

Combating Corruption in Local Government in the Western Cape

Final Field Research Report

for

Western Cape Department of Local Government

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EXECUTIVE SUMMARY

The Western Cape outperforms other provinces in terms of its municipalities maintaining a relatively good record of financial management and good governance practices. Despite this track record, corruption is a concern and affects many municipalities, in varying degrees.

This project for the Department of Local Government (and co-funded by the Hanns Seidel Foundation) focused on two key questions. First, why is corruption prevalent in municipalities in the Western Cape despite the existence of a relatively sound legislative and policy framework designed to curb corruption? Secondly, what is preventing the law from taking its course in the fight against corruption? The project comprised two phases. The first phase set out and analysed the legal and policy framework that applies to corruption in local government. The second phase, captured in this document examines, by means of a series of interviews with practitioners, to what extent the legal and policy framework to combat corruption is working.

Municipalities are vulnerable to corruption mainly in the following areas: supply chain management, human resources, human settlements, land use and building control. These areas are all well-regulated. However, the report shows that municipalities are exposed to potential corruption when municipal officials circumvent these laws. It also shows that municipalities are most at risk when their internal controls, the 'first line of defense', is weak. Lastly, it shows that certain types of corruption are difficult to pick up through internal controls and municipalities rely on whistle blowers to bring nefarious practices to light. It seems that, in terms of anti-corruption efforts, little attention is being paid to corruption in land use management.

Strong internal controls are essential to detect corruption and also work as a deterrent. However, as the report shows, a poor control environment characterised by the absence of appropriate checks and balances and the inability of the financial management system to raise red flags at an early stage increases opportunities for corruption. Conversely, improved internal controls enabled some municipalities to pick up and address fraudulent activities early on, instead of relying on investigations.

Internal structures such as the internal audit unit, audit committee and the municipal public accounts committee are often weakened by capacity constraints and a lack of experience or specialised skills. At times, there is uncertainty with regard to their mandate and/or a lack of independence for internal audit structures. This makes municipalities more reliant on external investigators to detect corruption. However, where these structures function optimally, they 'can be a good source of comfort' to municipalities.

The more challenged the municipality is in terms of its internal controls, the more it will rely on whistle-blowers to detect corruption. However, whistle-blowers within the municipality are often reluctant to make complaints because of a fear of victimisation. They are also often reluctant to testify in disciplinary and criminal proceedings. This causes delays in investigations and compromises the 'follow through' on cases. Some municipalities thus stated that whistleblowing does not play a considerable part in their anti-corruption efforts, for the above reasons.

Municipalities use fraud hotlines to allow the anonymous reporting of allegations. However, it is often difficult for municipalities to act on them as many, if not most, are without merit, misdirected or incomplete. There are also clear signs that hotlines are being abused to advance ulterior motives. Notwithstanding this, bona fide allegations that come through the national or local fraud hotlines are of value to municipalities. In some municipalities, these allegations assisted the municipality to address systemic issues and to strengthen their internal controls corruption accordingly.

Municipalities face several challenges in successfully conducting staff disciplinary proceedings involving allegations of corruption. The reasons for this are many: the law is cumbersome and fragmented, the 90-day time constraint is too short for complex cases, there is the abovementioned reluctance by whistle-blowers to testify and the municipality's internal investigative capacity may be weak. There are even concerns that external investigators from the private sector often lack the required capacity. Municipalities are most likely to achieve successful outcomes in disciplinary proceedings if these are predicated on a municipality's own internal control systems. Of course, this depends on whether their internal controls are functioning optimally.

The South African Police Service (SAPS), the Hawks and the National Prosecuting Authority hold the key to extracting criminal accountability for financial misconduct in municipalities. However, successful prosecutions have been far and few in between. These institutions lack sufficient capacity to properly investigate allegations of financial misconduct in local government while also being paralysed by a lack of resources.

Municipalities are instructed by law to recover corruption-related assets or funds from service providers, municipal staff members and councillors. However, the process to recover losses is complex. Most of the municipalities had little to no positive experiences with the recovery of losses related to corruption. To recover losses is costly and time-consuming and some interviewees questioned whether there is any point to it, as the costs may outweigh the benefit and/or the ill-gotten gains may be gone by the time the pursuit is completed.

Some suggested that involvement in corruption is not very prevalent among councillors because they are not directly involved in administration. However, others insisted that it is

possible for councillors to be involved in corruption even if they cannot themselves take administrative decisions. Councillors' direct involvement in corruption often relates to fraud with travel claims and abusing weaknesses in the municipal administration for political ends. It is more common for councillors to be indirectly involved in corruption, i.e. through exerting influence in the administration to bend rules to make the corrupt transactions happen, mainly in procurement and staff appointments. Unless allegations are investigated, a councillor's indirect involvement in corruption can go undetected because the paper trail often does not show the undue influence on the part of a councillor. Senior officials emphasised that resisting such political interference comes at a very high price, such as non-renewal of contracts or a prolonged suspension on spurious grounds.

The Code of Conduct for Councillors is the main instrument for municipalities to internally address allegations of councillor involvement in corruption. However, the Code is not without its difficulties. In some respects, the text and structure of the Code itself creates uncertainty. For example, it is not clear whether the declaration of interests of councillors extends to directorships of NGOs and which of the councillors' interests must be made public. It also appears that sometimes, councillors submit declarations that are vague, incomplete or the declarations are not forthcoming at all. However, the main concern expressed with regard to the Code is the fact that, too often, it is weaponised by councillors for political ends. The reliance on the council for enforcement of the Code, together with the speaker's agenda setting powers, make for a scenario that allows the Code to be manipulated as a political instrument or to protect certain individuals.

When assessing the role of the provincial government in supporting municipalities and exercising oversight, in matters related to combating corruption, many interviewees expressed satisfaction with the support they receive from the provincial government. However, they also highlighted difficulties. For example, it was argued that the provincial government does not take sufficient account of the concerns and needs of municipalities, before making decisions that affect municipalities. It was also highlighted that the provincial government seems to focus mostly on deeply troubled municipalities. With regard to investigations in terms of section 106 of the Municipal Systems Act, the province indicated that municipalities are often reluctant to implement the recommendations, particularly when senior officials or councillors are implicated. Furthermore, while these reports contain a wealth of information to assist law enforcement agencies with criminal investigations, they are hardly ever used or acted upon.

Thusfar, the provincial role in enforcing the Code of Conduct for Councillors has been mostly reactive. The MEC only becomes involved in matters that are referred to him. However, this may change as the provinces feels compelled to increasingly rely on provisions in the Code that permit the MEC to initiate an investigation on his own initiative, when the council fails to do so. The provincial respondents stressed that the province discharges its duties under

the Code of Conduct strictly objectively. However, there were concerns among municipal respondents that the weaponisation of the Code of Conduct extends to the provincial role.

While municipal respondents welcomed greater provincial support in combating corruption they resisted the notion that the provincial government should be afforded more powers. Some ideas that were discussed included a provincial role in facilitating more dedicated capacity for municipalities to investigate financial misconduct, providing financial support for investigations, finding solutions to address inefficiencies in the duplication of oversight mandates of various organs of state, and to enhance consultation with municipalities.

When discussing a greater role for district municipalities to support local municipalities in combating corruption there was ambivalence on the part of the respondents. They raised concerns about the relatively weak position of district municipalities in the local government system in the Western Cape, their funding challenges and the spectre of turf battles and contestation over roles and responsibilities. However, there was a positive appreciation of the potential of building on the Joint District Approach to enhance the role of district municipalities in this respect. One specific idea that was mentioned was the role districts could play in facilitating combined forensic investigative capacity in the district.

The following are some of the recommendations to the provincial government arising from the report:

- place greater focus on land use management, as an area with a high risk of corruption. This requires the inclusion of land use management in provincial and municipal anti-corruption strategies, with a drive to address corruption in this sector.
- pay greater attention to supporting 'the first level of defence', i.e. the internal systems in municipalities used to prevent corruption in the early stages.
- offer assistance, support and exercise oversight on both big and small cases of corruption in municipalities.
- offer practical advice, support and guidance to municipal managers on the running of disciplinary processes and the application of the different regulations for both staff and councillor disciplinary procedures.
- engage with the issue of the politicisation by municipal councils of the Code of Conduct and the 'judge and jury' problem. The province could use intergovernmental structures to raise these issues nationally.
- bolster the internal audit chain by, for example, supporting municipalities to capacitate internal audit units with skilled individuals and insisting they are afforded the necessary independence.
- intensify efforts to work with the Provincial Director of Public Prosecutions and pursue a formalised relationship with, as part of that, a focus on the prosecution of financial misconduct in local government. One aspect of this relationship could be an agreement on whether the NPA could make more direct use of the results of municipal and

provincial investigations. Another aspect could be addressing the need for capacity in the NPA on financial misconduct in local government that is specialised and decentralised.

- promote greater protection for whistle-blowers by, for example, in anti-corruption policies, through the enforcement of the Protected Disclosures Act and access to toll-free anonymous hotlines.
- insist on and support municipalities to pay greater attention to integrity and ethics in staff appointments.

1 INTRODUCTION

1.1 Purpose

This assessment comprises the second phase of the overall report on Combating Corruption in Local Government in the Western Cape. The first phase of the report provided an overview of the legislative, institutional and policy framework for combating corruption in municipalities, focusing particularly on the Western Cape province.

The purpose of this assessment is to examine to what extent the current legal and policy framework applicable to corruption in local government is working. Overall, the main object of the assessment is to determine the following:

1. What are the trends in how corruption manifests in local government?
2. What is the effectiveness and practicality of-
 - (a) legally prescribed internal controls to prevent corruption – are they working?
 - (b) available mechanisms to detect and investigate corruption – how easy/difficult is it to detect and investigate corruption?
 - (c) enforcement and sanctioning of allegations of corruption – how difficult is it to have perpetrators sanctioned with disciplinary measures and/or civil/criminal prosecution?

1.2 Methodology

For purposes of this research, senior managers and councillors from ten different municipalities in the Western Cape as well as officials from the provincial government were interviewed. The study took into account the geographic spread of the municipalities; the interviewees come from municipalities that are located in both urban and rural areas and from all three categories of municipalities. The study made use of semi-structured interviews. These offer flexibility in terms of the flow of the interview. This enriches the interview where the interviewees can guide the interviewers to speak about trends of corruption that they have encountered in the workplace. The benefit of this approach was that it afforded the interviewers to identify trends that were not initially foreseen. The interviewers used a semi-structured questionnaire to guide the interview process.

Before commencing the interviews, permission was obtained from the University of the Western Cape's Senate Research Ethics Committee.

1.3 Research process

On 23 March 2020, a country-wide lockdown was implemented in South Africa which restricted the movement of people. For this reason, it was no longer possible to have physical interviews. Meetings were instead held using online platforms. The interview process stretched over three months from June 2020 to August 2020. The duration of the interviews varied from 45 minutes to two hours and were conducted by a panel of at least two and at most four researchers. The interviews were transcribed and the content used to prepare this report.

1.4 Data analysis

The analysis of the interview data was informed by the content analysis approach. In qualitative content analysis, the data is presented in words and themes as in the interviews. This makes it possible for the researcher to draw conclusions about the manifestations of corruption and the effectiveness of the controls, mechanisms and sanctions from the interviews. Using this approach enables the researcher to tell the story through the interviews. In structuring the report, the researcher will thus describe what the interviewees say and merely describe what the text is saying.

The report comprises ten sections. The report commences by setting out the methodology that was used to conduct the assessment. Thereafter, it provides an overview of the manifestations of corruption in local government. In particular, it focuses on how corruption manifests in supply chain management, human resources, human settlements, land use and building control as well as other areas. The third section discusses how corruption is detected in municipalities. This section highlights whether detection mechanisms as set out in the phase 1 report are helpful to detect corruption but also identifies the shortcomings where the detection mechanisms do not meet its intended purpose. The fourth section provides an overview of how corruption is investigated in municipalities. The fifth section provides observations about the bottlenecks in conducting internal investigations and its consequences. What happens when cases are referred to SAPS, NPA, Hawks or the SIU for further investigation? The sixth section deals specifically with the experience of recovering damages or stolen assets/goods. In the seventh section, the report looks at the role of councillors in corruption and how corruption involving councillors manifests in municipalities. Section eight and nine discusses the role of the province and the district municipalities in combating corruption respectively. The final section provides reflective recommendations.

The fieldwork focused on the respondents' practical experience with combating corruption. We asked the respondents to be candid and provide illustrations. The report therefore contains responses that relate to this topic. As the report shows, there are aspects of the current efforts to combat corruption that are not functioning as they should. It is also clear that some municipalities are more affected by this than others. However, it is important to reiterate that, on the whole, municipalities in the Western Cape consistently maintain a comparatively good governance record, as is borne out by the results of the Auditor-General. Furthermore, the team of authors want to put on record that, in conducting the fieldwork, they encountered only committed public servants and representatives who displayed integrity and a passion for good governance. We are grateful to them for their time and valuable inputs.

2 MANIFESTATIONS OF CORRUPTION IN LOCAL GOVERNMENT

2.1 Recalling the legal framework

The desktop review sets out the various definitions and legal manifestations of (1) corruption as staff misconduct, (2) corruption as councillor misconduct and (3) corruption as a criminal offence.

It examines how national laws on the municipal public service define financial misconduct as staff misconduct. A series of legal instruments are discussed, including the Code of Conduct for Staff Members in the Municipal Systems Act, various regulations in terms of this Act concerning senior managers, Municipal Finance Management Act (MFMA) regulations and the Public Administration Management Act. Staff below senior management are governed by Bargaining Council Agreements. Furthermore, each municipality has its own municipal policies that often define corruption. We also examined how the law defines financial misconduct committed by councillors, which is dealt with mostly in the Code of Conduct for Councillors and the MFMA. Finally, the review examines how corruption is defined as a criminal offence, primarily in the Prevention and Combating of Corrupt Activities Act.

The picture that emerges is one of a very detailed legal framework. The framework itself is not without challenges as there are significant areas of overlap and even contradiction. Laws regulating the municipal public service emanate from three different national departments (CoGTA, NT & DPSA) with different regimes for senior management and 'ordinary' staff members. The definition of corruption as a criminal offence is detailed and of course requires a much higher burden of proof. Despite those challenges, however, it is clear that the law is comprehensive and pays considerable attention to what constitutes corruption in local government.

2.2 The questions we asked

Interviewees were asked to reflect, based on their experience as senior officials in municipal or provincial government, or as political representatives, on which municipal activities/departments were most 'prone' to corruption.

2.3 Responses

The interviewees mostly highlighted four areas, namely (1) supply chain management, (2) human resources, (3) human settlements and (4) building control and land use

management. However, two other important distinctions also came through, namely the distinction between small (petty) and big corruption as well as a difference between the manifestation of corruption in metropolitan and non-metropolitan settings.

2.3.1 Supply chain management

Without exception, the interviewees pointed at supply chain management as a municipal activity that is vulnerable to corruption. As one municipal manager put it:

“As a general approach, corruption can occur anywhere, in any department where there is a decision to appoint a service provider. Certainly, in my experience, that has been the main area.”

This does not mean that the problem is limited to supply chain management units. Corruption in supply chain management is often facilitated by collusion between (someone in) a municipal line department, a service provider and/or supply chain management committees. A municipal manager explained:

“With the cases that I have handled, there was definite collusion. There is collusion between the different departments and between the members of the supply chain committees. It starts early: once a budget is approved, plans are drawn up, then people already start talking to contractors out there.”

Another senior manager gave an example related to mechanical workshops:

“... you find that people in charge of supply chain in your mechanical workshops will actually work with some of the suppliers and they will make deals. So one supplier will get all the work and sometimes you will even overpay ... and pay R20 000 for just repairing brakes or whatever. Because it is municipal funds, there is a budget, I know the guy, there is a kickback and we pay the R20 000 and we come with the argument that there's nobody else who can actually do those repairs.”

A further example related to the manipulation of ceilings to avoid competitive tendering/quotations and then favouring certain service providers:

“We have orders under R2000 that can be approved at a lower level. (Then you get under R30 000, and over R200 000 is FQs for which you have tender processes.) So we had to bring the under R2000 orders down. Because you could just get an order and get it done. A lot of stuff just came in at R1999. So the system was being manipulated and we picked up that there's one particular person that got over 380 000 out of those 'under 2000' orders. Although the people had different names and

surnames, it was actually the husband of somebody in one of our departments. That person was eventually disciplined.”

At times, the corruption is not visible in the award, or the price of the goods or services but it manifests later when payment is done for work or goods that were not delivered. A municipal manager explained the scheme as follows:

“...an invoice is generated by a provider for services not delivered. That service provider works with somebody in the department where the invoice gets signed off. Then money gets paid over and then that money is being laundered in that service provider’s account.”

On the other end of the spectrum, the collusion may start far earlier with the writing of the tender specifications, as one interviewee pointed out:

“What [this company] did was to access a number of councils [with a solar energy project]. But [the company] wrote the tender brief. Now, how on earth can you allow any tender if the applicant writes the brief for you? So it's not just in the allocation process, it starts with who wrote the brief. The municipality should have engineers who write the brief, and they should have absolutely nothing to do with the company that may tender for that. So that's how far back it starts”.

One interviewee explained how corruption in procurement can be intertwined with government subsidy programmes such as Expanded Public Works Programme (EPWP). In essence, the ability to employ beneficiaries is used as leverage to secure tenders:

“So I am aware of a tender coming up for roadworks. For example, I am the mayor or I am a senior official and close to where the tendering process happens, I put word out ahead of time that there is a project coming and [ask a construction company] please make me a list of people who can come and work on this program, especially the EPWP program.”

Or the reverse:

“The contractor is aware that there is a tender coming. He contacts the local ward councillor. He tells the ward councillor: I have a contract coming up. Please give me 40 names. These 40 names will belong to the party of the ward. So the ward councillor is walking, door to door to identify people ...with an offer.”

Some interviewees also raised questions about the definition of corruption not always being clear. This was raised in particular in the context of extending contracts:

“We had lots of roadworks and then the engineering guys will come to us and say: ‘You know we've not done this part of the road and whilst we are at it, let us add another kilometre’. And so, Joe just gets the next kilometre. Is that corruption? Or does it make business sense?”

2.3.2 Human resources

Many interviewees mentioned human resources as another area where corruption may occur. With this type of corruption, a financial reward may not always be at play, but it is still corruption, as one senior official explained:

“...you appoint somebody who is family of yours and you don't declare it - there may, or may not be money involved but you are doing a family or a friend a favour... There is a benefit for somebody but it was unlawfully obtained.”

In some instances, there is even a direct monetary award:

“I am aware of instances where people who were appointed in permanent positions in municipalities have to pay ‘alimony’ of 5000 Rand per month for the honor to have a job. So you have to pay the person that helped you get the job.”

2.3.3 Human settlements

A further area that was mentioned on a number of occasions was corruption in human settlements, particularly low cost housing. Some interviewees referred to the problem of councillors getting involved in the compilation of lists of beneficiaries. Others referred to corruption in the development and construction process (which goes back to procurement):

“...the form that corruption can take is that they [developers] get paid for work not being done – they'll be appointed to build 150 houses, they'll build 50 and be paid as if they built 150. And that's the way the money flows. And if you have an administration that is not really up to scratch, those kinds of things flow through easily because the checks are not there to make sure that there's actual delivery against invoices presented.”

2.3.4 Land use and building control

Building control was identified by some interviewees as an area vulnerable to corruption. As one senior manager explained, the scheme is ruthlessly simple:

“With building plans, they submit the plans for approval and tell the officer that they will pay them an amount of money to get the approval as quickly as possible. Then when they go to conduct inspections, it is found that someone hasn't built according

to the building plan but the building control officer still signs off on the plan and gets paid in return.”

While the municipality may not feel an immediate financial impact of this type of corruption, the financial damage is considerable:

“If you submitted a plan for a house of 150 sqm and you build a house of 250 sqm and the building control signs off on this [even though the building is not in accordance with the building plan of 150 sqm] - in the long run, the income of the municipality is also compromised. The municipality charges you rates and taxes of a property with the size of a 150sqm whereas you actually have a larger property.”

Larger, more intricate schemes exist in land use management. As one senior official explained:

“You do get the more sophisticated ones where the municipality sells property at market value but then the municipality engages in a regulatory act - it will rezone it, for example. Suddenly that property becomes much more valuable in the hands of the buyer. But the buyer did not buy at that zoning but the zoning was included somewhere in the deal.”

However, it was also noted that the introduction of the new planning legislation has reduced the scope for corruption in land use management and that it didn't feature very high on the list of problem areas.

“I think with the tribunal and new legislation, that's sort of taken out of the scope, it's not as easy as it was in the past.”

“In the bigger scheme of things, it is a fairly minor one. We [provincial government] don't get many allegations relating to that.”

The interviewees indicated that these corrupt schemes are difficult to detect, because there is no financial transaction involving the municipality. As one senior official explained:

“There's no money that exchanges hands [with the municipality]. But there is influence in terms of land use applications, favours for friends, undue influence. It is very difficult to prove. The planner makes a recommendation whether it is to the MPT [Municipal Planning Tribunal] or whether it is to the authorising official. So if that person is unduly influenced, it's not always easy to see unless you get a whistleblower or when it's something that goes against the SDF [Spatial Development Framework] or council policies. There have been allegations that people have been

going on overseas trips paid by developers, but there is no proof, I don't have anything on paper. Nobody wants to go and make an affidavit.”

2.3.5 Other areas

Various other areas were highlighted by the interviewees. The handling and presentation of information was highlighted, for example. One respondent alluded to the trading of confidential information by councillors in return for rewards. Another respondent explained that the manipulation of information by senior officials is a form of corruption:

“There is often pressure on the CFOs to present a rosier picture [of the financial health of the municipality]. That is also a form of corruption in that it could benefit them in return as it could reflect positively on the CFO or the MM in terms of the performance bonuses that they'll receive. It is a deliberate manipulation of financial statements.”

Examples of corruption that were mentioned included the meter reader who under-reads in return for a reward, a municipal law enforcement officer taking bribes, an electrician facilitating illegal connections, use of council vehicles for private transport and corruption in licensing (particularly business licensing). Another area that was highlighted was cash handling. As one municipal manager explained:

“Wherever there is a cashier receiving cash, and somebody must come in and collect the cash ... so you reconcile everyday but then once a week, once a day, whatever, the cash is received and collected and taken to the bank – after a while people see gaps.”

One interviewee gave examples of small corruption where councillors abuse their position to extract free goods or services:

“There are councillors who would tell an EPWP worker or another worker: ‘I bought the dress at such and such a shop, please go pay it’. Or a call will come from a politician to say please replace the tires on that and that car. That's corruption.”

Municipalities own and operate infrastructure, vehicles and machinery in stores and workshops and this was also highlighted as an area where small corruption occurs. One municipal manager pointed out the selling of parts and fuel:

“That's an area where you deal with vehicle parts, tires, wheels. A vehicle part is something that you can sell in the street and you can actually also collude.”

2.3.6 Other distinctions

The distinction between small (petty) corruption and big corruption was raised a number of times. One official remarked that “not everything is a huge NPA or HAWKS-kind of investigation” or in the words of a senior manager:

“There is a distinction between what I want to call ‘big corruption’, where large sums of money changes hands and ‘small corruption’. There is a debate about whether that is corruption or not or whether it is purely maladministration. But small corruption around overtime and allowances and so on, that also creates a problem.”

A further distinction was made between urban and rural settings:

“...corruption has a different face in small municipalities. In rural municipalities, people know each other, it’s a very involved small system. If you look at the City of Cape Town or Johannesburg, it’s big and there’s not necessarily all those personal relationships. The developers in my municipality, they know everybody, they interact in the community, you walk past them in the street, you meet them at the corner café and so on. Whereas in a place like the City of Cape Town, that almost doesn’t happen. This makes corruption a little more difficult in a place like [name of municipality], because everybody knows everybody else’s business.”

3 DETECTION

3.1 Recalling the legal framework

The legal and policy framework examined the reporting channels, internal and external structures that are used to detect corruption in municipalities. It sets out how national legislation obliges municipalities to establish several structures such as the municipal public accounts committee (MPACs), audit committee and the internal audit unit, to assist municipal officials to detect corruption in the municipality. Allegations of corruption can also be detected through whistleblowers, using either the fraud hotlines or by a staff member or councillor approaching a senior in the municipality to lay a complaint in accordance with the procedures set out in that respective municipality's Fraud Prevention Policy. The framework demonstrated that officials who blow the whistle on corruption may further be protected in terms of the Protected Disclosures Act, from any prejudice that they may suffer subsequent to making a disclosure. There are also structures that are required to further investigate corruption cases beyond the municipality such as the SAPS, SIU, and in the case of financial misconduct, the national and provincial treasuries.

Overall, the law applicable to the detection of corruption makes provision for both internal and external structures to safeguard municipal resources from corruption. In this regard, the framework recognises that any official, regardless of his or her seniority, may be implicated in corruption allegations. Appropriate provision is made to ensure that in those instances where an allegation of corruption implicates a senior official, municipal manager or a councillor, that such cases be investigated by other structures and not by themselves. In doing so, it closes the gap for such allegations to be swept under the mat. Finally, in an effort to root out corruption in municipalities, the framework seemingly encourages individuals to blow the whistle on corruption through guaranteeing them that no harm will come to them on the basis of having made the disclosure.

3.2 The questions we asked

The questions that were posed to the interviewees, with respect to this theme, focused on the effectiveness of the internal systems, the channels or structures that are most useful for detecting corruption in municipalities, and the usefulness of the Protected Disclosures Act to protect whistleblowers in practice.

3.3 The first level of defense: risk management and internal controls

3.3.1 Internal controls to pick up anomalies

Municipalities' internal controls must be effective to safeguard municipal resources and to minimise risks of financial loss and corruption. When the interviewees were asked about the effectiveness of the internal controls to detect corruption in municipalities, they confirmed their vital importance. However, they also opined that their internal controls are not always able to pick up all those anomalies that are early indicators of corruption.

“Your system should have very clear parameters that will pick up these things. That is your first level of defense. That is the problem, the system doesn't pick it up hence you need somebody to blow the whistle.”

“The problem is if there are no real checks and balances to make sure that the numbers indicated on the invoice are actually related to actual delivery...”

“The biggest problem I think is that the financial management system does not pick up that one act that enables the fraud at source. For example, a person in a municipality decides to defraud the municipality and then creates a supply chain order. The order number exists but it has nothing to do with his department. They use that and start charging invoices and then he signs it off. Firstly, the system must be able to say that this supply chain number belongs to that contract and the person who signed off on that contract is X but this is A. Secondly, if you [already] used the supply chain order number which is not yours, now you've generated the request for payment. The request for payment must be signed off again, by the owner of the supply chain number. Yet, the crook signs off and gets paid. The finance management system did not pick up these anomalies. It had to be picked up manually through a forensic investigation. That is a crisis.”

The above quote is an illustration of internal control systems being insufficiently linked through the various aspects of municipal administration. Those involved in corruption are thus able to manufacture perfect paper trails that can only be shown up to be fraudulent through a subsequent (forensic) investigation.

The provincial interviewees shared with us their frustration at seeing municipalities paying insufficient attention to risks that were identified, even by the Auditor-General:

“What happens when municipalities can act but don't act, where their risk management has been spelling things out for many years and nothing has happened? In some municipalities we've been seeing recurring themes under the

AG's report. For five years at one municipality, I saw recurring themes coming up every year. You ask yourself 'what have they done?'

3.3.2 Improving business processes

Many interviewees made it clear that improving internal controls is key to detecting corruption early. Some shared their experience in achieving successes in reducing corruption by improving internal control systems. For example, one interviewee explained how corruption in procurement was detected and addressed by the municipality itself:

"With the procurement stuff, through our own checks and balances we actually pick up most of the issues ourselves. We did not have to rely on whistle-blowers. When we started bringing in more controls and more checks and balances we could quickly start picking up where there was fraudulent activities happening or where there was undue influence. When the process and the standard operating procedures were changed, it really showed where people were trying to cheat the system."

Early assessment of procurement needs can aid municipalities to clamp down on corruption.

"Forward planning, and working with quarterly procurement needs of the departments, it really assisted because there is no room for corruption in a sense anymore, you've taken it away from where it happens."

One interviewee recalled a business improvement project that responded to corruption in business licensing:

"[We examined] the business process around the issuing of motor vehicle licenses and the result was astounding. It went through so many hands. We created a business process that follows as few hands as possible. Because it's in the movement of the paper trail where a lot of the corruption effectively comes in."

Another interviewee explained how the use of internal controls highlighted corruption that could subsequently be addressed:

"Where we've picked up most of our stuff is through our own internal controls, where we start picking up red flags and we start investigating...that [problems] mostly comes out of internal control issues where you pick up certain things."

This suggests that there is great value in improving internal processes and internal controls to respond to an increased risk for corruption. This is also confirmed by the comment below from a provincial interviewee:

“I was involved with the coordination of an SIU investigation into a particular municipality. The SIU had to take over all the issues in the municipality whereas some of these issues like stuff relating to employees and minor allegations could’ve been resolved by the municipality itself, by its internal controls and risk detection, etc. So, sometimes we go into an overkill situation...”

3.4 The audit and risk chain

As discussed in Phase 1 of the report, the MFMA requires that the internal audit unit consider the areas that are prone to corruption, and to respond appropriately by auditing the controls of that area. The internal audit unit works closely with the Audit Committee and the Municipal Public Accounts Committee. The interviewees were asked about the performance of the internal audit chain in exercising this function and its utility in the detection of corruption in municipalities.

3.4.1 Internal audit unit: scope, independence and capacity

A number of interviewees commented on the internal audit unit, in particular on its scope, independence and capacity constraints.

The limited scope of the internal audit was mentioned as something that restricts their effectiveness in detecting corruption:

“Because of a limited scope, they wouldn’t be able to audit every transaction. Even the AG’s audit is based on a particular sample. They are not able to audit every transaction within the organisation. That is why we also need to rely on other avenues to get the information.”

Internal audit should be free to communicate with external structures without any undue influence by the municipal manager. This is not always the case as one interviewee pointed out:

“They don’t enjoy the level of protection that they ought to receive from the municipal manager and the audit committees.”

Accounting officers that we interviewed would insist, though, that they refrain from interfering with the work of the internal audit unit:

“So me [the MM], I’m not there to check what internal audit is communicating with external audit because they should actually be free to speak and to ensure that there is no cover up in any way.”

Many interviewees highlighted that, aside from the independence of the audit unit, the issue of the capabilities of staff in internal audit units is sometimes a concern. Capacity constraints in internal audit units make municipalities more reliant on external investigators. One interviewee even considered internal audit in some municipalities as mere compliance:

“I’ve also seen where internal audit units are just compliance – they tick the boxes, they don’t really add to it.”

However, interviewees noted that where internal audit units comprise of capable individuals, it can be of great value to the municipality in combating corruption:

“If you have the right people in those positions. I’ve seen internal audit units that are very well-placed and they do brilliant work, and in those instances they can be a good source of comfort.”

3.4.2 Audit Committees

Not many interviewees commented on the audit committees. However, one municipal manager had this to say:

“It starts with the right appointments. You need to have the right people in the right positions and with the right skill set. In the audit committee, you need the right skill set. I always have a qualified CA on the Chair, another CA on the committee. We also have an advocate and a risk specialist on the audit committee. You need the right people to assist. They can certainly add value.”

Others expressed concern with regard to their capacity and hinted that their weakness again causes a greater reliance on outside investigation:

“In a number of municipalities, the audit committees are quite weak. They don’t know what their mandate entails or how they need to interact with the administration and to hold the administration accountable. They don’t know how to oversee the internal audit unit. All of that suggests that internal capacity of municipalities to investigate is not sufficient. This is why they often appoint external investigators.”

3.4.3 Municipal public accounts committees

With respect to MPACs, many interviewees confirmed their importance but also expressed doubts as to whether they live up to their promise of effective internal oversight:

“Where it [corruption] normally gets picked up is not even in MPAC. Where the teeth lie, is in the external audit to identify wrongdoing.”

Some interviewees linked this to role confusion:

“They don’t know what their mandate entails or how they need to interact with the administration and to hold the administration accountable.”

3.4.3 Importance of skills and experience

Many interviewees stressed that the internal controls are only as effective as the quality of the managerial staff, councillors and committee members that operate them. Clear understanding of roles but also skills, capacity and experience are vital to make these systems work:

“If you have experienced and qualified people in positions of authority/senior management and middle management then it will be those people who will pick up systemic problems and root out corruption. My experience is that our management does not always have the ability to pick up things, that’s something for which you need experience.”

“So for me, making sure that you have the right people in place is your first line of defense against fraud and corruption. We should be able to identify fraud and corruption by ourselves, without people whistleblowing. But because our municipalities don’t have that kind of experience, that’s why people with corrupt intent have the ability to circumvent the system.”

One municipal manager specifically emphasised the importance of experience, which enables that person to analyse and interpret transactions in order to pick up on any anomalies. It was alluded to with this practical example:

“So, because I’ve been in this business for 28 years, I sometimes pick up things and it’s not because I’m smart or anything but because I have experience. I’ve seen it before. I’ll give you an example: We’re busy entering into an agreement with Transnet to rent property. This is not a corruption example, it’s how inexperience fits/feeds into this thing. Transnet tells us that they want us to pay a monthly rental for the property, which is R30 000 a month but we must also pay the rates on the property and the rates is R78.90 per month. Now that gets placed in front of me, I must approve this. So I say ‘listen if the rates are R78.90 per month then R30 000 cannot be a market-related rental because if your rates is less than R100 per month, its less than R1000 a year, that property cannot be worth well having to pay R30 000 a month into it’. Now that gets placed in front of me by a senior manager and they didn’t pick that up. The same happens with corruption – because they’re not experienced, they don’t see these things, they haven’t come through time to see how these things play out.”

While some municipalities shared with us their positive experiences of relying on internal systems and controls to detect and investigate corruption, there was an overall trend in the interviews to emphasise a reliance on external investigations and whistle blowers. At times, this is informed by the need for independence. However, the challenges mentioned above, with respect to skills and experience also play a role in this. This then leads to the discussion of whistleblowers and hotlines for the detection of corruption allegations.

3.5 Whistleblowers from within the municipality

3.5.1 Varied reliance on whistleblowers

Phase 1 of the report discussed the various channels that municipal officials or members of the community may use to blow the whistle on corruption. Most, if not all, municipal fraud and corruption policies stipulate that individuals in the municipality may approach their immediate senior officials and may also use other channels that are available to the public such as the national or local fraud hotline, the Public Protector as well as provincial and national government structures. The interviewees were asked to reflect on the usefulness of the complaints that come through these channels, as well as the issues that arise when individuals report allegations of corruption.

The reliance on internal whistleblowers to detect corruption varied from one municipality to the next. Many interviewees stated that they place a high premium on whistle-blowers allegations to detect corruption, especially where a municipality's internal controls are weak:

“Corruption is uncovered by someone who makes a report to the speaker or the municipal manager. It very seldom happens that a municipal manager would stumble into something like this.”

“The whistle-blowing mechanism is the primary source. Somebody complains.”

However, other interviewees indicated that whistle-blowing is not common in their municipalities:

“Whistleblowing hasn't really taken off in our municipality. I think people still fear for some comeback or reprisal. I haven't received an anonymous envelope.”

“I haven't come across a whistle-blower in local government, not within the system. Because the system is too closed. The crooks know who would be in a position to spill those kinds of beans.”

3.5.2 Victimization

Many of the interviewees spoke of a culture of fear in municipalities that prevents municipal officials from coming forward. Some also submitted that there are known instances where municipal officials have been victimised after making a complaint:

“There were instances where I’ve picked up that there is clear intimidation and victimisation of officials.”

3.5.3 Reluctance to testify

It is also difficult to bring a whistle-blower before a court of law or a disciplinary tribunal, where they are required to testify against a person that has been implicated in corruption. This adds to the delays in investigations (see para 5.3 below) and in some cases it prevents a municipality from following through, as illustrated by this quote relating to criminal proceedings:

“People are reluctant to testify, in which case they have to be subpoenaed. The subpoena in itself adds another two months to the investigation.”

3.5.4 Organisational culture

The municipality’s organisational culture or environment influences whether an observer will report suspected wrongdoing. As two municipal managers explained:

“What is then important is there should be a culture that people are protected to speak freely.”

“That depends on the mood: If people feel confident that they can go to someone and make a complaint. But sometimes the threats can be very subtle.”

The organisational climate of a municipality depends on the tone that is set at the top by municipal managers and other senior officials in the municipality. Whistleblowers should feel encouraged to come forward, and know that they will be protected by the municipal manager and other senior officials if they report any suspected wrongdoing. The quote below illustrates how internal whistleblowers can be suppressed as the person that set the tone for their protection leaves:

“I laid a number of criminal charges as a result of an investigation. There was a forensic report, people spoke but then I left. Suddenly there was no information coming forward. It was very difficult for people to remember the statements they made and they were very unwilling because they no longer felt protected within the municipal system.”

3.5.5 Protection of whistle-blowers

One interviewee mentioned that one way to prevent an official from being victimised is to transfer the whistle-blower to another department:

“...threats can be very subtle, specifically if you work in one department. So, in that case, we would move the person to another department. Another way is to do the investigation quickly or even at the start of the investigation, to put the person [against whom the complaint was lodged] on paid leave so as to stop the possibility of interference.”

Protecting and respecting the anonymity of a whistle-blower is important:

“So, people must feel, whether you’re a clerk or whatever, if you pick up anything that’s not ok there should even be a box where you can put it in an envelope, which is anonymous. So nobody should know who it is, the identity of the person is not important.”

“People must not feel that they will lose their jobs or that people will victimise them.”

The culture of victimisation of whistle-blowers in municipalities raises questions about how successful municipalities are in ensuring that the anonymity of whistleblowers is protected subsequently. Interviewees were asked to reflect on this:

“Unfortunately, people talk. One thing I’ve picked up is that you need to be very careful who you associate yourself with.”

“Even though, in theory, there are all these good measures to protect whistle-blowers; there are ways and means in which it is circumvented and where employees end up being victimised.”

“There are just too many eyes that would be able to see who the witnesses are.”

The interviewees were asked whether municipalities have any measures in place to raise awareness about the provisions of the Protected Disclosures Act (PDA), and about the avenues they can follow if they are subjected to some form of prejudice after they reported an allegation of corruption. None of the interviewees confirmed that they have created awareness about the PDA and some of the interviewees questioned whether it will even be useful to create awareness of the PDA in any case:

“There is no such thing as a protected disclosure now. The law has its limitations in the real world.”

3.6 Hotlines

3.6.1 Varied reliance on hotlines

Related to the topic of whistleblowers is the use of fraud hotlines. Generally, the interviewees confirmed that they can be important sources of information and also a mechanism that can prevent municipal officials (or councillors) from being victimised:

“So, there should also be a corrupt toll-free line that people can call, which we have. We’re actually promoting that anybody with something that they feel is not ok, report it to the corruption toll-free line but also in-house people must not feel that they will lose their jobs or that people will victimise them.”

Interviewees from the provincial government indicated that many of the allegations that the Province receives are through whistle blowing:

“A lot of the allegations that we receive are through whistle-blowers. It is our greatest source of allegations that we receive to do assessments. Quite often there are senior officials as well as councillors who are also implicated in the various allegations.”

3.6.2 Usefulness of fraud hotlines to detect corruption

Interviewees were asked to reflect on the usefulness of the allegations that are reported through the fraud hotlines. The majority of respondents were lukewarm to negative, about the usefulness of fraud and corruption toll-free hotlines. Overall, the hotline is a useful mechanism to receive allegations of corruption and in some cases even the primary source of information. However, there was general consensus among the interviewees that the allegations are very often without merit after they have been assessed:

“Most of the stuff that comes via the hotline, the majority of them are not of substance. An allegation against somebody that ‘this person must be corrupt’ is just that, if there is nothing of substance.”

“More than 90% of it is frivolous claims, someone lost out and out of jealousy they submit a complaint.”

Hotlines are sometimes also used to raise management issues that do not relate to corruption:

“People don’t quite understand what the hotline is for, so they put their issue through the hotline, which is not necessarily a corruption issue – it’s more a management issue that we then refer to the relevant labour relations or department to deal with.”

The receipt of complaints and allegations, however thin and perhaps not actionable at the start of an investigation, can, however, assist municipalities in addressing systemic issues. They may be a useful indication to municipalities on areas where the internal controls must be strengthened. As one municipal manager pointed out:

“What [the raising of allegations through the hotline] did was it raised the red flag for us and we started to pay more attention and put an extra layer in there to really scrutinise the reports and stuff that came through.”

3.6.3 Weaponisation of hotlines

The municipal interviewees also reported the ‘weaponisation’ of hotlines for ulterior motives. The majority of the interviewees indicated that the hotlines are regularly used as a weapon by aggrieved parties:

“Our hotline gets abused whether it’s to settle political scores or whether it’s a case of ‘I don’t like my supervisor’”.

“It’s normally someone with a dog in the fight. Somebody would complain that a person was unlawfully appointed and then we find that the person who’s complaining is somebody who lost out. It doesn’t always turn out to be fraud.”

“Sometimes there’s an axe I need to grind with X and then I call the toll-free number and say [things] about X. You also get that kind of thing.”

“Instances where we have received reports, people would make claims that someone was favoured but then it is normally a fellow service provider that submitted a bid but was unsuccessful.”

Notwithstanding the fact that the province relies considerably on whistleblowers to initiate inquiries, they also shared similar sentiments about the weaponisation of allegations:

“A lot of the allegations that we do get are from aggrieved municipal officials as well as people who applied for posts but were not successful, then there are various allegations against those who were successful. There are allegations that proper processes haven’t been followed.”

3.7 The need to work more with the community

A number of interviewees reflected on the role of communities in detecting corruption in municipalities, and placed specific value on doing more to involve communities in the fight against corruption:

“I think another element is involving your community. I find that if you engage with your community and if you’re open and you actually indicate to them that if they pick up anything, they can actually report that. That you get calls, that you get emails, that you get people really communicating to you because remember that the people who are corrupt, that work for the municipality, come from the community. So the community sees things, they hear things, they experience things and so if you bring the community in as well that’s another angle that I think one should pursue and utilise.”

The proximity between residents and municipal officials who come from the same communities means that members of the community monitor the actions of, and where necessary report, municipal officials that reside in their areas.

The interviewees indicated that it is important to distinguish between the ‘overzealous’ community members, and those that are genuine about holding the municipality accountable. As one municipal manager explained:

“What I find is that there’s an overzealousness, I mean people are not scared to be known as being so-called ‘corruption busters’. And with having hotlines and so on people actually have the ability to anonymously provide information. I’ve had the experience of people calling me, there’s a person that called me recently to say ‘listen I have evidence of corrupt activity in your municipality, I’m prepared to come to you.’”

4 INVESTIGATING CORRUPTION AS STAFF MISCONDUCT

4.1 Recalling the legal framework

Two legal regimes apply when pursuing disciplinary proceedings against senior management and 'ordinary' staff members (i.e. not senior management). Allegations of misconduct by senior managers are dealt with in terms of a special set of national legislation, namely the Disciplinary Regulations for Senior Managers of the Municipal Systems Act. In addition, the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings require that municipal councils establish a disciplinary board to investigate allegations of financial misconduct by senior management in the municipality and to monitor the institution of disciplinary proceedings against an alleged transgressor. Allegations of corruption against 'ordinary' staff members are dealt with in terms of the Disciplinary Procedure Collective Agreement, concluded under the auspices of the Local Government Bargaining Council. Clause 7.1 of this agreement provides that an allegation of misconduct against an employee shall be brought before the Municipal Manager or his or her authorised representative for consideration and decision.

4.2 The questions we asked

We sought to understand the experience of municipalities in staff disciplinary proceedings linked to allegations of corruption. Municipalities were asked to reflect on the role of Disciplinary Boards to investigate allegations of financial misconduct against senior managers.

4.3 How corruption is detected determines the success of staff disciplinary proceedings

Staff disciplinary proceedings predicated on a municipality's own internal control mechanisms are more likely to produce successful outcomes than proceedings pursued on the basis of information provided by whistle blowers. A municipal manager had this to say:

"In the few cases where we picked up the corruption ourselves, the disciplinary proceedings went quite successfully, in that all the people in those instances were actually dismissed. And I think it's because we had a good case, at the end of the day we had all the proof. For the staff member it was literally a case of 'let me now plead guilty, there is no way out of this'."

On the other hand, staff disciplinary proceedings predicated on information provided by external whistleblowers are often difficult to pursue and complete. One municipal manager argued:

“When it comes to external whistle-blowing it is difficult because you need to get a person to come and testify, who’s not always willing to do so. So you need to find additional evidence to corroborate the charges.”

This is perhaps why the manager concluded that:

“...the success rate in terms of stuff that we pick up ourselves [through the municipality’s internal controls] is quite high.”

4.4 For complex cases, the time for investigation is short

The collective agreement and the Regulations for senior management effectively allow the municipality 90 days to investigate allegations of misconduct. This may be adequate for cases of corruption that are relatively small and easy to prove. It may, however, be too short for big cases where investigations often take a long time to complete. A respondent remarked:

“You have 90 days to investigate. You can suspend somebody, but after 90 days you must charge the person. For some of the matters that you are looking at in the municipality, the investigation itself will take longer. Sometimes you have to suspend the person because they may destroy evidence but you cannot charge him for that one issue, you must investigate. The investigation then uncovers a snake-pit of corrupt activities. Suddenly, three months is nothing. The collective agreement did not anticipate this kind of money laundering or fraud.”

4.5 The regulatory framework is unnecessarily cumbersome

The regulatory framework for investigating financial misconduct by staff members is experienced to be cumbersome in a number of respects. Firstly, there is considerable overlap between the two sets of regulations, i.e. the Financial Misconduct Regulations under the MFMA and the Disciplinary Regulations for Senior Managers under the Municipal Systems Act. This creates implementation challenges as was acknowledged by provincial officials:

“What we picked up in practice is that there is a lot of confusion as to which is applicable. So, having these regulations running parallel to one another can be conflated to an extent. The difficulty in practice is that you are running with two processes which need to be parallel with one another.”

Many of the respondents also indicated that the Financial Misconduct Regulations are cumbersome and difficult to implement in an environment where frivolous allegations are common:

“Everything has to be tabled in council, you literally have to call a council meeting. I mean there was one instance where the entire top management was accused. So now I have to take that allegation to the council because the senior management regulations says I must. At one stage there was at least one allegation against a senior manager every month, which all had to be tabled before the council, sometimes even two each month.”

Another municipal manager indicated that, while every municipality has a disciplinary board under the MFMA disciplinary regulations, the boards take too long to conclude investigations:

“It is cumbersome and time consuming. Let me tell you: everyone has a board because it is compulsory. But how many have already gone the full process? I had one and it took them over a year for them to make recommendations. So, it took us a year to actually start with formal disciplinary processes. By then you’ve lost momentum, people become tired along the way.”

4.6 The challenge of frivolous allegations

Some allegations are based on a wrong understanding of misconduct. They may point to under-performance or administrative deficiencies but have little to do with corruption. As one respondent explained:

“Sometimes, they can complain about administrative deficiencies and dress it up as corruption. When you investigate, you see that there are indeed problems, it might not be corruption but there might be administrative problems.”

Sometimes, the allegations are politically motivated. The disciplinary procedures are then ‘weaponised’ in political battles. The prospect of a full council meeting, where the allegation is assessed, seems to be a critical aspect of a political, as opposed to a legal strategy. As one respondent indicated:

“So in order to score political points or to prove something, people will go on and make allegations knowing that it has to go to the council.”

This is compounded by the fact that, in some municipalities, municipal councils are very reluctant to resolve that an issue does not need to be investigated:

“The council will find it very difficult to say ‘listen I’ve received your complaint, I don’t see any *prima facie* evidence of anything’. Because they’re scared that they’ll be accused of covering up corruption. So it doesn’t matter what the complaint is, my experience is that the council will refer that to the disciplinary board if it’s financial misconduct.

4.7 The challenge of access to good investigative capacity

Once a decision has been made to pursue disciplinary procedures with respect to an allegation of financial misconduct, the municipality is faced with the question as to whether it will investigate the allegations itself or whether it will bring in outside expertise. The use of an external investigator is expensive, sometimes so expensive that the costs of the investigation exceed the quantum of damages to the municipality. Many respondents indicated their preference for external investigators, in order to ensure the independence of the investigation process. One of the respondents stated:

“Because it is an internal investigation you wouldn’t want to use the internal people to investigate as they might be biased. It becomes an expensive exercise to actually do the investigation. And only once you have evidence that corruption might have happened, then you start with the disciplinary process”.

“Even if an investigation does cost a lot of money, you need to send a message to the rest of the staff who might be thinking that they can still or continue to engage in corrupt activities.”

The investigative capacity in many municipalities is quite limited, to the concern of many interviewees. For instance, an interviewee said:

“I’m really worried about this. Here we have a small legal department, with two legally trained people in that legal department and I want to use them to make sure that we are compliant, that everything that we do fits within the law. But at the moment I have them responding to all these different complaints and allegations [linked to corruption] and litigation, I mean there’s litigation on some of these stuff as well.”

Furthermore, it seems that the investment in investigative capacity increases as the internal control systems weaken. In other words, the weaker the ‘first line of defense’, the more the municipality will have to spend on investigations.

“Investigators have to get to the bottom of the problem and that is why it is so expensive. They have to physically go and investigate things that the system is supposed to pick up.”

However, other respondents argued that external investigators do not always bring value to a municipality's anti-corruption efforts. A respondent stated:

"Something that you see is blatantly wrong and then the council appointed an investigator in terms of the Regulations, which they need, but the investigator's report is so nonsensical! The council must now adopt it because they requested this investigation and this is what the investigator suggests. And it just doesn't make sense".

The respondent went on to say:

"Local government is a very specialised field. If you don't understand local government law and procurement law and how it works, it becomes cumbersome for the investigator."

Another respondent expressed frustration about the lack of capacity in forensic firms to really helping a municipality unravel corruption cases:

"What I've found extremely frustrating is we spend such a lot of money on appointing forensic firms to do forensic investigations and what I've found of late is they never give you anything conclusive at the end of the day. And they are also not familiar with municipal processes, so all of them want to review your policies and tell you where the loopholes in your policies are. That's what they want to do. But they don't want to do the real investigations. So it's difficult to get proper investigations done.and a lot of these forensic firms are basically auditors. So that's the one issue."

In the end, the municipality sometimes pays forensic firms excessively as the investigation gets prolonged because of the lack of capacity in these firms. In the words of one respondent:

"We pay a lot of money because the investigator still needs to familiarise themselves with how the process works and at the end of the day, it frustrates you more than it assists you, because they don't fully understand all the processes."

5 CORRUPTION AS A CRIMINAL OFFENCE

5.1 Recalling the legal framework

The overview of laws and policies focused on the definition of corruption in the Prevention and Combating of Corrupt Activities Act 12 of 2004 (PCCAA), as well as the various definitions of criminal financial misconduct under the MFMA.

Traditionally, municipalities have limited policing powers, mostly focused on traffic, by-laws and crime prevention. The search and seizure powers of municipal police services (where they have been established) have increased incrementally. However, this increase has not been extended to the power to access bank accounts or the interception of electronic communications. In practice, metropolitan municipalities are expanding their investigative capacity and establishing forensic investigative units. These developments have taken place, primarily in the context of disciplinary proceedings but also in response to resource constraints in SAPS and the NPA.

There is potential for greater collaboration between municipalities and the various agencies of the criminal justice system. The observation was made that there is nothing in law that forces the NPA to only accept dockets prepared by SAPS, thereby opening the possibility, in theory at least, for the NPA to accept dockets directly from municipalities. Against the background of serious backlogs in the NPA, the analysis also reflected on whether corruption committed by municipal employees could be prosecuted in municipal courts.

Lastly, it reflected on the potential for a greater provincial role in training investigative agencies but also in facilitating agreements with agencies in the criminal justice system, to enhance the combating of corruption in local government.

5.2 The questions we asked

Interviewees were asked to share their experience in referring matters to the SAPS and the Hawks for investigation, as well as their experience with matters being followed through by the NPA for prosecution. We also asked the interviewees to reflect on the potential of municipalities increasing their own investigative capacity and greater collaboration with the agencies in the criminal justice sector.

5.3 Criminal investigations take too long or don't happen at all

Many, but not all, interviewees had first-hand experience with laying charges with SAPS and/or the Hawks, against employees or other persons for corruption and monitoring the

follow through. All around, the experience amongst those who did, was not good. As one municipal manager remarked:

“I was very disappointed. Up to now nothing, nothing other than a case number and a possible investigation. It is just not on their list of priorities.”

Many interviewees bemoaned how long investigations take:

“Look at the [name of municipality] investigation: four years and we are only at the warrant of arrest stage. The court roll in the regional court is so full that they most probably will make a first appearance and then only appear in a year's time. Now it's already four years since the case was made...And how long will the court process take? The BAC [Bid Adjudication Committee] members might have died, might not be employed anymore, might not be there anymore. How do you investigate a matter in the second and a third term of office [after the fact]?”

“You are lucky if you get a judgment within two years and then there is probably an appeal.”

“In terms of the time it takes to conclude the investigations: people often leave the institutions or lose their memory of what transpired, for example six years ago. It becomes difficult to build a solid case against an individual. The allegations then cannot be proven beyond a reasonable doubt.”

Aside from the disappointment with the duration of investigations, some interviewees explained that their efforts at recovering funds were deprived of momentum, if not compromised, by the inaction of the Hawks. One municipal manager explained:

“What was frustrating about that [process of recovering funds] was it was one of the cases which we eventually gave to the Hawks because it's very difficult to seize documents at companies etc. That's what we needed the Hawks for. So we could only operate with the information that we had and that we could scrape together through our own processes.”

5.4 Resource constraints in SAPS and the Hawks

There was a general appreciation among the interviewees for the resource constraints within SAPS. Many of them pointed out that it is difficult for SAPS and the Hawks to properly and timeously investigate allegations of financial misconduct in local government. One interviewee shared the following illustration:

“There is a [pending] investigation that has been coming on since 2011. Only one senior investigator has been assigned to this case. The same individual has also been responsible for investigations in two other municipalities. That is one of the reasons why these investigations are taking so long to complete. We can’t expect of one individual to have all the investigative capacity and knowledge to understand the complexities of local government.”

The Directorate for Priority Crime Investigation, the Hawks, also lacks sufficient capacity to investigate allegations of financial misconduct in local government. As one senior manager pointed out:

“There is very little capacity [in this region]... even with the Hawks.”

5.5 SAPS misunderstanding their role or not having relevant expertise

We were also told of incidents when SAPS made blatant errors, such as losing a docket, or misunderstand their role in the context of the overlap with disciplinary proceedings. One municipal manager shared that -

“...there is also a reluctance from our local SAPS to investigate a matter where our internal disciplinary processes have not yet been completed even though our case is not a criminal case.”

This is a wrong application of the law. The law does not compel a municipal manager to wait with laying a charge, or SAPS from investigating the charge, before the internal disciplinary proceedings have been completed.

5.6 Concerns with the prioritisation of investigative capacity

A number of interviewees commented that, besides the resource constraints and role clarification, there are concerns with respect to how SAPS and the Hawks prioritise their investigative capacity. Some expressed concerns regarding undue influence. The interviewees’ comments on this sometimes expressed general frustration:

“Why are they keen to lock up someone who went skinny dipping or is having a zol, but they can’t deal with the corruption?”

But there were also more specific concerns with the prioritisation of investigative capacity:

“I get investigated by the Hawks every other day. I had two investigators already in my office for two things – there was one who camped literally in my office for a week. In the one case ... it was referred to the NPA and they came back and said it’s

frivolous. The other one didn't even make it to the NPA because I gave them all the proof that negated every single allegation that was made. And I said to the Hawks now 'I will not entertain you anymore unless you bring me the affidavit of the person who made the charge so that I can actually go and sue the person for defamation'. Because you can't just come and not tell me who made the charge, who said what and then waste all my time. When are you going to go and pursue the real criminals?' ... I get constantly victimised by the Hawks and I'm asking where is this capacity when I need it? There's a lot of undue influence and people with connections that push certain agendas and the same with the Public Protector."

Another interviewee told us the following:

"There were allegations that this traffic officer accepted bribes for passing vehicles that were not roadworthy. There were affidavits, and even though the case was reported to SAPS, there was a reluctance on their part to investigate the matter because the SAPS official was a family member of one of the councillors. So, nothing came from the case."

5.7 Resource constraints and lack of specific expertise within the NPA

The resource constraints in the NPA are well-known and many interviewees had first-hand experience with it.

In addition to the lack of resources, all of the interviewees agreed that there is not enough knowledge and expertise in the criminal justice system to investigate and prosecute financial misconduct in local government. Any allegation of financial misconduct would have to be investigated and prosecuted in the context of the dense web of laws that make up local government law. However, very few prosecutors specialise in this area of law:

"Local government is one of the most difficult specialised fields out there. There are very few lawyers who really understand this field. We need specialists [to secure convictions]. Prosecuting authorities think criminal [law], whereas local government practitioners think local government law."

This challenge takes on a different dimension for the NPA, as compared to the investigators of SAPS or the Hawks. The (forensic) investigation, if successfully completed, will result in a detailed narrative, 'a connecting of the dots', that suggests wrongdoing. However, this narrative will not point out the exact unlawfulness. It is the NPA's task to create that picture of unlawfulness. In order to do this, the prosecutor needs to command local government law, in particular the MFMA and its many regulations. The interviewees indicated that, in their experience, there are few prosecutors who have this:

“The criminal justice response to fraud and corruption in municipalities is just shocking. Prosecutors are not trained in the MFMA, so if your prosecutor doesn't understand the MFMA and local government specific legislation, they will forever try to use ordinary commercial law.”

It goes further because, in addition to local government law, the prosecutor needs to command the policies, resolutions and delegations of the municipality in question. The unlawfulness of the actions will often have to be proven with reference to these internal laws and instruments that differ from one municipality to the next. One senior manager illustrated this by sharing an experience in engaging with a prosecutor on a specific case:

“I first had to explain to them how a special project gets approved in the municipality. The prosecutor asked me: When did it start being unlawful? They must know the policies when it comes to special events. The prosecutor had to be made aware of that policy. They wouldn't know the policies of the municipality. Then I must relate that to supply chain: where does it say in the supply chain policy that you can do this? That changes for each municipality, it is not necessarily the same across the municipalities... all of the intricacies of the interactions between policies, by-laws, legislation, practice, delegations - all of those you must know as a prosecutor. Each case must be investigated to that extent.”

For the NPA to present a credible picture of unlawfulness, needed for a conviction, it must command the many layers of local government law.

5.8 Responses to the inadequate criminal justice response

The absence of an adequate criminal justice response results in greater demands on municipal resources and also strange ‘mandate creep’, as one interviewee explained:

“I discovered one of my employees had committed a corrupt act. We hired a forensic auditor and used the report to discipline him and he was dismissed. I also laid a charge and didn't hear anything for a few years. Then the senior prosecutor phoned me and asked if I can ‘make the forensic auditors available’. I wanted to give him their number but he wanted me to pay for the forensic auditor! I told him that I lost money due to the corruption, I lost money paying for the forensic investigation to prepare the disciplinary, I lost money conducting the disciplinary, and now I have to pay again to assist the NPA with their investigation? At some point it is no longer justifiable.”

Where the provincial government has conducted an investigation in terms of section 106 of the Municipal Systems Act, there would be scope for greater synergy with the criminal justice agencies.

“With the section 106 report, the NPA or the HAWKS would have access to all the information: all the documentation, witness statements, statements by implicated persons, neatly packaged. It would even set out the offences that have been committed. We have handed all our 106-investigations over to the HAWKS and the NPA. I haven’t yet seen any outcome, nobody has even appeared in court. But theoretically it could speed up the process, especially when it is complicated like supply chain or human resource matters where they don’t necessarily know what the processes were that were meant to be followed. For an investigator who doesn’t deal with that it is a daunting task.”

5.9 Greater (forensic) investigative capacity in municipalities?

Most interviewees responded with caution to the suggestion for greater investigative capacity and powers for municipalities to investigate corruption. The first concern expressed was that such investigative capacity would be located in a municipal administration with the attendant risks of undue interference, as municipal administrations can be drawn into political battles or nefarious schemes. As one interviewee put it:

“Potentially [a good idea] yes, but what if those guys are crooks? I would be very careful.”

The second concern relates to the demands it would place on municipal capacity:

“It won’t work because, internally, municipalities lack the capacity to perform such investigations.”

The third concern relates to the required scope of investigations into corruption as a criminal offence. This would have to go beyond the scope of investigations into corruption as a disciplinary offence. As one interviewee pointed out:

“Corrupt money goes to so many accounts and in many instances comes back as a cash payment.”

This places limits on the prospect of municipality-led investigations into corruption as a criminal offence. As indicated earlier (see para 5.1 above), a municipality may not, for example, examine bank accounts (other than its own) or intercept electronic communication. These types of powers are reserved for national investigative agencies. As one interviewee pointed out:

“In the end you will always need the SAPS and the NPA because you cannot investigate beyond your own accounts as a municipality ... I think we most probably would get much more if I was able to get that assistance from the Hawks or from

SAPS. Because I can't summon and go raid offices and get the necessary documents."

There is also an argument that instead of investing in such investigative capacity, the investment required would be better spent elsewhere.

"What you are looking at would be the capacity that would normally reside in a forensic investigative unit of, for example, Price Waterhouse Coopers, to investigate suspicious activity. These are expensive resources. Why would the same institution spend so much money investigating and add powers when it can fix the system to enable it to do the job of the unit [investigative unit]?"

In other words, the suggestion made here is for municipalities to invest more in the first and second lines of defense (prevention and detection), rather than in capacity to pursue criminal investigations.

Some interviewees argued, along similar lines, that instead of propping up municipal investigative capacity, municipalities must liaise more closely with law enforcement agencies, possibly with the help of the provincial government or (where applicable) district municipalities. They emphasised that, despite the fact that criminal investigation and prosecution 'is not their lane', municipalities can liaise closely with SAPS, for example by giving attorneys a watching brief and generally chase up the case. One senior manager expressed this as follows:

"If the local police station is not doing what they're supposed to do, is that then the end of the line? Can we not take that further? Where's the district? Where's the province? Surely there are other levels, there's the Minister in charge of safety, the police is directly with the provincial commissioner. If there's a problem locally, and you tolerate that, then you're part of the problem. What we [would] do is open a case at the police station, we bring our legal advisors/legal teams on board and we're on that case."

6 RECOVERY OF ASSETS

6.1 Recalling the legal framework

The legal and policy framework provides for various sanctions that may be imposed when the investigating body finds that a corrupt act has indeed taken place. These sanctions include staff disciplinary sanctions, councillor disciplinary sanctions, sanctions against service providers, the imposition of criminal sanctions and lastly, the recovery of assets, losses or damages. These sanctions may be imposed by either a municipality's internal investigative body or an external body such as the National Treasury, the Asset Forfeiture Unit and the SIU.

Various legal instruments were discussed, including the Code of Conduct for Staff Members in the Municipal Systems Act, various regulations in the Municipal Systems Act concerning senior managers, the MFMA and the MFMA Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings, the Code of Conduct for Councillors, the Prevention and Combating of Corrupt Activities Act (PCCAA) and the Prevention of Organised Crime Act. Sanctions for staff other than senior management are set out in the Disciplinary Procedure Collective Agreement. At times, additional sanctions are provided for in municipal policies. With regards to staff disciplinary sanctions, the framework shows differences between the Code of Conduct for Staff Members and the Collective Agreement when it comes to the sanctions of suspension, demotion and withholding of remuneration. The threshold of penalties is higher in the Code of Conduct for Staff Members, as compared to the Collective Agreement.

Apart from sanctioning councillors and municipal officials, the legal framework also provides for the sanctioning of service providers through the cancellation of contracts, as well as endorsement on the national register of offenders (administered by the National Treasury). The legal framework also provisions for criminal sentences in the form of imprisonment or a fine once a person is convicted of corruption, under the PCCAA or the MFMA. Lastly, the legal framework places upon the National Treasury, Municipal Manager, SIU and the Asset Forfeiture Unit the duty to recover losses or damages incurred by the State as a result of corruption.

6.2 The questions we asked

Interviewees were asked to reflect, based on their experiences as senior municipal or provincial officials, or as political representatives, on the effectiveness of the legal and policy framework with respect to sanctions for proven corruption. Many of their responses with respect to disciplinary and criminal sanctions are captured in chapters 4, 5 and 7. This

chapter focuses on the responses related to the recovery of municipal assets following investigations into allegations of fraud and corruption.

6.3 Recovery of stolen assets and funds

Most of the interviewees agreed that recovery of damages, stolen assets and stolen funds is key and that measures need to be instituted to ensure that recovery takes place. In stressing the importance of recovery, one municipal manager emphasised actual recovery of assets coupled with removal of the individuals engaging in corrupt activities:

“...if somebody steals then the sheriff must come into play. So assets must be taken from that person. You may not recoup or get the money back, but you can get assets from that person. So we must do whatever [it takes] - so if that person owns a home, then that house, house content, vehicle, whatever, you must actually bring all those role players into play.”

“There are two things – I want the corrupt one out, I don’t want corrupt people working for me and number two, I want my money back.

6.4 Experiences with recovering assets or funds

Whilst the interviewees agreed on the principle, there was a lack of enthusiasm when it comes to actually recovering assets or funds:

“The recovery of money, it is great in principle but I don’t know to what degree it is being achieved. It is not easy to do.”

6.4.1 The process is cumbersome and lengthy

Most interviewees had little or no positive experiences with the recovery of damages incurred as a result of corruption. Some attributed this to how difficult it is to follow through on the process:

“It is not that easy. On the corruption side, you need to take it through the courts and obtain an order of the court to attach their property to make up for the losses. That in itself is not easy.”

6.4.2 Time lapse

Another challenge that was highlighted was that too much time may have lapsed between the time when the corruption was discovered or a conviction was made and the time when the process for recovery was instituted. Oftentimes the accused leaves the municipality or

gets rid of the asset/s or uses the funds received from the corrupt act. This makes the process of recovery even more difficult as one interviewee explained:

“By the time most of these things are discovered people have moved on and are in other places. Greater tracking of where officials are might be useful.”

6.4.3 Who pays for the investigation and who receives recovered funds and assets?

The end result of the recovery depends on whether the recovery is made by the municipality itself, or by the SIU or the Asset Forfeiture Unit. When the SIU or Asset Forfeiture Unit recover assets, municipalities do not necessarily receive the assets or funds lost as a result of corrupt activities. The recovered assets go to the state, not to the municipality as stated by one interviewee:

“I know of cases where certain assets were forfeited to the state, not to the municipality. You conceivably can have a system where the assets are forfeited to the municipality but it is the State v X not the municipality v X...the chances of recovery [for the municipality] are slim.”

Another issue that was raised was the cost for municipalities of an SIU investigation:

“Another issue is the price tag that comes with the SIU and the burden that suddenly gets shifted. The President decides what investigations happen, but that price tag ultimately moves down to wherever they investigate. So, if the SIU starts investigating municipalities left, right and center - and SIU investigations are not cheap, because they are not worried about keeping the investigation cost down to a minimum because they're not the ones carrying the price tags. The municipalities that are being investigated are ultimately the ones that can't even afford it.”

6.4.4 What is there to gain?

The low success rate in recovering municipal assets or damages, or in passing and implementing sanctions made quite a few respondents question what there really is to gain. Many of the responses from the interviews seem to suggest that there is nothing to gain as the process takes long, the assets get depleted during the investigation process and oftentimes the parties found guilty of corruption do not have enough assets or any assets worth recovering as two municipal managers remarked:

“The challenge is that people steal or involve themselves in activities that exceed their pension funds or property. You'll also find that people have very little assets. Because the investigation also takes so long, in the meantime they get rid of the assets.”

“I’ve also made a decision in the past to say it’s just not worth our while going after assets, just looking at the money you’re going to have to spend and the ability of the person that you’re going after. Because what I’ve also found, and I have limited experience of this, is that the people you’re going after often don’t make the big bucks. So people that are in the municipality that are corrupt they are corrupt for very little reward actually. The rewards are made in some other spaces. So they often don’t even have assets that you can go after. So I’ve made a decision or two about saying that it’s not worth our while to go after anything.”

6.4.5 Success stories

Although most interviewees had little or no positive experiences, there were some who had recorded success with the recovery of assets or funds. One municipal manager relayed the following story:

“We recovered about just under a million. But that was more a contractual issue. They had a system where a part of the tender amount went into this public benefit account, which was kept separate and they could buy certain things there. It was literally a clever way to circumvent supply chain. So when we discovered that, we did our investigation. It was very difficult to pinpoint exactly how much money they still needed to give us, because some of the records weren’t there anymore. And some of the assets that needed to come over to us were bought through the public safety (benefit) account. We were able to get about (from the money that we could prove) just under a million.”

During the interviews it also became clear that the chances of recovering assets or damages from service providers were much higher than the chances of recovery from staff or councillors. Another senior manager explained that the recovery was made part of the debt collection system.

“There was an acknowledgement of debt by the service provider who is paying it off. What we normally do, we raise the debtor and we put it in our debt collection system. It would then go to the debt collection unit.”

In another experience, the municipality sought assistance from the Hawks to finalise the case, thus highlighting some of the limited powers municipalities have when it comes to collating evidence needed to follow through on the recovery of ill-gotten funds:

“It was worth it. It was a lot and what was frustrating about that was it was one of the cases which we eventually gave to the Hawks because it’s very difficult to seize documents at companies etc. That’s what we needed the Hawks for. So we could only operate with the information that we had and that we could scrape together

through our own processes. And eventually through those processes we got some money back but that initial investigation we appointed someone, a forensic firm, but most of the stuff we had to do ourselves.”

One respondent suggested that municipalities could be more deliberate about pursuing the recovery of stolen assets and funds and that one way of achieving this would be to make it part of a municipality’s performance management system:

“So that should be indicators that you measure, the percentage of corrupt activities, funds recouped or whatever, that should be measured. So how much did we lose and what did we do about that?”

7 COUNCILLORS

7.1 Recalling the legal framework

As discussed in Phase 1 of the Report, councillors are mainly regulated by the Code of Conduct for Councillors as set out in Schedule 1 of the Systems Act. However, there may also be instances where the conduct of a councillor may give rise to liability under the MFMA. The objectives of the Code of Conduct for Councillors is two-fold, operating as both a mechanism that is aimed at preventing corruption, and as a sanctioning mechanism to act on corruption. Sections 117 and 173 of the MFMA further define the instances where the conduct of a councillor will amount to financial misconduct under the MFMA.

7.2 The questions we asked

Interviewees were asked to reflect on their experiences as councillors and senior managers with respect to issues such as how corruption as councillor misconduct manifests, whether and how councillors exert influence over administrative decisions, the effectiveness of the Code of Conduct for Councillors and specific elements such as the declaration of interests.

7.3 Manifestations of corruption as councillor misconduct

7.3.1 Perceptions of councillor involvement

When asked about the role of councillors in corruption, the responses were mixed. Some interviewees suggested that corruption is not very prevalent among councillors, because they operate at an arms' length of the administration. As an interviewee with many years of experience in enforcing the Code of Conduct for Councillors, remarked:

“I've never had to deal with corruption. I've had to deal with violations of the Code of Conduct.”

“Councillors are barred from engaging in tender processes in the MFMA so they cannot engage in tender-fraud.”

Some of the interviewees suggested that councillors can only be corrupt when they are directly involved in taking administrative decisions. However, most of the interviewees explained that councillors can be involved in corruption even if they cannot themselves take administrative decisions:

“Councillors have a big influence on who is appointed as municipal manager. The municipal manager has a large influence and is the accounting authority and is the

final decision-maker on most of your decisions in relation to tenders. In terms of appointments [the accounting officer] would also be on the panel in relation to most of the senior positions... There are instructions given to the MM and to senior managers to do certain stuff, to appoint a specific person, to award a certain contract to so-and-so. There are a lot of those allegations that do come through... Yes, they aren't meant to play any role in procurement and appointment of staff but just look at who is the ultimate person responsible for disciplinaries: It is again the MM. Where there are allegations against councillors, there are often associative allegations against the MM or certain senior managers.”

Even though the municipal manager is not supposed to be the final decision maker in relation to (regular) tenders, this is illustrative in many respects.

A distinction can be made between direct and indirect councillor involvement with corruption. Direct involvement means that the councillors him- or herself is directly involved in a corrupt transaction. Indirect involvement is the more subtle exertion of influence behind the scenes to get officials in the administration to bend the rules to make the corrupt transaction happen.

7.3.2 Direct involvement

It would seem that the opportunities for councillors to involve themselves directly in corruption are limited. A number of interviewees mentioned fraud with travel claims as examples of this:

“This councillor said that she is going to attend a meeting and she draws a travel allowance from the municipality. But on the N1, close to Paarl she drove past the CFO who saw that she was not the driver but the passenger in the vehicle.”

“Another councillor was tried for drawing a traveling allowance while it was later found that he never attended the meeting. So traveling allowance [fraud] is a big thing.”

Other examples of direct involvement in corruption related to councillors abusing weaknesses in the municipal administration for political ends. One example related to the so-called mayor's fund:

“Certain mayors have a mayor's fund in the municipality. That fund is used to do certain projects in the municipality and there are allegations that due process is not followed in relation to a lot of those. Certain wards are suddenly receiving all of the benefits of that fund, especially when there is a king-maker scenario in a municipality and the Mayor is the kingmaker. Suddenly all of the funds and all of the projects would happen in one ward, which then secures his base for the next election.”

When regulation catches up and loopholes are closed, it doesn't stop the nefarious intentions from being realised and council funds are used for political ends:

"...when the discretionary fund for mayors was cancelled, they started with a festival and sports event budget. Many councillors are involved in sport. Membership of sport councils buys votes 'because I generate the youth', 'I consolidate people around me for sporting events'. So the event budget is used to buy t-shirts and soccer kits, go on trips. So it's a festival budget but the reward is 'I vote for you'."

Some interviewees explained how they've come across councillors demanding rewards for having used their influence to have people appointed in EPWP projects:

"...there are councillors who would tell an EPWP worker or another worker: 'I bought the dress at such and such a shop and to go pay for it'. Or a call will come from a politician to say: 'please replace the tires on that and that car'. That's corruption."

7.3.3 Indirect involvement

Attempts to influence procurement and staff appointments were mentioned as the main areas where councillors are indirectly involved in corruption. This is illustrated with the quotes below from senior managers and councillors:

"Staff appointments and procurement specifically stand out. My experience is that, behind the scenes, councillors exert pressure to achieve a particular outcome."

"There are a number of allegations relating to councillors appointing family members to positions in municipalities. There is also allegations that certain service providers were given preference, in favour of others and there were kickbacks made in relation to that."

"The PA (personal assistant) of the deputy mayor came to me and told me that this particular company can offer X and that it is something that the deputy mayor is quite interested in getting involved in. So they try to influence and coerce you to do a particular thing. You always find councillors who come to you and tell you that 'they have referred a company to you but the company said that you do not want to speak to them'. I then say that we have processes. That is an unsolicited bid."

The councillors' ability to access information is sometimes also abused for personal gain:

"Linked to procurement is the trading of confidential information where councillors exert pressure on junior officials to share information for the ends that they'd like to achieve."

The example below illustrates that undue influence may come from elsewhere in the political party represented on the council:

“...a Member of Parliament came to the municipality that I was the Municipal Manager of, and sat in the Mayor’s office, called officials and gave them instructions on what to do and so on. When I spoke to this MP’s party and said ‘listen you can’t allow a MP to do this, he does not have the right to give instructions to my staff’ I was told: ‘He is the constituency head of his party, no problem’. But if he wants to give instructions to his Mayor, that’s the representative of the party, and that Mayor comes to me as the accounting officer and says ‘listen I want these things to be done’, no problem we can consider that. But you can’t have an MP giving instructions.”

7.3.4 Councillors’ indirect involvement is subtle and difficult to detect

A councillor’s indirect involvement in corruption is difficult to trace, perhaps more difficult than with respect to staff members. This is because the ‘rewards’ may not be monetary and, if they are, they may be settled far away from the gaze of those charged with ensuring clean governance. One interviewee explained it as follows:

“It is very difficult to determine that there is a politician involved. It only comes during the course of the investigation or after the beans have been spilt. That is when you find, for example, that the majority of councillors decide not to prosecute this person because somebody is being protected. Or when somebody says that the councillor told them [to commit the corrupt act], but it is normally not from the outset.”

Another interviewee expressed the same sentiment as follows:

“A lot of the mayors, they are quite clever. They don’t sign things. You will not see their hand in making an official appointment. But it is the hand behind the hand. That is what a lot of them get away with. The axe normally falls on the municipal manager because your MM does the appointments but the MM got an instruction. So, it is definitely happening. The problem is that we might not find the politicians’ direct involvement in it.”

At times, it is only as a result of further (police) investigations that involve bank accounts outside the municipality, that councillor corruption involving monetary rewards can be pinpointed and pursued further.

7.3.5 The cost of resisting political interference

Throughout the interviews, it became clear that the cost of resisting political interference is high. If an accounting officer stands up to politicians seeking to unduly influence him or her, and is not supported in this stance, it spells trouble:

“The municipality owned a piece of land located right on the beach. It was valued at the time for R60 million, in 2006. I was asked to sell that piece of property to a group of politically influential people for R380 000. I said ‘no man what you’re basically asking me is to take R59 million of X municipality people’s money and give it to this small group of politically influential people and I’m not prepared to do that’. Well after the election, my contract was not renewed. They had all different kinds of reasons but I know that it was connected to that – my refusal to make that move... So politicians exert influence in the ways that they handle things, I’ve had experience of it, I’ve seen it happen, they do it. I mean I’ve been approached by politicians before to participate in corrupt dealings, sometimes it’s covered in beautiful words you know...the moment that you resist things like that, then you’re not the most liked person and you probably will suffer to find a job.”

“The axe normally falls on the MM because the MM does the appointments. But the MM got an instruction. If the MM does not follow the instruction then the MM will be dealt with. The MM is then caught between a rock and a hard place. If you want to have tenure as a municipal manager then sometimes you need to play ball, and the minute you don’t play ball it is very easy to find something on an MM.”

“You know that MP [see above para 7.3.3] vowed that I will never get a job again, not only in that municipality but in the province. Law and behold: my contract wasn’t renewed after the elections.”

“If councillors or the Mayor has it out for you, chances are that you are going to be suspended at some stage if you refuse to play ball.”

“There’s a sense of fear. There’s a lot of reprisals happening with the investigations now being conducted.”

7.3.6 The importance of clear delineation of responsibilities and political backing for clean governance

On the flipside of the coin, one interviewee indicated that councillor corruption points to weaknesses in the administration:

“If there is a municipality where you need to discipline a councillor for corruption; I need to look at my colleagues and ask them: ‘How is that possible?’ because a councillor is not supposed to be involved in any of our financial supply chain processes. They have an oversight role. So, if I or any of my colleagues allow it, then there is a bigger challenge in the administrative leadership.”

Two accounting officers shared the experience of working with a council and mayor that provided political backing for a clear distinction between politics and administration:

“In [my municipality] there is no interference whatsoever. [When I assumed office] I could immediately sense that there are clear roles and responsibilities and lanes for the political leadership vis-a-vis the administration. And they’re not getting into my lane and I’m not getting into their lane, and if we respect those lanes and the gap between the two, whilst there should be a very good working relationship, we must respect that.”

“The Mayor supports me very well with that, in a sense that whenever an issue crops up I will inform the mayor to say ‘listen keep your people in line before I charge them’. And it normally helps so I really don’t have issues around interference and the directors know as well where to draw the line in terms of their own portfolio councillors, what’s expected and what is not, or what is allowed and what is not. And if there is an issue that they bring to my attention, I will call the relevant portfolio councillor to tell him that this is not on and then it normally stops.”

7.4 Enforcement of the Code of Conduct

Interviewees were asked about the enforcement of the Code of Conduct for Councillors. There appears to be a general consensus that the Code of Conduct is often politicised. However, the interviewees also raised a number of issues that relate to the content of the Code and the manner in which the enforcement mechanisms are structured.

7.4.1 Enforcing the Code of Conduct against mayors and speakers

Some interviewees indicated that the enforcement mechanism is flawed in that the Code of Conduct does not set out what processes must be followed when the Mayor or the Speaker are implicated:

“There were cases where the mayor was implicated in certain wrongdoings. The Speaker would be required to act [against the Mayor]... Those that are supposed to take action and implement the recommendations are those that are implicated in the investigations. That is why I think the Code does not make it quite clear what happens in instances like that. It’s clear where the MM is implicated, the council will take action.

But what happens when a Mayor or the Speaker is implicated? In my view, often it becomes a political consideration to decide how the matter should be dealt with.”

“If you are the Mayor and there [are] allegations of corruption against you - you are the political head of the municipality and of your councillors. So, now you’re asking those same councillors to investigate their political head. Obviously, there will be bias here...”

Some interviewees pointed out the role of the speaker and bemoaned the power of the speaker to set the agenda. This power is sometimes abused as a political manoeuvring tool against opposition members of the council or to protect certain individuals:

“The agenda is determined by the speaker. If the speaker decides he’s not placing that on the agenda, you will not get it...The speaker can use the power to set the agenda as a political manoeuvring tool to get to the opposition guys or the coalition guys or anyone he or she doesn’t like and it will also be used for protectionism.”

7.4.2 Councillors’ declaration of interest

In Phase 1 of the report it was established that the declaration of interests by councillors is an important mechanism to enhance transparency and to enable the early prevention of corruption. The interviewees were asked about the declaration of interests by councillors.

7.4.2.1 General compliance

Generally, interviewees reported that councillors declared their interests. However, we were told of instances where no declarations were made:

“I’ve also picked up instances where there were simply no declarations made and the defense was that they did not know about the requirement. At the time when it is picked up by the audit system, it is way too late.”

In most municipalities, the declaration of interest is used by the supply chain units to verify whether there are any conflicting interests in pending procurement decisions:

“That document is used by the officials who deal with tender processes to check for any conflict of interests. So, it serves as a detection mechanism in this regard.”

“...we use it for procurement use in terms of the database that we roll stuff through.”

However, it seems that sometimes, the declaration of interests is mistakenly interpreted as a ‘get out of jail card’ or a license to stay involved in decision making:

“...I think the issue of dealing with the declaration of interests of officials and councillors is problematic. I know of many, many municipalities where the Speaker will just say: ‘Well, the councillor declared his interest and therefore he can continue’- with a direct vested interest in the process.”

No single interviewee doubted the principle behind this provision but it was pointed out that, for some councillors, it prompted them to resign:

"This councillor owns a Pty Limited, he became a councillor and therefore could not trade with the state. He's the only provider of the service in [name of the town] and surrounds. But when he became a councillor, he had to obviously declare his interest and therefore ...no parts could be bought. The impact on his business turnover in the first year was over 2 million Rand, so eventually he resigned because he couldn't contain his business, he just contracted with the state.”

7.4.2.2 Do councillors have to declare directorships of NGOs?

With regard to the application of this principle, there appears to be uncertainty as to whether the prohibition applies to directorship of NGOS.

“...there are ample examples of councillors who are directors of NGOs and suddenly it’s okay if that NGO contracts with the state. Surely that can never be. Often an NGO will use a political name in order to give credence to the objectives of that NGO. So that matter is something that needs to be fleshed out. DLG will have to be very vocal in the legal interpretation of that.”

7.4.2.3 Declarations delayed, vague or incomplete

Some interviewees reported problems such as the delay in declarations or the information being clearly inadequate.

“There are often delays with the reporting and declaration of interest... Because it is not reported in a timely manner, it opens up the system [to corruption], particularly when it comes to procurement.”

“...the information is often incomplete or completed in such a manner that it is not clear what the interest is. So, there is often a back and forth between the office of the MM and councillors to comply.”

7.4.2.4 Is the information correct?

There appears to be little that municipal managers can do to verify that what has been submitted is in fact true and/or complete. Municipalities are then again reliant on whistle-blowers to inform the municipality of any other interests that are held by a councillor:

“We take what they give us at face value. So, there is no further investigation to determine ‘are these the only interests that they do have’? We rely on them to give us all the information. Nowhere are we compelled to check whether the information was correct.”

“Councillors will disclose what they want to disclose.”

“Even if it happens [they declare their interests], so what? They don’t declare the stuff [interests] that they are supposed to declare. It is only when you investigate and the cops show you that it [the proceeds] went to that account. All you can say then is: ‘But he never declared the account!’.”

“It is not as if the municipality has the capacity like the National Treasury or SARS. You can’t give your ID number and all of the trust accounts linked to the ID number are given back to you. So, the only time it will come out is when there is a whistle-blower or an investigation.”

7.4.2.5 Should councillors’ interest be made public?

As set out in Phase 1 of the report (see para 3.3.1 of the Phase 1 report), the Systems Act provides the council with the discretion to decide which of the declarations of interests should be made public. It appeared that this provision was not well-known. Not a single municipality in the sample ever decided to make any of its councillors’ interests public.

The responses of the interviewees to the suggestion to make (some) of the interests public, varied from an emphatic dismissal to a careful interest. For example, one interviewee stated that the interests of a councillor is privileged information that cannot be divulged to the public:

“None of it is made public. It is only for personal interest. It is managed in the office of the MM and the responsibility lies with the Speaker to ensure that councillors adhere to this [declare their interests]. But it is privileged information.”

“To be quite honest with you, I would not divulge such information and instead refer it to the council.”

Most interviewees indicated that, while their municipality will not publish the declarations of interests, they would make it available upon request:

“We don’t publish it. We make sure that they declare their interests every year. But it is not privileged information, so if a member of the public requests it, then we would give it.”

One interviewee indicated that if declarations ought to be public then there should be legislation to that effect:

“With POPI [Protection of Personal Information Act] coming into operation it’s really difficult to make private information available to anyone. It’s a stringent process in terms of getting that information, so I’m not too sure. I would suggest that if that is what they want to do, they must legislate that issue more directly because it’s not something that I will make available to anyone.”

7.4.3 Politicisation of the enforcement of the Code of Conduct

For some interviewees, the comparison between the fact that corruption involving councillors is a reality in some municipalities, and the lacklustre enforcement of the Code of Conduct in those municipalities, is enough to cast doubt on its utility:

“If they were acting in accordance with their Code of Conduct, we wouldn’t be having these issues. There has been no effective action taken by the municipality on very serious allegations with substantial evidence against people.”

“One must really go and look at the kind of cases that come before the council’s rules and ethics committees. You look at that and then you look at what the AG has picked up, you’ll find it is completely two different worlds. Because these are political decisions. You are not going to find justice there [in the enforcement of the Code of Conduct].”

7.4.3.1 Judge and jury

The application of the Code of Conduct is, in the first instance, done by the Council itself. For some interviewees, this already presents a difficulty:

“You can’t be a judge and jury. Specifically, when it is the ruling party, then it tends to be downplayed. [They] will accept an apology or pay a fine. It is a downplayed version of what should happen to that person. But that is because you are investigating yourself.”

“We’re asking politicians to use this thing to deal with politicians and it can only have one outcome.”

“To be honest it’s a toothless system. Remember at the end of the day it is still controlled by the councillors. Seriously it’s a toothless system and it’s really about whether there is a political will to deal with a specific councillor.”

Accounting officers made it clear that, in the end, their role is to advise the council.

“It is political. I could advise on the process but in the end, it is their judgment. In general, it is normally heavily stacked in favour of the governing party.”

The consequence is that recommendations resulting from investigations that implicate councillors are often not enforced, and the enforcement of those recommendations appears to be dependent on the political affiliation of the implicated individual.

7.4.3.2 Weaponisation of the Code of Conduct

Aside from the perception of enforcement being lacklustre at best, some interviewees indicated that the Code is actually being weaponised and used in political conflicts:

“My experience is that it’s used as a weapon. When it’s politically expedient to take it out, then it’s taken out but when it’s not, then we forget about it. So it depends on who is in control in the municipality and often also depends on whether there is alignment with whose in control at the provincial level because I see a lot of weaponising of the Code of Conduct. Like I said, it only gets pulled out when there’s political expediency surrounding it. So I don’t think it is a strong enough weapon because there’s no independent application of it.”

8 ROLE OF THE PROVINCIAL GOVERNMENT

8.1 Recalling the legal framework

The provincial government has various instruments at its disposal to supervise municipalities and the use of these instruments may bring allegations of corruption to light. For instance, section 105 of the Act empowers the provincial Minister, responsible for local government to establish mechanisms, processes and procedures to monitor municipalities when carrying out their obligations, assess their capacity and determine the level of support required by municipalities to effectively deliver on their obligations. The Western Cape Monitoring and Supporting Local Government Act allows municipalities to request the assistance of the provincial government when carrying out their general functions or to deal with a specific matter (s 3(1)). Thus a municipality can refer specific matters such as corruption, fraud and maladministration in the municipality to the provincial government for assistance. The Minister may also investigate maladministration, fraud and corruption in a municipality in terms of section 106 (1) of the Municipal Systems Act. The Western Cape Monitoring and Support of Municipalities Act gives further effect to section 106 of the Municipal Systems Act. The provincial Act guides the Minister on what factors to consider before and after invoking section 106.

Provincial oversight is also required in matters to do with councillor misconduct. While the municipal council decides on sanctions in terms of the Code of Conduct, any decision to suspend or dismiss a councillor is subject to the Minister's approval. If the council, through the speaker, unreasonably decides not to institute an investigation into any alleged breach of the Code of Conduct, the MEC may appoint a person or team to investigate the allegations and make appropriate recommendations (see s 14(4) of the Code of Conduct for Councillors). Like the council, the investigator or the team appointed by the MEC may recommend that the relevant councillor be given a form warning, reprimanded, fined or removed from office. Last, section 139(1)(a) of the Constitution empowers the MEC for local government to issue a directive to a municipality which cannot or does not fulfil an executive obligation as defined by the Constitution or legislation. The MEC may use these intervention powers to instruct a municipality to investigate any allegations or cases of corruption, fraud and maladministration. Section 139(1)(b) and (c) provide for even stronger intervention powers.

8.2. The questions we asked

We sought to understand how the province's support, monitoring and oversight role is playing out in practice with regards to the efforts against corruption. Respondents were asked to reflect on how the province has undertaken its oversight role. Municipal

respondents were asked if they make use of the opportunity to request provincial assistance to deal with allegations of corruption and what has been the experience. Questions relating to the provincial government's experience with section 106 investigations were also asked. We also wanted to understand how the province has exercised oversight over the enforcement of the Code of Conduct for Councillors. Lastly, the province was asked to reflect on the utility of section 139 in the fight against corruption.

8.3 Provincial government playing a positive role

The provincial government performs a range of monitoring, support and intervention functions with respect to local government and an outline of this would go beyond the scope of this report. There are a number of programmes and initiatives as well as statutorily required functions with respect to corruption in local government. Giving an example of how the province has been providing support to municipalities, a respondent from the province stated:

“We currently support municipalities especially when we get requests pertaining to the disciplinary regulations in terms of the Municipal Systems Act, as well as the financial misconduct one under the MFMA.”

Another respondent from the province stated that:

“Since 2011, we've had a snap survey done in all our municipalities around the awareness and perception of corruption. Since then we've done training in municipalities, we've tried to assist them in terms of improving their awareness.”

Most interviewees from various municipalities were cautious about answering questions relating to the role of the province in fighting corruption in municipalities. There was a group of respondents who stated that the province provides support whenever requested to do so:

“[e]ven though the province's powers are limited in terms of taking things all the way, they have tried to empower municipalities.”

A number of respondents expressed very clear satisfaction with the level of support provided by the province. One councillor stated that:

“...I pick up the telephone and Mr Pause is there, I pick up the telephone and the Minister is there...and I really can say this to all the mayors: we can pick up the phone and Mr Pause and Mr Bredell are there. Let there be no doubt about that”.

Her views are collaborated by other respondents who were decidedly positive and were even calling for a greater role of the province.

“I must say, the Province seems to be quite proactive in the way they deal with these complaints and allegations. Although sometimes they need to give priority to more serious cases. But in our case, I would say the oversight and monitoring from the Province was spot on. They were able to deal with these allegations in council to the point where the municipality was placed under administration.”

8.4 Challenges with respect to the provincial role

On the other side of the coin, there were respondents who raised challenges with respect to the role played by the province in conducting oversight over municipal efforts to combat corruption.

8.4.1 Visibility and focus

For other respondents, the provincial support to municipalities’ anti-corruption efforts have not been visible enough or were focused on the wrong issues. For instance, an interviewee claimed:

“The province will tell you whether you’ve complied with whatever you need to comply with when it comes to the SDF and the IDP, but you don’t hear a corruption focus. I’ve not experienced anything where people say ‘let’s talk corruption’ and where people visit from province, dedicated officials visit as the anti-corruption team, go into municipalities, have sessions, campaigns, latest technology, latest tendencies, whatever it is and say we’ve done studies, we’ve done research and even utilise universities. So there is no focus on this in the province”.

“It’s just not assisting at all. You’re literally on your own.”

Another interviewee expressed a similar sentiment and surmised that the province is preoccupied with municipalities that face serious trouble. In the words of this accounting officer:

“They only go for the big cases.”

8.4.2 Timing

For some respondents, the province does not act swiftly enough. They called for a more assertive province that uses its intervention powers more, and earlier:

“The experience is that they do not act swiftly. What you find is that the municipality is left until it is, or it is almost bankrupt. Then there is only intervention from the Province. I think they need to intervene sooner. On the political side, if you know that

the political head is the one that is causing problems and is interfering with the administration - that person must be taken out [by the MEC]. [The Province] must be much more assertive in handling the shenanigans of politicians in municipalities”.

On the other side of the coin, provincial respondents emphasised that, while section 139 of the Constitution provides for far reaching intervention powers, the jurisdictional requirements associated with this provision make it difficult for the province to act swiftly. Commenting on the utility of section 139 of the Constitution, one of the provincial respondents had this to say:

“The thresholds [associated with 139] ...are not easy to meet. Often the provincial government must first allow municipalities to take action and to show that they’re failing to take that action. It delays the processes to be honest. If the municipal official and the councillors start playing political games in relation to this, it can delay that action and even the potential for a section 139 intervention, by taking various actions or whitewashing a disciplinary process - because then they’ve actually taken action in relation to the report. You could potentially delay any effective action by years if that does happen.”

8.4.3 Municipalities sometimes abuse their autonomy

The protection afforded to municipalities against undue provincial interference can be abused when municipalities ‘hide’ behind these protections, or even manipulate it to thwart investigations. One of the provincial respondents stated that:

“If you look at the Western Cape Act and the Systems Act, and the hurdles that should be met before you can actually do an investigation: when you receive an allegation, you must first request a response from the municipality. Of course, the moment you do that the municipality has an advanced warning of what you are looking for which is itself an issue. The people who are implicated are the people to whom you are sending the correspondence, you are telling an implicated person that you will come look at their files. It does allow for someone to potentially manipulate files or for files to get destroyed. In other provinces, there has suddenly been fires in the records office following communications that the province will come to assess an allegation.”

As a way forward, there is a proposal to amend the Western Cape Monitoring and Supporting Local Government Act to address some of the deficiencies.

8.4.4 Considering municipal needs

A number of respondents commented that the support of the provincial government is not always practical and that it takes insufficient account of the needs of municipalities. One respondent remarked:

“When I approached the Provincial Treasury to assist with the Disciplinary Board, I got a repetition of what the Act says. I tell them: I want implementation; how can they assist me with that? It is so cumbersome. We didn’t get a lot of assistance.”

A similar view is that, too often, the province does not always consult municipalities before taking decisions that affect them. A respondent argued that:

“At the end of the day, municipalities have a constitutional mandate, and often you have a province that wants to tell you ‘do certain things’, without understanding your environment fully. Without understanding your nuances that we deal with on a daily basis, they sometimes push the envelope and tick a box, which is highly frustrating to most municipalities.”

The lack of effective consultation often discourages effective implementation of the province’s decisions:

“Many times they come up with all these wonderful things, on which we haven’t really been consulted or that actually don’t take our realities on the ground into account. So I mean most of the time it is a case of: ‘there goes province again, we’ll just ignore it’ because they don’t ask. Why don’t they just ask first?”

The views were refuted by provincial respondents, one of whom had this to say:

“There are enough forums for them to raise these things. With a lot of the municipalities, we meet almost on a monthly basis. If they feel that not enough is done then there are structures that they can use to draw attention to their plight. We can only act if we hear about things. If we don’t get approached for assistance, we can’t assist. What we’ve always done is to open the lines of communication; if they ask, we go in.”

8.4.5 Adding to the regulatory/monitoring burden

Some of the respondents explained that the provincial government’s involvement in municipal corruption allegations detracts the municipality from its efforts to deal with the allegations in terms of its own internal processes. As one senior manager explained:

“I’m in the process of writing a letter to the MEC to say ‘you know what, you’re actually not helping us because we’ve got to spend so much of our time responding to letters that you write to us’ because now in terms of the Western Cape legislation, if they get an allegation they write to us. We cannot just treat it lightly or just write a letter back to say ‘no it didn’t happen’. I’ve got to investigate. So now I have to use the resources of the municipality to make sure that we can answer the MEC properly.”

The requests for information also come from other institutions as articulated by the municipal manager below:

“Whilst we’re busy with the MEC’s letter we find the Public Protector coming in and saying we’ve received complaints about the same thing, so we tell the Public Protector we’re busy with the MEC. The Public Protector says ‘no we’ve got our own legislation, we’ve got to report so please can you respond to us’. Now we’ve got to respond to the Public Protector. We have to write reports to the MEC for finance, to the CoGTA committee on local government or cooperative government, the parliamentary committee on CoGTA for instance, the [South African] Human Rights Commission.”

8.4.6 Maintaining neutrality

There were also interviewees who said that the province’s role is not always without bias. In the words of one respondent:

“The provincial government is not always a neutral party”.

One of the respondents asserted that the Western Cape Monitoring and Supporting Local Government Act is selectively applied for political reasons:

“I think the intentions of the Act were probably pure and good, but I think the Act is being used for political reasons, that’s my perception. It’s being used to fight political battles and it is being pulled out when it’s convenient and forgotten when it’s not convenient.”

Province respondents acknowledged that this perception exists and indicated this sometimes affects how some municipalities respond to its oversight efforts on financial misconduct allegations. A respondent from the province stated:

“We get varying amounts of cooperation from certain municipalities. Some municipalities are very happy for us to do our assessments from a provincial side and to come in as independents. They like us to do an assessment so that they have something to take back and say ‘someone else [provincial government] has assessed

this and there is no substance to those allegations'. Then you have other municipalities where any correspondence we send to request information or documentation will be met with responses like 'why are you interfering with our municipality?' Often, they don't even look at the legislation that obliges the Minister to do his oversight function and monitoring and support. This makes our jobs more difficult because a lot more time is spent on sending correspondence back and forth to try and get documentation so that we could actually do our job."

8.5 Section 106 investigations

When discussing the nature and utility of provincial investigations under section 106 of the Municipal Systems Act, the respondents identified a number of trends and challenges.

8.5.1 Implementation again depends on the municipality

Provincial respondents were at pains to explain that the section 106 investigation does not automatically lead to action being taken. Ultimately, the investigation is aimed at enabling the municipality to take the necessary action and even conduct its own assessment:

"The 106-investigation should ultimately lead to the municipality being able to take action appropriately against implicated persons. The problem is the moment we hand over the 106-report to them, we are then reliant on the municipality to do their functions properly. If the municipality wants to stall the process, they can. Ultimately, the municipality must also do their own assessment, they can't just rely on our 106-report."

If the report contains findings against officials, the council is responsible for taking action against senior managers and the MM is responsible for taking action against other officials. However, when the implications extend to the entire top political and administrative structure of the municipality, there will be reluctance to implement the recommendations. Furthermore, the report may be abused for political ends. Both dimensions come to the fore in the scenario below:

"There were three section 106 reports issued to a municipality where a number of senior officials and councillors were implicated. Political games happen in terms of taking action on those reports. Just having those reports tabled before council is an issue sometimes. You have political parties that try to score points off the fact that someone is implicated in the report. Certain political parties are potentially using those reports and actually 'like' having that cloud hanging over a municipality. Instead of taking action and taking action appropriately as councillors, which they are obliged to do".

When this happens, there is no easy recourse for the provincial government as the next steps would be a section 139 intervention (see para 8.1) and/or the criminal justice system.

8.5.2 The relationship between section 106 reports and the criminal justice system

The province has over the years undertaken several section 106 investigations and produced reports which were handed to law enforcement agencies. These reports should, in the words of a provincial respondent “greatly assist and ...speed up the process” of pursuing corrupt culprits criminally:

“With the section 106 report, the Hawks and the NPA would have access to all the information collected from that investigation: all the documentation, statements made by various witnesses, statements by various implicated persons, neatly packaged and it would even set out the offences that were committed.”

However, the provincial respondents expressed frustration with these reports not having been acted upon.

“Nobody implicated in these reports has appeared in court, let alone been convicted.”

The provincial government has some liaison with law enforcement agencies. As one interviewee noted:

“The Minister has meetings with the NPA or with the Department of Justice in speeding up and seeking progress on investigations which have been reported to them.

However, progress on criminal investigations remain slow and the interaction between the provincial government and the law enforcement agencies unsatisfactory:

“We’ve asked for feedback or progress on matters, we are given dates by which certain things will happen and then there is no adherence to any of those dates. There is no real oversight and there is nothing that the Minister could do in relation to those.”

The provincial government even offered assistance to the NPA. However, the NPA is reluctant to accept help because it must protect its independence:

“We offered assistance appointing counsel to assist in reviewing matters, draft charge sheets etc, to assist when there are capacity constraints from the NPA’s side - it was refused. It’s probably because they don’t want anyone else involved in their processes to avoid allegations of undue influence or pressure. Which is valid.”

8.6 Provincial role in enforcement of the Code of Conduct for Councillors

By its very nature, the provincial role in the enforcement of the Code attracts controversy. As one provincial respondent remarked:

“It is a political environment, obviously there will be this political smell on everything.”

The interviewees raised a number of aspects of the provincial role. Firstly, it is important to emphasise that the provincial role is secondary. Investigations and sanctioning are done, in the first instance, by municipalities themselves. As a provincial respondent remarked:

“We come in at the last point. What happens before that, we have no control over.”

This means that, in principle, the provincial government only acts on matters referred to it, by a municipality. Furthermore, the provincial government has to balance its reliance on the results of the internal investigation with its own mandate to investigate for the purposes of its own decision. The provincial respondents explained that it is difficult to walk this tightrope. However, the lackluster and/or often politicised approach at municipal level increasingly causes gaps in the enforcement (see para 7.4.3 above). This is prompting the province to become more ‘proactive’ and not limit its involvement to matters referred to it by municipalities. The law provides for the Minister to initiate an investigation into violations of the Code of Conduct for Councillors, when the municipality fails to. As one provincial respondent remarked:

“We are seeing more now that we need to utilise the provisions of Item 14(4) of the Code where councils are not taking any action against councillors because of politics. We need to start exercising that provision.”

However, some municipal respondents were concerned about the provincial role in enforcing the Code of Conduct. One respondent argued that -

“The enforcement of the Code of Conduct depends on who is in control in the municipality and often also depends on whether there is alignment with whose in control at the provincial level because I see a lot of weaponising of the Code of Conduct.”

The provincial respondents insisted that the provincial government treats cases without fear or favour and utilises the checks and balances in the Code to ensure an objective approach. One of the provincial respondents argued that:

“We try as far as possible to be led by the evidence that the municipality provides to us. We assess the matter not based on your political party or your political allegiance;

we will look at what is your offence and what is the sanction coming from the municipality for your offence. A lot of times, we've gone so far as to disagree either with the sanction or the offence or even both in some instances."

"The checks and balances are there. The checks and balances allow for us to correct the political stuff."

8.7 Perspectives on the provincial role going forward

When asked about their perspectives on a future role for the province, the interviewees were almost unequivocal in their call for more provincial support in combating corruption. For instance, a municipal manager stated:

"Help us, so that we can focus on the core stuff which is service delivery."

While calling for greater support, municipal respondents were, unsurprisingly, not in favour of seeing that translated into giving the province greater powers. One interviewee stated:

"I'm very reluctant to give them more power over LG."

8.7.1 Increasing capacity to investigate corruption

The respondents noted the trend that the province is expanding its investigative capacity and activity. The provincial respondents confirmed this and explained that it is in response to a larger number of allegations:

"How can the Province assist with regard to investigations? I think you push to the limit. Because of the amount of allegations and investigations that are coming in, the Province is putting their money where their mouth is in terms of increasing the scope and capacity."

Some respondents argued that the provincial government should ensure more dedicated capacity to investigate municipal financial misconduct and that this should not be subsumed under the general provincial capacity to conduct forensic investigations. In other words, this would amount to specialised capacity closer to the Department of Local Government. For example, one respondent argued that -

"...forensic investigation capacity should be with the DLG because this is about local government. The provincial government has 16 departments that they have to look at and I think there is some role clarification needed."

Another interviewee expressed concern with the prospect of greater provincial investigative capacity:

“I am a bit concerned that it’s sitting at the provincial level and they want to use it as a tool to whip whoever they want to whip into line. So that is a bit of a concern to me.”

Given the fact that investigations are very costly and good capacity is hard to come by (see para 4.7), the prospect of provincial (financial) support for investigations conducted at municipal level received greater acclaim:

“If there’s one area where the province can help, it is with finance. Investigations are costly. If the province could finance the investigations that would be excellent.”

According to some interviewees, the increase in investigative capacity and activity at provincial level (see para XX above) is a response to the failures in the criminal justice system (see above paras 5.3 to 5.8 and 8.5.2). As one respondent remarked:

“Because the criminal justice system is not responsive, we put pressure on the forensic investigation capacity of the provincial government. We create concurrent systems, because although the [section] 106 [investigation] is running, at some point it has to go back to the criminal justice system to get into the court system.”

Given that the purpose of a section 106 investigation is not to prepare for criminal prosecution, this trend, if it were correct, would point at a conflation of roles or ‘mission drift’ for the provincial government.

8.7.2 Coordinating investigative and oversight mandates

The duplication of oversight mandates (referred to in para 8.4.5) is on the provincial government’s radar. Provincial interviewees acknowledged this and indicated that the ideal solution would be to secure cooperative agreements with other institutions that exercise forms of oversight:

“One of the issues we’ve highlighted is the duplication in mandates. We would like to have agreements with certain organs of state or Chapter 9 institutions where, if someone is sufficiently dealing with an allegation that the process can proceed through them and once they’ve completed their part of the investigation, to make it available to us. It is a waste of state resources when you have five different organisations assessing the same thing. That being said, we can’t just leave it to the police to investigate.”

8.7.3 Focus on supporting the first level of defense

There were a number of respondents who indicated that the province should focus its support more on the 'first level of defense', i.e. the internal preventative controls, instead of pursuing detection and investigation.

8.7.4 Greater consultation and needs assessment

Perhaps the most straightforward suggestion came from one municipal manager who brought the issue back to consultation and implored the provincial government to be more focused on responding to municipal needs:

“Why don't they ask: 'what help do you need, how can I assist you?' Let's start there: ask. There's a lot of help needed. But ask and then I will tell you what is the correct help – not necessarily the help they [the province] want to give. I think that's the problem.”

9 ROLE OF DISTRICT MUNICIPALITIES

9.1 Recalling the legal framework

In the first report's overview of the legislative, institutional and policy framework for combating corruption in municipalities in the Western Cape, the role of district municipalities in combating corruption was not covered. The legal framework doesn't set out a specific role for district municipalities in supporting local municipalities' efforts at combating corruption. However, the flexible nature of the interviews allowed the interviewees to take the lead in raising matters that were not initially covered in the first report. Interestingly, the role of district municipalities was sometimes brought up by the interviewees themselves, thus prompting further discussions on this topic.

9.2 The questions we asked

Interviewees were asked to reflect on the role that district municipalities could play in combating fraud and corruption in both district and local municipalities. In other words, is there a role for district municipalities (in addition to the efforts to combat corruption in their own municipality) to play a coordinating or supportive role with respect to local municipalities? For example, interviewees were asked to reflect on whether district municipalities' have the potential to facilitate combined investigative capacity that can be drawn upon by the local municipalities in the district.

9.3 Role of district municipalities?

When the interviewees were asked about district municipalities and about their role in combating corruption in local municipalities, one senior official of a district municipality expressed joy at the idea of district municipalities being involved in combating corruption:

“When I hear such things, it is like music to my ears.”

Most interviewees from local municipalities, however, were ambivalent. For some interviewees, it represented an opportunity to carve out a role for district municipalities, which they argue is currently lacking:

“I want to talk about the district municipalities. I'm not sure what the role of the districts is and if it's really adding value. But with the new focus now on districts, for whatever purpose or reason that is, I think it's crucial that when we talk about the joint district approach that one must ask the question 'how do we utilise the districts to deal with investigations?' Maybe shared services where each district should have a forensic investigator, at least a very strong anti-corruption team.”

“So I think the districts, as well as the provinces because remember that there is a direct link now between the districts and the provinces in terms of coordinating certain stuff. And I’m saying they should do that. Deal with the economy, deal with tourism, deal with all this stuff and help local municipalities so that we can focus on the core stuff – water and electricity, cut the grass, repair the potholes, service delivery per se.”

9.4 Better the district than the province?

The responses in paragraph 9.3 suggest that there may be a role for district municipalities in facilitating collaboration and coordination between local and district municipalities in the area of combating corruption. Some interviewees preferred district municipalities playing this role, rather than provinces, due to their proximity to local municipalities:

“I think the districts can assist a little bit, in that they’re closer to us to an extent.”

“I think districts are most probably better placed, if you ask me, than the province.”

9.5 The history of districts

Whilst the involvement of districts seemed to be favoured by some interviewees, one councillor made the point that the weaknesses of district municipalities could hamper any form of shared forensic services:

“The dilemma is that the districts have never been the strongest of the municipalities. Remember the history of the districts, we come from divisional councils and a focus on roads and the roads maintenance function, rather than being a leading wall-to-wall municipality. And so, you find that districts in many instances do not have the equivalent or better services or personnel and capacity than what B municipalities have and it's a territorial issue.”

9.6 Lack of clearly defined roles and responsibilities

The interviewees also remained cautious of the potential conflicts that might arise regarding roles and responsibilities or encroachment of local municipalities’ autonomy.

“Politics always play a role. You can just imagine if it’s the wrong political party [at district level], in the wrong area and what the influence of that would be. I think, to a large extent, as a municipality you don’t want to necessarily give your autonomy away just like that and become beholden to somebody else’s rule.”

“It is also about the ability of those at the Province or the district to actually do an investigation like that. They must work on the facts then reach an outcome. You can’t beforehand say “I want this outcome”. That might be the reason why there is a reluctance to share responsibilities. In order to get to the outcome, you need to work with the facts and it shouldn’t be politicised.”

“When you get to the implementation and then district municipalities start with turf contestation regarding roles and responsibilities.”

“With district municipalities, certainly there is a role that they could play but we still need to do some footwork regarding the perceptions.”

9.7 Building on the Joint District Approach

Most interviewees agreed that districts could play a role in facilitating combined forensic investigative capacity. Some interviewees suggested that this could be done through the Joint District Approach and the recent experience with district level coordination during covid-19 was mentioned as an encouraging example:

“The structures that have been created via the joint-district-model really showed resilience even during covid-19.”

“The Joint District Approach has the potential to create and to assist all the B municipalities with things like forensic investigations.”

In some cases, district municipalities had already started to play this role:

“A combined capacity to investigate matters would definitely assist greatly. On district level, there is already agreement between district and local municipalities on certain functions. So, there are those types of agreements in place already. I would make use of that.”

9.8 Finances as the key issue

The respondents, particularly those representing district municipalities, emphasised the importance of the funding model for districts and in particular the absence of revenue raising powers. They argued that this is key when charging district municipalities with any role of facilitating combined forensic investigation tasks:

“I think the model of district municipalities needs to be revisited in terms of the funding. That is the biggest drawback currently. It puts us at a disadvantage in terms of funding resources.”

10 RECOMMENDATIONS

What follows is a set of reflective recommendations, drawn from the desktop and field research. They are meant to inform policy engagement on how municipalities and the provincial government can further improve their efforts to combat corruption in the Western Cape.

10.1 Include a focus on land use management

Both the municipalities and the provincial government direct most of their anti-corruption efforts at procurement, staffing, asset management and a few other areas of municipal administration. This leaves the impression that land use management is not regarded as a municipal activity with a high risk for corruption.

This approach may overlook a critical area where indeed there is a high risk of corruption. Land and property values are high in the Western Cape. Moreover, the impact of the regulatory role played by municipalities on land and property values is immediate and drastic: with a single decision, the municipality increases land values multifold. This brings the risk of undue interference on that regulatory role. Some municipal respondents alluded to this and there was an acknowledgement that this has not yet been given the attention it deserves. Corruption in land use management manifests differently from corruption in procurement. For example, no audit or forensic investigation into transactions on the municipality's bank account will show the corruption, because the only financial transaction may be the payment of application fees (barring any development charges). It thus requires a different approach. It is recommended that municipalities and the provincial government include land management in their anti-corruption strategies and develop a strategy to prevent and address corruption in this sector.

10.2 Improving prevention

When it comes to anti-corruption efforts, it seems that a great deal of attention (and resources) of the provincial government goes to the detection and investigation of corruption. Of course, the provincial government is duty bound to exercise its various oversight and investigative powers in response to credible allegations of corruption. However, the prevention of fraud and corruption within municipalities also depends on investment in municipality-wide business processes and risk management, capable of *preventing* corruption, in other words: the phase even before internal detection. It is recommended that the provincial government considers paying greater attention to supporting the 'first level of defense', i.e. the internal systems in municipalities that detect anomalies before they pass for payment. These refer not only to the preventative controls but also to business engineering with a view to reducing the scope for corruption. As one

provincial interviewee stated: “Sometimes we go into an overkill situation...we are not simplifying things, we’re making it more complicated”.

10.3 Internal audit

In too many municipalities, the internal audit chain (i.e. internal audit unit, audit committee and MPAC) seems to not function optimally. Municipalities must ensure that internal audit units are not only capacitated but also operate at an arms’ length from the accounting officer. They must also ensure that audit committees are populated with individuals that have the skills and knowledge required to perform the audit function. Municipal councils must ensure that MPACs are established in terms of section 79 of the Municipal Structures Act and municipal managers must enable MPACs to perform their role. The provincial government should support the internal audit and risk chain of municipalities, focusing on (1) role clarity, (2) independence and (3) capacity.

10.4 Whistleblowers

Municipalities must promote the right kind of institutional environment for *bona fide* internal whistleblowers to alert the municipality of any wrongdoing. This requires having adequate systems in place such as the required anti-corruption policies, access to toll-free anonymous hotlines, but most importantly, the ‘setting of the tone at the top’ by the mayor and the municipal manager. Awareness surrounding the Protected Disclosures Act should be promoted.

The abuse of hotlines for ulterior motives is very real and can consume resources and energy, while sapping the momentum out of the effort that is needed to fight corruption. Municipalities have no choice but to be deliberate about actively discouraging the abuse of hotlines and whistleblowing for ulterior motives and finding ways to filter out vexatious claims. This will free up resources to pursue genuine allegations. The provincial government, with its considerable investigative momentum, must also be alert to the risk of being ‘used’ for political ends.

10.5 Disciplinary procedures

Municipalities must adopt *and practice* a zero-tolerance approach to fraud and corruption. As one municipal manager pointed out:

“People must actually see and feel that if you did something wrong, something will happen, and something will happen very quickly: there is a suspension in place, disciplinary action is enforced and things are actually happening. And when that is

well-communicated and we see people facing consequences and going to jail, that also assists in creating the right kind of culture.”

The implementation of disciplinary procedures with respect to staff and councillors is subject to a number of different, often overlapping and sometimes inconsistent national legal regimes. This does not aid municipalities in their efforts to pursue disciplinary procedures. The provincial government has no power to amend these various regulations but can still play an important role to minimise the negative effect of the cumbersome legal framework. A number of issues stand out:

- Accounting officers require practical advice on the running of disciplinary processes, particularly those applicable to senior managers.
- Accounting officers need assistance in dealing with the awkward overlap and inconsistency between CoGTA and National Treasury regulations with respect to disciplining senior managers.
- Guidance and a sector-wide understanding is needed on what constitutes a frivolous allegation which would not need to be investigated at great cost to the municipality and the individuals involved.
- Consideration should be given to advocating for a differentiated approach with regard to the time limit for laying disciplinary charges, with more time (than the standard 90 days) for very complicated and/or serious allegations.

10.6 Code of Conduct for Councillors

The provincial government has no powers to change the content of the Code of Conduct for Councillors. However, the “judge and jury” problem inherent to it, and the widespread complaint of the politicisation of its use by municipal councils casts doubts over its efficacy. The Province could use its role and participation in intergovernmental structures to highlight the difficulties with the Code and argue for a policy process to reconsider the way the enforcement of the Code works.

In the meantime, the provincial government should consider using its role as the convenor of various intergovernmental forums of local politicians to highlight the need to improve the way the Code is implemented at municipal level.

Furthermore, it should consider providing focused assistance to municipalities on the declaration of interests by councillors and officials. There seems to be a need for practical guidance to municipalities on how to manage these processes. In addition, greater clarity and coherence is needed on specific issues such as -

- whether directorship of NGOs falls within the remit of the declaration of financial interests in general; and

- which financial interests of councillors must be published by the municipality. Item 5A(3) of the Code requires the council to balance public interest with transparency and decide which interests are published. In practice, nothing is published. This means the Code is not adhered to. On the other hand, it is not practical to expect municipal councils to make these decisions without any guidance. This is where the provincial government should play a role.

A number of respondents intimated that politics plays a role in how the provincial government exercises its powers under the Code of Conduct. This perception, whether it is true or not, does not help the effort to combat corruption. The existence of allegations, rumours and perceptions of political favouritism may be inevitable when politicians have to sit in judgment over other politicians. However, the provincial government must take the mere fact of the perceptions seriously. It must act as a neutral arbiter when it deals with Code of Conduct matters, and also be seen to be acting as a neutral arbiter.

10.7 Provincial role in the criminal justice response

The pursuit of accountability for financial misconduct as a criminal offence, is sorely lacking in momentum and focus. There are very serious backlogs, delays and capacity constraints. However, the interviewees also expressed concerns around the prioritisation of investigative capacity by SAPS and the Hawks and even shared experiences of the abuse of such investigations for political ends. It does not fall within the scope of this research to verify this but the perception alone is troubling.

Interviewees have stressed, correctly so, that the provincial government does not have the power to change or influence the prioritisation of investigative capacity within law enforcement agencies. However, it is not correct that the provincial government has no constitutional mandate with respect to policing whatsoever. Section 206(2) of the Constitution provides that national policing policy may make provision for different policies in respect of different provinces after taking into account the policing needs and priorities of these provinces. Subsection (3) provides that the provincial government is entitled to monitor police conduct, oversee the effectiveness and efficiency of the police service, including receiving reports on the police service and to liaise with the Minister for Police with respect to crime and policing in the province. It is suggested that these provisions do empower the provincial government to critically engage the national government on critical failures to pursue criminal accountability for financial misconduct in local government.

Given the almost complete absence of any successful criminal prosecutions for financial misconduct in local government in the Western Cape, the provincial government should advocate strongly for greater capacity in SAPS and the Hawks.

The respondents expressed serious concerns about the lack of specialised expertise in local government law in both SAPS, the Hawks and the NPA. Investigations may point out suspicious actions and transactions. However, the problem is that a case of actual unlawfulness cannot be made without intimate knowledge, not just of the statutory local government law (MFMA etc.) but also the specificities (resolutions, policies, delegations etc) of the relevant municipality. There is a serious need for expertise in law enforcement and prosecution agencies that specialises in local government law.

It is recommended that the provincial government intensifies its efforts to work with the Provincial Director of Public Prosecutions and pursue a formalised relationship with, as part of that, a focus on the prosecution of financial misconduct in local government. One aspect of this relationship could be an agreement on whether the NPA could make more direct use of the results of municipal and provincial investigations. Another aspect could be addressing the need for capacity in the NPA on financial misconduct in local government that is specialised and decentralised. As one municipal manager suggested:

“It should be decentralised, so that you have a corpus of state advocates who understand the local government legislation... at least one per province.”

10.8 Coordination of multiple investigative inquiries

It seems counterproductive that municipalities are forced to respond to multiple oversight agencies at once concerning one specific incident or allegation. The research shows that it is not inconceivable that the Public Protector, South African Human Rights Commission, National Treasury, Western Cape Provincial Treasury, SAPS and the Western Cape Department of Local Government will all descend on a municipality, demanding answers, updates and information with regard to a matter that the municipality is still busy investigating. These institutions all work within their own distinct statutory frameworks and neither a municipality nor the provincial government can interfere with that. However, consideration should be given to the province playing a constructive role in coordinating investigative inquiries so as to avoid municipalities being pulled into different directions.

10.9 Investigative capacity

There was widespread agreement among the interviewees that municipalities often have to rely on external investigative capacity. This capacity is very costly and the right kind of capacity is hard to come by. It is often procured on an *ad hoc* basis by municipalities. Naturally, there were municipal interviewees who saw great prospect in the provincial government funding investigations:

“If there’s one area where the province can help, it is with finance. Investigations are costly. If the province could finance the investigations that would be excellent.”

However, the provincial government has been increasing its capacity and involvement in investigations but more as part of its oversight role, for example to support section 106 Investigations.

The provincial government should consider whether it can play a role in facilitating greater access for municipalities to good quality and independent investigative capacity. Are there mechanisms through which the provincial government can assist municipalities in accessing the right type of investigative capacity?

10.10 Recovery of funds and assets

Despite the assertive legal framework on this, the interviewees painted a bleak picture of the prospects of recovery of assets. The costs of embarking on recovery are very high and the process long and cumbersome. The successes were limited to municipalities themselves successfully extracting an acknowledgment of debt from outside service providers, and subsequently recovering funds. Recovering funds or assets from (former) staff members seems much more difficult and we did not encounter any success stories of court-mediated recovery. There were also questions about the cost of SIU investigations and the fact that recoveries do not necessarily flow back to municipal coffers. The limited scope of the study did not permit us to examine this in more detail. However, it would appear that there is scope for a greater interrogation as to why the framework for recovery of ill-gotten funds and assets produces so little, and what the province could do to support municipal efforts in this regard.

10.11 Provincial and district roles

Provincial oversight over, and support for, municipal anti-corruption efforts is quickly viewed with suspicion by municipalities. To some extent this may be inevitable, given the well-known tensions in the intergovernmental system. However, it inevitably diminishes the overall, combined effort to combat corruption. It is very important that the provincial government is alive to the ever-present possibility of its oversight being interpreted as a political maneuver.

There also seems to be a distinction between two types of municipalities. There are those municipalities that are in deep institutional trouble, where the need for provincial oversight and even intervention is patently clear. However, there are also municipalities that do not face deep institutional trouble but still have to regularly address allegations and improve their internal systems. It is those that seem to derive the least benefit from provincial support

and oversight. We encountered the perception that the provincial government focuses mostly on ‘the big cases’.

With the provincial government’s renewed emphasis on positioning district municipalities as the pivot for provincial-local relations, the Joint District Approach (JDA) may also open up possibilities for more ‘bottom-up’ coherence and collaboration with respect to anti-corruption efforts. While district-local tensions and turf battles are as old as the current local government system, there was still an acknowledgement amongst most interviewees that there is potential for district municipalities to play a greater role in coordinating anti-corruption efforts. Districts are seen as ‘closer’ to the local municipalities and are ultimately politically interconnected at the level of the council. The ideas varied from pooling resources to jointly procuring investigative capacity more efficiently, to utilising the JDA structures for knowledge sharing. It is recommended that the provincial government opens a discussion with municipalities on using the JDA in the fight against corruption.

10.12 Integrity and ethics in appointments

Without exception, the interviewees were at pains to emphasise that there are limits to what better laws, institutions and procedures can achieve in combating corruption. While it may seem like a truism, the appointment of the right people in the right places is essential and this is all the more true if a municipality wants to prevent and address corruption.

Therefore, municipalities should pay greater attention to integrity and ethics in appointments. As two interviewees remarked:

“I always say, you must have the right attitude. That is what we are lacking in most cases. You will see that someone has the right qualifications and ticks all the boxes but somewhere there is a weakness, and that is in his personal makeup - his ethos, his integrity. That is where you have a problem”.

“I cannot emphasise this more: honest people can never be replaced by legislation or legislation can never make dishonest people honest, because dishonest people will always find a gap to steal or to do funny stuff.”

The provincial government should advocate for greater professionalisation of local government administration. One of the key stumbling blocks in the fight against corruption is the price to be paid by honest senior managers for standing up against political pressure to cut corners or to engage in downright corrupt acts.

“We must get to a professional system of local government management. Fraud and corruption is not rife in professions that have professional status. Take the legal profession as an example. Because there’s a certain status attached to it: you can

lose that status if you fall foul of the rules, you know people are less likely to make those mistakes.

“What the province must do is to lobby for national legislation to get a professional set-up for local government management and as part of that we need to develop a proper career path so that we make sure that we bring people through the system, so that when they are eventually appointed as managers they have the right experience to be able to perform their duties properly”

A related issue is that there is still too much scope for municipal officials to commit financial misconduct in one municipality and move on to another municipality before having been held accountable. The provincial government should consider how it can play a role in assisting municipalities with the tracking of where officials are.