeable with maladministration, incapacity and inefficiency, especially because public resources are being used.

According to Ismail, Bayat and Meyer (1997:08) local government must promote high standard of professional ethics in its overall system of government and management. In practice, this means that officials and councilors must not be guilty of corruption, unethical behavior, favoritism or anything that enriches one person at the expense of one another. Local authorities work with public funds and must therefore utilize these funds effectively and efficiently. Misuse of public monies by local authorities should not be tolerated and should be reported immediately to the offices of Public Protector and Auditor-General according to them.

Finally, they argue that the above principles or norms for local government are aimed at ensuring good governance, service delivery and better quality of life for all citizens. However, instilling a culture of professional public administration requires much more efforts and dedication. It will also require the collective efforts of all officials, councilors, community members, civic organizations and community based organizations.

Kanyane (2005:84) defines corruption as the promotion of selfish interest at the expense of public interests, against the overall objectives of the government, by whoever in charge and responsible within the area of work.
Corruption takes many forms, but a common silver thread that runs through all of them is the misuse of power and resources for private benefit. Corruption is born out deep-rooted conflict between the power of those who ruled and claims of those who do not.

Kenyane in Mafunisa (2000:11) clearly defines corruption as the misuse of public funds and the failure of public trust. If public money is not properly utilized to attain government objectives, it is likely to be misused to promote selfish interests.

Kenyane further argues that corruption, resulting from appalling conditions, made public officials incapable of committing themselves to public service in the former homeland governments.

Services were poorly delivered, which aroused negative societal responses to the government of the time. This made the system ungovernable and apartheid structures unworkable.

Cameron (1995: 77) describes corruption as an instrument that violates the public order. It is destructive and incompatible with a system of public order. Corruption is a system of public order which exalts common interests in public officials.


Webb (2005: 152-153) argues that corrupt activities can take on many forms. General definitions of corruption include public officials, who deviate from prescribed norms, indiscriminately administer a law or adopt a subjective or partisan approach in dealing with clients and diligence in the performance of official duty. Corruption is defined as any international and unlawful conduct or behaviour by any person entrusted with responsibilities in public office, which violates the duties of such a public official, and which is aimed at obtaining undue gratification of any kind for self or for others.

Diale (2005: 296) describe corruption and maladministration, coupled with the culture of secrecy with the modern industrial system of democratic as serious epidemic with the potential of destroying the very essence of democracy.
In order for governments to deal with it effectively, governments need citizens and/or employees of conscience, vigour and exceptional courage to expose such maladies. Fox and Meyer (1996:29) describes corruption as unlawful or unethical abuse of authority in order to gain personal or group advantages.

Goba (1999:226) is of the opinion that corruption refers to dishonest or preferential of power or position, which has the result of one person or organization being advantaged over one another. It involves a breach of public trust and promotes exploitation of individuals by public officials.

The most obvious expression of corruption is bribery but it can express itself in other forms, such as, sexual favours and different kinds of extortion. Corruption is stealing the resources of the state as well as the community.

Kroukamp (2006: 206-207) argues that corruption in the developing countries was assumed to be part of natural maturation process.

Corruption is defined as any internal and unlawful conduct or behavior by persons entrusted with responsibilities in the public office which violates their duties as public officials and which is aimed at obtaining undue gratification of any kind for themselves or for others.

Corruption manifests itself as bribery, embezzlement, fraud, extortion, abuse of power, nepotism, conflict of interest, abuse of privileged information and favoritism.

Henry (2010:145), describes political corruption as crooked officials embezzling governments’ or independent organizations’ money or accepting bribes to waste it.

Van Rooyen (2013:20), describes corruption as a broad erosion of the rule of law, economic stability and confidence in good governance quickly follow. Sometimes it is referred to as state capture, which is where external interests illegally distort to the highest level of a political system to private ends. Van Rooyen further states that ‘grand corruption’ is an expression used to describe corruption that pervades the highest levels of government, endangering major abuses of power. He argues that corruption is when someone gives, or offers to give a benefit to another in exchange for favour.
Ndedi and Mua (2015:01), argue that it has been documented that fraud and corruption are gargantuan twin brothers that have limited the growth and infrastructure of many nations and led many firms to the road of bankruptcy. Fraud is rarely seen but the symptoms of fraud are usually observed. Corruption, the twin brother of fraud is the misuse of entrusted power for private benefit and includes; bribes, cronyism and nepotism, political donations, kickbacks and artificial pricing and fraud of all kinds.

Corruption in Cameroon has been a significant problem for many years, inhibiting investment opportunities. The paper therefore adopts the agency theory to examine the level of fraud and corruption practices in doing business in Cameroon and evaluate the impact of government anti-corruption policies in fighting the menace of fraud and corruption practices.

Findings in this study revealed that virtually all the segment of the public sector are highly corrupt; with the Police, Custom and Tax administrations being the most corrupt institutions in Cameroon, according to them. Although, almost all the anti-corruption initiatives are ranked ineffective, only the Cameroon programme (Change Habits, Oppose Corruption) are considered to be effective. This could be as a result of insincerity and lack of political will by the government to fight fraud and corruption in the system.

They further argue that the levels of fraud and corruption practices in the different segment of the public sector can be categorized into three, namely individual, business and political corruption.

**Individual Corruption:** It is a corruption that takes place in relations between individual citizens and public officials and authorities.

**Business Corruption:** It is a corruption that takes place primarily in relations between enterprises/companies and public officials and authorities.

**Political Corruption:** It is a corruption that takes place in the higher echelons of public administration and on a political level.
According to Oxford Shire Country Council Anti-Fraud and Corruption Strategy 2013, corruption can be defined as the deliberate use of one’s position for direct or indirect personal gain. “Corruption” covers the offering, giving, soliciting or acceptance of an inducement or reward, which may influence the action of any person to act inappropriately.

The late former and the first president of the new dispensation Dr Nelson Mandela, in his opening address to Parliament in 1999, has this to say:

‘Our hope for the future depends on our resolution as a nation in dealing with the scourge of corruption. Success will require an acceptance that, in many respects, we are a sick society. It is perfectly correct to asset that all this was spawned by apartheid.

No amount of self induced amnesia will change the reality of history. But it is also a reality of the present that among the new cadres in various levels of government you will find individuals who are as corrupt as, if not more as those they find in government.

When a leader in a provincial legislation siphons off resources meant to fund service by legislators to the people; when employees of a government institution set up to help empower those who were excluded by apartheid defraud it for their own enrichment, then we must admit that we are a sick society. This problem manifests itself in all areas of life’. (State of the Nation Address 1999:9)

Also former president of the Republic of South Africa, Mr Thabo Mbeki, delivering his keynote address in the Second National Anti- Corruption in March 2005, indicated that, “corruption is inimical development, it constraints the ability to fight poverty, negatively affects our economic development, damages social values, undermines democracy and good governance. Responding to all that in the last ten years, laws, policies and programmes have been put in place to root out corruption in the society, society, partnerships among social partners were established and collaborated with regional, continental and international partners”.(2nd National Anti-Corruption Summit 2005:1)
Yet more will have to be done to fight corruption and confident that the Summit will give more impetus to ongoing work and help everybody to overcome whatever weaknesses that may exist in the programmes and systems design to fight corruption”

Addressing the community of Cambridge Township in Buffalo City, the former MP Mr Tony Leon indicated that it is that time the President took responsibility for the failures of his party’s public representative on the ground.

The final responsibility for behavior of ANC public representative sits with him. He indicated that corruption is not the fault of a few people, it is endemic throughout the provincial government and regional structures of the ANC.

Corruption and mismanagement became so bad in the Eastern Cape that the national government had to appoint an interim management team (IMT) in November 2002 to sort out the financial mess at the time.

When the report was tabled in parliament in August 2003, it found that corruption and perceptions of corruption were still huge problems in the Eastern Cape, and that provincial officials had developed a culture of shifting the blame.

Generally, in the South African context corruption at present is narrowly defined in Corruption Act 1992 as giving, offering, or agreeing to give benefit by a public official or agent. The restriction of acts of corruption to an official or agent restrict sphere of duty impacts significantly on the manner in which anti-corruption policies are formulated and also inhabits effect investigation, prosecution and adjudication of cases of corruption.

According to the Public Service Anti-Corruption 2002, defining corruption is problematic and often disputed. Corruption appears in permutations and in degrees of intensity, varying from the occasional acceptance of bribes to systematic corruption where bribery is the accepted way of doing business and large of looting of country’s resources. Socio-economic conditions, the political-institutional infrastructure, cultural heritage and other factors influence the way in which corruption is perceived and addressed.

Whilst corruption seems easily identifiable, the varying perspectives makes it particular difficult to define corruption and develop appropriate remedies.
Another key definition issue, which is highlighted in the Strategy, relates to understanding what corruption is not. Often, problems such as maladministration, incapacity and inefficiency, especial in relation to the use of public resources, are identified as acts of corruption.

2.6 NATURE AND EXTENT OF CORRUPTION

Currently and generally at present, corruption is rife in South Africa. This is not because there was no corruption in the past, but because in the context of democracy, there is a greater awareness of the need for transparency and accountability.

In addition, the Constitution of the Republic of South Africa Act 1996, (Act 108 of 1996), provides the legal basis for combating corruption, promoting good governance moving away from apartheid and colonial bondages.

In the Corruption Watch Annual Report 2014, David Lewis the Executive Director, argues that fighting corruption is a long term affair; which is probably a permanent task. Any society to hold accountable its elected representatives and its public and private sectors leaders, will be confronted by increasing corruption. There is little doubt of the determination of the South African public to hold accountable those who abuse public power and public resources. From suburban dinner tables to shacks in informal settlements, corruption and its corrosive consequences is the conversation of the day.

Public outrage is expressed in various ways according to him, in voting patterns, in declining investment. Elevating corruption to first place in South Africa’s political conversation is the contribution that Corruption Watch has made and will continue to make. Loud and well-informed talking is the way democracies change.

There is evidence that those in power are starting to get the message; politicians at every level jostle to establish their anti-corruption credentials. While many of them are clearly hypocritical and simply pandering to popular opinion, each time an elected representative proclaims his/her opposition to corruption he/she publicly sets a higher standard against which the public will judge him/her.
At least as important, there is clear evidence that the leadership of both the public and the private sectors recognise the critical role of civil society. This is seen in the constant stream of requests from government institutions and businesses to assist them in developing anti-corruption programmes, invitations which are always pleased to be accept.

The senior courts have long demonstrated the serious light in which they view corruption. Particularly encouraging is the recent decision by the Supreme Court of Appeal to increase the sentence of J Arthur Brown for stealing funds entrusted to him from a fine of R150 000 to 15 years' imprisonment. Clearly the court recognises that to stem corruption, it is necessary to demonstrate that there will be serious consequences for those caught with their fingers in the till. For all these reasons, we at Corruption Watch see a glimmer of light at the end of the tunnel.

But we still have a mountain to climb and now is the time to increase the pressure. We have identified a number of critically important targets for the next phase of our work. These include exposing the impunity enjoyed by those who are politically well-connected; reforming the criminal justice system; making political party funding transparent; reforming the procurement system; reducing the vulnerability of local government to corruption; and shining a light on the flow of illicit funds to and from South Africa.

Of course, none of these major problems will be solved overnight; nor will they be solved by Corruption Watch acting alone. Our contribution will be to raise the volume and quality of discussion around these issues, to draw the South African community into these important conversations, and to place public pressure on all of those empowered to effect the necessary reforms.

The following year will see us focusing on drawing the voice of the youth into the struggle against corruption. Our approach to the youth is not based on the condescending notion that they are “the leaders of tomorrow”, implying that if they behave themselves and respect the “leaders of today” they will learn the ropes and be admitted to the ranks of leadership when their time comes. In the area of corruption, certainly, the youth have little
to learn from the current generation of leadership. We approach the youth on the basis that they are the leaders of today. The youth lead the way in music and fashion, in the adoption and adaptation of new communications technologies, in the very language that we speak.

They are already proven leaders, great influencers of their parents’ generation. There is no reason to expect that they will not lead the way in fighting corruption. Moreover, the youth are the generation least likely to embrace conservative values, and most likely to believe that a fundamental change in values and ethics is possible. So these then are the pleas that we will make to the youth when we ask them to lead the struggle against corruption: The first is to embrace change. For better or for worse, there are plenty of others who will argue for conserving the past. You, the youth, should be the representatives of change. Secondly, seize this moment; insist that your voices be heard now. If you wait until you are told by this generation of leadership that you are ready to lead, it will be too late to change anything, and certainly it will be too late for you to change anything.

Some of you may feel – and you would be justified for feeling this way – that for a person embarking on her working life, the most challenging uncertainties are in the surrounding environment. Some may be concerned by corruption; some may be concerned about climate change; others may be concerned about growing inequality and unemployment. Don’t imagine that anyone will overcome these problems for you. So whatever you do, keep the big picture in mind and set about repainting the canvas. Just start doing it in the certainty that, when you find the right brushes and colours to use, others will join you – even your parents. And when others join you, those in power will be forced to listen.

According to Brynard and Erusmus (1995: 93), “There is a broad consensus that corruption pervades the South African public sector and that this is a serious problem growing rapidly”.

According to Sangweni, corruption in the public sector continues to impact on government’s ability to ensure adequate service delivery to the public, and also impacts
adversely on the national security of the Republic. Corruption remains particularly problematic at provincial and local government levels, with recent demonstrations and instability against local government service delivery illustrating the extent of public dissatisfaction with corruption.

Zwelinzima Vavi, his address on his appointment as the chairperson of the National Anti-Corruption Forum in 2012, indicated that it is an exceptional honour for him to accept his election as chairperson of such important body. He insisted that the fight to defeat corruption is one that cannot be afforded to lose. If corruption cannot be defeated it will mean the decay and ultimate the death of the living body of our democracy.

He also indicated that corruption does not only covers just financial transactions, such as bribery, tender-abuse or the theft of public funds, but also other immoral conduct, such as human trafficking, sexual abuse of leaners by teachers, or the torture of suspects by police. All such conduct, if not checked, threatens to destroy the foundation of our democracy according to him.

Smith (1999:185) implores that the devastating effect that corruption has effect on service delivery must never be underestimated. Even petty corruption, which is often engaged in to facilitate ‘survival’ or to ensure a marginally better lifestyle than the official can afford, contributes to ineffectiveness.

While debates are taking place and various scenarios are being presented on the process of political, social and economic transition, and what this will mean to the public sector, the issue of corruption has been accorded scant attention. Despite consensus that corruption is a serious problem, there are uncertainties about its nature, characteristics, effects it could have and about ways of curbing this evil.

According to Shafritz, Russel and Borick (1995: 174), recurrent scandals and instances of official mischief in government no matter how much they threaten to cost, pose a great threat to the democratic notion of the rule of the law. When a public official misuses his or her office for self-gain, then the rule of law no longer prevails, and there is, in effect a return to tyranny. By engaging in such self-aggrandizement, corrupt representatives of
the people illegally put themselves above the law. Corruption also undermines economic rights.

When contracts are awarded illegally by means of bribes, the losing competitor can be said to have had their rights to a fair and impartial bidding process abridged. This kind of corruption makes a mockery of economic considerations. The few that greedily feed at the public trough deny the rights of others to enter a fair system economic system, according to them.

Peters and Pierre (2012: 636) argue that although the leaders of most newly independent nations in Africa and Asia started off with very high standards of probity and accountability, their successors have ended up deep in the cesspool of corruption. This is not to suggest that corruption is confined to these new nations. It exists in most places according to them. The difference between corruption in industrialized nations and the developing world is that in the former, a high public office does not sanctify the misdeeds of the office holder.

The four major causes of corruption are: delay in government decision, concentration of regulatory and discretionary power in the hands of few government officials, cumbersome procedures in dealing with public needs and poor systems of accountability. Corruption increases when there is a corresponding increase in administrative rules and regulations, which proliferate discretionary power among bureaucrats, thereby increasing mystification among the public about governmental system, and consequently creating a declining accountability. On the other hand, with transparency and accountability rising, and decrease in the discretionary power and authority, corruption declines.

According to Henry (2010: 04), corruption slashes governments' legitimate revenue by as much as half, and, with it public services, and odds from 3 to 10 percent to the cost of legitimate services because citizens must bribe officials to acquire them.

The rates of investments in countries with high and unpredictable rates of corruption is almost half of that in low-corruption countries. When corruption increases by about two points on a ten-point scale, investment decreases by 4%, and gross domestic product falls by half percent. Corruption inflates the prices of goods by as much as a fifth, and
severely curtails personal income growth for just about everyone, but especially for the poor.

According to Ijeoma, Nzewi and Sibanda (2013: 167), ethics deals with what is good or bad, as well as issues of right and wrong. It encompasses both the process and search for moral standards that help society distinguish right from wrong actions. Of particular importance is ethics in practice and in particular in the public sector. Ethics especial in the local government has to do with the basic understanding that the role of the municipal officer is that of a ‘servant’ of the people.

To this end, it is this moral justification of service to the people that guides considerations in the decisions and actions public servants make as they go about their duties in providing services.

According to Cloete (1996: 63) the political office bearers and public officials in a democratic state have to respect specific guidelines, sometimes referred to as tenets or principles that govern their conduct when carrying out their work. These guidelines which are derived from the body politic of the state and the prevailing values of society, are foundations of public administration. The guidelines should indeed provide the content values for the ethos and culture of government and public administration in a democratic state. Observance of guidelines they should keep the legislatures from passing malenactments, government office bearers from practising misgovernment, and officials from committing maladministration.

According to Denhardt, Denhardt and Blanc (2006:270), another area of potential ethical difficulties for public officials involves conflict of interest. Finding ways to avoid conflict of interest, especially financially, has been central to federal, state, and local ethics legislation for the past twenty-five to thirty years. At federal level legislation detailing the ethical behavior expected of public officials has deep historical root, however the tone of modern ethics legislation was set by Executive Order.
Parts of the policy read as follows:

Where government is based on the consent of the governed, every citizen is entitled to have complete confidence in the integrity of his /her government. Each individual officer, employee, or advisor of government must help earn and must honor that trust by his/her own integrity and conduct in all official actions.

This Executive Order according to them, then provides a set of standards of conduct that covers such topics as accepting gifts, financial conflicts of interest, misuse of federal property, and limitations on outside employment. The policy also bars use of public office for personal gain or for the gain of those with whom the individual has family, business, or financial ties. Under existing legislation, officers of the executive branch of the federal government are required.

Several attempts have been undertaken to fight the scourge of corruption in the public sector and promote accountability. Promulgation of the legislation and the establishment of institutions, as well as anti-corruption conferences and platforms in the fight against corruption have been created. Section 41(1) of the Constitution of the Republic of South Africa 1996, instructs all spheres of government to provide effective governance and cooperate with one another to the end.

Combating corruption requires political commitments, practical anti-corruption strategies, stamina to sustain such campaigns, and the establishment of integrity systems at all spheres of governance. Above all independent institutions, like chapter 9 institutions, Office of Public Protector, Office of Auditor-General etc. need to be occupied by people with integrity and independent of political influence.

According to Fraud and Corruption Control-Guidelines for Best Practices 2005, Fraud and corruption pose serious risks to the public sector and these risks cannot be ignored. The potential damage extends well beyond any financial losses, and the threats to organisational integrity are a constant challenge for public sector management.

In a rapidly changing business environment, it is vital to develop an integrated fraud and corruption control strategy to address these risks. Implementing effective fraud and
corruption control measures is part of good governance and management practice. For many agencies it will involve no more than reviewing and consolidating existing agency policies and practices in relation to risk management, codes of conduct, reporting mechanisms, investigation, training and awareness.

Fraud and corruption can take many forms. Fraud is normally characterised by some form of deliberate deception to facilitate or conceal the misappropriation of assets, whereas corruption involves a breach of trust in the performance of official duties. Fraudulent and corrupt conduct by public officials may fall within the category of ‘official misconduct’ under the *Crime and Misconduct Act 2001*. Official misconduct is defined as conduct by a public official, related to the official’s duties, that is dishonest or lacks impartiality, involves a breach of trust, or is a misuse of officially obtained information. The conduct must amount to a criminal offence or be serious enough to be justified. Many forms of fraud and corruption are offences under the *Criminal Code 1899*. These include offences such as extortion, false claims, stealing, misappropriation of property, false pretence, receipt or solicitation of secret commissions, forgery, revenue evasion, election fraud, currency violation and drug dealing. This publication does not treat fraud and corruption separately, nor does it give one priority over the other. Similarly, it does not deal with all the possible dimensions of fraud and corruption.

According to Country Corruption Assessment Report South Africa 2003, corruption has become very widespread in South African society. There are many grey areas since there is not any clear definition of the rules about what constitutes corruption. There also appears to be an unwillingness to declare for oneself where right ends and wrong begins, resulting in a pervasive attitude that “the first opportunity that they get to take part in (corruption), they will”.

Some trade union representatives said that in the public service it is regarded as “okay” to do wrong things. “Certain levels of corruption are acceptable”.

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There is also a view that corruption has become part of the “national psyche”. Most people are very aware of corruption and have developed their own agenda in terms of either:

- Turning a blind eye to corruption because they are doing the same;
- Trying to prove the government is using corruption as a political move;
- Wanting to be informed as it is the ‘in’-thing to do;
- Self-enrichment.

In a number of groups, respondents said high and low-level corruption of civil servants is prominent in the news: they said it is something that the public was keen to know about. It is easy to report on, since few journalists are qualified to look into white-collar crime and the average reporter doesn’t have the time to investigate. The media is often alerted to cases where civil servants are involved in corruption by a colleague or member of the public who has evidence of their involvement and chooses to pass this on to the media rather than report it internally.

“It is easy to write about (public service corruption) because they give it to you with documentation and everything” (Media)

“There is nothing juicier than a government scandal” (Prosecutors)

“The moment it is corruption with public money, then everyone is interested” (Parliamentarians).

Parliamentarians were of the opinion that when corruption takes place within the private sector, it is within a company and is often dealt with at that level – “it is found out, action is taken and that’s it”. They accused the media of “deliberate negative projection of the public sector”, and of creating the impression that corruption is a daily thing in the public sector. In their opinion corruption is spoken about a lot and is widely reported on, but they do not personally see a lot of corruption.

“There is more for the ear than for the eye when it comes to corruption” (Parliamentarians). In terms of their own positions as members of Parliament, a few said with good planning, it would be possible to exert influence on certain Committees and so sway decisions. Those who feel they aren’t being paid sufficient, might be tempted to find
ways to supplement their income by accepting bribes. Respondents suggested that it is 'the cabinet members who are most likely to be “exposed to a lot of things that form corruption”.

The general consensus is that rules and regulations such as the Register of Members’ Assets and the Ethics Committee aren’t working particularly well. The onus is on each individual to declare all business interests, but “certain people do not report and don’t put everything into it”. Members of Parliament who are aware of corruption within the ranks feel, that they are supposed to act, but all too often when a corrupt official is exposed, party discipline is imposed. Nonetheless, Parliamentary Oversight is believed to have the power and (to use it) to investigate reports of corruption at all levels. In theory, Portfolio Committees have the power to conduct their own investigations, but Parliamentarians complained that they often don’t have the capacity to do so.

In terms of corruption within media circles, most of the people in this group said it is not a problem. A few mentioned being taken on outings by government officials so that they would report favourably on them. Sometimes reporters are threatened with legal action for defamation of character, but generally, it appears that the media likes to believe that they are playing a positive role in exposing corruption.

Prosecutors were asked whether they are aware of bribery or corruption taking place within their own environment. Some said, “Yes”, in the form of traffic fines that are squashed or case dockets that disappear. Where such cases are reported, most believe that those involved are being disciplined. While prosecutors are well-placed to accept bribes, the general feeling is that they wouldn’t have an incentive to defeat the ends of justice. “It couldn’t imagine why a prosecutor would take a bribe. Prosecutors aren’t badly paid. They are all well educated”.

From time to time, liquidators have been known to make “special donations” to the staff of the Master’s Office and some prosecutors believed this practice is designed to influence appointment of liquidators: some described it as one of the grey areas for prosecutors. Various pieces of legislation that explicitly address issue of corruption have developed, such as,
The Promotion to Access Information Act 2 of 2000,
The Promotion of Administrative Justice Act 3 of 2000,
The Protected Disclosure Act 26 of 2000,
The Financial Intelligence Centre Act 3 of 2000, and

However, again the implementation and effectiveness of these pieces of legislation is a challenge given the high rate of corruption that is prevailing in our country.

Specific structures and mechanisms have been established as well to deal with the scourge of corruption in different ways. These include the following:

- South African Police Services (SAPS)
- Special Investigating Unit (SIU)
- Anti-Corruption Unit (ACU)
- National Intelligent Agency (NIA)
- Auditor- General (AG)
- Public Protector (PP)
- National Directorate for Public Prosecution (NDPP)
- Public Service Commission (PSC)
- Public Accounts Committee (SCOPA)
- Municipal Public Accounts Committee (MPAC)
- National Crime Prevention Strategy (NCPS)
- SAPS Commercial Crime Unit
- Independent Police Investigating Directorate (IPID) and
- Investigating Directorate for Serious Economic Offences (IDSEO)

Also the Specialized Commercial Crime Courts have been established to combat and adjudicate commercial crime including corruption. They have been established in Pretoria, Johannesburg, Durban and Port Elizabeth. These courts finalize a greater number of cases and achieve higher conviction rates above 94% than normal original courts according to statistics.
In the area of local government Municipal Finance Management Act 2003, Act 56 of 2003 was introduced in order to bring greater accountability and transparency into municipal operations. This Act also introduced risk management and fraud prevention as statutory requirements in local authorities as well as Municipal Public Accounts Committee. Project Initiative was also established to assist 136 municipality by government to fight corruption.

Addressing the Free State Provincial Anti-Corruption Summit 2005, the then Chairperson Professor S S Sangweni said, South Africa is a relatively new democracy that emerged in 1994 after decades of struggle. During the years of struggle, South Africa was a fragmented country and the majority of its people were subjected to a corrupt political, social, economical and moral regime.

In 1994 the Government that was elected democratically by the majority of people, embarked upon a programme to reconstruct and develop South Africa to the benefit of all its peoples. The programme of growth, reconstruction and development was fraught with obstacles and legacies created by the apartheid regime. One such obstacle was the prevalence of corruption.

In recent years, government has stepped up its anti-corruption activities. Its efforts have become more systemic, with greater emphasis on instituting appropriate policy measures to prevent corruption. Anti-corruption has been a priority in the programme of Government for many years and even the 2005 Programme of Action reflects this. Whilst the essence of progress in this area is captured in the Towards a Ten Year Review discussion document, progress has been much deeper and comprehensive.

‘In this paper I deal with the significant domestic initiatives, regional and international cooperation and conclude with an overview of corruption currently, the challenges ahead and the way forward. Ten years of Government action against corruption’ he said.

He insisted that fundamental to the fight against corruption was the involvement of all stakeholders. To this end the first National Anti-Corruption Summit was convened in April 1999, involving government leaders, organized business, organized religious bodies, the
NGO sector, donor countries, the media, organized labour unions, academic and professional bodies and the public sector.

The first National Anticorruption Summit created a powerful platform for the National Campaign against Corruption in that it recognized the societal nature of corruption, and that the fight against corruption requires a national consensus and co-ordination of activities.

The Summit adopted a range of resolutions for implementation in the public, business and civil society sectors of the country. These resolutions related to combating corruption, preventing corruption, building integrity and raising awareness. Progress with implementation of the resolutions has been very good. Government has honoured the commitments made at this Summit.

As a result of continuous consultation between the sectors in the period after the first National Anti-Corruption Summit, the National Anti-Corruption Forum was created in June 2001 as the formal mechanism to bring the public, business and civil society sectors together to fight corruption in all aspects of our society. Government has consistently participated in this Forum and attempted to strengthen its work.

He indicated that in the area of local government, Government has introduced the Municipal Finance Management Act in order to bring greater accountability and transparency into municipal operations. This Act also introduces risk management and fraud prevention as statutory requirements in local authorities. Structures have been created with the Department of Provincial and Local Government to initiate and implement an anti-corruption campaign in local government. Implementation of the anti-corruption initiative is taking place within the ambit of Project Consolidate, Government’s initiative to support 136 municipalities.

He concluded by saying it was very difficult to identify specific trends in respect of corruption, or even to determine whether corruption had increased or decreased. To address this situation, a corruption country assessment was launched with support from
the United Nations Office on Drugs and Crime, under the auspices of the United Nations’ Global Programme against Corruption. A fairly extensive assessment was undertaken.

The release of a comprehensive corruption country assessment report took place in early 2003. Elements thereof will be repeated through ongoing market, household and business surveys and research and in 2006 Government intends to do a full-scale assessment of the impact of its anti-corruption policies. Having all these initiatives by government corruption is still the order of the day.

According to the Daily Dispatch of the 25th November 2013, Buffalo City Metro authorized payments of three different companies for information technology systems before the contracts have been even signed. Documents revealed that the acting director of community services at the time authorized cheque requisitions to the three companies three days before the directors of the companies signed contracts with the metro.

According to Daily Dispatch of the 29th November 2013, the education institution that awarded Buffalo City Metro manager Andile Fani a certificate in municipal financial management was given informal tenders of almost R500 000 by the metro. Kgolo Institute’s Director, faced charges with Fani in East London Court over the certificate which was issued in 2012.

A schedule of informal tenders published by BCM list three awards to Kgolo. In all three awards listed on BCM presented to council as the sole bidder.

On the other hand, the list of informal tenderers’ responses on BCM’s website showed that in all three tenders Kgolo faced competitive bids from other services providers. Therefore, it was not clear as to what criteria BCM used that would flagged other bidders non-responsive.

According to the Daily Dispatch dated the 10th January 2014, eight Buffalo City Metro officials were suspended with full pay following allegations of fraud as the metro continued to crack down on corruption.
The officials were being investigated for gross misconduct relating to honesty. It was related to tenders valued between R30 000, 00 and R200 000, 00 and internal investigation reportedly found that some officials allegedly:

- Created bogus companies and paid money into their private accounts;
- Worked with private companies and inflated tender values in exchange of bribes;
- Used their residential addresses as delivery points for goods sourced using municipal funds.

The officials sourced three quotations and choose their preferred bidders according to the report. Some of the suspended officials had just returned to work after a 15 months’ suspension in 2012 over similar allegations.

The Daily Dispatch dated the 14th January 2014, revealed that East London firm was paid R6million by Buffalo City Metro to ferry mourners around the city over three days to four memorial services for former President Nelson Mandela. The company billed the metro R5 985 000.00 for services rendered on December 10, 11 and 12.

The invoice carried very little information on the services rendered by the company and did not include the number of people ferried, number of vehicles used as well as the distance travelled.

The budget for Mandela’s memorial was approved by the council on December 11 and the resolution by the council indicated that after all expenditure a report should be submitted to council detailing the costs. The estimated people who attended all the event was at 2000 according to the reporters who attended the events. What also came out was that the project was never taken to tender and other companies were not invited to tender.

The Daily Dispatch dated the 15th January 2014, revealed that opposition parties at BCM demanded that an investigation should be conducted over R6m bill to ferry Buffalo City mourners to Nelson Mandela memorial services. It was reported that the invoice lacked an order number and amount of tax payable, and it appeared that dates for two of the memorial services have been mixed up.
The Daily Dispatch dated the 27th of January 2014, indicated that Provincial ANC heavyweight Mr Mlibo Qoboshiyane had come out strongly in support of an investigation into the alleged misuse of money allocated by Buffalo City Metro to mark the passing of former president Nelson Mandela.

BCM has been embroiled in controversy over its spending of R6-million of an approved R10-million allocation by the council on services ostensibly to ferry local residents to Mandela memorial activities. In the latest installment in the saga, Saturday Dispatch reported that some of the money paid to Victory Ticket 750cc for transport costs ended up in the accounts of politically-connected local tenderpreneurs and girlfriend of regional secretary of the ANC in the Buffalo City Metro. Some was allegedly spent on T-shirts for ANC.

Qoboshiyane the then Eastern Cape MEC for local government and traditional affairs, moved quickly at the weekend to respond to the report, saying the allegations indicated ‘a possible breach of public trust by those entrusted with protecting public resources from plunder, abuse, corruption and theft.

Expressing alarm that the alleged maladministration happened at a time of sadness during the period of mourning for Mandela, indicated that his department would urgently seek answers from both BCM executive mayor and city manager. He also indicated that any investigation by his department will be guided by the Local Government Municipal Systems Act, which empower the MEC to act if he/she believed maladministration, fraud or corruption had taken place within a local authority.

Qoboshiyane said that anyone found to have acted contrary to approved policies, procedures and laws governing municipal finances and administration would be disciplined. He final said that everyone in three spheres of government has a constitutional and legislative responsibility to protect the public funds from any form of abuse and irregularities.

According to the Daily Dispatch dated the 07th February 2014, Buffalo City Metro’s top two executives were at each other’s throats over who is to blame for spending R5,9 million to transport people to Nelson Mandela’s memorials.
A confidential document in possession of Daily Dispatch at the time revealed that hours before a council meeting, Executive Mayor and City Manager were having a row over who would write the official report on how the money was spent. Before the matter could be discussed the union members clashed outside city hall with police, forcing the council meeting to be abandoned.

The timing of the disruption was seen by some as an attempt by supporters of a certain faction to halt proceedings. According to documents, with reports, invoices and memos leaked to the Daily Dispatch showed that City Manager tried to put the brakes on. A handwritten note stated that he would only approve the exigency expenditure on condition that all negotiations are transparent and procurement processes were followed.

According to the Daily Dispatch dated the 11th February 2014, more pressure had been heaped on East London businessman to explain how he spent millions of rands meant to transport mourners to four memorial services for former President Mandela in December. Mantella Trading 522cc was paid R1.38 million to print 20000 ANC T-shirts.

This was despite the memo from treasurer’s office to the metro making it clear that the R10-million allocated for the memorial services was to be used for venues, and transportation, not for printing T-shirts, catering or erecting marquee tents. T-shirts were printed 589 km from East London in Pietermaritzburg and delivered to Port Elizabeth.

However, the dispatch had scanned crowd photographs from the event and none of the shirts could be seen on mourners pictured. Series of questions were sent to the company concerned:

- A copy of the order for T-shirts,
- A copy of the order for printing,
- The contact details and name of the Pietermaritzburg company, and
- The courier documentation showing the T-shirts were delivered.

Unfortunately, all that information could not be obtained according to the report.

According to the Daily Dispatch dated the 20th February 2014, Buffalo City Metro concillors could not agree on whether an investigation into Nelson Mandela taxi scandal...
should be investigated internally or externally. But public Protector Thuli Madonsela confirmed that her office would investigate the R5.985-million taxi scandal. Advocate Mthwakazi Thomas, representing the public protector’s office in the Eastern Cape indicated that 7/2-00334/14 EC would be investigated over the coming year.

A Dispatch investigation has linked ANC regional secretary Pumlani Mkolo to the funding scandal, in that millions were paid to individuals close to him. The Dispatch established that the company that won the R5.9-million tender to ferry mourners around Buffalo City, Victory Ticket cc, was entered into the metro’s supplier database— a requirement for doing business with it, two days before the company was paid.

A document, with reports, invoices and memos, leaked to the Dispatch showed how city manager, Andile Fani, tried to put brakes on the tender. A hand written note sated that he could only approve the exigency expenditure “on condition that all negotiations are transparent and procurement processes followed. A deviation report be submitted to the following council meeting. The document further revealed how the mayor initially wanted to extract R15-million from the city purse, but Fani said the metro could not afford it.

The Daily Dispatch dated the 03rd March 2014, revealed that Fani.’ Buffalo City Metro City Manager Mr Andile Fani and head of supply chain management Mr Tembelani Sali were fingered in a damning forensic investigation into controversial procurement of R17 million worth of black refuse bags in 2012.

The investigation report was compiled by MMB Consulting and was finalized in May 2013 but had been gathering dust in the Executive Mayor’s office ever since.

The confidential report was leaked to the Dispatch yet to be tabled in the council found the municipal officials had contravened parts of the metro’s supply chain management policy when they hastily awarded the multimillion rand tender to Masiqhame Trading.

The report put blame on Fani and Sali, but also found senior creditors department official Deon Goosen to have colluded with Masiqhamisane for them to submit six invoices on the 29th of June 2012, amounting to R1.1million.
The report recommended that Fani and Sali be charged for misconduct, and Masiqhame be disqualified as it did not meet all the necessary requirements. It was found that Masiqhame submitted unaudited financial statements, did not submit BBBE certificate as requested in the bid specification document and communicated with municipal officials after the tender had closed before was awarded.

To add controversy on the matter, the contract was awarded in June 1 of that year, and Fani wrote on June 6 informing the owner of the company that had won the contract. On July 5, a month later, the company signed a letter of acceptance. A confidential report tabled in the council late in 2012 further showed that Masiqhame received payments almost every week, from March 8 2012, although it only accepted the terms of the contract on July 5.

Before June 29 2012 Masiqhame was advised by Goosen to submit invoices for money that need to be spent before the end of financial year, and six invoices in the amount of R189 338 each were submitted. These were submitted for goods that had not been delivered according the report.

According to the Daily Dispatch dated the 12th of March 2014, Buffalo City Metro mayor Zukiswa Ncitha ordered armed men to prevent Hawks investigators from talking to the staff in the City Hall about the multi-million-rand Nelson Mandela taxi scandal tender. Detectives from the police’s organized crime unit had reported the matter to their superiors and had also written to the then MEC for Local Government and Traditional Affairs, Mlibo Qoboshiyane.

The officers were investigating the taxi tender awarded to Victory Ticket 750cc, a company owned by East London businessman Mzwandile Sokwali. A sworn statement by Captain Luphumlo Lwana, seen by the Daily Dispatch claimed the officers were at the city hall on February 11 to interview the caretaker or person responsible for hall bookings. Workers initially cooperated but latter called their bosses.

BCM’s Acting Director Executive Services, Ondela Mahlangu allegedly arrived and told the Hawks that Ncitha was asking for questions to be directed to her instead of junior staff.
members. The investigators refused and tried to contact Municipal Manager Andile Fani but he could not be reached.

Qoboshiyane confirmed receiving the letter from police regarding the matter and called on BCM officials to co-operate with Hawks. Ncitha confirmed she had prevented the Hawks officers from investigating the matter because did not have a letter of authority. She claimed that the officers failed to report to the office of the political head of what they were doing, she also indicated that they needed to have something written from their heads, telling her about their plans to investigate her staff.

Lwana’s report revealed a possibility that some of the venues were double-booked. The report further revealed that Mahlangu allegedly authorized the initial payment of the R5.985-million to Victory Ticket.

According to the Daily Dispatch dated the 01st of April 2014, a company owned by the ANC regional leader was at the centre of R10 million housing tender scandal after a forensic investigation found the contract was awarded irregularly. But despite the inquiry finding that Buffalo City Metro had ignored supply chain management processes and recommending action be taken against top officials, the report has been gathering dust at the East London City Hall for almost a year. The tender for the completion of 150 houses in Mdantsane’s Unit P was awarded to businessman Koko Godlo’s Imvusa Trading.

A forensic inquiry by MMB Consulting revealed it was the only company invited to submit quotes for the job. Council then sanctioned an investigation into how Godlo’s company was appointed, and MMB Consulting completed its probe in May of the previous year. It confirmed supply chain processes were not followed and found that Imvusa’s appointment was predetermined. The investigation recommended that City Manager and Acting Director housing be charged for contravention of supply chain policies.

The Daily Dispatch dated the 16th April 2014, indicated that two multi-million rands Buffalo City Metro tenders were being investigated by Hawks and Public Protector. This was confirmed by City Manager Mr Andile Fani. The awarding of R 17million black refuse bag tender and a R10million Mdantsane housing tender were subjected to scrutiny.
This came after council reportedly failed to act on two forensic reports completed by an external consultant in the previous year.

News of investigation by Hawks and Public Protector came after executive mayor Zukiswa Ncitha announced that forensic investigation in her office were not yet completed. She also indicated that the matter was discussed with the then Finance Minister Pravin Gordhan. MMB Consulting was appointed to investigate the circumstances surrounding a R17 million contract to supply black refuse bags.

The three-year contract was awarded to Masiqhame Trading, owned by Cuan Surren Metune, the 27-year-old son of a former BCM employee and pastor Fabian Metune. The housing tender for completion of 150 houses was awarded in October 2013 to Imvusa Trading, owned by East London businessman and ANC regional leader Koko Godlo. The tender was for the completion of abandoned housing project in the metro’s Unit P outside Mdantsane. Responding to dispatch question, Mr Fani indicated that the two tenders were with the Hawks and had submitted his statement to them, also it was the very first time he saw both reports.

According to the Daily Dispatch dated the 23rd June 2014, five senior Buffalo City Metro officials, including Mayor Zukiswa Ncitha and her deputy were ordered to hand themselves over to Hawkes in relation to Manadela funeral scandal. Others were council speaker Luleka Simon- Ndzele, councilor Sindiswa Gompo and Ondela Mahlangu, who was the acting director of executive support services in the mayor’s office.

At the centre of the controversy was the ANC’s BCM regional secretary Phumlani Mkolo, who appeared to have engineered the movement of funds into various bank account. It was also emerged that Mkolo's girlfriend Nosipiwe Mati, who is the mother of his daughter, was also involved. Among payments made by Mr Sonkwali was R100 000.00 to Mati’s business, Mpindo Emergency. A further R899 000.00 was given to Forty Wing, a company owned by Viwe Vazi. It later emerged that Mkolo’s latest girlfriend, a high-flying Johannesburg-based lawyer, Zintle Nkuhlu, received R350 000.00 from funds through Lily Rose Trust which she co-owned with Songile Nkuhlu.
The Daily Dispatch dated the 24\textsuperscript{th} June 2014, revealed that the ANC was reeling in embarrassment after its top echelon in Buffalo City Metro was arrested and charged with money laundering and fraud. Those arrested included BCM’s executive Mayor Zukiswa Ncitha, her deputy mayor, Temba Tinta, council speaker Luleka Simon- Nzele, the ANC regional secretary, Pumlani Mkolo, and a senior councilor, Sindiswa Gomba.

The allegations they face relate to money meant for Nelson Manadela memorial services illegally being paid for another purposes. Some R5.9-million was allegedly paid by BCM to local taxi boss Mzwandile Sokwali’s company Victory Ticket cc to ferry mourners to memorial services around the city after Mandela’s death in December 2013. Relatively small number of mourners were seen at the services owing to heavy rains at the time.

The arrest followed a two-month investigation by the police’s special investigations unit, the Hawks, and those arrested handed themselves over to the elite police unit after being instructed to do so the day before. The five powerful politicians appeared alongside Ondela Mahlangu, the director in the office of the mayor, and local businesswoman Viwe Vazi. Their charges were added to those of Sokwali and Blanche Boti, who have previously appeared in court in connection with the alleged fraud.

Two other people allegedly implicated in the memorial services scandal, Dean William Fanoe, owner of Mantella Trading 522 cc, Zintle Nkuhlu did not appear in court although their names appeared on the court charge sheet. A sum of R1.38-million was given to Mantella Trading which was used to order T-shirts bearing Mandela’s face. A further R899 000.00 was given to Fort Wing, a company owned by Vazi. It later emerged that Molo’s girlfriend Nkuhlu, a Johannesburg-based lawyer, received R350 000.00 from the funds through Lily Rose Trust she co-owns with Sibongile Luthuli.

According to the Daily Dispatch dated the 26\textsuperscript{th} June 2014, the top echelon of the Buffalo City Metro, charged for their role in the R6-million Nelson Mandela memorial fund scandal, defied a national instruction by the ANC to step aside. ANC national spokesman and national committee member Zizi Kodwa was reported as saying that all ANC deployees in council as well as regional secretary Mkolo were expected to “step aside” to avoid dragging the ANC’s name in the mud.
Kodwa said the arrest has been discussed in a meeting where all ANC deployees should step aside for the sake of Nelson Mandela’s name, his family and the ANC. He indicated that an instruction had been issued that five should go on leave until the case had been finalized and that was taken in line with the Mangaung conference resolution of 2012.

The ANC clearly stated that corruption relating to the misappropriation of public funds as well as money laundering was a serious offence. He indicated that those arrested were innocent until proven guilty by the court of law.

On the other hand, it was reported that provincial deputy chairperson of the ANC Mr Sakhumzi Somyo led a provincial delegation to ANC caucus to instruct them to continue with ‘business as usual’. The instruction from the provincial committee was in contrast to the one issued by the ANC hierarchy. Also, confirming their arrest the speaker, Ms Luleka Simon-Ndzele told councilors they had no plans to take the leave of absence. The next date for their appearance was scheduled for the 1st September 2014.

The Daily Dispatch dated the 28th June 2014, indicate that the state was building its case against those it accuses of fraud and corruption over funds for former president Nelson Mandela’s memorial services.

The Saturday Dispatch could reveal that influential politicians and local business people with strong political links allegedly met twice in December the previous year to hatch the scam. They allegedly discussed how the money was to be divvied up and who was going to benefit. Local taxi boss Mzwandile Sokwali, who was among the fraud accused, was said to have been introduced to those present at the meetings. Sokwali and his wife Busisiwe Boti were arrested in March and charged with fraud, corruption and money laundering relating to R5.9million paid by Buffalo City Metro ostensibly to ferry mourners to Mandela’s memorial services. The two were back in court the same week and were joined in the dock by BCM mayor Zukiswa Ncitha, deputy mayor Temba Tinta, council speaker Luleka Simon-Ndzele, ANC regional secretary Pumlanile Mkolo, BCM councillor Sindiswa Gomba, and senior metro official Ondela Mahlangu. Other accused included local businesswoman Viwe Vazi and Dean William Fanoe, the owner of a company that puts up Christmas lights on the beachfront. The last accused is Johannesburg attorney
Zintle Nkuhlu, who was said to be Mkolo’s girlfriend. Details of the two meetings emerged as the ANC was putting pressure on the accused to leave public office.

This intention was made clear in Premier Phumulo Masualle’s maiden state of the province address in Bhisho the previous day. Masualle said his government was planning to introduce radical measures to combat fraud and corruption in the provincial administration. “These will include ensuring all public office bearers and government officials facing serious fraud and corruption charges are relieved of their duties until finalization of the investigations,” he said.

Dispatch could reveal that Ncitha, Gomba, Simon-Ndzele and Tinta were given until Monday to step down. If they do not voluntarily step down, the ANC would force them out of their offices. They were informed of the decision at a meeting with the ANC the previous Monday night. Some refused while others like Tinta asked for more time as he wanted to make representations to the special police investigating team, the Hawks. The Saturday Dispatch understood Tinta was arrested as he was the one who signed the documents which went to council asking for R10-million to be set aside for Mandela’s memorial services. The previous morning Tinta and his lawyer met with the Hawks to make representations to have charges against him withdrawn. The first of the two secret meetings was said to have taken place immediately after Mandela’s death and was held at the home of a local businesswoman in Bunkers Hill.

The meeting in Bunkers Hill apparently discussed how they were going to transfer funds from the metro coffers into the accounts of some of the accused. The second meeting took place in Simon-Ndzele’s office inside the City Hall shortly after the R5.9-million was transferred into Sokwali’s business account. In this meeting Sokwali was allegedly given a list of bank accounts into which to deposit the money. It was not yet clear how many people attended the second meeting but Simon-Ndzele, Gomba and Sokwali were allegedly present.

The Saturday Dispatch has been told others were uncomfortable with having their share of the money transferred directly to their private accounts. They agreed to meet at Hemingways Mall. According to the Daily Dispatch dated the 01st July 2014,
Nelson Mandela memorial service taxi scandal had deeply divided the ANC both in the province and Buffalo City Metro region. The Daily Dispatch understands that the ANC regional executive committee met at the weekend and unanimously decided to remove their implicated deployees from office. However, despite repeated efforts, the Dispatch has been unable to obtain on-the-record confirmation from provincial or regional ANC officials of decisions taken within party structures. The latest development comes days after the South African Communist Party (SACP) provincial leadership called for the members to step down as investigations continued.

The previous week metro executive mayor Zukiswa Ncitha, her deputy Temba Tinta, council speaker Luleka Simon-Ndzele, senior councillor Sindiswa Gomba and ANC regional secretary Pumlanile Mkolo were arrested on charges related to the use of money earmarked for Mandela memorial events. This left the ANC’s national structures “embarrassed” and through national spokesman Zizi Kodwa the party called on the officials to step aside while investigations were conducted by the Hawks. The provincial structure, through a statement attributed to provincial spokesman Mlibo Qoboshiyane, also urged ANC members with information on the matter to cooperate fully with the justice system. The Dispatch understands that a provincial meeting last week informed the BCM officials to resign.

The four ANC deployees never left office and attempts to obtain comments from them drew a blank yesterday. Sources within the ANC in the region claim that the four metro councillors claim that nothing was communicated to them by the provincial ANC and they “saw no reason to step down; They didn’t step down as we are divided within the party about this matter; The regional executive is calling for them to step down as the investigations continue; Here we need to protect the ANC name from embarrassment,” said the source who is privy to the Regional Executive Committee (REC) resolutions. Asked about the weekend meeting, BCM ANC regional chairwoman Zukisa Faku would not divulge what was discussed.

“We can confirm that the meeting took place over the weekend and among other things we talked about the fraud case against ANC members but unfortunately I can’t talk about this in the media,” said Faku.
Mkolo the day before said he was not aware of the ultimatum given to the ANC provincial authority by the region. “Your people [sources] have given you wrong information about this. This is not true but I will check this,” said Mkolo.

The arrest of the ANC leaders came amid an investigation by the Hawks into the R5.9-million paid by the metro to ferry mourners to Mandela’s memorial services. The money was allegedly paid to Victory Ticket 522 cc, a company owned by Mzwandile Sokwali and his wife, Busisiwe Boti. The couple was arrested in March in connection with fraud, corruption and money laundering charges. The two were back in court last week and were joined by Ncitha, Tinta, Simon-Ndzele, Gomba, Mkolo and metro senior official Ondela Mahlangu. Other accused include local businesswoman Viwe Vazi and Dean Fanoe, the owner of a company that puts up Christmas lights on the East London beachfront.

The last accused is Johannesburg attorney Zintle Nkuhlu, who is said to be Mkolo’s girlfriend. Welcoming the arrests, the SACP, through spokesman Siyabonga Mdodi said: “We view these developments as consistent with the call made by the SACP for law enforcement authorities to go to the bottom of the scandal and bring all those who might have done wrong to book.” Sandile Toni, secretary of ANC East London zone, which comprises 13 branches said their weekend meeting supported the officials.

According to the Daily Dispatch dated the 8th July 2014, the Eastern Cape ANC had referred the case of its senior leaders in Buffalo City, facing charges of defrauding funds for Nelson Mandela’s burial to a newly formed integrity commission. Its establishment came after 18 months after the ANC at its national conference at Mangaung resolved to set up integrity commission at all levels of the organization. They were out on bail of R10 000.00 each and expected back in court on the 1st of September.

ANC Provincial Secretary Oscar Mabuyane confirmed the formation of the commission, and indicated that the committee would have to deal with all cases that are not necessary in court but misconduct cases that brought ANC’s name into disrepute. He also indicated that the BCM case was one of the priorities but not the only one the committee would have to deal with. The Daily Dispatch dated the 1st August 2014, revealed that several bank accounts of suppliers who claimed to have assisted with Mandela memorial services
have been frozen. The move by Asset Forfeiture Unit (AFU) was carried out swiftly and in secret. Victory Ticket 750cc owners Mzwandile Sokwali and his wife Busisiwe Boti appeared in East London Magistrate’s Court on charges of fraud after they benefited from Buffalo City Metro Nelson Mandela taxi-scandal. It marks the latest action by law enforcement authorities to uncover the rotten dealings at the heart of the memorial saga. This latest steps meant the money, considered illicit from proceeds from Buffalo City Metro, was then in the control of Asset Forfeiture Unit.

The accounts frozen included those of Victory Ticket 750 cc. owned by Sokwali and his wife Boti; Mantella Trading 522 controlled by businessman Dean Fanoe; Forty-wing an account of controlled by Viwe Vazi; an account controlled by Zintle Nkuhlu who was reportedly ANC BCM regional secretary Pumlanl Mkolo’s girlfriend. It was not clear how much was in accounts. The extraordinary application was brought without notice to any of the bank account holders and was heard in Grahamstown High Court judge’s chambers. These so called matters were brought in secret to ensure the funds were quickly frozen before they could be moved.

The bank accounts would remain frozen pending an application to have all the in them forfeited to the state. At that point the account holders would be given opportunity to put their case to the court. The legal documents before court contained explosive details about massive fraud allegedly perpetrated on the BCM fiascos. According to the court papers, it stated with a lie BCM executive mayor Zukiswa Ncitha told her council.

Financial investigator for AFU Advocate Caleb Mdutyana said in an affidavit she told council she had met with the provincial government and it had been resolved at the meeting that BCM should fund transport to commemorate venues. As a result of that misrepresentation, the BCM council passed a resolution to utilize R10-million to be identified from potential savings for transport and venue costs. But Mdutyana indicated that provincial treasury head Nomdakazana Tibelo had made sworn statement in which he denied any meeting ever took place between the mayor and provincial government. He indicated that the treasury had never authorized the mayor to allocate funds for the events as a decision had been made that the treasury, through the Eastern Cape Development Corporation (ECDC), would handle all the expenses.
He also indicated that the BCM council made a resolution to disburse R10-million on the basis of unlawful misrepresentation by Ncitha who misled the BCM council to believe that the provincial government had agreed that the BCM would fund the event. He said that misrepresentation had opened the gate for the R10-million to be misused by others.

Some R5.98 – million was paid into the account of Victory Ticket. The undated invoice claimed that buses and taxis had transported some 10600 to various venues around East London and King William’s Town. The invoice did not show how this amount was arrived at. Strangely, two of the four venues that Victory Ticket claimed to have transported some 5600 mourners to for commemorative events, had in fact been booked on that particular day for a graduation ceremony and a wedding respectively.

Even worse, the money was paid to Victory Ticket for services carried out days before Municipal Manager Andile Fani had even approved BCM’s request to deviate from normal procurement processes. Mdutyana said Victory Ticket was registered as a service provider on BCM supply chain database on the same day Ncitha had made her misrepresentation to council.

Once the R5.98-million landed in Victory Ticket’s account, Sokwali had made payments to other entities and individuals, including Mantella Trading for providing ANC T-shirts. This was clearly neither a transport nor a venue cost.

A further R899 000 was paid to Vazi’s CC Forty Wing for catering- again a cost that national treasury had expressly forbidden municipalities from covering. A further R350 000 went to Mkolo’s girlfriend, Zintle Nkuhlu.

The Daily Dispatch dated the 02nd August 2014, indicated that evidence was mounting against the ruling party and its regional boss in the Buffalo City Metro, Pumlan Mkolo, after it emerged that it had lots to answer in the ongoing Mandela funeral millions scandal. ANC’s name was dragged into mess with investigators alleging that quotes from local companies bidding for the contract to transport mourners to memorial services around city were first sent to the party. The ANC, in turn, took them to Buffalo City Metro’s supply chain department in Chiselhurst.
Investigators also allege that the quotes were sent and received by the party way before executive mayor Zukiswa Ncitha asked council to set aside R10million from its coffers for the transportation of thousand of mourners. This shocking revelation was contained in documents that the National Prosecuting Authority (NPA) submitted to the Grahamstown High Court. Spokesperson Nathi Mncube said quotes received for the transport tender were addressed to the ANC and dated December 9 and 10 2013. This was even before the mayor requested the R10-million, a resolution to set aside the R10-million was taken at a full council meeting on December 11, according to Mncube.

A day later Municipal Manager Andile Fani had approved the urgent deviation request on condition that normal procurement processes were followed. But the investigators had been told by metro official that Mkolo had gone to the Metro to ask that service provider Victory Ticket be registered on its database. Victory Ticket was registered on the BCM database on 11 December 2013, according to Mncube. Mncube said invoices Victory Ticket submitted to BCM for the work it allegedly performed covered a period before approval of the use of R10-million and the deviation.

Sources close to the developments had told the Dispatch that Mkolo approached a senior official in the supply chain management unit to hand over three quotations, including one from Sokwal’s Victory Tickets. But the official refused to accept the quotation from outsider, saying his staff were competent enough to source quotes. The senior administrator, whose name was known to the Dispatch immediately went on leave, leaving fairly junior officials to handle the Mandela memorial tender.

The Daily Dispatch dated the 04th August 2014, indicated that the bank accounts of politicians arrested in connection with the Nelson Mandela memorial scandal, including the mayor of Buffalo City Metro, had been frozen.

The move on the politicians came just days after the Asset Forfeiture Unit (AFU) obtained an order freezing the accounts of several suppliers who claimed to have assisted with the Mandela memorial. The AFU which falls within the National Prosecuting Authority (NPA) obtained a provisional restraint order against the assets and bank accounts of those
charged in the East London Magistrate’s Court with fraud and /or theft and money laundering.

The latest action by law enforcement meant BCM’s Executive Mayor Zukiswa Ncitha, her deputy Themba Tinta, speaker Luleka Simon-Ndzele, councilor Sindiswa Gompa and senior BCM official Ondela Mahlangu will not have access to their bank accounts. The accounts of BCM regional ANC secretary Pumlani Mkolo were also frozen. The Assets Forfeiture Unit obtained a preservation order against bank accounts which still had the credits emanating from the sum of R5.9-million defrauded and/or stolen from the BCMM. Such credits amount to the sum of R2.2-million and could be linked directly to the theft. This left an outstanding of about R3.7-million in the hands of others accused in this matter.

The application was brought without notice to any of the bank account holders and was heard in a Grahamstown High Court judge’s chambers on Friday. The bank accounts would remain frozen pending an application to have all the money in it forfeited to the state. The account holders would be given an opportunity to put their case to the court. Senior national deputy director of public prosecution, Nkululeko Ndzengu, said in an affidavit that part of the money paid to Sokwali was also paid to people who had no right to receive it. This included the East London Taxi Association, which received R157 500 and taxi owner Tutu Zicina, who received R241 000.

Ndzengu indicated that there were reasonable grounds to believe that they derived or received a benefit from unlawful activities. Zicina confirmed receiving money from Sokwali but was not aware that his name appeared on court papers. He confirmed that he was questioned by the Hawks on the matter and gave full explanation, and it ended there according to him. The order stated that state attached all property held by the defendants at any time before or after the granting of the order, whether in their names or not, including all property held for or on behalf of the defendants by any person and further including shareholding of the defendants in any company. Samantha Vockerrodt of Fossa Trading and Invest (Pty) Ltd t/a Integrity Solutions had been appointed as curator of all the properties. The order stated that the curator would be entitled to pay expenses related to restrained assets, which would ordinarily be carried out by the estate out of the restrained assets.
The Daily Dispatch dated the 07th August 2014, revealed that Finance MEC wanted new Madiba fund probe. Amid investigations by the Public Protector Thuli Madonsela and elite police unit Hawks, the controversial Nelson Mandela funeral scandal had taken a new twist. Eastern Cape Provincial Planning and Treasury MEC Sakhumzi Somyo had appointed a private firm to probe his department. How the office of the premier Phumullo Masualle was in the dark about such investigations? It emerged that Somyo appointed Pretoria-based George Fivaz Forensic and Risk investigators. He wanted to know if the mandate by provincial executive council resolution to assist in the funeral of the late former state president Nelson Mandela was carried out by the province. The private firm was expected to question PPT head Marion Mbina-Mthembu, who was tasked to oversee and monitor the payments of funds, on the matter. Indications were that there is likelihood that former finance MEC Masualle would also be called to answer questions.

The department, under Mbina-Mthembu's watch, paid R250 000 into Masualle’s private account which he rejected. The money was paid back immediately and a special paycard was created. Treasury spokesperson Nosisa Sogayise confirmed the investigations were being undertaken and said there were issues of control that needed to be dealt with. The Hawks, Public Protector and the private investigators were investigating. The Public Protector announced the previous week that it was investigating four municipalities in the province, the Eastern Cape Development Corporation and Provincial Government, including:

The ECDC for R22.2-million used to pay services providers for preparations for the funeral;
Buffalo City Metro for R5.985-million paid to a company ostensibly to transport mourners;
King Sabata Dalindyebo Municipality’s spending of R21-million;
The Nelson Mandela Bay Metro for spending of R9-million, and
OR Tambo District Municipality for spending R5-million.

The ECDC itself had appointed Funduzi Forensic Services to investigate how funds were spent while Somyo appointed George Fivaz and Risk to investigate the actions of his department.
However, provincial government spokesperson Nomfanelo Kota said they were not aware of the investigation. Kota insisted that the Provincial Director-General Mbulelo Sogoni made it clear in an instruction that and there was a media statement on that all the investigations about Mandela funeral were being handled by the Public Protector and no one was to investigate unless that was informed by the Public Protector’s report.

The Daily Dispatch had seen the letter appointing the company, which was approved by Somyo. The letter indicated that the service provider was to undertake an investigation and release a report. It would then use the report submitted and any evidence obtained to determine whether the best procedures were followed in executing the provincial executive resolution in supporting the funeral arrangements.

The letter said the appointed company should be able to analyse documentation or evidence that would be made available and validate the assertions in the reports and any oral evidence that would have been given to indicate any possibilities for corrupt activities that may need further probing.

The Daily Dispatch dated the 02nd September 2014, stated that BCM fraud trial set for April. The Mandela memorial fraud case against top BCM and ANC officials was postponed in East London Magistrate’s Court despite heated argument between prosecution and defence.

Acting Magistrate Leon Kemp said he could not deny a postponement simply because the accused were prominent people in the community.

The state added another accused to the charge sheet. Nosiphiwe Mati, a former girl friend of ANC regional secretary Pumlani Mkolo and mother of his child, was alleged to have received R100 000 from money earmarked for events to commemorate the life and death of former president Nelson Mandela.

Mkolo was also accused of contravening his bail conditions by not informing the investigating officer that he was planning to travel out of the country. Lawyers for the accused argued that the prosecution was unnecessarily delaying the trial, prejudicing the high-profile accused and several embarrassing them. Prosecutor Deniso Ketani said the
postponement to November 21 was to obtain bank statements and cellphone records. A provisional date for the three-week trial was set for April 2014.

Advocate Matthew Mpahlwa applied on behalf of all the accused for the matter to be struck off the roll until the state was ready to proceed. It had provided a draft sheet. Mpahlwa said the accused had been subjected to media scrutiny and kind of public disapproval usually heaped on convicts. He asked for the matter to be struck off the roll until the state had finalized all its investigations and provided the accused with a final charge sheet and copies of all documents.

Kemp said it was early days in an investigation of this nature and he was not interested in the high-profile nature of the case or the embarrassment of the accused. He insisted that, while one must ask why the state cannot get its ducks in a row before arresting, other accused sat in his court daily with the same obstacles. He said in all those cases the state is allowed reasonable postponement. He asked as to why he should make this case different. He also said that one is dealing with complicated issues to investigate when it comes to money laundering and he found that the state was entitled to a postponement.

Regarding Mkolo’s trip, Kemp said Ketani and Mkolo’s attorney Nyameka Diniso should try to reach agreement, or the prosecutor should apply for Mkolo’s bail to be withdrawn or his bail conditions changed. The Daily Dispatch dated the 25th September 2014, stated that more than R4.1-million handed over to the Asset Forfeiture Unit (AFU) by individuals accused of illicitly benefiting from funds meant for Nelson Mandela’s memorial services was forfeited to the state. The amount accounts for a major portion of the nearly R6-million shelled out by Buffalo City Metro last in 2013 for the events and which led to a series of arrests, including some of the metro leaders. The Grahamstown High Court froze the bank accounts of separate businesses belonging to Mzwandile Sokwali and his wife Busisiwe Boti; Dean Fanoe; Viwe Vazi; and account controlled by attorney Zintle Nkuhlu.

Senior politicians at BCM; ANC regional secretary Pumlani Mkolo and the director in the office of the mayor Ondela Mahlangu had their accounts frozen as well. However, some of the business owners who needed to transact, volunteered to pay back the money were
accused of receiving illicitly so their bank accounts would be unfrozen. It is this money that was forfeited to the state on the order of Grahamstown High Court Judge Jeremy Pickering.

National Prosecuting Authority national spokesman Nathi Mncube said Pickering granted the AFU a forfeiture order of R4.172-million. Mncube said money would be deposited into the Criminal Asset Recovery Account and used to bolster law enforcement. Mncube also revealed that Vazi had repaid R899 000, while Fanoe returned R1.3-million, Sokwali and Boti repaid R.893-million distributed to Sizisa Ukhanyo and to Victory Ticket.

The outstanding balance would be recouped using restraint and prosecution processes according to Mncube. However, Mncube also revealed that Nkuhlu had not repaid money she allegedly received through Lily Rose Trust. Mncube said Zicina, who received R24 100, and Mati who received R50 000 had also not made payments. A provisional date for the three weeks' trial was set for April 2015. The state alleges that more than R5.9-million was illicitly disbursed by or to, these accused.

The Daily Dispatch dated the December 9th 2014, indicated that East London court gave the first conviction in the Nelson Mandela memorial funding scandal and set the stage for dramatic testimony for the following year. Sensational claims of deaths threats emerged from taxi businessman Mzwandile Sokwali, whose wife Busisiwe Boti was let off on all charges. Sokwali and Boti were arrested early this year after their company, Victory Ticket 750cc, received R5.9-million from Buffalo City Metro, to transport mourners to various state services following Mandela’s death. The Dispatch had uncovered evidence that showed much of the money was misspent. Following a series of news reports, Hawks investigators further arrested senior metro officials, among them Mayor Zukisa Ncitha and Council Speaker Luleka Simon-Ndzele.

Sokwali – who pleaded guilty to fraud and money laundering – and his wife entered into a plea bargain with the state. East London magistrate Fezeka Monakali acquitted Boti and found Sokwali and their company, Victory Ticket, guilty. “I find Victory Ticket guilty as charged and fine them R100000, with R50000 of it suspended. Also, [Sokwali] is sentenced to five years in prison, which is wholly suspended for five years,” said Monakali.
Through his counsel advocate Terry Price SC, Sokwali told the court he was threatened with harm if he did not transfer the money as instructed by ANC regional secretary Phumlani Mkolo to a list of beneficiaries. “[Sokwali] was informed that if he were not to pay all these monies over as requested, he would never again get any work from the municipality and he was also threatened unequivocally that he would be severely injured, if not murdered, if he did not transfer these monies as instructed by Mkolo.

“As a result, he transferred the monies,” said Price. Mkolo, the court heard, pressured Sokwali to pay the service providers and sent him text messages with account numbers of people to be paid. Sokwali admitted that his company gave councillor Sindiswa Gomba a lift to Port Elizabeth and put her up in an upmarket hotel. “This was reward for her support in passing illegal monies to the company regarding the Mandela memorials,” Price continued. Despite the fact Sokwali was not on the database of suppliers, as required for municipal contracts, he was still given the tender.Price alleged Mkolo intervened.

“(Mkolo) went to check if the accused was on the database at BCM Chiselhurst offices and there he met a Thembelani Sali who informed him that [Sokwali] was not … but that [Mkolo] would arrange that the accused meet Nqaba Ludidi, who assisted him to get onto the BCM database.”

Sali is the general manager of BCM’s supply chain and Ludidi is a coordinator in the same unit. The court further heard that, although Sokwali was threatened and was scared for his life, he knew he could have reported the matter to the police. He never did that and that made him guilty of the offences. “It would appear that when the regional ANC secretary and all those who had unlawfully benefited from this entire project started panicking, they tried to force him to supply a comprehensive report setting out all the vehicles and the routes he used and the number of passengers conveyed in an attempt to persuade those that had now picked up the irregularities and the corruption that in fact this was a legitimate spend.”The accused, under intense pressure, agreed to do so,” said Price.
Price said Sokwali did not involve himself in corrupt activities. “Initially, he believed that there was a genuine project designed to transport mourners to memorial services and he did what he was required to do, to wit, phoning transport companies in order to assist with the movement of mourners. He is a first offender and has never committed any offence prior to that day.” At the beginning of the year Sokwali and Boti were arrested. Their arrest was followed by the arrests of Ncitha, her deputy Temba Tinta, Simon-Ndzele and Gomba. Also arrested was a director in the mayor’s office, Ondela Mahlangu, and Mkolo.

Other people arrested and accused of benefiting from the funds were Mantella Trading’s Dean Fanoe, Forty Wings’s Viwe Vazi, Mkolo’s alleged girlfriend Zintle Nkuhlu of Lily Rose Trust and his ex-girlfriend Nosiphiwe Mati.

Contacted the day before, BCM municipal manager Andile Fani said he could not comment yet. “I cannot comment yet. It would be naïve for me to comment at this stage, I still have to apply my mind on the conviction and know the terms and conditions,” he said. The Dispatch reported the previous week that R4.1-million has already been returned to the state by some of the accused.

The Daily Dispatch dated the 10th December 2014, revealed that Hawks investigators believe they have uncovered a murder plot against the lead detective in the Buffalo City Metro Nelson Mandela funeral funds scam.

And the person they are investigating for the alleged conspiracy to kill is a prominent ANC leader in the Eastern Cape. Hawks spokesman Paul Ramaloko confirmed that “serious threats” had been made against the life of Investigating Officer Captain Lupumlo Lwana.

He refused to provide further details but the Dispatch has learnt that officers have extensive phone and video recordings in which the alleged hit is discussed. It was the second time within days that an allegation of a death threat in connection with the Mandela funds scam has surfaced.

On a Monday, taxi proprietor Mzwandile Sokwali pleaded guilty to fraud for his role in the funding saga and claimed he was pressured by ANC regional secretary Phumlani Mkolo to rig invoices or face harm, even death.
Sokwali’s plea was heard in the East London Magistrate’s Court. It contained detailed information of how Mkolo allegedly orchestrated disbursement of funds to guarantee a hefty slice of R10-million for the ANC.

The money was to be dressed up as transportation costs for mourners and budgeted for by Buffalo City Metro. In the end R5.9-million was paid to Sokwali, much of it allocated thereafter to a number of party cronies and business figures, allegedly at Mkolo’s instruction. R4.1-million has been returned.

Speaking to the Daily Dispatch the day before, Ramaloko said: “We can confirm there is conspiracy to murder the investigating officer. “The police are working on this matter to check the merits of these threats and at this stage we won’t give more than that.”

Ramaloko said the unit was pleased with the conviction of Sokwali and his company, Victory Ticket 750CC, on fraud and money laundering charges. His wife Busisiwe Boti’s charges were withdrawn as part of the plea bargain.

Sokwali was sentenced to five years in jail, wholly suspended for five years. His company was fined R100000, half of it suspended. Contacted the previous day regarding Sokwali’s statement, Mkolo refused to comment. “Please stop calling me on matters in front of the courts, please,” he said.

ANC provincial secretary Oscar Mabuyane voiced his concern at how the party’s name was being dragged into the scandal. He said they had not seen Sokwali’s plea.

Mabuyane said where wrongdoing was found, the party would not hesitate to act. “The ANC will not close its eyes and will act.” He called on “comrades” implicated to follow the party’s Mangaung conference resolutions. “Do what you think is right to save the name of the organisation. Just step aside.”

In his plea Sokwali said he was called by Mkolo and instructed to furnish a quotation on transporting mourners to various venues. “He was able to come up with a quotation which he submitted to Mkolo in the amount of R6272750,” said advocate Terry Price, reading from Sokwali’s statement to court. “He was informed by Mkolo that the available budget for the project was R10-million and that the ANC required the balance of the funds to
finance other ANC activities.” Sokwali stated that Mkolo had instructed him to amend the quotation to include more passengers. “He came up with the number R9946000, which was furnished to Mkolo, who expressed his satisfaction.”

Sokwali said he was escorted by Mkolo into a meeting where businesswoman Viwe Vazi, councillor Sindiswa Gomba and BCM speaker Luleka Simon-Ndzele were present. He claimed the meeting was delayed as they waited for senior Buffalo City Metro manager Ondela Mahlangu. “When Mahlangu arrived, everything was discussed and it was explained to him [Sokwali] that Vazi would be the caterer and that one Dean Fanoe would supply T-shirts.”

Sokwali said his company was registered on BCM’s database at the insistence of Mkolo and that he was pressured by Mkolo to pay people. “[Sokwali] was informed that if he were not to pay all these monies over as requested, he would never again get any work from the municipality and he was also threatened unequivocally that he would be severely injured, if not murdered, if he did not transfer these monies as instructed by Mkolo,” Price said.

Vazi, Gomba, Simon-Ndzele, Mahlangu, Fanoe, Mkolo, mayor Zukiswa Ncitha, her deputy Temba Tinta and two others, Nosiphiwe Mati and Zintle Nkuhlu, went on trial the following year.

According to Daily Dispatch dated the 20th February 2015, Senior Eastern Cape politicians and government officials were subpoenaed by public protector to answer questions on the Mandela funeral funding scandal. The politicians and officials including Acting Director-General Mahlubandile Qwase and BCM Mayor Zukiswa Ncitha had allegedly failed to appear voluntarily before investigators.

Others subpoenaed included Human Settlements MEC Helen Sauls-August, BCM Municipal Manager Andile Fani, BCM CFO Vincent Pillay, PAC Councillor Jerome Mdyolo and BCM Senior Manager Ondela Mahlangu. They were legally obliged to appear before public protector investigators as part of the PP’s probe into spending of funds budgeted for Nelson Mandela’s funeral.
Those subpoenaed were expected to report to the PP’s offices by end of the month. The target date for concluding investigation by Public Protector was by end of March 2015, and the issue of resources cited. Mahlangu was implicated in the scandal after allegedly attended a meeting held in BCM council speaker Luleka Simon-Ndzele’s office where it was discussed how the money would be spent. She was mentioned several times by Victor Ticket owner Mzwandile Sokwali in affidavits before court, where some of the officials face criminal charges in connection with the matter. Mahlangu allegedly met Sokwali several times as Sokwali drafted an invoice to the municipality for transporting mourners to memorial services around metro.

Ncitha was to be questioned by Public Protector’s investigating team in her capacity as an Executive Mayor of BCM, and because she signed for the release of the funds. Her office refused to comment on the matter claiming that the matter was sub judice.

Saul-August was allegedly responsible for coordinating the memorial service in Port Elizabeth where the provincial government spent R9.2-million. When asked by the Daily Dispatch how the money was spent, she refused to respond. She was allegedly phoned on several occasions by the PP’s office and asked questions she had not yet answered.

Qwase in his capacity as the Acting Director-General in the province, had to answer why the Premier’s Office spent more than R2-million for funeral when the executive council had ordered that payments should be directed through the Eastern Cape Development Corporation (ECDC).

Mdyolo, who originally questioned the release of R10-million by BCM for several memorial services, said he had to receive a request to be interviewed by the PP. He indicated that he was willing as obliged by the law, and had to cooperate at all times.

The Daily Dispatch dated the 21st February 2015, revealed that Sexwale was stranded at the East London airport on the morning of December 14 2013. He was then driven in a luxury car belong to a man at the centre of Nelson Mandela funeral. The former minister in the President Zuma’s cabinet and executive member of FIFA was driven in Sokwali’s seven-seater Chrysler Voyager. This was a special favour to Buffalo City Metro ANC regional secretary Pumlani Mkolo, the man believed be the mastermind of the scam.
The latest revelations will embarrass Sexwale as they have dragged his name into the Mandela Funeral fund scandal. This because the car may have been used in the commission of the sophisticated scam to defraud the state of the millions of rands meant for Mandela’s burial.

The same was used to transport Buffalo City Metro councilor Sindiswa Gomba and her team to a memorial service held in Port Elizabeth for Mandela. It was alleged that Port Elizabeth trip was sponsored and paid by Sokwali, again at the instruction of Mkolo, according to documents and evidence before the courts.

The startling information was revealed in an affidavit Sokwali gave to the state as part of an investigation into the fraud scandal that rocketed the nation. It also revealed how several large amounts of cash were paid by Sokwali to Mkolo for “ANC events”.

In an affidavit, Sokwali indicated that Sexwale was conveyed in his Chrysler Voyager from East London to Qunu on Saturday December 14 2013. This occurred at the request of BCM regional secretary Mkolo. Sexwale was to attend the funeral which was scheduled to take place the following day. The information was corroborated by Tobile Mtya, who was also a driver for Mkolo.

Eastern Cape ANC provincial Secretary Oscar Mabuyane distanced the party from the scandal, saying the ANC had nothing to do with transactions between Mkolo and Sokwali. He indicated that as the province were not aware of such money and never demanded any money even from Sokwali, and the best to answer that was Mkolo.

The latest affidavit exposed how senior officials at the municipality’s supply chain management were approached by Mkolo to assist in having Sokwali’s company registered. It further detailed how Mkolo allegedly asked for more than R400 000 from Sokwali, saying it would be used for ANC events.

In the affidavit, Sokwali details how he paid the following cash amounts to Mkolo:

R180 000 at Vincent,

Another R60 000 was paid to Mkolo at Sokwali’s Beacon Bay house,
Another R60 000 at Sokwali’s house,

R10 000 was paid to Mkolo at Hemmingways Mall,

R56 000 at Mkolo’s Gonubie home, and

An additional R40 000 was paid to Mkolo on January 8 for food.

Mkolo said he knew nothing about the money He declined to comment further, saying the matter was sub judice.

Sokwali pleaded guilty to contravening section 34(2) of Criminal Procedure Act in that he did not tell police that he knew or suspected that fraud, money laundering and other crimes may have been or been committed. He was sentenced to five years imprison, wholly suspended for five years, while Victory Ticket was fined R100 000, of which R50 000 was suspended.

Mkolo and his co-accused were to go back to court on February 25 2015.

According to the Daily Dispatch dated the 26th February 2015, ‘Trial date set for funeral fraud.’ Some of the remaining 10 accused in the Mandela memorial service fraud case line up at the start of hearing in the East London Magistrate’s Court.

There were heated exchanges in the lead-up to the confirmation of the trial date, as lawyers accused prosecutor Deniso Ketani and investigating officer Luphumlo Lwana of withholding the information they required to prepare their clients’ defenses.

Magistrate Deon Roussouw insisted that Ketani and the lawyers “get together, talk to each other [and] sort it out among yourselves. I am not going to get involved in who is to blame or not to blame”.

Before the court were Buffalo City Metro executive mayor Zukiswa Ncitha; ANC regional secretary Pumlani Mkolo; BCM’s deputy mayor Temba Tinta; council speaker Luleka Simon-Ndzele; senior councillor Sindiswa Gomba; the director in the office of the mayor Ondela Mahlangu; and business owners Viwe Vazi, Dean Fanoe, Johannesburg-based
attorney Zintle Nkuhlu and Nosiphiwo Mati. Charges have also been brought against various business entities related to some of the accused.

The case against businessman Mzwandile Sokwali was finalised in December 2014 when he was given a fully suspended prison term of five years for his role in the fraud. His company was fined an effective R50000, while his wife Blanche Boti Sokwali was let off the hook on all charges.

The Sokwalis’ evidence for the state appears crucial in the case faced by the remaining accused, with lawyers complaining that the couple’s witness statements had only been presented to them the previous week.

Ketani “let the cat out of the bag” which means he disclosed in court that local attorney Andre Schoombee, representing Dean Fanoe, had made representations for charges to be dropped against his client on the basis he would testify for the state against the others.

Schoombee objected to the disclosure of an “off-the-record” meeting to discuss settlement of the case against his client. “He still joked that ‘I’m not going to tape it with my cellphone’,” he said, referring to Ketani. “And now, he’s addressing the court on a ‘without prejudice’ discussion that took place. I take exception to it.”

Ketani acknowledged it was “regrettable” that he had made the disclosure of the discussion “on the record” in court.

“We did not agree, so there is no deal then.”

The state and defence agreed that by March 2 the state would provide a schedule to the defence of all the documents it intended relying on during the trial. The state would also provide each defence representative with a summary of the state’s case against their respective clients.

According to the City Press dated the 07th December 2014, Acting Director of Support Services at the Buffalo City Metropolitan Municipality said she was harassed into signing invoices connected to Madiba’s memorial service.
Ondela Mahlangu accused of being involved in fraudulent behavior involving R5.9 million was allegedly bullied into signing forms and threatened by municipal’s financial boss at a set of traffic lights in East London. This was revealed in documents that were handed to lawyers who where involved in the trial of BCM top officials.

They were accused of fraud and money laundering linked to millions of rands that were supposed to be spent on transporting mourners to memorial services after Nelson Mandela died in December 2013.

Mahlangu submitted a report to City Manager on January 29th 2014 in which she talked about how she was allegedly pressured by colleagues into signing documents. In her report, Mahlangu told City Manager that on December 12 2013 she got a phone call from Vincent Pillay, BCM’ Chief Financial Officer telling her to prepare a deviation report to procure transport services so mourners from the municipality could attend memorial services for Mandela, which were being held around the Eastern Cape.

On December 12, Mahlangu indicated in her report that she got other urgent and instructive phone calls from Pillay asking her to sign another form for the service provider who had been appointed. She said she refused because she was not clear as to whether or not all relevant procurement processes were followed. She also indicated that she decided to ignore his calls. While driving home after work she claimed that at the Beach Road intersection traffic lights she came across Mr Pillay who came out of the car and pointed finger at her threatening her.

On December 13, she claimed that she was now called and confronted by Mr Pumlani Mkolo for not wanting to sign and told her she is not a senior and as such will not be accountable. Mahlangu also indicated that Ms Ncitha also called to ask why she would not sign, but that after explaining her concerns to her understood her position.

After Fani gave her background information about plans and after Pillay had assured her that all procurement processes had been followed, Mahlangu signed the documents. In an affidavit Pillay made to the investigators, and which forms part of the bundle handed over, he said Mahlangu was told by Fani that she may withdraw the deviation report if she was uncomfortable with the document and indicate to him why she had concerns.
Meanwhile, three independent sources close to the case had told the City Press that Sokwali and Boti were considering turning state witnesses. This was after the pair asked for a separation of trial, which was granted in the East London Regional Court. They were scheduled to appear in court again on a Monday the 08th December 2014. The rest of the accused were due back in court for the start of their trial on April 7 2015.

According to Daily Dispatch dated the 14th April 2015, Buffalo City Metro boss Andile Fani was accused of seeking to influence the awarding of a lucrative contract after he allegedly instructed senior officials to remove a tender box. The box was said to have held bids for a roads maintenance project believed to be valued at R100 million.

It was claimed that Fani communicated this in a top management meeting the previous week in his 10th floor boardroom at Trust Centre. He ordered the box to be removed from the institution’s supply chain management unit in Chiselhurst.

Three senior officials, Chief Financial Officer (CFO) Vincent Pillay, Acting Head of Health and Public Safety, Steve Terwin and Acting Head of Corporate Services Louis Wulff – acted on the instruction.

The tender, known in tender business circles as Contract 26, was BCM’s multimillion rand tri-annual roads and storm water drainage contract worth more than R100-million a year. Fani’s motives for wanting the box moved were being questioned as it could be seen as interference in the tendering process.

BCM’s spokesman Keith Ngesi, on behalf of Fani, denied any impropriety, saying Fani came under pressure over numerous complaints about “internal weaknesses” around the tender and he used the powers conferred on him by the Municipal Finance Management Act to step in and bring order to the chaos. Ngesi said no verbal instruction had been given to the three officials to remove the box.

A source within BCM close to the developments but not allowed to speak to the media, was adamant Fani had issued the instruction which shocked many senior managers at the meeting. “The tender box that was to be removed from the SCM building had the most expensive and sought-after tenders. The reason Fani decided to call for its removal is not
known,” said the source. “Protecting tender boxes is one of the key things for any government institution, particularly the municipality. You don’t tamper with the tender box,” said the source.

Contacted for comment, all three senior officials refused to speak to the Dispatch. One however, confirmed the instruction. “I was at that meeting and an instruction came, but BCM will have a response on that,” said Wulff. Terwin and Pillay said they were not mandated to speak to the media. “Communication department is handling this,” said Terwin.

Ngesi expressed shocked that members of senior management could misrepresent the contents of the meeting with the aim of misleading the public. “A task was assigned to three managers to assess the situation and implement remedial actions. “On inspection by the three tasked by the accounting officer, (Fani) the keys of the box were found to be defective and an additional lock was installed. No keys were confiscated by the CFO,” said Ngesi.

“Numerous complaints have been brought to the attention of the accounting officer (Fani) regarding internal control weaknesses in the SCM unit. “This has exposed the metro to high risk of irregular expenditure, fraud and corruption as a result of the current state of chaotic document management practices in the unit,” said Ngesi.

The tender was for road construction like building bridges, storm water drains, sidewalks, guardrails and culverts. It closed on Tuesday March 31. Two days later, the three managers were seen at SCM but apparently the tender bids were locked in another room.

Another source said Pillay allowed this to happen because “he was controlled”. “He’s so controlled and he allowed this to happen because he has no choice. If you are told to jump at this municipality, you jump.” Ngesi said: “The accounting officer, (Fani) is responsible and accountable for managing the financial administration of the municipality.

“For this purpose, he takes all reasonable steps to ensure that unauthorized, irregular or fruitless and wasteful expenditure are prevented.” Ngesi said there were more changes
to be effected at SCM. “Some of these changes would bring discomfort to some people, but the accounting officer has an obligation to apply the law.”

The Daily Dispatch dated April 14th 2015, revealed that Advocate Thuli Madonsela ordered officials to explain Mandela funds. Eastern Cape politicians and officials were to be called to account for public funds allegedly squandered or creamed off the top instead of being spent on Nelson Mandela’s funeral.

Public Protector Thuli Madonsela had issued subpoenas to the 20 Eastern Cape politicians involved in the Mandela Memorial scandal to query the lost millions. Madonsela had been investigating the scandal for months, and the parade of officials before her to explain their actions would start with mayors and council speakers of OR Tambo and KSD municipalities.

Although not all the names of the politicians and officials were available to the Dispatch at the time, they had all been subpoenaed to appear. They would have to explain municipal spending on the funeral.

KSD spent more than R21-million on the funeral while OR Tambo reportedly spent about R9-million. In both cases, the municipal councils had not approved the expenditure. KSD’s municipal public accounts committee (MPAC) had called the spending on the funeral, code named “Project X”, a “project of science fiction”. The mayor of KSD, Nonkoliso Ngqongwa, speaker Dumani Zozo, OR Tambo mayor Nomakhosazana Meth and speaker Robert Nogumla, were served subpoenas the previous week, along with municipal managers (MM) and chief financial officers (CFOs) of both institutions.

Former KSD CFO Nomthandazo Ntshanga and former MM Zizamele Mqanqeni have also been called in to account. KSD officials were meant to appear for questioning on March 25, and hired a lawyer to appear with them. The municipality spent millions buying food for catering in public mourning areas during the funeral. Funds were also spent on flags, T-shirts and wheelie bins, filling potholes and transporting community members to the memorial services. Among the expenses were R788652 on billboards, R92500 for gumboots, and R78200 for golf shirts.
Other expenses included R49000 paid to a firm to provide 100 rolls of toilet paper, 120 brooms, 100 cans of air freshener, 100 bottles of toilet cleaner, 50 cleaning cloths and 12 bars of soap. No response had been received from KSD spokesman Sonwabo Mampoza to Daily Dispatch questions at the time of writing.

The OR Tambo municipality also spent funds on catering, a stand-by generator and bottled water, despite having a large volume of bottled water donated by the Department of Water Affairs. OR Tambo’s Ayongezwa Lungisa confirmed that the municipality had received subpoenas from the public protector.

KSD has also come under fire from its Municipal Public Account Committee (MPAC) which, in its recent report to council, could find no executive authority for the funeral expenditure. According to the report, none of the expenditure had been brought to council for approval.

The committee also recommended that Mqanqeni and Ntshanga be called to account for their involvement in the expenditure of the funds. Councillors lambasted KSD officials for hiring a lawyer instead of answering questions themselves.

Civic Alliance of South Africa councillor Pasika Nontshiza said: “The public protector is engaged in a fact-finding mission. Anybody who rushes to hire a lawyer is probably guilty of something. No one has been charged here; why the need for a lawyer? This is unauthorised expenditure of the worst kind.”

United Democratic Movement’s (UDM) Wandile Tsipa said it was surprising that leaders opted to be represented by a lawyer. “It is a waste of taxpayers’ money… if there is any wrongdoing, heads must roll.” DA councillor Raymond Knock said municipal heads needed to be accountable. “They need to avail themselves, innocent or not. It is part of their duty. You cannot be running a municipality, and be unaccountable.”

Public protector spokesman Oupa Segalwe said Madonsela was in the final stages of the investigation and would not comment on who was requested to appear before the protector.
According to the Daily Dispatch dated 14th April 2015, Fani was ordered to account for Metro millions. The office of the accountant-general in Pretoria wanted Buffalo City Metro’s municipal manager Andile Fani to provide documents on more than R636-million worth of irregular payments made by the metro.

The paperwork was required to form part of a National Treasury investigation into how the city’s books were handled during the 2013-14 financial year. In a letter to Fani dated February 23 2015, the head of the treasury’s specialized audit services Zanele Mxunyelwa, demanded supporting documentation for what she described as irregular write-offs worth R583-million.

This in addition to; more than R13-million paid to three information technology systems companies – Lugogwana Comtech, Empire Praxis and LC3 Solutions trading as Simo Solutions. BCM paid the companies before contracts had been signed, and; R40-million paid to finance the South African Cities Network (SACN), a network to help municipalities get clean audits.

Mxunyelwa gave Fani two days to respond, but it was unclear the day before whether or not Fani’s office had provided the information. National Treasury spokeswoman Phumza Macanda would not comment on whether or not the required information had been provided, saying: “We generally do not comment on investigations.”

Metro spokesman Keith Ngesi also refused to comment, saying: “BCM was reserving its comment on the matter for now until National Treasury is done with its investigation.”

In her letter to Fani, Mxunyelwa referred to a meeting between her office and Fani, in which Fani made an “undertaking to provide us with supporting documents to facilitate National Treasury investigation on these matters [referring to stated cases above].”

Mxunyelwa was demanding a breakdown of all expenditures related to the R583-million. She also asked Fani to submit all committee reports which made the recommendations that the amounts be written off, and all council resolutions relating to the write-offs.
This was part of R1.1-billion worth of write-offs the BCM council resolved to reverse two weeks ago, after Fani advised council to do so.

But he made no mention of Mxunyelwa’s letter of demand at the council meeting, except to highlight the importance of rescinding the decision to write-off the amounts.

Mxunyelwa also asked for documents which confirm the memorandum of understanding with SACN, as well as a list of companies which did work during the intervention.

She also asked for printouts from the financial system of all payments made to the three ICT companies.

“Provide documents indicating the procurement process followed in the appointment of these service providers,” and “provide us with the service level agreements for the appointment of all three companies,” she wrote.

According to the Daily Dispatch dated the 30th April 2015, the Buffalo City Metro council had instructed Mayor Zukiswa Ncitha to put municipal manager Andile Fani on special leave.

The action was over allegations that Fani instructed officials to tamper with a tender box and disregarded national Treasury regulations on metro finances.

The findings of Ncitha’s investigation into allegations that Fani had instructed three senior managers to tamper with the tender box were tabled behind closed doors at council meeting held at an East London hotel.

The city hall had been under renovation since last year, and a larger alternative venue was not available. The investigation stems from a Daily Dispatch report two weeks ago on allegations Fani gave orders that the box, containing among other tender documents submissions for a R100-million roads maintenance contract, “be removed”.

Municipal spokesman Keith Ngesi at the time denied the order was to remove the box, but rather for the officials to establish if it had been tampered with. Ncitha then conducted an investigation on events leading to the replacement of locks on the tender box.
The report on her investigation, named “Fani’s Conduct”, was tabled at a boisterous meeting the previous day, which included a walkout by the entire DA council caucus.

Fani supporters, mostly belonging to the South African Municipal Workers’ Union (Samwu), demanded to be allowed into the meeting as permitted by law.

But council speaker Luleka Simon-Ndzele said the venue was too small to accommodate members of the public. Inside the council meeting room, it was agreed that only confidential items would be discussed, leading DA councillors to march out before the Fani item was discussed.

More councillors walked out when Ncitha’s report on Fani was discussed, with several ANC councillors – including Tony Mtintsilana, Nomfezeko Ngesi, Thembisa Zantsi and Mxolisi Nkula, together with COPE’s Khayalethu Twalingca – following in the DA’s footsteps.

Despite the walkout, other councillors continued the discussion and the matter was put to vote. “The recommendation to put Fani on special leave was still put to the vote and endorsed by the majority of councillors. “One ANC councillor voted against and three abstained,” said a source close to the developments.

“The item was now in the hands of the mayor to write to the metro manager for him to give reasons why he should not be put on special leave,” added the source.

Simon-Ndzele confirmed the previous day that “there’s a council resolution on the matter of the accounting officer’s conduct” which included a national Treasury investigation into Fani’s conduct on financial “write-offs”.

But the matter remained confidential until follow all the necessary processes and then declare it an open matter which can talk about publicly there after, according to speaker. She promised to confirm the following day as to how council resolutions would be communicated to the public “because this is of public interest”.

Ncitha refused to comment on anything that “has to do with pink [confidential] items”. “I can’t do that. “All I can do is apologise to the members of the public for the fact that they
were unable to be part of this council meeting," Ncitha said. Fani could not be reached for comment at the time of writing.

According to the Daily Dispatch dated the 21st May 2015, Buffalo City Metro (BCM) Municipal Manager Andile Fani had 48 hours to prepare for battle with his detractors on the city council, led by Mayor Zukiswa Ncitha.

Ncitha and two other co-accused in the Mandela funeral funds court case – speaker Luleka Simon-Ndzele and leading ANC councillor Sindiswa Gomba – were back in their seats to preside over the top table and hold the floor during another raucous sitting of a special city council meeting at the Border Conference Centre in Abbotsford.

BCM top officials City Manager, Andile Fani, Council Speaker, Lulama Simon-Ndzele, Mayor Zukiswa Ncitha and Deputy mayor Themba Tinta at the second special council meeting at Border Conference Centre in Abbotsford on a Wednesday.

The legal fight between Fani and the mayor continued. Papers obtained the previous day showed Fani was seeking a high court order setting aside the council’s April 29 decision to investigate and suspend him, arguing it was irregular, irrational and unconstitutional.

At a meeting, while the three politicians were in court defending themselves from accusations they were interfering with a key witness, Fani was in good spirits as he held the top table at the start of the sitting.

That meeting ended in disarray with a decision to put off tabling the report until the following sitting. Fani looked subdued and, once, mopped his face, as Ncitha, with Simon-Ndzele by her side looking confident, pushed ahead with her “exigency” report.

Amid shouts of “order” and angry statements from opposition councillors, and two adjournments, Ncitha obtained a position from the ruling ANC caucus to give Fani 48 hours until noon the following day before the next special sitting which would only discuss his matter.

The meeting started with a bang, dealing immediately with whether Ncitha’s report on Fani’s suspension should be tabled. In her opening remarks, Simon-Ndzele said:
“We were not present in the last council meeting. We had a warrant of arrest [against us], that is why we were not part of the meeting. “In reconvening the meeting we have communicated with organizational support on how we deal with issues convening these meetings.”

Ncitha’s report into Fani was prompted by allegations of tender box tampering and of failing to inform Ncitha of a national Treasury investigation into allegations of irregularities in the management of the metro’s finances.

On April 29, Ncitha gave Fani seven days to argue why he should not be suspended for misconduct. However, charges of intimidation of a witness were then brought against Ncitha, Simon-Ndzele and Gomba. DA members made it clear they would be “recusing” themselves from the sitting if the “strictly confidential” items on pink paper were admitted.

DA BCM caucus chairman Terence Fritz said angrily: “We made it clear we won’t entertain exigency items because this is a special council meeting. We will only entertain those [items] in the books we have from the last meeting.”

ANC ward councillor Monwabisi Mahodi said: “Can this report please be circulated to the council so we do not discuss something we do not know the contents of.”

After reaching a deadlock, two brief adjournments were taken, and, based on the decision of the ANC caucus, the by-then 57-strong council resolved to circulate the “pink paper exigency report” among councillors and gave them 48 hours to “consult” with it. Fani asked to be excused soon after but returned after half and hour. The mayor also left briefly.

According to Daily Dispatch dated the 30th May 2015, one of Buffalo City Metro’s most sought after contracts was said to be at the centre of a massive rift between municipal bosses. City and political sources, who were close to the developments at both the Trust Centre and the City Hall, said the tender known as Contract 26 was being used by politicians and officials to dish out patronage.

While municipal authorities refused to reveal how much Contract 26 worth, dispatch had seen payment schedules valued at more than R500-million.
But BCM spokesman Kith Ngesi indicated that they could not discuss finances of the companies in papers because policy did not allow them to that though there are public finances involved.

Contract 26 was made up of different contracts for building and maintaining roads, storm water upgrades and fixing potholes around BCM. These contracts used to win by mainly white-owned construction companies in the past, but a decision was taken few years ago to award them to different companies, including black owned ones.

Politicians told dispatch that the multimillion rand tender had caused major rifts in the already sour relationship between Ncitha and Fani. It was also mentioned that Fani was being targeted because the contracts were going to people seen to be close to him. The tensions were said to have surfaced after Fani refused to extend the contract when it expired in March. When asked about the allegations Fani indicated that he preferred not to comment as the matter was still before courts, but insisted that he was not shaken by not signing and not ashamed as it was his responsibility to make sure that things were done I a responsible way.

After the tender lapsed in March a new tender was then advertised. In the previous month Dispatch exposed how officials were allegedly sent to remove tender box which contained bids for the lucrative tender. At the time Ngesi denied there was an order to remove the box, but rather for the officials to establish if it had been tampered with.

Fani was alleged to have called his entire management team to an impromptu meeting meeting on April 2 and told them he suspected foul play on how the tender box was being managed. He further alleged to have said that he would like it removed over the long weekend and kept in safe place.

He had denied ever giving such an instruction. But Ncitha had compiled a report in which she listed this incident as one which needed to be investigated. It was alleged the incident turned Fani’s former ally, CFO Vincent Pillay and supply chain management head Thembinkosi Sali against him.
In his response to the allegations that he had given instructions for the tender box be removed, Fani claimed he was trying to prevent manipulation of the tender process. But his rivals claimed he was trying that companies close to the city manager were given preference. But Fani had subsequently refuted the claims saying any one was receiving bribes the municipality would deal with it.

The Daily Dispatch dated the 03rd June 2015, indicated that Buffalo City Metro mayor Zukiswa Ncitha and municipal manager Andile Fani have been ordered to resign from their posts by provincial ANC leaders.

The Daily Dispatch could exclusively reveal that ANC provincial chairman Phumulo Masualle held a one-on-one meeting with Fani in which he recommended that the municipal manager throws in the towel in his battle with the mayor and negotiate an exit package. The decision came while President Jacob Zuma and his national working committee were visiting the Nelson Mandela Bay (NMB) metro.

ANC had made a similar intervention at NMB where Mayor Ben Fihla was replaced by football administrator Danny Jordaan, Bicks Ndoni appointed as his deputy and Litho Suka as Chiefwhip.

ANC provincial secretary Oscar Mabuyane confirmed that the party’s top five provincial officials had been given the go ahead to act on BCM’s state of paralysis. However, he refused to divulge further details of an ANC provincial executive committee (PEC) meeting in Port Elizabeth on Monday where the decision was made. “There is a PEC decision which instructed PEC officials to intervene decisively in BCM,” Mabuyane said. “So far this is an internal matter that we are processing and we are consulting with national [ANC leaders] about it. At an appropriate time, when all steps have been followed, we will issue a statement.” The PEC officials included Masualle; his deputy Sakhumzi Somyo; Mabuyane; deputy secretary Helen Sauls-August; and Treasurer Thandiswa Marawu.

Ncitha declined to comment on the matter saying: “On any PEC decision, only the secretary [Mabuyane] and ANC provincial spokesman Mlibo Qoboshiyane have the right to make comments in the media. “Even if that decision affects myself as an individual, I cannot comment.”
Efforts to get a comment from Fani were unsuccessful at the time of writing. At least four sources revealed that three names had been put up by the PEC as potential replacements for Ncitha. They were deputy mayor Temba Tinta, mayoral committee member Sindiswa Gomba and Ward 11 councillor Sakhumzi Caga. “Indeed the three names were the recommended ones for the position,” said the source. “The decision can go either way, but I’m sure it will be made by the end of this week.”

Ncitha and Fani had not seen eye to eye for a number of years. In 2012 the BCM regional executive committee recommended that Fani be redeployed, but instead the PEC tried to resolve the impasse. Despite this, the problems persisted.

Tensions came to a head last when councillors supporting the mayor and those who sympathized with Fani clashed in at least three meetings over Ncitha’s decision to try and suspend Fani.

At least one of the meetings had to be adjourned because it did not meet a quorum after opposition councillors marched out.

It was not clear at that stage who would emerge victorious for the mayoral position as both the ANC’s alliance partners – SACP and Cosatu – were usually given a say in such sensitive matters.

While Tinta and Gomba were both facing court charges for their alleged involvement in the misuse of more than R5.9-million in the Mandela memorial fraud scandal, that might not affect their bid for the city’s top job.

The ANC had previously said that the court matter should be allowed to run its course before any action will be taken. If there was no consensus on the best candidate, the matter would be voted on. Tinta should receive support from the SACP and Masualle, an SACP leader.

Gomba would likely receive support from BCM regional secretary Pumlani Mkolo and his allies within the PEC, while Caga was likely to get backing from Ncitha’s sympathisers in PEC as he had worked closely with her in the past.
Contacted for comment, Caga and Gomba said they were not aware of the developments and were in no position to discuss the matter. Tinta said he was held up in a meeting and could not comment.

According to the Daily Dispatch dated the 06th June 2015, the Buffalo City Metro executive underwent the first round of a major overhaul with new leaders only learning of the changes on the day they were announced. Both mayor in waiting Alfred Mtsi and his deputy Xola Pakati who replace Zukisa Ncitha and Temba Tinta respectively, said they only learnt about their appointments and responsibilities the day before.

The reshuffle came weeks after the ruling party affected drastic leadership changes at the Nelson Mandela Bay Metro where they replaced 83-year-old mayor Ben Fihla with soccer administrator Danny Jordaan amid infighting and administration instability in that council.

The changes in Buffalo City Metro also pointed to the urgency on the part of the ANC to deal with turmoil. Provincial ANC secretary Oscar Mabuyane announced at Calata House the day before that Ncitha and Tinta had already resigned as councilors to make ways for the members of the provincial legislature, who were also expected to resign immediately as MPLs.

Ncitha was moved to the National Council of Provinces and Tinata to the Eastern Cape Provincial Legislature Member of the Provincial Legislature (MPL). Mabuyane said municipal manager Andile Fani was also in a firing line, but was left with BCM to effect changes in the administration.

The new mayor and his deputy were expected to be sworn in in the following week, but announced more changes would expected.

Mabuyane indicated that there were protracted problems at BCM of lack of performance of the municipal leadership, especial the Municipal Manager and the Executive Mayor’s office. Every day ratepayers complained of lack of service delivery such as non-collection of refuse.
He said that they had decided to intervene and rescue the municipality and had nothing to do with individuals. The move was applauded by the opposition parties as well as ratepayers and business community.

The Daily Dispatch dated the 10th July 2015, revealed that Buffalo City Metro (BCM) authorized the payment of R7.6-million to a company just a day after issuing them with contract order documents.

On June 29, BCM supply chain management released an order for Interwaste Environmental Solutions to do an “emergency operation” at the regional waste disposal site in Berlin. Then, on June 30, an official who was acting as a head of department for community services, signed for R7 670 476.08 to be paid to the company.

BCM Chief Financial Officer (CFO) Vincent Pillay has questioned it in a letter seen by the Daily Dispatch. It read in part: “The challenge our directorate is currently having is that Ms N Daniels [the official who signed off the payment] is no longer acting HOD: community services and does not have authority to sign for the payment amount of R7 670 876.08. It is therefore advised that the invoice for payment be signed by the city manager, in order for the payment to be processed.”

Supply chain management (SCM) regulations state that a company is not allowed to commence work without being given an order to do so. The order is a document which states the order number used when payments are to be made, a description of work to be done and the amount quoted when the company bid for the tender.

Senior officials within the metro, who spoke on condition of anonymity, described authorizing payment a day after the company was ordered to go on site as “fiscal dumping”. The metro’s financial year ended on June 30. One said: “It’s obvious, this happened before and it is happening again. Don’t be surprised if this is another fiscal dumping. Where is the service level agreement?”

Allen de Villiers of Interwaste said everything was done above board. “We have a valid letter of appointment from BCM regarding commencement of operations in terms of the
tender.” He said work commenced on June 1; however, the order was only signed 28 days later.

Asked to produce a copy of the service level agreement, De Villiers said: “The project is governed by service levels as contained within the contract tender document which is duly agreed to and signed by the parties. We suggest you obtain a copy of the tender document from the BCM.”

Metro spokesman Keith Ngesi said the nature of this particular contract did not require an order to be issued before work is done. “This one is a different two-year milestone-based contract, not pinned on the order.”

Ngesi said the R7.6-million to the company was being processed but had not yet been paid. “The project started in 2015, therefore it is not completed.” Ngesi said the money claimed by the company was for site establishment, site clearance and material on site amongst others.

De Villiers said they received an official letter from BCM on May 19. “Subsequent to the applicable tender process, the letter of appointment required Interwaste to commence services within 14 days thereafter. As a result, we commenced operations.”

Another senior official said a letter of appointment does not necessarily give the authority to work on site. “No one should work without an order; how is that person going to claim money without an order. This is fraudulent.”

2.7 ATTEMPTS TO FIGHT CORRUPTION

Several attempts were embarked upon by government partnering with private sector and civil society to fight corruption. As well as Non-Governmental Organizations and pressure groups have made strides in declaring war against corruption.

2.7.1 The Third National Anti-Corruption Summit Report 2008

According this report the following resolution were taken:
2.7.1.1 The Ethical Practices in Social and Economic Life

a) That the NACF establish a task team to urgently consolidate and articulate the National Integrity System.

b) To call on political parties and Parliament to expedite the regulation of transparency in party political funding and to consider a sanctions mechanism.

c) To urge political parties in all three spheres of government to disclose their business interests.

d) To continue to strengthen monitoring and accountability mechanisms with respect to all tender processes in the public sector.

e) To support the swift regulation of post-public sector employment for all elected and appointed public officials and its implementation.

f) To strengthen the current system of disclosure of interests for all elected and appointed public officials.

g) To develop systems of disclosure of interests for business and civil society.

h) To support legislative and other measures to ensure that companies found guilty of offences of price-fixing, market allocation and collusive tendering are prohibited from state tenders for a determined period.

i) To strengthen the enforcement provisions of the Competition Act including holding individuals accountable for price-fixing, market-allocation and collusive tendering.

j) To urge the business community to investigate self-regulating mechanisms to improve ethical conduct in practice.

k) To reaffirm that ethics must be infused in all aspects of the education system including the curriculum at all levels.

l) To reaffirm that schools of Business and Public Management must provide courses on professional ethics and anti-corruption.

m) To call for the strengthening of the institutional capacity of the private sector to detect and prevent corruption.

n) To complete the implementation of continental and international anti-corruption legal instruments and promote the enforcement thereof in national law.
2.7.1.2 Strengthening Accountability, Coordination and Oversight

a) To strengthen anti-corruption bodies and improve coordination among them;
b) That all allegations of corruption must be investigated and prosecuted without fear or favour, in accordance with past and present anti-corruption legislation;
c) To reaffirm that sectors and professional bodies must adopt sector and profession-specific codes of conduct and/or ethics as well as a training and communications regime to support their application;
d) That the private sector must mainstream anti-corruption practices and report on them in Annual Reports in an accessible and transparent manner;
e) To promote national anti-corruption values and interests continentally and internationally;
f) To call for improved financial accountability and transparency of civil society organizations;
g) To strengthen the powers of oversight bodies for the business sector and promote coordination of their activities;
h) To promote the National Anti-Corruption Hotline and support the further development of capacity to respond to reported corruption.

2.7.1.3 Access to Services Through Participatory Governance

a) That all state entities improve service delivery through inter-alia eliminating corrupt practices, encouraging whistle blowing and complying with the National Integrity System;
b) That services are offered to all citizens equitably and fairly;
c) That the NACF supports the urgent finalization of the review of the Protected Disclosures Act and initiates a national conversation on building a culture of whistle blowing;
d) That participatory governance must be promoted to ensure that corruption and the abuse of power are addressed at the site of service delivery;
e) To implement effective anti-corruption communication and awareness programmes at community level, within the business sector and across civil society;
That public officials in all spheres of government must be trained in ethics, conflict of interest principles, constitutional and administrative law and the principles of Batho Pele.

2.7.1.4 National Anti-Corruption Forum

a) That all three sectors ie state, business and civil society must fully commit and take ownership of the NACF and the chair must rotate;
b) To strengthen the NACF and undertake a review of institutional arrangements including the role of leadership, composition, expanded participation and whether or not the NACF should become a statutory body;
c) To call on universities and professional bodies to expand their participation in the NACF; and
d) That the NACF promotes dialogue within the sectors.

2.7.2 The Fourth National Anti-Corruption Summit Report 2011

The primary function of this Summit was to report back on the implementation of the resolutions and to pass new ones for further implementation. The Summit was also used to reflect on the nature and state of corruption in the country and the initiatives and efforts needed to put in place to deal with corruption.

According to this summit report the following resolutions were taken:

- To reaffirm the original vision of the NACF, as set out in the Memorandum of Understanding on its Establishment, as the primary platform for the development of a national consensus through the coordination of sectoral strategies against corruption;
- Sector representatives commit to securing the renewed commitment of their leadership to give effect to the vision and objectives of the NACF;
- To reaffirm the commitment to holding accountable to report regularly on effective implementation of sectoral and joint strategies;
- To commit to engage with every respective constituencies and with each other to revise the National Anti-Corruption Strategy and implementation modalities;
• Sector representatives undertake to review their sectoral anti-corruption initiatives and programmes aimed at realising an agreed National Anti-Corruption Strategy;
• Each sector commits to review and where necessary reconstitute its representation on the NACF;
• To develop a comprehensive education, awareness and communication campaign to promote an ethical culture, develop an improved understanding of the many facets of corruption, and the contributions being made to combat this scourge;
• To develop a comprehensive education, awareness and communication campaign to promote an ethical culture, develop an improved understanding of the many facets of corruption, and the contributions being made to combat this scourge;
• To reaffirm the resolutions adopted at previous Summits that remain unimplemented, call on all sectors to take urgent and decisive action to demonstrate their commitment to both their previous joint undertakings and to this shared Forum, and to include them in the National Anti-Corruption Programme. Previous resolutions are attached for ease of reference;
• To commit every one to engage to consider options for the implementation of and respect for the Constitutional Court’s ruling requiring the establishment of independent anti-corruption capacity;
• Noting reference in the Preamble to the review of the PDA, a call for comprehensive protection for whistleblowers, and the right to access to information in line with the national Constitution; and
• To recognize that to give to the vision, objectives and programmes of the NACF it is necessary to identify and secure adequate resources to review and capacitate its structures at local, provincial and national.

The NACF was tasked to urgently produce a strategic programme of action supported by a business plan, including timeframes, to give effect to all resolutions.
2.7.3 Country Corruption Assessment Report South Africa 2003

According to Country Corruption Assessment Report South Africa 2003, it is evident from the assessment that South Africa has made great strides in the fight against corruption; however, there are still serious challenges to be faced. These challenges require a concerted effort from all sectors, plus partnerships with business, civil society and the international community.

It is especially important that Government’s partnerships with business and civil society are nurtured, as it would be impossible for Government alone to deal with corruption. In these partnerships, each partner must be held accountable for its own corruption, but each also should exercise both a critical role and seek assistance and co-operation from the other partners.

There is no doubt that on a national strategic and policy implementation level, Government’s share of responsibility is the largest as it is Government which is open to the sharp public scrutiny for its own corruption and anti-corruption efforts. Yet, as corruption is a kind of partnership though illicit, so too is the response to it a partnership which is legitimate, desired and necessary.

It is important that South Africa continues to participate in the development and implementation of anti-corruption legal instruments at the international level (e.g., the UN Convention against Transnational Organised Crime and the Convention against Corruption), regional level (e.g., the AU Convention) and sub-regional level (e.g., the SADC Protocol against Corruption). It is important that the country also provides support to various international and regional strategies and mechanisms for the promotion of good governance and anti-corruption.

2.7.4 Public Service Anti-Corruption Strategy 2012

According to Public Service Anti-Corruption Strategy 2012, the current proliferation of courts need to be reviewed in order to assess and improve the efficiency of courts. Particular attention should be given to improving the specialized capacity of court officials to address corruption cases, rather than creating additional specialized courts.
The existing specialized commercial courts proved be hugely successful according to the strategy.

The institutions that are fighting corruption need to be improved, that is NPA, DSO, AFU, PP, AG, PSC, SIU, SAPS, NIA, ICD now known as IPID, IDSEO, MPAC, SCOPA NDPP, ACU, SARS and NCPS.

The research indicated that initiatives to fight corruption are fragmented and hampered by the number of agencies and the institutions that attend to corruption as part of a broader functional mandate.

This situation of fragmentation, insufficient coordination, and poor delineation of responsibility and assimilation of corruption work into a broader mandate directly affects the resourcing and optimal functioning of these agencies and institutions as far as anti-corruption roles are concerned.

In order to address this situation, the following are required according to the strategy:

- A clear definition of the roles, powers and responsibilities of these institutions in order to increase their efficiency, including allocation of new roles to negate deficiencies in areas of focus and to promote a holistic and integrated approach;
- Establishment of formal coordinating and integrating mechanisms within national executive and between departments and agencies involved in anti-corrupt work;
- Coordination at the level of departments and agencies must be regulated by a protocol and this mechanism must be accountable to the national executive through the governance and administration structures;
- A well defined accountability arrangement for all the institutions, ie departments and agencies;
- Increased institutional capacity of the institutions, in particular the competencies of employees and focus on prevention; and
- All departments and institutions of the public service must establish a minimum capacity to undertake the following:
Conduct risk assessment.
Implement fraud plans as required in terms of PFMA, which must include an anti-corruption policy and implementation plan.
Investigate allegations of corruption and detected risks at a preliminary level.
Enable the process of conducting further investigation, detection and prosecution, in terms of prevailing legislation and procedures.
Receive and manage allegations of corruption through whistleblowing or other mechanisms.
Promote professional ethics among employees.

Employees and businesses that have been party to acts of corruption often change employer within the public service or, in the case of businesses change name or location in which they operated. To remedy this situation and raise the integrity and ethics of the public service and businesses it does business with, prohibition must be established, according to Public Service Anti-Corruption Strategy 2012 by:

- Excluding an employee and owners and directors of businesses found criminally guilty of corruption from employment within public service for a maximum of 5 years. Such punishment must be included in legislation as mandatory provision upon sentence;
- Recording the prohibition of such persons on employment systems.
- Publication of sanctions and names of businesses, owners and directors;
- Creating a centralized electronic register through the Common Service Provider of National Treasury of prohibited businesses, and their respective owners and directors, that have participated in acts of corruption;
- Requiring institutions to consult the centralized electronic register before contracts are concluded; and
- Requiring contractors to declare previous criminal convictions related to corrupt practices.

The role of society in fighting corruption is international recognized. Society and in particular organizations within civil society that has an interest in corruption matters and the effects thereof on societies, should be encouraged to undertake the following:
Ongoing social analysis and research on the trends and causes of corruption as well as the impact of anti-corruption measures;
Advocacy of preventative measures and the promotion of a culture of whistleblowing within their constituencies; and
Ongoing monitoring and evaluation of corruption trends, causes and measures in all sectors.

Although many good initiatives exist to fight corruption, the public awareness is poor. Employees are insufficiently educated on their rights and responsibilities as well as about the mechanisms that exist to fight corruption. A comprehensive awareness campaign, supported by education and training, needs to established and implemented.

Importantly, a targeted communication campaign that contain the following elements must be developed:

a. A targeted campaign to promote South Africa's anti-corruption and good governance successes internationally.
b. Promotion of departmental successes in anti-corruption work.
c. Messaging that balances a positive duty upon employees, not to tolerate corruption, with negative messages of consequences for both perpetrators and victims.
d. Awareness of the current legislative framework as it relates to corruption, with practical guidelines on the rights of employees who blow the whistle on corruption, the nature of witness protection system and the roles and responsibilities of existing anti-corruption institutions.
e. Encouragement of employees to blow the whistle on corruption within their work environments.
f. Responsibility of employees to evaluate and report risk to internal audit functionaries in departments.
g. Integration of anti-corruption issues into the wider campaign to promote the Batho Pele principles, with particular links to the, ‘I am proud to be a public servant’ element of that campaign.
The Public Service Anti-Corruption Strategy emphasizes fighting corruption in a holistic manner and promotes preventative action. Main elements of corruption prevention within departments and entities include preventing and managing risks, solid management systems and practices, access to report wrongdoing and integrity of the whistleblowing system, and ongoing focused training of employees.

2.7.5 Local Government Anti-Corruption Strategy 2006

In terms of the Public Service Act and the Public Finance Management Act, accounting officers (heads of departments/organisations) are responsible to manage the employees and the other resources of organisations and to account for their management of these resources.

In order to fight corruption in departments (as defined in the Public Service Act) and public entities under the jurisdiction of departments (as listed in Schedule 3 of the PFMA), each accounting officer must, for his/her department /organisation:

a) Specifically focus on and analyse corruption risk as part of risk assessment required in terms of the PFMA;

b) Implement fraud plans required in terms of the PFMA, which fraud plans must specifically address the corruption risk;

c) Verify the previous employment, qualifications, citizenship and criminal record of all persons before they are employed;

d) Establish a system or systems that encourage and allow employees and citizens to report corruption, which system or systems must provide for confidentiality of reporting, the recording of all allegations of corruption received through the system or systems and a formal institutional arrangement for acting on such allegations;

e) Establish a capacity to-

    Investigate allegations;
    Institute and complete disciplinary action for cases of corruption;
    Detect corruption; and
    Refer allegations of corruption to a relevant law enforcement agency or other appropriate agencies/bodies in terms of a formal arrangement

f) Establish an information system that-
The main principles upon which the Local Government Anti-Corruption Strategy (LGACS) is based are the following:

Creating a culture within municipalities which is intolerant to unethical conduct, fraud and corruption;
Strengthening community participation in the fight against corruption in municipalities;

Strengthening relationships with key stakeholders, e.g. SALGA, employee representative unions and communities, that are necessary to support the actions required to fight corruption in municipalities;
Deterrence of unethical conduct, fraud and corruption;
Preventing unethical conduct, fraud and corruption which cannot be deterred;
Detection of unethical conduct, fraud and corruption;
Investigating detected unethical conduct, fraud and corruption;
Taking appropriate action in the event of such irregularities, e.g. disciplinary action, recovery of losses, prosecution, etc; and
Applying sanctions, which include redress in respect of financial losses.

All aspects of the LGACS will be:
Supported by comprehensive education, training and awareness campaigns;
Coordinated within the spheres of government;
Subjected to continuous fraud risk assessments; and
Expressed in terms of measurable and time-bound implementation plans.

The objectives of the LGACS could be summarised as follows:
Encouraging a culture within the local sphere of government where all employees, members of the public and other stakeholders continuously behave with and promote integrity in their dealings with, or on behalf of municipalities;
Improving accountability, efficiency and effective administration within municipalities, including decision-making and management conduct which promotes integrity;
Development of anti-corruption capacity within municipalities;
Improving the application of systems, policies, procedures, rules and regulations within municipalities;
Changing aspects within municipalities that undermine institutional integrity and facilitate unethical conduct, fraud and corruption and allow these to go unnoticed or unreported; and

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Encouraging all employees and other stakeholders to strive toward the promotion of integrity and the prevention and detection of unethical conduct, fraud and corruption impacting or having the potential to impact on the local sphere of government.

The above is not intended to detract from the premise that all the components are equally essential for the successful realisation of the LGACS.

The then Department of Provincial and Local Government, in consultation with municipalities, had develop a Whistle-blowing Policy framework covering the following key issues:

- The whistle-blowing policy stance;
- Scope, including types of irregularities to be reported;
- Where and to whom to report;
- Confidentiality of reports made;
- Assurances relating to protection;
- Undertakings to investigate all reports;
- Commitment to act promptly in instances where allegations are proven;
- Publication of sanctions, including providing appropriate feedback to whistle-blowers.

**2.7.6 Eastern Cape Provincial Anti-Corruption Consultative Conference 2010**

Addressing the Eastern Cape Provincial Anti-Corruption Consultative Conference in October 2010, the former Premier of the Eastern Cape Ms Noxolo Kiviet mentioned the fact that the ANC in its 52\(^{nd}\) National Conference held in Limpopo province in 2007, observed that corruption was a systematic and institutional phenomenon that involved all sectors of society undermining democratic processes as well as corporate governance. The rise of this disease has become so epidemic in the societal structures that it erodes social cohesion and moral values. Consequent to crooked means and fraudulent ways of the people, the South African national integrity system, comprising the legislative, executive, judicial, business and civil society are continuously undermined.
She further indicated that the ANC strongly believes that these community sectors should be underpinned by high revolutionary morality and high historic values. Civil society has a crucial role to play in exposing corruption of all forms and ensuring adherence to ethical conduct.

Committing the provincial administration in fighting corruption she outlined the key priorities that includes:

- Speeding up growth and transforming the economy to create decent work and sustainable livelihoods;
- Building social and economic infrastructure;
- Rural development land, agrarian reform and food security;
- Strengthening education and building a skills and human resources base;
- Improving the health profile of the province;
- Intensifying the fight against crime and corruption;
- Building a developmental state;
- Improving the public services, and strengthening democratic institutions; and
- Building cohesive, caring and sustainable communities.

She highlighted key strategies to fight corruption, ie

- Detecting and investigating corruption through the use of whistleblowing mechanisms;
- Managing conflicts of interest in the workforce; and
- Communication and awareness.

She concluded by mentioning a number of challenges that includes:

- Lack of internal investigative capacity to handle reported cases;
- Whistle blowers do not always provide detailed information on allegations to enable initiation of investigation by relevant departments;
- Anonymity of whistle blowers is hampering investigation process in institutions where follow up or clarity is required;
- Non-adherence to the minimum information security;
Protection of whistle blowers still worrying factor;
There are no proper processes to follow up on cases referred to departments;
Quality of anti-corruption and risk management framework and adherence to them;
and
Weak information systems that are open to hackers and fraudsters

2.7.7 The State of the Province Address 2014

In his state of the province address in June 2014, the Premier of the Eastern Cape Mr Phumulo Masualle indicated that in line with his administration commitment to clean governance, radical new measures will be introduced to combat fraud and corruption in government institution in the province.

These will include ensuring that all public office bearers and government officials facing serious fraud and corruption charges are relieved of their duties until finalization of the investigations, detection systems to be strengthen; investigative capacity to be increased to ensure timely conclusion of investigations; strengthening of collaborations between anti-corruption units and law enforcement agencies as well as taking decisive action against the perpetrators.

He concluded by indicating that fighting the cancer of corruption need a concerted effort by all key stakeholders to work together in partnership and with a greater sense of urgency as well as improved accountability.

2.7.8 The State of the Province Address 2016

Addressing the Eastern Cape Provincial Legislature, the Premier of the Eastern Cape, Mr Phumulo Masualle again indicated that in line with zero tolerance to corruption and fraud, will continue to fight against fraud and corruption in the system. He also mentioned that partnerships with crime fighting agencies like Kawks and Special Investigating Unit has been strengthened. A call was made upon communities acting within the provisions of laws to reclaim their streets and villages from criminal elements operating in these spaces.
Unfortunately, there was no mention of the previous commitment whether they were successful implemented or not. Also even the kind of partnership forged with these agencies in order to make it a reality, hence there is a strong perception out there that government is just paying a lip service in fight against corruption.

2.7.9 Free State Provincial Anti-Corruption Summit 2005

Addressing the Free State Provincial Anti-Corruption Summit in Bloemfontein July 2005, Professor SS Sangweni the former chairperson of Public Service Commission, said in recent years’ government has stepped up its anti-corruption activities. Its efforts have become more systematic, with greater emphasis on instituting appropriate policy measures to prevent corruption. Anti-corruption has been a priority in the programme of government for many years and even the 2005 programme of action reflects that.

He indicated that the fundamental to the fight against corruption is involvement of all stakeholders. To this end the first national Anti-Corruption Summit was convened in April 1999, involving government leaders, organized business, organized religious bodies, the Non-Governmental Organization (NGO) sector, donor countries, and the media organized labour, academic and professional bodies as well as public sector.

This first Anti-Corruption National Summit created a powerful platform for National Campaign against Corruption in that it recognized the societal nature of corruption, and that the fight against corruption requires a national consensus and coordination of activities.

He indicated that the Anti-Corruption Coordinating Committee had been established to co-ordinate implementation of the Public Service Anti-Corruption Strategy as well as other anticorruption work.

The committee consisted of 14 departments and agencies within government, including:

- The Special Investigating Unit,
- National Prosecuting Authority,
- Public Protector’s Office,
- Auditor-General’s Office,
National Intelligence Agency,
Public Service Commission,
Department of Public Service and Administration,
Department of Provincial and Local Government,
Department of Justice and Constitutional Development,
Department of Home Affairs,
National Treasury,
South African Police Services, and
Offices of the Premiers in 8 eight provinces with the exception of Free State.

Also, he indicated that in spite of the number of anti-corruption initiatives that government had embarked upon in the past decade, various challenges remained. Whilst progress is also being made in local government as far as legislative requirements and structures are concerned, local government still lacks a visible and coherent anti-corruption strategy.

Reliable data on corruption remains difficult and expensive to collate and analyze. The myriad of instruments used to determine corruption measures is not helpful. An ideal system would be one where a greater degree of consistency in methodologies exists, thus enabling comparative use of data. This needs to be supplemented with substantive research and analysis of causes and effects of corruption.

2.7.10 National Conference on Corruption and Governance Challenges in Nigeria 2010

Addressing the National Conference on Corruption and Governance Challenges in Nigeria in January 2010, the Public Protector of the Republic of South Africa, Advocate Thuli Madonsela, insisted that in her view corruption and good governance sit at the opposite ends of the spectrum.

While good governance represents the ideal for governments, corporations and the nations globally, corruption is a scourge that decent people, organizations and government seek to eradicate. In the simplest term according to her, corruption involves the abuse of power for private gain.
Actual acts range from simple act of bribing someone to skip a queue or bribing a traffic officer to avoid a speed fine to serious conduct as the irregular award of tenders or even buying political patronage.

She also mentioned the fact that most authority on the issue of corruption and good governance are adamant that single most important factor is the human element. In other words, what is needed is to address human values and behavior. Of course having good and preferably, transparent governance and administration systems is part of the package. She indicated that there are three dimensions to human element, these are the values of each individual, community values and political will at all levels of leadership.

The corruption tolerance levels of the community too can be a force for or against corruption. Political will is undoubtedly a critical factor in fight against corruption and promotion of good governance. Political will incorporates leading by example and taking prompt and firm action where corruption is detected and supporting law enforcement agencies when they do their work in this regard.

2.7.11 The Symposium on Corruption in the Public Sector University of Free State 2014

Addressing the symposium on corruption in the public sector at the University of Free State in June 2014, Mr FDT Brand said, ‘The seriousness of the offence of corruption cannot be overemphasized. It lowers the moral tone of a nation and negatively affects development and the promotion of human rights. The country has travelled a long and tortuous road to achieve democracy. Corruption threatens the constitutional order. Every effort must be made to ensure that corruption with its putrefying effects is halted. Courts should send out an unequivocal message that corruption will never be tolerated and punishment will be appropriately severe.’

He also said that corruption and maladministration are inconsistent with the rule of law and fundamental values of the constitution. They undermine the constitutional commitment to human dignity, the achievement of equality and the advancement of human rights and freedoms.
They are the antithesis of the open, accountable, democratic government required by the constitution. If allowed to go unchecked and unpunished they will pose threat to the society.

He concluded by emphasizing that corruption also plays a role in civil litigation. Administrative review forms the principle basis of the courts ‘activities in this arena. The most commonly understood role that the courts play in ensuring ethical relationships between development of the law by the courts in recent times in this regard is that, although government is not liable for damages resulting from negligence of its employees in tendering process, the government is indeed liable for the loss suffered by an unsuccessful tenderer through the conduct of an employee which was not only negligent, but also dishonest and corrupt.

2.7.12 Anti-Corruption Vision 2030 - 2013

According to this vision South Africa has a comprehensive anti-corruption architecture composed of a range of important institutions which address corruption. The current anti-corruption institutions acting in a disjointed manner, resulting in a loss of knowledge retention and sharing.

In addition, overlaps between the functions and mandates of anticorruption institutions reduce overall effectiveness of the system. Although there are several co-ordination mechanisms between the relevant institutions, the effectiveness of these mechanisms are limited as not all institutions are included and structures and roles are not always clear. The Constitutional Court has determined the need for an independent anti-corruption body with structural and operational autonomy.

The following anti-corruption role players were identified:

- South African Police Service which is responsible for law enforcement, (prevents, combats and investigate corruption).
- National Prosecuting Authority which institutes and conducts criminal proceedings on behalf of the state.
- Special Investigating Unit which investigates and reports on maladministration and corruption, and recovers losses through civil proceedings.
- Auditor-General which conducts compliance, forensic and performance audit and reports on accounts and financial statements of state-funded institutions.
- Public Protector which investigates and reports to state on conduct in the state affairs which may have caused prejudice to citizens.
- Public Service Commission which investigates, monitors and evaluates public service systems, policies, controls and practices, including effectiveness of anti-corruption agencies. It also promotes ethics and manages conflict of interests.
- National Treasury which makes policies on financial management, risk assessment SCM and maintains national database for restricted suppliers.
- Anti-Corruption Coordinating Committee which is responsible for the implementation of Anti-Corruption Strategy of the Public Service.
- Also ensures that the fight against corruption is coordinated and integrated with synergies between elements of prevention, detection, investigation, prosecution and monitoring.
- National Anti-Corruption Forum, a cross-sectorial task team to look into the establishment of a National Coordinating Structure with the authority to effectively lead, coordinate and monitor the National Anti-Corruption Programme.
- Anti-Corruption Task Team responsible to fast track high priority corruption investigations and prosecution. It also coordinates efforts of participating agencies (SIU, NPA, AFU and SARS).
- Multi-Agency Working Group on SCM which reviews state system to reduce and prevent instances of corruption in the state SCM system. It also coordinates participating agencies as well.
- Anti-Corruption Coordinating Committee responsible to implement Anti-Corruption Strategy of the Public Service. Also ensures that the fight against corruption is coordinated and integrated with synergies between elements of prevention, detection, investigation, prosecution and monitoring.
- Special Anti-Corruption Unit established by DPSA to support departments in managing corruption cases and to enhance and coordinate the fight against corruption.

2.7.13 Ekurhuleni Metropolitan Municipality Anti-Corruption and Risk Management Strategy 2009

According to this strategy, staff member of a municipality must at all times:

Loyally execute the lawful policies of the municipal council;
Perform functions of office in good faith, diligently, honestly and in a transparent manner;
Act in such a way that the spirit, purport and objects of section 50 are promoted;
Act in the best interest of the municipality and in such a way that the credibility and integrity of the municipality are not compromised; and
Act impartially and treat all people, including other staff members, equally without favour or prejudice.

A staff member of a municipality is a public servant in a developmental local system, and must accordingly:

Implement the provisions of section 50 (2);
Foster a culture of commitment to serving the public and a collective sense of responsibility for performance in terms of standards and targets;
Promote and seek to implement the basic values and principles of public administration described in section 195 (1) of the Constitution;
Obtain copies of or information about the municipality's integrated development plan, and as far as possible within the ambit of the staff members job description, seek to implement the objectives set out in the integrated development plan, and achieve the performance targets set for each performance indicator; and
Participate in the overall performance management system for the municipality; as well as the staff member's individual performance appraisal and reward system, if such exists, in order to maximize the ability of the municipality as a whole to achieve its objectives and improve the quality of life of its residents.
A staff member of a municipality may not:

   Use the position or privileges of a staff member, or confidential information obtained as a staff member, for private gain or to improperly benefit another person;
   Take a decision on behalf of the municipality concerning a matter in which that staff member or that staff member's spouse, partner or business associate, has a direct or indirect personal or private business interest.

Except with the prior consent of the council of a municipality a staff member of the municipality may not:

   Be a party to a contract for the provision of goods or services to the municipality;
   or the performance of any work for the municipality otherwise than as a staff member,
   Obtain a financial interest in any business of the municipality; or
   Be engaged in any business, trade or profession other than the work of the municipality.

A staff member of a municipality who, or whose spouse, partner, business associate or close family member acquired or stands to acquire any direct benefit from a contract concluded with the municipality must disclose in writing full particulars of the benefit to the council.

This item does not apply to a benefit which a staff member, or a spouse, partner, business associate or close family member, has or acquires in common with all other residents of the municipality.

A staff member of a municipality may not without permission disclose any privileged or confidential information obtained as a staff member of the municipality to an unauthorized person.

A staff member of a municipality may not:
Unduly influence or attempt to influence the council of the municipality, or a structure or functionary of council, or a councillor, with a view to obtaining any appointment, promotion, privilege, advantage or benefit, or for a family member, friend or associate;
Mislead or attempt to mislead the council, or a structure or functionary of the council, in its consideration of any matter; or
Be involved in a business venture with a councillor without the prior written consent of the council of the municipality.

A staff member of a municipality may not:

Request, solicit or accept any reward, gift or favour for persuading the council of the municipality, or any structure or functionary of the council, with regard to the exercise of any power or the performance of any duty;
Make a representation to the council, or any structure or functionary of the council;
Disclose any privileged or confidential information; or
Do or not doing anything within that staff member's powers or duties.

A staff member must without delay report to a superior official or to the speaker of the council any offer which, if accepted by the staff member, would constitute a breach of sub item (1).

A staff member of a municipality may not use, take, acquire, or benefit from any property or asset owned, controlled or managed by the municipality to which that staff member has no right. A staff member of a municipality may not be in arrears to the municipality for rates and service charges for a period longer than 3 months, and a municipality may deduct any outstanding amounts from a staff member's salary after this period.

2.7.14 Merafong City Local Municipality Anti-Corruption Strategy 2013/14

According to this strategy, fraud is an ever-increasing global problem that affects us all. Merafong City Local Municipality is not immune to this worldwide epidemic and is not prepared to continue being a victim of fraud, but rather seeks to be a part of the solution to a fraud free society. The main aim of this policy is to reduce fraud to an absolute minimum in order to provide better care and quality of services for all its stakeholders.
Merafong City Local Municipality irrevocably binds itself to combat all forms of fraud and corruption and binds the organisation to remain proactive in the fight against fraud and other white collar crime.

The Fraud Policy, which was to be signed by the Municipal Manager, sets the attitude towards the problem and declares a Zero Tolerance policy towards fraud and other acts of dishonesty. As a municipality, it is important that we take these values seriously and ensure that we do not permit activities that are not aligned with our norms. It is incumbent on all to be intolerable of this behaviour and to report such findings. To this end, defrauding MCLM will not be tolerated and those employees or other stakeholders found to be in violation of this policy will be prosecuted to the fullest extent possible, both internally and externally. This policy places fraud prevention and/or reporting of any form of irregularity as a responsibility of every employee in MCLM.

It is therefore expected of every employee to report all incidents of irregularities or fraud that comes to his or her attention. Failure to do so will result in disciplinary or criminal action for having failed to comply with this policy. Also according to this strategy, management has the following responsibilities with regard to the administration of the Business:

- Ensuring that all employees under their control receive and sign an acknowledgement of receipt of a copy of the Business Code of Ethics at employment and annually thereafter during the performance review discussion;
- Taking steps to ensure that employees are fully conversant with the Business Code of ethics.
- Ensuring that the Business Code of Ethics forms part of MCLM orientation programme.
- Ensuring that all standards and procedures comply with the Business Code of Ethics and are communicated to all employees.
- Reporting any violations of the Business Code of Ethics up through the chain of command.
- Ensuring that all matters that cannot immediately be decided on are properly escalated to the appropriate level/division.
Ensuring that each employee completes a Commitment Form and a Declaration of Interest form (where applicable) and filing these forms together with the employment contract in the employee’s personal file, which should be retained by you.

Creating and maintaining a Gift Register for your section.

Ensuring that a record is kept of all Declaration of Interest Forms received.

All employees must commit themselves to the following responsibilities:

- Be familiar with the Code of Ethics according to which MCLM business should be conducted.
- Abiding by the behaviour embodied in the Business Code of Ethics.
- Keeping a copy of the document for personal reference.
- Any changes in the declaration of interest status should again be reported in writing to the promoter.
- Seeking advice and information from their Supervisors when needed.
- Reporting violations of the Business Code of Ethics up through the chain of command.
- Ignorance of the Code will not be an excuse.

The onus is on the employee to complete a new Declaration of Interest Form as and when there are any changes.

Ensure that employees have a copy of the Code of Ethics.

Employees must sign a commitment form of acceptance and understanding of the Code of Ethics at appointment and annually thereafter.

Ensure that employees are conversant with the principles of the Code of Ethics.

Abide by the standards embodied in the Code of Ethics.

Communicate the objectives of the Code of Ethics.


Newly recruited employees to sign declaration of interest.
2.7.15 Eastern Cape Fraud Prevention Plan 2012-2016

According to this plan, the Eastern Cape Provincial Government (ECPG) has a zero tolerance policy towards corruption. No form of corruption will be tolerated from any public servant, public service provider, or from any other stakeholder dealing with the ECPG.

The Eastern Cape Provincial Government will:

- Actively work to build a culture of professionalism, abiding by the highest ethical standards;
- Deal with all reports of corruption in the strictest confidentiality, and will protect whistle-blowers from any form of occupational detriment or other forms of victimisation;
- Institute disciplinary action against any official who subjects a whistle-blower to occupational detriment, or any other form of victimisation, or who fails to protect a whistle-blower in line with this policy;
- Ensure appropriate prevention and detection controls will be applied. These include controls and checking mechanisms as prescribed in existing policies, procedures and other relevant prescripts to the activities of ECPG and systems of internal control.
- Diligently, speedily, and fairly follow up all reports of corruption received, or instances of corruption uncovered;
- Require a review, and where possible improvement of the effectiveness of the control which have been breach in order to prevent similar irregularities from happening in the future.
- Make it the responsibility of all managers to detect, prevent and investigate allegations of fraud, corruption, theft, maladministration or any dishonest activities of a similar nature, within their areas of responsibility.
- Ensure that where an official is alleged to have committed an act fraud, corruption, theft or maladministration, the manager must institute disciplinary proceeding within a reasonable period.
• Allocate sufficient resources to investigate all reported or uncovered cases of corruption which merit an investigation.
• Implement all forms of recourse available to the Eastern Cape Government where corruption has taken place, including disciplinary and criminal action and recovery of losses
• Report to SARS all matters that might involve tax invasion, and
• Report all criminal matters to the SAPS and give them full support in the resolution of cases.

Also according to this strategy, the ECPG has establish a centralised case management system which will enable it to track progress of all fraud, corruption and related cases, whether received through the National Anti-Corruption Hotline, the Presidential Hotline, or from other sources. The case management system will be maintained by the Office of the Premier Anti-Corruption Security Management (ACSM).

The Office of the Premier (OTP) will work with departments to ensure alignment to the design of the OTP case management system and that used in all other departments. This will ensure that the reporting from departments to the OTP is simplified. Departments will report progress to the OTP on a quarterly basis.

The OTP will ensure that the provincial database is maintained and updated on a monthly basis. The OTP will forward quarterly updates to the Public Service Commission (for National Anti-Corruption Hotline cases), and Provincial Treasury (where applicable).

Submission of quarterly updates by the OTP to the Public Service Commission (for National Anti-Corruption Hotline cases), and Provincial Treasury (where applicable).

Increased centralised investigative capacity will be developed in the OTP ACSM to ensure greater independence in the investigation of senior personnel, all reports or cases implicating staff at the level of Chief Director or above will be investigated by this centralised capacity. Any cases uncovered at departmental level must be forwarded to the OTP ACSCM for investigation. The OTP ACSM will keep the Head of Departments of the relevant departments, as well as the Director General informed of progress.
Such matters will also be reported to the Audit Committees of the OTP and the relevant department/s.

The OTP ACSM will establish capacity to conduct a preliminary assessment on all cases received from the National Anti-Corruption Hotline and the Presidential Hotline. The purpose is to ensure that cases which are clearly without substance, or with insufficient information, can be eliminated without burdening departments. In this way the statistics will give a more realistic picture of the number of legitimate cases open. Information of cases under scrutiny will still be forwarded to departments for their information. Departments who do not have sufficient investigative capacity may approach the OTP ACSM and request assistance. Should the OTP ACSM not be able to provide investigators at that time, the department will have to source external capacity. The Anti-Corruption Task Team should provide guidance on the establishment of the additional capacity.

Heads of Departments (HODs) will be required to review the placement and appropriate expertise of their current anti-corruption practitioners. Anti-corruption practitioners will be trained in pro-active anti-corruption skills to enable them to guide other departmental staff in preventative measures. Training should preferably be linked to the Minimum Anti-Corruption Capacity Requirements.

Investigative staff will be trained in investigative skills and techniques. The OTP ACSM will arrange training in line with the requirements that emerged from the recent skills audit. The OTP ACSM should consider a structured and accredited training route such as is provided by the Association for Certified Fraud Examiners. This will ensure a more uniform and professional way of dealing with investigations throughout the province.

Investigative capacity will be built in departments through skills transfer by allowing staff to shadow OTP ACSM and Treasury FIU investigators.

2.7.16 Buffalo City Fraud and Corruption Mitigation Strategy 2012

The strategy was introduced to change features that allow corruption to occur, go unnoticed or unreported. To address issues such as accountability, efficiency and effective administration. It focuses on measures to improve systems and procedures,
change attitudes of staff, and improve the overall integrity and performance of the municipality. The important factors in this framework include:

Management commitment,
Staff commitment,
Resources, and
Networking.

According to this strategy all managers are required to be aware of the importance of fraud mitigation and be committed to it. Managerial attitudes play a significant role in shaping the ethical culture of the municipality. The staff should part of the processes, see the benefits for themselves (and organization) and understand that management is serious about preventing corruption. Also adequate resources should be made available.

This strategy stipulated that staff members of municipality at all times are expected to:

Loyal execute the lawful policies of the municipal council;
Perform the functions of office in good faith, diligently, honesty and in a transparent manner;
Act in such a way that the spirit, purport and objects of section 50 are promoted;
Act in the best interest of the municipality and in such a way that the credibility and integrity of the municipality are not compromised; and
Act impartially and treat all people, including other staff members, equally without favour or prejudice.

A staff member of a municipality is a public servant in a developmental local system, and must accordingly:

Implement the provisions of section 50 (2);
Foster a culture of commitment to serving the public and a collective sense of responsibility for performance in terms of standards and targets.
Promote and seek to implement the basic values and principles of public administration described in section 195 (1) of the constitution;
Obtain copies of or information about the municipality’s integrated development plan, as far as possible within the ambit of staff member’s job description, seek to implement the objectives set out in the IDP, and achieve the performance targets set for each performance indicator;

Participate in the overall performance management system for the municipality, as well as the staff member’s individual performance appraisal and reward system, if such exists, in order to maximize the ability of the municipality as a whole to achieve its objectives and improve the quality of life of its people.

In addition, it is also stated that staff members may not use their positions or privileges or confidential information for private gains or to improperly benefit another person. They may not unduly influence or attempt to influence the council of the municipality with a view of obtaining any appointment, promotion, privilege, advantage or benefit. They may not be involved in a business venture with the council without the prior consent of the council of the municipality.

**2.7.17 State of the Metro Address 2015**

Delivering his first state of the Metro address, Mr Alfred Mtsi the Executive Mayor of Buffalo City Metropolitan Municipality, indicated that they have resolved as ANC led municipality that fraud and corruption will not be tolerated. He vowed that they will deal decisively and without fear or favour when matters of fraud and corruption are brought to their attention. He indicated that an independent audit committee has been established in terms of section 166 of the MFMA that advises the council, the Executive Mayor and Municipal Manager by providing opinions and recommendations on financial matters.

Also a multi-party Municipal Public Accounts Committee is in place to strengthen the oversight responsibility of the council. Irregular matters are also referred to this committee for investigation. He also mentioned that the municipality has a comprehensive Fraud Mitigation Strategy in which the emphasis is on proactive preventative techniques. The strategy sets out an aggressive and firm attitude towards fraud and corruption, undertaking to seek it out aggressively, to investigate allegations, to prosecute offenders, and to encourage staff and public to report any incidents.
2.7.18 Fraud and Corruption Control- Guidelines for Best Practices March 2005

According to Fraud and Corruption Control-Guidelines for Best Practices 2005, fraud and corruption pose serious risks to the public sector and these risks cannot be ignored. The potential damage extends well beyond any financial losses, and the threats to organisational integrity are a constant challenge for public sector management. In a rapidly changing business environment, it is vital to develop an integrated fraud and corruption control strategy to address these risks. Implementing effective fraud and corruption control measures is part of good governance and management practice. For many agencies it will involve no more than reviewing and consolidating existing agency policies and practices in relation to risk management, codes of conduct, reporting mechanisms, investigation, training and awareness.

Fraud and corruption can take many forms. Fraud is normally characterised by some form of deliberate deception to facilitate or conceal the misappropriation of assets, whereas corruption involves a breach of trust in the performance of official duties. Fraudulent and corrupt conduct by public officials may fall within the category of 'official misconduct' under the Crime and Misconduct Act 2001. Official misconduct is defined as conduct by a public official, related to the official’s duties, that is dishonest or lacks impartiality, involves a breach of trust, or is a misuse of officially obtained information. The conduct must amount to a criminal offence or be serious enough to justify. Many forms of fraud and corruption are offences under the Criminal Code 1899. These include offences such as extortion, false claims, stealing, misappropriation of property, false pretence, receipt or solicitation of secret commissions, forgery, revenue evasion, election fraud, currency violation and drug dealing. This publication does not treat fraud and corruption separately, nor does it give one priority over the other. Similarly, it does not deal with all the possible dimensions of fraud and corruption.

2.7.19 Oxfordshire Country Council Anti-Fraud and Corruption Strategy 2013

According to this strategy the County Council is one of the largest business organisations in Oxfordshire. In administering its responsibilities; the Council has a duty to prevent fraud and corruption, whether it is attempted by someone outside or within the Council such as
another organisation, a resident, an employee or Councillor. The Council is committed to an effective Anti-Fraud and Corruption culture, by promoting high ethical standards and encouraging the prevention and detection of fraudulent activities.

The Assistant Chief Executive and Chief Finance Officer as the “Section 151 Officer” has a statutory responsibility under section 151 of the Local Government Act 1972 to ensure the proper arrangements for the Council’s financial affairs and has developed financial codes of practice and accounting instructions. The Chief Finance Officer exercises a quality control on financial administration through delegation of responsibilities to the Head of Corporate Finance, Assistant Heads of Finance and the Finance Business Partners.

The Monitoring Officer and Head of Law and Governance, has a statutory responsibility to advise the Council on the legality of its decisions and to ensure that the Council’s actions do not give rise to illegality or maladministration.

It is therefore essential for employees to follow the Council's policies and procedures to demonstrate that the Council is acting in an open and transparent manner. Oxfordshire County Council will thoroughly investigate all suggestions of fraud, corruption or theft, both from within the Council and from external sources, which it recognises can:

- Undermine the standards of public service that the Council is attempting to achieve;
- Reduce the level of resources and services available for the residents of Oxfordshire; and
- Result in consequences which reduce public confidence in the Council.

The aims and objectives of the Anti-Fraud and Corruption Strategy are to:

- Ensure that the Council is protected against fraud and loss;
- Protect the Council’s valuable resources by ensuring they are not lost through fraud but are used for improved services to Oxfordshire residents and visitors; and
Create an “anti-fraud” culture which highlights the Council’s zero tolerance of fraud, corruption and theft, which defines roles and responsibilities and actively engages everyone (the public, Councillors, staff, managers and policy makers).

To provide a best practice “counter-fraud” service which:

- Proactively deters, prevents and detects fraud, corruption and theft.
- Investigate suspected or detected fraud, corruption and theft.
- Enables the Council to apply appropriate sanctions and recovery of losses.
- Provides recommendations to inform policy, system and control improvements, thereby reducing the Council’s exposure to fraudulent activity.

The principles are that:

The Council will not tolerate abuse of its services or resources and has high expectations of propriety, integrity and accountability from all parties identified within this strategy. The Council will ensure that the resources dedicated to “counter-fraud” activity are sufficient and all those involved are trained to deliver a professional “counter-fraud” service to the highest standards.

All fraudulent activity is unacceptable, and will result in consideration of legal action being taken against the individual(s) concerned. The Council will also pursue the repayment of any financial gain from individuals involved in malpractice and wrongdoing. The Council will ensure consistency, fairness and objectivity in all its “counter-fraud” work and that everyone is treated equally.

This strategy encourages those detailed in section 3.1 to report any genuine suspicions of fraudulent activity. However, malicious allegations or those motivated by personal gain will not be tolerated and, if proven, disciplinary or legal action may be taken. Sections 8.3 and 8.4 detail the reporting arrangements in relation to incidents of fraud or irregularity. The Council will work with its partners (such as the Police, District Councils and other investigative bodies) to strengthen and continuously improve its arrangements to prevent fraud and corruption.
Corruption can be defined as the deliberate use of one’s position for direct or indirect personal gain. “Corruption” covers the offering, giving, soliciting or acceptance of an inducement or reward, which may influence the action of any person to act inappropriately, according to this strategy.

2.7.20 Westonaria Local Municipality Anti-Fraud and Corruption Policy 2014

According to this policy Westonaria Local Municipality takes its duty to ensure stewardship of public money very seriously. Council is therefore committed to the prevention, detection and investigation of all forms of fraud and corruption whether these are attempted from within or external to the organisation. Council is also committed to creating an environment that is based on the prevention Fraud and corruption which is achieved by promoting openness and honesty in all council activities.

Fraudulent and corrupt practices undermine the basic values and principles governing public administration as set out in chapter 10 of the Constitution. Criminal and other irregular conduct is detrimental to good, effective, accountable and transparent governance and can hamper the service delivery capacity of the Municipality. Procedures are provided in terms of which employees and councilors may without fear of reprisals, disclose information relating to suspected or alleged criminal or other irregular conduct. This policy also provides guidelines for all employees and councilors of the Municipality, including external stakeholders, to prevent and combat fraud and/or corruption and other acts of theft and maladministration.

This Policy applies to all Municipal employees and prohibits all acts of fraud and corruption or any other dishonest activities of a similar nature impacting or having a potential prejudice to the Municipality or members of the public.

This policy shall be applied with due observance of the Municipality’s policy with regard to delegated powers. Such delegations refer to delegations between the Municipal Manager and other responsible officials; the Council and the Executive Mayor as well as between the Council and the Municipal Manager. Any investigation required will be
conducted without regards to the suspected wrongdoer’s length of service, position/title, seniority or relationship to Westonaria Local Municipality.

This policy:

- Sets out the stance of the Municipality with regard to fraud and corruptions, as well as reinforcing existing legislation aimed at preventing, reacting to, and reducing the impact of fraud, corruption, theft and maladministration, where these dishonest acts exist.
- Aims to develop and foster an environment, where all employees and councilors shall strive for the ultimate eradication of fraud, corruption, theft and maladministration by means of the application of the full spectrum of both pro-active and re-active measures at their disposal.
- Prescribes appropriate prevention and detection controls, including, but not limited to, the disclosure of unlawful or irregular acts or conduct as prescribed by the Protected Disclosures Act.
- Requires the responsibility to take reasonable steps to ensure that “whistleblowers”, who disclose such information, are protected from any reprisals as a result of such disclosure.
- To operate policies and systems which minimize fraud and corruption or any other dishonest activities of a similar nature.
- To develop partnership with other stakeholders in the fight against fraud and corruption.
- To ensure that management is aware of its responsibilities for identifying exposures to fraudulent and corrupt activities or any other dishonest activities of a similar nature and for establishing controls and procedures for preventing such fraudulent and or corrupt activity and / detecting such fraudulent or corrupt activity when it occurs.
- To provide guidance to employees and members of the public as to what action should be where they suspect any fraudulent or corrupt activity.
• To provide a clear statement to staff or any other persons having business with the municipality, for bidding any illegal activity.
• To provide a clear guidance as to responsibilities for detecting and reporting investigations into fraudulent and or corrupt activities.
• To provide assurances that any reasonable suspicion of fraudulent and or corrupt activity will be fully investigated.
• Provide for a swift investigation of fraudulent and corrupt activities.
• To provide adequate protection and guidance as to appropriate action to employees in circumstances where they are victimised as a consequence of reporting or being a witness to fraudulent and or corrupt activities.
• To provide a suitable environment for employees to report matters that they suspect may concern corrupt and fraudulent conduct.

It is the policy of the Municipality that fraud, corruption, theft and maladministration or any other dishonest activities of a similar nature will not be tolerated. In addition, these acts will be investigated and followed up by the application of all remedies available within the full extent of the law. Appropriate prevention and detection controls will be applied. These include the existing controls and checking mechanisms as prescribed by existing policies and procedures, and systems of internal control.

It is the responsibility of all employees and councilors of the Municipality to report incidents of fraud, corruption, theft, maladministration or any other dishonest activity. If an employee is not comfortable reporting such matters to his/her immediate supervisor or manager, he/she should report the matter to the next level of management, with final recourse being to the Municipal Manager.

Appropriate lines of authority should be utilized in line with the Municipality’s policy on delegated authority. Executive Managers are responsible for the detection, prevention and investigation of fraud, corruption, theft, maladministration, or other dishonest activities within their directorates.
2.7.21 Fraud Prevention Plan for the Marine Living Resources Fund 2013

The Fraud Prevention Plan of the Marine Living Resources Fund has been developed to comply with section 3.2.1 of the Treasury Regulations to the Public Finance Management Act. The FPP is a dynamic strategy that will continuously evolve as makes changes and improvements in its drive to promote ethics, fight fraud, corruption, theft, maladministration and other acts of misconduct.

According to this plan, it is important that all employees understand and are aware of what acts are deemed corruption, fraud or maladministration, and the responsibilities for combating these in the workplace. Employees should understand that the department has a zero tolerance approach to fraud and corruption.

Corruption is defined as the subversion of public interest and the common good by private interest according to the plan. More specifically, it is the abuse of power for illegitimate or illegal gain or profit, or the failure to impose proper controls. In general terms, corruption involves improper acts or omissions, improper use of an official’s influence or position, and/or improper use of information. It can also be defined as an official’s misuse of position, which may lead to a criminal offence, a disciplinary offence or reasonable grounds for dismissal. It may include breach of trust, bribery, blackmail, obtaining or offering secret commissions, obtaining financial benefit from employers for non-compliance with labour legislation or violence, just to name a few.

Corruption should be distinguished from maladministration, but is closely related to it, since in the absence of properly functioning systems and controls, corruption is permitted to thrive.

Maladministration can be defined as actions or inactions of a serious nature that are contrary to the law, or unreasonable, unjust, oppressive or improperly discriminatory, or based wholly or partly on improper motives.

Maladministration will involve non-performance of functions in terms of the Public Finance Management Act, that is ignoring management’s request to implement controls in high risk areas, negligence of duties by managers and supervisors, to name a few.
Fraud is generally regarded as a subset of corruption. The difference is primarily that fraud involves personal gain.

In South Africa, the Common Law offence of fraud is defined as “the unlawful and intentional making of a misrepresentation which causes actual and or potential prejudice to another”. Fraud can be described as any conduct or behaviour of which a dishonest representation and/or appropriation forms an element.

White-collar crime is generally defined, as those illegal acts characterised by deceit, concealment, violation of trust, and not dependent upon application or threat of physical force or violence. Such crimes are committed to obtain money, property, and services or to secure personal or business advantage.

The terms “fraud” and “corruption” in this document include, and are not limited to, fraud, corruption, and theft that are crimes. They also include maladministration and other acts of misconduct including those specified in the PFMA and Disciplinary Code and Procedure. They are manifested as follows:

a) Any dishonest, fraudulent or corrupt act;
b) Theft of funds, supplies, or other assets;
c) Maladministration or financial misconduct in handling or reporting of money, financial transactions or other assets;
d) Making a profit from insider knowledge;
e) Disclosing confidential, proprietary, classified or restricted information to outside parties;
f) Irregularly accepting, requesting, offering or giving anything of material value to or from contractors, suppliers, or other persons providing services/goods to the MLRF, and/or its Programmes and/or Clients;
g) Irregular destruction, removal, or abuse of records, furniture, and equipment;
h) Deliberately omitting or refusing to report or act upon reports of any such irregular or dishonest conduct;
i) Acts of financial misconduct contemplated in terms of sections 81 to 85 of the Public Finance Management Act;

j) Incidents of unauthorised, irregular or fruitless and wasteful expenditure as defined in the Public Finance Management Act; and

k) Any similar or related irregularity.

Heads of directorates are responsible for fostering an environment that makes fraud prevention a responsibility of all staff and which demonstrates the department's zero tolerance of corrupt or fraudulent activities.

The main objective of the FPP is to change the way in which employees think about fraud and corruption, and to put fraud prevention strategies in place. The central component of the strategy is to create awareness of the FPP amongst all employees through education and communication campaigns.

The components of the Fraud Prevention Plan (FPP) are the following:

a) Creation of fraud and corruption awareness in general, and awareness of the FPP and its components in particular, amongst employees and other stakeholders through communication and education;

b) The Organisation’s policies, procedures, rules, regulations and other prescripts (including the PFMA and supporting Treasury Regulations);

c) The disciplinary code and procedure;

d) Implementation of sound internal controls to prevent and detect fraud and corruption;

e) An effective internal audit function;

f) An effective anti-fraud and corruption investigating capacity;

g) Ongoing risk assessments;

h) The Management structures for the Fraud Prevention Plan, adopted to steer and take responsibility for the FPP as well as to ensure effective implementation and maintenance.
i) A Code of Ethics and Business Conduct (the “Code”) containing a set of values to which management and employees subscribe;

j) An Anti-Fraud and Corruption, including a fraud and corruption response plan and comprehensive steps for the proper resolution of reported and detected incidents and allegations of fraud and corruption;

k) An anti-fraud and corruption hotline for confidentially reporting fraud and corruption;

l) Physical and information security management; and

m) Ongoing maintenance and review of the FPP.

An illustration of the FPP is contained in the figure below:

a) Training and Education regarding good ethics, and the MLRF’s stance to prevention, combating, detection and investigation of fraud and corruption; and

b) Creating awareness of the FPP through:
   Education of employees regarding the FPP; and
   A communications campaign.

2.7.22 ANC 50th National Conference Resolution on Corruption Mafikeng 1997

The ANC in its conference in Mafikeng 1997, noted that corruption may be understood to be abuse of power for illegitimate and illegal gain or profit, whether it be exercised in the private or in the public domain, corruption leads to losses in efficiency and opportunity, and increased production and hence, it adversely affects development and, as a consequence, results in poverty becoming more prevalent.

That corruption undermines the objectives of the National Democratic Revolution had the following resolution:

Elimination of corruption should be placed high of the agenda of the ANC ensuring that;

Branches and members are educated on various forms of corruption for its eradication;

A nationwide anti-corruption campaign, including a media campaign, be initiated;
Mechanisms be developed to build a link between state interventions on corruption;
Prompt disciplinary action be taken against any member, regardless of office, who is guilty of any corrupt practices;
Government should ensure that legislation and regulations are introduced to deter corruption through punitive measures;
Steps are taken to review institutions fighting corruption;
And to increase their resources and effectiveness; and
The necessary capacity for financial management is created.

2.7.23 ANC 53rd National Conference Resolution on Corruption Mangaung 2012

In this conference again it was noted that still there was significant corruption in many sections of society, including in the private sector. It was resolved that ANC comrades as leaders of society, in every sphere of activity need to be the champions in the anti-corruption campaigns. The ANC should take tougher action against corruption. Systems to detect and act against corruption should be be strengthened. There should be greater cooperation across the spheres of governance in dealing with corruption. Corruptors should be punished as well.

The resolutions taken in this conference on corruption were almost the same as those taken in previous conferences, but the challenge there was no clear mechanism to implement and monitor them, hence the issue of corruption is still the order of the day especial at the level of municipalities.

2.7.24 ANC National General Council Resolution on Corruption Johannesburg 2015

Also in this general council ANC resolved to root out corruption in government and as well as in the private sector. Four concrete proposals were recommended as follows:

There should be periodical rotation of civil servants, including those in the security cluster to different employment sites to circumvent unprofessional and frequent corrupt relationships. The vetting process for government employees should be expedite and its related entities. A single state vetting agency to vet all strategically placed civil servants
should be implemented including those in the state owned enterprises, and people who turn down a promotion even though it comes with improved remuneration package, and the ANC deployment committee should ensure proper vetting prior cadre deployment.

Also the ruling party challenged the private sector to subject itself to financial interest disclosure, vetting and lifestyle audits.

Presenting the state of the organization in this general council, Mr Gwede Mantashe the Secretary-General of the ANC, reiterated that corruption is a big challenge facing the movement, both in government and inside the party. He indicated that whether this is a perception or reality the the organization should confront it seriously. There is a growing general public concern that the movement is corrupt and protecting those within the ranks who are corrupt, according to him. This reality if not reversed poses a threat to the organization whereby people will lose trust and faith in the leadership.

He concluded by indicating that the ANC cannot wait for the time it is out of power to engage in serious organizational renewal.

Also according the Integrity Commission in the National General Council (NGC) corruption was widely accepted as a major threat to National Democratic Revolution and the organization. The commission discussed corruption at length and accepted the Integrity Commission’s operationalization. The Mangaung Conference in 2012 decided to set up the Integrity Commission made up of veterans beyond reproach to investigate and make a determination based on the best interests of the organization.

The following resolutions were agreed upon:

The Commission should get powers to implement decisions and just to recommend to the National Executive Committee of the ANC.

The innocent until proven guilty doctrine should not apply as this is not a court or disciplinary process.

The Integrity Commission should pursue the interest of the ANC and ask members to step aside while dealing with their problems, for the sake of the organization. It should be adequately resourced.
Their determination on cases should be final and all previous decisions should be implemented.

In taking its decisions the Integrity Commission must ensure that its processes are not used to stifle debate or deny members their basic democratic rights or used as means of settling political scores.

The integrity Commission must inform the officials of its decisions before their conclusions are announced.

The Integrity Commission should also be set up at provincial level, and members should be vetted and approved by National Integrity Commission; and

All members of the ANC should be subjected themselves to the due processes of the Commission.

2.7.25 Special Investigating Unit Annual Report 2012-2013

According to this report Special Investigating Unit (SIU) is an independent statutory body that is accountable to the president and Parliament in terms of its activities. It was established to investigate corruption and maladministration and to report on the findings of these investigation. Its primary mandate is recover and prevent financial loses to the state due to various acts of corruption, fraud and maladministration. It also assists departments with systematic improvements that will improve service delivery.

The Special Investigating Unit is an entity with powers of investigation and litigation. Following the issuing of presidential proclamation, the SIU has powers to subpoena, search, seize and interrogate witnesses under oath. It can take civil action to correct any wrongdoing it uncovers in its investigation. The SIU can obtain a court order to compel a person to pay back the wrongful benefit received and consequently recover the money for the state.

It works with the department concerned to cancel contracts when proper procedures were not followed, or to stop transactions or other actions that were not properly authorized. While it does not have the powers to arrest or prosecute offenders where criminal conduct is uncovered, it will bring the matter to the attention of the Directorate for Priority Crime Investigation, Hawkes as well as the National Prosecuting Authority.
The SIU may investigate any matter set out in section 2 of the Special Investigating Unit Act, including the following:

- Serious maladministration in connection with the affairs of any state institution;
- Improper or unlawful conduct by employees of any state institution;
- Unlawful appropriation or expenditure of public money or property;
- Unlawful, irregular or unapproved acquisitive act, transaction, measure or practise having bearing on state property;
- Intentional or negligent loss of public money or damage to public property; and
- Unlawful or improper conduct by any person which has caused or may cause serious harm to the interests of public or any category thereof.

The functions of a Special Investigating Unit are, within the framework of its terms of reference as set out in the proclamation referred to in section 2 (1):

- To investigate all allegations regarding the matter concerned;
- To collect evidence regarding acts or omissions which are relevant to its investigation and, if applicable;
- To institute proceedings in a Special Tribunal against the parties concerned;
- To present evidence in proceedings brought before a Special Tribunal;
- To refer evidence regarding or which points to the commission of an offence to the relevant prosecuting authority;
- To perform such functions which are not in conflict with the provisions of this Act, as the President may from time to time request;
- From time to time as directed by the President to report on the progress made in the investigation and matters brought before the Special Tribunal concerned;
- Upon the conclusion of the investigation, to submit a final report to the President; and
- To at least twice a year submit a report to Parliament on the investigations by and activities, composition and expenditure of such unit.

According this report the SIU investigated Moses Kotani Municipality. The SIU had registered more success in this municipality than in Madibeng.
There were 33 disciplinary matters against officials and there were a number of conflict of interest matters, and recommendations had been made to council in this regard. There were instances of financial mismanagement and fraudulent payments. Acknowledgement of Debts had been signed in this regard.

Mr Modipa said that there had been no control on the use of cheques in the unicipality. Follow-ups were being made and recoveries were in progress. There were instances where payments had been made in cash to the municipality, but the money which had been received had not been put into the municipal account. The position of the SIU was that there was a need to improve internal controls in municipalities. It was ecommended by the SIU that municipalities should not accept personal cheques and only business cheques should be used.

The SIU had identified 115 officials who had undisclosed business interests with the municipality, and 16 of these officials had done business with the municipality. Disciplinary proceedings had been recommended and the officials blacklisted from the municipal database. A legal opinion had been obtained which stated that these officials could be charged with Section 17 of the Preventing and Combating of Corruption Act. The matter had been referred to the SAPS. The disciplinary proceedings against the former Municipal Manager had been facilitated. He had been charged with 21 offences and found guilty of all charges. He had been dismissed, but was contesting his dismissal at the CCMA. Some of the charges related to irregular appointments. From a civil recovery point of view, the irregular and wasteful expenditure should be recovered from him.

An official had been identified who had used a municipal truck for the transportation of building materials for his private home. This same official had stolen an amount of R10 000 from the social club account of the municipality. He had admitted to the crime and had signed an AOD. He had broken into the municipal tender box and tampered with submitted tenders.
The Municipal Manager said that the officials had been given a written warning, but in the personal file of the official, there had been no written warning. After a week, when the file was checked, a written warning which was backdated had been inserted.

A criminal case had been registered against the official and the SIU had recommended his suspension. Instead of being suspended, the said official had been promoted to the position of Director in charge of Community Services. In some cases, investigations had been carried out, but the results had been negative as no anomalies or irregularities found. This was the case in Mawusi Hills, where an investigation had been conducted on the matter of high-mast lights and no irregularities found. There was a situation where the municipality had paid a service provider an amount of R17 000 for catering services, which had not been provided. The matter had been taken to the SAPS, who took the matter further to the Senior Public Prosecutor. The Senior Public Prosecutor had said that it was not a criminal matter, but rather an administrative error.

The SIU was of the opinion that it was a criminal matter because the service provider had submitted a claim for payment for a service which they knew had not been rendered. That was misrepresentation and it was a criminal matter. There were investigations on the building of the Civic Centre, where the contract was worth R20 million and the service provider had invoiced the municipality for an amount of R1.6 million for a steel door which had not been erected. There was also an investigation into the purchase of the mayoral house which had not been put out to tender.

There was the challenge of the statutory contravention of the MFMA. In some cases, the MFMA had clearly been contravened and recommendations had been made to SAPS for charges to be pressed against the officials. The SAPS had the mandate to follow up on statutory offences. An example was the need for some of the Municipal Managers to be charged with contravening the Archives Act, as they did not archive documents properly and this had led to the hiding of evidence.
Adv Mokhatla said that the SIU was putting systems in place to cover the gaps where investigations were done by the SIU, and later handed over to the SAPS, who did not carry on with the case properly as the SAPS investigating officers were not abreast with the necessary information on the crimes and related matters. The SIU had met with the NPA and the SAPS to work on ways of closing the gaps.

The Chairperson said that he was going to recommend to the Acting Chairperson of the Portfolio Committee on Police and the Chairperson in the NCOP dealing with Police matters, to engage with the SIU to get SAPS involved with legislation.

Mr B Mashile (ANC, Mpumalanga) asked if the SIU did not have imbedded prosecutorial powers. What legislation was the SIU using to revive its tribunal, as there was the need to curb the disjuncture in the track of cases going to the NPA and falling along the way?

Adv Mokhatla replied that in the past there was a secondment to the SIU of NPA officials who had prosecutorial powers, but since the delegations had been withdrawn in 2010 by the National Directorate of Public Prosecution (NDPP), no one in the SIU had the power to prosecute. The tribunals were in the SIU Act, but the issue in the court of law was that one could not sit as the head of the SIU and be an investigator and arbiter at the same time. That was how the SIU had distanced itself from doing litigation. The SIU had identified the need for the speedy recovery of misappropriated funds. The agency was doing a legal review which was going to be finalised by the end of the month of September 2012. The review was going to motivate for the forensic investigations, and 28 lawyers were being groomed to be able to take the matters to the courts and eventually, to the tribunals. The SIU was going to provide a motivation to the Minister of Justice on the process.

2.7.26 Buffalo City Metro IDP/Budget Process Plan 2013/2014

In this plan the metro has identified six overarching strategic objectives:

- To be financial sound organization that efficiently manages its resources;
- To be an institutionally efficient and effective city that inclusively works with communities;
To generate sustainable infrastructure that supports social and economic development;
To be a well structured and capacitated institution that renders effective and efficient services to all by 2016;
To enhance and protect all environmental assets and natural resources within BCM by 2016; and
To deliver sustainable infrastructure that support social and economic development.

Having these plans in place of which are not the first of its kind, starting from the constitution, legislation that are in place, the anti-corruption structures etc, but still we continue to have these corrupt related activities in this municipality. The conclusion therefore would be a human factor.

2.7.27 Buffalo City Metropolitan Municipality IDP Review 2015/2016

According to this IDP Review, BCM indicated that some of the weaknesses which impact negatively on the performance of the Metro relate to disintegrated systems, internal control deficiencies, lack of staff with requisite capacity, a spatially fragmented workforce as well as lack of clearly defined processes and systems.

Also it was highlighted that corruption and poor service delivery undermines the credibility of the state. A weak local government leads to low investor confidence for both state and the private sector decisions. Poor governance leads to poor economic performance. The Metro acknowledges the fact that in order for it to fulfill its mandate as stipulated in the constitution of the country, there is a need to maintain financial viability and expand its revenue base in relation to expenditure. This requires robust strategies to turn around the current predicament dependency and ensure that the city is in a financially sound position over the next five years and beyond. To achieve financial viability, they will put in place mechanisms for the recording and management of the financial resources of the municipality and investigation and development of new revenue streams to provide for the financial sustainability of the Metro.
Again in this IDP Review BCM identified a number of challenges and constraints which impact in the way in which the municipality functions and fulfills its mandate as per section 152 of the Constitution of the Republic of South Africa, which state among other things that a municipality must strive, within its financial and administrative capacity, to achieve the objectives set out in subsection (1).

Having identified these challenges and constraints the city identified nine strategic focal areas and crafted six strategic objectives to guide its developmental trajectory towards realization of its vision as follows:

To be a financial sound organization that efficiently manages its resources;
To be an institutionally efficient and effective city that inclusively works with communities;
To generate an enabling environment for an economy that is growing, diversifying, generating increasing number of sustainable employment opportunities and contributing to increased incomes and equality;
To deliver sustainable infrastructure that support social and economic development;
To be a well structured and capacitated institution that renders effective and efficient services to all by 2016; and
To enhance and protect all environmental assets and natural resources within BCM by 2016.

It should be noted that these objectives are the same objectives that were adopted in their IDP Review of 2014/2015. What is not coming up is whether they were implemented or not, if they were implemented what were the obstacles?

2.7.28 Annual Address by President Zuma to National Council of Provinces 2015

In his annual address to National Council of Provinces, President Zuma indicated that, under the leadership of the Department of Cooperative Governance and Traditional Affairs, Government will continue and accelerate the hands-on approach on municipalities.
He said that in the following phase of the Back to Basics approach, Government will work smarter and innovatively to increase impact. “We will make better use of available monitoring mechanisms such as unannounced municipal visits, spot checks of supply chain management processes, implementation of forensic report’s recommendations and site visits of Municipal Infrastructure Grant funded projects.

He reiterated the fact that corruption will be tackled with vigour and determination, as the uprooting of corruption is a core objective of the Back to Basics programme. He mentioned that already two hundred and twenty-two officials were dismissed for fraud and corruption in the nine months from October 2014 to June 2015.

He concluded by emphasizing going forward, anti-corruption measures will include the monitoring of the implementation of the recommendations of all forensic investigations into municipalities. A campaign with organised business will be embarked upon to counter private sector involvement in corruption in municipalities. Debt owed to municipalities by business and residential sectors were constraining municipalities. A specific campaign will be launched to alleviate this obstacle. The improvement of the Billing Systems of selected municipalities will receive dedicated attention.

2.7.29 Guidelines for Implementing the Minimum Requirements in the Departments and Organizational Components in the Public Service

In these guidelines, it is stated that this booklet provides guidelines on how to create the minimum anti-corruption capacity in the departments. It aims to assist managers and other officials in the public service tasked with implementing the minimum anti-corruption capacity requirements in their departments. Undoubtedly, it will also be helpful for anyone who has an oversight role over these functions and any other role players in an anti-corruption strategy.

These guidelines set out a comprehensive anti-corruption strategy organized around four main components:

Prevention of corruption;
Detection of corruption;
Investigation of corruption; and
Resolution of corruption.
Also, it is stated that this booklet shows how to integrate these components into an effective anti-corruption strategy for any department. It deals with the need for and objectives of each aspect.

According to these guidelines the following steps are suggested to development an anti-corruption strategy:

An initial meeting be held with all personnel; all the relevant stakeholders be taken on board as early as possible in the process to ensure buy-in;
A person or group of people be identified to take the responsibility for the process and to drive it forward;
The organization’s existing capacity to deal with corruption need to be assessed. During assessment process, it should be determined which of the anti-corruption functions can be accommodated in existing functional units, and which of the functions will require new functional unit or shared service arrangements;
Fraud and corruption risk management to be part of the normal risk management process in all departments;
An anti-corruption strategy should be developed based on the minimum anti-corruption capacity functions described in this booklet.

It is further stated that, once anti-corruption strategy has been developed, a time frame must be set for implementation. This of course will depend on the size and the nature of the department, the resources available, as well as the current state of ethics and corruption in each department.

Finally, it is stated that corruption prevention is an ongoing process that needs continuous updating and realignment. And of course depending on the conditions prevailing at particular time.
2.8 IMPACT AND COST OF CORRUPTION

Corruption is a universal problem that undermines growth and development by diverting resources away from development programmes. In the public service it affects the entire country, it causes problems for individuals, for groups of people, for communities and for the country as a whole. Corruption undermines human rights such as right to equality and to freedom of trade and occupation.

When people pay bribes to get things that they are not entitled to, like old age pensions or other forms of social grants, there is less money available for people who really need it. It increases the cost of public services, resulting in less money for housing, health care, education or other basic services hence people will resort to mass protest actions, and impact negatively in service delivery.

Professor Sangweni concluded by indicating that corruption in the public sector continues to impact on government ability to ensure adequate service delivery to the public, and also impacts adversely on the national security of the country. Corruption remains particularly problematic at provincial and local government levels, with recent demonstrations and instability against local government service delivery illustrating the extent of public dissatisfaction with corruption.

At the end, whoever is involved in corrupt activities has to be prosecuted and perhaps kept in jail. Given that some cases take so long to be completed, the process becomes so expensive and puts the burden in the justice system.

According to Lagide (2014: 10-11) scholars argue that corruption is not endemic to a given society or state. Corruption can be found in all walks of life. Combating corruption is instrumental to the broader goal of achieving more effective, fair, and efficient government.

When there is inadequate transparency, accountability, and probity in the use of public resources, the state fails to generate credibility and authority.

Systemic corruption undermines the credibility of democratic institutions and counteracts good governance. There is a high correlation between corruption and an absence of
respect for human rights, and between corruption and undemocratic practices. Corruption alienates citizens from their government. 

Literatures on the corruption shows that its consequence is not only limited to the economic aspect in any given state but it also affects the growth and developmental process of a nation. It has a wide range bearing on economic, social, political, developmental, human rights issues, and in what follows, I will present only the economic consequences of corruption which is more prevalent and devastating.

Lagide argues that, when one considers the economic consequences of corruption, the adverse impact of grand corruption comes readily to mind. Corruption on a grand scale associated with some dictators and their cronies can involve embezzlement of huge sums of public funds, and the mismanagement, wastage, inequity, and social decay that come along with it, can be disastrous for an economy. There are familiar tales of fortunes in gold, gems and jewellery stashed away in secret hiding places by corrupt officials and hundreds of millions of dollars spent in acquiring real estate abroad and in depositing into their foreign bank accounts. The devastating impact of misconduct on such a massive scale, especially for poor countries that are facing perennial and severe foreign exchange shortages, is obvious and requires no further comment. But corruption does not have to be on a grand scale to inflict serious damage. There are other adverse effects that can be just as damaging for a poor country.

Whilst it is undisputed that corruption has become global in scope, it has a particular damaging effect on the domestic environment of countries. Four types of costs can be identified according to the Public Service Anti-Corruption Strategy 2012, that is Macro-fiscal, Reproduction in productive investment and growth, Cost to public and poor in particular and Loss of confidence in public institutions.

Habtemichael (2009: iii), argues that corruption has been with the society since the beginning of recorded history and it is unlikely to be eliminated as it is part of human nature. The effort against it is aimed at controlling it and reducing it to a minimal level, which is possible, as precedents around the globe have shown.
Corruption is a pervasive cancer and a plague that invades all sectors of society, international organisations and all socio-economic formations, though to varying degrees. It manifests itself in various forms, including bribery, fraud, embezzlement, favouritism, extortion, conflict of interest, political bargains, abuse of discretion, and abuse of power.

He further argues that, corruption is evolutionary and new forms of corruption and mechanisms emerge in response to various anti-corruption programmes. Corruption is a complex in which its agents are like viruses that mutate and adapt to new environments. Given its changing meanings, manifestations, proliferations and perceived causes and impacts, corruption is seen as a dynamic and complex social phenomenon.

Contrary to the general belief that corruption is perceived differently in different cultures, economic environments and socio-political systems, corruption is generally conceptualised as “the misuse of entrusted power for private gain”.

The ever worsening trend revealed by socio-economic indicators in developing nations; increasing cognizance of the deleterious effects of corruption; mounting anxiety about organised crime; rigorous research that measures the impact of corruption; and anti-corruption websites and networks are the main drivers that have fuelled anti-corruption movements. Corruption manifests itself as a by-product of low political competition; low and uneven economic growth; a weak civil society; and the absence of institutional mechanisms.

The interaction of these factors in complex ways gives rise to many forms of corruption.

Despite the view that corruption is beneficial to the economy, there is conclusive evidence that it is an invisible wound and detrimental to sustainable development. It is highly destructive of economic and human development and leads directly to insecurity and conflict, and breeds crime and terrorism.

As a systemic failure, the focus of anti-corruption efforts must be on reforming systems rather than on blaming individuals. Corruption needs to be viewed within a broader governance context and hence we have to dismantle bad governance, which is conducive
to corruption. Successful anti-corruption initiatives must aim to avoid the monopoly of resources, limit the discretion in decision making, and promote accountability, transparency and integrity.

The advent of Information and Communication Technologies (ICTs) has signalled both promises and perils to the anti-corruption system. E-Government can contribute to the control of corruption by taking away employees’ discretion, thereby reducing opportunities for arbitrary actions. Moreover, ICTs enhance transparency by enabling the public to monitor work processes of government employees.

One characteristic of the information technology paradigm is the growing convergence of technologies into a highly integrated system that is well adapted to increasing complexity of interaction and to unpredictable patterns of development. This brings together the e-government infrastructure and complexity thinking as contributors to the effectiveness of anticorruption actions.

However, despite all the promises and capabilities of egovernment to fight corruption and promote good governance there are arguments and practical experiences that point to ICTs actually shifting corruption from one group of society to another in an intergenerational shift.

Corruption has a long history in South Africa with the net loss of billions of tax payers' money to finance corrupt public officials and their counterparts in the business sector under the apartheid regime. Despite a comprehensive legislative framework, the country has not escaped from the shameful list of corrupt states.

The financial cost of this far exceeds the value lost through visible violent street crime in the country. New social forces that have been excluded from the economy now control state power, a major mechanism of wealth accumulation. In the context of inadequate control mechanisms, this offers fertile ground for misconduct and abuse of power. Irrespective of the legal requirements, many South African government officials are reluctant to disclose their financial assets, but investigation has established that some
government officials have defrauded the social grant system by misrepresenting their financial status, which has allowed them to qualify for social grants.

Traditional mechanisms of corruption control are still dominant in the South African anti-corruption effort. The application of ICTs is still in the initial stage and is not in the mainstream of the anti-corruption strategy. The various public sector initiatives to develop management information systems are mostly disconnected. Lack of interoperability and coordination in government information systems; absence of automatic checking of conflict of interests at the nomination of public officials; lack of access to information concerning the wealth of public officials and their close relatives granted for judicial action; lack of a national database concerning information on corrupt individuals or businesses; and lack of integration of judicial, executive and banking information systems are some of the limitations in the e-government approach to fighting corruption in South Africa. In addition, e-procurement is also in the initial phase in South Africa.

Although bids are well advertised in procurement, the public has no way of knowing the decision-making processes as there are no online features that enable monitoring. The procurement system does not have strong pre-emptive mechanisms to prevent fraud.

Though the potential for controlling corruption by means of ICTs is considerable, it does not work in isolation from other anti-corruption systems. ICTs do not work magic in a corrupt environment; they are only as good as the people who utilise them—without integrity, ICTs are incapable of controlling corruption. Hence, efforts to increase professionalism and ethical integrity in public service are of enormous importance. There is no anti-corruption silver bullet and no single best way to deal with corruption: one specific anti-corruption strategy does not lead to a predetermined result. Nonlinearity and adaptability are the main features of the corruption and anticorruption system in general.
2.8.1 Macro- Fiscal

This includes lost revenues from tax and customs levies, licensing fees, traffic fines etc. and excessively high expenditure as a result of corruption loading and fronting on state contracts. In extreme manifestation such as with State Capture, the lack of competition between bidders raises the cost dramatically.

2.8.2 Reduction in Productive Investment and Growth

The costs of corruption are particularly high for countries in great need of inflows of productive foreign capital. Widespread corruption provides a poor environment that does not attract foreign investment and those investors likely to make long-term contribution to development. Corruption however attract those investors seeking to make quick profits through dubious ventures. Abuse of regulatory powers and misprocurement imposes further costs.

2.8.3 Costs to the Public and the Poor in Particular

Diversion of resources from their intended purposes distorts the formulation of public policy and the provision of services. This is a result of bribe-extraction for delivery of services, poor quality of services and poor access to services. Petty corruption and payment of bribes have a particular impact on the poor.

Public programmes such as access to land, health services and legal system are negated if bribe paying determines the allocation of these priorities and services.

It has effect of benefiting the few at the expense of the many and reinforces existing social and economic inequalities. This in turn undermines the credibility of government and public institutions.

2.8.4 Loss of Confidence in the Public Institutions

Once services can be bought and public officials break the trust and confidence people have in them, a loss in confidence in public institutions set in. This turn undermines the rule of law, security of property, respect for contracts, civil order and safety and ultimately the legitimacy of the state itself.
2.9 DIMENSIONS OF CORRUPTION

In order to analyze and unpack corruption it is important to understand the various forms in which corruption manifests itself in the public service and elsewhere in society. The following examples illustrate the various manifestations:

2.9.1 Bribery

Bribery involves the promise, offering or giving of a benefit that improperly affects the actions or decisions of the public servant.

This benefit may accrue to the public servant, another person or an entity. A variation of this manifestation occurs where a political party or government is offered, promised or given a benefit that improperly affects the actions or decisions of the political party or government.

2.9.2 Embezzlement

This involves theft of resources by person entrusted with the authority and control of such resources, an example is the hospital staff that steal medicines and in turn sell these to private pharmacists.

2.9.3 Fraud

This involves actions or behaviours by a public servant, other person or entity that fool others into providing a benefit that would not normally accrue to the public servant, other persons or entity. An example is a public servant that registers a fictitious employee in order to collect the salary of that fictitious employee.

2.9.4 Extortion

This involves coercing a person or entity to provide a benefit to public servant, another person or an entity in exchange for acting or failing to act in a particular manner.
2.9.5 Abuse of Power

This involves a public servant using his/her vested authority to improperly benefit another public servant, person or entity, or using the vested authority to improperly discriminate against another public servant, person or entity.

2.9.6 Conflict of Interest

This involves a public servant acting or failing to act on a matter where the public servant has an interest or another person or entity that stands in a relationship with public servant has an interest.

2.9.7 Abuse of Privileged Information

This involves the use of privileged information and knowledge that public servant posses as a result of his/her office to provide unfair advantage to another person or entity to obtain a benefit, or to accrue a benefit him/herself.

2.9.8 Favouritism

This involves the provision of services or resources according to personal affiliations, eg ethic, religious, party political affiliation of a public servant.

2.9.9 Nepotism

This involves a public servant ensuring that family members, girlfriends or boyfriends are appointed to public service positions or receive contracts from the state resources. This manifestation is similar to conflict of interests and favouritism.

2.9.10 Influence-Peddling

This is where public officials or other political or government insiders offer to exert influence not available to the outsider. This is distinct from political advocacy or lobbying in that the corrupt individual sells access to or influences government decision making that he/she only has as a result of public office.
2.9.11 Offering or Receiving Improper Gifts, Gratuities or Commissions

According to the Gauteng Anti-Corruption Strategic Framework 2009, it is stated that in some countries it is common for public officials to accept tips or gratuities in exchange for their services. Such payments become difficult to distinguish from bribery or extortion as link between payments and results will always develop.

In South Africa, government officials receiving any gratuities, favours or commissions are obliged to declare such if the value thereof is more than R350.00.

In government institutions public officials or office bearers are obliged to sign declaration form, but strange enough there are those who do not worry themselves to declare their personal interests until they are being exposed by media.

2.9.12 Avoiding Liability for Taxes and other Cost

Officials who work for or supervise revenue collecting agencies, such as tax or customs authorities, may be bribed to reduce or eliminate tax amounts or other revenues to be collected or ignore of facilitate illicit transactions for purposes such as money laundering.

2.9.13 Bribery to Avoid Criminal Liability

Law enforcement officers, prosecutors, or other officials may be bribed to ensure that other criminal activities are not investigated or prosecuted or if prosecuted that a favourable outcome will result.

The above illustration of the manifestations of corruption is by no means complete or exhaustive. Corruption appears in permutations and degrees of intensify. Degrees of intensify vary from the occasional acceptance of bribes to systematic corruption where bribery is accepted way of doing business and large scale looting of government resources take place.

2.9.14 Ethical Conduct

In public administration ethics is the collection of moral principles, norms, values and obligations that serve as conduct rules to be observed by political office bearers and
officials to ensure that actions remain focused on the promotion of the general welfare of all members of the population.

2.9.15 Misappropriation of Funds

It is very important to state that misappropriation of funds refers to unauthorized use or spending of another's money. Embezzling or stealing of the money of another person or an institution could also be observed as misappropriation of funds.

The above illustration of the manifestations of corruption is by no means complete or exhaustive. Corruption appears in permutations and in degrees of intensity. Degrees of intensity vary from the occasional acceptance of bribes to systemic corruption where bribery is the accepted way of “doing business” and large-scale looting of a country’s resources take place. Thus corruption also manifests as personal and political corruption.

Corruption increases if left unattended and once this has culminated in systemic corruption creates a bigger challenge to address. Socio-economic conditions, the political-institutional infrastructure, cultural heritage and other factors influence the way in which corruption is perceived and addressed. Whilst corruption seems easily identifiable, the varying perspectives make it particularly difficult to define corruption and develop appropriate remedies. Such perspectives vary from the Moralist-Normative perspective (corruption is inherently bad), the Functionalist perspective (corruption is ever-present in society and not always unwanted), the Public Office-Legalist perspective (legal institutions independent from government is required to combat corruption), the Public Interest-Institutionalist perspective (institutions shape individual corrupt behaviour), the Interest-maximizing perspective (a market-centred perspective that accuses officials of converting political resources into goods needed to initiate and maintain corrupt relations) and the Political Economy perspective (State is the mechanism for the accumulation of wealth, especially where indigenous people lack independent access to the economy outside of the State).

Understanding the dimensions of corruption entails also understanding what not corruption is. Corruption is often described interchangeably with maladministration,
incapacity and inefficiency, especially because public resources are being used. The deficiency of approaching corruption in this manner is that corruption becomes indefinable and thus impossible to address. Though corruption seems easily identifiable, it is of paramount importance to establish a workable legal definition of corruption, in order to maximize preventative and combating efforts, including the proper arrangement of responsibilities between institutions.

2.10 CAUSES OF CORRUPTION

The main factors perceived to be at the root of the problem according to Country Corruption Assessment Report South Africa were listed as:

- Poverty: people who are struggling to survive may easily be drawn to corruption as a means of survival. Many also commented that it is easier to bribe someone, who is not earning enough, as they see it as a means of supplementing their income.

- Mind-set: there is evidence of decay of moral values in general, within society. In a number of groups, respondents said the way in which the average South African views corruption, allows corruption to be practiced. Corruption is often condoned, rather than reported. Trade union representatives said they believed the average man on the street would buy stolen goods offered at a good price and actually feel good (even boast) about getting a bargain.

All of the stolen cars, or goods … somebody buys them.

The situation is exacerbated by the fact that the emphasis is generally on the person who accepts the bribe: it is seldom on the person that offers it.

Some said that because of media coverage, the public sees a case of a government official receiving a bribe in a very serious light.

Placing the blame on the businessman concerned, might cause a serious outcry.

If somebody bribes a policeman and you prosecute the guy that bribed… and not the policeman, you will never hear the end of it. So you prosecute the poor policeman and use the other guy as a witness. In fact, he is not better than the policeman.
Lack of effective control mechanisms to combat corruption. If people are not caught and prosecuted, they will continue with the practice and others will follow suit. People believe they can manipulate the system and get away with it: they often manage to beat the system and get away with it.

Magistrates said they experience some difficulty in prosecuting at times when the prosecutors and investigating officers assigned to handle cases are not trained sufficiently to deal with the cases effectively. The entire process can thus become bogged down and ineffectual.

Prisoners awaiting trial have free access to all manner of contraband and frequently escape as a result of corruption in prisons. Court dockets are “mislaid” when prosecutors are bribed and many misdemeanours are simply never brought to trial and punish.

In most cases, the root cause of corruption is inadequate, inefficient and ineffective monitoring tools in municipalities. Most cases of corruption in municipalities, emanates from the rather homogenous nature of the employees, approximately 90% are Xhosa speaking in the Eastern Cape Province. Everybody knows somebody. Any application of punitive measure remains elusive.

It should be remembered that the concept of “Imali yethu” (our money), is embedded in the minds of the people.

Corruption tends to flourish where governance is weak. Government institutions do have fraud and corruption plans or strategies in place. However, a plan or strategy can only be effective if the mindset of the population is proactive. A significant co-relation between the levels of corruption and the quality of service delivery exists. The more employees enjoy the game of fraud and unpunished corruption; the more employees do not care to discharge personal social expectations. There are many causes of corruption, including the fact that the people in administration are new and now occupy strategic positions. Power corrupts.
Lack of investigative and case management capacity, as well as poor ethical culture may cause corruption. Poor conflict of interest management (including government employees trading with the provincial government), where a register to declare is not always updated nor properly monitored.

Low compliance with Minimum Anti-Corruption Capacity (MACC) requirements;
Misplaced employees in the government departments or possibly in other institutions or entities.

In most cases employees have low satisfaction levels with their departments and institutions and as such they furthermore do not perceive that their departments are fair towards staff members. This is perfect fodder for a fraudster to use in rationalisation.
There is also a perception that policies and procedures are not consistently applied, which means that controls can be easily bypassed. This creates opportunity for fraud and corruption to take place.

Lagide (2014:9), argues that, without proper vigilance and effective countermeasures, corruption can occur anywhere. Recent corruption cases exposed in the World Bank (1997, 2004, and 2012) and the United Nations (2004) have shown that any society or organization issue susceptible, even where well established checks and balances are in place. Combating corruption, building integrity and establishing credibility require time, determination and consistency.
When anti-corruption strategies are first instituted, a long-term process begins, during which corrupt values and practices are gradually identified and eliminated.
In most cases, a complex process of interrelated elements is involved: reforms to individual institutions take place in stages as problems are identified; countermeasures are developed and implemented; personnel are reoriented and retrained. Corruption is generally connected with the activities of the state and especially with the monopoly and discretionary power of the state.
It has a large number of laws, rules, regulations, and administrative orders to restrict business and economic activities and thereby creates huge opportunities for generating
economic rent, and especially if these restrictive measures are complex and opaque and applied in a selective, secretive, inconsistent and non-transparent way.

Administrators are granted large discretionary powers with respect to interpreting rules, are given a lot of freedom to decide on how rules are to be applied, to whom and in what manner they are to be applied, are vested with powers to amend, alter, and rescind the rules, and even to supplement the rules by invoking new restrictive administrative measures and procedures. There are no effective mechanisms and institutional arrangements in the country to hold administrators accountable for their actions.

Corruption also has a political dimension, which can arise from the way in which politics are financed and power is managed, either in an authoritarian or pluralistic and democratic way. In some countries, the distribution of economic rents is used both to payoff political constituencies and enrich elites. When corruption is deeply rooted in a society, the fight against it is a long-term challenge which involves both institutional and attitudinal reform.

The challenge requires establishment of transparent procedures, holding both public and private sector actors accountable, strengthening the judicial system to handle corruption cases efficiently, but also the active participation of the civil society in all its forms in the anti-corruption battle.

Despite the long-term nature of the anti-corruption struggle, the government can take many actions in the short term to reduce policy-generated —economic rents— that are the source of much corruption, thereby demonstrating to the citizenry its commitment to its anti-corruption campaign. Therefore, corruption needs a fertile ground to widespread in the society, according to him.

One would align corruption with poverty, but in most cases people involved in corruption are rich people, you will find them in senior position in government abusing their position of power manipulating the systems, as well as in private sector.
This category of individuals is driven by personal greed that leads to an unfettered desire for money or power, with no regard whatsoever to moral boundaries. The underlying anthropological cause is the innate human impulse to own external goods, when it is not subject to personal integrity.

It is decline of personal ethical sensitivity, either due to lack of education or negative learning experiences, developed by downplaying perverse conduct in the past. No sense of service when working in public or private institutions. This is seen, for instance, in those who use politics for their selfish interests, instead of serving the common good through politics.

Importantly, it is also very interesting to state that low awareness or lack of courage to denounce corrupt behavior and situations conducive to corruption have been very rampant among government officials. That is the case of someone who is aware of corruption and stays quiet. They simply cover for the corrupt individuals, perhaps thinking that it is not their problem, or perhaps out of cowardice, so as not to make their lives more complicated.

In addition, lack of transparency, especially at the institutional level, but also in less formal organizations. Regulations and inefficient controls. Increased regulations and control mechanisms are probably not the answer. They are costly and tend to stifle initiatives and administrative dynamics.

Lack of moral criteria in promotions. Corruption is prevalent when there are no criteria for proven integrity and responsibility in the promotion. Such criteria are ignored when someone is promoted simply because of their loyalty to whoever is in charge or those in control of the party or the institution.

Downplaying or reacting mildly to corruption charges. Little power of decision within organizations to penalize acts of corruption to set examples creates an environment conducive to perpetuating corruption or corruption being perceived as the thing to do.
In sum, there are various reasons, personal, cultural, institutional, and organizational. It is applicable on a greater or lesser scale depending on different cultural and geographical environments.

There are cases where the issue of corruption is inherited. The parents are or were involved in drug dealings, smuggling, car theft or hijacking, money laundering or recketeering et cetera, now the whole family is involved including the young generation.

In most cases what causes corruption is bad incentives, such as a junior official of the institution not earning enough to live on or not being sure that he will have a job tomorrow so that he/she supplements his income with bribes.

In the extreme cases, people do not have an incentive to perform their official duties, but actually pay for their jobs with the understanding they will make money through bribes.

Also what causes corruption is attitudes or circumstances that make average people disregard the law. People may try to get around laws of a government they consider illegitimate (for example, not paying taxes to the apartheid government in South Africa). Poverty or scarcity of goods, such as medicine may also push people to live outside the law. So, corruption is not just about ethics. It is also about how the government is set up and managed.

Again people offer bribes because they want an unfair advantage over other, to pay lower taxes, to get an appointment or promotion, to win a contract, or to get something done quickly. This will be seen as justifiable act because high rate of unemployment and hunger. They also may offer bribes to avoid a fine or penalty. People seek bribes for several reasons that are special for them. For example: Politicians seek money to use for patronage especial during the elective conferences. They may argue that to stop such payments could bring political instability and unrest, which is nonsense.

Also politicians and officials who fear loss of office seek corrupt benefits as insurance especially
if they can expect no pension. Officials need extra money to maintain their standards of living if salaries have not been raised to match inflation, to meet commitments for housing, car, school fees, et cetera. In most cases they want to bribe their girl friends to sustain their relationships.
Some seek status, not only for having more riches than their colleagues but because corrupt officials may be admired by friends and family for their skills in outwitting authority.

2.11 CONCLUSION

It can be concluded that despite the tremendous initiatives by ANC led government to curb corruption throughout the country, corruption is still the order of the day especially in the local sphere of governance that is municipal level. The issue of corruption in our municipalities is compromising and impact negatively in the service delivery. It can be concluded that municipalities are characterized by a number of instances of corruption perpetrated mainly by municipal officials, councilors and members of society.

There is glaring non-compliance with the Municipal Finance Management Act (MFMA), the National Treasury Regulations, the Procurement Procedures of the municipality et cetera, within Buffalo City Metropolitan Municipality. There were serious challenges facing the leadership of Buffalo City Metropolitan Municipality during the era of Ncitha and Fani, both politically and administratively. However, after the deployment of Mr Mtsi as an Executive Mayor and Mr Xola Phakathi as his Deputy things have drastically changed and there is a relevant stability. The unfortunate part is that the Accounting Officer is on suspension and there is no full time Municipal Manager.

The organisational structure of the municipality does not address areas of responsibility and lines of reporting to support effective control over financial reporting. Management’s philosophy and operating style do not promote effective control over financial reporting. There is inadequate segregation of duties to prevent fraudulent data and asset misappropriation.
This state of affairs in municipalities has impacted negatively in the overall performance of the ruling party in the outcome results of the recent 2016 Local Government Elections, especial in metros like Nelson Mandela, Tshwane, Ekurhuleni and Johannesburg. The intensive campaign of the opposition parties focussed mainly on uprooting corruption and bringing good governance and stability in municipalities, which yielded good results for them.

As a results the National Executive Committee meeting of the ANC (11th-14th August 2016) took the following resolutions:

That the NEC will visit all provinces to meet with its own structures and Alliance components, different sectors and communities to deal with the concerns raised by the people;
The organization will immediately embark on training of councillors to ensure that they lead municipalities in the interests of the people;
Councillors should provide services to the people and maintain high levels of revolutionary discipline and integrity;
The NEC resolved to put in place mechanisms that would monitor services delivery across all spheres of government and ensure accountability of all deployees for actions in the execution of assigned responsibilities; and
While noting the efforts to rid the society, government and the private sector of corruption and its associated consequences, the NEC called for an approach that will effectively deal with this cancer, without fear or favour. (ANC NEC PRESS STATEMENT 04/08/2016)

Again the issue of implementation of these resolutions is a matter of concern.
CHAPTER THREE: RESEARCH METHODOLOGY

3.1 INTRODUCTION

Describing the meanings of methodology, Neuman (79-80:1991), indicates that there are three approaches, which include Positivist Social, Interpretive Social Science and Critical Social Science.

Neuman argued that Positivist Social science is used widely, and positivism, broadly defined is the approach of natural science. Interpretive Social Science can be traced to German sociology Max Weber (1864:1920) and German philosopher Wilhem Diltney (1833-1911). Werber argued that social science needed to study social action with purpose. Werber further argue that Interpretive researcher often use participant observation and field research. Critical Social Science versions are called dialectical materialism, class analysis and structuralism and this can be traced to Karl Max (1818-1883), according to him.

Research methodology is general concerned with formulating systematic and logically coherent sets of methods for acquiring knowledge and information. In this study besides targeting to meet the criteria of rigor and replication the methodology design had to meet the following criteria:

The issues raised, obviously were potential sensitive, controversial and emotive by their nature. This therefore had demanded a need for careful attention to item construction and quality assurance in respect of disclosure of confidentiality and reliability.

Levels of participation were expected to be low given the nature of the study, where some cases being sub judice. But endorsement was sorted from those in authority for the purpose of the study.

The purpose of the study relates to specific aims to be assessed and explained. In addressing that two components were to be used, namely:

A theory construction component based on literature study, and
A theory testing components where research questionnaire and interview survey were conducted.

There are two types of social research, namely qualitative and quantitative research. According to Newman (1991:13), although both share basic principles of science, the two approaches differ in significant ways. Each has its strengths and limitations.

The researcher had used qualitative research. In this approach procedures are not strictly formalized, while the scope is more likely to be defined and more philosophical mode of operation is adopted.

Also observations are determined by information richness of the settings, and types of observations used are modified to enrich understanding. The qualitative researcher is likely to collect, analyze, and interpret data simultaneously, going back and forth between these steps, tends to build new theory as well as draw on existing theory during these steps.

Qualitative research is primarily exploratory research. It is used to gain an understanding of underlying reasons, opinions, and motivations. It provides insights into the problem or helps to develop ideas or hypotheses for potential quantitative research. Qualitative research is also used to uncover trends in thought and opinions, and dive deeper into the problem. Qualitative data collection methods vary using unstructured or semi-structured techniques. Some common methods include focus groups (group discussions), individual interviews, and participation or observations. The sample size is typically small, and respondents are selected to fulfill a given quota.

Quantitative research is used to quantify the problem by way of generating numerical data or data that can be transformed into useable statistics. It is used to quantify attitudes, opinions, behaviors, and other defined variables and generalize results from a larger sample population. Quantitative research uses measurable data to formulate facts and uncover patterns in research. Quantitative data collection methods are much more structured than qualitative data collection methods. Quantitative data collection methods include various forms of surveys, paper surveys, mobile surveys and kiosk surveys, face-
to-face interviews, telephone interviews, longitudinal studies, website interceptors, and systematic observations.

Also observations are determined by information richness of the settings, and types of observations used are modified to enrich understanding. The qualitative researcher is likely to collect, analyze, and interpret data simultaneously, going back and forth between these steps, tends to build new theory as well as draw on existing theory during these steps.

According to Creswell (1994: 10) in qualitative research the rules and procedures are not fixed. Qualitative research is open and emerging, and therefore this design calls for an individual who is willing to take risk inherent in an ambiguous procedure. Clear processes and skilled planning of the research are therefore crucial aspects of qualitative research. The researcher had personally administered the in-depth processes.

Winter, in Peters and Pierre (2012:270) argues that while the first and second generations of implementation studies have been helpful in directing attention to implementation problems and identifying implementation barriers and factors that might ease implementation, the research had not succeeded in sorting out the relative importance of the explanatory variables.

A substantial part of the studies could be criticized as merely presenting, often long, checklists of variables that might affect implementation. Malcom Goggin (1986) pointed out that because implementation research had been dominated by single case studies, it was plagued by the problem of ‘too few cases and too many variables’ or by over determination, where two or more variables explain variation in the independent equally well.

The single study approach did not allow for any control of third variables. According to Goggin this problem had hampered the development of implementation theory. He therefore called for third generation of implementation studies that would test theories on the basis of more comparative case studies and statistical research designs which could increase the number of observations and allow control for third variables.
3.2 TARGET POPULATION GROUPS

The officials of municipalities, members of the law enforcement agencies, service providers or consultants, some members of the community and the politicians. These are key stakeholders in the field of play and have information on one way or another that had assisted in the research process.

3.3 DATA COLLECTION TECHNIQUES AND PROCEDURES

According to David and Sutton (2004:27), data is what the researcher actually receives from the respondents, be it social or physical.

Informal interviews in some instances were conducted given the sensitivity of the topic. This was augmented by observation of the system and practices of the senior municipal officials. Data was also drawn from municipal council documents. The study used both documentary sources and interviews with key role players.

Documentary sources included:

- Newspapers
- Annual reports of the municipality
- The Auditor- General’s Office reports.
- The Anti-Corruption Agencies’ reports, and
- The Forensic Investigation reports.

The researcher further interviewed few relevant people in the municipality, Anti-Corruption Agencies and Law Enforcement Agencies.

The aim of interviews was to solicit additional information in particular about issues and questions that were not covered in the published documents.

With regards to research procedures, impromptu appointments were made with officials occupying strategic positions and where possible written submissions were sort.
The process was not an easier one given the sensitivity of the topic itself. Also the majority of the officials were on suspension for their involvement in corrupt activities who might have valuable information.

3.4 DOCUMENTS PERUSED
The following documents were scrutinized in the process of conducting this study. They were also analysed and unpacked as they relate to the study.

3.4.1 Consolidated General Report on Audit Outcome of Local Government 2009/2010

According to the Consolidated General Report on the Audit Outcomes of Local Government 2009/2010 local municipalities are struggling with a number of constraints and challenges which hamper their ability to deliver services.

The followings can be attributed to that:

Lack of capacity and lack of the requisite skills has left many municipalities inadequately staffed, with grave implications for service delivery.
Public confidence in government’s ability to deliver being undermined by corruption and maladministration.
The appointment of people without necessary skills or qualifications in senior position under the pretext of a cadre deployment.
Lack of discipline, an absence of commitment to serving the public interest and non-adherence to the code of conduct for municipal officials is a challenge.
The biggest challenge for local government, especially the smaller ones with no reliable revenue base, is to attract and retain competent persons across all areas of administration.
The instability before and after elections means more acting persons and vacancies that are not filled timeously, which in turn impacts negatively on financial management and service delivery.
The glaring Auditor-General's report on handling of finances by municipalities especially in the Eastern Cape Province.
3.4.2 Consolidated General Report on the Audit Outcomes of Local Governments 2010/2011

According to the Constitution of the Republic of South Africa, Act 108 of 1996, the Auditor-General has a constitutional mandate and, as Supreme Audit Institution, exists to strengthen the country’s democracy by enabling oversight, accountability and good governance in the public sector, thereby building public confidence.

According to this report there were absolutely no improvement compared to the previous year though recommendations were made to improve the situation.

This could be attributed to following:

- Not all political leaders took these matters seriously and accepted their accountability in this regard;
- Most municipalities did not take the AG’s recommendations seriously;
- There were also limited consequences for the failure of Accounting Officers and municipal officials to comply, even though there were clear remedies in legislation to deal with transgressions;
- Skills level and experience of staff appointed in the finance department, especially with regard to compilation of financial statements that comply with GRAP were not adequate;
- Consultants were often appointed close to a year end and data used by or provided to consultants to prepare financial statements was often not reliable;
- The lack of improvement in the areas such as Supply Chain Management, which received much attention from AG, points to a disregard for laws and regulations.

As is always the case, there were findings that were picked up in the report of which some of them were the same as in the previous report:

- Three price quotations were not in all instances obtained from prospective service providers and deviations were not approved by a properly delegated official or committee as required by legislation;
- Competed bids were not always invited and deviations were not approved by properly delegated officials;
Awards were made to suppliers without proof from South African Revenue Services that their tax matters were in order; The declarations were not always submitted by the service providers, as a results the auditees did not have sufficient information to to identify conflicts of interests and prohibited awards; Bids were advertised for a shorter period and no approval of deviation; Bids were not adjudicated by a properly constituted adjudication committee; Prospective supplier’s list was not administered in accordance with the requirements; Bids were not evaluated by properly constituted evaluation committee; Goods and services were received and payments made to suppliers without a written, signed contracts being in place; Contracts were not prepared in accordance with general conditions of contract as prescribed by National Treasury Regulations; Some officials involved in the implementation of SCM policies were not adequately trained to perform their duties effectively; Contracts were not adequate to ensure that officials declared whether they or their close family members, partners and associates had interests in suppliers or contract to awarded; Supply Chain Management policies or procedures were in conflict with applicable legislation; and Supply Chain Management officials were not aware of supply chain management policies and/or did not understand roles and responsibilities.

3.4.3 The Report of the Auditor-General to the Eastern Cape Provincial Legislature and council of Buffalo City Metropolitan Municipality 2010/2011

The Report of the Auditor-General to the Eastern Cape Provincial Legislature and the Council of Buffalo Metropolitan Municipality 2010/2011 has reflected no-compliance with laws and regulations. The following irregularities among others were detected:

The municipality incurred expenditure in excess of the limits provided in the votes with the approved budget. This was in contravention of section 15 of the MFMA.
Awards were made to service providers based on criteria which differed from those stipulated in the original bid documents.
Quotations were accepted from prospective service providers who were not on the list of accredited prospective providers and not meet the listing requirements prescribed by the supply chain management policy.
Awards were made to service providers whose tax matters had not been declared by the South African Revenue Services to be in order as required by the supply chain regulation.
Awards were made to providers based on criteria which differed from those stipulated in the original bid documents.
Awards were made to providers who are persons in service of the municipality which contravenes SCM regulations, and they failed to declare that they were in service of the state.
The prospective providers list for procuring goods and services through quotations was not updated at least quarterly to include new suppliers that qualify for listing.
The Accounting Office did not take all reasonable steps to ensure that the municipality had and maintained an effective system of expenditure control, including procedures for the approval, authorization, withdrawal and payment of funds, as required by section 65 (2) (a) of the MFMA.
Investigations were not always conducted into all allegations of financial misconduct against officials of the municipality, as required by section 171(4)(a) of the MFMA.
Lastly, the fraud prevention plan was last reviewed in 2003. The significance of not reviewing the plan was evident by the numerous fraud cases uncovered by management subsequent to the last review performed.

In the year under review, the permanent filling of key leadership positions remained a challenge in the Buffalo City Metropolitan Municipality. For the third consecutive year, the critical positions of the City Manager and the Chief Financial Officer remained vacant. The suspension of three directors was only lifted in June 2011 and cases against these individuals were not yet finalized according to the report.
Key leadership vacancies have directly contributed towards the weakening of the general control environment of the municipality during the past three years.

General delegations were only approved by the council during May 2011. The municipality therefore operated without approved delegations for most of the financial year and no sub delegation to lower ranks was in place at the year end. This had a severe impact on the operational and organizational efficiency of the municipality.

The disregard for approved financial policies and procedures, specifically the municipality's supply chain management policy was an area of concern. Staff at supply chain management unit were not capacitated to fulfill and execute their duties and responsibilities. The lack of segregation of duties between the procurement and payment functions at the supply chain management unit has contributed towards the weakening of control environment.

The municipality again did not introduce an appropriate system to detect, monitor, report and discipline staff who failed to observe the municipal's supply chain management policy.

Finally, according to this report, the investigation in respect of allegations leveled against former Acting Municipal Manager was concluded after year-end, and a number of officials and councilors were implicated in the report. At the time of conducting the research, the council was still in the process of assessing and implementing the finding and recommendations of the report. Irregular expenditure of R75.1 million in respect of this matter was detected.

But it was clear that the report had divided the council given that some heavy weights were being implicated.

3.4.4 The Report of the Auditor- General to the Eastern Cape Provincial Legislature and Buffalo City Metropolitan Municipality 2011/2012

According to this report the municipality incurred expenditure in excess of the limits provided for in the votes with the approved budget. This was in contravention of section 15 of the MFMA, as a result an unauthorized expenditure of R8.1 million was disclosed.
The Accounting Officer did not timeously submit the monthly budget statements to the mayor and provincial treasury as required by section 71(1) of MFMA.

Sufficient appropriate audit could not be obtained that goods and services with a transaction value between R10 000 and R200 000 were procured by means of obtaining written price quotations from at least three different prospect service providers as per the requirement of supply chain management regulation 17 (a) and (c). Quotations were accepted from prospective providers who were not on the list of accredited prospective providers and which were not stipulated in the original bid documents as the requirements of SCM regulations.

The annual performance report for the year under review did not include the performance of the municipality and external service providers, a comparison of the performance with set targets. An audit committee was not in place for the full year as required by MFMA, as a result there were no audit committee meeting. Disciplinary hearings did not commence within three month of the resolution to institute disciplinary action, as required by Disciplinary Regulation for Senior Managers.

The following irregularities were detected on procurement and contract management in the year under review:

- Goods and services with a transaction value below R200 000 were procured without obtaining the required price quotations as required by SCM.
- Quotations were accepted from prospective providers who were not registered on the list of accredited prospective providers and did not meet the listing requirements prescribed by SCM policy.
- The performance of contractors and providers was not monitored on a monthly basis as required by MFMA.
- Awards were made to providers who were persons in service of municipality or whose directors are persons in the service of the municipality, in contravention of SCM Regulation.
Persons in the service of the municipality who had a private or business interests in contracts awarded by the municipality failed to disclose such interests, as well as their close family members.

Allegations of fraud or corruption and improper conduct and failure to comply with the SCM system laid against role players in the SCM were not investigated as required by SCM.

Sufficient appropriate audit evidence could not be obtained that all contracts and quotations were awarded in accordance with the legislative requirements and procurement process which was fair, equitable, transparent and competitive, as some of the information submitted was incomplete.

On leadership the following challenges were identified:

The political and administrative leadership did not take full ownership of the internal control environment and did not insist on daily disciplines to ensure efficiency and effectiveness in financial management, service delivery execution and compliance with laws and regulation, thus not setting the correct tone for the credibility of all reports of administration.

Top and middle management positions were vacant for extended periods. This included the Chief Financial Officer's position which was vacant for more than 33 months at the time of the report, while the Accounting Officer's position was only filled in March 2012. The continued absence of permanent finance professional to lead and guide the municipality compromised sound financial management.

The leadership did not address the challenges faced by municipality's SCM Unit during the past four years and did not implement its SCM policy. This was largely as a result of inadequate capacity within the unit to implement the SCM policy, which was further aggravated by inadequate planning by the different directorates within municipality. This was evidenced by the large amount of irregular expenditure incurred and the amount by which the budget was underspent.
According to this report the following observations were identified:

The municipality did not have adequate systems in place to identify and disclose all irregular expenditures incurred during the year under review as required by MFMA. Due to the lack of adequate systems and non-availability of sufficient appropriate audit evidence for all awards, it was impracticable to determine the full extent of the understatement of irregular expenditure disclosed at R781.1m.

The municipality’s performance management system was not in line with priorities, objectives, indicators and targets contained in its IDP. The municipality did not have and maintain effective, efficient and transparent systems of financial and risk management and internal controls as required by MFMA.

Measures to combat the abuse of the SCM system were not implemented as per the requirements of SCM regulations as declarations of interest were not submitted to assess whether awards were not made to providers who:

- During the last five years had failed to perform satisfactory on previous contracts with the municipality or municipal entity or other organ of state.
- Committed a corrupt or fraudulent act in competing for the contract.
- Abused the SCM system of the municipality.
- Had been convicted of fraud or corruption during the past five years.

Goods and services with a transaction value of below R200 000 were procured without obtaining the required price quotations as required by Municipal Supply Chain Management regulation.

Sufficient appropriate audit evidence could not be obtained that contracts and quotations were only awarded to and accepted from bidders who submitted a declaration on whether they are employed by the state or connected to any person employed by the state as required by SCM. An effective system of expenditure control, including procedures for the withdrawal and payment of funds was not in place as required by MFMA.
The municipality did not comply with requirements of the MFMA regarding the following:

Fruitless and wasteful expenditure incurred by the municipality was not investigated to determine whether any person was liable for the expenditure.
The municipality did not adequately follow up on Council and Municipal Public Accounts Committee reports which determine whether any person is liable for fruitless and wasteful expenditure incurred resulting in action not being taken to recover such funds.
Council reports in which an assessment is made regarding the recoverability of the irregular and fruitless and wasteful expenditure was not produced.

Leadership did not sufficiently address the challenges faced by the municipality’s SCM. This had resulted in inadequate capacity within the unit, which was further aggravated by poor planning by the different directorates within the municipality. Top and middle management positions were vacant for extended periods of time. The continued absence of permanent officials to lead and guide the municipality compromised the effectiveness of the control environment.

There was a lack of processes in place to ensure compliance with laws and regulation, as a result management did not effectively monitor and address areas of non-compliance.

3.4.6 The Report of the Auditor-General to the Eastern Cape Provincial Legislature and Buffalo City Metropolitan Municipality 2013/2014

According this report the municipality did not have adequate system in place to identify and disclose all irregular expenditure incurred during the current and previous financial periods as required by section 125 (2) (d) (i) of the MFMA. Due to these inadequate systems it was impracticable to determine the full extent of the understatement.

The municipality was a defendant in a number of law suits to the amount of R166 million. The outcome of these law suits could not be determined at the time as litigation was still in progress.
The consolidated financial statement submitted for auditing were not prepared in all material respects in accordance with requirements of section 122 of the MFMA. Asset management was inadequate as a perpetual asset register was not in place.

The accounting and information systems did not support internal controls for assets as required by section 63(2)(a) and (c) of the MFMA.

Unauthorized, irregular, fruitless and wasteful expenditure incurred by the municipality was not always investigated to determine whether any person was liable for the expenditure, as required by section by section 32(2)(a)(ii) of MFMA. Reasonable steps were not taken to prevent authorized, irregular, fruitless and wasteful expenditure as required by MFMA.

Council certified irregular expenditure as irrecoverable without having conducted an investigation into every award made, as required MFMA.

Reasonable steps were not taken to prevent unauthorized, irregular, fruitless and wasteful expenditures as required by MFMA. Quotations were accepted from prospective providers who were not registered on the list of accredited prospective providers and did not meet the listing requirements prescribed by Supply Chain Management policy.

For prior period awards identified through the audit no effective steps were taken to prevent or combat the abuse of the SCM processes in accordance with SCM regulation. Awards were made to providers whose directors or members were in the service of the municipality, as well as providers who were in the service of other state institutions. Persons in the service of the municipality or close family members who had a private or business interest in contracts awarded by municipality failed to disclose such interest as required by SCM regulation.

Also contracts and quotations were awarded to bidders who had not submitted declaration on whether they were employed by the state or connected to any person employed by the state as required by SCM regulation.

The performance management system and its related controls were inadequate as it did not describe and represent the processes of performance.
Leadership had not instituted all disciplines necessary to enable oversight and monitoring that promote efficiency and effectiveness in financial management, service delivery reporting and compliance with laws and regulation.

The leadership did not implement effective human resource management to ensure that adequately and sufficiently skilled resources are in place as a number of key position within top and middle management were vacant for extended periods of time. The continued absence of permanent officials to lead and guide the municipality compromised the effectiveness and stability of the control environment.

Leadership did not sufficiently address the previously reported challenges faced by municipality’s SCM unit. This was largely as result of inadequate capacity within the SCM unit which resulted in poor record keeping and monitoring thought the year under review. This was further aggravated by poor planning, implementation and monitoring of contracts by user directorates within the municipality.

The municipality did not fully implement and monitor all required daily and monthly financial, performance and compliance disciplines to verify the credibility of in-year reporting. This resulted in key reconciliations and processing only being performed after the financial year-end.

The municipality did not implement an effective performance management system that enables leadership to hold all officials accountable for the work they perform on a daily basis.

There was a lack of processes in place to ensure compliance with laws and regulation. As a result, management did not effectively monitor and address areas of no-compliance.

Finally, according to this report MEC for Local Government and Traditional Affairs, and the Directorate of Priority Crime Investigation were investigating allegations of irregularities with respect to the state funeral procurement.
3.4.7 The Report on the Investigation into the alleged irregularities in Respect of Buffalo City 2010 FIFA World Cup by Ernst and Young 2011

In the report the following irregularities were detected in the appointment of service providers:

The Buffalo City Metro SCM Unit was not requested to assist in the appointment of the local service providers.
Media Led and Enterstage were subcontracted by Phumaf and Alliance without following a process to verify their credentials.
However, when the contracts were cancelled the payment relating to services were not yet rendered and were not recovered.
The scope of work for Enterstage, a service provider appointed to provide equipment in King William’s Town, was extended to include the provision of equipment and related services in Douw Sports Grounds in Chalumna for the work which was previously contracted to Media Led.
Media Led and Enterstage were paid for the same services, which amounts to double payments in respect of the same work.

In the same report, the Price Water Coopers report dated 11th October 2010 revealed that various potential irregularities relating to the local service providers subcontracted by Alliance.

They included the following:

Non-compliance with VAT. In this regard there were instances where incorrect VAT numbers were supplied by service providers;
No VAT numbers were supplied on certain invoices;
Certain individuals owned numerous entities that Alliance appointed as subcontractors;
Manual modification occurred in respect of bank details on certain invoices, and Inconsistent bank accounts were provided in invoices by certain entities.

There were media reports that the present Executive Mayor, Ms Zukiswa Ncitha wanted an external body to look into the recommendations of the report. But the unfortunate part
was that the report implicated some senior officials and politicians, hence it has taken so long to be auctioned. Ultimately a multiparty committee was tasked to handle the matter.

3.4.8 Buffalo City Metro IDP/Budget Process Plan 2013/2014

In this plan the metro has identified six overarching strategic objectives:

- To be a financial sound organization that efficiently manages its resources.
- To be an institutionally efficient and effective city that inclusively works with communities.
- To generate sustainable infrastructure that supports social and economic development. And
- To be a well structured and capacitated institution that renders effective and efficient services to all by 2016

Having these plans in place of which are not the first of its kind, starting from the constitution, legislation that are in place, the anti-corruption structures etc, but still we continue to have these corrupt related activities in this municipality. The conclusion therefore would be a human factor.

3.4.9 Public Service Commission Annual Report 2011/2012

The Public Service Commission is tasked, among other things to undertake public administration investigations, promote a high standard of ethical conduct among public servants and contribute to preventing and combating corruption in the public service.

It is responsible to investigate public administration practices and make recommendations to the departments. Also it is responsible for monitoring and evaluation of financial misconduct cases and maintains a database.


According to this Act, councilors must disclose to the municipal council, or to any committee of which that councilor is a member, any direct or indirect personal or private business interest that councilor or spouse, partner or business associate of that councilor may have in any matter before the council or committee. A councilor must withdraw from
proceedings of the council or committee when the matter is considered by the council, unless the council or committee decides that the councilor’s direct or indirect interest in the matter is trivial or irrelevant.

A councilor who, or whose spouse, partner, business associate or close family member, has or acquires any direct benefit from a contract concluded with the municipality, must disclose full particulars of the benefit of which the councilor is aware at the first meeting of the municipal council at which it is possible for the councilor to make the disclosure.


The aim of this Act is to provide for the establishment of municipalities in accordance with the requirements relating to categories and types of municipalities; to establish criteria for determining the category of municipality to be established in the area; to define the types of municipality that may be established within each category; to provide for the appropriate division of functions and powers between categories of municipality; and to regulate the internal systems, structures and office-bearers of municipalities.

According to this Act, provincial legislation must determine for each category of municipality the different types of municipality that may be established in that category in province.


In terms of this Act, the accounting officer of a municipality is responsible for managing the financial administration of the municipality, and must for this purpose take all reasonable steps to ensure that, resources of the municipality are used effectively, efficiently and economically.

That all full and proper records of the financial affairs of the municipality are kept in accordance with any prescribed norms and standards. That unauthorized, irregular or fruitless and wasteful expenditure and other losses are prevented.

Also that disciplinary or, when appropriate, criminal proceedings are instituted against any official of the municipality who has allegedly committed an act of financial misconduct.
Section 171(1), states that an Accounting Officer of a municipality commits an act of financial misconduct if he/she deliberately or negligently contravenes a provision of this Act, makes, permits, or instructs another official of the municipality to make unauthorized, irregular, fruitless or wasteful expenditure.

Section 172 (3), (a) of this Act requires a municipality to investigate allegations of financial misconduct against the Accounting Officer or any municipal official suspected of being involved in fraudulent activities.

Then, section 173 (1), concludes that the Accounting Officer of a municipality is guilty of an offence if he/she deliberately or in a grossly negligently way contravenes or fails to comply with a provision of relevant sections, fail to take reasonable steps to implement the municipality’s supply chain management policy.

If found guilty a person is liable on conviction of an offence in terms of section 173 to imprisonment for a period not exceeding five years or to an appropriate fine determined in terms of applicable legislation according to this Act.

The accounting officer must act with fidelity, honesty, integrity, and in the best interest of the municipality in managing its financial affairs.

He/she must disclose to the municipal council and the mayor all material facts which are available to the accounting officer and seek, within the sphere of influence of the accounting officer, to prevent any prejudice to the financial interest of the municipality. An accounting officer may not act in any way that is inconsistent with the duties assigned to him/her in terms of this Act.

As much as councilors are exempted to participate in procurement processes as according to sections 117 and 118 of this Act, they influence the process by collaborating with corrupt officials who in turn will be assured of the renewal of their contracts promotions.

Chapter ten of this Act defines financial misconduct, and deals with the procedures for disciplining those public officials guilty of financial misconduct. It also includes a provision for criminal prosecution to apply where there is gross financial misconduct.


Section 195 of the constitution lays down the values and principles that govern public administration. These values and principles include:

- A high standard of professional ethics,
- Efficient, economic and effective use of resources,
- Services must be provided impartially, fair equitably and without bias,
- Public administration must be accountable,
- Transparency must be fostered by providing the public with timely, accessible and accurate information.

In addition to the above values and principles, the constitution contains further requirements related to employment and procurement. Section 197 (3) states that no public service employee may be favoured or prejudice because an employee supports a particular party or cause. Section 217 (1) requires all organs of the state national, provincial and local spheres of government or any other institution identified in national legislation to contract for goods or services in accordance with system which is fair, equitable, transparent, competitive and cost-effective.

Section 139 (1) states that, when a municipality cannot or does not fulfill an executive obligation in terms of the constitution or legislation, the relevant provincial executive may intervene by taking any appropriate steps to ensure fulfillment of that obligation, including-

- Issuing a directive to the Municipal Council, describing the extent of the failure to fulfill its obligations and stating any steps required to meet its obligation;
- Assuming responsibility for the relevant obligation in that municipality to the extent necessary to:
Maintain essential national standards or meet established minimum standards for the rendering of a service,
Prevent the Municipal Council from taking unreasonable action that is prejudicial to the interests of another municipality, or
Dissolving the Municipal Council and appointing an administrator until a newly elected Municipal Council has been declared elected, if exceptional circumstances warrant such a step.

Again having this provision of the Constitution after 20 years of democracy not one municipality was ever dissolved, reasons therefore are political and of course is an expensive exercise.

3.4.15 The Protected Disclosures Act 2000, (Act 26 of 2000)
This Act sets out clear and simple framework to promote possible whistleblowing by:

- Reassuring workers that silence is not the only safe option,
- Providing strong protection for workers who raise concerns internally,
- Reinforcing and protecting the right to report concerns to public protection agencies such as Public Protector, Auditor-General and Law Enforcement Agencies, and
- Protecting more general disclosures provided that there is a valid reason for going wider and that the particular disclosure is reasonable one.

3.4.16 The Promotion to Access Information Act 2000, (Act 2 of 2000)
The purpose of this Act is to give effect to the constitutional right access to any information held by the state and any information that is held by another person and that is required for the exercise or protection of any rights, and provide for matters connected therewith. To establish voluntary and mandatory mechanisms or procedures to give effect that right in a manner which enables persons to obtain access to records of public or private bodies as swiftly, inexpensively and effortlessly as reasonable possible. To promote transparency, accountability and effective governance of all public and private bodies, including but not limited to, empowering and educating everyone.

The purpose of this Act is to give effect to the right to administrative action that is lawful, reasonable and procedural fair and to the right to written reasons for administrative action as contemplated in section 33 of the Constitution of the Republic of South Africa, 1996, and to provide for matters incidental thereto. Any person may institute proceedings in a court or tribunal for the judicial review of an administrative action.

3.4.18 The Financial Intelligence Centre Act 2001, (Act 38 of 2001)

In terms of this Act, a Financial Intelligence Centre and Money Laundering Advisory Council need to be established in order to combat money laundering activities and financing of terrorist and related activities; to impose certain duties on institutions and other persons who might be used for money laundering purposes and the financing of terrorist and the related activities.

Also a Financial Intelligence Centre will be established as an institution outside the public service but within the public administration as envisaged in section 195 of the constitution.

Objectives of the Centre will be:

To assist in identification of the proceeds of an unlawful activities and combating of money laundering activities and financing of terrorist and related activities;
To make information collected by it available to investigating authorities, the intelligence services and South African Revenue Service to facilitate the administration and enforcement of the laws of the Republic; and
To exchange information with similar bodies in other countries regarding money laundering activities and similar offences.


The purpose of this Act is:

To provide for the strengthening of measures to prevent and combat corruption and corrupt activities;
To provide for the offence of corruption and offences relating to corrupt activities;
To provide for investigative measures in respect of corruption and related corrupt activities;
To provide for the establishment and endorsement of a Register in order to place certain restrictions on persons and enterprises convicted of corrupt activities related to tenders and contracts;
To place a duty on certain persons holding a position of authority to report certain corrupt transactions;
To provide for extraterritorial jurisdiction in respect of the offence of corruption and offences relating to corrupt activities, and
To provide for matters connected therewith.


According to this Act the Public Protector is a functionary to whom the public has recourse. This functionary is guaranteed independence by the constitution. The Public Protector is required to be impartial and exercise his/her powers functions without fear, favour or prejudice.

In terms of section 182 of the Constitution of the Republic of South Africa, the Public Protector has the power as regulated by national legislation to:

Investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper.
To report that conduct; and
Take appropriate remedial action.

The Act provides for matters necessary to establish and operate the Office of the Public Protector as contemplated in the Constitution. Section 6, for example, sets out the powers of the Public Protector. In terms of section 6(4) the Public Protector is competent to investigate, on his/her initiative or on receipt of a complaint, any alleged:

Maladministration in connection with the affairs of government at any level;
Abuse or unjustifiable exercise of power or unfair, capricious, discourteous or improper conduct or undue delay by a person performing a public function;
Improper or dishonest act; or omission or corrupt, with respect to public money; improper or unlawful enrichment, or receipt of any improper advantage, by a person as result of an act or omission in the public administration.

Section 7(4), (5) give the Public Protector the right to subpoena any person to submit an affidavit or affirmed declaration or appear before him/her to give evidence or to produce any document in his/her possession or under control which has a bearing on the matter being investigated, and to examine such a person.

Cases of corruption are tried in the Magistrates Court. The jurisdiction of these courts is prescribed in the Magistrate’s Court Act 32 of 1994, and in the High Courts, the jurisdiction of which prescribed in the Supreme Court 59 of 1959.

In terms of section 162 of the Constitution, the judiciary authority of the Republic is vested in the courts. The courts are independent and subject only to the Constitution and the law, which must apply impartially and without fear, favour or prejudice.

3.4.21 Code of Conduct of Public Service 2004.

Section 4.5.3 of the code of conduct for Public Service states that an employee should not use his/her official position to obtain private gifts or benefits for him/herself during performance of duties nor should accept any gifts or bribes when offered, as these may be construed as bribes.

The code should act as a guideline to employees as to what is expected of them from an ethical point of view, both in their individual conduct and their relationship with others. Compliance with the code can be expected to enhance professionalism and help to ensure confidence in the Public Service.

According to this code of conduct an employee should:

Be faithfully to the Republic and honours the constitution and abides thereby in the execution of his/her daily tasks;

Puts the public interest first in the execution of his/her duties;
Loyally executes the policies of the government of the day in the performance of hi/her official duties as contained in all statutory and other prescripts;
Co-operates with public institutions established under legislation and the constitution in promoting public interest;
Serve the public in an unbiased and impartial manner in order to create confidence in the public service;
Not abuse his/her position in the public service to promote or prejudice the interest of any political or interest group and;
Refrains from favouring relatives and friends in work-related activities.

3.4.22 Public Service Anti-Corruption Strategy 2002

According to this strategy, it is proposed that a holistic and integrated approach to fight corruption be established. This requires a strategic mix of preventative and combative activities and a consolidation of the institutional and legislative capabilities of government.

The strategy contains nine considerations that are inter-related and mutually supportive, as follows:

Review and consolidation of legislative framework to fight corruption be established and implemented and must provide:

A new corruption Act that provides a workable definition of corruption, that will reinstate the common law crime of bribery, that creates presumption of prima facie proof to facilitate prosecution, that extends the scope of the Act to all public officials and private citizens and their agents;
A range of offences and obligations;
A holistic approach to fight corruption;
Compliance with regional and international conventions;
Civil recovery of proceeds and the ability to claim for damages; and
Prohibition of corrupt individuals and business.

It is further proposed that the courts, existing institutions and departmental capabilities be improved for optimal functioning. In particular it is proposed that—
That the efficacy of existing departments and agencies be improved through the establishment of appropriate mechanisms to coordinate and integrate anti-corruption work; Departments create a minimum capacity to fight corruption; Improved access to report wrongdoing and protection of whistleblowers and witnesses; Prohibition of corrupt individuals and businesses.

The purpose of the Public Service Anti-Corruption Strategy is to prevent and combat corruption through a multiplicity of supportive actions.

The Public Service Anti-Corruption Strategy is informed by the following principles to root out corruption:

a) The need for holistic and integrated approach to fight corruption, with a balanced mixture of prevention, investigation, prosecution and public participation as the platform for strategy,
b) Constitutional requirements for the criminal justice system,
c) Public Service tailor-made strategies are required that operate independently but complementary to national strategies, particularly with regard to detection, investigation, prosecution and adjudication of acts of corruption, as well as the recovery of the proceeds of corruption.

d) Acts of corruption are regarded as criminal acts and these acts can be dealt with either in the administrative or criminal justice system, or both if need be.

3.4.23 Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings 2014

According to these regulations any person must report an allegation of financial misconduct against the Accounting Officer, a Senior Manager, or the Chief Financial Officer of a municipality. The person to whom an allegation of financial misconduct has been reported must ensure that the report is treated in a confidential manner. An official against whom an allegation of financial misconduct is made must be given an opportunity
to make written representation to the municipality or municipal entity as to why he/she should not be suspended within seven days of being notified of the allegation.

A municipality must establish a disciplinary board to investigate allegations of financial misconduct in the municipality. A disciplinary board is an independent advisory body that assists the council with the investigation of allegations of financial misconduct, and provide recommendations on further steps to be taken.

After completion of a full investigation, the investigator must compile a report on the investigation and submit it to the council for implementation.


This Act provides for the following:

- That any person who is in charge of a business undertaking has to report activities relating to unlawful activities or proceeds;
- Makes it an offence to belong to a criminal gang or aid any criminal activity by a criminal gang;
- The obtaining of restraint orders by NDPP against any person charged or to be charged with offence from dealing with property specified in the order.

3.4.25 Witness Protection Order 56 of 2000

This Act encourages state witnesses to give evidence in trial proceedings and commissions of enquiry by providing them with protection.


According to this Act a person is guilty of an offence if he/she corruptly uses official information for the purpose of obtaining any gift, loan, fee, reward, or advantage whatsoever for himself or any other person. Corruptly communicates official information to any other person with a view of enabling any person to obtain any gift, loan, fee, reward, or advantage whatsoever.
3.4.27  **Public Service Act 1994, (Act 103 of 1994)**

This Act confers powers on Minister for Public Service and Administration to make policy, and to set a frame work of norms and standard relating to employment, including the promotion of broad representation, human resource management and development, compensation and labour relations. The norms and standards are extremely covered in the Public Service Regulations that deal with all employment matters.

3.4.28  **The Commissions Act 1947, (Act 8 of 1947)**

This Act makes provision for the conferring of certain powers on commissions appointed by the President for the purposes of investigating matters of public concern, including corruption. Commissions are empowered to require persons and documents to appear before them.


This Act provides for imposition of minimum sentences in respect of certain serious offences, including corruption, where a case involves amounts of more than R500 000, or where a case involves amounts more than R100 000 if committed by syndicate or a group of persons, or where a case involves more than R10 000 if committed by a law enforcement officer, must be sentenced to a minimum of R15 years imprisonment.

3.4.30  **Public Administration Management Act 2014, (Act 11 of 2014)**

The objects of this Act are to:

- Promote and give effect to the values and principles in section 195(1) of the Constitution;
- Provide for the transfer and secondment of employees;
- Promote a high standard of professional ethics in the public administration;
- Promote the use of information and communication technologies in the public administration;
- Promote efficient service delivery in the public administration;
- Facilitate the eradication and prevention of unethical practices in the public administration; and
Provide for the setting of minimum norms and standards to give effect to the values and principles of section 195(1) of the Constitution.

The basic values and principles governing this Act are to:
- Promote and maintain a high standard of professional ethics;
- Promote efficient, economic and effective use of resources;
- Be development oriented;
- Provide such services impartially, fairly, equitably and without bias;
- Respond to people’s needs and encourage public participation in policymaking;
- Be accountable to the public;
- Foster transparency by providing the public with timely, accessible and accurate information; and
- Ensure good human resource management and career development practices to maximise human potential.

3.4.31 Anti-Corruption Vision 2030 - 2013

According to this vision South Africa has a comprehensive anti-corruption architecture composed of a range of important institutions which address corruption.

The current anti-corruption institutions acting in a disjointed manner, resulting in a loss of knowledge retention and sharing.

In addition, overlaps between the functions and mandates of anticorruption institutions reduce overall effectiveness of the system.

Although there are several co-ordination mechanisms between the relevant institutions, the effectiveness of these mechanisms are limited as not all institutions are included and structures and roles are not always clear. The Constitutional Court has determined the need for an independent anti-corruption body with structural and operational autonomy.

The following anti-corruption role players were identified:
- South African Police Service which is responsible for law enforcement, (prevents, combats and investigate corruption).
- National Prosecuting Authority which institutes and conducts criminal proceedings on behalf of the state.
- Special Investigating Unit which investigates and reports on maladministration and corruption, and recovers losses through civil proceedings.
- Auditor- General which conducts compliance, forensic and performance audit and reports on accounts and financial statements of state funded institutions.
- Public Protector which investigates and reports to state on conducts in the state affairs which may have caused prejudice to citizens.
- Public service Commission which investigates, monitors and evaluates public service systems, policies, controls and practices, including effectiveness of anti-corruption agencies. It also promotes ethics and manages conflict of interests.
- National Treasury which makes policies on financial management, risk assessment SCM and maintains national database for restricted suppliers.
- Anti-Corruption Coordinating Committee which is responsible for the implementation of Anti-Corruption Strategy of the Public Service.
- Also ensures that the fight against corruption is coordinated and integrated with synergies between elements of prevention, detection, investigation, prosecution and monitoring.
- National Anti-Corruption Forum, a cross sectorial task team to look into the establishment of a National Coordinating Structure with the authority to effectively lead, coordinate and monitor the National Anti-Corruption Programme.
- Anti-Corruption Task Team responsible to fast track high priority corruptions investigations and prosecution. It also coordinates efforts of participating agencies (SIU, NPA, AFU and SARS).
- Multi-Agency Working Group on SCM which reviews state system to reduce and prevent instances of corruption in the state SCM system. It also coordinates participating agencies as well.
- Anti-Corruption Coordinating Committee responsible to implement Anti-Corruption Strategy of the Public Service. Also ensures that the fight against corruption is
coordinated and integrated with synergies between elements of prevention, detection, investigation, prosecution and monitoring.

- Special Anti-Corruption Unit established by DPSA to support departments in managing corruption cases and to enhance and coordinate the fight against corruption.

### 3.4.32 Ekurhuleni Metropolitan Municipality Ant-Corruption and Risk Management Strategy 2009

According to this strategy, staff member of a municipality must at all times:

- Loyally execute the lawful policies of the municipal council;
- Perform functions of office in good faith, diligently, honestly and in a transparent manner;
- Act in such a way that the spirit, purport and objects of section 50 are promoted;
- Act in the best interest of the municipality and in such a way that the credibility and integrity of the municipality are not compromised; and
- Act impartially and treat all people, including other staff members, equally without favour or prejudice.

A staff member of a municipality is a public servant in a developmental local system, and must accordingly:

- Implement the provisions of section 50 (2);
- Foster a culture of commitment to serving the public and a collective sense of responsibility for performance in terms of standards and targets;
- Promote and seek to implement the basic values and principles of public administration described in section 195 (1) of the Constitution;
- Obtain copies of or information about the municipality's integrated development plan, and as far as possible within the ambit of the staff members job description, seek to implement the objectives set out in the integrated development plan, and achieve the performance targets set for each performance indicator;
Participate in the overall performance management system for the municipality, as well as the staff member’s individual performance appraisal and reward system, if such exists, in order to maximize the ability of the municipality as a whole to achieve its objectives and improve the quality of life of its residents.

A staff member of a municipality may not:

Use the position or privileges of a staff member, or confidential information obtained as a staff member, for private gain or to improperly benefit another person;

Take a decision on behalf of the municipality concerning a matter in which that staff member or that staff member’s spouse, partner or business associate, has a direct or indirect personal or private business interest.

Except with the prior consent of the council of a municipality a staff member of the municipality may not:

Be a party to a contract for the provision of goods or services to the municipality; or the performance of any work for the municipality otherwise than as a staff member,

Obtain a financial interest in any business of the municipality; or

Be engaged in any business, trade or profession other than the work of the municipality.

A staff member of a municipality who, or whose spouse, partner, business associate or close family member acquired or stands to acquire any direct benefit from a contract concluded with the municipality must disclose in writing full particulars of the benefit to the council.

This item does not apply to a benefit which a staff member, or a spouse, partner, business associate or close family member, has or acquires in common with all other residents of the municipality.

A staff member of a municipality may not without permission disclose any privileged or confidential information obtained as a staff member of the municipality to an unauthorized person.
A staff member of a municipality may not –

Unduly influence or attempt to influence the council of the municipality, or a structure or functionary of council, or a councillor, with a view to obtaining any appointment, promotion, privilege, advantage or benefit, or for a family member, friend or associate;

Mislead or attempt to mislead the council, or a structure or functionary of the council, in its consideration of any matter; or

Be involved in a business venture with a councillor without the prior written consent of the council of the municipality.

A staff member of a municipality may not-

Request, solicit or accept any reward, gift or favour for persuading the council of the municipality, or any structure or functionary of the council, with regard to the exercise of any power or the performance of any duty;

Make a representation to the council, or any structure or functionary of the council;

Disclose any privileged or confidential information; or

Do or not doing anything within that staff member’s powers or duties.

A staff member must without delay report to a superior official or to the speaker of the council any offer which, if accepted by the staff member, would constitute a breach of sub item (1).

A staff member of a municipality may not use, take, acquire, or benefit from any property or asset owned, controlled or managed by the municipality to which that staff member has no right. A staff member of a municipality may not be in arrears to the municipality for rates and service charges for a period longer than 3 months, and a municipality may deduct any outstanding amounts from a staff member’s salary after this period.

3.4.33 Merafong City Local Municipality Anti-Corruption Strategy 2013/14

According to this strategy, fraud is an ever-increasing global problem that affects us all. Merafong City Local Municipality is not immune to this worldwide epidemic and is not
prepared to continue being a victim of fraud, but rather seeks to be a part of the solution to a fraud free society.

The main aim of this policy is to reduce fraud to an absolute minimum in order to provide better care and quality of services for all its stakeholders.

Merafong City Local Municipality irrevocably binds itself to combat all forms of fraud and corruption and binds the organisation to remain proactive in the fight against fraud and other white collar crime.

The Fraud Policy, which was to be signed by the Municipal Manager, sets the attitude towards the problem and declares a Zero Tolerance policy towards fraud and other acts of dishonesty.

As a municipality, it is important that we take these values seriously and ensure that we do not permit activities that are not aligned with our norms. It is incumbent on all to be intolerable of this behaviour and to report such findings. To this end, defrauding MCLM will not be tolerated and those employees or other stakeholders found to be in violation of this policy will be prosecuted to the fullest extent possible, both internally and externally.

This policy places fraud prevention and/or reporting of any form of irregularity as a responsibility of every employee in MCLM. It is therefore expected of every employee to report all incidents of irregularities or fraud that comes to his or her attention. Failure to do so will result in disciplinary or criminal action for having failed to comply with this policy.

Also according to this strategy, management has the following responsibilities with regard to the administration of the Business-

- Ensuring that all employees under their control receive and sign an acknowledgement of receipt of a copy of the Business Code of Ethics at employment and annually thereafter during the performance review discussion;
- Taking steps to ensure that employees are fully conversant with the Business Code of ethics.
• Ensuring that the Business Code of Ethics forms part of MCLM orientation programme.
• Ensuring that all standards and procedures comply with the Business Code of Ethics and are communicated to all employees.
• Reporting any violations of the Business Code of Ethics up through the chain of command.
• Ensuring that all matters that cannot immediately be decided on are properly escalated to the appropriate level/division.
• Ensuring that each employee completes a Commitment Form and a Declaration of Interest form (where applicable) and filing these forms together with the employment contract in the employee's personal file, which should be retained by you.
• Creating and maintaining a Gift Register for your section; and
• Ensuring that a record is kept of all Declaration of Interest Forms received.

All employees must commit themselves to the following responsibilities:
• Be familiar with the Code of Ethics according to which MCLM business should be conducted.
• Abiding by the behaviour embodied in the Business Code of Ethics.
• Keeping a copy of the document for personal reference.
• Any changes in the declaration of interest status should again be reported in writing the promoter.
• Seeking advice and information from their Supervisors when needed.
• Reporting violations of the Business Code of Ethics up through the chain of command.
• Ignorance of the Code will not be an excuse.
• The onus is on the employee to complete a new Declaration of Interest Form as and when there are any changes.
• Ensure that employees have a copy of the Code of Ethics.
• Employees must sign a commitment form of acceptance and understanding of the
  Code of Ethics at appointment and annually thereafter.
• Ensure that employees are conversant with the principles of the Code of Ethics.
• Abide by the standards embodied in the Code of Ethics.
• Communicate the objectives of the Code of Ethics.
• Report any violation of the Code of Ethics.
• Newly recruited employees to sign declaration of interest.
• Employees to sign declaration in interest annually or when personal circumstances
  change.
• Employee to declare any gift that was offered/declined.

3.4.34 Eastern Cape Fraud Prevention Plan 2012-2016

According to this plan, the Eastern Cape Provincial Government has a zero tolerance
policy towards corruption. No form of corruption will be tolerated from any public servant,
public service provider, or from any other stakeholder dealing with the ECPG.

The Eastern Cape Provincial Government will:

  Actively work to build a culture of professionalism, abiding by the highest ethical
  standards;

  Deal with all reports of corruption in the strictest confidentiality, and will protect
  whistle-blowers from any form of occupational detriment or other forms of
  victimisation;

  Institute disciplinary action against any official who subjects a whistle-blower to
  occupational detriment, or any other form of victimisation, or who fails to protect a
  whistle-blower in line with this policy;

  Ensure appropriate prevention and detection controls will be applied. These
  include controls and checking mechanisms as prescribed in existing policies,
  procedures and other relevant prescripts to the activities of ECPG and systems of
  internal control.
Diligently, speedily, and fairly follow up all reports of corruption received, or instances of corruption uncovered;

Require a review, and where possible improvement of the effectiveness of the control which have been breach in order to prevent similar irregularities from happening in the future.

Make it the responsibility of all managers to detect, prevent and investigate allegations of fraud, corruption, theft, maladministration or any dishonest activities of a similar nature, within their areas of responsibility.

Ensure that where an official is alleged to have committed an act fraud, corruption, theft or maladministration, the manager must institute disciplinary proceeding within a reasonable period.

Allocate sufficient resources to investigate all reported or uncovered cases of corruption which merit an investigation.

Implement all forms of recourse available to the Eastern Cape Government where corruption has taken place, including disciplinary and criminal action and recovery of loses.

Report to SARS all matters that might involve tax invasion, and

Report all criminal matters to the SAPS and give them full support in the resolution of cases.

3.4.35 Buffalo City Fraud and Corruption Mitigation Strategy 2012

The strategy was introduced to change features that allow corruption to occur, go unnoticed or unreported. It has been noted also that the strategy was designed to address issues such as accountability, efficiency and effective administration. It focuses on measures to improve systems and procedures, change attitudes of staff, and improve the overall integrity and performance of the municipality.

The important factors in this framework include:

Management commitment,
Staff commitment, Resources, and Networking.
According this strategy all managers are required to be aware of the importance of fraud mitigation and be committed to it. Managerial attitudes play a significant role in shaping the ethical culture of the municipality. The staff should be part of the processes, see the benefits for themselves (and organization) and understand that management is serious about preventing corruption. Also adequate resources should be made available.

Also according to this strategy, staff members of municipality at all times are expected to:

Loyally execute the lawful policies of the municipal council;
Perform the functions of office in good faith, diligently, honesty and in a transparent manner;
Act in such a way that the spirit, purport and objects of section 50 are promoted;
Act in the best interest of the municipality and in such a way that the credibility and integrity of the municipality are not compromised; and
Act impartially and treat all people, including other staff members, equally without favour or prejudice.

A staff member of a municipality is a public servant in a developmental local system, and must accordingly-

Implement the provisions of section 50 (2);
Foster a culture of commitment to serving the public and a collective sense of responsibility for performance in terms of standards and targets.
Promote and seek to implement the basic values and principles of public administration described in section 195 (1) of the constitution;
Obtain copies of or information about the municipality’s integrated development plan, as far as possible within the ambit of staff member’s job description, seek to implement the objectives set out in the IDP, and achieve the performance targets set for each performance indicator;
Participate in the overall performance management system for the municipality, as well as the staff member’s individual performance appraisal and reward system, if such exists, in order to maximize the ability of the municipality as a whole to achieve its objectives and improve the quality of life of its people.

It is also stated that staff members may not use their positions or privileges or confidential information for private gains or to improperly benefit another person. They may not unduly influence or attempt to influence the council of the municipality with a view of obtaining any appointment, promotion, privilege, advantage or benefit. They may not be involved in a business venture with the council without the prior consent of the council of the municipality.

3.4.36 Fraud and Corruption Control- Guidelines for Best Practices March 2005

According to Fraud and Corruption Control-Guidelines for Best Practices 2005, fraud and corruption pose serious risks to the public sector and these risks cannot be ignored. The potential damage extends well beyond any financial losses, and the threats to organisational integrity are a constant challenge for public sector management.

In a rapidly changing business environment, it is vital to develop an integrated fraud and corruption control strategy to address these risks.

Implementing effective fraud and corruption control measures is part of good governance and management practice. For many agencies it will involve no more than reviewing and consolidating existing agency policies and practices in relation to risk management, codes of conduct, reporting mechanisms, investigation, training and awareness.

Fraud and corruption can take many forms. Fraud is normally characterised by some form of deliberate deception to facilitate or conceal the misappropriation of assets, whereas corruption involves a breach of trust in the performance of official duties. Fraudulent and corrupt conduct by public officials may fall within the category of ‘official misconduct’ under the Crime and Misconduct Act 2001.
Official misconduct is defined as conduct by a public official, related to the official’s duties, that is dishonest or lacks impartiality, involves a breach of trust, or is a misuse of officially obtained information. The conduct must amount to a criminal offence or be serious enough to justify.

Many forms of fraud and corruption are offences under the *Criminal Code 1899*. These include offences such as extortion, false claims, stealing, misappropriation of property, false pretence, receipt or solicitation of secret commissions, forgery, revenue evasion, election fraud, currency violation and drug dealing.

This publication does not treat fraud and corruption separately, nor does it give one priority over the other. Similarly, it does not deal with all the possible dimensions of fraud and corruption.

### 3.4.37 Oxfordshire County Council Anti-Fraud and Corruption Strategy 2013

According to this strategy the County Council is one of the largest business organisations in Oxfordshire. In administering its responsibilities; the Council has a duty to prevent fraud and corruption, whether it is attempted by someone outside or within the Council such as another organisation, a resident, an employee or Councillor. The Council is committed to an effective Anti-Fraud and Corruption culture, by promoting high ethical standards and encouraging the prevention and detection of fraudulent activities.

The Assistant Chief Executive & Chief Finance Officer as the “Section 151 Officer” has a statutory responsibility under section 151 of the Local Government Act 1972 to ensure the proper arrangements for the Council’s financial affairs and has developed financial codes of practice and accounting instructions. The Chief Finance Officer exercises a quality control on financial administration through delegation of responsibilities to the Head of Corporate Finance, Assistant Heads of Finance and the Finance Business Partners.
The Monitoring Officer and Head of Law and Governance, has a statutory responsibility to advise the Council on the legality of its decisions and to ensure that the Council's actions do not give rise to illegality or maladministration. It is therefore essential for employees to follow the Council's policies and procedures to demonstrate that the Council is acting in an open and transparent manner. Oxfordshire County Council will thoroughly investigate all suggestions of fraud, corruption or theft, both from within the Council and from external sources, which it recognises can:

- Undermine the standards of public service that the Council is attempting to achieve.
- Reduce the level of resources and services available for the residents of Oxfordshire.
- Result in consequences which reduce public confidence in the Council.

The aims and objectives of the Anti-Fraud and Corruption Strategy are to:

- Ensure that the Council is protected against fraud and loss.
  - Protect the Council's valuable resources by ensuring they are not lost through fraud but are used for improved services to Oxfordshire residents and visitors.
  - Create an "anti-fraud" culture which highlights the Council's zero tolerance of fraud, corruption and theft, which defines roles and responsibilities and actively engages everyone (the public, Councillors, staff, managers and policy makers).

- To provide a best practice "counter-fraud" service which:
  - Proactively deters, prevents and detects fraud, corruption and theft.
  - Investigate suspected or detected fraud, corruption and theft.
  - Enables the Council to apply appropriate sanctions and recovery of losses.
  - Provides recommendations to inform policy, system and control improvements, thereby reducing the Council's exposure to fraudulent activity.
The principles are that:

The Council will not tolerate abuse of its services or resources and has high expectations of propriety, integrity and accountability from all parties identified within this strategy. The Council will ensure that the resources dedicated to “counter-fraud” activity are sufficient and all those involved are trained to deliver a professional “counter-fraud” service to the highest standards.

All fraudulent activity is unacceptable, and will result in consideration of legal action being taken against the individual(s) concerned. The Council will also pursue the repayment of any financial gain from individuals involved in malpractice and wrongdoing. The Council will ensure consistency, fairness and objectivity in all its “counter-fraud” work and that everyone is treated equally.

This strategy encourages those detailed in section 3.1 to report any genuine suspicions of fraudulent activity. However, malicious allegations or those motivated by personal gain will not be tolerated and, if proven, disciplinary or legal action may be taken. Sections 8.3 and 8.4 detail the reporting arrangements in relation to incidents of fraud or irregularity. The Council will work with its partners (such as the Police, District Councils and other investigative bodies) to strengthen and continuously improve its arrangements to prevent fraud and corruption.

Corruption can be defined as the deliberate use of one’s position for direct or indirect personal gain. “Corruption” covers the offering, giving, soliciting or acceptance of an inducement or reward, which may influence the action of any person to act inappropriately, according to this strategy.

Council’s policies and procedures to demonstrate that the Council is acting in an open and transparent manner.

3.4.38 Westonaria Local Municipality Anti-Fraud and Corruption Policy 2014

According to this policy Westonaria Local Municipality takes its duty to ensure stewardship of public money very seriously. Council is therefore committed to the prevention, detection and investigation of all forms of fraud and corruption whether these
are attempted from within or external to the organisation. Council is also committed to creating an environment that is based on the prevention Fraud and corruption which is achieved by promoting openness and honesty in all council activities.

Fraudulent and corrupt practices undermine the basic values and principles governing public administration as set out in chapter 10 of the Constitution. Criminal and other irregular conduct is detrimental to good, effective, accountable and transparent governance and can hamper the service delivery capacity of the Municipality.

Procedures are provided in terms of which employees and councilors may without fear of reprisals, disclose information relating to suspected or alleged criminal or other irregular conduct.

This policy also provides guidelines for all employees and councilors of the Municipality, including external stakeholders, to prevent and combat fraud and/or corruption and other acts of theft and maladministration.

This Policy applies to all Municipal employees and prohibits all acts of fraud and corruption or any other dishonest activities of a similar nature impacting or having a potential prejudice to the Municipality or members of the public.

This policy shall be applied with due observance of the Municipality’s policy with regard to delegated powers. Such delegations refer to delegations between the Municipal Manager and other responsible officials; the Council and the Executive Mayor as well as between the Council and the Municipal Manager.

Any investigation required will be conducted without regards to the suspected Wrong doers’ length of service, position/title, seniority or relationship to Westonaria Local Municipality.

This policy:
Sets out the stance of the Municipality with regard to fraud and corruptions, as well as reinforcing existing legislation aimed at preventing, reacting to, and reducing the impact of fraud, corruption, theft and maladministration, where these dishonest acts exist.

Aims to develop and foster an environment, where all employees and councilors shall strive for the ultimate eradication of fraud, corruption, theft and maladministration by means of the application of the full spectrum of both pro-active and re-active measures at their disposal.

Prescribes appropriate prevention and detection controls, including, but not limited to, the disclosure of unlawful or irregular acts or conduct as prescribed by the Protected Disclosures Act.

Requires the responsibility to take reasonable steps to ensure that “whistleblowers”, who disclose such information, are protected from any reprisals as a result of such disclosure.

To operate policies and systems which minimize fraud and corruption or any other dishonest activities of a similar nature.

To develop partnership with other stakeholders in the fight against fraud and corruption.

To ensure that management is aware of its responsibilities for identifying exposures to fraudulent and corrupt activities or any other dishonest activities of a similar nature and for establishing controls and procedures for preventing such fraudulent and or corrupt activity and / detecting such fraudulent or corrupt activity when it occurs.

To provide guidance to employees and members of the public as to what action should be where they suspect any fraudulent or corrupt activity.

To provide a clear statement to staff or any other persons having business with the municipality, for bidding any illegal activity.

To provide a clear guidance as to responsibilities for detecting and reporting investigations into fraudulent and or corrupt activities.

To provide assurances that any reasonable suspicion of fraudulent and or corrupt activity will be fully investigated.
Provide for a swift investigation of fraudulent and corrupt activities.
To provide adequate protection and guidance as to appropriate action to employees in circumstances where they are victimised as a consequence of reporting or being a witness to fraudulent and or corrupt activities.
To provide a suitable environment for employees to report matters that they suspect may concern corrupt and fraudulent conduct.

It is the policy of the Municipality that fraud, corruption, theft and maladministration or any other dishonest activities of a similar nature will not be tolerated. In addition, these acts will be investigated and followed up by the application of all remedies available within the full extent of the law. Appropriate prevention and detection controls will be applied. These include the existing controls and checking mechanisms as prescribed by existing policies and procedures, and systems of internal control.

It is the responsibility of all employees and councilors of the Municipality to report incidents of fraud, corruption, theft, maladministration or any other dishonest activity. If an employee is not comfortable reporting such matters to his/her immediate supervisor or manager, he/she should report the matter to the next level of management, with final recourse being to the Municipal Manager.

Appropriate lines of authority should be utilized in line with the Municipality’s policy on delegated authority. Executive Managers are responsible for the detection, prevention and investigation of fraud, corruption, theft, maladministration, or other dishonest activities within their directorates.

3.4.39 Fraud and Corruption Awareness Handbook 2013
According to this hand book, every year, vast sums of taxpayers’ funds are spent on public goods and services by national and subnational entities. An unknown percentage of these funds, unfortunately, are not used for their intended purposes because funds are illegally diverted.
According to a 2013 study commissioned by the European Anti-Fraud Office, the direct public loss encountered within five selected sectors of the economy where European Union (EU) funds are spent in eight member States amounts to 18% of the overall project budgets concerned.

Considering the scale of the problem of fraud and corruption in public procurement, pessimists argue that the idea that it can be prevented from happening seems futile. There is, indeed, no fail-proof solution against the hidden schemes, whose organizers always seem to be one step ahead of the corruption hunters. However, public officials and other concerned stakeholders have been successfully improving their ability to detect, prevent, and punish fraud and corruption, where it is uncovered.

The procurement process has proven particularly vulnerable to fraud and corruption, because that is the point in the investment cycle where money changes hands. In order to prevent misconduct, one must have a keen understanding of the inner workings of the many fraud and corruption schemes that occur.

This handbook offers some insights about fraud and corruption in public investments in Poland as well as in World Bank-financed projects; how it happens and how it can be detected before it negatively impacts investments. Early detection through paying specific attention to red flags in the procurement process can prevent the corrupt parties from succeeding, as multiple examples over the past years have shown.

Much of what we know about fraud and corruption is the direct result of the reporting of alleged fraud and corruption by public sector employees; they are the first-and best line of defence when it comes to protecting funds from misuse. Bidders, civil society representatives and other stakeholders as well are an important source of complaints, which underscores the crucial role of effective complaint handling mechanisms to elicit, channel and respond to complaints. This handbook was written with the intent to raise awareness and encourage public sector employees to be alert to potential malfeasance in the management of public investments.
Published in 2011 by the World Bank’s Integrity Vice-Presidency, this publication builds on the experiences gained by Poland’s Anti-Corruption Bureau and the World Bank with a view to share lessons learned from investigative activities of both organizations.

Bringing integrity to our public investments requires a shared commitment. It provides some insights into how fraud and corruption schemes work in public investments. The handbook identifies a range of fraud and corruption indicators, or red flags, and relevant schemes that may become apparent during the life of an investment, from design to implementation. The primary focus of this handbook is fraud and corruption in procurement, with some coverage of general governance issues.

It is based on the experience of Poland’s Central Anti-Corruption Bureau and the World Bank’s Integrity Vice-Presidency, and it presents examples referring both to public investments implemented under Polish public procurement law and international competitive bidding.

While carrying out the tasks imposed by the legislature, the Central Anti-Corruption Bureau seeks to draw attention to irregularities that may occur while spending public funds for the purchase of goods and services, and investment projects. Non-observance by the procuring entity of the provisions regulating public spending may have negative economic consequences for the unit finances and may result in disciplinary measures and possible criminal prosecution.

This handbook aims to provide support to the managers of procuring entities in conducting public procurement by identifying frequently occurring irregularities and suggesting methods of preventing them.

Government officials, companies or their agents, and supervision consultants most frequently engage in the corruption schemes. These actors play various roles as illustrated below:

*Government officials* often play a central role in corruption schemes by being in a position to influence the award of contracts, the processing of invoices for payment, and the signing of licenses and approvals.
Local and international companies (contractors and sub-contractors) organize or participate in illicit arrangements in order to win contracts. They divert project funds to project officials, with the bribes usually disguised as ‘legitimate’ payments for goods, works or services. Frequently, subcontractors—actual or fictitious—are used to channel funds to project officials.

Contractors’ independent agents may play a role in brokering the illicit arrangements and shielding the contractors from legal action.

Supervision consultants may also be corruptly induced or pressured to sign-off on substandard work.

Senior government officials may provide protection or seek their share of the corrupt payments.

A corruption scheme often involves more than one type of misconduct. A corrupt scheme in procurement often begins with a demand for, or offer of payment, followed by bid rigging and finally fraud to cover up the scheme:

Demand for payment. A government official demands a bribe or kickback from a firm or individual, or a firm or individual offers a bribe, in exchange for a contract award. In most cases, the corrupt official will permit the bribe payer to inflate the price to cover the bribe and preserve its profits.

Bid rigging. To ensure that the contract will be awarded to the bribe-paying firm (whose prices are now inflated to cover the cost of the bribe), government officials manipulate the bidding process to exclude other (presumably cheaper) competitors.

Fraud. To recover the cost of the bribe, and to exploit the corrupt relationship, the firm, usually with the knowledge and complicity of government officials, inflates prices, bills for work not performed, fails to meet contract specifications or delivers substandard product during implementation. This often requires further corrupt payments to inspectors or auditors.
While it is difficult to prove that someone has paid a bribe, there are related activities that can be uncovered more easily. Complaints from disgruntled [losing] bidders and the paper trail left by a government official steering a contract to a favoured bidder are common starting points.

The following section in this handbook deals with indicators, or red flags, which public officials can look for when supervising contract awards. A combination of certain red flags should alert them that a bid rigging scheme may be affecting their investment. Corrupt practices and bid rigging can take place at any stage during the procurement cycle. Sophisticated planning of corrupt activity usually starts at the project design stage when the activities are determined and contracts planned. Officials generally have a level of discretion in drafting specifications or qualification criteria, which provides the opportunity to steer contracts to the favoured bidder.

For each procurement action leading up to the contract award, this section highlights the red flags that can be identified as well as related fraud and corruption schemes. The following bid rigging schemes will be presented:

- Unnecessary items
- Unjustified sole source awards
- Contract splitting
- Inappropriate bundling
- Restricted circulation, short notice, inadequate information
- Unnecessary or inappropriate line items
- Rigged specifications
- Biased evaluation criteria
- Unbalanced bidding
- Leakage of confidential information
- Inappropriate contractual terms
- Hidden interest in a company
- Exclusion of qualified bidders
Late bids, bid tampering and other forms of manipulation.

Finally, the handbook has the following suggestions that:

Ensure the prequalification or expression of interest contains sufficient information for the prospective companies to determine their eligibility. Assess the qualifications criteria used for short-listing in order to determine whether they are in line with the contract requirements.
Review the prequalification and short list evaluation report to ensure that the short-listed companies or firms have the required expertise.

3.4.40 South Kesteven Council District Council Counter Fraud, Corruption and Bribery Framework 2013

According to this framework, South Kesteven District Council is determined to maintain its reputation as a Council, which will not tolerate theft, fraud, corruption, bribery or abuse of position for personal gain in any area of its organisation or activities.

The Council has therefore adopted this Counter-Fraud, Corruption and Bribery Framework which is designed to:

- Promote a culture of openness, integrity and accountability on the part of its Members and employees,
- Eliminate, as far as possible, opportunities for theft, fraud, corruption, bribery and abuse of position to take place,
- Establish effective arrangements for the detection and investigation of any malpractice that does occur and for the imposition of appropriate sanctions against offenders,
- Provide suitable information and training for Members and employees to ensure that they are aware of their duty and responsibility to assist the Council to achieve these objectives.
The Framework applies to all employees, contractors and any persons or organisations doing business with the Council. It applies to all aspects of the Council's business. The Council may actively involve the Police, pursue prosecution and consider disciplinary action against employees where fraud, corruption and bribery are suspected or identified.

The Council will act swiftly and firmly to deal with any person who is suspected of theft, fraud, corruption, bribery or abuse of their position. Disciplinary action will be taken as necessary and the Police will be involved where appropriate. The Council will always seek to ensure that persons subject to investigation are treated fairly and will comply with all applicable legal safeguards.

Maintaining effective corporate governance, the Council is committed to promoting an environment of effective corporate governance (the way in which it manages its affairs) through the openness, integrity and accountability of its Members and employees. Members and employees are expected to adhere at all times to legally sound and honest procedures and practices.

The Counter Fraud, Corruption and Bribery Framework underpins the commitment already made by the Council to provide the highest quality of services to all of our residents and customers by:

- Promoting clear and positive community leadership,
- Consulting with and listening to local people in its planning and decision making,
- Making the most efficient and effective use of public resources through the rigorous application of value for money principles,
- Encouraging co-operative and partnership working with public, private and voluntary organisations,
- Supporting, valuing and developing its Members and staff thereby enabling them to contribute to the continuous improvement of the quality of services.

Elected Members set the tone for the Council as a whole. By being seen to take seriously all matters involving financial probity and standards of personal conduct. Members will provide a clear lead to all persons involved with the Council in any capacity.
The following senior officers have statutory responsibilities for regulating the conduct of the Council according to this framework:

The Chief Executive Officer responsible for the overall management and direction of the Council,

The Section 151 Officer responsible for the financial management and financial probity of the Council,

The Monitoring Officer responsible for the legal probity of the Council,

The Chief Executive Officer, Strategic Directors and Heads of Service have responsibility for the proper organisation and conduct of their services. The Council expects them to maintain an environment in which employees and others feel comfortable in raising issues relating to the way in which business is conducted.

The Council expects and requires all of its employees to display honesty and integrity in their personal dealings with the Council, both as members of staff and as users of Council services. The good sense and alertness of employees can also prove vital in drawing management attention to any areas of systems weakness which could provide opportunities for fraud.

The Council also expects and requires all individuals and organisations (such as contractors, voluntary bodies and service users) with which it comes into contact to act towards the Council with honesty and integrity.

All Members and employees must ensure always that they avoid situations where there is potential for a conflict of interest. Such situations can arise with externalisation of services, licensing, tendering and planning and land issues. Effective role separation will ensure that decisions are seen to be based on impartial advice and avoid concern about the improper disclosure of confidential information.
Anyone who has a genuine concern about potential fraud, corruption, bribery, or weak financial systems within the Council is encouraged to bring it to the Council's attention (in confidence) through any of the following channels:

- The Chief Executive Officer,
- The Section 151 Officer,
- Head of Finance,
- The Monitoring Officer,
- Any other Strategic Director or Head of Service,
- Governance & Risk Officer, and
- The Council’s internal auditors.

All of the above are required by the Council to take such concerns seriously and to ensure that they are properly investigated. If you are not certain as to the extent of the problem you have identified you should still report it. What appears, on initial consideration, to be only a minor incident can sometimes turn out to be much more serious after investigation. The only circumstance in which someone raising an issue could face criticism or (in the case of employees) disciplinary action is where they have made a malicious or vexatious allegation which they know to be untrue.

Also the Council recognises that prevention is better than cure. Fraud, corruption and bribery will be minimised where proper procedures are followed, sound financial systems are in place and effective arrangements are made for oversight and monitoring. The Council has developed a comprehensive network of procedures and systems to provide deterrence against fraud, corruption and bribery and to assist in their detection. These arrangements will be reviewed and developed as necessary to keep pace with future developments.

All Members of the Council are required to comply with relevant legislation, with the Member Code of Conduct and with the Council’s Standing Orders including those relating to Finance and Contracts. These are set out in the Council’s Constitution.
Members sign to indicate that they have read and understood the Member Code when they take office. Conduct and ethical matters are specifically covered within Members’ induction and refresher training.

Members are required to register disclosable pecuniary interests in the Register of Members’ Interests maintained by the Monitoring Officer. Members are responsible for ensuring that the information recorded about them in the Register is kept up to date. Members are required, at the earliest opportunity, to declare disclosable pecuniary interests in respect to matters being discussed at meetings of full Council, the Cabinet, Committees, Boards and Panels.

They are also expected to comply with the Member Code when representing the Council on external bodies.

Members are required to declare the receipt of all gifts and hospitality over the value of £50 in a separate Register maintained by the Monitoring Officer. Items of a lower value can also be entered in the Voluntary Register. Member behaviour is also governed by the Planning Code of Good Practice and the Member/Officer Relationship Protocol, which form part of the Constitution.

Finally, the Council co-operates with other local authorities and other bodies in combating fraud, corruption and bribery. Data may be exchanged with these organisations where appropriate and subject to compliance with the Data Protection Act 1998. These bodies include:

- The Council’s External Auditor,
- Chartered Institute of Public Finance and Accountancy,
- The Local Government Ombudsman,
- HM Revenue and Customs,
- Lincolnshire Constabulary,
- The Department for Work & Pensions,
- Department of Communities and Local Government, and
Other local authorities.

Information obtained direct from members of the public is also important in bringing issues to the Council’s attention. This can include complaints lodged under the Council’s complaints procedure and questions raised with the External Auditor during the audit of the Council’s accounts.

Any Service within the Council that receives money from an external person or body is potentially vulnerable to a money laundering operation. The need for vigilance is vital and if there is any suspicion concerning the appropriateness of a cash transaction this must be reported to the Head of Finance, the Council’s nominated Money Laundering Reporting Officer, without alerting the payee.

The possibility of money laundering through corporate borrowing and lending is minimised through the application of best practice in the Council’s Treasury Management Function. The Council’s Treasury Management Strategy complies with the CIPFA (Chartered Institute of Public Finance & Accountancy) publication, Treasury Management in the Public Services – Code of Practice and Cross Sectoral Guidance Notes.

The Council’s Legal Services have their own professional guidance in relation to Money Laundering which places a duty on solicitors to report any suspicions. These may override their legal professional privilege and confidentiality.

Internal control procedures are designed to deter fraud and can also provide indicators of where fraudulent activity may be occurring most especially where large amounts of data are involved. Statistical analysis can also highlight individual transactions that fall outside normally expected parameters and are worthy of examination. It is often the alertness of Members, employees and members of the public to potential fraud that enables detection to occur and appropriate action to take place.
All employees have a duty to report suspected irregularities to their Service Manager or through the other channels that are set out in this framework. It is essential that these channels are seen to be fully supported by all managers.

3.4.41 Explanatory Manual on the Code of Conduct for the Public Service 2002

The purpose of this manual is to explain the contents of the Code of Conduct more fully. The phrasing of the official Code required brevity, precision and official terminology. This manual is aimed at making the Code more understandable to all public servants.

The manual does not introduce any new principles and follows the same structure and numbering of the principles as in the Code, to allow for easy comparison. When using this manual, departments should try to add examples of their own, related to their particular environment.

It should be emphasised that the development of this manual is a dynamic process and that it may require revision from time to time, like the Code itself, according to its introduction.

In order to promote a high standard of professional ethics in the workplace according this manual, public servants should be encouraged to think and behave ethically. This manual should therefore serve as an aid in developing and presenting short training courses for all employees. This manual also contains many examples which illustrate ethical complexities in the work environment, which may serve as a basis for training and case studies.

As a companion to the Code, this manual can assist in maintaining public confidence in the integrity and impartiality of the Public Service by providing minimum expectations about acceptable behaviour and benchmarks for ethical practices. It is an accepted fact that human beings learn by observation and experience.
A special responsibility is therefore placed on the employer, namely the executing authorities (Ministers and Members of the Executive Council) at the political level, and Public Service managers at all levels, to create an appropriate environment in which values are established and exemplary models are set for all employees.

Section 195(1) (a) of the Constitution requires that “a high standard of professional ethics must be promoted and maintained” in public administration generally. In terms of the collective agreement (Public Service Co-ordinating Bargaining Council Resolution 2 of 1999) all the employees in the Public Service have the responsibility to comply with the prescribed Code of Conduct. As this forms the main basis on which pro-active, corrective and even disciplinary action rests, the employer must do everything possible to ensure that the contents of the Code of Conduct are known to all employees.

An employee must put the public interest first in the execution of his/her duties. This stipulates that where decisions have to be made or discretion has to be exercised, due consideration should be given to putting the interests of the public first. The public servant’s own interests or any other sectarian interest must always be placed subordinate to the public interest which is a challenge in the society.

According to this manual, the Public Service is required to appoint, promote and reward personnel who, irrespective of their political opinion or affiliation, family ties or position in the community, have the abilities to render a service.

The following practices are unacceptable:

Favouritism — this means that certain singled out employees are appointed, promoted, transferred, or given generous treatment based on subjective considerations such as friendship, returning a favour, etc.

Nepotism — this implies that an employee is appointed, promoted, transferred, or given some or other advantage purely based on the fact that he or she has family or other ties with the person in a position to authorise such actions or to manipulate/influence the system.
In order to bring about and maintain trust in the Public Service, all employees are expected to serve in a loyal and dedicated manner. This requires employees not to get involved, either on or off duty, in matters or activities that could:

- Be regarded as being fraud or theft;
- Interfere with the carrying out of their duties;
- Influence the way in which they do their work;
- Influence their objectivity in making decisions;
- Create embarrassment for the State as employer; or
- Be perceived to potentially prejudice or favour certain parties.

Employees’ behaviour on and off duty should be such that the government of the day and members of the public will trust them to loyal do their work, with the objective being the interest of the community.

Lastly an employee in the course of his or her official duties, shall report to the appropriate authorities, fraud, corruption, nepotism, maladministration and any other act which constitutes an offence, or which is prejudicial to the public interest.

Corruption refers to widespread moral deterioration especially bribery or fraud. It often goes hand in hand with other criminal practices, for example influence peddling, drug trafficking, ghost workers, fraud and organised crime which may threaten a legitimate economy.

Firstly, it is a factor of social disintegration and is extremely harmful to any community. It is always underpinned by a “get rich quick” social ethos. Secondly, it undermines the legitimacy of a political system by destroying trust and confidence, for when an administration loses its credibility a climate for instability and lawlessness is created. Thirdly, it frustrates the economic system. It does thi Corruption eats away at the very fabric of public trust and confidence in our democracy.

It is the duty of all employees to report any illegal actions, dishonest behaviour or corrupt practices to their Supervisors or a relevant authority as soon as they become aware of
them. Corrupt practices are often fed by lack of work ethic, absence of public accountability and responsibility, as well as nepotism.

Likewise, potential service providers in the private sector should be made aware of the fact that the Public Service, in procuring services/goods, are bound by the principles contained in the Constitution regulating public administration which require the highest possible level of professional conduct. Offers of gifts, sponsorships, promotional material, luncheon invitations, etc. should thus not form part of their promotional activities in regard to the Public Service as it inevitably creates the impression/perception of improper influencing of decision takers and also makes for unfair competition where small service providers cannot afford to undertake such activities.

As this is always a highly contentious matter, the following is intended to serve as guidelines in directing departments’ actions in this regard. It is impossible to provide departments with comprehensive guidelines and departments should approach the Public Service Commission for advice should they be in doubt regarding the handling of certain situations which may arise.

The acceptance of any gifts or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by performance of employee’s duties can only be accepted within the express written approval of the Head of Department. It is important to note that gifts and hospitality from a source other than a family member need to be declared. The gifts/benefits to be declared must be in excess of R350.

Employees may also consult the Public Service Commission where doubts exist with regard to the acceptance of gifts.

3.4.42 Public Sector Integrity Management Framework 2011

The purpose for introducing the Public Sector Integrity Management Framework is to strengthen measures and standards for managing integrity and promotes ethical conduct in the public service. This Framework provides provisions for managing unethical conduct
that can arise as a result of financial interests, gifts, hospitality and other benefits, post public employment and remunerative work outside the public service. Further proposals are made in respect of deployment of ethics officers in the public service and minimum conduct requirements.

Some of these measures will require legislation to become enforceable. The Department of Public Service and Administration (DPSA) will also conduct communication and awareness workshops to explain all measures contained in the Framework and assist departments with implementation through developing implementation guidelines.

The Public Sector Integrity Management Framework is applicable to the following public Servants:

All persons employed in terms of the Public Service Act, 1994 (Proclamation 103 of 1994), as amended;

Members of the SAPS, Correctional Services, Defence and Intelligence Services and educators only in so far as they are not contrary to the laws governing their employment;

Senior Managers contemplated in (a) and (b) above, for a period of a maximum period after they have left the public service; and

Persons employed by municipalities, to the extent provided in the laws governing their employment.

According to this framework, a myriad of challenges are apparent in the public service as far as implementation of ethical and anti-corruption measures is concerned, chief among them is non compliance with legislation and lack of enforcement. A summary of these measures dealing with a compendium of ethical and good governance measures is contained in Section 7 of this Framework.

There is great frustration about the delayed response of departments in preventing and combating corruption. Sometimes it takes several months for disciplinary processes to even be started. Officials are often suspended on full pay for months, if not years.
Furthermore, there are significant inconsistencies in the type of sanctions applied. Allegations of corruption reported to the anti-corruption hotline are referred back to departments for follow-up, but because departments do not have sufficient investigative capacity, initial investigations are never completed. The ineffectiveness of the Protected Disclosure Act, 2000 has also resulted in the lack of confidence in blowing the whistle against unethical conduct and corruption.

Furthermore, the Country Corruption Assessment (CCA) conducted in 2002, amongst others, highlighted gaps in our knowledge of corruption in relation to incidents, trends, perceptions, causes as well as anti-corruption measures in place to fight corruption. The lack of a central database of cases of corruption was also highlighted.

Implementation of anti-corruption and good governance measures has not been satisfactory including the review to assess impact thereof. Some of the implementation gaps include:

- Limited implementation and adherence to the Code of Conduct. The conduct of some public servants as highlighted in the various government reports have identified a culture of unethical and undesirable conduct by some public servants;
- Non-compliance with the Financial Disclosure Framework. Since the inception of the Financial Disclosure Framework in April 2000 and subsequent expanded application to all senior managers in 2001, a hundred percent (100%) compliance rate has not been achieved. Disciplinary action against officials who fail to submit their financial disclosure forms has also never been instituted;
- Weak enforcement of anti-corruption measures perpetuates non-compliance.

This is also exacerbated by the lack of follow-up on recommendations of the Public Service Commission by some Executing Authorities on non-compliance with the Financial Disclosure Framework;
Non-compliance with Section 30 of the Public Service Act dealing with remunerative work outside the public service and Section 31 dealing with recovery of losses;
Non-compliance with the Minimum Anti-Corruption Capacity Requirements;
Supply chain management prescripts are not adhered to which results in tender related malpractices, fraud and corruption as a result of improperly awarded tenders, goods and services provided at grossly inflated prices, officials benefiting from government contracts, unnecessary purchases and payments for services not rendered;
Weak enforcement and inconsistent application of disciplinary measures;
Resignation and transfer to other departments before disciplinary processes could be instituted or concluded; and
Ineffective implementation of the Protected Disclosures Act, 2000.

The policy gaps which exist are as result of limited implementation of the measures which results in the measure not been fully effective. These gaps are as follows:

a) The ambiguity with regard to the acceptance of gifts found in the Code of Conduct (Chapter 2 of the Public Service Regulations, 2001, as amended, and the Financial Disclosure Framework (Chapter 3 of the mentioned Regulations. In terms of the Code of Conduct, a public servant is prohibited from using his/her position to obtain private gifts or benefits. The Financial Disclosure Framework prescribes that members of the Senior Management Service (SMS) must disclose gifts valued at R350.00 or more;
b) Limited application of the Financial Disclosure Framework has resulted in ‘unregulated public servants’ having business interests which are in conflict with public interest. In terms of the Financial Disclosure Framework, only members of the SMS are required to disclose their financial interests annually to the relevant Executive Authority. Recent government reports on the implementation of the Financial Disclosure Framework have pointed a policy gap in the disclosure system. According to the Public Service Commission and the Auditor-General
reports, the majority of public servants with business interests are officials on salary levels 4 to 8 and are excluded by the financial disclosure framework; and
c) Despite the Public Service Anti-Corruption Strategy identifying the need to regulate post-public employment when it was introduced in 2002, no measures have been put in place in this regard.

In order to close the policy gaps and strengthen implementation of ethical and good governance measures, the following additional measures are proposed that:

Public servants be prohibited from directly or indirectly soliciting or accepting gifts, hospitality or private benefits of any value from any person (natural and juristic) that is contracted to the department to which the public servant is an employee;
Any person, when rendering service to departments in the public service be prohibited from offering gifts, hospitality or private benefits to employees or their immediate families and relatives;
Public servants should be prohibited from accepting or soliciting any gifts, hospitality and private benefits from any person in return for performing or not performing his or her official duties.
The prohibitions of gifts exclude all tokens that may be offered or accepted within normal standards of courtesy or protocol by any entity. This will include tokens such as conference packages (pens, bags, t-shirts, etc) and any promotional materials or gifts that are often offered at functions and events; and
In situations where public servants cannot decline a token of appreciation because it might be considered culturally disrespectful, such tokens must be declared and registered in the departmental gift register. 6.1.6 These gifts will be registered in the Special Anticorruption Unit web site to promote transparency;
An employee whose spouse, partner, business associate or close family member, stand to acquire any direct benefit from a contract concluded with their department, must disclose in writing full particulars of the benefit to the Ethics Officer and withdraw from participating in any manner whatsoever in the process relating to that contract;
Department to appoint/designate Ethics Officer/s depending on the size of the department to scrutinise, assess and analyse the disclosure forms of all employees in their respective department;

An employee to forward his or her disclosure form to the designated Ethics Officer;

An employee to disclose every time there is a change of status as opposed to annually as is currently required;

The Head of Department (HOD) be assigned the responsibility to oversee the approval of disclosure reports compiled by Ethics Officers;

The disclosure forms of Ethics Officer/s be forwarded to their respective Head of Department for submission to the Public Service Commission;

The disclosure forms of Heads of Departments be forwarded to their respective Executive Authorities for submission to the Public Service Commission;

The financial disclosure form be amended to include a requirement to attach a copy of the approval received to perform any remunerative work outside the public service;

The financial disclosure form should be amended to include job description, Identity number of the public servant and for property declaration include ERF No and Unit No; and

The financial disclosure form be amended to include income tax and company registration no, attach the certificate of registration, and specify the sector/s in which interests are held.

An employee with private business interests should first seek approval from the Executive Authority before conducting business with government.

The Executive Authority or designated official must take into consideration:

The nature of goods or services to be supplied to Government by the entity concerned;

The nature and extent of the business interest of the employee concerned in that entity;
The nature and extent of any adverse financial, operational and other circumstances for the state, the employee concerned or members of the public if the application is not approved, and
Whether the approval of the application will be consistent with a fair, equitable, transparent, competitive and cost effective procurement of goods or services; and
Applicable national treasury procurement regulations and policies; and
No employee shall perform or engages himself or herself to perform remunerative work outside his or her employment in the relevant department, except with the written permission of the executive authority of the department.

The Executive Authority shall scrutinise the disclosure to ensure that there is no conflict of interest between the officials functions in the public service during the period of one year prior to the termination of their service and the new functions outside the public service; according to the framework.

3.4.43 Report on an Investigation into Allegation of Maladministration Relating to Financial Mismanagement, Tender and Appointment Irregularities against PRASA 2015

According to this report conducted by the office of Public Protector, Passenger Rail Agency of South Africa (PRASA) an organ of state reported an accumulated loss of R1 billion for 2014/2015 financial year. The budget allocation from government for the Medium Term Expenditure Framework (MTEF) period 2015-2018 was 17.2 billion.

There were 37 cases reported by the Complainant mostly dealing with alleged procurement irregularities with the amount involved being more than R2.8 billion. As the report was finalized by the office further allegations of procurement irregularities at PRASA were reported.

In the process it was reported that South African Transport and Allied Workers Union (SATAWU) attempted to withdraw its complaint something that discomforted the investigation as Passenger Rail Agency of South Africa management was also reluctant to cooperate with the investigation process, using the withdrawal as the basis for questioning the continued investigation by the Office of Public Protector.
There were also allegations of victimization of whistle-blowers, current and former employees of PRASA as well as member of the executive of SATAWU.

The allegations were as follows:

- PRASA improperly cancelled all contracts for cleaning services on the 15th March 2012, and improperly appointed Reakgona Commercial and Industry Hygiene and Katanga Cleaning Services on contract valued the R500 000 threshold in contravention of the Treasury Regulations and Supply Chain Management Policies of PRASA.

- Reakgoma Commercial and Industry Hygiene was awarded a contract due to its association with the Group Chief Executive Officer’s close business associate.

- PRASA appointed Sidas Security Company improperly at a higher rate on tender 525/2010/GAU/PS to replace National Force Security on instructions of the GCEO, but improperly terminated the contract 9 months after its appointment.

- Proper procurement processes were not followed in the appointment of Vimtsire Security Services Company which allegedly failed to meet the minimum requirements for appointment. Royal Security was also allegedly appointed on the same tender in 2009 and allegedly billed PRASA R2.8-million instead of the agreed amount of R2.5 million per month.

- The appointment of Royal Security on tender concerned was irregular, as its original contract WM/FIN/CA/7/24/06 was terminated by PRASA due to its underperformance.

- An amount of R600 000, alleged to have been improperly authorized by PRASA’s Head: Corporate Services, was improperly paid in advance to Enlightened Security for a contract for the Tshwane Metropolitan Municipality Region prior to its appointment on tender TSH/RISK/436/10/2008.

- A tender for the installation of high speed passenger gates worth R800-million was awarded to certain contractor in 2009/2010 financial year for the Doornfontein station but was later improperly extended to other stations nationally without following proper tender processes.
- PRASA improperly incurred an upfront payment, to a developer of the City Mall for the construction of an underground train station (Bridge City Project), without going on a bidding process and without proper authorisation during the periods 2008 to 2010;
- PRASA improperly appointed a media company to produce *Hambanathi* during 2008/2009;
- A PRASA Board member, Mr Vusi Twala, was improperly awarded a tender by Intersite, a subsidiary of PRASA, to provide CCTV cameras;
- A Change Management Consultant, Mr Ezra Ndwandwe, was appointed at a cost of R2 million without following proper procurement processes during 2008/2009;
- The GCEO improperly awarded a tender amounting to an estimated R10 million to the erstwhile CEO of the South African Rail Commuters Corporation (SARCC), Mr Edwin Lekota, for the development of a contingency emergency preparedness programme for Metrorail without following proper procurement processes;
- Umjanji Consortium, a company formed and incorporated after the closing date for submission of tenders on tender HO/CA/739/02/2010, was improperly awarded a tender on Media Advertising and Broadcasting Concession Agreement in March 2011 without following proper procurement processes in contravention of the PRASA Supply Chain Management Policies;
- The GCEO improperly awarded a contract for the provision of professional advisory service on the signalling project to a friend, Mr Makhensa Mabunda of Siyaya DB, who did not possess the necessary skills and experience and without following proper procurement processes;
- A tender amounting to R22 million for the Park Station for Park Station Development Framework was allegedly not advertised but recommended for approval to be awarded to a contractor named ARUP. Associated to a member of PRASA Board in November 2009.
- Between the years 2008 and 2010, PRASA engaged construction companies in the 2010 Soccer World Cup Station Building Project, the Capex Project and renovation of existing stations without following proper procurement processes and an overspending of R2 billion amounting to fruitless and wasteful expenditure.
In April 2010, Autopax concluded an irregular security contract with Futuris Guarding (PTY) amounting to R54 337.20 per month;

PRASA was delaying to pay Rasakanya Builders, the service provider to PRASA Corporate Real Estate Solutions (PRASA CRES), and has improperly served a notice of termination of the contract, thereby leaving 36 employees of Rasakanya Builders without pay for services rendered;

The GCEO/PRASA incurred irregular and/or fruitless and wasteful expenditure relating to the following transactions: upfront payment of an amount of R80 million for the FIFA World Cup sponsorship without proper approval; budget and/or allocated funds which resulted in fruitless and wasteful expenditure; and to this end, the GCEO invested funds with FIFA based on the agreement that PRASA would recoup the expenditure through the sales of tickets to commuters/soccer fans and it is asserted that the money was never recovered;

Brand Leadership was awarded the new PRASA branding contract to the value of R9 million. However, the contract amount was improperly inflated to R19 million, thereby resulting in irregular/fruitless and wasteful expenditure of R10 million;

During the period 2009/2010, the GCEO allegedly requested R1 billion funding from the National Treasury on the pretext that it would be used during the taking over of operations of Shosholoza Meyl. It is alleged that National Treasury paid R500 million, and nevertheless, the funds were never used for their intended purpose;

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PRASA Operational Expenditure (OPEX) budget was improperly overspent by R2.2 billion without the approval of the PRASA Board during the period 2009/2010;

PRASA Head Office staff vacated its Offices at Jorissen Building 14 months before the expiry of the lease agreement but PRASA continued to pay rental, which constituted fruitless and wasteful expenditure;
• After vacating Jorissen Building, PRASA acquired Umjantshi House Building to accommodate its Head Office staff without following proper procurement processes and without a proper budget approval;

• The GCEO instructed PRASA Management at the Intersite Building in Woodmead to vacate the premises 20 months prior to the expiry of the lease agreement, but continued to pay for the lease, thereby constituting fruitless and wasteful expenditure;

• The GCEO dismissed five Senior Executives unlawfully during the years 2008 and 2011 and the CCMA ordered their reinstatement, which he rejected and instead compensated them with an estimated R5 million, which constituted fruitless and wasteful expenditure. The Group Executive HR was replaced improperly by the GCEO’s uncle, Mr Mphefo Ramutloa, without proper recruitment processes being followed;

• During February 2010, an unlawful Electronic Funds Transfer (EFT) was uncovered in a forensic report by Deloitte, in which R8.1 million was fraudulently transferred in the Durban and Tshwane Regions but no action was taken against those implicated in the transaction.

• During the period 24 to 27 September 2009, Mr Montana undertook a leisure trip in a Blue Train to Cape Town together with 10 female companions and returned in a South African Airways (SAA) flight costing PRASA R17 000.00. The total cost of the trip was allegedly an estimated R170 000.00 which constituted fruitless and wasteful expenditure;

• During 2008/2009, the Executive Corporate Affairs Manager, Mr P Mabe, allegedly received salaries from PRASA despite having left its service and Mr Montana allegedly misled the Executive Committee (EXCO) and the PRASA Board that the employee was not on PRASA’s payroll; and

• PRASA disregards the labour relations processes and conditions of employment when dealing with labour issues thereby costing the entity enormous amounts of money that resulted in fruitless and wasteful expenditure. To this end it is alleged that:

  a) Mr Stephen Ngobeni, Mr Montana’s cousin in the employment of PRASA, was improperly appointed as a Training Contractor to provide training services on
the handling of People with Disability. He was later allegedly improperly transferred without a disciplinary process being instituted against him; and  
b) Mr Montana unlawfully engages yearly in a series of suspending employees perpetually payment of salaries costing PRASA an estimated R3.35 million in fruitless and wasteful expenditure.

- The complainant further raised allegations of conflict of interests relating to the following PRASA Board members:
  
i. Dr Bidgette Gasa who was also director of ARUP, a company contracted to provide advisory services to PRASA, and another consultancy company

ii. The chairman of PRASA Board, Mr Sifiso Buthelezi alleged to be CEO of Makana, subsidiary of Cadiz also proving advisory services on the Rolling Stock Recapitalization Project.

iii. The wife of Mr Bushy Boshielo was appointed as General Manager of Autox without following proper recruitment processes whilst Mr Boshielo was still a board member.

- During 2008/2009, Mr Montana improperly appointed Mr Chimanda as a Special Advisor at PRASA at a cost of R2 million, without following proper recruitment processes and in contravention of the PRASA Recruitment Policy.

- About 17 tenders/contracts collectively exceeding R2.8 billion were specifically identified by the Complainant for investigation of supply chain irregularities, including non-competitive processes, cronyism, scope creep, cost overruns, overpayments and fruitless and wasteful expenditure.

Given the magnitude of the problem within PRASA, indications were that there would be a second round of the investigation, but given that Thuli Madonsela is no longer in the office there is no guarantee for the second round of the investigation.
3.4.44 Report on a Systematic Investigation into Alleged Maladministration by the Nala Local Municipality 2013

According to this report of the office of Public Protector, most of the systemic service delivery failures and maladministration complaints were substantiated, including the failure to expeditiously implement the recommendations of the forensic investigation report of KPMG. The Municipal Manager at the time, received KPMG report during 2010 and failed to table the it in the council or to release the findings of a KPMG forensic investigation that was conducted in respect of the Nala Local Municipality. The executive summary was only tabled in the council on the 14th November 2011, whereas the report was received by the Municipal Manager on the 20th September 2010, which was in contravention of Municipal Systems Act 2000.

The former Municipal Manager did not adhere to Supply Chain Management policies and in some cases engaged in incidents amounting to manipulation of SCM processes such as in the case of the Bucket Eradication Phase 3 tender which was also in contravention of the Municipal Finance Management Act 2003. The Municipal Manager and the Mayor and the council failed to take the required steps to implement the recommendations of the KPMG report. Also the Municipal Manager failed to ensure that disciplinary proceedings were conducted in respect of the officials implicated in the report.

3.4.45 Report on Investigation into Allegation of Unethical Conduct Relating to Installation and Implementation of Security Measures at Private Residence of President Zuma at Inkandla 2014

According to this report, “Secure in Comfort” is the report of Public Protector on investigation conducted into allegations of impropriety and unethical conduct relating to installation and implementation of security and related measures and the private residence of the President of the Republic of South Africa Mr Jacob Zuma at Inkandla in KwaZulu Natal Province.

The cost estimation for the project was R145 million at the time according to the Architectural Services of the Department of Public Works. At the time of concluding the report it is said that R215 million had been spent while the total cost to conclude the project was conservatively estimated at R246 million.
The investigation was carried out in response to seven complaints lodged between December 2011 and November 2012. The earliest concerns regarding excessive expenditure at the private residence of President Zuma were expressed on the 04\textsuperscript{th} of December 2009 by the Mail and Guardian at cost of R65 million then. Apart from the release of a statement by the presidency denying that government was footing the bill, nothing seems to have been done by government to verify the allegations or attempt to arrest the costs which the article predicted would continue to rise.

Three years later and a year after a complaint was lodged with Public Protector’s office, the Minister of Public Works appointed a task Task Team of officials composed of departments involved in the project, to investigate specified matters in relation therewith.

The Task Team report was released to public in December 2013. More items were added to the project after the concerns were raised in 2009, bringing the costs from R65 million to R215, which had since been spent, whilst outstanding was estimated at R36 million bringing the envisaged total costs to R246 million.

A number of questions were raised according to this report for instance:

Where was the money coming from and how had it been approved;

Whether undue political influence was placed on the Department of Public Works to allocate these funds;

Who issued the instruction for the allocation of these funds;

Whether these funds had been properly budgeted for;

Whether any funds had been transferred from other much needed projects for this revamp to place;

Whether the allocation of funds for which is essential a private home which will not remain within the state’s ownership-represents irregular expenditure;

How can this amount of money be spent on a private residence of any government employee;
The additional complaints raised issues regarding the possible abuse of Executive privileges, impropriety, extending benefits to relatives and misleading Parliament,

Included in the complaints were the following significant statements according to the report:

“I do not understand how this money can be spent on a private residence of any government employee, especially when that employee has two residences at his disposal in Cape Town and Pretoria.”

“Whether this construction is being performed for President Zuma as President of SA or as a favour as ANC President, I would suggest it is misuse of state funds to the benefit of a private individual, possibly to curry political favour for the Minister of Public Works or a DG. When the President is no longer the incumbent he is not entitled to state housing but he will enjoy the benefits of the modifications to his private estate in perpetuity.”

“While the majority of people in this country still struggle and fight for survival it is deeply disturbing to discover that the President and some of his close senior supporters feel that it is all right to abuse their positions to benefit themselves and each other at the expense of the nation and all her citizens. These individuals, in their capacities as servants of the people, should be held to task if they are in any way guilty of wrongdoing, abuse of power or corruption.

If the allegations in the press on what is happening with the President’s private homestead in Nkandla are true, then the President and those involved in facilitating these massive renovations are possibly guilty of a number of transgressions and should be held accountable. At the least these allegations should be grounds for you and your team to conduct some sort of investigation.” (Public Protector 2014: 7-8)

It would appear that the course of events changed significantly around August 2009, when Mr Makhanya, the President’s private architect who had been involved in the President’s
non-security construction works, was brought in, without going on tender, to act as the DPW’s Principal Agent in respect of the entire Nkandla Project, while retaining his position as the President’s Principal Agent and architect. This is the period when the scale of work increased exponentially, leading to installations that were not recommended in any of the authorizing instruments or Security Evaluation Reports and the cost of works escalating to over R215 million. It is also the point at which the Director: Architectural Services at the DPW expressed concerns about moving from “humble beginnings to establishing a full township.

By installing measures that were not based on the outcome of any of the 2 security evaluations carried out using the Minimum Physical Security Standards as required and not quantifying and approving the scope of measures before approaching service providers, the process that ensued from August 2009 did not fully comply with the Cabinet Policy of 2003, from which the authority to install security measures was derived. The Cabinet Policy of 2003 requires:

- Request by the President or Presidency for security measures;
- Security evaluation by the SAPS and State Security Agency;
- A proposal to the Inter-Departmental Security Co-ordinating Committee or technical;
- Cost estimate prepares by DPW;
- The SAPS to advise the Minister of Police on the proposed security measures including the cost;
- Communication to the President on the approved security measures for his or consent; and
- Implementation by the DPW.

If the Cabinet Policy of 2003 was not complied with then, what about the National Key Points Act? The Presidency and SAPS have since argued that there was no need to comply with the National Key Points Act. This was despite the fact that in submissions to Parliament and media statements, the National Key Points Act was used, primarily by the
Minister of Public Works, to justify the installations and related expenditure at President Zuma’s private residence.

According to the Declaration Certificate issued by the Minister of Police, Mr Nathi Mthethwa, on 08 April 2010, the security installations at the President’s residence were supposed to be handled in terms of the National Key Points Act. Since work was already in progress, the directive in the declaration was to presumably apply from that date onwards. Unfortunately, the organs of state involved have failed to address the Public Protector on what was intended arguing, in a very strange way that the act of bringing in the National Key Points Act was to secure what had already been built in the name of security.

The office of the Public Protector had the following findings according to the report that:

The expenditure of an amount in excess of R215 million that was spent by the DPW on the Nkandla Project, the prescribed open tender process was not utilized for the procurement of the goods and services required at any stage of the project. Treasury requirements require that all goods and services between R10 000 and R500 000 be subjected to three quotations and above R500 000, to an open tender process. Most of the deviations from the prescribed open tender process were justified in internal memoranda and minutes of meetings citing:

a) The fact that a particular service provider was appointed by the President and that there was a need to integrate the project with the President’s private works;
b) Security;
c) Instructions from the Minister of Public Works;
d) Urgency; and
e) Indications that the service/product required was only available from one supplier.

The investigation had its own limitations according to the report which caused some delays.
The investigation took approximately two years, which exceeded the one year target the Public Protector South Africa team had set for complex investigations. The delays could be attributed to the following:

a) Internal capacity constraints;
b) Access to classified information;
c) Access to the report of the internal Task Team appointed by the Minister of Public Works;
d) Objection lodged by the Minister of Police on 22 March 2013, later supported by the Ministers of Public Works and State Security with the assistance of the Acting State Attorney and the Chief State Law Advisor to the investigation; 

e) General delays in access to information held by some departments involved in the Nkandla Project; and

f) Requests for extensions to submit responses to notices issued in terms of section 7(9) of the Public Protector Act.

When the Executive Members’ Ethics Act dimension was added in December 2012, the 30-day period stipulated in this Act could not be met, primarily because this was an addition to an existing extensive investigation in terms of the Public Protector Act. Furthermore, the abovementioned delays exacerbated the situation;

Some of the parties that appeared to have been implicated by the investigation were assisted by attorneys and advocates in their responses and a total of 7 attorneys and 5 advocates were involved, some of whom tried to turn the investigation into adversarial proceedings. Threats of interdicts were frequently made.

The following jurisdictional and process issues were raised by respondent organs of state and implicated persons:

The authority of the Public Protector to conduct the investigation at the same time while the Executive had decided on the agencies it wanted to conduct the investigation;

The authority to investigate the conduct of a private consultant contracted by the state;
The access to, scrutiny and review of the evidence and information obtained during the investigation; and
The process followed during the investigation. In some cases, there was a lack of proper understanding of the provisions of the Public Protector Act.

The security nature of the project in question required an extensive consideration of the legislation and other prescripts that regulate the security classified information. In terms of the provisions of the Minimum Information Security Standards Policy (MISS), this means that the information is regarded as being of such a nature that its unauthorized disclosure/exposure can be used by malicious/opposing/hostile elements to neutralize the objectives and functions of institutions and/or the state.
In essence the Public Protector had to strike a balance between security on the one hand and accountability and openness.
She took into account the provisions of section 1(d) of the Constitution, entrenching accountability, responsiveness and openness among other founding values of democracy.

Her office took drastic measures to ensure that information that was sensitive and classified was secured throughout the investigation. In relating to the ethical considerations, she was faced with asking the President the same questions that she had to ask of the former Minister of Cooperative Governance and Traditional Affairs, the late Mr S Sicheka, and the Minister of Police, Mr N Mthethwa, when she investigated allegations of unethical conduct against them, i.e. did she raise any concerns about obvious extravagant and expensive measures that were being implemented by the state at his private residence? In Mr Mthethwa’s case he questioned obvious excessive expenditure and took steps to remedy the impropriety.

Her approach to the investigation was to consider and evaluate what happened, what should have happened and whether there was a discrepancy between the two that constituted improper conduct and maladministration, to rectify or remedy the impact.
Finally, the office of the Public Protector had the following findings on the investigations:

The key violation in this regard was the failure to follow the processes outlined in the Cabinet Policy and the deviation from the 16 security measures that were recommended in the Second Security Evaluation by SAPS. This constituted improper conduct and maladministration.

With the National Key Points Act having been inexplicably dragged in halfway through the implementation of the Nkandla Project, its provisions had to be complied with. This did not happen. Neither was there compliance with the contents of the declaration of the Nkandla Residence as a National Key Point, as signed by the Minister of Police on 08 April 2010.

In relation to installations at the request of the Surgeon General on behalf of the Department of Defence (DOD) and South African Medical Health Services (SAMHS), there appears to be no instrument specifically authorizing the construction of brick and mortar installations at or for a private household. The installations were justified on generic military doctrines aimed at installations built in pursuit of public services and the general power given to the SAMHS to provide health services to the President Deputy President, Minister and Deputy Minister of Defence and, at the request of the Minister of International relations, foreign dignitaries.

The organs of state involved in the Nkandla Project failed dismally to follow Supply Chain Management prescripts, such as section 217 of the Constitution, PFMA, Treasury Regulations the Department of Public Works (DPW) Supply Chain Management policy, key omissions including: the absence of demand management; improper delegations; failure to procure services and goods costing above R500 000 through a competitive tender process; failure to conduct due diligence leading to the engagement of service providers such as the Principal Agent without the necessary qualifications or capacity for security measures; failure to ensure security clearance for service providers, and allowing “scope creep” leading to exponential scope and cost escalations.
The conduct of all organs of state involved in managing the Nkandla Project, particularly officials from the DPW, who unduly failed to comply with Supply Chain Management prescripts was unlawful and constitutes improper conduct and maladministration. The DOD and SAPS officials failed to comply with Treasury Regulation 16A.3.2 imposing the responsibility for demand management on client departments, which include ensuring cost effective measures and budgeting, appropriately for such. A number of the measures, including buildings and other items constructed and installed by the DPW at the President’s private residence went beyond what was reasonably required for his security. Some of these measures can be legitimately classified as unlawful and the acts involved constitute improper conduct and maladministration.

Measures that should never have been implemented as they are neither provided for in the regulatory instruments, particularly the Cabinet Policy of 2003, the Minimum Physical Security Standards and the SAPS Security Evaluation Reports, nor reasonable, as the most cost effective to meet incidental security needs, include the construction inside the President’s residence of Visitors’ Centre, an expensive cattle kraal with a culvert and chicken run, a swimming pool, an amphitheater, marquee area, some of the extensive paving and the relocation of neighbours who used to form part of the original homestead, at an enormous cost to the state. The relocation was unlawful as it did not comply with section 237 of the Constitution. The implementation of these installations involved unlawful action and constitutes improper conduct and maladministration.

The expenditure incurred by the state in respect of the measures taken, including buildings and other items constructed or installed by the DPW at the request of the SAPS and DOD, many of which went beyond what was reasonably required for the President’s security, was unconscionable, excessive, and caused a misappropriation of public funds. The failure to spend state funds prudently was a contravention of section 195 (1)(b) of the Constitution and section of the Public Finance Management Act. The acts and omissions involved were, accordingly, unlawful and constitute improper conduct and maladministration.
President Zuma told Parliament that his family had built its own houses and the state had not built any for it or benefited them. This was not true. It was common cause that in the name of security, government built for the President and his family in his private a Visitors’ Centre, cattle kraal and chicken run, swimming pool and amphitheatre among others. The president and his family clearly benefited from the project according to the report.

3.4.46 Fraud Prevention Plan for the Marine Living Resources Fund 2013

The Fraud Prevention Plan of the Marine Living Resources Fund has been developed to comply with section 3.2.1 of the Treasury Regulations to the Public Finance Management Act.

The FPP is a dynamic strategy that will continuously evolve as it makes changes and improvements in its drive to promote ethics and fight fraud, corruption, theft, maladministration and other acts of misconduct. According to this plan, it is important that all employees understand and are aware of what acts are deemed corruption, fraud or maladministration, and the responsibilities for combating these in the workplace. Employees should understand that the department has a zero tolerance approach to fraud and corruption. Corruption is defined as the subversion of public interest and the common good by private interest according to the plan. More specifically, it is the abuse of power for illegitimate or illegal gain or profit, or the failure to impose proper controls. In general terms, corruption involves improper acts or omissions, improper use of an official’s influence or position, and/or improper use of information. It can also be defined as an official’s misuse of position, which may lead to a criminal offence, a disciplinary offence or reasonable grounds for dismissal.

It may include breach of trust, bribery, blackmail, obtaining or offering secret commissions, obtaining financial benefit from employers for non-compliance with labour legislation or violence, just to name a few.

Corruption should be distinguished from maladministration, but is closely related to it, since in the absence of properly functioning systems and controls, corruption is permitted to thrive.
Maladministration can be defined as actions or inactions of a serious nature that are contrary to the law, or unreasonable, unjust, oppressive or improperly discriminatory, or based wholly or partly on improper motives. Maladministration will involve non-performance of functions in terms of the Public Finance Management Act, i.e. ignoring management’s request to implement controls in high risk areas, negligence of duties by managers and supervisors, to name a few. Fraud is generally regarded as a subset of corruption. The difference is primarily that fraud involves personal gain.

In South Africa, the Common Law offence of fraud is defined as “the unlawful and intentional making of a misrepresentation which causes actual and or potential prejudice to another”. Fraud can be described as any conduct or behaviour of which a dishonest representation and/or appropriation forms an element.

White-collar crime is generally defined, as those illegal acts characterised by deceit, concealment, violation of trust, and not dependent upon application or threat of physical force or violence. Such crimes are committed to obtain money, property, and services or to secure personal or business advantage.

The terms “fraud” and “corruption” in this document include, and are not limited to, fraud, corruption, and theft that are crimes. They also include maladministration and other acts of misconduct including those specified in the PFMA and Disciplinary Code and Procedure. They are manifested as follows:

a) Any dishonest, fraudulent or corrupt act;
b) Theft of funds, supplies, or other assets;
c) Maladministration or financial misconduct in handling or reporting of money, financial transactions or other assets;
d) Making a profit from insider knowledge;
e) Disclosing confidential, proprietary, classified or restricted information to outside parties;
f) Irregularly accepting, requesting, offering or giving anything of material value to or from contractors, suppliers, or other persons providing services/goods to the MLRF, and/or its Programmes and/or Clients;
g) Irregular destruction, removal, or abuse of records, furniture, and equipment;
h) Deliberately omitting or refusing to report or act upon reports of any such irregular or dishonest conduct;
i) Acts of financial misconduct contemplated in terms of sections 81 to 85 of the Public Finance Management Act;
j) Incidents of unauthorised, irregular or fruitless and wasteful expenditure as defined in the Public Finance Management Act; and
k) Any similar or related irregularity.

Heads of directorates are responsible for fostering an environment that makes fraud prevention a responsibility of all staff and which demonstrates the department’s zero tolerance of corrupt or fraudulent activities.

The main objective of the FPP is to change the way in which employees think about fraud and corruption, and to put fraud prevention strategies in place. The central component of the strategy is to create awareness of the FPP amongst all employees through education and communication campaigns. The components of the FPP are the following:

a) Creation of fraud and corruption awareness in general, and awareness of the FPP and its components in particular, amongst employees and other stakeholders through communication and education;
b) The Organisation’s policies, procedures, rules, regulations and other prescripts (including the PFMA and supporting Treasury Regulations);
c) The disciplinary code and procedure;
d) Implementation of sound internal controls to prevent and detect fraud and corruption;
e) An effective internal audit function;
f) An effective anti-fraud and corruption investigating capacity;
g) Ongoing risk assessments;
h) The Management structures for the Fraud Prevention Plan, adopted to steer and take responsibility for the FPP as well as to ensure effective implementation and maintenance.
i) A Code of Ethics and Business Conduct (the “Code”) containing a set of values to which management and employees subscribe;

j) An Anti-Fraud and Corruption, including a fraud and corruption response plan and comprehensive steps for the proper resolution of reported and detected incidents and allegations of fraud and corruption;

k) An anti-fraud and corruption hotline for confidentially reporting fraud and corruption;

l) Physical and information security management; and

m) Ongoing maintenance and review of the FPP.

An illustration of the FPP is contained in the figure below:

i. Training and Education regarding good ethics, and the MLRF’s stance to prevention, combating, detection and investigation of fraud and corruption; and

ii. Creating awareness of the FPP through:

   Education of employees regarding the FPP; and

   A communications campaign.

3.4.47 Assessment of the Effectiveness of National Anti-Corruption Framework 2008

According to this framework, effective implementation and application of the national anti-corruption framework is largely dependent on having strong institutional capacity to implement and apply the various anti-corruption legislative and normative frameworks. South Africa unlike other countries has opted for a multi-agency approach to fighting corruption. This has been a feature of debate concerning the functioning of the anticorruption bodies.

There appears to be general consensus that each agency has a role to play in fighting corruption. Currently, there are at least ten bodies that are tasked with fighting corruption. Most of these agencies focus on the investigation and prosecution of corruption. Of concern is the fact that it is not clear which agency is tasked with the prevention of corruption including education, awareness raising and training. The Department of Public Service and Administration (DPSA) has increasingly taken over this role.
In addition to the national anti-corruption agencies, departments and organisational components are also tasked with ensuring there is minimum capacity within departments to fight corruption. This part of the study focuses on the effectiveness of the various anti-corruption agencies, departments and organizational components in fighting corruption.

### 3.4.48 Corruption Watch Annual Report 2014

In the Corruption Watch Annual Report 2014, David Lewis the Executive Director, argues that fighting corruption is a long term affair; which is probably a permanent task. Any society to hold accountable its elected representatives and its public and private sectors leaders, will be confronted by increasing corruption. There is little doubt of the determination of the South African public to hold accountable those who abuse public power and public resources. From suburban dinner tables to shacks in informal settlements, corruption and its corrosive consequences is the conversation of the day.

Public outrage is expressed in various ways according to him, in voting patterns, in declining investment. Elevating corruption to first place in South Africa’s political conversation is the contribution that Corruption Watch has made and will continue to make. Loud and well-informed talking is the way democracies change.

There is evidence that those in power are starting to get the message; politicians at every level jostle to establish their anti-corruption credentials.

While many of them are clearly hypocritical and simply pandering to popular opinion, each time an elected representative proclaims his/her opposition to corruption he/she publicly sets a higher standard against which the public will judge him/her.

At least as important, there is clear evidence that the leadership of both the public and the private sectors recognise the critical role of civil society. This is seen in the constant stream of requests from government institutions and businesses to assist them in developing anti-corruption programmes as well as invitations which are always pleased to be accepted.
The senior courts have long demonstrated the serious light in which they view corruption. Particularly encouraging is the recent decision by the Supreme Court of Appeal to increase the sentence of J Arthur Brown for stealing funds entrusted to him from a fine of R150 000 to 15 years’ imprisonment. Clearly the court recognises that to stem corruption, it is necessary to demonstrate that there will be serious consequences for those caught with their fingers in the till. For all these reasons, we at Corruption Watch see a glimmer of light at the end of the tunnel. But we still have a mountain to climb and now is the time to increase the pressure. We have identified a number of critically important targets for the next phase of our work. These include exposing the impunity enjoyed by those who are politically well-connected; reforming the criminal justice system; making political party funding transparent; reforming the procurement system; reducing the vulnerability of local government to corruption; and shining a light on the flow of illicit funds to and from South Africa.

Of course, none of these major problems will be solved overnight; nor will they be solved by Corruption Watch acting alone. Our contribution will be to raise the volume and quality of discussion around these issues, to draw the South African community into these important conversations and to place public pressure on all of those empowered to effect the necessary reforms.

The following year will see us focusing on drawing the voice of the youth into the struggle against corruption. Our approach to the youth is not based on the condescending notion that they are “the leaders of tomorrow”, implying that if they behave themselves and respect the “leaders of today” they will learn the ropes and be admitted to the ranks of leadership when their time comes. In the area of corruption, certainly, the youth have little to learn from the current generation of leadership. We approach the youth on the basis that they are the leaders of today. The youth lead the way in music and fashion, in the adoption and adaptation of new communications technologies, in the very language that we speak.
They are already proven leaders, great influencers of their parents’ generation. There is no reason to expect that they will not lead the way in fighting corruption. Moreover, the youth are the generation least likely to embrace conservative values, and most likely to believe that a fundamental change in values and ethics is possible. So these then are the pleas that we will make to the youth when we ask them to lead the struggle against corruption: The first is to embrace change. For better and for worse, there are plenty of others who will argue for conserving the past. You, the youth, should be the representatives of change. Secondly, seize this moment; insist that your voices be heard now. If you wait until you are told by this generation of leadership that you are ready to lead, it will be too late to change anything, and certainly it will be too late for you to change anything.

Some of you may feel – and you would be justified for feeling this way – that for a person embarking on her working life, the most challenging uncertainties are in the surrounding environment. Some may be concerned by corruption; some may be concerned about climate change; others may be concerned about growing inequality and unemployment. Don’t imagine that anyone will overcome these problems for you.

So whatever you do, keep the big picture in mind and set about repainting the canvas. Just start doing it in the certainty that, when you find the right brushes and colours to use, others will join you – even your parents. And when others join you, those in power will be forced to listen.

3.4.49 Special Investigating Units and Special Tribunals Act 74 (Act of 1996)

This Act was enacted to provide the establishment of Special Investigating Units for the purposes of investigating serious malpractices or maladministration in connection with the administration of the state institutions, state assets and public money as well as any conduct which may seriously harm the interests of public, and for the establishment of Special Tribunals so as to adjudicate upon civil matters emanating from investigations by Special Investigating Units; and to provide for matters incidental thereto.
According to this Act the following allegations may be investigated:

- Serious maladministration in connection with the affairs of any state institution;
- Improper or unlawful conduct by employees of any state institution;
- Unlawful appropriation or expenditure of public money or property;
- Unlawful, irregular or unapproved acquisitive act, transaction, measure or practise having bearing on state property;
- Intentional or negligent loss of public money or damage to public property; and
- Unlawful or improper conduct by any person which has caused or may cause serious harm to the interests of public or any category thereof.

The functions of a Special Investigating Unit are, within the framework of its terms of reference as set out in the proclamation referred to in section 2 (1):

- To investigate all allegations regarding the matter concerned;
- To collect evidence regarding acts or omissions which are relevant to its investigation and, if applicable, to institute proceedings in a Special Tribunal against the parties concerned;
- To present evidence in proceedings brought before a Special Tribunal;
- To refer evidence regarding or which points to the commission of an offence to the relevant prosecuting authority;
- To perform such functions which are not in conflict with the provisions of this Act, as the President may from time to time request;
- From time to time as directed by the President to report on the progress made in the investigation and matters brought before the Special Tribunal concerned;
- Upon the conclusion of the investigation, to submit a final report to the President; and
- To at least twice a year submit a report to Parliament on the investigations by and activities, composition and expenditure of such unit.

The Special Investigating Unit is an independent statutory body previously known as the Heath Commission. The Unit was re-established in August 2001 as the SIU. The SIU
addresses fraud, corruption and maladministration within the public service and assists the State in recovering money lost as a result of unlawful or corrupt action. It started with only 67 members in 2001 and it has grown to at least 600 members and it has established regional offices in major towns in South Africa.

The SIU’s key investigations over the past few years have been investigations into social grants fraud within the Department of Social Development; investigations into the irregular issuing of driving licenses in the Department of Transport; recovering of losses within the Department of Correctional Services and made numerous systemic recommendations; and is currently completing an audit of 13 343 beneficiaries for the Special Pensions Fund. The SIU has contributed to combating and preventing corruption in the country. This is evident from the number of successful interventions that SIU has been involved in. Over the years, the SIU has managed to save millions of rands for government, according the framework.

3.4.50 Special Investigating Unit Annual Report 2011/2012

According to this report, Special Investigating Unit was mandated by Proclamation R62 to investigate claims of irregularities at the Tshwane Metropolitan Municipality among other things. These included the appointment of staff to positions they were not qualified or best suited for, the mismanagement of the affairs of municipal entities and mismanagement of the municipality’s finances and assets. Further issues were the irregular procurement of goods and services, as well as interference by the City Manager in pending disciplinary proceedings against employees of the municipality. The investigation found that 66 officials had conflicts of interests and failed to disclose these to the municipality as required by the MFMA. The matters involving these officials were referred to the municipality for disciplinary action. Recommendations on the improvement of systems and controls were also made.

Eight procurement investigations were finalized with the fact that R104 million in irregular, fruitless and wasteful expenditure was identified among seven of the investigations. The SIU had also finalized investigations in respect of 83 deviations where work was allocated to service providers without the supply chain management procedures being followed. In
most of these matters, it was established that lack of planning resulted in the need to deviate from formal procedures. A total of the 43 matters to the value of R430 million are under investigation. An investigation against a senior procurement official in the Metro Police was referred to the ACTT as a result of payments being made in excess of R90 million to seven companies with which the official has links.

Preliminary findings revealed a possible R140 million in unauthorised expenditure in a contract awarded for the installation of CCTV cameras. Site inspections being conducted to verify whether the actual number of cameras, as invoiced for, have in fact been delivered and installed.

Investigations to date have revealed that the municipality had made payments in excess of R1.9 billion on 22 746 transactions on its one-time vendor account. This account was established to pay service providers who provided a once-off service to the municipality and who were not registered on the preferred supplier database. A report detailing systemic recommendations on how to manage the account was in draft, as no checks and balances existed.

The invoices and action reports of 300 3G users were reviewed. Of these, 189 accounts were identified as being used excessively and recommendations were subsequently made for them to be deactivated, pending the finalization of the investigation. From those deactivated, only nine users requested activation. Due to the deactivation of the cards six months ago, the Tshwane Metropolitan Municipality had reported total savings of R502 778 to date.

An investigation was being conducted to verify the qualifications held by all officials occupying positions in management level 1 to 3. It had been proven that five senior officials submitted fraudulent qualifications. Two of these officials have already been found guilty and have been dismissed. Criminal cases were being registered. The disciplinary matters in respect of the other three were underway.
In the investigation into fraudulent identity numbers, the Department of Home Affairs (DHA) confirmed that eight officials had more than one identity number linked to them. In 11 instances, the identity numbers used by officials on the municipal payroll database did not exist on the DHA database.

The investigation of irregularities with regard to officials using identity numbers belonging to persons classified as deceased on the DHA database was finalised and systemic recommendations were made to the municipality.

A total of 212 employees have been identified with fraudulent driving licences. Investigations on 60 of them had been finalised and the SIU recommended the cancellation of their licences and instituting disciplinary action. Investigations of the 164 Metro Police officials with convictions were finalised. Thirteen officials with convictions and who are awaiting trial for other offences have been redeployed, pending the finalisation of their cases. The SIU was currently preparing disciplinary case files.

3.4.51 Special Investigating Unit Annual Report 2012-2013

According to this report Special Investigating Unit is an independent statutory body that is accountable to the president and Parliament in terms of its activities. It was established to investigate corruption and maladministration and to report on the findings of these investigation. Its primary mandate is recover and prevent financial loses to the state due to various acts of corruption, fraud and maladministration. It also assists departments with systematic improvements that will improve service delivery.

The Special Investigating Unit is an entity with powers of investigation and litigation. Following the issuing of presidential proclamation, the SIU has powers to subpoena, search, seize and interrogate witnesses under oath. It can take civil action to correct any wrongdoing it uncovers in its investigation. The SIU can obtain a court order to compel a person to pay back the wrongful benefit received and consequently recover the money for the state.

It works with the department concerned to cancel contracts when proper procedures were not followed, or to stop transactions or other actions that were not properly authorized.
While it does not have the powers to arrest or prosecute offenders where criminal conduct is uncovered, it will bring the matter to the attention of the Directorate for Priority Crime Investigation, Hawkes as well as the National Prosecuting Authority.

The SIU may investigate any matter set out in section 2 of the Special Investing Unit Act, including the following:

- Serious maladministration in connection with the affairs of any state institution;
- Improper or unlawful conduct by employees of any state institution;
- Unlawful appropriation or expenditure of public money or property;
- Unlawful, irregular or unapproved acquisitive act, transaction, measure or practise having bearing on state property;
- Intentional or negligent loss of public money or damage to public property; and
- Unlawful or improper conduct by any person which has caused or may cause serious harm to the interests of public or any category thereof.

The functions of a Special Investigating Unit are, within the framework of its terms of reference as set out in the proclamation referred to in section 2 (1)-

- To investigate all allegations regarding the matter concerned;
- To collect evidence regarding acts or omissions which are relevant to its investigation and, if applicable;
- To institute proceedings in a Special Tribunal against the parties concerned;
- To present evidence in proceedings brought before a Special Tribunal;
- To refer evidence regarding or which points to the commission of an offence to the relevant prosecuting authority;
- To perform such functions which are not in conflict with the provisions of this Act, as the President may from time to time request;
- From time to time as directed by the President to report on the progress made in the investigation and matters brought before the Special Tribunal concerned;
- Upon the conclusion of the investigation, to submit a final report to the President; and
To at least twice a year submit a report to Parliament on the investigations by and activities, composition and expenditure of such unit.

According to this report the SIU investigated Moses Kotani Municipality the SIU had registered more success in this municipality than in Madibeng. There were 33 disciplinary matters against officials and there were a number of conflict of interest matters, and recommendations had been made to council in this regard. There were instances of financial mismanagement and fraudulent payments. Acknowledgement of Debts had been signed in this regard.

Mr Modipa said that there had been no control on the use of cheques in the municipality. Follow-ups were being made and recoveries were in progress. There were instances where payments had been made in cash to the municipality, but the money which had been received had not been put into the municipal account. The position of the SIU was that there was a need to improve internal controls in municipalities. It was recommended by the SIU that municipalities should not accept personal cheques and only business cheques should be used.

The SIU had identified 115 officials who had undisclosed business interests with the municipality, and 16 of these officials had done business with the municipality. Disciplinary proceedings had been recommended and the officials blacklisted from the municipal database. A legal opinion had been obtained which stated that these officials could be charged with Section 17 of the Preventing and Combating of Corruption Act. The matter had been referred to the SAPS. The disciplinary proceedings against the former Municipal Manager had been facilitated. He had been charged with 21 offences and found guilty of all charges. He had been dismissed, but was contesting his dismissal at the CCMA.

Some of the charges related to irregular appointments. From a civil recovery point of view, the irregular and wasteful expenditure should be recovered from him. An official had been identified who had used a municipal truck for the transportation of building materials for his private home. This same official had stolen an amount of R10 000 from the social club.
account of the municipality. He had admitted to the crime and had signed an AOD. He had broken into the municipal tender box and tampered with submitted tenders. The Municipal Manager said that the officials had been given a written warning, but in the personal file of the official, there had been no written warning. After a week, when the file was checked, a written warning which was backdated had been inserted. A criminal case had been registered against the official and the SIU had recommended his suspension. Instead of being suspended, the said official had been promoted to the position of Director in charge of Community Services.

In some cases, investigations had been carried out, but the results had been negative as no anomalies or irregularities found. This was the case in Makwasi Hills, where an investigation had been conducted on the matter of high-mast lights and no irregularities found. There was a situation where the municipality had paid a service provider an amount of R17 000 for catering services, which had not been provided. The matter had been taken to the SAPS, who took the matter further to the Senior Public Prosecutor. The Senior Public Prosecutor had said that it was not a criminal matter, but rather an administrative error.

The SIU was of the opinion that it was a criminal matter because the service provider had submitted a claim for payment for a service which they knew had not been rendered. That was misrepresentation and it was a criminal matter. There were investigations on the building of the Civic Centre, where the contract was worth R20 million and the service provider had invoiced the municipality for an amount of R1.6 million for a steel door which had not been erected. There was also an investigation into the purchase of the mayoral house which had not been put out to tender.

There was the challenge of the statutory contravention of the MFMA. In some cases, the MFMA had clearly been contravened and recommendations had been made to SAPS for charges to be pressed against the officials. The SAPS had the mandate to follow up on statutory offences. An example was the need for some of the Municipal Managers to be charged with contravening the Archives Act, as they did not archive documents properly and this had led to the hiding of evidence.
Adv Mokhatla said that the SIU was putting systems in place to cover the gaps where investigations were done by the SIU, and later handed over to the SAPS, who did not carry on with the case properly as the SAPS investigating officers were not abreast with the necessary information on the crimes and related matters. The SIU had met with the NPA and the SAPS to work on ways of closing the gaps. The Chairperson said that he was going to recommend to the Acting Chairperson of the Portfolio Committee on Police and the Chairperson in the NCOP dealing with Police matters, to engage with the SIU to get SAPS involved with legislation. Mr B Mashile (ANC, Mpumalanga) asked if the SIU did not have imbedded prosecutorial powers. What legislation was the SIU using to revive its tribunal, as there was the need to curb the disjuncture in the track of cases going to the NPA and falling along the way?

Adv Mokhatla replied that in the past there was a secondment to the SIU of NPA officials who had prosecutorial powers, but since the delegations had been withdrawn in 2010 by the NDPP, no one in the SIU had the power to prosecute. The tribunals were in the SIU Act, but the issue in the court of law was that one could not sit as the head of the SIU and be an investigator and arbiter at the same time. That was how the SIU had distanced itself from doing litigation. The SIU had identified the need for the speedy recovery of misappropriated funds. The agency was doing a legal review which was going to be finalised by the end of the month of September 2012. The review was going to motivate for the forensic investigations, and 28 lawyers were being groomed to be able to take the matters to the courts and eventually, to the tribunals. The SIU was going to provide a motivation to the Minister of Justice on the process.

3.4.52 ANC 50th National Conference Resolution on Corruption Mafikeng 1997

The ANC in its conference in Mafikeng 1997, noted that corruption may be understood to be abuse of power for illegitimate and illegal gain or profit, whether it be exercised in the private or in the public domain, corruption leads to losses in efficiency and opportunity, and increased production and hence, it adversely affects development and, as a consequence, results in poverty becoming more prevalent.
That corruption undermines the objectives of the National Democratic Revolution had the following resolution:

Elimination of corruption should be placed high on the agenda of the ANC ensuring that;
Branches and members are educated on various forms of corruption for its eradication;
A nation-wide anti-corruption campaign, including a media campaign, be initiated;
Mechanisms be developed to build a link between state interventions on corruption;
Prompt disciplinary action be taken against any member, regardless of office, who is guilty of any corrupt practices;
Government should ensure that legislation and regulations are introduced to deter corruption through punitive measures;
Steps are taken to review institutions fighting corruption;
And to increase their resources and effectiveness; and
The necessary capacity for financial management is created.

3.4.53 ANC 53rd National Conference Resolution on Corruption Mangaung 2012

In this conference again it was noted that still there was significant corruption in many sections of society, including in the private sector. It was resolved that ANC comrades as leaders of society, in every sphere of activity need to be the champions in the anti-corruption campaigns. The ANC should take tougher action against corruption. Systems to detect and act against corruption should be strengthened. There should be greater cooperation across the spheres of governance in dealing with corruption. Corruptors should be punished as well.

The resolutions taken in this conference on corruption were almost the same as those taken in previous conferences, but the challenge there was no clear mechanism to implement and monitor them, hence the issue of corruption is still the order of the day especially at the level of municipalities.
Also in this general council ANC resolved to root out corruption in government and as well as in the private sector. Four concrete proposals were recommended as follows:

There should be periodical rotation of civil servants, including those in the security cluster to different employment sites to circumvent unprofessional and frequent corrupt relationships. The vetting process for government employees should be expedite and its related entities. A single state vetting agency to vet all strategically placed civil servants should be implemented including those in the state owned enterprises, and people who turn down a promotion even though it comes with improved remuneration package, and the ANC deployment committee should ensure proper vetting prior cadre deployment.

Also the ruling party challenged the private sector to subject itself to financial interest disclosure, vetting and life style audits.

Presenting the state of the organization in this general council, Mr Gwede Mantashe the Secretar-General of the ANC, reiterated that corruption is a big challenge facing the movement, both in government and inside the party. He indicated that whether this is a perception or reality the organization should confront it seriously. There is a growing general public concern that the movement is corrupt and protecting those within the ranks who are corrupt, according to him. This reality if not reversed poses a threat to the organization whereby people will lose trust and faith in the leadership.

He concluded by indicating that the ANC cannot wait for the time it is out of power to engage in serious organizational renewal.

Also according the integrity commission in the National General Council corruption was widely accepted as a major threat to National Democratic Revolution and the organization. The commission discussed corruption at length and accepted the Integrity Commission’s operationalization. The Mangaung Conference in 2012 decided to set up the Integrity Commission made up of veterans beyond reproach to investigate and make a determination based on the best interests of the organization.
The following resolutions were agreed upon:

The Commission should get powers to implement decisions and just to recommend to the National Executive Committee of the ANC.
The innocent until proven guilty doctrine should not apply as this is not a court or disciplinary process.
The Integrity Commission should pursue the interest of the ANC and ask members to step aside while dealing with their problems, for the sake of the organization. It should be adequately resourced.
Their determination on cases should be final and all previous decisions should be implemented.
In taking its decisions the Integrity Commission must ensure that its processes are not used to stifle debate or deny members their basic democratic rights or used as means of settling political scores.
The Integrity Commission must inform the officials of its decisions before their conclusions are announced.
The Integrity Commission should also be set up at provincial level, and members should be vetted and approved by National Integrity Commission; and
All members of the ANC should be subjected themselves to the due processes of the Commission.

3.4.55 Buffalo City Metropolitan Municipality IDP Review 2015/2016

According to this IDP Review, BCM indicated that some of the weaknesses which impact negatively on the performance of the Metro relate to disintegrated systems, internal control deficiencies, lack of staff with requisite capacity, a spatially fragmented workforce as well as lack of clearly defined processes and systems.

Also it was highlighted that corruption and poor service delivery undermines the credibility of the state. A weak local government leads to low investor confidence for both state and the private sector decisions. Poor governance leads to poor economic performance.

The Metro acknowledges the fact that in order for it to fulfill its mandate as stipulated in the constitution of the country, there is a need to maintain financial viability and expand
its revenue base in relation to expenditure. This requires robust strategies to turn around the current predicament dependency and ensure that the city is in a financially sound position over the next five years and beyond. To achieve financial viability, they will put in place mechanisms for the recording and management of the financial resources of the municipality and investigation and development of new revenue streams to provide for the financial sustainability of the Metro.

Again in this IDP Review BCM identified a number of challenges and constraints which impact in the way in which the municipality functions and fulfills its mandate as per section 152 of the Constitution of the Republic of South Africa, which state among other things that a municipality must strive, within its financial and administrative capacity, to achieve the objectives set out in subsection (1).

Having identified these challenges and constraints the city identified nine strategic focal areas and crafted six strategic objectives to guide its developmental trajectory towards realization of its vision as follows:

To be a financial sound organization that efficiently manages its resources;
To be an institutionally efficient and effective city that inclusively works with communities;
To generate an enabling environment for an economy that is growing, diversifying, generating increasing number of sustainable employment opportunities and contributing to increased incomes and equality;
To deliver sustainable infrastructure that support social and economic development;
To be a well structured and capacitated institution that renders effective and efficient services to all by 2016; and
To enhance and protect all environmental assets and natural resources within BCM by 2016.

It should be noted that these objectives are the same objectives that were adopted in their IDP Review of 2013/2014. What is not coming up is whether they were implemented or not, if they were implemented what were the obstacles?
3.4.56 Profiling and Analysis of the Most Common Manifestations of Corruption and its Related Risks in the Public Service Report 2011

According to this report it is stated that corruption is a global concern that seriously hampers development and diverts resources from where they are needed most. South Africa has responded actively to the fight against corruption. Apart from comprehensive anti-corruption legislation, a wide range of instruments have been introduced to deepen integrity and to strengthen the fight against corruption.

The indication that corruption is a global concern that seriously hampers development and diverts resources from where they are needed most. The unfortunate reality is that are the poor who suffered most. South Africa has responded actively to the fight against corruption according to this report. Apart from comprehensive anti-corruption legislation, a wide range of instruments have been introduced to deepen integrity and to strengthen the fight against corruption.

The report had the following findings:

- 10% of departments had clear written objectives which were well integrated with other objectives and evidence of planning and monitoring against objectives;
- 45% of departments had written objectives for addressing corruption;
- The areas of greatest concern to departments were those where officials could use their discretion to decide whether or not to investigate cases of alleged corruption;
- Officials tended to request the closure of cases even before they are investigated;
- Only 15% of the departments were found to have basic investigative capacity;
- Departments were often lenient in imposing disciplinary sanction against officials found guilty of fraud and corruption; and
- Also disciplinary enquiries were very time consuming and that departments took too long to finalize enquiries against officials suspected of fraud and corruption.
- Internal controls in areas of procurement and financial management should be strengthen;
• Departments should periodically conduct surprise procurement audits of selected projects to identify weaknesses and malpractices in procurement processes;
• Accounting Officers must specifically focus on and analyse corruption risks as part of the risk management required in terms of the MFMA and implement fraud prevention plans;
• The provinces should establish centralized Anti-Corruption Investigative Units;
• The offices of the Premiers in the provinces should commit as much resources as possible to the investigation of corruption;
• Integrity Management Units should be created through the appointment of appropriately skilled persons and through the training of officials in the discipline of Forensic Investigation;
• The investigative capacities in the local sphere of government which is currently fragmented needs coordination and integration; and
• Departments and public entities should conduct an in-depth assessment of its fraud risk management framework and strategies. The outcome of such assessment should prevent over-investiment sub-optimal anti-fraud area.

General findings were that cases of procurement irregularities involve collusion between a person issuing a tender and an associate which is often a family member or friends seeking to win the tender by all means. Such practices place a strain on government resources and increase the cost of public services. The area of procurement is a high risk area in the public service, according to the report.

Again in the process of investigation the following challenges were identified:

Inadequate records were kept of investigations conducted;
Lack of support by management during the investigation of cases of the alleged corruption, for instance investigators were intimidated by officials while pursuing cases of alleged corruption;
Anti-Corruption Investigative Units established in the provincial departments were dysfunctional;
Departments did not have time limits for investigation of cases of the alleged corruption; and
Departments stopped investigation of certain cases of the alleged corruption without valid reasons.

3.4.57 Annual Address by President Zuma to National Council of Provinces 2015

In his annual address to National Council of Provinces, President Zuma indicated that, under the leadership of the Department of Cooperative Governance and Traditional Affairs, Government will continue and accelerate the hands-on approach on municipalities.

He said that in the following phase of the Back to Basics approach, Government will work smarter and innovatively to increase impact. 'We will make better use of available monitoring mechanisms such as unannounced municipal visits, spot checks of supply chain management processes, implementation of forensic reports recommendations and site visits of Municipal Infrastructure Grant funded projects'. He reiterated the fact that corruption will be tackled with vigour and determination, as the uprooting of corruption is a core objective of the Back to Basics programme. He mentioned that already two hundred and twenty-two officials were dismissed for fraud and corruption in the nine months from October 2014 to June 2015.

He concluded by emphasizing that going forward, anti-corruption measures will include the monitoring of the implementation of the recommendations of all forensic investigations into municipalities. A campaign with organised business will be embarked upon to counter private sector involvement in corruption in municipalities. Debt owed to municipalities by business and residential sectors were constraining municipalities. A specific campaign will be launched to alleviate this obstacle.

3.4.58 The Third National Anti-Corruption Summit Report 2008

According this report the following resolution were taken and it was not the first time resolutions being taken in these summits.
a) The Ethical Practices in Social and Economic Life

i. That the National Anti-Corruption Forum (NACF) establish a task team to urgently consolidate and articulate the National Integrity System.

ii. To call on political parties and Parliament to expedite the regulation of transparency in party political funding and to consider a sanctions mechanism.

iii. To urge political parties in all three spheres of government to disclose their business interests.

iv. To continue to strengthen monitoring and accountability mechanisms with respect to all tender processes in the public sector.

v. To support the swift regulation of post-public sector employment for all elected and appointed public officials and its implementation.

vi. To strengthen the current system of disclosure of interests for all elected and appointed public officials.

vii. To develop systems of disclosure of interests for business and civil society.

viii. To support legislative and other measures to ensure that companies found guilty of offences of price-fixing, market allocation and collusive tendering are prohibited from state tenders for a determined period.

ix. To strengthen the enforcement provisions of the Competition Act including holding individuals accountable for price-fixing, market-allocation and collusive tendering.

x. To urge the business community to investigate self-regulating mechanisms to improve ethical conduct in practice.

xi. To reaffirm that ethics must be infused in all aspects of the education system including the curriculum at all levels.

xii. To reaffirm that school of Business and Public Management must provide courses on professional ethics and anti-corruption.

xiii. To call for the strengthening of the institutional capacity of the private sector to detect and prevent corruption.

xiv. To complete the implementation of continental and international anti-corruption legal instruments and promote the enforcement thereof in national law.
b) Strengthening Accountability, Coordination and Oversight

i. To strengthen anti-corruption bodies and improve coordination among them.

ii. That all allegations of corruption must be investigated and prosecuted without fear or favour, in accordance with past and present anti-corruption legislation.

iii. To reaffirm that sectors and professional bodies must adopt sector and profession-specific codes of conduct and/or ethics as well as a training and communications regime to support their application.

iv. That the private sector must mainstream anti-corruption practices and report on them in Annual Reports in an accessible and transparent manner.

v. To promote national anti-corruption values and interests continentally and internationally.

vi. To call for improved financial accountability and transparency of civil society organizations.

vii. To strengthen the powers of oversight bodies for the business sector and promote coordination of their activities.

viii. To promote the National Anti-Corruption Hotline and support the further development of capacity to respond to reported corruption.

c) Access to services through participatory governance

i. That all state entities improve service delivery through inter-alia eliminating corrupt practices, encouraging whistle blowing and complying with the National Integrity System.

ii. That services are offered to all citizens equitably and fairly.

iii. That the NACF supports the urgent finalization of the review of the Protected Disclosures Act and initiates a national conversation on building a culture of whistle blowing.

iv. That participatory governance must be promoted to ensure that corruption and the abuse of power are addressed at the site of service delivery.
v. To implement effective anti-corruption communication and awareness programmes at community level, within the business sector and across civil society.

vi. That public officials in all spheres of government must be trained in ethics, conflict of interest principles, constitutional and administrative law and the principles of Batho Pele.

3.4.59 The Fourth National Anti-Corruption Summit Report 2011

The primary function of this Summit was to report back on the implementation of the resolutions and to pass new ones for further implementation. The Summit was also used to reflect on the nature and state of corruption in the country and the initiatives and efforts needed to put in place to deal with corruption.

According to this summit report the following resolutions were taken:

- To reaffirm the original vision of the National Anti-Corruption Forum (NACF), as set out in the Memorandum of Understanding on its Establishment, as the primary platform for the development of a national consensus through the coordination of sectoral strategies against corruption;
- Sector representatives commit to securing the renewed commitment of their leadership to give effect to the vision and objectives of the NACF;
- To reaffirm the commitment to holding accountable to report regularly on effective implementation of sectoral and joint strategies;
- To commit to engage with every respective constituencies and with each other to revise the National Anti-Corruption Strategy and implementation modalities;
- Sector representatives undertake to review their sectoral anti-corruption initiatives and programmes aimed at realising an agreed National Anti-Corruption Strategy;
- Each sector commits to review and where necessary reconstitute its representation on the NACF;
- To develop a comprehensive education, awareness and communication campaign to promote an ethical culture, develop an improved understanding of the many facets of corruption, and the contributions being made to combat this scourge;
• To reaffirm the resolutions adopted at previous Summits that remain unimplemented, call on all sectors to take urgent and decisive action to demonstrate their commitment to both their previous joint undertakings and to this shared Forum, and to include them in the National Anti-Corruption Programme. Previous resolutions are attached for ease of reference;

• To commit everyone to engage to consider options for the implementation of and respect for the Constitutional Court’s ruling requiring the establishment of independent anti-corruption capacity;

• Noting reference in the Preamble to the review of the PDA, a call for comprehensive protection for whistleblowers, and the right to access to information in line with the national Constitution; and

• To recognize that to give to the vision, objectives and programmes of the NACF it is necessary to identify and secure adequate resources to review and capacitate its structures at local, provincial and national.

The NACF is tasked to urgently produce a strategic programme of action supported by a business plan, including timeframes, to give effect to all resolutions.

3.4.60 Report on Investigation in Respect of the Allegations Leveled against the BCM Former Acting Municipal Manager Dr Lulama Zitha by Ernst and Young 2011

According to this report, Ernst and Young was requested by BCM to investigate whether a prima facie case against the erstwhile the then Acting Municipal Manager of BCM, Dr Lulama Zitha, existed of any financial misconduct, failure to perform her fiduciary duty or any other act or omission that may prejudice the financial interest of BCM on the part of Dr Zitha or any official or councilor of BCM for the period of 01st March 2010 to 26th July 2010.

There were 14 contracts during phase one of the investigation that required to be investigated and were listed in the report.
The objectives to the investigation were as follows:

- Determine whether the BCM Supply Chain Management Policy, as well as other applicable legislation and regulations, were adhered to in respect of the specifications, advertising, evaluation or adjudication of such bids, by reviewing the tenders awarded during the above mentioned period that required further investigation;
- Determine whether the relevant statutory and policy framework, most particularly in respect of Municipal Systems Act and Municipal Finance Management Act and associated regulations as well as SCM Policy were adhered to in all respects in the process that led to the specifications, advertising of tenders, evaluation and adjudication of such bids and the finalization of contracts with respective service providers;
- Establish whether prima facie evidence existed of any contravention of the code of conduct for councillors or code of conduct for municipal staff members pertaining to the specification, advertising, evaluation and adjudication of the above bids as well as the finalization and/or administration of respective contracts pertaining thereto;
- Establish whether sufficient prima facie grounds existed for BCM to initiate proceedings to recover from any party any loss or damage suffered as a result of any deliberate or negligent unlawful actions;
- Establish whether prima facie evidence existed indicating any tender rigging, corruption or any involvement of councillors or officials in procurement processes;
- Establish whether any councilor and/or official has wrongfully and/or unlawfully interfered in the administration of BCM;
- Establish what involvement, if any, has been from the councilors and officials in procurement;
- Establish whether all identified tenders awarded via deviations complied with the relevant policies, regulations and legislation;
- Establish whether any contracts, formal or informal, were awarded to service providers resident outside the jurisdiction of the BCM and, if so, whether the
directors of these entities have declared their relationship with any BCM member of staff or office bearer; and

- With regard to payments, establish the following in respect of the identified contracts that were awarded:
  
  What payments were made?
  Who processed each payment?
  Who approved each payment?
  If there was evidence of any irregularity in the payment process; and
  Whether the actual services were rendered in relation to each payment?

The report had the following findings with regard to the appointment of Mkwanazi Construction to upgrade the Bhisho, King Williams Town and Zwelitsha Regional Sewerage Scheme:

- The project was initiated after a proper needs analysis was performed and sufficient funding was made available for the project;
- Due to limited time frame to appoint consulting engineers to the project, a normal tender process was not followed and Arcuss Gibb was appointed as the project managers for the project;
- The tender was properly advertised on the 05th of December 2008;
- A total of nine tender submissions were received on the 23rd of January 2009, but none of the tenders qualified in terms of the pre-qualification criteria recorded in the SCM Policy of December 2007. In fact, three of the tenderers submitted non-priced tenders and they attached letters to their bid submissions stating that BCM’s SCM Policy contradicted the Preferential Procurement Policy Framework Act (PPPFA) and that they would challenge the award of the tender in court;
- On the 24th February 2009 council suspended the pre-qualification criteria recorded in the SCM Policy. Also an opinion from legal department was obtained recommending that the tender be cancelled and re-advertised;
- The tender was re-advertised on the 04th of September 2009, a total of 15 tender submissions were received;
• Cypress Construction was evaluated by Project Management Unit (PMU) as the company scoring the most points, even though it had not submitted a valid Tax Clearance Certificate;

• The Bid Adjudication Committee recommended that the contract be awarded to Mkwanazi Construction as this company achieved the second highest points after Sypress Construction;

• Dr Zitha approved the Bid Adjudication Committee (BAC) recommendation to award contract to Mkwanazi Construction in the amount of R30 million as she was accounting officer at the time and contract in excess of R10 million had to approved by the accounting officer. However, Mr Mtembu signed the letter of award in favour of Mkwanazi Construction in contravention of the SCM Policy; and

• As a result of the above mentioned signing of the letter awarded outside the delegated authority, the expenditure incurred on the project, represented technical non-compliance with the SCM Policy and consequently met the definition of irregular expenditure as defined by section 1 of the MFMA.

The following anomalies and problem areas were identified in the evaluation of the tender bids received, but such did not render the evaluation process ineffective and it would in all probability not had changed the outcome of the award to Mkwanazi Construction.

Control over bid documents appeared to poor, as well as the investigating team could only provided with eleven of the fifteen tender bid submissions. Initially the team was not provided with the bid documents submitted by Mkwanazi Construction, and instead had to obtain a copy of the bid document from Arcus Gibb.

The bid document was later found in a correspondence file in the SCM Unit. The SCM Unit is responsible for securing and maintaining the tender bid submissions receive. This indicated no-compliance with section 62(1)(b) of the MFMA, which requires that full and proper records of the financial affairs of the municipality are kept.

No complete set of Bid Evaluation Committee (BEC) and Bid Adjudication Committee (BAC) minutes were kept at the SCM Unit.
The evaluation reports compiled by the Project Management Unit (PMU) were sometimes rejected by the BEC and had to be redone. The amended reports submitted to the BEC then contained different information and recommended a completely new contractor for the project.

This may have indicted that the officials from PMU did not evaluate the tender submissions properly in the first instance, or that they lacked the experience to conduct proper evaluation of tender bids received.

No technical assessment was conducted on the tenderers technical skills and capacity by engineering specialists.

The BAC deferred their decision on a number of occasions due to incomplete information provided by the BEC, such as no review conducted of the financial statements submitted by the preferred tenderer.

The tender documents did not include a schedule where the tenderers could complete their Historical Disadvantage Individuals (HDI) information, yet according to their tender document the tenderers were to be assessed on both price (90 points) and HDI (10 points).

HDI points were allocated to only eight of the fifteen tenderers, without any schedule being completed in the tender document or any subsequent requests being made by BCM to the tenderers for such information.

No HDI points were allocated to Mkwanazi Construction, but share certificates were attached to the company profile that indicated that they had a 25% BEE shareholding. However, this could have made a difference to the position of tenderers in terms of the award.

On the basis that the information and documentation provided to the investigating team were complete and correct, and based on the information obtained during interviews conducted, it was concluded as follow with regard to the payments effected to Mkwanazi Construction in respect of this project:
As at December 2010 Mkwanazi Construction had submitted a total of seven payments certificates totaling R13,2 million inclusive of VAT. However, only the first three payment certificates totaling R6,3 million had been paid by BCM to Mkwanazi Construction as at the same date. The payments for the first three payment certificates were initially allocated to the incorrect vote number, but this was corrected in January 2011 by means of a journal voucher; and Certificate number seven reflected that the project was 44,3% completed as at 09th December 2010. However, during the site visit on the 20th January 2011, it was evident that only 10 of the 90 manholes had been successfully constructed.

The quality of the work of Mkwanazi Construction in respect of electrical and structural competencies appeared questionable according to one of the referees listed by Mkwanazi Construction in its tender document that was contacted. According to consulting engineers, this also seemed to relate to the problem that the contracted was experiencing at the time on site, with only having successfully completed 10 of the 90 manholes that needed to be completed by June/July 2011. Mkwanazi Construction was also meant order pipes from China to be able to complete the manholes, but as at end of January 2011 such an order had not yet been placed with the supplier. According to the consulting engineers, it appeared that the project would not completed on time, being June/July 2011.

In terms of section 116 of the MFMA, BCM should ensure that Mkwanazi Construction deliver on the project, as a failure to do so, would exposed BCM to incurring fruitless and wasteful expenditure as defined by section 1 of the MFMA.

On the 27th May 2010 Cypress Construction was awarded a tender for a project of West Bank Land Restitution and Additional Bulk Services amounting to R52,8 million for the duration of 48 weeks. The letter of appointment was also signed by Mr Mthembu. The tender was initially awarded to Eastern Khula Nathi Construction but later set aside because they failed to disclose on the disclosure page that an employee of the state was the member of the company.
Subsequent to that a number of contractors were appointed during the era of Dr Zitha, and in all of them SCM policies, regulations and policies were not adhered to, hence the team based on conclusions set out in the report, recommended that BCM, in consultation with its legal advisors, should consider appropriate disciplinary action, which may include disciplinary hearings where, on the available facts, transgressions appeared to be serious, or written warning where less serious against the following BCM officials:

**Mr Mthembu:** For signing letters of award without the authority to do so in respect of Mkwanazi Construction – contract valued R30 million, Cpress Construction – contract valued R52.7 million and Bigen Africa – contract valued R15.7 million. For contravening section 112 of MFMA, Regulation 32 of the MSCM Regulations and paragraph 40(1)(a)-(d) of the BCM’s SCM, when he signed and issued the letter of award dated 25th May 2010 to INTPS to the value of R2.2 million without the supporting documents. For contravening section 78 of the MFMA for issuing the letter of appointment to DDN Consulting on 16th April 2010 without verifying compliance with due procurement processes.

**Mr Ncunyana:** For contravention of his delegated responsibilities in terms of section 78 of the MFMA for signing incomplete and inaccurate evaluation reports compiled by the PMU in respect of Mkwanazi Construction and Cypress Construction bids, without conducting a proper review of the contents of the report. For contravening section 78 of the MFMA for failing to obtain a report from the consulting engineers prior to the evaluation of the tender bids received from Cypress Construction and Mkwanazi Construction, but instead requested PMU to assess the bids received.

**Ms Zukiswa Faku, Former Mayor:** For requesting Ndodana to proceed with three projects without an approved budget or appointment letter and contract, possibly resulting in irregular and unauthorised expenditure in terms section 32 (1) (c) of the MFMA and also a possible contravention of section 117 of the MFMA.

**Ms Magwentshu:** For signing the Ndodana contract on 2 November 2009 when the procurement process in respect of the appointment of Ndodana was not adhered to, or not fully complied with. For signing dodana contract when she had no authority to do so, as she was no longer the Acting Municipal Manager.
For authorizing payment to Ndodana of their invoice NC0963 to the value of R2 million without verifying that the correct procurement process was followed.

**Dr Zitha:** The council should consider its obligations in terms of section 32 of the MFMA and take the necessary action to recover the unauthorized or irregular expenditure that had occurred.

From the available evidence it was apparent that Dr Zitha might have contravened section 173 of the MFMA, failing to take reasonable steps to prevent irregular expenditure, as she appointed City Square and Renamane without following the SCM Policy and MFMA.

It can be concluded that indeed pieces of legislation that are there to regulate procurement processes were never adhered to. Also a Multy-Party Committee comprised of nine councilors was established according to the report to examine the findings and recommendations of Ernst and Young forensic report.

The committee set its own terms of reference:

To refine the recommendations of Ernst and Young report and submit concrete resolutions to council on disciplinary action to be taken, as well as possible criminal and civil action against implicated individuals in the report.

Given powers to call for documents it may require to perform its mandate as well as councilors or officials for interviews.

The objective of the mandate was to:

Determine whether the SCM Policy of BCM, as well as other applicable legislation and regulations were adhered to in respect of the specifications, advertising, evaluation and/or adjudication of bids.

Determine whether the relevant statutory and policy framework, most particularly in respect of Municipal Systems Act, MFMA and associated regulations, as well as BCM SCM Policy were adhered to in all respects in the process.

Establish whether *prima facie evidence* existed of any contravention of the Code of Conduct for councilors or the Code of Conduct for Municipal Staff Members.
Establish whether sufficient *prima facie* ground existed for BCM to initiate proceedings to recover from any party any loss or damage suffered as a result of any intention or negligent unlawful action whether by commission or omission.

Establish whether all identified tenders awarded via deviations complied with the relevant statutory requirements. And

The committee would make such recommendations as deemed appropriate against officials and councilors that were implicated.

The committee had the following recommendations:

That criminal charges should be preferred against Dr Zitha for neglecting her duties whilst she was the Accounting Officer.

That steps should be taken to recover from Zitha the portion of wasteful and fruitless expenditure incurred by BCM as a result of her conduct in terms of section 32 of the MFMA.

That disciplinary action be instituted against Mr B Mthembu for signing the letters of awards to companies whilst having no authority to do so.

Also all other implicated officials implicated to the report should be subjected to disciplinary processes as well.

The committee had also the following general recommendations:

That BCM should consider implementing two stage bidding processes for all engineering contracts, the majority of them were complex, and require technical assessment.

The BEC and BAC should request that consulting engineers be assigned to an engineering project in order to compile reports on technical aspects of the projects.

That the proper control over the tender bid submissions, even after the contract has been awarded.

That evaluation reports be compiled as soon as possible after the tender closes.

That proper records be kept of all reference checks performed on contractors, which records the date, time, name of person and comments made by referee.
BCM should implement effective internal controls to ensure that all documentation is stored in a logical and effective manner; and

BCM should implement a system to detect and monitor occurrences of unauthorized expenditure and fruitless and wasteful expenditure.

It was established that almost all contracts awarded to various service providers were not budgeted for as required by section 15 of the MFMA, according to Multi-Party Committee report. Procurement processes followed were fundamentally flawed

This attempt by the committee was to ensure that public funds in the Buffalo City Metro Municipality are spent in an effective, efficient and transparent manner, in line with the prescripts of the law.

But however, having these recommendations tabled and adopted by the council there are completely no indications of implementation, given that Dr Zitha has since left the BCM as she seconded as well as implicated individuals, some have also left the system and some are still in the payroll of the municipality as if nothing happened. These are some of the challenges facing the municipalities hence the instabilities and endless mass actions.

Also tax payer’s monies have squandered which impact negatively in service delivery. Also the process of investigations after investigations has costs the municipality a lot of money but no value for money.

3.4.61 Public Audit Act 25 of 2005

This Act is established to give effect to the provisions of the Constitution establishing and assigning functions to the Auditor-General, to provide for the auditing of institutions in public sector, to provide accountability arrangements of Auditor-General to repeal certain obsolete legislation; and to provide matters connected therewith.

The Auditor- General has a constitutional mandate and, as the Supreme Audit Institution of the country, and it exists to strengthen the country’s democracy by enabling oversight,
accountability and good governance in the public sector through auditing, thereby building public confidence.

According to this Act, the functions of the Auditor-General among others are:

To carry out an appropriate investigation or special audit of any public institution, if the Auditor-General considers it to be in public interest or upon the receipt of a complaint or request;
May, in public interests, report any matter within the functions of AG and submit such report to the relevant legislature and any other organ of state with a direct interest in the matter;
Inspect, and question any person about any such document, book or written or electronic record or information;
Direct a person to disclose; either orally or in writing, any information that may be relevant for the audit including any confidential, secret or classified information; and
Compliance with requirement of this section is not a breach of any applicable legislation imposing the relevant obligation of secrecy or confidentiality or non-disclosure.

When performing an audit according to this Act, the Auditor-General has all reasonable times full and unrestricted access to:

a) Any document, book or written or electronic record or information of the institution being audited;
b) Any of the assets of or under the control of the institution, or
c) Any staff member or representative of th institution in question; and
d) Enter any property, premises under the control of auditee.
Finally, a person is guilty of an offence if that person:

   a) Hinders or interferes with AG or any person exercising a power or carry out a duty in terms of this Act;
   b) Refuses or fails to comply with a request of AG or an authorized auditor in terms of section 15;
   c) Furnishes false or misleading information when complying with request the AG or an authorized auditor; and
   d) Contravenes section 50.

3.4.62 Guidelines for Implementing the Minimum Requirements in the Departments and Organizational Components in the Public Service

In these guidelines, it is stated that this booklet provides guidelines on how to create the minimum anti-corruption capacity in the departments. It aims to assist managers and other officials in the public service tasked with implementing the minimum anti-corruption capacity requirements in their departments. Importantly, it would also be helpful for anyone who has an oversight role over these functions and any other role players in an anti-corruption strategy.

These guidelines set out a comprehensive anti-corruption strategy organized around four main components:

   Prevention of corruption;
   Detection of corruption;
   Investigation of corruption; and
   Resolution of corruption.

Also, it is stated that this booklet shows how to integrate these components into an effective anti-corruption strategy for any department. It deals with the need for and objectives of each aspect.

According to these guidelines, the following steps are suggested to development an anti-corruption strategy:
An initial meeting be held with all personnel; all the relevant stakeholders be taken on board as early as possible in the process to ensure buy-in;
A person or group of people be identified to take the responsibility for the process and to drive it forward;
The organization’s existing capacity to deal with corruption need to be assessed. During assessment process, it should be determined which of the anti-corruption functions can be accommodated in existing functional units, and which of the functions will require new functional unit or shared service arrangements;
Fraud and corruption risk management to be part of the normal risk management process in all departments; and
An anti-corruption strategy should be developed based on the minimum anti-corruption capacity functions described in this booklet.

It is further stated that, once anti-corruption strategy has been developed, a time frame must be set for implementation. This of course will depend on the size and the nature of the department, the resources available, as well as the current state of ethics and corruption in each department.
Finally, it is stated that corruption prevention is an ongoing process that needs continuous updating and realignment. And of course depending on the conditions prevailing at particular time.

3.4.63 The State of the Province Address 2016
Addressing the Eastern Cape Provincial Legislature, the Premier of the Eastern Cape, Mr Phumulo Masualle again indicated that in line with zero tolerance to corruption and fraud, will continue to fight against fraud and corruption in the system. He also mentioned that partnerships with crime fighting agencies like Kawks and Special Investigating Unit has been strengthened. A call was made upon communities acting within the provisions of laws to reclaim their streets and villages from criminal elements operating in these spaces.

Unfortunately, there was no mention of the previous commitment whether they were successful implemented or not. Also even the kind of partnership forged with these
agencies in order to make it a reality, hence there is a strong perception out there that
government is just paying a lip service in the fight against corruption.

3.4.64 State of the Nation Address 1999

According to the State of the Nation Address 1999, the late former and the first president
of the new dispensation Dr Nelson Mandela, in his opening address to Parliament in 1999,
stated that “Our hope for the future depends on our resolution as a nation in dealing with
the scourge of corruption. Success will require an acceptance that, in many respects, we
are a sick society. It is perfectly correct to asset that all this was spawned by apartheid.
No amount of self induced amnesia will change the reality of history.

But it is also a reality of the present that among the new cadres in various levels of
government you will find individuals who are as corrupt as, if not more than those they
find in government. When a leader in a provincial legislation siphons off resources meant
to fund service by legislators to the people; when employees of a government institution
set up to help empower those who were excluded by apartheid defraud it for their own
enrichment, then we must admit that we are a sick society. This problem manifests itself
in all areas of life.”

3.4.65 Thabo Mbeki’s Address in the Second National Anti-Corruption Summit
2005

Also the former President of the Republic of South Africa after Dr Manadela, Mr Thabo
Mbeki, delivering his key note address in the Second National Anti-Corruption Summit in
March 2005, indicated that “corruption is inimical to development, it constraints the ability
to fight poverty, negatively affects the economic developments, damages social values,
undermines democracy and good governance. Responding to all that in the last ten years
laws, policies and programmes have been put in place to root out corruption in the society,
partnerships among social partners were established and collaborated with regional,
continental and international partners.

Yet more will have to be done fight corruption and confident that the Summit will give
more impetus to ongoing work and help everybody to overcome whatever weaknesses
that may exist in the programmes and systems design to fight corruption.”

According to the Consolidated General Report on the Audit Outcomes of Local Government 2014/2015, there is a slight improvement in audit outcomes in municipalities, which indicates that the interventions that are put in place to turnaround situation on financial management are yielding good results.

The report states that over the past five years from the period 2010/11 to 2014/15 municipalities in South Africa have reported a steady improvement in audit outcomes, with 53% having improved, while 13% regressed and 34% remained unchanged.

The audit outcomes of six of the eight metro councils, 21 (49%) district municipalities and 116 (52%) local municipalities have improved. Positioned against government’s medium-term strategic framework (MTSF) targets for improving audit outcomes in pursuit of sound financial and administrative management, this compares as follows:

10% of municipalities with adverse or disclaimed audit opinions against the target to have no municipalities with these type of opinions by 2019;
28% of municipalities with qualified audit opinions against the target to have a maximum of 25% of municipalities with such opinions by 2019;
59% of municipalities with unqualified audit opinions against the target to see at least 75% of municipalities to achieve this desirable state by 2019.

The expenditure budget for the municipal sphere in 2014-15 totaled R347 billion. Municipalities with clean audit opinions represent R134 billion (39%) of this amount, while those with unqualified opinions with findings represent R143 billion (41%). The municipalities with qualified audit opinions made up R49 billion (14%) of the total budget, with those with adverse and disclaimed opinions representing R20 billion (6%). The outstanding audits constitute R1 billion of the total budget.
Increased accountability and transparency within local government are evident in the significant improvement made in submission of financial statements for audit by the legislated date and the preparation of annual performance reports.

The financial statement submission rate improved from 78% to 94%, while the number of municipalities that failed to prepare annual performance reports decreased from 14% to 4%.

The provinces with the highest proportion of municipalities with clean audit opinions in 2014-15 were the Western Cape (73%), Gauteng (33%) and KwaZulu-Natal (30%). Leadership in these provinces has proved the value of investing in strengthening internal control, valuing stability in the administration of municipalities and taking decisive action on both internal control failings and audit findings. This does not mean that these provinces find themselves without challenges, as the situation in the Central Karoo District Municipality (Western Cape), the West Rand District Municipality (Gauteng) and the Umkhanyakude District Municipality (KwaZulu-Natal) testifies. The audit outcomes of municipalities in the Eastern Cape, Free State and Mpumalanga have shown momentum in the right direction.

Also the report indicated that the audit area that showed the greatest improvement was the audit opinions on financial statements. The number of unqualified audit opinions increased from 47% to 59%, while municipalities receiving disclaimed or adverse opinions decreased from 33% to 11%. The items that municipalities struggled with most to correctly measure and disclose in the financial statements over the past five years were property, infrastructure and equipment, revenue and irregular expenditure, but there has been improvement in all three areas – most notably property, infrastructure and equipment. Municipalities continue to rely on consultants to prepare financial statements.

Finally, the report also indicated that the municipal managers and senior managers improved financial and performance management by implementing audit action plans to address the audit findings as well as the root causes of the audit findings. They improved the record keeping of municipalities, ensured that the basic controls around transactions
and reconciliations are in place and enabled monitoring and oversight through regular and credible reporting on important matters such as SCM and contract management.

The governance of these municipalities was greatly enhance Councils and municipal management to implement the recommendations of the audit committees and used the internal audit units to identify risks and the controls that can be implemented to mitigate the risks. The initial outcomes that have been observed from the back-to-basics programme recently launched by Cooperative Government and Traditional Affairs (COGTA) bode well for the municipal sphere in South Africa. Where these interventions have been taken up by stable leadership in an environment where strong internal controls are valued and where the needs of the community remain a paramount consideration, audit outcomes have improved and stabilised to a point where service delivery can take place in a well-governed environment.

It has also recognised the considerable effort made by the South African Local Government Association (SALGA) to join hands with National Treasury and CoGTA to support municipalities. SALGA’s municipal audit support programme, which was launched mid-2014 and focuses specifically on addressing challenges experienced by so-called ‘red zone’ municipalities, certainly contributed to the downward trend in adverse and disclaimed audit opinions, according to the report.

3.4.67 Project Consolidate 2006, Initiative to Improve Revenue in Municipalities

Also the campaigns launched by COGTA in an attempt to improve the situation have yielded good results. In 2006 Project Consolidate, an initiative to improve revenue in municipalities and water sanitation was launched. The Consolidated Financial Statement was aimed to provide information on financial performance as well as national government ability to meet current and future obligation according to the project, namely:

- Preventing the consolidated monetary values of national governments;
- Improving the users’ understanding of public sector financial management and to enhance the achievement of social objectives and priorities; and
Creating uniformity in the presentation and analysis of public sector financial information by 2014.

3.4.68 Integrated Municipal Information System 2009, Operation Clean Audit 2014

In 2009 Integrated Municipal Information System, known as Operation Clean Audit 2014, was also launched. In this initiative, all municipalities and provincial government departments were expected to:

- Achieve clean audit in their Accounting Financial Statements;
- Maintain systems for sustainable quality financial statements and management;
- Between 2010 and 2011 no municipality and provincial department will receive adverse or disclaimer audit opinions;
- At least 60% of provincial departments and 283 Local Municipalities should achieve unqualified audit opinion by 2012;
- By 2013 there should be an increase to 75% both in municipalities and provincial departments that achieve unqualified audit; and
- By 2014 there should be 100% clean audit, according this project.

3.4.69 Local Government Back to Basic Approach 2014

Finally, in 2014, after the reviewal of the above projects, Back-to-Basic project was launched, a situation where a need for a change of paradigm that would focus mainly on serving the people and not political elites and organizations. This was the essence of 'back to basics’ approach. At the most basic level, it was expected that municipalities would:

- Put people and their concerns first and ensure constant contact with communities through effective public participation platforms;
- Create conditions for decent living by consistently delivering municipal services to the right quality and standard. This would include planning for and delivery of infrastructure and amenities, maintenance and upkeep, including the budgeting to do this;
- Ensure no failures in services and where there are, restore with urgency;
Be well governed and demonstrate good governance and administration - cut wastage, spend public funds prudently, hire competent staff, ensure transparency and accountability;
Ensure sound financial management and accounting, and prudently manage resources so as to sustainably deliver services and bring development to communities; and
Build and maintain sound institutional and administrative capabilities administered and managed by dedicated and skilled personnel at all levels.

According to this strategy, changing strategic orientation was no mean feat and it required leadership and political will. At the same time a need of a collective effort and unity of purpose and partnership with leaders in local government, provinces and national government.
There was a need to improve the political management of municipalities and be responsive to the needs and aspirations of local communities.

A desperately need of leadership with a vision to change and the calibre to drive the change process. A need of leadership that will inspire and organize for the common purpose of improving services to our people.

Each functionary needed to understand the core mandate and orientation, understand their specific role in delivering the local government vision as envisaged in the White Paper and act in a manner that ensures that local government primarily serves its people by delivering basic services.

Actions needed to move from intent to generating impact on the ground, and that will have to mobilise massive support from those who are willing to change for the better and isolate those who seek to push back progressive change amongst us. The strategy for the campaign would be based on supporting and educating the coalition of the willing as well as enforcing compliance through legislation and regulation to achieve the goals. In other
words, that would have to push, incentivise, disincentivise and embarrass those who are not willing to change.

3.5 LIMITATIONS OF THE STUDY

In most instances issues of corruption involve high profile individuals in government corridors as such it makes it difficult to get information because people are scared to be victimized. The municipalities kept highly confidential information which was not readily available for public consumption when required. Also the principle of *sub judice* on matters of this nature applied.

Also the majority of senior officials were always in suspension within municipalities. In order to overcome these risks the researcher had utilized the provisions of the Access the Information Act 2000 (Act 2 of 2000). This Act gives effect to the constitutional rights of access to any information held by the state and any information that is held by another person.

3.6 CONCLUSION

This process has not been smooth and easy one given the sensitivity of the topic itself. The municipalities keep highly secretive information which is not always available for public consumption. People were reluctant to divulge information because they did not know what would happen to them thereafter.

Some senior officials have been suspended for fraudulent activities who might have valuable information. The change and volatility of leadership in the municipalities has constrained the researcher to speed up the process and meet the targets.

The publicity of the Mandela Scandal in BCM has assisted a lot in this research process in making information available especial with the local newspaper such as Daily Dispatch.

Also the African National Congress through its National Integrity Committee is commended of its latest stance on Comrades accused or face charges on corrupt activities or related matters, as per the resolutions of the Mangaung Conference and other conferences as well as National General Conferences. The report of the committee dated
the 15th March 2015 recommended that an action should be taken against Comrades implicated in the Madiba funeral scandal until their court case is finalized.

The researcher had to use certain skills to acquire certain information because of being familiar with the terrain. The tensions and uncertainty among municipal employees made it difficult to acquire information.

At the time of finalizing the research it can be confirm that there has been relative stability in the Buffalo City Metro because of the intervention of the Provincial Executive Committee of the ruling party, the African National Congress, where the former Executive Mayor Ncitha was redeployed to National Council of Provinces and replaced by Mr Mtsi, and former Deputy Executive Mayor Ntinta redeployed to the Eastern Cape Provincial Legislature and replaced by Mr Phakathi.

The Integrity Commission’s with findings on Buffalo City Metropolitan Municipality has since been released, with the recommendations that Mr Mkolo should be relied of his duties as Regional Secretary with immediate effect. The former Executive Mayor Ms Ncitha, her former Deputy Mr Ntitha and should also relinquish their positions with immediate effect as well. The suspension of the Municipal Manager and other senior officials was still intact by the time of finalizing the study.

This state of affairs in municipalities has impacted negatively in the overall performance of the ruling party in the outcome results of the recent 2016 Local Government Elections, especial in metros like Nelson Mandela, Tshwane, Ekurhuleni and Johannesburg.

As a results the National Executive Committee meeting of the ANC (11th-14th August 2016) took the following resolutions:

That the NEC will visit all provinces to meet with its own structures and Alliance components, different sectors and communities to deal with the concerns raised by the people;

The organization will immediately embark embark on training of councillors to ensure that they lead municipalities in the interests of the people;
Councillors should provide services to the people and maintain high levels of revolutionary discipline and integrity;
The NEC resolved to put in place mechanisms that would monitor services delivery across all spheres of government and ensure accountability of all deployees for actions in the execution of assigned responsibilities; and
The NEC called for an approach that will effectively deal with this cancer of corruption, without fear or favour. (ANC NEC PRESS STATEMENT 04/08/2016) Again the issue of implementation of these resolutions is a matter of concern.
CHAPTER FOUR: DATA PRESENTATION AND ANALYSIS

4.1 INTRODUCTION

Data analysis involves what has been seen, heard and read in order to use of the data collected. In this chapter gathered information has been analyzed by means of case study, mapping and filtered techniques. The data extracted from documents, newspapers and observations were triangulated and validated through utilizing of the referred techniques.

It is significant due to the fact that many officials in the Buffalo City Metro surveyed, demonstrated an incomplete understanding of the concept of corruption. However, the majority believed that it was understandable and that accepting gifts in return for performing services, which form part of the relevant job description, should not be punishable.

This finding indicated that there is an urgent need for the municipality and senior management to provide education and training to all its officials on the definition, identification and adverse social impact of corruption.

The officials of the municipality should be left with clear realization that when public resources are abused, the entire communities suffer as a result. Another very important aspect, which must be understood, is that social infrastructure such as community halls, a domain where the municipality has a huge backlog in community facilities, provision of water and sanitations, roads etc will not be provided.

4.2 CONSOLIDATED GENERAL REPORT ON AUDIT OUTCOME OF LOCAL GOVERNMENT 2009/2010

According to the Consolidated General Report on the Audit Outcomes of Local Government 2009/2010 local municipalities are struggling with a number of constraints and challenges which hamper their ability to deliver services.

The followings can be attributed to that:

Lack of capacity and lack of the requisite skills has left many municipalities inadequately staffed, with grave implications for service delivery.
Public confidence in government’s ability to deliver being undermined by corruption and maladministration.

The appointment of people without necessary skills or qualifications in senior position under the pretext of a cadre deployment.

Lack of discipline, an absence of commitment to serving the public interest and non-adherence to the code of conduct for municipal officials is a challenge.

The biggest challenge for local government, especially the smaller ones with no reliable revenue base, is to attract and retain competent persons across all areas of administration.

The instability before and after elections means more acting persons and vacancies that are not filled timeously, which in turn impacts negatively on financial management and service delivery.

The glaring Auditor-General’s report on handling of finances by municipalities especially in the Eastern Cape Province.

4.3 CONSOLIDATED GENERAL REPORT ON THE AUDIT OUTCOMES OF LOCAL GOVERNMENTS 2010/2011

According to the Constitution of the Republic of South Africa, Act 108 of 1996, the Auditor-General has a constitutional mandate and, as Supreme Audit Institution, exists to strengthen the country’s democracy by enabling oversight, accountability and good governance in the public sector, thereby building public confidence.

According to this report there were absolutely no improvement compared to the previous year though recommendations were made to improve the situation.

This could be attributed to following:

Not all political leaders took these matters seriously and accepted their accountability in this regard;

Most municipalities did not take the AG’s recommendations seriously;

There were also limited consequences for the failure of Accounting Officers and municipal officials to comply, even though there were clear remedies in legislation to deal with transgressions;
Skills level and experience of staff appointed in the finance department, especially with regard to compilation of financial statements that comply with GRAP were not adequate;
Consultants were often appointed close to a year end and data used by or provided to consultants to prepare financial statements was often not reliable;
The lack of improvement in the areas such as Supply Chain Management, which received much attention from AG, points to a disregard for laws and regulations.

As is always the case, there were findings that were picked up in the report of which some of them were the same as in the previous report:

Three price quotations were not in all instances obtained from prospective service providers and deviations were not approved by a properly delegated official or committee as required by legislation;
Competed bids were not always invited and deviations were not approved by properly delegated officials;
Awards were made to suppliers without proof from South African Revenue Services that their tax matters were in order;
The declarations were not always submitted by the service providers, as a result the auditees did not have sufficient information to identify conflicts of interests and prohibited awards;
Bids were advertised for a shorter period and no approval of deviation;
Bids were not adjudicated by a properly constituted adjudication committee;
Prospective supplier’s list was not administered in accordance with the requirements;
Bids were not evaluated by properly constituted evaluation committee;
Goods and services were received and payments made to suppliers without a written, signed contracts being in place;
Contracts were not prepared in accordance with general conditions of contract as prescribed by National Treasury Regulations;
Some officials involved in the implementation of SCM policies were not adequately trained to perform their duties effectively;
Contracts were not adequate to ensure that officials declared whether they or their close family members, partners and associates had interests in suppliers or contract to awarded; 
Supply Chain Management policies or procedures were in conflict with applicable legislation; and 
Supply Chain Management officials were not aware of supply chain management policies and/or did not understand roles and responsibilities.

4.4 THE REPORT OF THE AUDITOR-GENERAL TO THE EASTERN CAPE PROVINCIAL LEGISLATURE AND BUFFALO CITY METROPOLITAN MUNICIPALITY 2010/2011

The Report of the Auditor-General to the Eastern Cape Provincial Legislature and the Council of Buffalo Metropolitan Municipality 2010/2011 has reflected no-compliance with laws and regulations. The following irregularities among others were detected:

- The municipality incurred expenditure in excess of the limits provided in the votes with the approved budget. This was in contravention of section 15 of the MFMA.
- Awards were made to service providers based on criteria which differed from those stipulated in the original bid documents.
- Quotations were accepted from prospective service providers who were not on the list of accredited prospective providers and not meet the listing requirements prescribed by the supply chain management policy.
- Awards were made to service providers whose tax matters had not been declared by the South African Revenue Services to be in order as required by the supply chain regulation.
- Awards were made to providers based on criteria which differed from those stipulated in the original bid documents.
- Awards were made to providers who are persons in service of the municipality which contravenes SCM regulations, and they failed to declare that they were in service of the state.
- The prospective providers list for procuring goods and services through quotations was not updated at least quarterly to include new suppliers that qualify for listing.
• The Accounting Office did not take all reasonable steps to ensure that the municipality had and maintained an effective system of expenditure control, including procedures for the approval, authorization, withdrawal and payment of funds, as required by section 65 (2) (a) of the MFMA.

• Investigations were not always conducted into all allegations of financial misconduct against officials of the municipality, as required by section 171(4)(a) of the MFMA.

• Lastly, the fraud prevention plan was last reviewed in 2003. The significance of not reviewing the plan was evident by the numerous fraud cases uncovered by management subsequent to the last review performed.

In the year under review, the permanent filling of key leadership positions remained a challenge in the Buffalo City Metropolitan Municipality. For the third consecutive year, the critical positions of the City Manager and the Chief Financial Officer remained vacant. The suspension of three directors was only lifted in June 2011 and cases against these individuals were not yet finalized according to the report.

Key leadership vacancies have directly contributed towards the weakening of the general control environment of the municipality during the past three years.

General delegations were only approved by the council during May 2011. The municipality therefore operated without approved delegations for most of the financial year and no sub delegation to lower ranks were in place at the year end. This had a severe impact on the operational and organizational efficiency of the municipality.

The disregard for approved financial policies and procedures, specifically the municipality’s supply chain management policy was an area of concern. Staff at supply chain management unit were not capacitated to fulfill and execute their duties and responsibilities.

The lack of segregation of duties between the procurement and payment functions at the supply chain management unit has contributed towards the weakening of control environment.
The municipality again did not introduce an appropriate system to detect, monitor, report and discipline staff who failed to observe the municipal’s supply chain management policy.

Finally, according to this report, the investigation in respect of allegations leveled against former Acting Municipal Manager was concluded after year-end, and a number of officials and councilors were implicated in the report. At the time of conducting the research, the council was still in the process of assessing and implementing the finding and recommendations of the report. Irregular expenditure of R75, 1 million in respect of this matter was detected. But it was clear that the report had divided the council given that some heavy weights were being implicated.

4.5 THE REPORT OF THE AUDITOR- GENERAL TO THE EASTERN CAPE PROVINCIAL LEGISLATURE AND BUFFALO CITY METROPOLITAN MUNICIPALITY 2011/2012

According to this report the municipality incurred expenditure in excess of the limits provided for in the votes with the approved budget. This was in contravention of section 15 of the MFMA, as a result an unauthorized expenditure of R8.1 million was disclosed.

The Accounting Officer did not timeously submit the monthly budget statements to the mayor and provincial treasury as required by section 71(1) of MFMA. Sufficient appropriate audit could not be obtained that goods and services with a transaction value between R10 000 and R200 000 were procured by means of obtaining written price quotations from at least three different prospect service providers as per the requirement of supply chain management regulation 17 (a) and (c). Quotations were accepted from prospective providers who were not on the list of accredited prospective providers and which were not stipulated in the original bid documents as the requirements of SCM regulations. The annual performance report for the year under review did not include the performance of the municipality and external service providers, a comparison of the performance with set targets.

An audit committee was not in place for the full year as required by MFMA, as a result there were no audit committee meeting. Disciplinary hearings did not commence within
three month of the resolution to institute disciplinary action, as required by Disciplinary Regulation for Senior Managers.

The following irregularities were detected on procurement and contract management in the year under review:

- Goods and services with a transaction value below R200 000 were procured without obtaining the required price quotations as required by SCM.
- Quotations were accepted from prospective providers who were not registered on the list of accredited prospective providers and did not meet the listing requirements prescribed by SCM policy.
- The performance of contractors and providers was not monitored on a monthly basis as required by MFMA.
- Awards were made to providers who were persons in service of municipality or whose directors are persons in the service of the municipality, in contravention of SCM Regulation.
- Persons in the service of the municipality who had a private or business interests in contracts awarded by the municipality failed to disclose such interests, as well as their close family members.
- Allegations of fraud or corruption and improper conduct and failure to comply with the SCM system laid against role players in the SCM were not investigated as required by SCM.
- Sufficient appropriate audit evidence could not be obtained that all contracts and quotations were awarded in accordance with the legislative requirements and procurement process which was fair, equitable, transparent and competitive, as some of the information submitted was incomplete.

4.5.1 Challenges Facing the Leadership in the Municipalities in South Africa

The study identified the following challenges on leadership in the municipalities in South Africa:

- The political and administrative leadership did not take full ownership of the internal control environment and did not insist on daily disciplines to ensure
efficiency and effectiveness in financial management, service delivery execution and compliance with laws and regulation, thus not setting the correct tone for the credibility of all reports of administration.

Top and middle management positions were vacant for extended periods. This included the Chief Financial Officer’s position which was vacant for more than 33 months at the time of the report, while the Accounting Officer’s position was only filled in March 2012. The continued absence of permanent finance professional to lead and guide the municipality compromised sound financial management.

The leadership did not address the challenges faced by municipality’s SCM Unit during the past four years and did not implement its SCM policy. This was largely as a result of inadequate capacity within the unit to implement the SCM policy, which was further aggravated by inadequate planning by the different directorates within municipality. This was evidenced by the large amount of irregular expenditure incurred and the amount by which the budget was underspent.

4.6 THE REPORT OF THE AUDITOR-GENERAL TO THE EASTERN CAPE PROVINCIAL LEGISLATURE AND BUFFALO CITY METROPOLITAN MUNICIPALITY 2012/2013

According to this report the following observations were identified:

The municipality did not have adequate systems in place to identify and disclose all irregular expenditures incurred during the year under review as required by MFMA.

Due to the lack of adequate systems and non-availability of sufficient appropriate audit evidence for all awards, it was impracticable to determine the full extent of the understatement of irregular expenditure disclosed at R781,1m. The municipality’s performance management system was not in line with priorities, objectives, indicators and targets contained in its IDP.

The municipality did not have and maintain effective, efficient and transparent systems of financial and risk management and internal controls as required by MFMA.
Measures to combat the abuse of the SCM system were not implemented as per the requirements of SCM regulations as declarations of interest were not submitted to assess whether awards were not made to providers who:

- During the last five years had failed to perform satisfactory on previous contracts with the municipality or municipal entity or other organ of state.
- Committed a corrupt or fraudulent act in competing for the contract.
- Abused the SCM system of the municipality.
- Had been convicted of fraud or corruption during the past five years.

Goods and services with a transaction value of below R200 000 were procured without obtaining the required price quotations as required by Municipal Supply Chain Management regulation.

Sufficient appropriate audit evidence could not be obtained that contracts and quotations were only awarded to and accepted from bidders who submitted a declaration on whether they are employed by the state or connected to any person employed by the state as required by SCM. An effective system of expenditure control, including procedures for the withdrawal and payment of funds was not in place as required by MFMA.

The municipality did not comply with requirements of the MFMA regarding the following:

- Fruitless and wasteful expenditure incurred by the municipality was not investigated to determine whether any person was liable for the expenditure.
- The municipality did not adequately follow up on Council and Municipal Public Accounts Committee reports which determine whether any person is liable for fruitless and wasteful expenditure incurred resulting in action not being taken to recover such funds.
- Council reports in which an assessment is made regarding the recoverability of the irregular and fruitless and wasteful expenditure was not produced.

Leadership did not sufficiently address the challenges faced by the municipality’s SCM. This had resulted in inadequate capacity within the unit, which was further aggravated by poor planning by the different directorates within the municipality.
Top and middle management positions were vacant for extended periods of time. The continued absence of permanent officials to lead and guide the municipality compromised the effectiveness of the control environment. There was a lack of processes in place to ensure compliance with laws and regulation, as a result management did not effectively monitor and address areas of non-compliance.

4.7 The Report of the Auditor-General to the Eastern Cape Provincial Legislature and Buffalo City Metropolitan Municipality 2013/2014

According this report the municipality did not have adequate system in place to identify and disclose all irregular expenditure incurred during the current and previous financial periods as required by section 125 (2) (d) (i) of the MFMA. Due to these inadequate systems it was impracticable to determine the full extent of the understatement.

The municipality was a defendant in a number of law suits to the amount of R166 million. The outcome of these law suits could not be determined at the time as litigation was still in progress.

The consolidated financial statement submitted for auditing were not prepared in all material respects in accordance with requirements of section 122 of the MFMA. Asset management was inadequate as a perpetual asset register was not in place. The accounting and information systems did not support internal controls for assets as required by section 63(2)(a) and (c) of the MFMA.

Unauthorized, irregular, fruitless and wasteful expenditure incurred by the municipality was not always investigated to determine whether any person was liable for the expenditure, as required by section by section 32(2)(a)(ii) of MFMA. Reasonable steps were not taken to prevent authorized, irregular, fruitless and wasteful expenditure as required by MFMA.

Council certified irregular expenditure as irrecoverable without having conducted an investigation into every award made, as required MFMA.

Reasonable steps were not taken to prevent unauthorized, irregular, fruitless and wasteful expenditures as required by MFMA. Quotations were accepted from prospective
providers who were not registered on the list of accredited prospective providers and did not meet the listing requirements prescribed by Supply Chain Management policy.

For prior period awards identified through the audit no effective steps were taken to prevent or combat the abuse of the SCM processes in accordance with SCM regulation. Awards were made to providers whose directors or members were in the service of the municipality, as well as providers who were in the service of other state institutions. Persons in the service of the municipality or close family members who had a private or business interest in contracts awarded by municipality failed to disclose such interest as required by SCM regulation. Also contracts and quotations were awarded to bidders who had not submitted declaration on whether they were employed by the state or connected to any person employed by the state as required by SCM regulation.

The performance management system and its related controls were inadequate as it did not describe and represent the processes of performance.

Leadership had not instituted all disciplines necessary to enable oversight and monitoring that promote efficiency and effectiveness in financial management, service delivery reporting and compliance with laws and regulation.

The leadership did not implement effective human resource management to ensure that adequately and sufficiently skilled resources are in place as a number of key position within top and middle management were vacant for extended periods of time. The continued absence of permanent officials to lead and guide the municipality compromised the effectiveness and stability of the control environment.

Leadership did not sufficiently address the previously reported challenges faced by municipality’s SCM unit. This was largely as result of inadequate capacity within the SCM unit which resulted in poor record keeping and monitoring thought the year under review. This was further aggravated by poor planning, implementation and monitoring of contracts by user directorates within the municipality.

The municipality did not fully implement and monitor all required daily and monthly financial, performance and compliance disciplines to verify the credibility of in-year
reporting. This has eventually resulted to reconciliations and processing only being performed after the financial year-end.

The municipality did not implement an effective performance management system that enables leadership to hold all officials accountable for the work they perform on a daily basis. There was a lack of processes in place to ensure compliance with laws and regulation. As a result, management did not effectively monitor and address areas of non-compliance.

Finally, according to this report MEC for Local Government and Traditional Affairs, and the Directorate of Priority Crime Investigation were investigating allegations of irregularities with respect to the state funeral procurement.

4.8 THE REPORT ON THE INVESTIGATION INTO THE ALLEGED IRREGULARITIES IN RESPECT OF BUFFALO CITY 2010 FIFA WORLD CUP BY ERNST AND YOUNG 2011

In the report the following irregularities were detected in the appointment of service providers:

- The Buffalo City Metro SCM Unit was not requested to assist in the appointment of the local service providers.
- Media Led and Enterstage were subcontracted by Phumaf and Alliance without following a process to verify their credentials. However, when the contracts were cancelled the payment relating to services were not yet rendered and were not recovered.
- The scope of work for Enterstage, a service provider appointed to provide equipment in King William’s Town, was extended to include the provision of equipment and related services in Douw Sports Grounds in Chalumna for the work which was previously contracted to Media Led.
- Media Led and Enterstage were paid for the same services, which amounts to double payments in respect of the same work.
In the same report, the Price Water Coopers report dated 11\textsuperscript{th} October 2010 revealed that various potential irregularities relating to the local service providers subcontracted by Alliance. They included the following:

- Non-compliance with VAT. In this regard there were instances where incorrect VAT numbers were supplied by service providers.
- No VAT numbers were supplied on certain invoices.
- Certain individuals owned numerous entities that Alliance appointed as subcontractors.
- Manual modification occurred in respect of bank details on certain invoices, and inconsistent bank accounts were provided in invoices by certain entities.

There were media reports that then present Executive Mayor, Ms Zukiswa Ncitha wanted an external body to look into the recommendations of the report. But the unfortunate part was that the report implicated some senior officials and politicians, hence it has taken so long to be auctioned. Ultimately a multiparty committee was tasked to handle the matter.

### 4.9 REPORT ON INVESTIGATION IN RESPECT OF THE ALLEGATIONS AGAINST THE BCM FORMER ACTING MUNICIPAL MANAGER DR LULAMA ZITHA BY ERNST AND YOUNG 2011

According to this report, Ernst and Young was requested by BCM to investigate whether a prima facie case against the erstwhile the then Acting Municipal Manager of BCM, Dr Lulama Zitha, existed of any financial misconduct, failure to perform her fiduciary duty or any other act or omission that may prejudice the financial interest of BCM on the part of Dr Zitha or any official or councilor of BCM for the period of 01\textsuperscript{st} March 2010 to 26\textsuperscript{th} July 2010.

There were 14 contracts during phase one of the investigations that required to be investigated and were listed in the report.

The objectives to the investigation were as follows:

a) Determine whether the BCM Supply Chain Management Policy, as well as other applicable legislation and regulations, were adhered to in respect of the specifications, advertising, evaluation or adjudication of such bids, by reviewing
the tenders awarded during the above mentioned period that required further investigation;
b) Determine whether the relevant statutory and policy framework, most particularly in respect of Municipal Systems Act and Municipal Finance Management Act and associated regulations as well as SCM Policy were adhered to in all respects in the process that led to the specifications, advertising of tenders, evaluation and adjudication of such bids and the finalization of contracts with respective service providers;
c) Establish whether prima facie evidence existed of any contravention of the code of conduct for councillors or code of conduct for municipal staff members pertaining to the specification, advertising, evaluation and adjudication of the above bids as well as the finalization and/or administration of respective contracts pertaining thereto;
d) Establish whether sufficient prima facie grounds existed for BCM to initiate proceedings to recover from any party any loss or damage suffered as a result of any deliberate or negligent unlawful actions;
e) Establish whether prima facie evidence existed indicating any tender rigging, corruption or any involvement of councilors or officials in procurement processes;
f) Establish whether any councilor and/or official has wrongfully and/or unlawfully interfered in the administration of BCM;
g) Establish what involvement, if any, has been from the councilors and officials in procurement;
h) Establish whether all identified tenders awarded via deviations complied with the relevant policies, regulations and legislation;
i) Establish whether any contracts, formal or informal, were awarded to service providers resident outside the jurisdiction of the BCM and, if so, whether the directors of these entities have declared their relationship with any BCM member of staff or office bearer; and
j) With regard to payments, establish the following in respect of the identified contracts that were awarded:
   What payments were made?
Who processed each payment?
Who approved each payment?
If there was evidence of any irregularity in the payment process; and
Whether the actual services were rendered in relation to each payment.

The report had the following findings with regard to the appointment of Mkwanazi Construction to upgrade the Bhisho, King Williams Town and Zwelitsha Regional Sewerage Scheme:

The project was initiated after a proper needs analysis was performed and sufficient funding was made available for the project;
Due to limited time frame to appoint consulting engineers to the project, a normal tender process was not followed and Arcuss Gibb was appointed as the project managers for the project;
The tender was properly advertised on the 05\textsuperscript{th} of December 2008;
A total of nine tender submitted were received on the 23\textsuperscript{rd} of January 2009, but none of the tenders qualified in terms of the pre-qualification criteria recorded in the SCM Policy of December 2007. In fact, three of the tenderers submitte non-priced tenders and they attached letters to their bid submitted stating that BCM’s SCM Policy contradicted the Preferential Procurement Policy Framework Act (PPPFA) and that they would challenge the award of the tender in court;
On the 24\textsuperscript{th} February 2009 council suspended the pre-qualification criteria recorded in the SCM Policy. Also an opinion from legal department was obtained recommending that the tender be cancelled and re-advertised;
The tender was re-advertised on the 04\textsuperscript{th} of September 2009, a total of 15 tender submissions were received;
Cypress Construction was evaluated by Project Management Unit as the company scoring the most points, even though it had not submitted a valid Tax Clearance Certificate;
The Bid Adjudication Committee (BAC) recommended that the contract be awarded to MkwanaziConstruction as this company achieved the second highest points after Cypress Construction;
Dr Zitha approved the Bid Adjudication Committee (BAC) recommendation to award contract to Mkwanazi Construction in the amount of R30 million as she was accounting officer at the time and contract in excess of R10 million had to approved by the Accounting Officer. However, Mr Mtembu signed the letter of award in favour of Mkwanazi Construction in contravention of the SCM Policy; and

As a result of the above mentioned signing of the letter awarded outside the delegated authority, the expenditure incurred on the project, represented technical non-compliance with the SCM Policy and consequently met the definition of irregular expenditure as defined by section 1 of the MFMA.

The following anomalies and problem areas were identified in the evaluation of the tender bids received, but such did not render the evaluation process ineffective and it would in all probability not had changed the outcome of the award to Mkwanazi Construction.

Control over bid documents appeared to poor, as well as the investigating team could only provided with eleven of the fifteen tender bid submissions. Initially the team was not provided with the bid documents submitted by Mkwanazi Construction, and instead had to obtain a copy of the bid document from Arcus Gibb. The bid document was later found in a correspondence file in the SCM Unit.

The SCM Unit is responsible for securing and maintaining the tender bid submissions received. This indicated no-compliance with section 62(1)(b) of the MFMA, which requires that full and proper records of the financial affairs of the municipality are kept.

No complete set of Bid Evaluation Committee (BEC) and Bid Adjudication Committee (BAC) minutes were kept at the SCM Unit.

The evaluation reports compiled by the Project Management Unit were some times rejected by the BEC and had to be redone. The amended reports submitted to the BEC then contained different information and recommended a completely new contractor for the project.
This may have indicted that the officials from PMU did not evaluate the tender submissions properly in the first instance, or that they lacked the experience to conduct proper evaluation of tender bids received.

No technical assessment was conducted on the tenderers technical skills and capacity by engineering specialists.

The BAC deferred their decision on a number of occasions due to incomplete information provided by the BEC, such as no review conducted of the financial statements submitted by the preferred tenderer.

The tender documents did not include a schedule where the tenderers could complete their Historical Disadvantage Individuals (HDI) information, yet according to their tender documents the tenderers were to be assessed on both price (90 points) and HDI (10 points).

HDI points were allocated to only eight of the fifteen tenderers, without any schedule being completed in the tender document or any subsequent requests being made by BCM to the tenderers for such information.

No HDI points were allocated to Mkwanazi Construction, but share certificates were attached to the company profile that indicated that they had a 25% Black Economic Empowerment (BEE) shareholding. However, this could have made a difference to the position of tenderers in terms of the award.

On the basis that the information and documentation provided to the investigating team were complete and correct, and based on the information obtained during interviews conducted, it was concluded as follow with regard to the payments effected to Mkwanazi Construction in respect of this project:

As at December 2010 Mkwanazi Construction had submitted a total of seven payments certificates totaling R13.2 million inclusive of VAT. However, only the first three payment certificates totaling R6.3 million had been paid by BCM to Mkwanazi Construction as at the same date.
The payments for the first three payment certificates were initially allocated to the incorrect vote number, but this was corrected in January 2011 by means of a journal voucher; and Certificate number seven reflected that the project was 44.3% completed as at 09th December 2010. However, during the site visit on the 20th January 2011, it was evident that only 10 of the 90 manholes had been successfully constructed.

The quality of the work of Mkwanazi Construction in respect of electrical and structural competencies appeared questionable according to one of the referees listed by Mkwanazi Construction in its tender document that was contacted.

According to consulting engineers, this also seemed to relate to the problem that the contracted was experiencing at the time on site, with only having successfully completed 10 of the 90 manholes that needed to be completed by June/July 2011.

Mkwanazi Construction was also meant order pipes from China to be able to complete the manholes, but as at end of January 2011 such an order had not yet been placed with the supplier. According to the consulting engineers, it appeared that the project would not completed on time, being June/July 2011.

In terms of section 116 of the MFMA, BCM should ensure that Mkwanazi Construction deliver on the project, as a failure to do so, would exposed BCM to incurring fruitless and wasteful expenditure as defined by section 1 of the MFMA.

On the 27th May 2010 Cypress Construction was awarded a tender for a project of West Bank Land Restitution and Additional Bulk Services amounting to R52, 8 million for the duration of 48 weeks. The letter of appointment was also signed by Mr Mthembu. The tender was initially awarded to Eastern Khula Nathi Construction but later set aside because they failed to disclose on the disclosure page that an employee of the state was the member of the company.

Subsequent to that a number of contractors were appointed during the era of Dr Zitha, and in all of them SCM policies, regulations and policies were not adhered to, hence the team based on conclusions set out in the report, recommended that BCM, in consultation
with its legal advisors, should consider appropriate disciplinary action, which may include
disciplinary hearings where, on the available facts, transgressions appeared to be
serious, or written warning where less serious against the following BCM officials:

**Mr Mthembu:** For signing letters of award without the authority to do so in respect
of Mkwanazi Construction – contract valued R30 million, Cypress Construction-
contract valued R52.7 million and Bigen Africa – contract valued R15, 7 million.
For contravening section 112 of MFMA, Regulation 32 of the MSCM Regulations
and paragraph 40(1)(a)-(d) of the BCM’s SCM, when he signed and issued the
letter of award dated 25th May 2010 to INTPS to the value of R2,2 millio without
the supporting documents. For contravening section 78 of the MFMA for issuing
the letter of appointment to DDN Consulting on 16th April 2010 without verifying
compliance with due procurement processes.

**Mr Ncunyana:** For contravention of his delegated responsibilities in terms of
section 78 of the MFMA for signing incomplete and inaccurate evaluation reports
compiled by the PMU in respect of Mkwanazi Construction and Cypress
Construction bids, without conducting a proper review of the contents of the report.

For contravening section 78 of the MFMA for failing to obtain a report from the
consulting engineers prior to the evaluation of the tender bids received from
Cypress Construction and Mkwanazi Construction, but instead requested PMU to
assess the bids received.

**Ms Zukiswa Faku, Former Mayor:** For requesting Ndodana to proceed with three
projects without an approved budget or appointment letter and contract, possibly
resulting in irregular and unauthorised expenditure in terms section 32 (1) (c ) of the
MFMA and also a possible contravention of section 117 of the MFMA.

**Ms Magwentshu:** For signing the Ndodana contract on 2 November 2009 when
the procurement process in respect of the appointment of Ndodana was not
adhered to, or not fully complied with. For signing dodana contract when she had
no authority to do so, as she was no longer the Acting Municipal Manager.
For authorizing payment to Ndodana of their invoice NC0963 to the value of R2 million without verifying that the correct procurement process was duly followed.

**Dr Zitha:** The council should consider its obligations in terms of section 32 of the MFMA and take the necessary action to recover the unauthorized or irregular expenditure that had occurred. From the available evidence it was apparent that Dr Zitha might have contravened section 173 of the MFMA, failing to take reasonable steps to prevent irregular expenditure, as she appointed City Square and Renamane without following the SCM Policy and MFMA.

It can be concluded that indeed pieces of legislation that are there to regulate procure processes were never adhered to. Also a Multy-Party Committee comprised of nine councilors was established according to the report to examine the findings and recommendations of Ernst and Young forensic report.

The committee set its own terms of reference:

- To refine the recommendations of Ernst and Young report and submit concrete resolutions to council on disciplinary action to be taken, as well as possible criminal and civil action against implicated individuals in the report.
- Given powers to call for documents it may require to perform its mandate as well as councilors or officials for interviews.

The objective of the mandate was to:

- Determine whether the SCM Policy of BCM, as well as other applicable legislation and regulations were adhered to in respect of the specifications, advertising, evaluation and/or adjudication of bids.
- Determine whether the relevant statutory and policy framework, most particularly in respect of Municipal Systems Act, MFMA and associated regulations, as well as BCM SCM Policy were adhered to in all respects in the process.
- Establish whether *prima facie evidence* existed of any contravention of the Code of Conduct for councilors or the Code of Conduct for Municipal Staff Members.
Establish whether sufficient *prima facie* ground existed for BCM to initiate proceedings to recover from any party any loss or damage suffered as a result of any intention or negligent unlawful action whether by commission or omission. Establish whether all identified tenders awarded via deviations complied with the relevant statutory requirements. And

The committee would make such recommendations as deemed appropriate against officials and councilors that were implicated.

The committee had the following recommendations:

That criminal charges be preferred against Dr Zitha for neglecting her duties whilst she was the Accounting Officer.
That steps be taken to recover from Zitha the portion of wasteful and fruitless expenditure incurred by BCM as a result of her conduct in terms of section 32 of the MFMA.
That disciplinary action be instituted against Mr B Mthembu for signing the letters of awards to companies whilst having no authority to do so.
Also all other implicated officials implicated to the report should be subjected to disciplinary processes as well.

The committee had also the following general recommendations:

That BCM should consider implementing two stage bidding processes for all engineering contracts, the majority of them were complex, and require technical assessment.
The BEC and BAC should request that consulting engineers be assigned to an engineering project in order to compile reports on technical aspects of the projects.
That the proper control over the tender bid submissions, even after the contract has been awarded.
That evaluation reports be compiled as soon as possible after the tender closes.
That proper records be kept of all reference checks performed on contractors, which records the date, time, name of person and comments made by referee.
BCM should implement effective internal controls to ensure that all documentation is stored in a logical and effective manner; and
BCM should implement a system to detect and monitor occurrences of unauthorized expenditure and fruitless and wasteful expenditure

It was established that almost all contracts awarded to various service providers were not budgeted for as required by section 15 of the MFMA, according to Multi-Party Committee report. Procurement processes followed were fundamentally flawed

This attempt by the committee was to ensure that public funds in the Buffalo City Metro Municipality are spent in an effective, efficient and transparent manner, in line with the prescripts of the law.

But however, having these recommendations tabled and adopted by the council there are completely no indications of implementation, given that Dr Zitha has since left the BCM as she seconded as well as implicated individuals, some have also left the system and some are still in the payroll of the municipality as if nothing happened. These are some of the challenges facing the municipalities hence the instabilities and endless mass actions.

Also tax payer’s monies have squandered which impact negatively in service delivery. Also the process of investigations after investigations has costs the municipality a lot of money but no value for money.

4.10 NEWS PAPERS PUBLICATIONS

Buffalo City Metro has been the target of print media especially the local paper Daily Dispatch, because of scandal after scandal that has been taking place in this municipality.

4.10.1 Daily Dispatch 25th November 2013, Mystery of BCM Payments

According to the Daily Dispatch dated the 25th November 2013 Buffalo City Metro authorized payments of three different companies for information technology systems before the contracts have been even signed. Documents revealed that the acting director of community services at the time authorized cheque requisitions to the three companies three days before the directors of the companies signed contracts with the metro.
4.10.2 Daily Dispatch 29th November 2013, Questions on Tenders Link BCM Boss

According to Daily Dispatch dated the 29th November 2013, the education institution that awarded Buffalo City Metro manager Andile Fani a certificate in municipal financial management was given informal tenders of almost R500 000 by the metro. Kgolo Institute’s Director, faced charges with Fani in East London Court over the certificate which was issued in 2012. A schedule of informal tenders published by BCM list three awards to Kgolo. In all three awards listed on BCM presented to council as the sole bidder.

On the other hand, the list of informal tenders’ responses on BCM’s website showed that in all three tenders Kgolo faced competitive bids from other services providers. Therefore, it was not clear as to what criteria BCM used that would flag other bidders non-responsive.

4.10.3 Daily Dispatch 10th January 2014, BCM Suspends Officials on Fraud Allegations Again

According to the Daily Dispatch dated the 10th January 2014, eight Buffalo City Metro officials were suspended with full pay following allegations of fraud as the metro continued to crack down on corruption.

The officials were being investigated for gross misconduct relating to honesty. It was related to tenders valued between R30 000, 00 and R200 000, 00 and internal investigation reportedly found that some officials allegedly:

- Created bogus companies and paid money into their private accounts;
- Worked with private companies and inflated tender values in exchange of bribes;
- Used their residential addresses as delivery points for goods sourced using municipal funds.

The officials sourced three quotations and choose their preferred bidders according to the report. Some of the suspended officials had just returned to work after a 15 months suspension in 2012 over similar allegations.
4.10.4 Daily Dispatch 14th January 2014, BCM Pays R6m for Madiba Services Taxis

According to the Daily Dispatch dated the 14th January 2014, an East London firm was paid R6million by Buffalo City Metro to ferry mourners around the city over three days to four memorial services for former President Nelson Mandela. The company billed the metro R5 985 000,00 for services rendered on December 10, 11 and 12.

The invoice carried very little information on the services rendered by the company and did not include the number of people ferried, number of vehicles used as well as the distance travelled.

The budget for Mandela’s memorial was approved by the council on December 11 and the resolution by the council indicated that after all expenditure a report should be submitted to council detailing the costs. The estimated people who attended all the event was at 2000 according to the reporters who attended the events.

What also came out was that the project was never taken to tender and other companies were not invited to tender.

4.10.5 Daily Dispatch 15th January 2014, Demands to Probe R6m Bill

According to the Daily Dispatch dated the 15th January 2014, opposition parties at BCM demanded that an investigation should be conducted over R6m bill to ferry Buffalo City mourners to Nelson Mandela memorial services.

It was reported that the invoice lacked an order number and amount of tax payable, and it appeared that dates for two of the memorial services have been mixed up.

4.10.6 Daily Dispatch 27th January 2014, ANC Big Shot Backs Probe into BCM’s R6m Scandal

The Daily Dispatch dated the 27th January 2014, indicated that the Provincial ANC heavyweight Mr Mlibo Qoboshiyane had come out strongly in support of an investigation into the alleged misuse of money allocated by Buffalo City Metro to mark the passing of former president Nelson Mandela.
BCM has been embroiled in controversy over its spending of R6-million of an approved R10-million allocation by the council on services ostensibly to ferry local residents to Mandela memorial activities. In the latest installment in the saga, Saturday Dispatch reported that some of the money paid to Victory Ticket 750cc for transport costs ended up in the accounts of politically-connected local tenderpreneurs and girlfriend of regional secretary of the ANC in the Buffalo City Metro. Some was allegedly spent on T-shirts for ANC.

Qoboshiyane the then Eastern Cape MEC for local government and traditional affairs, moved quickly at the weekend to respond to the report, saying the allegations indicated ‘a possible breach of public trust by those entrusted with protecting public resources from plunder, abuse, corruption and theft. Expressing alarm that the alleged maladministration happened at a time of sadness during the period of mourning for Mandela, indicated that his department would urgently seek answers from both BCM executive mayor and city manager. He also indicated that any investigation by his department will be guided by the Local Government Municipal Systems Act, which empower the MEC to act if he/she believed maladministration, fraud or corruption had taken place within a local authority.

Qoboshiyane said that anyone found to have acted contrary to approved policies, procedures and laws governing municipal finances and administration would be disciplined. He final said that everyone in three spheres of government has a constitutional and legislative responsibility to protect the public funds from any form of abuse and irregularities.

4.10.7 Daily Dispatch 7th February 2014, East London’s Top Two at each others Throat

According to the Daily Dispatch dated the 7th February 2014, Buffalo City Metro’s top two executives were at each other’s throats over who is to blame for spending R5.9 million to transport people to Nelson Mandela’s memorials. A confidential document in possession of Daily Dispatch at the time revealed that hours before a council meeting, Executive Mayor and City Manager were having a row over who would write the official report on how the money was spent. Before the matter could be discussed the union members clashed outside city hall with police, forcing the council meeting to be abandoned.
The timing of the disruption was seen by some as an attempt by supporters of a certain faction to halt proceedings. According to documents, with reports, invoices and memos leaked to the Daily Dispatch showed that City Manager tried to put the brakes on.

A handwritten note stated that he would only approve the exigency expenditure on condition that all negotiations are transparent and procurement processes were followed.

4.10.8 Daily Dispatch 11th February 2014, Row Grows Over R1,4 m ANC T-shirts

According to the Daily Dispatch dated the 11th February 2014, more pressure had been heaped on East London businessman to explain how he spent millions of rands meant to transport mourners to four memorial services for former President Mandela in December.

Mantella Trading 522cc was paid R1.38 million to print 20000 ANC T-shirts.

This was despite the memo from treasurer's office to the metro making it clear that the R10-million allocated for the memorial services was to be used for venues, and transportation, not for printing T-shirts, catering or erecting marquee tents. T-shirts were printed 589 km from East London in Pietermaritzburg and delivered to Port Elizabeth. However, the dispatch had scanned crowd photographs from the event and none of the shirts could be seen on mourners pictured. Series of questions were sent to the company concerned:

- A copy of the order for T-shirts,
- A copy of the order for printing,
- The contact details and name of the Pietermaritzburg company, and
- The courier documentation showing the T-shirts were delivered.

Unfortunately, all that information could not be obtained according to the report.

4.10.9 Daily Dispatch 20th February 2014, Thuli Probe BCM Taxi Deal

The Daily Dispatch dated the 20th February 2014, revealed that Buffalo City Metro concillors could not agree on whether an investigation into Nelson Mandela taxi scandal should be investigated internally or externally. But public Protector Thuli Madontsela confirmed that her office would investigate the R5.985-million taxi scandal. Advocate
Mthwakazi Thomas, representing the public protector’s office in the Eastern Cape indicated that 7/2-00334/14 EC would be investigated over the coming year.

A Dispatch investigation has linked ANC regional secretary Pumlani Mkolo to the funding scandal, in that millions were paid to individuals close to him. The Dispatch established that the company that won the R5.9-million tender to ferry mourners around Buffalo City, Victory Ticket cc, was entered into the metro’s supplier database- a requirement for doing business with it, two days before the company was paid.

A document, with reports, invoices and memos, leaked to the Dispatch showed how city manager, Andile Fani, tried to put brakes on the tender. A hand written note sated that he could only approve the exigency expenditure “on condition that all negotiations are transparent and procurement processes followed.

A deviation report be submitted to the following council meeting. The document further revealed how the mayor initially wanted to extract R15-million from the city purse, but Fani said the metro could not afford it.

**4.10.10 Daily Dispatch 03rd March 2014, R17m Refuse Bags Probe Fingers at Fani**

According to the Daily Dispatch dated the 03rd March 2014, Buffalo City Metro City Manager Mr Andile Fani and head of supply chain management Mr Tembelani Sali were fingered in a damning forensic investigation into controversial procurement of R17 million worth of black refuse bags in 2012.

The investigation report was compiled by MMB Consulting and was finalized in May 2013 but had been gathering dust in the Executive Mayor’s office ever since.

The confidential report was leaked to the Dispatch yet to be tabled in the council found the municipal officials had contravened parts of the metro’s supply chain management policy when they hastily awarded the multimillion rand tender to Masiqhame Trading.

The report put blame on Fani and Sali, but also found senior creditors department official Deon Goosen to have colluded with Masiqhamisane for them to submit six invoices on the 29th of June 2012, amounting to R1.1million.
The report recommended that Fani and Sali be charged for misconduct, and Masiqhame be disqualified as it did not meet all the necessary requirements. It was found that Masiqhame submitted unaudited financial statements, did not submit BBBE certificate as requested in the bid specification document and communicated with municipal officials after the tender had closed before was awarded.

To add controversy on the matter, the contract was awarded in June 1 of that year, and Fani wrote on June 6 informing the owner of the company that had won the contract. On July 5, a month later, the company signed a letter of acceptance. A confidential report tabled in the council late in 2012 further showed that Masiqhame received payments almost every week, from March 8 2012, although it only accepted the terms of the contract on July 5.

Before June 29 2012 Masiqhame was advised by Goosen to submit invoices for money that need to be spent before the end of financial year, and six invoices in the amount of R189 338 each were submitted. These were submitted for goods that had not been delivered according the report.

**4.10.11 Daily Dispatch 12th of March 2014, Mayor Stops Hawks Investigation**

According to the Daily Dispatch dated the 12th March 2014, Buffalo City Metro mayor Zukiswa Ncitha ordered armed men to prevent Hawks investigators from talking to the staff in the City Hall about the multi-million-rand Nelson Manadela taxi scandal tender.

Detectives from the police’s organized crime unit had reported the matter to their superiors and had also written to the then MEC for Local Government and Traditional Affairs, Mlibo Qoboshiyane. The officers were investigating the taxi tender awarded to Victory Ticket 750cc, a company owned by East London businessman Mzwandile Sokwali. A sworn statement by Captain Luphumlo Lwana, seen by the Daily Dispatch claimed the officers were at the city hall on February 11 to interview the caretaker or person responsible for hall bookings. Workers initially cooperated but latter called their bosses.
BCM’s Acting Director Executive Services, Ondela Mahlangu allegedly arrived and told the Hawks that Ncitha was asking for questions to be directed to her instead of junior staff members. The investigators refused and tried to contact Municipal Manager Andile Fani but he could not be reached.

Qoboshiyane confirmed receiving the letter from police regarding the matter and called on BCM officials to co-operate with Hawks. Ncitha confirmed she had prevented the Hawks officers from investigating the matter because did not have a letter of authority.

She claimed that the officers failed to report to the office of the political head of what they were doing, she also indicated that they needed to have something written from their heads, telling her about their plans to investigate her staff.

Lwana’s report revealed a possibility that some of the venues were double-booked. The report further revealed that Mahlangu allegedly authorized the initial payment of the R5.985-million to Victory Ticket.

4.10.12 Daily Dispatch 1st April 2014, R10m Tender Scam

The Daily Dispatch dated the 1st of April 2014, revealed that a company owned by the ANC regional leader was at the centre of R10 million housing tender scandal after a forensic investigation found the contract was awarded irregularly.

But despite the inquiry finding that Buffalo City Metro had ignored supply chain management processes and recommending action be taken against top officials, the report has been gathering dust at the East London City Hall for almost a year. The tender for the completion of 150 houses in Mdantsane’s Unit P was awarded to businessman Koko Godlo’s Imvusa Trading. A forensic inquiry by MMB Consulting revealed it was the only company invited to submit quotes for the job.

Council then sanctioned an investigation into how Godlo’s company was appointed, and MMB Consulting completed its probe in May of the previous year.
It confirmed supply chain processes were not followed and found that Imvusa’s appointment was predetermined. The investigation recommended that City Manager and Acting Director housing be charged for contravention of supply chain policies.

**4.10.13  Daily Dispatch 16th April 2014, Hawks Probe Two BCM Tenders**

The Daily Dispatch dated 16th April 2014, indicated that two multi-million rands Buffalo City Metro tenders were being investigated by Hawks and Public Protector. This was confirmed by City Manager Mr Andile Fani. The awarding of R 17million black refuse bag tender and a R10million Mdantsane housing tender were subjected to scrutiny. This came after council reportedly failed to act on two forensic reports completed by an external consultant in the previous year.

News of investigation by Hawks and Public Protector came after executive mayor Zukiswa Ncitha announced that forensic investigation in her office were not yet completed. She also indicated that the matter was discussed with the then Finance Minister Pravin Gordhan.

MMB Consulting was appointed to investigate the circumstances surrounding a R17 million contract to supply black refuse bags. The three-year contract was awarded to Masiqhame Trading, owned by Cuan Surren Metune, the 27-year-old son of a former BCM employee and pastor Fabian Metune.

The housing tender for completion of 150 houses was awarded in October 2013 to Imvusa Trading, owned by East London businessman and ANC regional leader Koko Godlo. The tender was for the completion of abandoned housing project in the metro’s Unit P outside Mdantsane.

Responding to dispatch question, Mr Fani indicated that the two tenders were with the Hawks and had submitted his statement to them, also it was the very first time he saw both reports.
4.10.14 Daily Dispatch 23rd June 2014, Mayor, Deputy Hand Themselves Over Mandela Scandal

According to the Daily Dispatch dated 23rd June 2014, five senior Buffalo City Metro officials, including Mayor Zukiswa Ncitha and her deputy were ordered to hand themselves over to Hawks in relation to Manadela funeral scandal. Others were council speaker Luleka Simon-Ndzele, councilor Sindiswa Gompo and Ondela Mahlangu, who was the acting director of executive support services in the mayor’s office.

At the centre of the controversy was the ANC’s BCM regional secretary Phumlani Mkolo, who appeared to have engineered the movement of funds into various bank account. It was also emerged that Mkolo’s girlfriend Nosipiwe Mati, who is the mother of his daughter, was also involved. Among payments made by Mr Sonkwali was R100 000, 00 to Mati’s business, Mpindo Emergency. A further R899 000, 00 was given to Forty Wing, a company owned by Viwe Vazi.

It later emerged that Mkolo’s latest girlfriend, a high-flying Johannesburg-based lawyer, Zintle Nkuhlu, received R350 000,00 from funds through Lily Rose Trust which she co-owned with Songile Nkuhlu.

4.10.15 Daily Dispatch Dated the 24th June 2014, Hawks Arrest ANC Heads for Madiba Funeral Fraud

The ANC was reeling in embarrassment after its top echelon in Buffalo City Metro was arrested and charged with money laundering and fraud. Those arrested included BCM’s executive Mayor Zukiswa Ncitha, her deputy mayor, Temba Tinta, council speaker Luleka Simon-Ndzele, the ANC regional secretary, Pumlani Mkolo, and a senior councilor, Sindiswa Gomba.

The allegations they face relate to money meant for Nelson Manadela memorial services illegally being paid for another purposes.

Some R5.9-million was allegedly paid by BCM to local taxi boss Mzwandile Sokwali’s company Victory Ticket cc to ferry mourners to memorial services around the city after Mandela’s death in December 2013. Relatively small number of mourners were seen at the services owing to heavy rains at the time.
The arrest followed a two month investigation by the police’s special investigations unit, the Hawks, and those arrested handed themselves over to the elite police unit after being instructed to do so the day before.

The five powerful politicians appeared alongside Ondela Mahlangu, the director in the office of the mayor, and local businesswoman Viwe Vazi. Their charges were added to those of Sokwali and Blanche Boti, who have previously appeared in court in connection with the alleged fraud.

Two other people allegedly implicated in the memorial services scandal, Dean William Fanoe, owner of Mantella Trading 522 cc, Zintle Nkuhlu did not appear in court although their names appeared on the court charge sheet. A sum of R1.38-million was given to Mantella Trading which was used to order T-shirts bearing Mandela’s face.

A further R899 000.00 was given to Fort Wing, a company owned by Vazi. It later emerged that Molo’s girlfriend Nkuhlu, a Johannesburg-based lawyer, received R350 000.00 from the funds through Lily Rose Trust she co-owns with Sibongile Luthuli.

4.10.16 Daily Dispatch Dated the 26th June 2014, BCM’s top Brass Snub ANC Call

The top echelon of the Buffalo City Metro, charged for their role in the R6-million Nelson Mandela memorial fund scandal, defied a national instruction by the ANC to step aside. ANC national spokesman and national committee member Zizi Kodwa was reported as saying that all ANC deployees in council as well as regional secretary Mkolo were expected to “step aside” to avoid dragging the ANC’s name in the mud.

Kodwa said the arrest has been discussed in a meeting where all ANC deployees should step aside for the sake of Nelson Mandela’s name, his family and the ANC. He indicated that an instruction had been issued that five should go on leave until the case had been finalized and that was taken in line with the Mangaung conference resolution of 2012.

The ANC clearly stated that corruption relating to the misappropriation of public funds as well as money laundering was a serious offence. He indicated that those arrested were innocent until proven guilty by the court of law.
On the other hand, it was reported that provincial deputy chairperson of the ANC Mr Sakhumzi Somyo led a provincial delegation to ANC caucus to instruct them to continue with ‘business as usual’.

The instruction from the provincial committee was in contrast to the one issued by the ANC hierarchy. Also, confirming their arrest the speaker, Ms Luleka Simon-Ndzele told councilors they had no plans to take the leave of absence.

The next date for their appearance was scheduled for the 1st September 2014.

4.10.17 Daily Dispatch Dated the 28th June 2014, The Mayor Must Go by Monday.

The state was building its case against those it accuses of fraud and corruption over funds for former president Nelson Mandela’s memorial services.

The Saturday Dispatch could reveal that influential politicians and local business people with strong political links allegedly met twice in December the previous year to hatch the scam.

They allegedly discussed how the money was to be divvied up and who was going to benefit.

Local taxi boss Mzwandile Sokwali, who was among the fraud accused, was said to have been introduced to those present at the meetings.

Sokwali and his wife Busisiwe Boti were arrested in March and charged with fraud, corruption and money laundering relating to R5.9million paid by Buffalo City Metro ostensibly to ferry mourners to Mandela’s memorial services.

The two were back in court the same week and were joined in the dock by BCM mayor Zukiswa Ncitha, deputy mayor Temba Tinta, council speaker Luleka Simon-Ndzele, ANC regional secretary Pumlani Mkolo, BCM councillor Sindiswa Gomba, and senior metro official Ondela Mahlangu.

Other accused included local businesswoman Viwe Vazi and Dean William Fanoe, the owner of a company that puts up Christmas lights on the beachfront.
The last accused is Johannesburg attorney Zintle Nkuhlu, who was said to be Mkolo’s girlfriend.

Details of the two meetings emerged as the ANC was putting pressure on the accused to leave public office.

This intention was made clear in Premier Phumulo Masualle’s maiden state of the province address in Bhisho the previous day. Masualle said his government was planning to introduce radical measures to combat fraud and corruption in the provincial administration.

“These will include ensuring all public office bearers and government officials facing serious fraud and corruption charges are relieved of their duties until finalization of the investigations,” he said.

Dispatch could reveal that Ncitha, Gomba, Simon-Ndzele and Tinta were given until Monday to step down. If they do not voluntarily step down, the ANC would force them out of their offices.

They were informed of the decision at a meeting with the ANC the previous Monday night. Some refused while others like Tinta asked for more time as he wanted to make representations to the special police investigating team, the Hawks.

The Saturday Dispatch understood Tinta was arrested as he was the one who signed the documents which went to council asking for R10-million to be set aside for Mandela’s memorial services.

The previous morning Tinta and his lawyer met with the Hawks to make representations to have charges against him withdrawn.

The first of the two secret meetings was said to have taken place immediately after Mandela’s death and was held at the home of a local businesswoman in Bunkers Hill.

The meeting in Bunkers Hill apparently discussed how they were going to transfer funds from the metro coffers into the accounts of some of the accused.

The second meeting took place in Simon-Ndzele’s office inside the City Hall shortly after the R5.9-million was transferred into Sokwali’s business account.
In this meeting Sokwali was allegedly given a list of bank accounts into which to deposit the money. It was not yet clear how many people attended the second meeting but Simon-Ndzele, Gomba and Sokwali were allegedly present.

The Saturday Dispatch has been told others were uncomfortable with having their share of the money transferred directly to their private accounts. They agreed to meet at Hemingways Mall.

4.10.18 Daily Dispatch dated the 01st July 2014, Madiba Memorial Taxi Scandal Splits ANC

The Nelson Mandela memorial service taxi scandal has deeply divided the ANC both in the province and Buffalo City Metro region.

The Daily Dispatch understands that the ANC regional executive committee met at the weekend and unanimously decided to remove their implicated deployees from office. However, despite repeated efforts, the Dispatch has been unable to obtain on-the-record confirmation from provincial or regional ANC officials of decisions taken within party structures.

The latest development comes days after the SACP provincial leadership called for the members to step down as investigations continued.

Last week metro executive mayor Zukiswa Ncitha, her deputy Temba Tinta, council speaker Luleka Simon-Ndzele, senior councillor Sindiswa Gomba and ANC regional secretary Pumlani Mkolo were arrested on charges related to the use of money earmarked for Mandela memorial events.

This left the ANC’s national structures “embarrassed” and through national spokesman Zizi Kodwa the party called on the officials to step aside while investigations were conducted by the Hawks.

The provincial structure, through a statement attributed to provincial spokesman Mlibo Qoboshiyane, also urged ANC members with information on the matter to cooperate fully with the justice system.

The Dispatch understands that a provincial meeting last week informed the BCM officials to resign.

The four ANC deployees never left office and attempts to obtain comments from them drew a blank yesterday.
Sources within the ANC in the region claim that the four metro councillors claim that nothing was communicated to them by the provincial ANC and they “saw no reason to step down”.

“They didn’t step down as we are divided within the party about this matter.

“The regional executive is calling for them to step down as the investigations continue.

“Here we need to protect the ANC name from embarrassment,” said the source who is privy to the REC resolutions.

Asked about the weekend meeting, BCM ANC regional chairwoman Zukisa Faku would not divulge what was discussed.

“We can confirm that the meeting took place over the weekend and among other things we talked about the fraud case against ANC members but unfortunately I can’t talk about this in the media,” said Faku.

Mkolo yesterday said he was not aware of the ultimatum given to the ANC provincial authority by the region.

“Your people [sources] have given you wrong information about this.

“This is not true but I will check this,” said Mkolo.

The arrest of the ANC leaders came amid an investigation by the Hawks into the R5.9-million paid by the metro to ferry mourners to Mandela’s memorial services.

The money was allegedly paid to Victory Ticket 522 cc, a company owned by Mzwandile Sokwali and his wife, Busisiwe Boti.

The couple was arrested in March in connection with fraud, corruption and money laundering charges. The two were back in court last week and were joined by Ncitha, Tinta, Simon-Ndzele, Gomba, Mkolo and metro senior official Ondela Mahlangu.

Other accused include local businesswoman Viwe Vazi and Dean Fanoe, the owner of a company that puts up Christmas lights on the East London beachfront.

The last accused is Johannesburg attorney Zintle Nkuhlu, who is said to be Mkolo’s girlfriend.

Welcoming the arrests, the SACP, through spokesman Siyabonga Mdodi said: “We view these developments as consistent with the call made by the SACP for law enforcement authorities to go to the bottom of the scandal and bring all those who might have done wrong to book.”
Sandile Toni, secretary of ANC East London zone, which comprises 13 branches said their weekend meeting supported the officials.

4.10.19 Daily Dispatch Dated the 08th July 2014, BCM Bosses to Face ANC Integrity Body

The Eastern Cape ANC had referred the case of its senior leaders in Buffalo City, facing charges of defrauding funds for Nelson Mandela’s burial to a newly formed integrity commission. Its establishment came after 18 months after the ANC at its national conference at Mangaung resolved to set up integrity commission at all levels of the organization. They were out on bail of R10 000.00 each and expected back in court on September 1.

ANC provincial secretary Oscar Mabuyane confirmed the formation of the commission, and indicated that the committee would have to deal with all cases that were not necessary in court but misconduct cases that brought ANC’s name into disrepute. He also indicated that the BCM case was one of the priorities but not the only one the committee would have to deal with.

4.10.20 Daily Dispatch Dated the 1st August 2014, Court Blocks Accounts of Mandela Suppliers

Several bank accounts of suppliers who claimed to have assisted with Mandela memorial services have been frozen.

The move by Asset Forfeiture Unit (AFU) was carried out swiftly and in secret. Victory Ticket 750ccnowners Mzwandile Sokwali and his wife Busisiwe Boti appeared in East London Magistrate’s Court on charges of fraud after they benefited from Buffalo City Metro Nelson Mandela taxi-scandal.

It marks the latest action by law enforcement authorities to uncover the rotten dealings at the heart of the memorial saga. This latest steps meant the money, considered illicit from proceeds from Buffalo City Metro, was then in the control of Asset Forfeiture Unit.

The accounts frozen included those of Victory Ticket 750cc owned by Sokwali and his wife Boti; Mantella Trading 522 controlled by businessman Dean Fanoe; Forty-wing an
account of controlled by Viwe Vazi; an account controlled by Zintle Nkuhlu who was reportedly ANC BCM regional secretary Pumlani Mkolo’s girlfriend. It was not clear how much was in accounts. The extraordinary application was brought without notice to any of the bank account holders and was heard in Grahamstown High Court judge’s chambers. These so called matters were brought in secret to ensure the funds were quickly frozen before they could be moved.

The bank accounts would remain frozen pending an application to have all the in them forfeited to the state. At that point the account holders would be given opportunity to put their case to the court.

The legal documents before court contained explosive details about massive fraud allegedly perpetrated on the BCM fiascos. According to the court papers, it stated with a lie BCM executive mayor Zukiswa Ncitha told her council.

Financial investigator for AFU Advocate Caleb Mdutyana said in an affidavit she told council she had met with the provincial government and it had been resolved at the meeting that BCM should fund transport to commemorate venues. As a result of that misrepresentation, the BCM council passed a resolution to utilize R10-million to be identified from potential savings for transport and venue costs. But Mdutyana indicated that provincial treasury head Nomdakazana Tibelo had made sworn statement in which he denied any meeting ever took place between the mayor and provincial government.

He indicated that the treasury had never authorized the mayor to allocate funds for the events as a decision had been made that the treasury, through the Eastern Cape Development Corporation (ECDC), would handle all the expenses.

He also indicated that the BCM council made a resolution to disburse R10-million on the basis of unlawful misrepresentation by Ncitha who misled the BCM council to believe that the provincial government had agreed that the BCM would fund the event. He said that misrepresentation had opened the gate for the R10-million to be misused by others.

Some R5.98 million was paid into the account of Victory Ticket. The undated invoice claimed that buses and taxis had transported some 10600 to various venues around
East London and King William’s Town. The invoice did not show how this amount was arrived at. Strangely, two of the four venues that Victory Ticket claimed to have transported some 5600 mourners to for commemorative events, had in fact been booked on that particular day for a graduation ceremony and a wedding respectively.

Even worse, the money was paid to Victory Ticket for services carried out days before Municipal Manager Andile Fani had even approved BCM’s request to deviate from normal procurement processes. Mdutyana said Victory Ticket was registered as a service provider on BCM supply chain database on the same day Ncitha had made her misrepresentation to council.

Once the R5.98-million landed in Victory Ticket’s account, Sokwali had made payments to other entities and individuals, including Mantella Trading for providing ANC T-shirts. This was clearly neither a transport nor a venue cost.

A further 899 000 was paid to Vazi’s CC Forty Wing for catering- again a cost that national treasury had expressly forbidden municipalities from covering. A further R350 000 went to Mkolo’s girlfriend, Zintle Nkuhlu.

4.10.21 Daily Dispatch Dated the 02nd August 2014, ANC at Heart of Mandela Funeral Scandal

Evidence was mounting against the ruling party and its regional boss in the Buffalo City Metro, Pumlani Mkolo, after it emerged that it had lots to answer in the ongoing Mandela funeral millions scandal.

ANC’s name was dragged into mess with investigators alleging that quotes from local companies bidding for the contract to transport mourners to memorial services around city were first sent to the party. The ANC, in turn, took them to Buffalo City Metro’s supply chain department in Chiselhurst.

Investigators also allege that the quotes were sent and received by the party way before executive mayor Zukiswa Ncitha asked council to set aside R10million from its coffers for the transportation of thousands of mourners. This shocking revelation was contained in
documents that the National Prosecuting Authority (NPA) submitted to the Grahamstown High Court.

Spokesperson Nathi Mncube said quotes received for the transport tender were addressed to the ANC and dated December 9 and 10 2013. This was even before the mayor requested the R10-million, a resolution to set aside the R10-million was taken at a full council meeting on December 11, according to Mncube.

A day later Municipal Manger Andile Fani had approved the urgent deviation request on condition that normal procurement processes were followed. But the investigators had been told by metro official that Mkolo had gone to the Metro to ask that service provider Victory Ticket be registered on its database. Victory Ticket was registered on the BCM database on 11 December 2013, according to Mncube. Mncube said invoices Victory Ticket submitted to BCM for the work it allegedly performed covered a period before approval of the use of R10-million and the deviation.

Sources close to the developments had told the Dispatch that Mkolo approached a senior official in the supply chain management unit to hand over three quotations, including one from Sokwal's Victory Tickets. But the official refused to accept the quotation from outsider, saying his staff were competent enough to source quotes. The senior administrator, whose name was known to the Dispatch immediately went on leave, leaving fairly junior officials to handle the Mandela memorial tender.

4.10.22 Daily Dispatch Dated the 04th August 2014, Mandela Memorial Probe Takes New Twist

The bank accounts of politicians arrested in connection with the Nelson Mandela memorial scandal, including the mayor of Buffalo City Metro, had been frozen.

The move on the politicians came just days after the Asset Forfeiture Unit (AFU) obtained an order freezing the accounts of several suppliers who claimed to have assisted with the Mandela memorial. The AFU which falls within the National Prosecuting Authority (NPA) obtained a provisional restraint order against the assets and bank accounts of those charged in the East London Magistrate’s Court with fraud and/or theft and money laundering.
The latest action by law enforcement meant BCM’s Executive Mayor Zukiswa Ncitha, her deputy Themba Tinta, speaker Luleka Simon-Ndzele, councilor Sindsiswa Gompa and senior BCM official Ondela Mahlangu will not have access to their bank accounts. The accounts of BCM regional ANC secretary Pumlani Mkolo were also frozen.

The Assets Forfeiture Unit obtained a preservation order against bank accounts which still had the credits emanating from the sum of R5.9-million defrauded and/or stolen from the BCMM. Such credits amount to the sum of R2.2-million and could be linked directly to the theft. This left an outstanding of about R3.7-million in the hands of others accused in this matter.

The application was brought without notice to any of the bank account holders and was heard in a Grahamstown High Court judge’s chambers on Friday. The bank accounts would remain frozen pending an application to have all the money in it forfeited to the state. The account holders would be given an opportunity to put their case to the court.

Senior national deputy director of public prosecution, Nkululeko Ndzengu, said in an affidavit that part of the money paid to Sokwali was also paid to people who had no right to receive it. This included the East London Taxi Association, which received R157 500 and taxi owner Tutu Zicina, who received R241 000.

Ndzengu indicated that there were reasonable grounds to believe that they derived or received a benefit from unlawful activities. Zicina confirmed receiving money from Sokwali but was not aware that his name appeared on court papers. He confirmed that he was questioned by the Hawks on the matter and gave full explanation, and it ended there according to him.

The order stated that state attached all property held by the defendants at any time before or after the granting of the order, whether in their names or not, including all property held for or on behalf of the defendants by any person and further including shareholding of the defendants in any company. Samantha Vockerrodt of Fossa Trading and Invest (Pty) Ltd t/a Integrity Solutions had been appointed as curator of all the properties.
The order stated that the curator would be entitled to pay expenses related to restrained assets, which would ordinarily be carried out by the estate out of the restrained assets.

4.10.23 Daily Dispatch Dated the 07th August 2014, Finance MEC Seeks New Madiba Fund Probe

Amid investigations by the Public Protector Thuli Madonsela and elite police unit Hawks, the controversial Nelson Mandela funeral scandal had taken a new twist. Eastern Cape Provincial Planning and Treasury MEC Sakhumzi Somyo had appointed a private firm to probe his department. How the office of the premier Phumullo Masualle was in the dark about such investigations? It emerged that Somyo appointed Pretoria-based George Fivaz Forensic and Risk investigators. He wanted to know if the mandate by Provincial Executive Council resolution to assist in the funeral of the late former state president Nelson Mandela was carried out by the province.

The private firm was expected to question Provincial Planning and Treasury (PPT) head Marion Mbina-Mthembu, who was tasked to oversee and monitor the payments of funds, on the matter. Indications were that there is likelihood that former finance MEC Masualle would also be called to answer questions.

The department, under Mbina-Mthembu’s watch, paid R250 000 into Masualle’s private account which he rejected. The money was paid back immediately and a special paycard was created. Treasury spokesperson Nosisa Sogayise confirmed the investigations were being undertaken and said there were issues of control that needed to be dealt with.

The Hawks, Public Protector and the private investigators were investigating. The Public Protector announced the previous week that it was investigating four municipalities in the province, the Eastern Cape Development Corporation and Provincial Government, including:

- The ECDC for R22.2-million used to pay services providers for preparations for the funeral;
- Buffalo City Metro for R5.985-million paid to a company ostensibly to transport mourners;
- King Sabata Dalindyebo Municipality’s spending of R21-million;
The Nelson Mandela Bay Metro for spending of R9-million, and OR Tambo District Municipality for spending R5-million.

The ECDC itself had appointed Funduzi Forensic Services to investigate how funds were spent while Somyo appointed George Fivaz and Risk to investigate the actions of his department.

However, provincial government spokesperson Nomfanelo Kota said they were not aware of the investigation. Kota insisted that the Provincial Director-General Mbulelo Sogoni made it clear in an instruction that and there was a media statement on that all the investigations about Mandela funeral were being handled by the Public Protector and no one was to investigate unless that was informed by the Public Protector’s report.

The Daily Dispatch had seen the letter appointing the company, which was approved by Somyo. The letter indicated that the service provider was to undertake an investigation and release a report. It would then use the report submitted and any evidence obtained to determine whether the best procedures were followed in executing the provincial executive resolution in supporting the funeral arrangements.

The letter said the appointed company should be able to analyze documentation or evidence that would be made available and validate the assertions in the reports and any oral evidence that would have been given to indicate any possibilities for corrupt activities that may need further probing.

4.10.24  Daily Dispatch Dated the 02nd September 2014, BCM Fraud Trial for April

According to the Daily Dispatch dated the 02nd September 2014, the Mandela memorial fraud case against top BCM and ANC officials was postponed in East London Magistrate’s Court despite heated argument between prosecution and defense. Acting Magistrate Leon Kemp said he could not deny a postponement simply because the accused were prominent people in the community.

The state added another accused to the charge sheet. Nosiphiwe Mati, a former girlfriend of ANC regional secretary Pumloni Mkolo and mother of his child, was alleged to have
received R100 000 from money earmarked for events to commemorate the life and death of former president Nelson Mandela.

Mkolo was also accused of contravening his bail conditions by not informing the investigating officer that he was planning to travel out of the country. Lawyers for the accused argued that the prosecution was unnecessarily delaying the trial, prejudicing the high-profile accused and several embarrassing them.

Prosecutor Deniso Ketani said the postponement to November 21 was to obtain bank statements and cellphone records. A provisional date for the three-week trial was set for April 2014.

Advocate Matthew Mpahlwa applied on behalf of all the accused for the matter to be struck off the roll until the state was ready to proceed. It had provided a draft sheet. Mpahlwa said the accused had been subjected to media scrutiny and kind of public disapproval usually heaped on convicts. He asked for the matter to be struck off the roll until the state had finalized all its investigations and provided the accused with a final charge sheet and copies of all documents.

Kemp said it was early days in an investigation of this nature and he was not interested in the high-profile nature of the case or the embarrassment of the accused.

He insisted that, while one must ask why the state cannot get its ducks in a row before arresting, other accused sat in his court daily with the same obstacles. He said in all those cases the state is allowed reasonable postponement. He asked as to why he should make this case different. He also said that one is dealing with complicated issues to investigate when it comes to money laundering and he found that the state was entitled to a postponement.

Regarding Mkolo’s trip, Kemp said Ketani and Mkolo’s attorney Nyameka Diniso should try to reach agreement, or the prosecutor should apply for Mkolo’s bail to be withdrawn or his bail conditions changed.
4.10.25 Daily Dispatch dated the 25th September 2014, Mandela Millions Repaid

More than R4.1-million handed over to the Asset Forfeiture Unit (AFU) by individuals accused of illicitly benefiting from funds meant for Nelson Mandela’s memorial services was forfeited to the state.

The amount accounts for a major portion of the nearly R6-million shelled out by Buffalo City Metro last in 2013 for the events and which led to a series of arrests, including some of the metro leaders.

The Grahamstown High Court froze the bank accounts of separate businesses belonging to Mzwandile Sokwali and his wife Busisiwe Boti; Dean Fanoe; Viwe Vazi; and account controlled by attorney Zintle Nkuhlu.

Senior politicians at BCM; ANC regional secretary Pumlani Mkolo and the director in the office of the mayor Ondela Mahlangu had their accounts frozen as well. However, some of the business owners who needed to transact, volunteered to pay back the money were accused of receiving illicitly so their bank accounts would be unfrozen.

It is this money that was forfeited to the state on the order of Grahamstown High Court Judge Jeremy Pickering.

National Prosecuting Authority national spokesman Nathi Mncube said Pickering granted the AFU a forfeiture order of R4.172-million. Mncube said money would be deposited into the Criminal Asset Recovery Account and used to bolster law enforcement.

Mncube also revealed that Vazi had repaid R899 000, while Fanoe returned R1.3-million, Sokwali and Boti repaid R.893-million distributed to Sizisa Ukhanyo and to Victory Ticket.

The outstanding balance would be recouped using restraint and prosecution processes according to Mncube. However, Mncube also revealed that Nkuhlu had not repaid money she allegedly received through Lily Rose Trust. Mncubd said Zicina, who received R24 100, and Mati who received R50 000 had also not made payments.

A provisional date for the three weeks' trial was set for April 2015. The state alleges that more than R5.9-million was illicitly disbursed by or to, these accused.
Daily Dispatch Dated the 09th December 2014, Taxi Boss Found Guilty in Mandela Funeral Scam.

East London court gave the first conviction in the Nelson Mandela memorial funding scandal and set the stage for dramatic testimony for the following year.

Sensational claims of deaths threats emerged from taxi businessman Mzwandile Sokwali, whose wife Busisiwe Boti was let off on all charges.

Sokwali and Boti were arrested early this year after their company, Victory Ticket 750cc, received R5.9-million from Buffalo City Metro, to transport mourners to various state services following Mandela’s death.

The Dispatch had uncovered evidence that showed much of the money was misspent. Following a series of news reports, Hawks investigators further arrested senior metro officials, among them Mayor Zukisa Ncitha and council speaker Luleka Simon-Ndzele.

Sokwali who pleaded guilty to fraud and money laundering and his wife entered into a plea bargain with the state. East London magistrate Fezeka Monakali acquitted Boti and found Sokwali and their company, Victory Ticket, guilty.

“I find Victory Ticket guilty as charged and fine them R100000, with R50000 of it suspended. Also, [Sokwali] is sentenced to five years in prison, which is wholly suspended for five years,” said Monakali.

Through his counsel advocate Terry Price SC, Sokwali told the court he was threatened with harm if he did not transfer the money as instructed by ANC regional secretary Phumblani Mkolo to a list of beneficiaries.

“[Sokwali] was informed that if he were not to pay all these monies over as requested, he would never again get any work from the municipality and he was also threatened unequivocally that he would be severely injured, if not murdered, if he did not transfer these monies as instructed by Mkolo.

“As a result, he transferred the monies,” said Price.
Mkolo, the court heard, pressured Sokwali to pay the service providers and sent him text messages with account numbers of people to be paid.

Sokwali admitted that his company gave Councillor Sindiswa Gomba a lift to Port Elizabeth and put her up in an upmarket hotel. “This was reward for her support in passing illegal monies to the company regarding the Mandela memorials,” Price continued.

Despite the fact Sokwali was not on the database of suppliers, as required for municipal contracts, he was still given the tender.

Price alleged Mkolo intervened.

“(Mkolo) went to check if the accused was on the database at BCM Chiselhurst offices and there he met a Thembelani Sali who informed him that [Sokwali] was not … but that [Mkolo] would arrange that the accused meet Nqaba Ludidi, who assisted him to get onto the BCM database.” Sali is the general manager of BCM’s supply chain and Ludidi is a coordinator in the same unit.

The court further heard that, although Sokwali was threatened and was scared for his life, he knew he could have reported the matter to the police. He never did that and that made him guilty of the offences.

“It would appear that when the regional ANC secretary and all those who had unlawfully benefited from this entire project started panicking, they tried to force him to supply a comprehensive report setting out all the vehicles and the routes he used and the number of passengers conveyed in an attempt to persuade those that had now picked up the irregularities and the corruption that in fact this was a legitimate spend. “The accused, under intense pressure, agreed to do so,” said Price.

Price said Sokwali did not involve himself in corrupt activities. “Initially, he believed that there was a genuine project designed to transport mourners to memorial services and he did what he was required to do, to wit, phoning transport companies in order to assist with the movement of mourners. He is a first offender and has never committed any offence prior to that day.” Early at the beginning of the year Sokwali and Boti were arrested.
Their arrest was followed by the arrests of Ncitha, her deputy Temba Tinta, Simon-Ndzele and Gomba. Also arrested was a director in the mayor's office, Ondela Mahlangu, and Mkolo.

Other people arrested and accused of benefiting from the funds were Mantella Trading’s Dean Fanoe, Forty Wings’s Viwe Vazi, Mkolo’s alleged girlfriend Zintle Nkuhlu of Lily Rose Trust and his ex-girlfriend Nosiphiwe Mati. They all went on trial the following year.

Contacted the day before, BCM municipal manager Andile Fani said he could not comment yet.

“I cannot comment yet. It would be naïve for me to comment at this stage.

“I still have to apply my mind on the conviction and know the terms and conditions,” he said.

The Dispatch reported last week that R4.1-million has already been returned to the state by some of the accused.

**4.10.27 Daily Dispatch Dated the 10th December 2014, Hawks Probe ANC Death Plot.**

Hawks investigators believe they have uncovered a murder plot against the lead detective in the Buffalo City Metro Nelson Mandela funeral funds scam.

And the person they are investigating for the alleged conspiracy to kill is a prominent ANC leader in the Eastern Cape.

Hawks spokesman Paul Ramaloko confirmed that “serious threats” had been made against the life of Investigating Officer Captain Lupumlo Lwana.

He refused to provide further details but the Dispatch has learnt that officers have extensive phone and video recordings in which the alleged hit is discussed.

It is the second time within days that an allegation of a death threat in connection with the Mandela funds scam has surfaced.
On a Monday, taxi proprietor Mzwandile Sokwali pleaded guilty to fraud for his role in the funding saga and claimed he was pressured by ANC regional secretary Phumlani Mkolo to rig invoices or face harm, even death.

Sokwali’s plea was heard in the East London Magistrate’s Court. It contained detailed information of how Mkolo allegedly orchestrated disbursement of funds to guarantee a hefty slice of R10-million for the ANC.

The money was to be dressed up as transportation costs for mourners and budgeted for by Buffalo City Metro. In the end R5.9-million was paid to Sokwali, much of it allocated thereafter to a number of party cronies and business figures, allegedly at Mkolo’s instruction. R4.1-million has been returned.

Speaking to the Daily Dispatch the day before, Ramaloko said: “We can confirm there is conspiracy to murder the investigating officer.

“The police are working on this matter to check the merits of these threats and at this stage we won’t give more than that.”

Ramaloko said the unit was pleased with the conviction of Sokwali and his company, Victory Ticket 750CC, on fraud and money laundering charges.

His wife Busisiwe Boti’s charges were withdrawn as part of the plea bargain.

Sokwali was sentenced to five years in jail, wholly suspended for five years. His company was fined R100000, half of it suspended.

Contacted the previous day regarding Sokwali’s statement, Mkolo refused to comment.

“Please stop calling me on matters in front of the courts, please,” he said.

ANC provincial secretary Oscar Mabuyane voiced his concern at how the party’s name was being dragged into the scandal.

He said they had not seen Sokwali’s plea.
Mabuyane said where wrongdoing was found, the party would not hesitate to act. “The ANC will not close its eyes and will act.”

He called on “comrades” implicated to follow the party’s Mangaung conference resolutions.

“Do what you think is right to save the name of the organization. Just step aside.”

In his plea Sokwali said he was called by Mkolo and instructed to furnish a quotation on transporting mourners to various venues.

“He was able to come up with a quotation which he submitted to Mkolo in the amount of R6272750,” said advocate Terry Price, reading from Sokwali’s statement to court.

“He was informed by Mkolo that the available budget for the project was R10-million and that the ANC required the balance of the funds to finance other ANC activities.”

Sokwali stated that Mkolo had instructed him to amend the quotation to include more passengers.

“He came up with the number R9946000, which was furnished to Mkolo, who expressed his satisfaction.”

Sokwali said he was escorted by Mkolo into a meeting where businesswoman Viwe Vazi, Councillor Sindiswa Gomba and BCM speaker Luleka Simon-Ndzele were present.

He claimed the meeting was delayed as they waited for senior Buffalo City Metro manager Ondela Mahlangu.

“When Mahlangu arrived, everything was discussed and it was explained to him [Sokwali] that Vazi would be the caterer and that one Dean Fanoe would supply T-shirts.”

Sokwali said his company was registered on BCM’s database at the insistence of Mkolo and that he was pressured by Mkolo to pay people.
“[Sokwali] was informed that if he were not to pay all these monies over as requested, he would never again get any work from the municipality and he was also threatened unequivocally that he would be severely injured, if not murdered, if he did not transfer these monies as instructed by Mkolo,” Price said.

Vazi, Gomba, Simon-Ndzele, Mahlangu, Fanoe, Mkolo, mayor Zukiswa Ncitha, her deputy Temba Tinta and two others, Nosiphiwe Mati and Zintle Nkuhlu, go on trial next year.

4.10.28 Daily Dispatch dated the 20th February 2015, Protector Issues Subpoenas

Senior Eastern Cape politicians and government officials had been subpoenaed by public protector to answer questions on the Mandela funeral funding scandal. The politicians and officials including Acting Director-General Mahlubandile Qwase and BCM Mayor Zukiswa Ncitha had allegedly failed to appear voluntarily before investigators.

Others subpoenaed included Human Settlements MEC Helen Sauls-August, BCM Municipal Manager Andile Fani, BCM CFO Vincent Pillay, PAC Councillor Jerome Mdyolo and BCM Senior Manager Ondela Mahlangu. They were legally obliged to appear before public protector investigators as part of the PP’s probe into spending of funds budgeted for Nelson Mandela’s funeral.

Those subpoenaed were expected to report to the PP’s offices by end of the month. The target date for concluding investigation by Public Protector was by end of March 2015, and the issue of resources cited.

Mahlangu was implicated in the scandal after allegedly attended a meeting held in BCM council speaker Luleka Simon-Ndzele’s office where it was discussed how the money would be spent. She was mentioned several times by Victor Ticket owner Mzwandile Sokwali in affidavits before court, where some of the officials face criminal charges in connection with the matter. Mahlangu allegedly met Sokwali several times as Sokwali drafted an invoice to the municipality for transporting mourners to memorial services around metro.
Ncitha was to be questioned by Public Protector’s investigating team in her capacity as an Executive Mayor of BCM, and because she signed for the release of the funds. Her office refused to comment on the matter claiming that the matter was sub judice.

Saul-August was allegedly responsible for coordinating the memorial service in Port Elizabeth where the provincial government spent R9.2-million. When asked by the Daily Dispatch how the money was spent, she refused to respond. She was allegedly phoned on several occasions by the PP’s office and asked questions she had not yet answered.

Qwase in his capacity as the Acting Director-General in the province, has to answer why the Premier’s Office spent more than R2-million for funeral when the executive council had ordered that payments should be directed through the Eastern Cape Development Corporation (ECDC).

Mdyolo, who originally questioned the release of R10-million by BCM for several memorial services, said he had to receive a request to be interviewed by the PP. He indicated that he was willing as obliged by the law, and had to cooperate at all times.

**4.10.29 Daily Dispatch dated the 21st February 2015, Madiba Fraudster’s Favour to Sexwale**

The Saturday Dispatch revealed that Sexwale was stranded at the East London airport on the morning of December 14 2013. He was then driven in a luxury car belong to a man at the centre of Nelson Mandela funeral. The former minister in the President Zuma’s cabinet and executive member of FIFA was driven in Sokwali’s seven-seater Chrysler Voyager. This was a special favour to Buffalo City Metro ANC regional secretary Pumlani Mkol, the man believed be the mastermind of the scam.

The latest revelations will embarrass Sexwale as they have dragged his name into the Mandela Funeral fund scandal. This because the car may had been used in the commission of the sophisticated scam to defraud the state of the millions of rands meant for Mandela’s burial. The same was used to transport Buffalo City Metro councilor Sindiswa Gomba and her team to a memorial service held in Port Elizabeth for Mandela.
It was alleged that Port Elizabeth trip was sponsored and paid by Sokwali, again at the instruction of Mkolo, according to documents and evidence before the courts.

The startling information was revealed in an affidavit Sokwali gave to the state as part of an investigation into the fraud scandal that rocketed the nation. It also revealed how several large amounts of cash were paid by Sokwali to Mkolo for “ANC events”.

In an affidavit, Sokwali indicated that Sexwale was conveyed in his Chrysler Voyager from East London to Qunu on Sterday December 14 2013. This occurred at the request of BCM regional secretary Mkolo. Sexwale was to attend the funeral which was scheduled to take place the following day. The information was corroborated by Tobile Mtya, who was also a driver for Mkolo.

Eastern Cape ANC provincial Secretary Oscar Mabuyane distanced the party from the scandal, saying the ANC had nothing to do with transactions between Mkolo and Sokwali. He indicated that as the province were not aware of such money and never demanded any money even from Sokwali, and the best to answer that was Mkolo.

The latest affidavit esxposed how senior officials at the municipality’s supply chain management were approached by Mkolo to assist in having Sokwali’s company registered. It further detailed how Mkolo allegedly asked for more than R400 000 from Sokwali, saying it would be used for ANC events.

In the affidavit, Sokwali details how he paid the following cash amounts to Mkolo:

- R180 000 at Vincent,
- Another R60 000 was paid to Mkolo at Sokwali’s Beacon Bay house,
- Another R60 000 at Sokwali’s house,
- R10 000 was paid to Mkolo at Hemmingways Mall,
- R56 000 at Mkolo’s Gonubie home, and
- An additional R40 000 was paid to Mkolo on January 8 for food.
Mkolo said he knew nothing about the money. He declined to comment further, saying the matter was sub judice.

Sokwali pleaded guilty to contravening section 34(2) of Criminal Procedure Act in that he did not tell police that he knew or suspected that fraud and money laundering as well as other crimes may have been or been committed. He was sentenced to five years imprisonment, wholly suspended for five years, while Victory Ticket was fined R100 000, of which R50 000 was suspended.

Mkolo and his co-accused were to go back to court on February 25 2015.

4.10.30 Daily Dispatch dated the 26th February 2015, Trial Date Set for Funeral Fraud

Some of the remaining 10 accused in the Mandela memorial service fraud case line up at the start of hearing in the East London Magistrate’s Court.

There were heated exchanges in the lead-up to the confirmation of the trial date, as lawyers accused prosecutor Deniso Ketani and investigating officer Luphumlo Lwana of withholding the information they required to prepare their clients’ defenses.

Magistrate Deon Roussouw insisted that Ketani and the lawyers “get together, talk to each other [and] sort it out among yourselves. I am not going to get involved in who is to blame or not to blame”.

Before the court were Buffalo City Metro executive mayor Zukiswa Ncitha; ANC regional secretary Pumlanzi Mkolo; BCM’s deputy mayor Temba Tinta; council speaker Luleka Simon-Ndzele; senior councillor Sindiswa Gomba; the director in the office of the mayor Ondela Mahlangu; and business owners Viwe Vazi, Dean Fanoe, Johannesburg-based attorney Zintle Nkuhlu and Nosiphiwo Mati.

Charges have also been brought against various business entities related to some of the accused. The case against businessman Mzwandile Sokwali was finalised in December previous year when he was given a fully suspended prison term of five years for his role
in the fraud. His company was fined an effective R50000, while his wife Blanche Boti Sokwali was let off the hook on all charges.

The Sokwalis’ evidence for the state appears crucial in the case faced by the remaining accused, with lawyers complaining that the couple’s witness statements had only been presented to them the previous week.

Ketani “let the cat out of the bag” this means that he disclosed in court that local attorney Andre Schoombee, representing Dean Fanoe, had made representations for charges to be dropped against his client on the basis he would testify for the state against the others.

Schoombee objected to the disclosure of an “off-the-record” meeting to discuss settlement of the case against his client. “He still joked that ‘I’m not going to tape it with my cellphone’,” he said, referring to Ketani. “And now, he’s addressing the court on a ‘without prejudice’ discussion that took place. I take exception to it.”

Ketani acknowledged it was “regrettable” that he had made the disclosure of the discussion “on the record” in court. “We did not agree, so there is no deal then.”

The state and defence agreed that by March 2 the state would provide a schedule to the defence of all the documents it intended relying on during the trial.

The state would also provide each defence representative with a summary of the state’s case against their respective clients.

4.10.31 Daily Dispatch Dated the 14th April 2015, Row Over R100m Tender Box Order.

Buffalo City Metro boss Andile Fani was accused of seeking to influence the awarding of a lucrative contract after he allegedly instructed senior officials to remove a tender box. The box was said to have held bids for a roads maintenance project believed to be valued at R100 million.

It was claimed that Fani communicated this in a top management meeting the previous week in his 10th floor boardroom at Trust Centre. He ordered the box to be removed from
the institution’s supply chain management unit in Chiselhurst. Three senior officials – chief financial officer Vincent Pillay, acting head of health and public safety Steve Terwin and acting head of corporate services Louis Wulff – acted on the instruction.

The tender, known in tender business circles as Contract 26, was BCM's multimillion rand tri-annual roads and stormwater drainage contract worth more than R100-million a year. Fani’s motives for wanting the box moved were being questioned as it could be seen as interference in the tendering process.

BCM’s spokesman Keith Ngesi, on behalf of Fani, denied any impropriety, saying Fani came under pressure over numerous complaints about “internal weaknesses” around the tender and he used the powers conferred on him by the Municipal Finance Management Act to step in and bring order to the chaos. Ngesi said no verbal instruction had been given to the three officials to remove the box.

A source within BCM close to the developments but not allowed to speak to the media, was adamant Fani had issued the instruction which shocked many senior managers at the meeting.

“The tender box that was to be removed from the SCM building had the most expensive and sought-after tenders. The reason Fani decided to call for its removal is not known,” said the source.

“Protecting tender boxes is one of the key things for any government institution, particularly the municipality. You don’t tamper with the tender box,” said the source.

Contacted for comment, all three senior officials refused to speak to the Dispatch.

One however, confirmed the instruction.

“I was at that meeting and an instruction came, but BCM will have a response on that,” said Wulff. Terwin and Pillay said they were not mandated to speak to the media. “Communication department is handling this,” said Terwin. Ngesi expressed shocked that members of senior management could misrepresent the contents of the meeting with the
aim of misleading the public. “A task was assigned to three managers to assess the situation and implement remedial actions.

“On inspection by the three tasked by the accounting officer, (Fani) the keys of the box were found to be defective and an additional lock was installed. No keys were confiscated by the CFO,” said Ngesi.

“Numerous complaints have been brought to the attention of the accounting officer (Fani) regarding internal control weaknesses in the SCM unit.

“This has exposed the metro to high risk of irregular expenditure, fraud and corruption as a result of the current state of chaotic document management practices in the unit,” said Ngesi.

The tender was for road construction like building bridges, stormwater drains, sidewalks, guardrails and culverts. It closed on Tuesday March 31. Two days later, the three managers were seen at SCM but apparently the tender bids were locked in another room. Another source said Pillay allowed this to happen because “he was controlled”. “He’s so controlled and he allowed this to happen because he has no choice. If you are told to jump at this municipality, you jump.”

Ngesi said: “The accounting officer, (Fani) is responsible and accountable for managing the financial administration of the municipality. “For this purpose, he takes all reasonable steps to ensure that unauthorized, irregular or fruitless and wasteful expenditure are prevented.” Ngesi said there were more changes to be effected at SCM.

“Some of these changes would bring discomfort to some people, but the accounting officer has an obligation to apply the law.”
4.10.32 Daily Dispatch Dated the 14th April 2015, Thuli Orders Officials to Explain Mandela Funds.

According to the Daily Dispatch dated April 14th 2015, Thuli ordered officials to explain Mandela funds. Eastern Cape politicians and officials were to be called to account for public funds allegedly squandered or creamed off the top instead of being spent on Nelson Mandela’s funeral.

Public Protector Thuli Madonsela had issued subpoenas to the 20 Eastern Cape politicians involved in the Mandela Memorial scandal to query the lost millions.

Madonsela had been investigating the scandal for months, and the parade of officials before her to explain their actions would start with mayors and council speakers of OR Tambo and King Sabata Dalindyebo (KSD) Municipalities.

Although not all the names of the politicians and officials were available to the Dispatch at the time, they had all been subpoenaed to appear. They would have to explain municipal spending on the funeral.

KSD spent more than R21-million on the funeral while OR Tambo reportedly spent about R9-million. In both cases, the municipal councils had not approved the expenditure.

KSD’s Municipal Public Accounts Committee (MPAC) had called the spending on the funeral, code named “Project X”, a “project of science fiction”. The mayor of KSD, Nonkoliso Ngqongwa, speaker Dumani Zozo, OR Tambo mayor Nomakhosazana Meth and speaker Robert Nogumla, were served subpoenas the previous week, along with Municipal Managers (MM) and Chief Financial Officers (CFOs) of both institutions.

Former KSD CFO Nomthandazo Ntshanga and former MM Zizamele Mqanqeni have also been called in to account. KSD officials were meant to appear for questioning on March 25, and hired a lawyer to appear with them.

The municipality spent millions buying food for catering in public mourning areas during the funeral. Funds were also spent on flags, T-shirts and wheelie bins, filling potholes and
transporting community members to the memorial services. Among the expenses were R788652 on billboards, R92500 for gumboots, and R78200 for golf shirts.

Other expenses included R49000 paid to a firm to provide 100 rolls of toilet paper, 120 brooms, 100 cans of air freshener, and 100 bottles of toilet cleaner, 50 cleaning cloths and 12 bars of soap.

No response had been received from KSD spokesman Sonwabo Mampoza to Daily Dispatch questions at the time of writing.

The OR Tambo municipality also spent funds on catering, a stand-by generator and bottled water, despite having a large volume of bottled water donated by the Department of Water Affairs. OR Tambo’s Ayongezwa Lungisa confirmed that the municipality had received subpoenas from the public protector.

KSD has also come under fire from its MPAC which, in its recent report to council, could find no executive authority for the funeral expenditure. According to the report, none of the expenditure had been brought to council for approval.

The committee also recommended that Mqanqeni and Ntshanga be called to account for their involvement in the expenditure of the funds. Councillors lambasted KSD officials for hiring a lawyer instead of answering questions themselves.

Civic Alliance of South Africa councillor Pasika Nontshiza said: “The public protector is engaged in a fact-finding mission. Anybody who rushes to hire a lawyer is probably guilty of something. No one has been charged here; why the need for a lawyer? This is unauthorised expenditure of the worst kind.”

UDM’s Wandile Tsipa said it was surprising that leaders opted to be represented by a lawyer. “It is a waste of taxpayers’ money… if there is any wrongdoing, heads must roll.” DA councillor Raymond Knock said municipal heads needed to be accountable. “They need to avail themselves, innocent or not. It is part of their duty. You cannot be running a municipality, and be unaccountable.”
4.10.33  Daily Dispatch Dated the 14th April 2015, Fani Was Ordered to Account for Metro Millions.

The office of the accountant-general in Pretoria wanted Buffalo City Metro’s municipal manager Andile Fani to provide documents on more than R636-million worth of irregular payments made by the metro.

The paperwork was required to form part of a National Treasury investigation into how the city’s books were handled during the 2013-14 financial year.

In a letter to Fani dated February 23 2015, the head of the treasury’s specialized audit services Zanele Mxunyelwa, demanded supporting documentation for what she described as irregular write-offs worth R583-million.

This in addition to:

More than R13-million paid to three information technology systems companies – Lugogwana Comtech, Empire Praxis and LC3 Solutions trading as Simo Solutions. BCM paid the companies before contracts had been signed, and;

R40-million paid to finance the South African Cities Network (SACN), a network to help municipalities get clean audits.

Mxunyelwa gave Fani two days to respond, but it was unclear the day before whether or not Fani’s office had provided the information. National Treasury spokeswoman Phumza Macanda would not comment on whether or not the required information had been provided, saying: “We generally do not comment on investigations.”

Metro spokesman Keith Ngesi also refused to comment, saying: “BCM was reserving its comment on the matter for now until National Treasury is done with its investigation.”

In her letter to Fani, Mxunyelwa referred to a meeting between her office and Fani, in which Fani made an “undertaking to provide us with supporting documents to facilitate National Treasury investigation on these matters [referring to stated cases above].”
Mxunyelwa was demanding a breakdown of all expenditures related to the R583-million.

She also asked Fani to submit all committee reports which made the recommendations that the amounts be written off, and all council resolutions relating to the write-offs.

This was part of R1.1-billion worth of write-offs the BCM council resolved to reverse two weeks ago, after Fani advised council to do so. But he made no mention of Mxunyelwa’s letter of demand at the council meeting, except to highlight the importance of rescinding the decision to write-off the amounts.

Mxunyelwa also asked for documents which confirm the memorandum of understanding with South African Cities Networks (SACN), as well as a list of companies which did work during the intervention. She also asked for printouts from the financial system of all payments made to the three ICT companies.

“Provide documents indicating the procurement process followed in the appointment of these service providers,” and “provide us with the service level agreements for the appointment of all three companies,” she wrote.

4.10.34 Daily Dispatch Dated the 30th April 2015, Council Uproar Over Fani

The Buffalo City Metro council had instructed Mayor Zukiswa Ncitha to put municipal manager Andile Fani on special leave.

The action was over allegations that Fani instructed officials to tamper with a tender box and disregarded national Treasury regulations on metro finances.

The findings of Ncitha’s investigation into allegations that Fani had instructed three senior managers to tamper with the tender box were tabled behind closed doors at council meeting held at an East London hotel. The city hall had been under renovation since last year, and a larger alternative venue was not available.

The investigation stems from a Daily Dispatch report two weeks ago on allegations Fani gave orders that the box, containing among other tender documents submissions for a R100-million roads maintenance contract, “be removed”.

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Municipal spokesman Keith Ngesi at the time denied the order was to remove the box, but rather for the officials to establish if it had been tampered with.

Ncitha then conducted an investigation on events leading to the replacement of locks on the tender box. The report on her investigation, named “Fani’s Conduct”, was tabled at a boisterous meeting the previous day, which included a walkout by the entire DA council caucus.

Fani supporters, mostly belonging to the South African Municipal Workers’ Union (Samwu), demanded to be allowed into the meeting as permitted by law. But council speaker Luleka Simon-Ndzele said the venue was too small to accommodate members of the public. Inside the council meeting room, it was agreed that only confidential items would be discussed, leading DA councillors to march out before the Fani item was discussed.

More councillors walked out when Ncitha’s report on Fani was discussed, with several ANC councillors – including Tony Mintsilana, Nomfezeko Ngesi, Thembisa Zantsi and Mxolisi Nkula, together with Congress of the People’s (COPE) Khayalethu Twalingca – following in the Democratic Alliance’s (DA) footsteps.

Despite the walkout, other councillors continued the discussion and the matter was put to vote.

“The recommendation to put Fani on special leave was still put to the vote and endorsed by the majority of councillors.

“One ANC councillor voted against and three abstained,” said a source close to the developments.

“The item was now in the hands of the mayor to write to the Metro Manager for him to give reasons why he should not be put on special leave,” added the source.

Simon-Ndzele confirmed the previous day that “there’s a council resolution on the matter of the accounting officer’s conduct” which included a national Treasury investigation into Fani’s conduct on financial “write-offs”.

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But the matter remained confidential until follow all the necessary processes and then declare it an open matter which can talk about publicly thereafter, according to speaker.

She promised to confirm the following day as to how council resolutions would be communicated to the public “because this is of public interest”.

Ncitha refused to comment on anything that “has to do with pink [confidential] items”. “I can’t do that. “All I can do is apologise to the members of the public for the fact that they were unable to be part of this council meeting,” Ncitha said.

Fani could not be reached for comment at the time of writing.

4.10.35 Daily Dispatch Dated the 21st May 2015, Gloves Off in BCM’s Battle of Bosses

Buffalo City Metro (BCM) manager Andile Fani had 48 hours to prepare for battle with his detractors on the city council, led by Mayor Zukiswa Ncitha.

Ncitha and two other co-accused in the Mandela funeral funds court case – speaker Luleka Simon-Ndzele and leading ANC councillor Sindiswa Gomba – were back in their seats to preside over the top table and hold the floor during another raucous sitting of a special city council meeting at the Border Conference Centre in Abbotsford.

BCM top officials City Manager, Andile Fani, Council Speaker, Lulama Simon-Ndzele, Mayor Zukiswa Ncitha and Deputy mayor Themba Tinta at the second special council meeting at Border Conference Centre in Abbotsford on a Wednesday.

The legal fight between Fani and the mayor continued. Papers obtained the pervious day showed Fani was seeking a high court order setting aside the council’s April 29 decision to investigate and suspend him, arguing it was irregular, irrational and unconstitutional.

At a meeting, while the three politicians were in court defending themselves from accusations they were interfering with a key witness, Fani was in good spirits as he held the top table at the start of the sitting.
That meeting ended in disarray with a decision to put off tabling the report until the following sitting. Fani looked subdued and, once, mopped his face, as Ncitha, with Simon-Ndzele by her side looking confident, pushed ahead with her “exigency” report.

Amid shouts of “order” and angry statements from opposition councillors, and two adjournments, Ncitha obtained a position from the ruling ANC caucus to give Fani 48 hours until noon the following day before the next special sitting which would only discuss his matter.

The meeting started with a bang, dealing immediately with whether Ncitha’s report on Fani’s suspension should be tabled. In her opening remarks, Simon-Ndzele said: “We were not present in the last council meeting. We had a warrant of arrest [against us], that is why we were not part of the meeting. “In reconvening the meeting we have communicated with organizational support on how we deal with issues convening these meetings.”

Ncitha’s report into Fani was prompted by allegations of tender box tampering and of failing to inform Ncitha of a national Treasury investigation into allegations of irregularities in the management of the metro’s finances.

On April 29, Ncitha gave Fani seven days to argue why he should not be suspended for misconduct. However, charges of intimidation of a witness were then brought against Ncitha, Simon-Ndzele and Gomba. DA members made it clear they would be “recusing” themselves from the sitting if the “strictly confidential” items on pink paper were admitted.

4.10.36 Daily Dispatch Dated the 30th May 2015, Lucrative Contract Splits BCM Bosses

One of Buffalo City Metro’s most sought after contracts was said to be at the centre of a massive rift between municipal bosses. City and political sources, who were close to the developments at both the Trust Centre and the City Hall, said the tender known as Contract 26 was being used by politicians and officials to dish out patronage.
While municipal authorities refused to reveal how much Contract 26 was worth, dispatch had seen payment schedules valued at more than R500-million. But BCM spokesman Kith Ngesi indicated that they could not discuss finances of the companies in papers because policy did not allow them to that though there are public finances involved.

Contract 26 was made up of different contracts for building and maintaining roads, storm water upgrades and fixing potholes around BCM. These contracts used to be won by mainly white-owned construction companies in the past, but a decision was taken few years ago to award them to different companies, including black owned ones.

Politicians told dispatch that the multimillion rand tender had caused major rifts in the already sour relationship between Ncitha and Fani. It was also mentioned that Fani was being targeted because the contracts were going to people seen to be close to him. The tensions were said to have surfaced after Fani refused to extend the contract when it expired in March. When asked about the allegations Fani indicated that he preferred not to comment as the matter was still before courts, but insisted that he was not shaken by not signing and not ashamed as it was his responsibility to make sure that things were done I a responsible way.

After the tender lapsed in March a new tender was then advertised. In the previous month Dispatch exposed how officials were allegedly sent to remove tender box which contained bids for the lucrative tender. At the time Ngesi denied there was an order to remove the box, but rather for the officials to establish if it had been tampered with.

Fani was allege to have called his entire management team to an impromptu meeting meeting on April 2 and told them he suspected foul play on how the tender box was being managed. He further alleged to have said that he would like it removed over the long weekend and kept in safe place.

He had denied ever giving such an instruction. But Ncitha had compiled a report in which she listed this incident as one which needed to be investigated. It was alleged the incident turned Fani’s former allies CFO Vincent Pillay and supply chain management head Thembinkosi Sali against him.
In his response to the allegations that he had given instructions for the tender box be removed, Fani claimed he was trying to prevent manipulation of the tender process. But his rivals claimed he was trying that companies close to the city manager were given preference. But Fani had subsequently refuted the claims saying any one was receiving bribes the municipality would deal with it.

**4.10.37 Daily Dispatch Dated the 03rd June 2015, Axe Swing at Ncitha and Fani**

Buffalo City Metro mayor Zukiswa Ncitha and municipal manager Andile Fani have been ordered to resign from their posts by provincial ANC leaders. The Daily Dispatch could exclusively reveal that ANC provincial chairman Phumulo Masualle held a one-on-one meeting with Fani in which he recommended that the municipal manager throws in the towel in his battle with the mayor and negotiate an exit package. The decision came while President Jacob Zuma and his national working committee were visiting the Nelson Mandela Bay (NMB) metro.

ANC had made a similar intervention at NMB where Mayor Ben Fihla was replaced by football administrator Danny Jordaan, Bicks Ndoni appointed as his deputy and Litho Suka as Chiefwhip. ANC provincial secretary Oscar Mabuyane confirmed that the party’s top five provincial officials had been given the go ahead to act on BCM’s state of paralysis. However, he refused to divulge further details of an ANC Provincial Executive Committee (PEC) meeting in Port Elizabeth on Monday where the decision was made. “There is a PEC decision which instructed PEC officials to intervene decisively in BCM,” Mabuyane said.

“So far this is an internal matter that we are processing and we are consulting with national [ANC leaders] about it. At an appropriate time, when all steps have been followed, we will issue a statement.” The PEC officials included Masualle; his deputy Sakhumzi Somyo; Mabuyane; deputy secretary Helen Sauls-August; and treasurer Thandiswa Marawu.

Ncitha declined to comment on the matter saying: “On any PEC decision, only the secretary [Mabuyane] and ANC provincial spokesman Mlibo Qoboshiyane have the right.
to make comments in the media. “Even if that decision affects myself as an individual, I cannot comment.”

Efforts to get a comment from Fani were unsuccessful at the time of writing. At least four sources revealed that three names had been put up by the PEC as potential replacements for Ncitha. They are deputy mayor Temba Tinta, mayoral committee member Sindiswa Gomba and Ward 11 councillor Sakhumzi Caga.

“Indeed the three names were the recommended ones for the position,” said the source. “The decision can go either way, but I’m sure it will be made by the end of this week.”

Ncitha and Fani had not seen eye to eye for a number of years. In 2012 the BCM regional executive committee recommended that Fani be redeployed, but instead the PEC tried to resolve the impasse. Despite this, the problems persisted.

Tensions came to a head last when councillors supporting the mayor and those who sympathized with Fani clashed in at least three meetings over Ncitha’s decision to try and suspend Fani. At least one of the meetings had to be adjourned because it did not meet a quorum after opposition councillors marched out.

It was not clear at that stage who would emerge victorious for the mayoral position as both the ANC’s alliance partners – South African Communist Party (SACP) and Congress of South Africa (Cosatu)– were usually given a say in such sensitive matters.

While Tinta and Gomba were both facing court charges for their alleged involvement in the misuse of more than R5.9-million in the Mandela memorial fraud scandal, that might not affect their bid for the city’s top job.

The ANC had previously said that the court matter should be allowed to run its course before any action will be taken. If there was no consensus on the best candidate, the matter would be voted on. Tinta should receive support from the SACP and Masualle, a SACP leader.
Gomba would likely receive support from BCM regional secretary Pumlani Mkolo and his allies within the Provincial Executive Committee (PEC), while Caga was likely to get backing from Ncitha’s sympathisers in PEC as he had worked closely with her in the past.

Contacted for comment, Caga and Gomba said they were not aware of the developments and were in no position to discuss the matter. Tinta said he was held up in a meeting and could not comment.

4.10.38 Daily Dispatch Dated the 06th June 2015, Day of the Long Knives at BCM

The Buffalo City Metro executive underwent the first round of a major overhaul with new leaders only learning of the changes on the day they were announced. Both mayor in waiting Alfred Mtsi and his deputy Xola Pakati who replace Zukisa Ncitha and Temba Tinta respectively, said they only learnt about their appointments and responsibilities the day before.

The reshuffle came weeks after the ruling party affected drastic leadership changes at the Nelson Mandela Bay Metro where they replaced 83-year-old mayor Ben Fihla with soccer administrator Danny Jordaan amid infighting and administration instability in that council.

The changes in Buffalo City Metro also pointed to the urgency on the part of the ANC to deal with turmoil. Provincial ANC secretary Oscar Mabuyane announced at Calata House the day before that Ncitha and Tinta had already resigned as councilors to make ways for the members of the provincial legislature, who were also expected to resign immediately as MPLs.

Ncitha was moved to the National Council of Provinces (NCOP) and Tinata to the Provincial Legislature Bhisho as an MPL. Mabuyane said municipal manager Andile Fani was also in a firing line, but was left with BCM to effect changes in the administration.

The new mayor and his deputy were expected to be sworn in in the following week, but announced more changes would be expected. Mabuyane indicated that there were protracted problems at BCM of lack of performance of the municipal leadership, especial
the Municipal Manager and the Executive Mayors Office. Every day ratepayers complained of lack of service delivery such as non-collection of refuse. He said that they had decided to intervene and rescue the municipality and had nothing to do with individuals. The move was applauded by the opposition parties as well as ratepayers and business community.

4.10.39 Daily Dispatch Dated the 10th July 2015, BCM Fiscal Dumping Row

Buffalo City Metro (BCM) authorized the payment of R7.6-million to a company just a day after issuing them with contract order documents.

On June 29, BCM supply chain management released an order for Interwaste Environmental Solutions to do an “emergency operation” at the regional waste disposal site in Berlin. Then, on June 30, an official who was acting as a head of department for community services, signed for R7 670 476.08 to be paid to the company.

BCM chief financial officer Vincent Pillay has questioned it in a letter seen by the Daily Dispatch. It read in part: “The challenge our directorate is currently having is that Ms N Daniels [the official who signed off the payment] is no longer acting HOD: community services and does not have authority to sign for the payment amount of R7 670 876.08. It is therefore advised that the invoice for payment be signed by the city manager, in order for the payment to be processed.”

Supply Chain Management (SCM) regulations state that a company is not allowed to commence work without being given an order to do so. The order is a document which states the order number used when payments are to be made, a description of work to be done and the amount quoted when the company bid for the tender.

Senior officials within the metro, who spoke on condition of anonymity, described authorizing payment a day after the company was ordered to go on site as “fiscal dumping”. The metro’s financial year ended on June 30. One said: “It’s obvious, this happened before and it is happening again. Don’t be surprised if this is another fiscal dumping. Where is the service level agreement?”
Allen de Villiers of Interwaste said everything was done above board. “We have a valid letter of appointment from BCM regarding commencement of operations in terms of the tender.” He said work commenced on June 1; however, the order was only signed 28 days later. Asked to produce a copy of the service level agreement, De Villiers said: “The project is governed by service levels as contained within the contract tender document which is duly agreed to and signed by the parties. We suggest you obtain a copy of the tender document from the BCM.”

Metro spokesman Keith Ngesi said the nature of this particular contract did not require an order to be issued before work is done. “This one is a different two-year milestone-based contract, not pinned on the order.” Ngesi said the R7.6-million to the company was being processed but had not yet been paid. “The project started in 2015, therefore it is not completed.” Ngesi said the money claimed by the company was for site establishment, site clearance and material on site amongst others.

De Villiers said they received an official letter from BCM on May 19. “Subsequent to the applicable tender process, the letter of appointment required Interwaste to commence services within 14 days thereafter. As a result, we commenced operations.” Another senior official said a letter of appointment does not necessarily give the authority to work on site. “No one should work without an order; how is that person going to claim money without an order. This is fraudulent.”

**4.10.40 City Press Dated the 07th December 2014, ‘I Was Bullied into R6m Madiba Fraud’**

According to the City Press dated the 07th December 2014, Acting Director of support services at the Buffalo City Metropolitan Municipality said she was harassed into signing invoices connected to Madiba’s memorial service. Ondela Mahlangu accused of being involved in fraudulent behavior involving R5.9 million was allegedly bullied into signing forms and threatened by municipal’s financial boss at a set of traffic lights in East London. This was revealed in documents that were handed to lawyers who where involved in the trial of BCM top officials.
They were accused of fraud and money laundering linked to millions of rands that were supposed to be spent on transporting mourners to memorial services after Nelson Mandela died in December 2013.

Mahlangu submitted a report to City Manager on January 29th 2014 in which she talked about how she was allegedly pressured by colleagues into signing documents. In her report, Mahlangu told City Manager that on December 12 2013 she got a phone call from Vincent Pillay, BCM’ Chief Financial Officer telling her to prepare a deviation report to procure transport services so mourners from the municipality could attend memorial services for Mandela, which were being held around the Eastern Cape.

On December 12, Mahlangu indicated in her report that she got other urgent and instructive phone calls from Pillay asking her to sign another form for the service provider who had been appointed. She said she refused because she was not clear as to whether or not all relevant procurement processes were followed. She also indicated that she decided to ignore his calls. While driving home after work she claimed that at the Beach Road intersection traffic lights she came across Mr Pillay who came out of the car and pointed finger at her threatening her.

On December 13, she claimed that she was now called and confronted by Mr Pumlane Mkolo for not wanting to sign and told her she is not a senior and as such will not be accountable. Mahlangu also indicated that Ms Ncitha also called to ask why she would not sign, but that after explaining her concerns to her understood her position. After Fani gave her background information about plans and after Pillay had assured her that all procurement processes had been followed, Mahlangu signed the documents.

In an affidavit Pillay made to the investigators, and which forms part of the bundle handed over, he said Mahlangu was told by Fani that she may withdraw the deviation report if she was uncomfortable with the document and indicate to him why she had concerns.

Meanwhile, three independent sources close to the case had told the City Press that Sokwali and Boti were considering turning state witnesses. This was after the pair asked for a separation of trial, which was granted in the East London Regional Court.
They were scheduled to appear in court again on a Monday the 08\textsuperscript{th} December 2014. The rest of the accused were due back in court for the start of their trial on April 7 2015.

4.11 ANC INTEGRITY COMMISSION REPORT ON THE BUFFALO CITY METROPOLITAN MUNICIPALITY 2015

According to the findings of this report all other Comrades were found guilty with the exception of Comrade Sindiswa Gomba. Ncitha was also charged for misleading the council into believing the provincial government had agreed that BCM would fund the event. The Eastern Cape Provincial Government denied that it had done so according the report.

The report also indicate that Ncitha initially thought to secure the release of R20m through her delegated authority, but after discussion with the Chief Financial Officer (CFO) and City Manager, she was persuaded to ask the council to vote for R10m.

Ncitha also mentioned that after she was asked by the Daily Dispatch on the matter, she was convinced that there was something wrong with the project and she immediately checked with the CFO who assured her that procurement processes were followed.

The following recommendations were made by the ANC Integrity Committee (IC):

a) The officials of the ANC must make it clear to all ANC officials at all levels which include national, provincial and regional that they should not interfere in state or in provincial administration, especially in procurement or tender processes.

b) The Regional Secretary, Phumlani Mkolo, must be relieved of his duties with immediate effect and not be allowed to hold any political office or serve as spokesperson for the ANC. He should also be prevented from campaigning in 2016 municipal elections.

c) The IC recommended that the Executive Mayor, Deputy Mayor and Speaker relinquish their positions with immediate effect, and that they revert to being ordinary councilors, they brought ANC into disrepute by mismanaging the Mandela Funeral issue.
Also the Integrity Committee believed that the role of Phumlani Mkolo needed to be further investigated by ANC officials. During the course of the hearing he told the committee that he met regularly with business because they want to associate themselves with people in positions of power. He told the committee that his salary was approximately R30 000 per month which was not matching with his lifestyle.

The committee further recommended that the officials of the ANC or an organization with appropriate authority need to investigate the source of his income. The report also indicated that Daily Dispatch ran an article detailing his assets, which he never disputed or corrected to protect his image.

The committee indicated that this report does not make any factual findings about the guilty or innocence of Comrades in question claiming that is beyond the scope of its mandate. The committee also indicated that their guilt or otherwise would be determined by court by a court.

But the question is, what informed their demotion if they were not found guilty by the committee? Also, why the report itself released on February 2016 whilst it was completed in March 2015, almost a month ago. The credibility of the committee could be questionable if there is evidence or proof of misappropriation of government funds.

CHAPTER FIVE: CONCLUSION AND RECOMMENDATIONS

5.1 INTRODUCTION

It can be concluded that emerging from the current discussions and ongoing debate on the issue of corruption, that corruption is a symptom of deep-seated and fundamental economic, political and institutional weaknesses and shortcomings in the society. To be effective, measures against corruption must therefore address these underlying causes and not symptoms. Emphases therefore should be placed on preventing corruption by tackling the root causes that give rise to it.

Anti-Corruption enforcement measures, such as oversight like MPAC, strengthened law enforcement agencies and courts will not be effective in the absence of serious efforts to address the fundamental causes.
It is clear throughout the research process that there are serious dangers in basing anti-corruption assessments and strategies solely on perception-based surveys. The surveys carried out for this research has provided a solid base for further studies. These studies should go into more depth about systems’ weaknesses, which provide the opportunity for corruption, organisational culture and attitude problems, and general employee integrity systems.

There is also a need to study cases, to understand them and draw lessons from them.

5.2 RECOMMENDATIONS

Having raised these critical issues in this research, the following recommendations are made. A number of avenues of options need to be explored in order to uproot corruption entirely.

The study recommends the following anti-corruption strategies to the municipalities and public sector in South Africa.

The municipal’s strategic plans to fight corruption should be clearly assigned senior management to ensure appropriate delegation of duties and accountability for functions and municipal operations. The municipality should ensure that Risk Assessment is regularly performed and that fraud and corruption plan is in place, and is being implemented. The management of the municipality should ascertain that adequate monitoring and control mechanisms are developed and implemented.

The municipality should investigate all matters reported and take corrective measures where necessary and report to South African Police Services in time. The municipality should ensure that proper internal controls are in place and implemented.

Control measures should be in place to guarantee that all revenue is collected, received, recorded and utilized for intended purposes.

Monitoring mechanisms and control procedures must be developed to ensure proper management of payment of service providers, the physical verification of their existence and services rendered in a stipulated time. In addition, the municipality should develop and implement a clear mechanism to verify that all supporting documents are attached to
the claims of service providers. Oversight by senior staff to ensure that all procedures are performed and should be implemented.

The municipality must confirm at all times that only registered and valid service providers are utilized for procurement of goods and services. Delegation of powers should be in line with relevant legislation to ensure that payments are approved by delegated officials. Delegation of powers should be in writing and signed by the Accounting Officer. The municipality should develop and implement control activities to ensure that adequate verification for goods and services received are given. Checks and balances should be in place in order to authenticate that payments are allocated to the correct bank accounts of service providers or suppliers.

Additional mechanisms and activities must also be documented and implemented to prevent duplicate payments of the expenditure transactions. The management should at all times follow up the discrepancies and make the necessary adjustment.

Monitoring mechanisms and controls procedures must be developed to guarantee that all related parties are identified and disclosed in the register of directors’ interest in companies.

Any municipal official who fails to declare business interests, as stipulated in MFMA, should be dealt with in line with municipal processes. The municipality should develop and implement monitoring mechanisms to verify that the requirements of supply chain management policies are adhered to in order to avoid incurring irregular expenditure. The municipal policies and contracts should be reviewed and updated on a regular basis to safeguard compliance with the necessary legislation.

As required by Treasury Regulation, the Accounting Officer of the municipality must cancel the contracts awarded to fraudulent suppliers. Where necessary steps should be taken to recover the money and allow the law to take its course through law enforcement agencies. Programme managers should on a monthly basis, prepare a Suppliers’ Monitoring Tool Report and through monitoring, review that contracts are properly observed, simultaneously encouraging supplier adherence with the contract terms.
A service provider Service Level Agreement stipulating specific responsibilities, duties, timeframes, format documentations and specification of documents to be submitted. The municipality should check the National Treasury database to verify that none of the recommended bidders is blacklisted.

The Accounting Officer and all senior member staff of the municipality must sign performance agreements and undergo performance appraisals to ensure that accountability measures are in place and corrective action is taken where performance is inadequate. Management must ensure that performance contracts are discussed and signed at the beginning of period of the year under review.

The Accounting Officer and the Senior Management need to demonstrate personal practical commitment to stop corruption by:

- Leading by example at all time;
- Ensuring speedy disciplinary investigations and proceedings in cases of alleged corruption involving officials;
- Ensuring that disciplinary proceedings are brought to swift conclusion;
- Keeping the council, the public, the media and municipal officials constantly updated and informed of the outcome of disciplinary investigations and proceedings.

The municipality should convey a clear message that reporting corruption is encouraged as well as valued and all municipal officials have a responsibility to report corruption, regardless of individual positions. As a matter of urgency, the municipality needs to establish formal channels for reporting corruption internally and ensure that officials, at all levels are informed about these channels.

The municipality should workshop all the officials in ensuring that are made aware of individual rights as whistle-blowers and the protection of each employee is afforded under the Protected Disclosure Act 26 of 2000.
The African National Congress, as the ruling party nationally and in eight provinces should at all times deploy competent and capable cadres to the positions of executive authority in municipalities.

The cadre deployment policy of the ANC, need to be reviewed and monitored constantly in order to avoid abuse and manipulation in the implementation process. Deployment of cadre ship should be linked to minimum qualifications and standards, and capacity building programmes. Coupled with this is the need to have political will on the part of the political leadership within the ANC as an organization responsible for such crucial and critical deployments and as well as within the municipalities to fight corruption.

A holistic and integrated approach to fight corruption should be established. A structure comprised of all Municipal Public Account Committee Chairpersons, Anti-corruption Units in municipalities, coordinated by SALGA should be established in the province to coordinate anti-corruption work in municipalities. This structure should be mandated or allowed to coopt other relevant departments like DLGTA and agencies on a need and issue driven basis. Terms of reference and the work of this structure should be made clear and known to the public.

Also, Public Sector Unions and organs of civil society need to be mobilized to advocate professional ethics with their members.

Criminal Justice in the province needs to be strengthened, starting from the provision of competent and better qualified and dedicated Presiding Officers over alleged fraud and corruption cases. All parties whose work involve fighting fraud and corruption need to cement personal work relationships, by signing a Memorandum of Understanding for cooperation and efficiency in the fight against cooperation.

The scope of legislation to fight corruption should be extended to all officials in the public bodies, corruptors and their agents. The civil and recovery elements of the of legislative framework should be improved, in particular tax legislation that prohibits rebates related to bribes, the applicability of Section 297 and 300 of the Criminal Procedure Act, recovery of losses in terms of PFMA, Prevention of Organized Crime, recovery from pension provisions, freezing of assets and return of assets to institutions that incurred losses.

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Corrupt individuals should be blacklisted or prohibited from further employment in public service as well as corrupt businesses from gaining contracts funded from state resources. A centralized electronic register should be created through Common Service Provider of National Treasury of prohibited businesses, and their respective owners and directors that have participated in acts of corruption.

Clear guidelines should be established for dealing with prohibited individuals and businesses. Also screening of individuals and business to which contractors are awarded should be enforced. Before the appointment of all senior managers, procurement officials or employees in a government sensitive and high-risk position is confirmed, the employing authority must ensure that such individuals obtain positive security clearance and if any conflict of interest is prevalent.

Workers should be encouraged to be the whistleblowers at work place and be protected. The fight against corruption should be on top of the agenda of organized labour at work place.

There is a need for regular monitoring of perceptions and experiences of citizens, clients, business and public officials with corruption based on uniformly accepted methodology.

- A need for the establishment of comprehensive, reliable and timely criminal justice statistics on corruption cases.
- A need for the establishment of comprehensive, reliable and timely departmental statistics on corruption cases.
- A need for the regular analysis of media presentation of corruption cases.
- A need for the establishment of comprehensive, reliable and timely statistical information on corruption in the business sector and civil society.
- A need for a certain level of consistency and compatibility among different methodologies and statistical data bases.
- A need to encourage the establishment of a research anti-corruption resource network to advance anti-corruption studies and analysis, as well as exchange of information and experience at the national, regional and international levels.
The establishment of Integrity Committee by the ANC is a noble idea, but however by look of things this committee is toothless, and therefore it needs to be beefed up, resourced and given powers to take though decision against perpetrators of fraud and corruption within the movement that are abusing their political power assigned by the organization and electorate.

Whenever there is an allegation of corrupt activities it should act swiftly without fear or favour, because justice delayed is justice denied.

5.3 CONCLUSION

The issue of corruption in our municipalities is compromising and impact negatively in the service delivery. It can be concluded that municipalities are characterized by a number of instances of corruption perpetrated mainly by municipal officials, councilors and members of society.

Bribery, fraud, nepotism, and systematic corruption are some of the forms of corruption that take place in municipalities in South Africa.

There are systems in place to fight corruption, but the reality is that they are very weak and ineffective. The anti-corruption strategies put in municipalities have general functioned poorly hence the prevailing the situation.

There is glaring non-compliance with the Municipal Finance Management Act (MFMA) and the Treasury Regulations and their own Procurement Procedures and Procurement Policies.

It is evident that despite the achievement accomplished by the ANC led government for almost over 21 years of democracy, there remain many political and administrative challenges facing many municipalities in South Africa. The fundamental question need to be posed and address therefore is, how best these challenges can be addressed and turn around service delivery to a tangible outcome?

The Constitution of the Republic of South Africa provides for the promotion and maintenance of a high standard of professional ethics in the public service.
Public resources are vulnerable to abuse by unscrupulous elements, both inside and outside government and therefore requires careful monitoring and control.

The existing legislative framework is solid but fragmented and requires review and consolidation to improve its efficiency.

To achieve that government requires an approach that is developmental in nature. Governance should be able to take control of the organization’s systems and at the same time adaptable to the environment in a way strengthens the capacity to achieve goals.

Those who are entrusted with authority must ensure that all allegations of corruption, nepotism and maladministration are speedily dealt with, without fear or favour. Political parties must take appropriate action to prevent factionalism from taking hold of municipalities and negatively affecting service delivery.

The primary responsibility for the prevention and detection of fraud rests with both those charged with the governance and the management of entity. Management with the oversight of those charged with governance, needs to set proper tone, create and maintain a culture of honesty and high ethics. It is the responsibility of those charged with the governance of an entity to ensure, through the oversight of management, the integrity of an entity’s accounting and financial reporting systems and appropriate controls are in place, including those for monitoring risk, financial controls and compliance with the law.

To establish a control environment and maintain policies and procedures to assist in achieving the objectives of ensuring, as far as possible the orderly and efficient conduct of entity's business.

It can be concluded that the fight against corruption goes beyond merely enacting laws that state that corruption is illegal. It needs a concerted effort among all stakeholders to engage in a campaign to uproot corruption. It undermines our young democracy, the gains of the revolution as well as service delivery.

The ruling party in the Eastern Cape has appointed a task team to look into the crisis situation in municipalities.
The question one should ask is whether it will bear any fruits given that some of the problems within municipalities are political orchestrated and also, some of the leaders are implicated.

Given that the issues of service delivery affect everybody irrespective of political affiliation, it is high time that everybody in our communities set aside political or social differences and come on board in the fight against fraud and corruption in our municipalities which impact negatively in service delivery.

The primary objective of the study was to access critical challenges of corruption in municipalities and its impact on service delivery. This has been achieved firstly exploring the existing mechanisms in the province in general and the role of municipalities in dealing with corruption.

Subsequently, the anti-corruption strategies within municipalities where they exist, and their effectiveness as well as compliance with the relevant legislation were explicated. It was evident throughout research that systems to fight corruption within municipalities were neither existence nor effective.

The African National Congress 2007, in its 52nd National Conference resolved that, ANC members and its leaders in particular, should continue to actively promote ethical and democratic values and lead by examples.

ANC members and its leaders should avoid conflict of interest or perceived conflict of interest. Also, the ANC as an organization should at all times provide leadership to society as a whole in fight against corruption.

Again, the question one need to ask is whether in deed the ANC as an organization as well as the ruling party has clear mechanisms to monitor the implementation of resolutions of this nature, and if ever members of the ANC found crossing the line, are there any punitive measures taken? Obviously the answer will be no, its only when one is no longer in good books of those who are in possession of power, Mr Julius Malema’s South African Revenue Services saga and the rest are the living examples. The only office seemed to be firm in fighting corruption is that of the Public Protector under the leadership of
Advocate Thuli Madonsela. So far this office has demonstrated its resolved to fight corruption without any favours or fear from whoever.

There were attempts by Ministers of the security cluster to interfere with her investigation on Inkandla Gate and other cases implicating senior government officials, but she stood her ground.

At the time of finalizing the research it can be confirm that there has been relative stability in the Buffalo City Metropolitan Municipality because of the intervention by the Provincial Executive Committee of the ruling party, the African National Congress, where the former Executive Mayor Ms Zukiswa Ncitha was redeployed to National Council of Provinces and replaced by Mr Alfred Mtsi, and former Deputy Executive Mayor Mr Temba Ntinta redeployed to the Eastern Cape Provincial Legislature and replaced by Mr Xola Phakathi. Also the Integrity Commission’s findings on Buffalo City Metropolitan Municipality have since been released, with the recommendations that Mr Phumlani Mkolo should be relieved of his duties as Regional Secretary with immediate effect.

The former Executive Mayor Ms Ncitha, her Deputy Mr Ntitha and former should also relinquish their positions with immediate effect as well. Former Speaker Ms Simon-Ndzele decided to resign from the council as well. The suspension of the Municipal Manager and other senior officials was still intact by the time of finalizing the research.

Also it should be noted that according to the Consolidated General Report on the Audit Outcomes of Local Government 2014/2015, there is a slight improvement in audit outcomes in municipalities, which indicates that the interventions that are put in place to turnaround situation on financial management are yielding good results.

The report states that over the past five years from the period 2010-11 to 2014-15 municipalities in South Africa have reported a steady improvement in audit outcomes, with 53% having improved, while 13% regressed and 34% remained unchanged.

The audit outcomes of six of the eight metro councils, 21 (49%) district municipalities and 116 (52%) local municipalities have improved. Positioned against government’s medium-term strategic framework (MTSF) targets for improving audit outcomes in pursuit of sound financial and administrative management, this compares as follows:
10% of municipalities with adverse or disclaimed audit opinions against the target to have no municipalities with these type of opinions by 2019;
28% of municipalities with qualified audit opinions against the target to have a maximum of 25% of municipalities with such opinions by 2019;
59% of municipalities with unqualified audit opinions against the target to see at least 75% of municipalities to achieve this desirable state by 2019.

The expenditure budget for the municipal sphere in 2014-15 totaled R347 billion. Municipalities with clean audit opinions represent R134 billion (39%) of this amount, while those with unqualified opinions with findings represent R143 billion (41%). Municipalities with qualified audit opinions made up R49 billion (14%) of the total budget, with those with adverse and disclaimed opinions representing R20 billion (6%). The outstanding audits constitute R1 billion of the total budget.

Increased accountability and transparency within local government are evident in the significant improvement made in submission of financial statements for audit by the legislated date and the preparation of annual performance reports. The financial statement submission rate improved from 78% to 94%, while the number of municipalities that failed to prepare annual performance reports decreased from 14% to 4%.

The provinces with the highest proportion of municipalities with clean audit opinions in 2014-15 were the Western Cape (73%), Gauteng (33%) and KwaZulu-Natal (30%). Leadership in these provinces has proved the value of investing in strengthening internal control, valuing stability in the administration of municipalities and taking decisive action on both internal control failings and audit findings. This does not mean that these provinces find themselves without challenges, as the situation in the Central Karoo District Municipality (Western Cape), the West Rand District Municipality (Gauteng) and the Umkhanyakude District Municipality (KwaZulu-Natal) testifies. The audit outcomes of municipalities in the Eastern Cape, Free State and Mpumalanga have shown momentum in the right direction.

Also the report indicated that the audit area that showed the greatest improvement was the audit opinions on financial statements. The number of unqualified audit opinions
increased from 47% to 59%, while municipalities receiving disclaimed or adverse opinions decreased from 33% to 11%. The items that municipalities struggled with most to correctly measure and disclose in the financial statements over the past five years were property, infrastructure and equipment, revenue and irregular expenditure, but there has been improvement in all three areas – most notably property, infrastructure and equipment. Municipalities continue to rely on consultants to prepare financial statements.

Finally, the report also indicated that the municipal managers and senior managers improved financial and performance management by implementing audit action plans to address the audit findings as well as the root causes of the audit findings. They improved the record keeping of municipalities, ensured that the basic controls around transactions and reconciliations are in place and enabled monitoring and oversight through regular and credible reporting on important matters such as SCM and contract management.

The governance of these municipalities was greatly enhanced. Councils and municipal management implemented the recommendations of the audit committees and used the internal audit units to identify risks and the controls that can be implemented to mitigate the risks. The initial outcomes that have been observed from the back-to-basics programme recently launched by CoGTA bode well for the municipal sphere in South Africa. Where these interventions have been taken up by stable leadership in an environment where strong internal controls are valued and where the needs of the community remain a paramount consideration, audit outcomes have improved and stabilised to a point where service delivery can take place in a well-governed environment.

Also it has been recognised the considerable effort made by the South African Local Government Association (SALGA) to join hands with National Treasury and COGTA to support municipalities. SALGA’s municipal audit support programme, which was launched mid-2014 and focuses specifically on addressing challenges experienced by so-called ‘red zone’ municipalities, certainly contributed to the downward trend in adverse and disclaimed audit opinions, according to the report.
Also the campaigns launched by COGTA in an attempt to improve the situation have yielded good results. In 2006 Project Consolidate, an initiative to improve revenue in municipalities and water sanitation was launched. The Consolidated Financial Statement was aimed to provide information on financial performance as well as national government ability to meet current and future obligation according to the project, namely:

- Preventing the consolidated monetary values of national governments;
- Improving the users’ understanding of public sector financial management and to enhance the achievement of social objectives and priorities; and
- Creating uniformity in the presentation and analysis of public sector financial information by 2014.

In 2009 Integrated Municipal Information System, known as Operation Clean Audit 2014, was also launched. In this initiative, all municipalities and provincial government departments were expected to:

- Achieve clean audit in their Accounting Financial Statements;
- Maintain systems for sustainable quality financial statements and management;
- Between 2010 and 2011 no municipality and provincial department will receive adverse or disclaimer audit opinions;
- At least 60% of provincial departments and 283 Local Municipalities should achieve unqualified audit opinion by 2012;
- By 2013 there should be an increase to 75% both in municipalities and provincial departments that achieve unqualified audit; and
- By 2014 there should be 100% clean audit, according this project.

Finally, in 2014, after the review of the above projects, Back-to-Basic project was launched, a situation where a need for a change of paradigm that would focus mainly on serving the people and not political elites and organizations. This was the essence of ‘back to basics’ approach. At the most basic level, it was expected that municipalities would:
a) Put people and their concerns first and ensure constant contact with communities through effective public participation platforms.

b) Create conditions for decent living by consistently delivering municipal services to the right quality and standard. This would include planning for and delivery of infrastructure and amenities, maintenance and upkeep, including the budgeting to do this. Ensure no failures in services and where there are, restore with urgency.

c) Be well governed and demonstrate good governance and administration - cut wastage, spend public funds prudently, hire competent staff, ensure transparency and accountability.

d) Ensure sound financial management and accounting, and prudently manage resources so as to sustainably deliver services and bring development to communities.

e) Build and maintain sound institutional and administrative capabilities administered and managed by dedicated and skilled personnel at all levels.

According to this strategy, changing strategic orientation was no mean feat and it required leadership and political will. At the same time a need of a collective effort and unity of purpose and partnership with leaders in local government, provinces and national government. There was a need to improve the political management of municipalities and be responsive to the needs and aspirations of local communities. Leaders should have a vision to change and the calibre to drive the change process. There is a need of leadership that will inspire and organize for the common purpose of improving services to our people. Each functionary needed to understand the core mandate and orientation, understand their specific role in delivering the local government vision as envisaged in the White Paper and act in a manner that ensures that local government primarily serves its people by delivering basic services.

Actions needed to move from intent to generating impact on the ground, and that will have to mobilise massive support from those who are willing to change for the better and isolate those who seek to push back progressive change amongst us. The strategy for the campaign would be based on supporting and educating the coalition of the willing as well as enforcing compliance through legislation and regulation to achieve the goals.
In other words, that would have to push, incentivise, disincetivise and embarrass those who are not willing to change.
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ANC asks top BCM deployed employees to ‘step aside’

By BONGANI FUZILE and MPHUMZI ZUZILE on June 25, 2014

SENIOR Buffalo City councillors including the mayor, her deputy and council speaker, have been asked “to step aside” following their arrests and court appearance on Monday.

This was announced by ANC national spokesman Zizi Kodwa yesterday following a national working committee meeting in Johannesburg.

Those arrested included Buffalo City ANC regional secretary Pumlani Mkolo, mayor Zukiswa Ncitha, deputy mayor Temba Tinta, speaker Luleka Simon-Ndzele and senior councillor Sindiswa Gomba. BCM’s executive manager Ondela Mahlangu and businesswoman Viwe Vazi were also arrested.

Kodwa said the arrests had been discussed at the meeting. “All the ANC deployed must step aside for the sake of [Nelson] Mandela’s name, his family and the ANC’s sake,” he said.

He said the instruction that the five go on “leave” until the case had been finalised was taken in line with party resolutions taken at the 2012 Mangaung conference.

The ANC had clearly stated that corruption relating to the misappropriation of public funds as well as money laundering was a serious offence.

“I have no doubt in my mind that they will be cleared by the court, but for now these are very serious allegations,” said Kodwa.

“We expect members to spare the name of the organisation from being dragged through the mud. All we can do is ask them to do what is right.”
But Kodwa said those arrested were innocent until proven guilty. “We [are telling] these comrades – use your own political consciousness and steer the ANC’s name away from this.

“That is not an admission of guilt, but because as individuals you were deployed by the ANC, and anything you do reflects on the ANC, it is important to protect the ANC’s name.”

ANC provincial spokesman Mlibo Qoboshiyane stopped short of asking those arrested to step down, but placed the onus on them.

“The party resolution is clear, but it is up to the individual’s conscious to decide what to do,” he said.

Kodwa said: “There can’t be corruption in the name of Mandela. They must step aside.”

It will only become clear if they adhere to the instructions today as the BCM council is scheduled to meet.

The ANC caucus will have to appoint an acting speaker and mayor to officiate the meeting if Ncitha and Simon-Ndzele take leave.

Qoboshiyane said that the party had appointed an integrity committee to deal with the matter.

The Dispatch has learnt that more arrests are expected and may include ANC politicians, BCM officials and local business owners.

Hawks spokesman Paul Ramaloko confirmed that more arrests were expected.

“This is an ongoing investigation that will see more [arrests]. The team has worked around the clock to make these arrests.”

Regarding Mahlangu’s arrest, BCM spokesman Keith Ngesi said they would follow labour relations processes in dealing with the matter.
ANC big shot backs probe into BCM’s R6m scandal

By RAY HARTLE on January 27, 2014

PROVINCIAL ANC heavyweight Mlibo Qoboshiyane has come out strongly in support of an investigation into alleged misuse of money allocated by Buffalo City Metro to mark the passing of former president Nelson Mandela.

BCM has been embroiled in controversy over its spending of R6-million of an approved R10-million allocation by the council on services ostensibly to ferry local residents to Mandela memorial activities.

In the latest installment in the saga, the Saturday Dispatch reported that some of the money paid to Victory Ticket 750cc for transport costs ended up in the accounts of politically-connected local tenderpreneurs and a girlfriend of ANC BCM regional secretary Pumlani Mkolo. Some was allegedly spent on T-shirts for the ANC.

Qoboshiyane, the Eastern Cape MEC for local government and traditional affairs, moved quickly at the weekend to respond to the report, saying the allegations indicated “a possible breach of public trust by those entrusted with protecting public resources from plunder, abuse, corruption and theft”.

Expressing alarm that the alleged maladministration happened at a time of sadness during the period of mourning for Mandela, he said his department would urgently seek answers from both BCM executive mayor Zukiswa Ncitha and municipal manager Andile Fani.

But he said any investigation by his department would be guided by the Local Government: Municipal Systems Act, which empowered the MEC to act if he believed maladministration, fraud or corruption had taken place within a local authority.
Qoboshiyane said anyone found to have acted contrary to approved policies, procedures and laws governing municipal finances and administration, would be disciplined.

“All of us in the three spheres of government have a constitutional and legislative responsibility to protect the public purse from any form of abuse and irregularities.

“If we find any irregularity, and abuse of state resources and undue enrichment, we will expose it to the people and the law will take its course to recover the funds.”

Qoboshiyane’s response yesterday followed those of ANC provincial secretary Oscar Mabuyane, who told the Dispatch last week the allegations first had to be tested, adding “for now, it’s just hearsay”.

DA caucus leader in the BCM council Terence Fritz said his party would await a breakdown of the expenditure on the Mandela memorial activities from Ncitha, due to be tabled at a council meeting on Friday.

“I don’t have any document to substantiate my comments at this stage.”

Fritz said, however, he believed the DA’s decision to refrain from any party political activity during the 10day period of mourning for Mandela created a gap which had been exploited by some within BCM with devious objectives. “We approved the R10-million because we took a decision in December that we wouldn’t oppose anything.

“We wanted to show the world and our communities what we think of Mandela – how we respected him, even as an opposition party, because he was an icon for all.”

The Pan Africanist Congress was the only political party in BCM’s council in December to vote against the allocation of money towards the Mandela memorial activities.

The party argued then that the expenditure was unbudgeted and, therefore, illegal in terms of the Municipal Finance Management Act.
Party chief whip Jerome Mdyolo said at the time that he suspected some of the allocated money would be used for “something else”.

Yesterday, Mdyolo said the party felt vindicated by the Dispatch reports on the misuse of the funds, especially as the PAC had warned the money would be used to bankroll the ANC election campaign this year.

“There should be a forensic investigation into this saga.”
APPENDIX C

BCM bosses to face ANC integrity body

By ZINE GEORGE on July 8, 2014

Committee to advise party.

THE Eastern Cape ANC has referred the case of its senior leaders in Buffalo City, facing charges of defrauding funds for Nelson Mandela’s burial, to a newly formed integrity commission.

The committee was established yesterday and some of its members introduced to the party’s provincial executive committee at a meeting at Calata House in King William’s Town.

Its establishment comes 18 months after the ANC, at its national conference in Mangaung, resolved to set up the integrity commission at all levels of the organisation.

Businessman Mzwandile Sokwali and his wife Busisiwe Boti (front left to right) appeared in the East London Magistrates Court on fraud charges. Also appearing in back standing from left are ANC Regional secretary Pumlani Mkolo, BCM mayor Zukiswa Ncitha, BCM Deputy Mayor Temba Tinta, Ondela Mahlangu, BCM speaker Luleka Simon-Ndzele and BCM councillor Sindiswa Gomba Picture: MARK ANDREWS

Buffalo City mayor Zukiswa Ncitha, her deputy Temba Tinta, council speaker Luleka Simon-Ndzele, senior councillor Sindiswa Gomba as well as BCM regional secretary Pumlani Mkolo were arrested last month for their alleged involvement in the R5.9million Mandela memorial scandal.

They are out on bail of R10 000 each and expected back in court on September 1.

But before that, they may have to present themselves before the nine-member commission chaired by former Eastern Cape education MEC and ANC MP Professor Shepard Mayathula.
Other members include respected cleric and former Eastern Cape Council of Churches provincial secretary the Reverend Mcebisi Xundu, University of Fort Hare vicechancellor Mvuyo Tom, and Port Elizabeth-based Depuo Kondile.

ANC provincial secretary Oscar Mabuyane confirmed the formation of the commission.

“There are a lot of cases before courts which implicate ANC members, that includes the BCM arrests.

“The committee will have to deal with all these cases including cases that are not necessarily in court, but misconduct cases which bring the ANC’s name into disrepute,” said Mabuyane.

“The BCM case is one of the priorities but not the only one the committee will have to deal with.” Others members of the committee will be announced in due course.

“For now we are working hard to ensure that we recruit enough people to have the correct gender balance and minimum of nine names as required in the ANC constitution as amended in Mangaung.

“This committee, which comprises ANC veterans who are very independent and have integrity, will be tasked to make recommendations to the PEC.

“It’s a committee we hold in high regard to give us informed guidance on how to deal with a lot of cases.”

The ANC’s resolution to establish integrity committees in all its leadership structures at the Mangaung conference in December 2012 followed a national general council resolution taken in 2010.

At the conference the ANC admitted that “more urgent steps had to be taken to protect the image of the organisation and enhance its standing in society by ensuring, among others, that urgent action is taken to deal with public officials, leaders and members of the ANC who face damaging allegations of improper conduct”.

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A decision to form the provincial integrity committee was taken last Monday – the day the Buffalo City regional leaders were arrested.

It came after party leaders met with them at a beachfront hotel, where PEC officials advised them to “step aside” to protect the ANC from embarrassment.

None have taken leave of absence since.

Mabuyane said they were in the process of identifying two more women to form part of the committee before the committee can start its job in earnest.

“As much as we understand that due processes have to be followed in that the principle of someone being innocent until proven guilty is key, but the ANC’s integrity is being compromised in some of these cases, and we have to have a committee to guide us on how to handle all these cases,” said Mabuyane.
APPENDIX D

BCM in ‘fiscal dumping’ row

By BONGANI FUZILE and SIPHE MACANDA on July 10, 2015

Buffalo City Metro (BCM) authorised the payment of R7.6-million to a company just a day after issuing them with contract order documents.

THE BERLIN DUMP: Here, a woman leaves after finding a few trays of eggs but will BCM officials end up with egg on their faces?

On June 29, BCM supply chain management released an order for Interwaste Environmental Solutions to do an “emergency operation” at the regional waste disposal site in Berlin.

Then, on June 30, an official who was acting as a head of department for community services, signed for R7 670 476.08 to be paid to the company.

BCM chief financial officer Vincent Pillay has questioned it in a letter seen by the Daily Dispatch. It read in part: “The challenge our directorate is currently having is that Ms N Daniels [the official who signed off the payment] is no longer acting HOD: community services and does not have authority to sign for the payment amount of R7 670 876.08. It is therefore advised that the invoice for payment be signed by the city manager, in order for the payment to be processed.”

Supply chain management (SCM) regulations state that a company is not allowed to commence work without being given an order to do so.

The order is a document which states the order number used when payments are to be made, a description of work to be done and the amount quoted when the company bid for the tender.
Senior officials within the metro, who spoke on condition of anonymity, described authorising payment a day after the company was ordered to go on site as “fiscal dumping”. The metro’s financial year ended on June 30.

One said: “It’s obvious, this happened before and it is happening again. Don’t be surprised if this is another fiscal dumping. Where is the service level agreement?”

Allen de Villiers of Interwaste said everything was done aboveboard. “We have a valid letter of appointment from BCM regarding commencement of operations in terms of the tender.” He said work commenced on June 1; however, the order was only signed 28 days later.

Asked to produce a copy of the service level agreement, De Villiers said: “The project is governed by service levels as contained within the contract tender document which is duly agreed to and signed by the parties. We suggest you obtain a copy of the tender document from the BCM.”

Metro spokesman Keith Ngesi said the nature of this particular contract did not require an order to be issued before work is done. “This one is a different two-year milestone-based contract, not pinned on the order.”

Ngesi said the R7.6-million to the company was being processed but had not yet been paid. “The project started in 2015, therefore it is not completed.”

Ngesi said the money claimed by the company was for site establishment, site clearance and material on site amongst others.

De Villiers said they received an official letter from BCM on May 19. “Subsequent to the applicable tender process, the letter of appointment required Interwaste to commence services within 14 days thereafter. As a result, we commenced operations.”

Another senior official said a letter of appointment does not necessarily give the authority to work on site.
“No one should work without an order; how is that person going to claim money without an order. This is fraudulent.”
APPENDIX E

BCM pays R6m for Madiba service taxis

By BONGANI FUZILE on January 14, 2014

AN EAST London firm was paid R6-million by Buffalo City Metro to ferry mourners around the city over three days to four memorial services for former President Nelson Mandela.

Victory Ticket 750cc, a company owned by Richard Mzwandile Sokwali and Busisiwe Boti, billed the metro R5985000 for services rendered on December 10, 11, and 12.

The Daily Dispatch has a copy of the invoice, which is dated December 12, 2013.

The invoice has a company registration number, VAT number as and an address in Beacon Bay.

However, when the Dispatch visited the address a man said he rented the house and knew nothing about the company.

The invoice carries very little information on the services rendered by the company and does not include how many people were ferried, how many vehicles were used or what distances they travelled.

Metro spokesman Keith Ngesi yesterday would not say whether the company was registered with them. Neither would he provide any details on the work it had carried out.

“The budget for Mandela’s memorial was approved by council on December 11 and the resolution by council said after all the expenditure a report will be submitted to council detailing the costs. I haven’t seen this invoice and can’t talk about it until it is tabled,” said Ngesi.
The Dispatch can today reveal that Sokwali was paid for transporting people to memorial services held:

At the Gompo hall in East London on December 10;

In King William’s Town on December 11;

Another one in Mdantsane on the same day; and

A regional memorial service at the East London City Hall on December 12.

Two Daily Dispatch reporters who attended both the Mdantsane and East London memorial services said attendance was very poor in Mdantsane while a number of people turned up for East London’s City Hall.

At most an estimated total of 2000 attended all the events.

In Mdantsane and Duncan Village a number of people blamed rain as the reason for the poor turnout while the East London City Hall was full.

For a return trip from East London to King William’s Town in a 15-seater taxi, the normal fare is R40 return. It would thus normally cost R600 return for a full taxi.

For R6-million, this would have involved 10000 taxis, carrying 160000 passengers on a return fare basis for the longest route.

The Dispatch understands the first three events were organised by the ANC and not the metro.

The ruling party was supposed to have paid for them but the Victory Ticket invoice refers to these events.

During a phone call with the Dispatch yesterday, Sokwali confirmed he had already been paid.
“They’ve paid me the money for the job I did. I had to hire a number of taxis from different associations to ferry people for different events,” he said, promising a full interview with Dispatch later in the day.

Attempts to get hold of him later were unsuccessful.

A metro employee, who asked not to be named, said the payment was made on December 23.

Another employee, who had earlier leaked the invoice to the Dispatch, said there were a number of questions surrounding the matter.

“The person who paid the money was just doing as they were ordered – here you jump, you don’t ask how high,” said the source.

“Why were other companies not invited for this tender? There was no transparency.”

The source also claimed that when a company bid for a tender, the address they gave had to be be current. “The company must be traceable from the address they give.”

A council meeting just days after Mandela’s death resolved that the metro would spend R10-million for events leading up to Mandela’s funeral on December 15.

At the time Mayor Zukiswa Ncitha had said they had tasked chief financial officer Vincent Pillay to find the money, which had not been budgeted for, from municipal coffers.

“We said [the CFO] must look from our savings because of these kind of things, it’s things that we have never budgeted for.

“If it happens that from our savings we don’t have that kind of amount, it’s then that we will check from different directorates,” she said at the time, adding that the money would pay for transport for residents and councillors to events planned for BCM and the provincial memorial service to be held in Port Elizabeth. This would also include venue costs.
Questioned on details of the pick-up points for the events after the press conference, Ncitha was unable to give specifics.

The Pan Africanist Congress (PAC) in the metro had raised concerns over the city allocating the R10-million.

Its councillor, Jerome Mdoyo, said at the time his party had lodged a dissent on the decision as it suspected some of the money was to be used for “something else”.

“As the PAC, we made it clear we were not happy about such a huge allocation. When this report was tabled, the PAC objected to it citing there was no breakdown as to what exactly the money was to be spent on.”

Yesterday Ncitha told the Dispatch that she could not answer on procurement and administration issues.

“Mine is policy issues. I really can’t help on this until it’s presented in the council and then I will call you to my boardroom where I will answer to your questions about this,” said the mayor. — bonganif@dispatch.
Call for probe into tender box tampering allegations

By ZINE GEORGE on April 14, 2015

The South African Communist Party (SACP) in the province has called for an investigation into allegations of tampering with Buffalo City Metro’s tender box.

The SACP directed its call to the auditor-general, MEC of cooperative governance and traditional affairs Fikile Xasa, and the police.

This follows a Saturday Dispatch report last week that BCM’s municipal manager Andile Fani allegedly instructed three senior metro officials to remove the box which held tender documents for a multimillion-rand road maintenance project.

But BCM spokesman Keith Ngesi denied there was any wrongdoing when Fani instructed the officials to do an “in loco inspection” as the keys to the box were found to be defective “and an additional lock was installed”.

In fact, Ngesi said: “No tender box has been tampered with or removed. The box is physically built into a wall of the offices and removing it would result in breaking the wall.”

SACP’s provincial spokesman Siyabonga Mdodi said the party’s provincial executive committee (PEC) had “noted with great concern the reports carried in the edition about the alleged interference by the BCM MM Andile Fani”.

The call came as a shock to the party as Fani is an SACP member and serves as the party’s deputy secretary of the Skenjana Roji region.

But Mdodi said the party’s provincial bosses had stated clearly that irrespective of who was implicated in the matter, they were calling “for all relevant authorities (such as) the department of local government and traditional affairs, the auditor-general and all other relevant law enforcement authorities to get closer to the situation and act decisively on any wrongdoing irrespective of who is found to have erred”.

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Mdodi said: “We don’t care who is implicated but the police and relevant government departments must investigate what really happened here and bring to book anyone found to have flouted municipal processes.”

The meeting also discussed developments in the Amathole district municipality’s toilet scandal following another Dispatch report on how the R631-million project was marred by controversy as scores of toilets in some of the villages collapsed, posing a danger to members of the community especially after heavy downpours.

Mdodi said: “The meeting has noted with great astonishment the new media reports on the matter. We therefore reiterate our call that the law enforcement agencies should get closer to the matter as a matter of urgency.”

The meeting also demanded that ADM municipal manager Chris Magwangqana make “all the documentation related to this procurement public for clean and transparent governance”.

A month ago the Dispatch reported that the Siyenza Group, the company hired by ADM as implementing agent for the project to build 66000 toilets in rural villages, was not a registered company.

“As the SACP, it is our firm commitment to fight corruption wherever it raises its ugly head,” Mdodi said.

“It is a stumbling block to the ANC alliance-led government to deliver services to our people.” — zine@dispatch.co.za
APPENDIX G

Fani is ordered to account for metro millions

By ZINE GEORGE and SIPHE MACANDA on April 14, 2015

The office of the accountant-general in Pretoria wants Buffalo City Metro’s municipal manager Andile Fani to provide documents on more than R636-million worth of irregular payments made by the metro.

The paperwork is required to form part of a National Treasury investigation into how the city’s books were handled during the 2013-14 financial year.

In a letter to Fani dated February 23 2015, the head of the treasury’s specialised audit services Zanele Mxunyelwa, demanded supporting documentation for what she described as irregular write-offs worth R583-million.

This in addition to:

- More than R13-million paid to three information technology systems companies – Lugogwana Comtech, Empire Praxis and LC3 Solutions trading as Simo Solutions. BCM paid the companies before contracts had been signed, and;
- R40-million paid to finance the South African Cities Network (SACN), a network to help municipalities get clean audits.

Mxunyelwa gave Fani two days to respond, but it was unclear yesterday whether or not Fani’s office has provided the information.

National Treasury spokeswoman Phumza Macanda would not comment on whether or not the required information had been provided, saying: “We generally do not comment on investigations.”

Metro spokesman Keith Ngesi also refused to comment, saying: “BCM is reserving its comment on the matter for now until National Treasury is done with its investigation.”
In her letter to Fani, Mxunyelwa referred to a meeting between her office and Fani, in which Fani made an “undertaking to provide us with supporting documents to facilitate National Treasury investigation on these matters [referring to stated cases above].”

Mxunyelwa is demanding a breakdown of all expenditures related to the R583-million.

She also asked Fani to submit all committee reports which made the recommendations that the amounts be written off, and all council resolutions relating to the write-offs.

This is part of R1.1-billion worth of write-offs the BCM council resolved to reverse two weeks ago, after Fani advised council to do so.

But he made no mention of Mxunyelwa’s letter of demand at the council meeting, except to highlight the importance of rescinding the decision to write-off the amounts.

Mxunyelwa also asked for documents which confirm the memorandum of understanding with SACN, as well as a list of companies which did work during the intervention.

She also asked for printouts from the financial system of all payments made to the three ICT companies.

“Provide documents indicating the procurement process followed in the appointment of these service providers,” and “provide us with the service level agreements for the appointment of all three companies,” she wrote. — zineg@dispatch.co.za
Hawks arrest ANC heads for Madiba funeral fraud

By BONGANI FUZILE, RAY HARTLE and MPHUMZI ZUZILE on June 24, 2014 in News · 20 Comments

THE ruling ANC was reeling in embarrassment last night after its top echelon in Buffalo City Metro (BCM) was arrested and charged with money laundering and fraud.

Those arrested yesterday include BCM’s executive mayor Zukiswa Ncitha, deputy mayor Temba Tinta, council speaker Luleka Simon-Ndzele, the ANC’s regional secretary, Pumlani Mkolo, and a senior councillor, Sindiswa Gomba.

The allegations they face relate to money meant for Nelson Mandela memorial services illegally being paid for other purposes.

Some R5.9-million was allegedly paid by BCM to local taxi boss Mzwandile Sokwali’s company Victory Ticket cc to ferry mourners to memorial services around the city after Mandela’s death in December.

Relatively small numbers of mourners were seen at the services owing to heavy rains at the time.

The arrests follow a two-month investigation by the police’s special investigations unit, the Hawks, and those arrested handed themselves over to the elite police unit after being instructed to do so yesterday morning.

Ncitha cut short her participation in a government lekgotla at a beachfront hotel – an important meeting ahead of the provincial state of the province address by Premier Phumulo Masualle on Friday.

The five powerful politicians appeared alongside Ondela Mahlangu, the director in the office of the mayor, and local businesswoman Viwe Vazi.

Their charges were added to those of Sokwali and Blanche Boti, who have previously appeared in court in connection with the alleged fraud.
Two other people allegedly implicated in the memorial services scandal, Dean William Fanoe, owner of Mantella Trading 522 cc, and Zintle Nkuhlu did not appear in court although their names appeared on the court charge sheet.

A sum of R1380000 was given to Mantella Trading which was used to order T-shirts bearing Mandela’s face.

A further R899000 was given to Forty Wing, a company owned by Vazi. It later emerged that Mkolo's girlfriend Nkuhlu, a Johannesburg-based lawyer, received R350000 from the funds through Lily Rose Trust which she co-owns with Sibongile Luthuli.

Late yesterday the ANC appeared to be scrambling for a coherent response to the high profile arrests.

Provincial spokesman Mlibo Qoboshiyane called on the party’s members to allow the court process to unfold to its conclusion.

“We stand by our initial position that all ANC members who might have information on this matter are urged to cooperate fully with the law enforcement agencies investigating this matter and with our justice system to get to the bottom of this matter,” he said.

The case followed a Daily Dispatch investigation which revealed that funds earmarked for Mandela memorial services found their way into the bank accounts of a number of private business people.

The dramatic events started early yesterday morning when Simon-Ndzele arrived at the Hawks office at about 9am.

She was immediately followed by Mahlangu. Minutes later, Tinta arrived accompanied by two bodyguards. Gomba sneaked in unnoticed in the company of a lady friend, followed by Ncitha, Mkolo and Vazi shortly after lunch.

The Dispatch understands that all the accused, apart from Mkolo, were called by the Hawks early yesterday to hand themselves over.

When Mkolo called the Hawks, he was advised to hand himself in.
The magistrate’s courts were abuzz throughout the day with anticipation of the appearance of the political heavyweights, with confirmation they would appear at 2pm.

Shortly after the lunch break, security guards started allowing people into the public gallery of A court.

The mayor was the first to appear from the cells below with a slightly bemused expression on her face and wearing a business outfit.

Mkolo, whose name has been linked to the Mandela memorial scandal funds from the outset, wore a broad smile and chuckled as he chatted to co-accused.

The brief hearing eventually got underway after 3pm, after negotiations between prosecutors and lawyers.

Ketani was adamant he wanted bail set at R100000 for each accused, but the lawyers argued that it was excessive and tantamount to refusing bail altogether.

Acting magistrate Leon Kemp was concerned that any delays in finalising the hearing beyond the end of the business day would make bail meaningless because there would be no officials in the clerk of the court’s office to process the payments.

He eventually set bail at R10000 for each new accused, except for Vazi, whose bail was set at R5000.

Hawks spokesman Paul Ramaloko said more arrests could be expected as the investigation progressed.

Ramaloko said all those implicated in the Mandela memorial investigation would be arrested and would appear in court.

Andre Schoombee, Fanoe’s lawyer, said his client was not informed to appear in court while Nkuhlu also claimed to be in the dark about the court case.

In granting bail, Kemp said the accused should not interfere with anybody on the list of witnesses.
He also ordered that they inform the investigating officer timeously of their intention to travel abroad.

Sokwali and Boti, had their conditions relaxed so that they no longer have to report at the local police station. The next court appearance is September 1 this year.
APPENDIX I

Hawks probe two BCM tenders

By MPHUMZI ZUZILE and ASANDA NINI on April 16, 2014

TWO multi-million rands Buffalo City Metro tenders are being investigated by the Hawks and Public Protector.

This was confirmed by BCM’s municipal manager Andile Fani yesterday.

The awarding of a R17-million black refuse bag tender and a R10million Mdantsane housing tender will be subjected to scrutiny.

This comes after council reportedly failed to act on two forensic reports completed by an external consultant last year.

Failure to act on such reports could result in the metro losing grant funding from national Treasury.

News of the investigations by the Hawks and protector comes after executive mayor Zukiswa Ncitha announced that forensic investigations in her office were not yet complete.

Speaking at a media briefing before the state of the metro address (Soma) at the Steve Biko Foundation Centre in Ginsberg, Ncitha said she was attending to the forensic reports.

She said she had also discussed the matter with Finance Minister Pravin Gordhan.

MMB Consulting was appointed to investigate the circumstances surrounding a R17-million contract to supply black refuse bags.

The three-year contract was awarded to Masiqhame Trading, owned by Cuan Surren Metune, the 27-year-old son of a former BCM employee and pastor Fabian Metune.
The housing tender for the completion of 150 houses was awarded in October last year to Imvusa Trading, owned by East London businessman and ANC regional leader Koko Godlo.

The tender was for the completion of an abandoned housing project in the metro’s Unit P outside Mdantsane.

Asked for more information on the forensic reports, Ncitha referred questions to Fani, saying she was rushing to deliver her speech and then to Port Elizabeth.

Fani was said to be at the centre of both tenders.

“Whether the reports have been finalised or not, I do not know. I only knew during the time when I was questioned only about Unit P. I was not asked about black plastic bags,” Fani said.

“All I know is that these two tenders are with the Hawks. I had a meeting with the Hawks and I had submitted my statement to them and it was the very first time I saw the reports.”

Fani explained that the reports were provisional and said he had not been given an opportunity to respond.

“I only saw the reports when police started asking me questions about them. Even the public protector is asking for the same info he revealed.

The protector joined the fray after UDM’s president Bantu Holomisa wrote to the office pleading for it to investigate the Unit P tender.

Hawks national spokesman Paul Ramaloko could not confirm they were investigating the two tenders. However, a source close to the case confirmed the tenders were being investigated.
APPENDIX J

Lucrative contract splits BCM bosses

By BONGANI FUZILE and SIPHE MACANDA on May 30, 2015

ONE of Buffalo City Metro’s most sought after contracts is said to be at the centre of a massive rift between municipal bosses.

City and political sources, who are close to the developments at both the Trust Centre and the City Hall, said the tender known as Contract 26 was being used by politicians and officials to dish out patronage. It is also allegedly one of the reasons behind the fallout between mayor Zukiswa Ncitha and city manager Andile Fani.

BCM mayor Zukiswa Ncitha and Metro’s municipal manager Andile Fani

While municipal authorities on Thursday refused to reveal how much Contract 26 is worth, the Saturday Dispatch has seen payment schedules valued at more than R500-million.

“We cannot discuss finances of the companies,” said BCM spokesman Keith Ngesi. “Yes, these are public funds but in our policy we are not allowed to do that, this is their money now for the work they’ve done.”

Contract 26 is made up of different contracts for building and maintaining roads, stormwater upgrades and fixing potholes around BCM. These contracts used to be won by mainly white-owned construction companies in the past, however a decision was taken a few years ago to award them to different companies, including black-owned ones.

A source close to Contract 26 developments said: “Everyone knows that there are tensions and infighting, because of how lucrative this tender is.”

Politicians told the Saturday Dispatch that the multimillion-rand tender had caused major rifts in the already sour relationship between Ncitha and Fani. They said Fani was being targeted because the contracts were going to people seen to be close to him.
The tensions are said to have surfaced after Fani refused to extend the contract when it expired in March.

When asked about the allegations this week Fani said he preferred not to comment as the matter was still before courts.

“But one this I can say which is not related to this, is I am not even shaken by the fact that I did not expend the contract 26. I am not ashamed of that because I have got a responsibility to make sure we do things in responsible way.”

After the tender lapsed in March a new tender was then advertised. Last month Dispatch exposed how officials were allegedly sent to remove tender box which contained bids for the lucrative tender.

At the time Ngesi had denied there was an order to remove the box, but rather for the officials to establish if it had been tampered with.

This week Ngesi denied that Contract 26 bids were inside the box. “When the officials were sent to assess the tender box it was April 2 and that contract closed on March 31. So there was nothing in the box, and the contract manager did confirm that the competitive bids closed on the Tuesday and the officials were there on the Thursday.”

Fani is alleged to have called his entire management team to an impromptu meeting on April 2 and told them he suspected foul play on how the tender box was being managed. He is further alleged to have said that he would like it removed over the long weekend and kept in a safe place.

He has denied ever giving such an instruction. But Ncitha has compiled a report in which she lists this incident as one which needs to be investigated.

It is alleged the incident turned Fani’s former allies CFO Vincent Pillay and supply chain management head Thembelani Sali against him.
In his response to the allegations that he had given instructions for the tender box to be removed, Fani claimed he was trying to prevent manipulation of the tender process.

But his rivals claim that companies close to the city manager were given preference.

Fani has subsequently refuted the claims saying if anyone was receiving bribes the municipality would deal with it.
On 19 July 2014, at the request of the Secretary-General, the IC met with the Executive Mayor of Buffalo City Municipality (BCM), Cde Zukiswa Ncitha. Cde Ncitha requested the meeting to explain her involvement in what has become known as the "Mandela funeral saga".
2 Cde Ncithat the Deputy Mayor, Themba Thinta, the Speaker, Luleka Simon Nzela, the Regional Secretary of the ANC, Phumlani Mkolo, and a part-time councillor in the BCM, Sindiswa Gomba, were arrested in March 2014 on charges of corruption. The court case is ongoing.

3 They were charged with conspiring with Mzwandile Sokwati (Sokwali) and his wife, Busisiwe Boti (Boti), the owners of a company by the name of Victory Ticket 759 CC, and Dean Fanoe, the owner of a company called Mantella Trading 522, to defraud the BCM. The couple’s company, Victory Ticket 750cc, was awarded a R5.985-million tender by Buffalo City Metro in December to transport mourners to different memorial services around the province.

4 From that amount, a sum of R1.38m was paid to Mantella Trading 522cc to print ANC T-shirts. An amount of R899 000 was paid to East London businesswoman, Viwe Vazi, for catering. BCM ANC’s regional secretary Pumlani Mkoto’s ex-girlfriend was paid R100 000 of the money.

5 Cde Ncitha was also charged with misleading the Council into believing the provincial government had agreed that BCM would fund the events. The Eastern Cape provincial government denied that it had done so.

6 On 5 August 2014, the IC met with Cde Zizi Kodwa, the NEC deployee assigned to deal with BCM. The purpose of this meeting was to enable Cde Kodwa to brief the Integrity Commission on developments in BCM following the arrest of Cde Ncitha and others. In particular, the IC wanted to establish the NEC’s position on whether the Mayor and others should be asked to resign from their positions in BCM and in the ANC. Zizi Kodwa confirmed that the IC should continue to apply its principles and guidelines consistently as set out in the IC Mandate and judge each case on its merits. (The members of the IC are aware that the ICs mandate needs to be further clarified,)
After meeting with Cde Kodwa, the IC met with the Deputy Mayor, Speaker, Regional Secretary of the ANC and a part-time councillor, Sindiswa Gombo on 16 August 2014.

We are aware that the Public Protector is also investigating the matter. Furthermore, according to newspaper reports, we understand that the Hawks' investigation into corruption into BCM is broader than this single incident.

Background to resolution of BCM to allocate R10 million to Madiba memorial events.

The Mayor, Deputy Mayor and Speaker explained the background to a resolution of the BCM Council in terms of which R10 million was appropriated from the BCM budget to fund memorial services when they met with the IC on 19 July 2014 and 14 August 2014. They explained:

9.1 On 9 December 2013, the Speaker, Mayor, Deputy Mayor and chief whip in the BCM together with the municipal manager and the CFO met with the top five of the REC excluding the chairperson.

9.2 The purpose of the meeting was to plan memorials to commemorate the life of former President Mandela.

9.3 Cde Ncitha told the IC (during her hearing) that she thought it was important to meet with the ANC structures so that the ANC and government/BCM programmes could be aligned, rather than duplicated. Initially she thought she could secure the release of R20 million through her delegated authority, but after discussion with the CFO and the City Manager, she was persuaded to ask Council to vote for R10 million. The money was appropriated from savings of BCM.

9.4 Cde Ncitha told the IC further that the Municipal Manager and CFO were tasked to source funding for this purpose.
9.5 Council voted in favour of appropriating funds to organise memorial services. Except for the PAC, the vote was unanimous.

Cde Ncitha told the IC that once Council had passed the resolution, she was not involved in implementing the resolution or in sourcing service providers to provide the services. That was left to officials in the administration.

According to Cde Ncitha, during January 2014, a journalist from the Daily Dispatch in the Eastern Cape telephoned her and asked her to comment on rumours that the money had been misappropriated.

According to Cde Ncitha, she immediately called the CFO to ask him whether procurement processes had been followed in identifying service providers. She told the IC that he had assured her that they had.

By mid-January, Cde Ncitha said that she became convinced that something was wrong. She met with the Hawks — not in the Eastern Cape, but in Johannesburg — to brief them about her concerns. She said that she opted to meet with the Hawks in Johannesburg to brief them about her concerns because she does not trust the Hawks in the Eastern Cape. The IC does not know whether the Hawks in Johannesburg investigated the matter and if they did, what the outcome of this investigation was.

**Scope of this report**

This report identifies issues that the IC believes require further attention of the Officials. At the outset, we stress that this report does not make any factual findings about the guilt or innocence of Cdes Ncitha, Simon-Nzeta, Thinta, Gombo or Mkolo. That is beyond the scope of the IC's mandate. In any event, their guilt or otherwise will be determined by a court.
The role of the ANC Regional Secretary (Phumlani Mkolo)

15 The IC believes that the role of the Regional Secretary, Phumlani Mkolo, needs to be investigated by the Officials. During the course of the BCM hearings, we were told that Cde Mkolo is widely suspected of being corrupt. Cde Kodwa confirmed this.

16 The Officials, alternatively somebody or an organisation with the appropriate authority, needs to investigate the source of Cde Mkolo's wealth. He told the IC that his salary was his only source of income. He claimed not to have any independent business interests. As far as we are aware, his salary of approximately R30 000 per month as ANC Regional Secretary is not enough to fund his lifestyle. The Daily Dispatch has run articles detailing has assets. He has never challenged them. If they were untrue; he would have been expected to correct them to protect his reputation. He has not done so.

17 In relation to the BCM matter, Cde Mkolo allegedly instructed the Municipal Manager to appoint specific service providers.

18 When the IC met with him, Cde Mkolo made no attempt to hide the fact that he meets regularly with business people. As he told the IC, business people want to meet with someone who has "real power" and influence. We understand this to mean that Cde Mkolo believes that he has power to influence government processes because of his position in the ANC.

19 We draw the SGO's attention to a report carried in City Press on 23 February 2015(attached) that gives details of a plea bargain entered into by the owner of Victory Ticket, Sokwali. Sokwali, and his wife pleaded guilty to charges of fraud. Mrs Sokwali was acquitted, Victory Ticket paid a R 100 000 fine. Sokwali was given a 5-year prison sentence which was wholly suspended".
In his affidavit, Sokwali claims that he quoted R 6 272 750.00 for transport. He gave the quotation to the ANC Regional Secretary. Mkolo allegedly told him that the available budget for the project was R10 million and that "the ANC required the balance of the funds to finance other ANC activities."

Sokwali also claims that Cde Mkolo asked him to prepare an amended budget based on higher passenger numbers. Sokwali then submitted an amended quote for R9 946 000. Sokwali claimed further that Mkolo asked him to submit an invoice for a night vigil that was cancelled.

**Relationship between the Executive Mayor and the MM**

The role of the MM and his relationship with the Executive Mayor is central to the problems facing BCM. From what we were told, there are two reasons for this.

- **22.1** Cde Ncitha initiated an investigation into the Municipal Manager's qualifications at some stage. That investigation was stopped. We do not know the outcome.

- **22.2** Both Cde Ncitha and the Municipal Manager are involved in the SACP. The Municipal Manager was part of a campaign to remove Cde Ncitha from the CEC of the SACP.

- **22.3** The conflict between leaders’ factions within the SACP leads to problems within the administration and must be resolved.

- **22.4** There is a need for clear governance guidelines that re-iterate the separation between party and the administration.