

**THE PROMOTION OF ETHICAL CONDUCT IN
LIMPOPO PROVINCE WITH REFERENCE TO
THE DEPARTMENT OF LOCAL GOVERNMENT
& HOUSING**

BY

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This thesis is dedicated to:

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ABSTRACT

“The government of national unity is committed to continually improving the lives of the peoples of South Africa by a transformed public service which is representative, coherent, transparent, efficient, accountable and responsive to the needs of all, hence the creation of a people centered and people driven service which is characterized by equity, quality, timeousness and a strong code of ethics” (White Paper on the Transformation of the Public Service 1997:6). *Section 2 of the Constitution, Act 108 of South Africa, 1996* states that “This Constitution is the supreme law of the Republic, law or conduct inconsistent with it is invalid and the obligations imposed by it must be fulfilled. Du Toit, Van der Walddt, Bayat and Cheminais (1998:112) maintain that constitutionalism requires that all actions by public officials should be in accordance with their country’s constitution.

In the post apartheid era, achieving good governance and fighting unethical conduct are amongst the most important challenges that the South Africa faces. Despite the introduction of numerous anti-corruption agencies, corruption is a universal problem. Its effects can seriously constrain development of national economies and prevent good governance. Corruption erodes stability and trust, and it damages the ethos of democratic governments. Public services in South Africa are characterized by widespread allegations of unethical conduct and the Department of Local Government and Housing in Limpopo Province is no exception. Allegations of unethical conduct practices in the South African public sector are relatively high and have generated widespread concern by politicians about public officials and, consequently, a search for remedies. It is therefore important that ethical conduct be promoted in public institutions.

This study examines how ethical conduct could be promoted amongst public officials to enhance good governance and administration in Limpopo Province’s Department of Local Government and Housing. The study starts with the identification of the

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factors that inhibit promoting ethical conduct. It further focuses on the measures and institutions for promoting ethical conduct in the public service. It is recommended that the Department of Local Government and Housing must focus on mechanisms that can be used to control and prevent unethical conduct. In view of the challenges facing the Department of Local Government and Housing, this thesis presents an alternative solution for combating unethical conduct.

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CHAPTER 1

INTRODUCTION

1.1 General overview

Limpopo Province has been created as one of the nine Provinces under provisions of Section 103 (1) of the *Constitution of the Republic of South Africa, 1996* (Act 108 of 1996). The public services of Limpopo Province consists of the public officials from the former public service of the “self governing territories” and “independent state” i.e. Lebowa, Gazankulu and Venda respectively (Engelbrecht 1995:55).

All public officials from the “independent or self governing territories” created by the former government were incorporated into different departments of the public service of Limpopo Province. Limpopo Province is also administered by eleven departments which are: Education and Culture; Agriculture and Forestry; Environment and Tourism; Office of the Premier; Office of Provincial Service Commission; Finance and Expenditure; Economic Affairs; Commerce and Industry; Housing and Local Government; Health and Welfare; Public Works and Public Transport. The above-mentioned departments have inherited 120 000 public officials from the former public services (Mafunisa 1998:25).

Engelbrecht (1995:55) argued that the South African public service's main reason for incorporating the above-mentioned "self governing territories" was to create a genuinely representative public service, which reflects the major characteristic of South Africa demography, without eroding efficiency and competence, facilitate the transformation of attitudes and behavior of public servants towards a democratic ethos underlined by the overriding importance of human rights and strong code of ethics.

"There is a need to continuously send a message to those who thrive on corruption that we have the will to deal with them decisively. The extent of corruption in all spheres of our lives is such that even as we conclude this conference, an act of corruption is being committed somewhere in our country and in other countries all over the world. As we make laws and regulations to underpin our democracies, we should ensure that our law enforcement agencies are adequately equipped to deal effectively with corruption. There should be harmony between the organs of state that have been put in place to fight corruption and the judiciary system". - Address by the former Deputy President of the Republic of South Africa Mr. Jacob Zuma at the Anti-Corruption Summit, Durban, October 15 1999 (Sunday times, 05 June 2005:1).

The Department of Local Government and Housing in Limpopo Province has dismissed five officials following recommendations by a task team investigating allegations of corruption in the allocations of tenders. Departmental spokesperson also confirmed the dismissal of those officials and disciplinary action has been taken against those officials for defrauding the department. The MEC (Member of Executive Council) for the Department has also recommended that information gathered from the disciplinary hearing be forwarded to the law enforcement agencies and that steps be taken to recover all the monies in terms of Criminal Procedures Act (No 51 of 1997), she said (Sowetan, Friday June 3 2005:10).

Finance Minister, Mr. Trevor Manuel (Sowetan, 27th February 2003:21) told Parliament that, "When the people experience poor service delivery or our projects fail, then not only are citizens denied those services, but in turn their capacity to contribute further to the development process is undermined. Unless our policies are implemented efficiently, courteously, honestly, enthusiastically, we will achieve far less than we intend and than our people deserve. A key to prosperity is the public service and those employed there who do not embrace the spirit of Batho- Pele should do the right thing or leave".

Judge Hillary Squires told Durban High Court (The Star, 09 June 2005:4) that “corruption is plainly an invasive and insidious evil and when politicians and public officials are bought and sold by powerful economic interest, it undermines the democratic process. One of the primary political costs of corruption is that it undermines and destroys the political trust. Citizens can conclude, quite rightly, that it is futile to deal with government through official, political and bureaucratic channels or even if such channels are functional, others will pre-empt them through bribery and connections. Before long, citizens come to distrust each other... and the very right to express oneself politically can become endangered.”

“Corruption in all its forms constitutes a violation of the human rights of the people who experience it. Governments who are complicit of corruption are failing in their duty to protect and promote human rights. The struggle for human rights and the struggle against corruption are intimately and inextricably linked because corrupt government does not respect human rights. Human rights are generally universal, while corruption concerns the few and particular” (The Star, 09 June 2005:4). Unethical conduct, corruption and related corrupt activities by public officials endanger the stability and security of public institutions, undermine the institutions and values of democracy and ethical values and morality, jeopardize sustainable

development, the rule of law and the credibility of South Africa (Maluleke 2000:64).

The former Minister of Provincial and Constitutional Development and Mr.Valli Moosa (Citizen, 26 August 1997:7) told journalists that the intergovernmental forum agreed that a new culture of performance and dedication to work is required in the public service. From the above-mentioned statements it could be deduced that some of the public officials are not dedicated to their work as a result they fail to reach acceptable standards of performance.

The public's expectations of ethics and accountability from public officials are related to the trust, which the members of the public prefer and are entitled to. This enables them to identify how public servants carry out public functions. The obligation for ethical conduct by public officials is also found in the fact that they are paid through the taxpayer's money. Public officials are in the position of trustees. When judging a government, the extent to which it furthers the public interest, the extent to which it allows participation by its citizens in the processes of government and the extent to which it encourages the pursuit of the ideals of a good life should be taken into account. Deviations from these expectations constitute immoral and unethical conduct (Gildenhuys 1991:52).

According to *Prevention and Combating of Corrupt Activities Act* (Act 12 of 2004:16), “any public official who, directly or indirectly, accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person; in order to act, personally or by influencing another person so to act, in a manner- that amounts to the illegal, dishonest, unauthorized, abuse of authority, breach of trust, violation of legal duty and performs functions designed to achieve unjustified results, is guilty of offence of corrupt activities relating to public officials”.

From the foregoing it can be deduced that, in South Africa, the *Constitution* (Act 108 of 1996) is the supreme authority that provides for the basic values, rights and obligations of all citizens, the state and all public officials. The *Constitution of the Republic of South Africa* (Chapter 10) requires that the Public Service be...

- (a) governed by democratic values and principles of the *Constitution*;
- (b) maintaining and promoting a high standard of professional ethics;
- (c) promoting efficient, economic and effective use of resources;
- (d) oriented towards development;
- (e) delivering services impartially, fairly, equitably and without bias;
- (f) responding to people’s needs and encouraging public participation in policy matters,

- (g) accountable for its action;
- (h) transparent in providing the public with timely, accessible and accurate information;
- (i) cultivating good human resource management and career development practices to maximize human potential
- (j) broadly representative of the South African people, with employment and personnel management practices based on ability, objectivity, fairness, and the need to redress the imbalances for the past.

This dissertation focuses on ways and means to promote ethical conduct by public officials in Limpopo Province's Department of Local Government and Housing. Thus, it could be stated that ways and means required developing a public officials that performs effectively and efficiently while operating ethically. From what has been argued thus far, the research proposes to determine the ways in which ethical conduct can be promoted in the Department of Local Government and Housing in Limpopo Province.

Rabin, Hildreth and Miller (1989:976) state that fostering ethical conduct in public administration is a challenge which requires continued searches for the normative and administrative ways of dealing with public issues. Nalbandian (1991:xi) remarks that the gap between what public officials actually do and what they ought to do distances them from normative guidance about their

roles and responsibilities and also about the values that underpin the decisions they make. This dissertation seeks to close the gap through a scientific investigation of discussion on promoting ethical conduct.

1.2 Definitions

1.2.1 Code of Conduct

Chapman (1993:18) defines a Code of Conduct as statement of principles and standards about the right conduct of public officials. It normally contains only a portion of a government's rules on public service ethics. It is, therefore, a more narrow term than ethical rules, which include statutes, regulations and guidelines. Rosenow and Rosenthal (1993:360) define a Code of Conduct as a set of principles that is adopted by associations or institutions to define specific principles for which the institution stands. It makes a policy selection of the basic ethics present in general society and seeks to use them to influence a particular institution's definition of its action and what kind of institution- oriented behaviour is acceptable. Code of Conduct in this dissertation will refer to the *Explanatory Manual Code of Conduct* for the Public Service issued by the Public Service Commission for all public officials in South African Public Service. It is important to reiterate that the primary purpose of the Code of Conduct is a positive one, namely to promote exemplary conduct. Notwithstanding the fact that an

employee shall be guilty of misconduct if he or she contravene any provisions of the Code.

1.2.2 Ethics and Ethos

Ethics is defined as the branch of philosophy dealing with the values that relate to human conduct with respect to rightness or wrongness of specific actions and to the goodness or badness of the motives and ends of such actions (Chandler and Plano 1988:17). Ethos refers to “inner character” and it deals with matters of conscience. Ethics encourages public officials to do work whereas ethos requires him or her to do (from within) what is ethical in an outstanding way. Put differently, ethos requires public officials to go beyond ethics i.e. to possess an internalized drive and willingness to do which is right or ethical. To understand ethics and ethos, Lapin (1992:19) argues that one has to understand the difference between compliance (ethics) and commitment (ethos).

To comply, public officials will only do as much as they ought to do: they will give of themselves only as much as necessary to achieve specified results. Unlike compliance, commitment implies that public officials produce more than is expected. Section 2 of the *Constitution of the Republic of South Africa Act* (108 of 1996) expressly provides for its own supremacy

and states that “any law or conduct inconsistent with it is invalid and the obligation imposed by it must be fulfilled”. Ethics and ethos in this dissertation will refer to compliance with all existing legislation and to perform official functions effectively and efficiently.

1.2.3 Efficiency and effectiveness

Cameron and Stone (1995: xii) define efficiency as the greatest possible output at the lowest cost. Efficiency has to do with economy. Thus efficiency is measured by the ratio of input to output. It refers to the optimal use of scarce resources in attaining policy and objectives (Du Toit et al 1998:116). According to Cameron and Stone (1995: xii) effectiveness refers to the realization of maximum efficiency with the most frugal application of funds, human resources, material and apparatus.

To achieve this ideal, it is essential to exercise control. According to Cameron and Stones (1995: xii) efficiency refers to the greatest possible measure of achieving objectives of an institution. An activity has been performed effectively if it has reached its objectives or goals. Mafunisa (1995:65) maintains that effectiveness refers to the degree to which services are responsive to the needs and desires of society. He further points out that effectiveness encompasses both the quantity and the quality aspects of service. The ethical standards of effectiveness are yardsticks for determining

how well the government performs its functions. Officials in the Department of Local Government and Housing must advocate a standard of cost-effectiveness which stresses the need to be concerned with making the most efficient use of available scarce resources while focusing on to the achievement of desired objectives.

1.2.4 Accountability

According to Maluleke (2000:52) accountability is an obligation to explain and justify the actions of the bearer of the responsibility to perform an accepted duty. Accountability presupposes a reciprocal relationship similar to that of two parties to a legal contract and serves to curtail the abuse of power. Public officials, particularly at the lower levels of supervision were held accountable for adherence to rules and work procedures, and not for the promotion of productivity (Mafunisa 2000:6). This lack of accountability for the productivity reduces the extent to which they find necessary to experiment with the operational changes to promote efficiency and effectiveness.

However, any lack of accountability at lower levels to some extent exists because super ordinate public officials are not held responsible or accountable for demanding it. In this dissertation accountability will refer to

public officials who serve members of the public and not to promote private or selfish interests. Cloete (1994:70) maintain that public accountability promotes ethical conduct in that public officials will usually perform their duties effectively and efficiently if they know that they are expected to render account for their actions to the public through their political office bearer.

1.2.5 Unethical conduct

Maluleke (2000:53) defines unethical conduct as deliberate or negligent conduct constituting a deviation from or breach of the guidelines designed to form an expected pattern of behaviour in a given situation. Unethical conduct includes the protection of, or covering up of incompetence, lack of responsiveness to the needs of clients, tardiness in the discharge and assigned accepted duties, the manifestation of inefficiency and ineffectiveness and corruption.

Mafunisa (2000:1) argues that, unethical conduct that exists starts at the top of the political and public service leadership and cascades down the ranks by example. It is essential for the superordinate public officials to personify public service values and as such and provide tangible role models for superordinate to follow. Unethical conduct in this dissertation includes the

protection of or covering up of; incompetence; lack of responsiveness to the needs of clients; tardiness in the discharge of assigned and accepted duties; the manifestation of inefficiency and ineffectiveness and corruption (Mafunisa 2000:5).

1.2.6 Corruption

According to Hornsby (1994:193) corruption refers to immoral, deprived or dishonest practices of persons. This definition suggests that corruption is a cultural and moral problem. In similar terms, Dobel (in Werner 1983:147) asserts that, from an organizational point of view, corruption is essentially illustrative of specific cultural attitudes regarding loyalty, morality and usurpation of public good. Corruption could therefore mean the promotion of private gains or selfish interest at the expense public interest, against the overall objectives of the government, by whoever is in charge and responsible within the area of work. Following this analysis, functions performed by public officials who fail to promote the general interest within the government, jurisdiction can be construed as a corrupt practice.

Judge Hillary Squires (The Star, 09 June 2005) told Durban High Court that the phenomenon of corruption can be truly be linked to a cancer, eating away remorselessly at the fabric of corporate privity – and extending its

baleful effect into all spheres of administrative functions, whether state officials of private sector manager. Judge Squires warned that if this cancer is not checked, it would become systematic. “The after effects of systematic corruption can quite readily extend to the corrosion of the integrity of anyone who has the duty to discharge to the public-leading eventually and unavoidably to a disaffected populace. Prospect of corruption happening in this country, but it has sort of increasing dissatisfaction which leads –and has led –in other parts of the continent and else where to a coup de tat, or the rise of populist leaders who in turn manipulate politics for even greater private benefits, Judge Squires said.”

According to Maluleke (2000:34) corruption involves loss of moral authority, increased opportunities for organized crime, encouraged public brutality, added taxpayer’s burden, undermining political decisions and lead to inefficient use of public resources and benefits. Within the framework of this definition, Ikoiwark (1987:62) draws the analogy that corruption means the betrayal of public trust and interest for individual gain. If public money is not properly utilized to attain government objectives it is likely to be misused to promote self interest. In this dissertation corruption includes the unethical use of public office; subjective and arbitrary decision making; unauthorized decision-making; unauthorized disclosure of confidential

information; nepotism; bribery; fraud; theft; misuse of public property; victimization and sexual harassment.

1.3 Motivation

The *White Paper on Transforming Public Service Delivery* (1997:9) has been drafted with the purpose of providing a policy framework and a practical implementation strategy for the transformation of the delivery public services. This White Paper primarily indicates how public services should be provided, and relentless search for increased efficiency and the reduction of wastage within the public service. All national and provincial departments in the nine Provinces of South Africa are expected to publish standards for the level and quality of services they will provide. This will enable all potential users to establish the level of services they are entitled to expect, and can complain if they do not receive it.

Performance against standards must regularly be measured and the results published regularly to provide for rectification if the expected results are not attained. For the attainment of set standards, all public officials should accept two of the central values of public administration, *viz.* the ethos of objective competence and loyalty. Ethical public officials abide by normative guidelines even in the absence of watchful eyes of subordinates

public officials. Cloete (1991:56-75) argues that normative guidelines come from (i) the body politic which is the political belief (philosophy) on which the constitutional dispensation of the country is based, and (ii) the community values which provide for the norms regulating the conduct of public officials to make orderly life possible. He categorizes the guidelines of the body politic into: legislative supremacy, public accountability and requirements of democracy and the guidelines from the community values are divided into: efficiency and effectiveness, requirements of administrative law and respect of societal values.

Cloete (1991:56) argues that normative considerations call for specific guidelines, which every public official has to heed when performing official duties. These value laden requirements will find fulfillment in a display of the correct attitudes and by following one's conscience rather than observing restrictive rules and obeying instructions. It can be argued that normative guidelines provide public officials with the standard by which they can guide their own behaviour, measure their own performance and guide the behaviour and performance of public officials.

From the foregoing discussion it can be argued that instilling a positive work ethic in public officials would promote respect of public goals, core values and codes of conduct, effective performance meeting set standards, promote

ethical behaviour of public officials; promote efficiency in the production and provision of public goods and services; promote the already low public trust and; as part of the global village be able to compete with ethical standards and services of other countries. The significance of promoting ethical conduct led to the choice of the study, hence the topic: "The promotion of ethical conduct in Limpopo Province with specific reference to the Department of Local Government and Housing".

1.4 Problem statement

Public officials have been appointed to serve members of the public and not to promote private interest. However, public services in South Africa are characterized by widespread allegations of unethical conduct and the Department of Local Government and Housing in Limpopo Province is no exception. Allegations of unethical conduct practices in the South African public sector are relatively high. The former President of South Africa, Mr. Nelson Mandela (Sunday Times, 18 December 1994:5) even called for a moral crusade in 1994 to put an end to unethical conduct by public officials.

These allegations of unethical conduct have generated widespread concern by politicians about public officials and, consequently, a search for remedies. It is therefore important that ethical conduct be promoted in public

institutions. This dissertation is aimed at establishing the effects of ethical conduct on the promotion of services that comply with the constitutional provisions in Chapter 10 of the *Constitution of the Republic of South Africa Act* (108 of 1996).

1.5 Research question

What measures could be introduced to promote ethical conduct amongst public officials to enhance good governance and administration in Limpopo Province's Department of Local Government and Housing?

1.6 Objectives of the study

The objective of study is to suggest how ethical conduct by public officials can be promoted in Limpopo Province with reference to the Department of Local Government and Housing by:

- (I) identifying and discussing the role of a Code of Conduct for public officials and indicate how it can assist in promoting ethical conduct and building a culture of accountability in the public service;
- (II) identifying and explaining the role of values and principles of public administration in shaping the conduct of public officials; and
- (III) identifying and evaluating measures and institutions that will help foster ethical conduct and entrench an ethos of accountability in the Department of Local Government and Housing in Limpopo Province.

1.7 Statement of hypothesis

First hypothesis: More than half of 120 public officials are not committed to their jobs and fail to abide by the provision of the Code of Conduct for the Public Service.

Second hypothesis: Lack of education and training in ethics inhibit the promotion of ethical conduct by public officials.

Third hypothesis: A good incentive structure and protection of whistle blowers reduces unethical conduct of public officials.

1.8 Delimitation of the study

This dissertation will be limited to public officials in Limpopo Province with specific references to the Department of Local Government and Housing. Reference will only be made to the public services of other countries and South Africa for the purpose of comparative analysis. The dissertation covers a period of approximately ten years i.e. post 1994 until 16 June 2005. The latter date was used as a cut -off date to contain the research within a reasonable scope for both the researcher and for examination purpose.

1.9 Methods of investigation

The sources consulted in this dissertation are divided into two types i.e. primary and secondary sources. The nature and the extent of these sources will be provided in the following paragraphs.

1.9.1 Primary sources

Official publications comprise one type of primary source. The official publications used, include the following: *Annual Reports of the Auditor-General 2000/2001, 2002/2003 for Department of Local Government and Housing, Provincial Administration: Limpopo Province, Republic of South African Constitution Act 108 of 1996, Explanatory Manual on the Code of Conduct for the Public Service 2002, White Paper on the Transformation of the Public Service 1997, Batho- Pele White Paper 1997, Special Investigating Units and Special Tribunals Act, 74 of 1996, The protection of constitutional democracy against terrorism and related activities Act (No 33 of 2004), Prevention and Combating of Corrupt Activities Act 12 of 2004.* A survey questionnaire sent to public officials in the Department of Local Government and Housing was used as another primary source to examine causes of unethical conduct and proposed actions for promoting ethical conduct.

In this dissertation a self-administered questionnaire with semi-structured interview questions was used. The questions in the questionnaire are based on the statement of the three different hypothesis. The respondents were explicitly requested to complete the questionnaire and anonymity was emphasized. In this dissertation respondents refer to public officials who responded to the questions of the questionnaire. Before the questions were administered, a pilot study was made. A pilot study refers to the pretesting of the questionnaire on a small population. The main aim was guided by the views of Leedy (1989:143), to test whether there are any items that the population may have difficulty understanding or that may not require exactly as a small preliminary investigation of the same general character as the major study.

The pretesting stage of a questionnaire provides the researcher an opportunity to detect errors and flaws in the questionnaire used for the collection of data. As part of the pilot study the questionnaire was distributed to experienced academic researchers in the social sciences and public administration practitioners in particular. The purpose was to clarify issues that could possibly lead to misunderstanding during the intended interviews. Suggestions for improvement were considered and adaptations were made. It can be deduced that the questionnaire was pretested and thus objective and valid for the purpose of the study.

One the hundred and twenty officials who are employed in the Department of Local Government and Housing were selected for the study of the total population. In this dissertation the purposive sampling method was used because the researcher assessed the opinion of the above-mentioned public officials on the promotion of ethical conduct in Limpopo Province with specific reference to the Department of Local Government and Housing.

The purposive sampling method is one of the non-probability sampling methods, which is less complicated and more economical (in terms of time and financial expenses) than probability samples. Non-probability samples may be useful for the pilot studies in which a questionnaire has to be tested (Welman and Kruger 2001:62). There are two types of sampling methods, *viz*, probability and non-probability sampling. In probability sampling the researcher can clarify in advance that each element of the population will be represented in the sample. This is the distinguishing characteristic that sets it apart from non-probability sampling. The composition of the sample is derived by selecting units from those of the sample selected from a larger population (Leedy 1989:153).

A non-probability sample was chosen, guided by the views of Wimmer and Dominill (1987:701), stating that the decision to use a probability or non-probability sample should be shaped by the aspects that will be identified

and explained in the following paragraphs. These aspects include: aim of the study, cost versus value and time constraints.

(i) Aim of the study

According to Babbi (1990:99) the selection of samples is primarily determined by the aim of the investigation. O'Sullivan and Russel (1989:121) argue that non-probability sampling is appropriate for the exploratory study. Thus, bearing in mind the nature and the purpose of the study, a non-probability sample was used.

(ii) Cost versus value

It is essential for the sample to produce the greatest value for the least investment. If the cost of the probability sample design is too high in relation to the type and the quality of data collected, a non-probability sample is a possible option (Wimmer and Dominill 1978:71). For the purpose of this research, a non-probability sample was selected and used because it is relatively inexpensive, being guided by the views of O'Sullivan and Russel (1989:121).

(iii) Time constraints

In most cases preliminary data is collected within strict time constraints imposed by *inter alia*, sponsoring agencies. Since probability sampling is often time consuming, a non-probability sample may be appropriate (Wimmer and Dominill 1978:701).

1.9.2 Secondary sources

Published books, relevant literature on ethical conduct, published and unpublished theses, political speeches and articles from journal and newspaper reports were used as secondary sources in this dissertation.

1.10 Chapters outline

Chapter Two: CODE OF CONDUCT FOR PUBLIC OFFICIALS

This Chapter focuses on the Code of Conduct for public officials. Purpose and guidelines of the Code of Conduct are identified and discussed. These guidelines include relationship with the legislature and the executive, relationship with the public, relationship among employees and performance of duties. Attention is focused on the importance of commitment by public officials to the Code of Conduct and the goals of the Department of Local Government and Housing.

Chapter Three: CONSTITUTIONAL VALUES AND PRINCIPLES FOR PROMOTING ETHICAL CONDUCT

This Chapter examines the values and principles for promoting ethical conduct contained in Section 195 (1) of the *Constitution of the Republic of South Africa Act* (108 of 1996). An attempt will be made on how these

values and principles can enforce ethical conduct and build a culture of accountability in the Department of Local Government and Housing.

Chapter four: MEASURES AND INSTITUTIONS FOR COMBATING UNETHICAL CONDUCT

Measures and institutions for combating unethical conduct are provided in Chapter Four. Measures for combating unethical conduct include: protection of whistle blowers, blacklisting corrupt public officials; training and development; penalties; good incentive structures; political will; awareness and transparency and prescreening of educational qualifications.

Institutions for combating unethical conduct include: Criminal Justice System, National Prosecuting Authority of South Africa, Asset Forfeiture Unit, Special Investigating Unit and Special Tribunals, Public Protector, Auditor-General, Commissions of enquiry, Judicial institutions and Public Service Commission. An attempt will be made on how these measures and institutions can combat unethical conduct in the Department of Local Government and Housing in Limpopo Province.

Chapter Five: CONCLUSION

The conclusion of the study will be given in Chapter Five. It will indicate whether the research findings have rejected or supported the statement of hypothesis.

CHAPTER 2

CODE OF CONDUCT FOR PUBLIC OFFICIALS

2.1 Introduction

Officials represent the Department of Local Government and Housing at all levels in the performance of official duties. The Department of Local Government and Housing in Limpopo Province depends on its employees for the proper conduct of its business in a quest to provide essential services to the people it serves. The missions, visions and objectives of the Department of Local Government and Housing are advanced and secured by its employees, whose conduct is one of the measures of its success. In rendering services to the community, the conduct of public officials must always be in the public interest. Demands such as, ethical conduct, displaying commitment to good governance, honesty, integrity, openness, transparency, justice, loyalty and trustworthiness are placed on public officials who have to render services to the public.

The main reason for the existence of the Department of Local Government and Housing is to provide services to the community. Public officials play a major role in ascertaining, producing and providing the products and services that are responsive to the needs timeously. Public official should

be committed to their work. Creating commitment amongst public officials contribute in developing ethical conduct, as commitment is one of its behavioural indicants.

2.2 Purpose of the Code of Conduct

According to Hanekom, et al (1987:163) codes of conduct have the following objectives: promoting and maintaining responsible conduct of public officials, promoting public confidence in the integrity of public servants, providing guidelines to the public servants in their relationship with fellow officials, elected representatives and with members of the public and providing guidelines to public officials in the exercise of the discretionary powers they have.

The purpose of the Code of Conduct is to promote exemplary conduct notwithstanding the fact that an employee shall be guilty of misconduct in terms of Section 20 (t) of the *Public Service Act*, 1994 and may be dealt with in accordance with the relevant Sections of the Act if he/she contravenes any provisions of the Code of Conduct (South Africa, 1997:3). Chapman (1993:18) maintains that a Code of Conduct is necessary to promote public trust and confidence in the performance of official duties, to decrease and if possible, to eliminate political and administrative corruption by

discouraging and punishing them, to legitimize the imposition of sanctions for corrupt behaviour and to promote moral development. Codes of Conduct have the following objectives: promoting and maintaining responsible conduct of public officials; providing guidelines to public officials in their relationship with fellow public officials, elected representatives and with members of the public; and providing guidelines to public officials in the exercise of discretionary powers they have (Hanekom, Rowland and Bain 1987:163).

Chapman (1993:18) remarks that a Code of Conduct is necessary to promote public trust and confidence in the ethical performance of public officials; to decrease; and if possible; to eliminate; unethical practices by discouraging and punishing them; to legitimize the imposition of sanctions for unethical conduct; to sensitize both current and aspiring public officials to the ethical conduct and value dimensions of current decisions; to reduce uncertainty as to what constitutes ethical and unethical conduct; to develop skills in the analysis of ethical and value issues; to assist public officials to resolve ethical and value dilemmas and to promote moral development. The *Explanatory Manual on the Code of Conduct for the Public Service* (1997:22) instructs public officials to be effective in the discharge of their official duties.

In the discharge of their daily responsibility at work, public officials should continually ask themselves whether they are functioning in the cheapest possible manner. It can be argued that a Code of Conduct for public officials contributes to the promotion of ethical conduct in the Department of Local Government and Housing in Limpopo Province. Although the Code of Conduct was drafted to be as comprehensive as possible, it does not provide a detailed standard of conduct.

Heads of the departments are, in terms of Section 7 (3) b of the *Public Service Act*, 1994 (proclamation 103 of 1994), *inter alia*, responsible for the efficient management and administration of their departments and the maintenance of discipline. They may therefore supplement the Code of Conduct in order to provide for the unique circumstances of a department. These departmental codes of conduct should be agreed upon with the appropriate representative bodies of public officials and promulgated in writing to every public official. For example, public officials who deal directly with the members of the public should be given clear guidance about the standards of courtesy and behaviour that are expected.

Mafunisa (1995:29) maintains that codes of conduct are necessary to keep on reminding political office bearers and public officials what actions will be ethical and what actions will be unethical. The unethical conducts

concerned in this regard are for example, fraud, extortion, nepotism, sexual harassment, favoritism and using public property for private ends. Maluleke (1999:1-2) correctly asserts that there is nothing more disappointing than the phenomenon of corruption, which is ravaging the public service of virtually all nine provinces in South Africa.

On the 10th of June 1997, the Public Service Commission under Section 41(1) of the *Public Service Act*, 1994, issued the Code of Conduct in South Africa. All employees are required to comply with the law, and abide by the Code of Conduct. Failure to do so, constitutes a breach of discipline for which an employee can be found guilty of misconduct in terms of Section 20(t) of the *Public Service Act*, 1994, and may be dealt with in accordance with the relevant sections of the Code of Conduct.

Of the 120 public officials in the Department of Local Government and Housing who responded to the question in the questionnaire: "Which of the following aspects will promote ethical conduct"? 57 per cent of the research respondents believe that a Code of Conduct is an effective measure to enforce ethical conduct and build a culture of accountability. A total of 29 per cent public officials were given a Code of Conduct when appointed in the public service. They indicated it was useful in shaping their ethical conduct. Some 15 per cent indicated that it was useless, while 10 per cent

indicated that Code of Conduct contains no provision for enforcement, six percent argues that Code of Conduct affect individual rights and private lives while another three per cent maintains that Code of Conduct is ineffective in preventing unethical conduct by public officials.

Mafunisa (1997:5) argues that ethical principles are contained in many codes of conduct are often difficult to apply in particular situations. A sector related concern is that codes of conduct, even if they contain detailed provisions, are difficult to enforce, as many codes of conduct contain no provisions for enforcement. Thirdly, given the considerable size and complexity of the public service, it is difficult to draft a Code of Conduct that can be applied effectively and fairly across all departments and other public institutions (Chapman 1993:19).

Fourthly, codes of conduct are ineffective in dealing with systematic maladministration, where the public service professes an external Code of Conduct that contradicts internal practices and where internal practices encourage and hide the violation of an external code of conduct (Kernaghan and Dwivedi 1993:67). Finally, codes of conduct are regarded as 'lip service' as superordinate public officials fail to abide by its provisions.

Advocates of codes of conduct in the public service acknowledge that, codes can effectively promote some of the objectives but contend that codes can effectively promote some of the objectives that have been outlined and make a modest contribution to achieving all others. In addition, it is argued that many of the criticism can be overcome by careful drafting and effective administration of codes of conduct is to create an environment where a high standard of professional behaviour is the norm. It is the duty of managers in the Department of Local Government and Housing to ensure that every employee is aware of the legislation which impacts on their area of work and is provided with a personal copy of the code of conduct for public servants when they take up their duties (South Africa 1997:44).

Public officials should maintain ethical standards in the public service and take positive and effective measures against corruption. Public officials must at all times be accountable to the public, serve them with responsibility, integrity, loyalty and efficiency. They must also act with patriotism and justice and lead modest lives (Gilman and Lewis 1996:522). Mafunisa (1998:77) argues that the actions of political office bearers and public officials should, therefore, be to the benefit of the members of the public. i.e. every action should be of value to the citizens. This being the case, public officials need to consider the activities that the members of the public regard as important, and take action according. They should

continuously be in a position to render account to the members of the public for their actions.

Public accountability promotes the development of positive work ethic. Public officials will usually perform their duties effectively and efficiently if they know that they are expected to render account for their actions to the public through their political office-bearers and other public institutions (Mafunisa 1998:30). The Department of Local Government and Housing need to maintain and strengthen the ethos of the public officials i.e. that public good is more important than their possible private gain. All those who receive salaries from the state will be required to recommit themselves to upholding a Code of Conduct. Codes are necessary because some officials cannot be trusted at all times to live by internalized ethical values and do their fair share.

It can be argued that the Code of Conduct contributes to promoting ethical conduct and accountability in public officials. The reason for this is that public officials will endeavour to perform their duties effectively and efficiently for them not to violate the provision of Code of Conduct and be punished.

2.2.1 Constitutional requirements

Constitutionalism requires that all actions of public officials must be in line with their country's Constitution. In accordance with the values and principles of Section 195 of the Constitution, public administration as an activity must be governed by the following principles: professional ethics, efficiency, effectiveness, accountability, impartiality, development oriented, representativeness, participation, and fairness. All officials must loyally execute the policies of the government of the day in the performance of their official's duties as contained in all statutory and other prescripts and must serve the member of the different political parties in an unbiased and impartial manner.

The Constitution deals with specific aspects related to the rights and interests of all citizens in Limpopo Province and South Africa respectively. The stipulation of the Code of Conduct in the first instance requires loyalty of public officials to the existing democratic order. Secondly, the supremacy of the Constitution must be accepted and honoured at all the time. Thirdly every public official should have a reasonable understanding of the contents and purpose of the Constitution as a mechanism to maintain and regulate the existing order (Code of Conduct for the Public Service 2002:10). Constitutional requirements is a powerful tool to enforce ethical conduct because the Constitution requires that "a high standard of professional ethics

must be maintained and promoted” by the actions of public officials in performance of official duties.

2.2.2 Public interest

Mafunisa (1997:1) maintains that, the public’s expectations of ethical conduct and accountability from public officials are related to the trust, which members of the public prefer and are entitled to from in their public servants carrying out public functions. The nature of obligation in the conduct of public functionaries is also found in the fact that they are paid through taxpayer’s money. Cheminais, Bayat and Van der Waldt (1998:74) maintain that in rendering services to the community, the conduct of public officials must always be in the public interest. The public trusts officials to render services and to use public funds effectively and efficiently.

Klitgaard (1991:115) maintains that corruption is a sensitive subject from which many citizens in developing countries shy away since they are simply exhausted by it. According to Bayat and Meyer (1994:216) the phenomenon of corruption manifests itself through a defective system of public accountability. What is more disturbing is the fact that public service corruption is essentially one of the most serious developmental problems. In support of this contention is the view that corruption is the “behaviour,

which is inimical to the public interest and involves the subversion of the public interest for private ends” (Theobald 1990:5).

Mafunisa (1998:21) maintains that, in most public administrations, inefficiency, mismanagement and corruption became the norm. In the former “independent states” and “self governing territories” for example, some public officials saw lack of commitment to one’s work and respect for public property as subtle forms of opposition to the Bantustan system. It was further pointed out that some public officials did not have a sense of belonging to the public service and they did not regard public property such as motor vehicles as their own, but they regarded them as belonging to the “apartheid” government. Therefore, they did not use public property and other property with care.

Of the 120 public officials in the Department of Local Government and Housing in Limpopo Province who responded to the question in the questionnaire of this research on their opinions: “Do lack of ethics and ethos inhibit the promotion of ethical conduct? Most respondents (80 respondents) supported the hypothesis that lack of ethics and ethos is inhibiting the promotion of ethical conduct in the Department of Local Government and Housing in Limpopo Province. It can be argued that public officials must

show the right (model) way of behaving at work to provide tangible role models. Disciplinary measures must be taken publicly against those officials who fail to perform their duties effectively and efficiently. The fact that those found guilty of unethical conduct and disciplined has a psychological effect on the public officials who are beginning to realize that the Department of Local Government and Housing is serious about combating unethical conduct. The most urgent task facing the public officials in the Department of Local Government and Housing is not only to get those officials to comply with *inter alia* a Code of Conduct for the Public Service, legislation or administrative law but also to transform the compliant work force to aim at effective and efficient performance.

The Department of Local Government and Housing's main reason for existence is to provide members of the public with goods and services such as housing, water, electricity, sanitation, education and health. The Department can only render these services with the aid of resources, such as human and financial resources, information, time and equipment. Whereas the resources are limited, public officials must use the resources effectively, efficiently and economically. This stipulation means that where decisions have to be made or discretion has to be exercised, due consideration should be given to putting though interest of the public first. The public officials' own interest or any other sectarian interest must always be placed

subordinate to the public interest. Ethical conduct will be promoted if public officials are faithful and put the interest of the public first in the execution of duties.

2.2.3 Policy implementation

Section 19 (1) *Constitution of the Republic of South Africa Act* (108 of 1996) provides that, every citizen is free to make political choices that include the right to form a political party; to participate in the activities of or recruit members for a political party and campaign for a political party. Since the public serves the entire community, which consists of various political parties and people with different beliefs, it follows that public service employees must not be involved in any matter, which could be seen as favoring any group over another. In terms of the Constitution of 1996, the public service has to be apolitical in the service it renders to the community. This means that public service employees are required to render services to all the citizens of the Limpopo Province and may not be selective at all times.

The *Bill of rights* in the Constitution, inter alia, protects each citizen's political rights, which includes the right to associate with and belong to the political party of his or her choice. The election process will result in the political party drawing the majority vote taking office. This might mean that

a specific public official's personal preference might not be reflected in the outcome of an election. It could mean that the priorities, programme of action and policies adopted by the government of the day may differ from the personal priorities of individual public officials. It can be argued that to promote ethical conduct, public officials are nevertheless required to serve the elected Government of the day in a dedicated, skillful and faithful manner in executing such policies.

2.2.4 Statutes and instructions

In order to faithfully and efficiently service the Government of the day, as well as the public, employees in the Department of Local Government and Housing are required to know their job content, execute policies relevant to their jobs have to be done and follow the prescribed procedures. Similarly it is expected of employees to familiarize themselves with the prescriptions contained in *inter alia*, the *Public Service Act, 1994*, *Labour Relations Act 1995*, *Public Service Regulations staff code*, as well as the *Employment Equity Act, 1988 (Act 55 of 1998)*,

Auditor -General Report of 11 March (1999:4) states that, controls over the claims of subsistence and transport were found to be inadequate in the Department of Local Government and Housing. Trips were undertaken

which were not in the interest of the state, but costs thereof were claimed. An audit of log sheets and claims revealed that either the scheme is open to misuse or officials are deliberately inflating and planning unnecessary trips in order to augment their fuel claims. In some cases, officials who participated in the subsidized motor scheme exceeded the officially allocated monthly kilometers, as stipulated in the contracts between themselves and the Department.

It was observed from the same official's motor vehicle file that he covered a distance of 2512 within eight days, i.e. from 1st May 1998 up to 31st May 1998. An official traveled 615 kilometers to attend an end-of-year party and thereafter transported some officials to their places of residence. The kilometers were regarded as official. An official traveled 850 kilometers from Pietersburg to Nelspruit to deliver a file and 645 kilometers from Pietersburg to Pretoria to transfer one official's personnel records. Other convenient, cost effective alternative modes of transport should have been considered. During June 1998 an official traveled 628 kilometers to *Bush-Midlands* the purpose being to attend Youth day celebrations, whilst in August the same official traveled 714 kilometers to transport another official to Kempton Park in Johannesburg. No response received on the audit query raised for trips mentioned (Auditor-General Report 11 March, 1999:4).

Public officials must use resources effectively, efficiently and economically. Thus, the actions of public officials should therefore, be to the benefit of the members of the public, *i.e.* every action of public officials should be of value to the citizens. They must be accountable to the members of the public because they are paid by taxpayer's money. Non-compliance to statutes and instructions by public officials is unethical and unacceptable, because officials are deviating from public good and promoting private ends. In order to promote ethical conduct, public officials must strive to be familiar with and abides by all statutory and other instructions applicable to his or her conduct and duties.

2.2.5 Co-operation with public institutions

State institutions have been created to strengthen constitutional democracy under the Constitution. These institutions include: The Public Protector, Human Rights Commission, Commission for the Promotion and Protection of Rights Cultural, Religious and Linguistic Communities, the Commission for Gender Equality, the Auditor-General, the Electoral Commission, the Financial and Fiscal Commission and Judicial Service Commission. These institutions are independent and subject only to the Constitution and the law. They must be impartial and must exercise their powers and perform their functions without fear, favour and prejudice.

The above-mentioned institutions serve as checks and balances to ensure sound administration in all government departments including the Department of Local Government and Housing in Limpopo Province. Public officials should, therefore, not regard these institutions negatively, but should assist them to perform their functions by, for example, providing any information and explanations they might require at any given time. If public institutions were requested to investigate a complaint by a member of the public against any government department, it would expect the co-operation of employees in the department in providing whatever information is required.

If these public institutions finds irregularities in the financial administration of the Department of Local Government and Housing, the departmental officials should not regard the findings negatively. They should understand and appreciate the Auditor-General's role and co-operate fully with these public institutions to clear up the problems. State auditing should no longer be regarded primarily as only a financial function. It is also concerned with whether public institutions achieve the intended purposes for which funds are made available; are doing so economically and efficiently; and are complying with the provisions of the laws of a competent authority.

Auditing is often criticized for acting too late, and of being undertaken only when omissions and errors have already been committed (Mafunisa 2000:35). Although this argument is valid, experienced auditors can also act in a preventative capacity in a quest to promote ethical conduct and building a culture of accountability in the Department of Local Government and Housing. By contrast public officials will endeavour to perform their duties effectively and efficiently if they know that their actions may be investigated to ascertain whether effective management principles are in place to ensure resources are procured economically, and utilized effectively and effectively. Public officials in the Department of Local Government and Housing must co-operate with public institutions established under legislation and the Constitution in promoting the public interest. It can be concluded that, ethical conduct be promoted, if public officials co-operate with institutions under legislation.

2.3 Relationship with the public

2.3.1 Impartiality

The Department of Local Government and Housing serves the total community in Limpopo Province, and the public expects to be treated equally, efficiently, professionally and in a friendly manner. Employees are,

therefore, required to live up to this expectation by treating those with whom they work and those they serve equally, in a manner that will not only create trust in the Department of Local Government and Housing, but will also establish an appreciation for the quality and efficiency for the services rendered (Explanatory Manual for the Code of Conduct for the Public Service 2002:16). The officials in the Department of Local Government and Housing may not unfairly discriminate directly or indirectly against anyone on one or more grounds including race, gender, sex, pregnancy, marital status, ethnic or social origin, sexual orientation, age, disability, religion, belief, culture and language.

The preamble to the *Constitution of the Republic of South Africa Act* (108 of 1996) states that “the adoption of the Constitution is intended to- heal the divisions of past and establish a society based on democratic values, social justice and fundamental rights; lay foundation of democratic and open society in which Government is based on the will of the people and every citizen is equally before the law; improve the quality of life of all citizens and free the potential of each person; and build united and democratic South Africa able to take its rightful place as a sovereign state in the family nation.”

This means that, a good team spirit, good interpersonal relationships and a generally pleasant, helpful and professional atmosphere among a group of employees from different population groups who are working directly with the public, will set an example for the community at large. Public officials must therefore promote unity and well being of Limpopo Province in performing official duties.

2.3.2 Treatment of members of the public

It is important for the employees in the Department of Local Government and Housing to realize that, by joining the Department, they have committed themselves to serve the community at large. The public expects to be served and requires employees to be available and to help them in a friendly and efficient manner. Public officials must treat members of the public as customers who are entitled to receive the highest standard of service. The aim of the Department of Local Government and Housing is to progressively raise standards of service, especially for those whose access to public services have been limited in the past and whose needs are greatest (Batho-Pele White Paper 1997:5).

Excellence in rendering of services to the members of the public cannot be achieved without the maintenance and strengthening of high standards, conduct and behaviour. The behaviour of public officials is based on

various factors such as ethics, attitude and perception. However, it is also imperative that public officials behave according to acceptable community norms and values. If public officials fail to establish high moral standards in public institutions, a situation may arise in which unethical conduct by public officials will increase (Batho-Pele White Paper 1997:5). It can be argued that in a quest to promote ethical conduct, public officials must serve the members of the public in an unbiased and impartial manner to create confidence in the Department of Local Government and Housing.

2.3.3 Timely services

The Government of the day has clearly stated its intention to focus on the upliftment of communities, which had been disadvantaged in the past, as set out in *Reconstruction and Development Programme* (Explanatory Manual on the Code of Conduct for the Public Service 2000:19). Improving the delivery of public services means redressing the imbalances of the past while maintaining continuous service to all levels of society especially those who are living below the poverty line, such as disabled and black women living rural areas, who have previously been disadvantaged in terms of service delivery should be attended to.

In promoting ethical conduct, public officials must take part in the development or upliftment programmes made available by their department.

They must be dedicated to their task and ensure that such programmes are executed in the most effective and efficient manner and within the time frames, which has been set.

2.3.4 Dignity

Ensuring courtesy is the way a public official should treat any customer and this has to be emphasized. The Department of Local Government and Housing must specify the standards regarding the way in which a customer should be treated. These have to be included in their departmental codes of conduct. These should cover, among other things, simplification and customer-friendliness, the maximum length of time within which responses must be made to enquiries, the conduct of interviews, how complaints should be dealt with and dealing with people who have special needs such as elderly (Batho-Pele White Paper 1997:18).

If providing a counter service and an employee are, for example, approached by a member of the public who is highly intoxicated and noisy, employees should behave towards such a person in the same manner as they would in respect of others, and should calmly and efficiently assist the person (Explanatory Manual on the Code of Conduct for the Public Service 2000:11).

In this regard it is important to remember that the public will be carefully watching how situation is dealt with, and if dealt with as explained, it will benefit the Department of Local Government and Housing's image, as well as that of its employees. If for example such situation gets out of hand and employees find it difficult to deal with the matter, they should not react to the situation emotionally, but should simply take the person to their supervisors where he/she can deal in private with the person. Public officials must respect and protect every person's dignity and his or her rights as contained in the *Constitution of the Republic of South Africa*.

2.3.5 Access to information

In terms of Section 195 (1) (g) of the *Constitution of the Republic of South Africa Act (108 of 1996)*, transparency of Public Administration must be fostered by providing the public with timely, accessible and accurate information. Section 32 (1) (a) of the *Constitution* further regulates that everyone has access to information held by the state whilst subsection 2 of that section provides for national legislation to give effect to this right and to provide for reasonable measures to alleviate the administrative and financial burden of the State. Thus employees must at all time recognize the right of the public to have access to information and must be aware of the statutes and policies regulating this matter within the Department of Local

Government and Housing. If information requested by a member of the public cannot be made available, acceptable reasons for such decisions must be provided to that member of the public.

A Code of Conduct of the Public Service (2002:30) states that: “An employee recognizes the public rights of access to information, excluding information that is specially protected by laws”. Information is one of the most powerful tools at the customer’s disposal in exercising his/her right to efficient service. The Department of Local Government and Housing must provide full, accurate and up to date information about services they provide and identify who is entitled to them. This needs to be done in order to ensure that all those who need it receive information, especially those who have previously been excluded from the provision of a particular public service.

Information must be provided by communication in various ways for example, media, television and languages to meet the different needs of different customers. Written information should be plain and free of jargon and supported by geographical material where this will make it easier to understand (Batho-Pele White Paper 1997:18). There should be a name and contact numbers for obtaining further information and advice. However, it should not be assumed that written information alone would suffice: many people will prefer to receive information verbally, so that they

can ask questions and check their understanding. In promoting ethical conduct, public officials must recognize the public's right of access information, excluding information that is specifically protected by law.

2.4 Relationship among employees

2.4.1 Co-operation

The *Explanatory Manual on the Code of Conduct for the Public Service* (2002:25) maintains that employees must make a special effort to co-operate with one another. By sharing ideas and even resources, employees will be able to function more efficiency and in the best interest of the state and the society. Because the activities of the Department of Local Government and Housing cannot are judged according to the profit motive, there seems to be a particular misconception that the financial resources of the Department of Local Government and Housing are unlimited and that capacity exists to undertake new projects.

The Department of local Government and Housing is consisting of personnel representing cultural backgrounds across the spectrum; it is of utmost importance that employees will continually strive to realize common goals by actively bridging individual differences that may exist a spirit of mutual cooperation. Co-operation in this regard implies, among other, that employees should know what is expected of them. Employees should also

actively take part in their components functioning by utilizing their expertise /skills to the fullest potential in the Department interest and by assisting and supporting one another where possible.

2.4.2 Favouring relatives and friends

The *Explanatory Manual on the Code of Conduct for the Public Service* (2002:27) asserts that, the Public Service is required to appoint, promote and reward personnel who, irrespective of their political opinion or affiliation, family ties or position in the community, have the abilities to render a service. The following constitutes unethical conduct in the public service :(

I) Nepotism implies that an employee is appointed, promoted, transferred or given some or other advantage purely based on the fact that he or she has family or other ties with the person in a position to authorize such actions or to manipulate the system. (II) Favoritism refers to certain singled out employees who are appointed, promoted, transferred or given generous treatment based on subjective considerations such as friendship or returning a favour.

Mavuso (1999:183) argues that some political parties arrange appointments for their comrades through a phoney advertisement of posts already earmarked for friends and relatives. In turn, the candidates pay kickbacks to super-ordinates officials. A chain is formed where in corruption occurs

behind the scenes network. This undermines the principles of efficiency and effectiveness if the appointees do not perform effectively. Officials who are under qualified are appointed and promoted to the higher positions of leadership and influence in public administration without the necessary credentials (Noordelike Review, 6 Maart 2003:2). Against the background that the “apartheid” regime did exactly the same two wrongs still do not make a right.

In a quest to promote ethical conduct, all public officials to refrain from favouring relatives or friends in work-related activities and stop abusing their authority. The Department of Local Government and Housing renders excellent services to the public by means of amongst other things, appointment, promoting and rewarding personnel who, irrespective of their political affiliation, family ties and position in the society, have the abilities to render such a service. Public officials must refrain from-favouring relatives and friends in work related activities and never abuse their authorities.

2.4.3 Development and utilization of staff

In order to see to it that the overall objective of the Department of Local Government and Housing Development is realized, that is to render excellent services to the public, all managers and supervisors must see to it

that the personnel under their control have and skills to perform their tasks at a required level, are motivated to render such services and are willing and able to promote sound relations (Explanatory Manual on the Code of Conduct for the Public Service 2002:27).

In striving to archive the aforementioned, (Tinarelli 2000:56) states that, a supervisor should keep the following in mind that development of personnel implies that an employee in a supervisory / managerial capacity should:

- (i) understand what the development, motivation and utilization of personnel is all about;
- (ii) continuously assess the developmental, motivation and utilization needs of the personnel concerned;
- (iii) Introduce a developmental plan and measures to enhance motivation if necessary and assess the extent to which the personnel are utilized;
- (iv) See to it that the plan is followed and; enhance the level of motivation if necessary and measures to enhance optimal utilization of personnel
- (v) Constantly monitor the progress of developmental plan, level of motivation of personnel and utilization of personnel.

In order to achieve the overall objectives of the Department of Local Government and Housing, which is to render excellent services to the public, all managers in the are obliged to see that the personnel under their control have knowledge and skills to perform their tasks with the required knowledge and skills. They have to perform their tasks at the required level; are motivated to render such services; and are willing and able to promote sound relations (The Manual Code on the Conduct for the Public Service 2002:32).

Development of personnel implies that an employee in a supervisory capacity should: understand what the development of personnel entails, continually assess the development needs of personnel; introduce a developmental plan; see to it that the plan is followed and constantly monitor the progress of such a plan. Managers and supervisors should monitor the team spirit in their components and immediately step in if their personnel seem to be negative or constantly fighting with one another (Tinarelli 2000:76). To promote ethical conduct, public officials must be committed to the optimal development, motivation and utilization of staff and the promotion of sound labour and interpersonal relations.

2.5 Commitment to the Code of Conduct

Commitment deals with the will of a human being. Public officials cannot force commitment on someone else. Commitment is personal, involving from within a human being. It is voluntary, unleashing a determination and enthusiasm for that which is regarded as important. Public officials are expected to be committed to the services or goals of the Department of Local Government and Housing. Cherrington (1980:169) contends that commitment is facilitated by personal choice. When public officials are told what to do and implicitly forced to do it, either by threat of punishment or promise of reward, they may feel uncommitted.

Public officials become conscious of the goals of the public service and sensitive to how his or her actions contribute to the fulfillment of those goals. To identify with the public service implies that the public official is willing to expend effort for the sake of the public service, and the public service performance is experienced as a personal success or lack of performance as failure. Committed public officials defend the public service when threatened and desire to maintain their employment relationship even if offered attractive alternatives (Lincoln and Kalleberg 1992:22).

In line with Lincoln and Kalleberg 's statement, most research respondents (50 per cent of 98 officials who responded to the question: Would you stay with your present employer if you are offered attractive employment alternatives?) indicate that they would, as they are committed to the Department of Local Government and Housing. Research (Cherrington 1980:167) indicates that commitment refers to the strength of an individual's identification with and involvement in a particular public service.

2.6 Concluding remarks

Public officials have been appointed to serve members of the public and not to promote private and self interest. When newly appointed public officials join the Department of Local Government and Housing, their values and attitudes should be directed and adjusted towards the public service, their job, and the public service's Code of Conduct.

The primary aim of this is planned and directed adjustment of values and attitude is to ensure that they acquire knowledge, values and work attitudes essential for the job. The overall objective of this process is to create an environment where the employer will obtain effective and efficient performance from newly appointed officials.

Attention was paid on the Code of Conduct for public officials. The purpose of the Code of Conduct, relationship with the legislature and executive, relationship with the public, relationship among employees and performance of duties were identified and discussed. When officials in the Department of Local Government and Housing render services to their clients in the community, their conduct must always be in the public interest. Demands such as, ethical conduct, loyalty and trustworthiness are placed on public officials who have to render services to the public. The Department of Local Government and Housing need to create an atmosphere conducive to the promotion of ethical conduct.

The next chapter will deal with the values and principles for promoting ethical conduct in Section 195 (1) of the *Constitution of the Republic of South Africa Act* (108 of 1996). An attempt will be made to show how these values and principles can promote ethical conduct and build a culture of accountability in the Department of Local Government and Housing in Limpopo Province.

CHAPTER 3

CONSTITUTIONAL VALUES AND PRINCIPLES FOR PROMOTING ETHICAL CONDUCT

3.1. Introduction

The Department of Local Government and Housing was created with only one goal in mind, i.e. the promotion of the general welfare of Limpopo Province. To succeed in promoting the general welfare of society and rendering services to the community, the conduct of public officials must always be in the public interest. Members of the public trust officials to render services efficiently, effectively, and achieve the objectives of his or her department cost effectively. Employees should be honest and accountable in dealing with public funds and use public property and other resources only for authorized purposes.

3.2 Values and principles for promoting ethical conduct

In terms of *Section 195(1) of the Constitution* (Act 108 of 1996, public administration as an activity must be governed by the democratic values and principles enshrined in the Constitution. Values and principles for promoting ethical conduct to be discussed are: maintaining professional

ethics, consultation, access, courtesy, service standards, information, redress openness and transparency and that public administration must be accountable.

3.2.1 Maintaining professional ethics

According to Sangweni and Balia (1999:56) lawmakers inserted a high standard of professional ethics in Constitution of 1996, Act 108 as one of the values and principles underpinning the new democracy, based on the premise that proper conduct is a prerequisite for good governance. The Public Service Commission is entrusted with the responsibility of promoting a high standard of professional ethos in the public service.

The Commission issued a Code of Conduct for the public service to promote an ethics of professionalism, protect democratic values and create the highest standards of probity, integrity and ethical behavior in the public service. Specific mechanisms to ensure compliance with the values and principles governing public administration, facilitating the process of performance review and evaluation, are to varying degrees already in place (Sangweni and Balia 1994:44).

It must be stressed that personal integrity and trust are vital and indispensable to the public official whose credibility is so often under attack. The public service presents employees with moral issues that require attributes often associated with our private lives such as sensitivity, compassion, trustworthiness, as well as those generally regarded as appropriate to our public and professional lives – Impartiality and effective attainment of externally imposed goals (Gummer 1996:93). The *Constitution of the Republic of South Africa* (Act 108 of 1996) in Section 195 (1) (a) states that: ethics should just be promoted and maintained by the actions of the public officials. Public officials should treat all members of the public with courtesy and dignity.

3.2.2 Consultation

Citizens should be consulted about the level and quality of the public service they receive, where possible, they should be given a choice about the services that are provided to them. People with different political views should be allowed to articulate their views and canvass for the platform of a political party of their own choice. Public officials must keep contact with their constituency at all times (Batho Pele White Paper 1997:18).

Public officials must be responsive to the needs of the people, facilitate a culture of customer oriented, be performance – oriented and be focused on core business, management decisions and a collective sense of responsibility, create healthy relationships between political and administrative structures, allow flexibility to respond to changing priorities and circumstances, be organized in the most operationally effective and appropriate structures, and mechanisms, align clear responsibility for management, facilitate cooperative and coordinated communication and ensure the culture of accountability for performance.

Since the Department of Local Government and Housing in Limpopo Province consists of various interest groups, political parties and many different people with different beliefs, it follows that the public officials may not be involved in any matters which could be perceived as to be favoring one group or prejudice another. As far as the Department of Local Government and Housing is concerned, all members of the public must be consulted in accordance with the policies of the government of the day.

3.2.3 Access

All citizens should have access to the services to which they are entitled. However, as much as citizens are entitled to receive equitable services, they

also have an obligation and responsibility to pay for those services. The *Explanatory Manual Code on the Conduct for the Public Service* (2002:32) states that: “An employee recognizes public’s right of access to information, excluding information that is specifically protected by law”. Information is one of the most powerful tools at the customers’ disposal in exercising his /her rights to good service.

All three spheres of government namely: national, provincial and local sphere of government must provide full, accurate and up to date information about the services they provide and who is entitled to each service. This must be done actively, in order to ensure that all those who need it, receive information, especially those who have previously been excluded from the provision of public services. The consultation process should also be used to establish what customers and potential customers need to know and then work out how, where and when the information can best be provided (Batho-Pele White Paper 1997: 19).

The basic purpose of communication is always one or more of the following: inform interested parties, transmit accurate information, consult, invite participation, promote empowerment, educate, train, create trust, delegate, create transparency, promote democracy, promote better life for all, provide feedback on service delivery and exchange information to create

mutual understanding and a unification of activities towards the achievement of organization goals (Thakhathi, Mutshekwane, and Kwashaba 1998:28). Written information should be plain and free of jargon and supported by geographical material where this will make it easier to understand. There should always be a name and contact details for obtaining further information and advice. All written information should be tested on the target audience for reliability and comprehensiveness.

3.2.4 Courtesy

Service standards must cover customer's main requirements e.g. accessibility of services, response times, turn around times, accuracy, courtesy, the provision of information and dealing with complains. National, provincial and local departments must specify according to which customers should be treated. These are to be included in its departmental Code of Conduct. These should cover, simplification and customer-friendliness of forms, the maximum length of interviews, how complaints should be dealt with, dealing with people who have special needs, such as the elderly and consider gender and language (Batho-Pele Paper White 1997:5).

The concept of courtesy goes much wider than asking public officials to give a polite smile and to say thank you; though these are certainly required. The Department of Local Government and Housing should specify the standards

in their departmental Code of Conduct (Batho-Pele White Paper 1997:5). These standards should cover, among other things: greeting and addressing customers; the identification of staff by name when dealing with customers, whether in person or by telephone or in writing; the style and tone of written communication; simplification of customers-friendliness of forms; the maximum length of time within which the responses must be made to enquiries; the conduct of interviews; hoe complaints should be dealt; dealing with people who have specials needs such as elderly; gender and language.

The performance of public officials who deal worth customers must be regularly monitored and performance, which falls below the standards, should not be tolerated. Service delivery and customer care must be included in all future training programmes and additional training should be given to all those who deal directly with the public, whether face to face, in writing or telephone. This should not require the injection of large amounts of resources: it is more a case of orientating existing training courses to focus on service delivery

3.2.5 Service standards

The public service serves the society and the public expects to be treated equally, efficiency, professionally and in a friendly manner. Employees are,

therefore, required to live up to this expectation by treating those with whom they work and those they serve equally, in a manner that will not only create trust in the public service, but will also establish an appreciation for the quality and efficiency of services rendered. It is essential that public officials realize that by joining the public service, they have committed themselves to serving the community at large. The government of the day has clearly stated its intention to focus on the upliftment of communities disadvantaged in the past, as set out in the Reconstruction and Development Programme (RDP). This has to be carried out by all departments through their line functions (The explanatory Manual on the Code of Conduct for Public Service 2000:18).

Since the public service serves the society which consists of various interest groups, political parties and people with different needs, it follows that public service employees must not be involved in any matters which could be seen as favouring one group over another. Public officials must at all times put the public interest first in the execution of their duties. This means that where decisions have to be made or discretion has to be exercised, due consideration should be given to putting the interest of the public first. In addition public officials must loyally execute the policies of the government of the day in the performance of their official duties as contained in statutory and other prescripts.

Batho-Pele White Paper (1997:5) states that, service must go to the people, improving the delivery of a public service to the citizens, the development, particularly through training; of a culture of customer care; and approaches to service delivery that are sensitive to issues of race; gender and disability. The people must come first. The customer concept is important. The response to a complaint, however trivial should take full account of the individual's concerns and feelings.

The above-mentioned statements encourage core human values of service to humanity. It emphasizes that the author is genuinely wishing to improve the services of all South Africans. There is a need and necessity of a culture for customer care. This culture of care may be possible only if it is based on human values and ethics. The services-orientated culture can be developed through participation of the wider community, private sector and citizens. This means that every official should have an attitude of excellence in delivery of services. This attitude towards services comes when one pursues the value of service to humanity. Services should be provided impartially, fairly, and equitably and without bias. Resources should be utilized efficiently, economically and effectively.

The *White paper on the Transformation of the Public Service* (1997:34) requires both national and provincial departments to identify a mission

statement for service delivery together with service guarantees; services to be provided; to which groups and at which service charges in line with RDP priorities, the principle of affordability; and the principle of redirecting resources to areas and groups previously under resourced. There should be set service standards, defined outputs and targets and performance indicators benchmarked against comparable international standards.

The introduction of monitoring and evaluation mechanisms and structures, designed to measure progress and introduce corrective action where appropriate. Plans for staffing, human resource development and organizational capacity building tailored meet service regarding human and other resources and other administrative tasks to service provision, particularly for disadvantaged groups and areas, financial plans that link budgets directly to services and personnel plans, potential partnerships with the private sector, non-government organizations which will provide more effective forms of service delivery and the development, particularly through training of a culture of customer care, and approaches to service delivery that are sensitive to issues of race; gender and disability(White Paper on the Transformation of Public Services 1995:59).

Proceeding from the constitutional principles and the strategies of the White Paper on the Transformation of the Public Service, the Batho-Pele White

Paper was drafted. It also identified various challenges. It states that the public service is currently perceived as being characterized by the inequitable distribution of services; especially in rural areas; lack of access to services, lack of transparency and openness and consultation on the required service standards; lack of accurate and simple information on services and standards at which they are rendered; lack of responsiveness and insensitiveness towards citizens' complaints and discourteous staff.

These perceptions, which are frequently reflected in media reporting on public service activities, are also shared by many public officials themselves, which was confirmed during the consultation process, which preceded the preparation of the *Batho Pele White Paper* (White Paper on the Transforming Public Service delivery 1997:13). On the one hand *Batho-Pele White Paper* seeks to introduce effective approach to service delivery. It is an approaches that focuses on systems, procedures, attitudes and behaviour within the public services and reorients them in the customer's favour.

This approach is the one that puts the people first by creating a framework for the delivery of public services, which treats citizens more like customers and enables the citizens to hold public officials to account for the public services they receive. The *Batho-Pele White Paper* emphasizes

commitment of public officials to introduce more customer-focused ways of working. The approach is encapsulated in the name, which has been adopted by this initiative *Batho-Pele* (a Sesotho adage meaning *people first*). This also sets out a practical agenda for transforming the delivery of public services. It is directly applicable to those parts of the public sector, both national and provincial which are regulated by the *Public Service Act, 1999* (White Paper on Transforming Public Service 1997:14).

3.2.6 Information

Section 32 (1) of the Constitution (Act 108 of 1996) states that: everyone has the right to access to any information that is held by another person and that is required for the exercise or protection on any rights. National legislation must be enacted to give effect to this right and may provide for reasonable measures to alleviate the administrative and financial burden of the state. The Constitution provides for two dimensions in respect of access to information.

The first is the promotion of transparency, which will allow all citizens to access information that is in the public interest. Secondly, the provisions also intend to enable citizens to protect particular basic rights as provided for in the Bill of Rights. They can also request written reasons for any

administrative action that might adversely affect them. In addition citizens can also request any information for the exercise of protecting their rights.

The *Explanatory Manual on the Code of Conduct for the Public Service* (2000:18) states that, "An employee recognizes the public's rights of access to information, excluding information that is protected by law." Information is one of the most powerful tools at the customer's disposal in exercising his/ her right to good service. The Department of Local Government and Housing must provide full, accurate and up-to-date information about the services they provide, and who is entitled to them. This must be done actively in order to ensure that all those who have previously been excluded from the provision of public service obtain the services.

The consultation process should also be used to find out what customers and potential customers need to know and then work out how, where and when the information can be best provided (Batho-Pele White Paper 1997:19). Determination of which information is of public interest is a complex issue. Certain information is regarded as protected information to be managed by departments in terms of the guidelines of minimum information security standards as issued by the National Intelligence Agency. On the one hand the Labour Relations Act, 1995 provides for specific mechanisms to afford

public officials access to information held by the state so as to allow an employer to protect certain labour rights of employees.

In order to promote ethical conduct the officials in the Department of Local Government and Housing in Limpopo Province must make sure that there is free flow of information, which is important for service delivery. The *explanatory Manual on the Code of Conduct for the public service* (2000:18) also recognizes this. Should the employee fail to provide the necessary information to the public, the Code of Conduct (2000:18-21) considers it a misconduct case. The Code of Conduct strives to alter the behaviour conduct of public officials so that access to information by the public is guaranteed.

However, the *Batho-Pele White Paper* does not recommend any punishments should the public official deviate from that principle. Employees must at all times recognize the right of the public to have access to relevant information. Every department must establish an appropriate policy, which is in line with relevant national legislation to regulate matters within their respective organization. Officials should be aware of statutes and policies regulating all matters within their relevant departments (The Explanatory Manual on the Code of Conduct for the Public Service 2000: 24).

The reasons for and process followed, which resulted in an administrative action, must be properly recorded in order that the information will be available if requested. If information requested cannot be made available, acceptable reasons for such a decision must be provided to that member of the public.

3.2.7 Openness and transparency

In a democracy the principle of accountability is closely linked to transparency. Transparency is the creation of openness and access, so people can determine what activities are undertaken by. The Department of Local Government and Housing has a duty to make information available to communities, because this department is closest to the people. Government cannot be held accountable if communities have no way of finding out what government is doing.

Mechanisms to ensure openness and transparency include: report-back by members of Parliament, provincial legislature or local councillors to their constituencies, reports by parliamentary committees to Parliament or by local standing committees to their council, open meetings which members of the public can attend, reports to the Auditor -General or special commissions of enquiry. (Salga 2000:7). According to Dutoit, et al (1998:146) transparency is synonymous with democracy and also implies

participation in decision- making, involvement of citizens, access to information, accountability, and political responsibility. Democracy implies transparency or openness regarding the activities of public institutions and functionaries and participation by citizens in the decision- making process of public institutions also in determining policies and in implementing them. The *Batho-Pele White Paper* (1997:20) states that openness and transparency are the hallmarks of a democratic government and are fundamental to public service transformation.

Section 188 of the Constitution, Act 108 of 1996 states that, the Auditor - General is appointed to ensure transparency and openness with regard to public finance. The Auditor -General will audit and report on accounts of government institutions at all levels, providing that essential, independent link in the whole process of legislative control over financial activities of the executive arm of government. In the course of performing these duties, over 14000 audits are compiled annually and submitted to the various legislative institutions concerned.

At local spheres of government, these audit reports are submitted to the relevant council and at provincial spheres to the provincial legislature and at national sphere to Parliament. Ultimately the Auditor -General is answerable only to Parliament (Mafunisa 2000:46. In the public interest

and with a view to promoting ethical conduct, openness and transparency, the Auditor- General must continually submit all reports to Parliament and other legislative intuitions without fear or favour.

3.2.8 Redress

Citizens should at all times be offered an apology if the promised standard of service is not delivered. An explanation should be presented in a speedy and effective way. When complaints are made, citizens should receive a sympathetic or positive response. The Batho-Pele principle of redress requires a completely new approach of handling complaints. Complaints are seen by many public servants as a time consuming irritation. Where complaints procedures exist, they are often lengthy and bureaucratic, aimed at defending the department's actions rather than solving the user's problem (*Batho-Pele White Paper 1997:27*).

All 65 per cent of all research respondents who have responded to the questions in the questionnaire maintain the Department does not collect any statistics about the number and type of complaints they receive. Often complaints are counted as such only when they are submitted in writing through the formal channels. Yet many members of the public do not use these channels because they have no confidence in their effectiveness, and

because they find the process time consuming and sometimes daunting. As a result, public sector organizations frequently underestimate the level of dissatisfaction, which exists.

In a quest to promote ethical conduct in the department, complaints systems should be well publicized and easy to use. Excessive formality should be avoided. Systems, which require complaints to be made only in writing may be convenient for the organization but can be experienced negatively by many customers. Complaints made in other ways, such as face to face or by telephone should therefore also be welcomed. All customers must receive polite and helpful service of high standards (*Batho-Pele White Paper* 1997:27).

The efficiency of public institutions may be assessed in terms of three criteria namely effectiveness, economy and productivity. Firstly effectiveness has to do with the extent to which the institution has satisfied the needs identified when priorities were set for a programme of action. It is necessary when evaluating effectiveness to do so in terms of the degree to which it was originally decided when setting objectives that a need would be satisfied. Economy concerns with the frugality with which available resources have been used.

From the preceding discussion it is obvious that, because of the complicated nature of local government activities, it is not always obvious whether or not an action is advantageous. Values should be decisive considerations. The responsibility, therefore, rests on public officials and political office bearers to ensure that public activities are carried out without ulterior motives, according to predetermined criteria and procedures, and that the taxpayer's money is used for the purpose intended. This will lead to the promotion of ethical conduct on the one hand building a culture of accountability in the public service on the other hand.

Department of Local Government and Housing should not wait for a financial crisis to happen before improving efficiency. Officials must at all times relate performance to costs and costs must be specified for each activity measured. Efficiency is to be measured in rand rather than just the labour time used. Cost accounting is also essential for the costs in addition to salaries. The labour time is the standard time used to complete a task. A ratio of one means that standard has been achieved effectively and efficiently. A ratio of less than one means efficiency has been less than the achievement exceeded the standard.

3.2.8 Public administration must be accountable

Accountability refers to the duty to answer and report to a higher authority (in a democracy the highest authority is the people) about the results obtained with the performance of one or more specific functions. Accountability should be seen as a process whereby the subordinates report to a superior on what they did or failed to give effect when performing their activities. Their conduct should above reproach as they are accountable to the public (Cloete 1994:69).

Public officials must accept accountability in public for their official actions. In terms of local government, municipal councillors are elected and officials are appointed to render services by which the general welfare of municipal inhabitants will be promoted. For this reason public funds are used. The sources of income, which municipalities have at their disposal, are limited to the extent to which the inhabitants are able to or prepared to make a contribution. In addition, municipalities are dependent upon the resources available in order to satisfy particular needs. It can thus justifiably be expected of all councillors and officials to act in such a way that the greatest benefit is achieved for those being served (all actions should be efficient, resources used economically and maximum possible service effectiveness be provided). All decisions and actions should be publicly

accounted for (explained in terms of the authority of the councilors and official) (Meiring and De Villiers 1995:243).

3.2.10 Conduct management.

All public officials are required to comply with the law, and to abide by the Code of Conduct for the Public Service. Failure to do so constitutes a breach of discipline for which an employee can be penalized (The Explanatory Manual on the Code of Conduct for the Public Service 1997:2). It is therefore, the responsibility of the Department of Local Government and Housing in Limpopo Province to ensure that every employee is aware of the legislation which impacts on their areas of work and is provided with a personal copy of the Code of Conduct for public officials when they take up their duties.

The key to promoting ethical conduct on the part of employees is to create an environment where a high standard of professional behaviour is the norm. Managers must at all times set and maintain high standards of honesty, ensure responsible use of resources, courtesy, punctuality and conscientious performance of their duties. This applies, above all, to managers who are ultimately accountable for their employees' conduct. In case of misconduct managers in the Department of Local Government and Housing should

immediately be dealt with. Unlawful or criminal activity should be dealt with under due legal process.

3.3 Concluding remarks

Attention in this chapter was focused on values and principles for promoting ethical conduct as required in Section 195 (1) of the *Constitution of the Republic of South Africa Act* (108 of 1996). The principles identified and discussed are: (a) maintaining and promoting a high standard of professional ethics; (b) efficient, economic and effective use of resources; (c) oriented towards development; (d) delivering services impartially, fairly, equitably and without bias; (e) public participation in policy matters, (f) accountable for its action; (g) transparency (h) cultivating good human resource management and (i) broadly representative of the South African people.

The next chapter will focus measures and institutions for combating unethical conduct. Measures for combating unethical conduct include: training and development, penalties, good incentive structures, political will, awareness and transparency, prescreening of educational qualifications, establishing a national integrity system, anti-corruption agencies, innovation of public procurement, project execution and concessions, and blacklisting corrupt public officials. Institutions for combating unethical conduct include: Criminal Justice System, National Prosecuting Authority of South Africa, Asset Forfeiture Unit, Special Investigating Unit and Special Tribunals, Public Protector, Auditor-General, Commissions of enquiry, Judicial institutions and Public Service Commission.

CHAPTER 4

MEASURES AND INSTITUTIONS FOR COMBATING UNETHICAL CONDUCT

4.1 Introduction

The prevention and combating of unethical conduct and related activities is responsibility of all States Departments requiring mutual cooperation, with the support and involvement of individuals and groups outside the public sector, such as organs of civil society and non-governmental and community-based organizations, if their efforts in this area are to be effective and efficient. Unethical conduct is harmful to the Department of Local Government and Housing in Limpopo Province causing irreparable damage to public morale. Consequently, people end up losing faith in the integrity of public administration. If means and ways are not devised to combat unethical conduct, it will eventually destroy public credibility and hamper the effectiveness of the Department. This chapter is dedicated towards measures and institutions for enforcing ethical conduct, accountability and combating corruption in the Department of Local Government and Housing in Limpopo Province.

4.2 Measures for combating unethical conduct

The United Nations has adopted various resolutions condemning all corrupt practices, and urged member states to take effective and concrete action to combat all forms of unethical conducts and related practices. The *South African Development Community Protocol* against unethical conducts, adopted on the 14 August in Malawi, reaffirmed the need to eliminate the scourges of unethical conduct through the adoption of effective and preventive and deterrent measures and by strictly enforcing legislation against all types of unethical conduct. The Republic of South Africa desires to be in compliance with and to become party of United Nations against unethical conducts adopted by the General Assembly of the United Nations on the 31 October 2003. A comprehensive, integrated and multidisciplinary approach is required to prevent and combat unethical conduct by public officials (Prevention and Combating of Corrupt Activities Act 2004:4).

4.2.1 Protection of whistle-blowers

Whistle blowing is defined as the process in which an organizational member (former or current) discloses confidential information to the outside world (on its employer or one of its employees) relating to illegal, illegitimate or unethical practices (like danger, fraud, corruption or other illegal conduct) linked to the organization (Louw, 2002:121).

Section 1 of the Protected Disclosures Act No 26 of 2000 defines disclosure as :

- (i) any disclosure of information regarding any conduct of an employer of employee of that employer, made by any employee who has the reason to believe that the information concerned shows or tends to show one or more of the following:
 - (a) that a criminal offence has been committed, is being committed or is likely to be committed.
 - (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which that person is subject to;
 - (c) that a miscarriage of justice has occurred, is occurring or is likely to occur,
 - (d) that the health or safety of an individual has been or is likely to be endangered,
 - (e) that the environment has been or is likely to be damaged;
 - (f) unfair discrimination as contemplated in the promotion of Equality and Prevention of Unfair Discrimination Act 2000 (Act 4 of 2000) or
 - (g) that any matter referred to in the paragraph (a) to (f) is being or likely to be deliberately concealed.

According to Protected Disclosures Act (2000:4) whistle blowing is an early warning system to alert possible risk to the organization. An effective policy to encourage whistle blowing enables employees to find out when something is going wrong in time to take remedial steps. A positive whistle blowing is a critical element in the success of any risk management system. If the Department of Local Government and Housing can encourage whistle blowing, it will stand a better chance of demonstrating that it is properly run and managed. The existence of a working whistle blowing policy can be pivotal in legal proceedings. This is because, in determining liability and in setting the penalties, the courts may well take account of whether a whistle was blown and if not, why not.

While employees are usually the first to know of wrongdoing, many will feel they stand to lose the most by speaking out. The fear of being labeled a “sneak” or a troublemaker, the fear of “breaking ranks” and appearing disloyal to colleagues, and the fear of being required to provide irrefutable evidence are powerful disincentives to speaking out. One of the key obstacles faced in the fight against corruption is the fact that individuals are often too intimidated to speak out or blow the whistle on corrupt and unlawful activities they observe occurring in the workplace, although they may be obliged to in terms of their conditions of employment.

The procedures enshrined in the Protected Disclosures Act 26 of 2000 offer potential whistle blowers protection from ‘occupational detriment’ (Camerer, 2000:3). The Act prevents the employer from subjecting an employee to occupational detriment upon having made a protected disclosure and it submits an end to escalating instances of retaliation to whistle blowing. Occupational detriment in relation to the working environment of an employee is defined in subsection (vi) of the Protected Disclosures Act (2000:4) as follows:

- (a) being subjected to any disciplinary action;
- (b) being dismissed, suspended, demoted, harassed or intimidated
- (c) being transferred against his or her will;
- (d) being refused transfer or promotion;
- (e) being subjected to a term or condition of employment or retirement which is altered or kept altered to his or her advantage;
- (f) being refused a reference or being provided with an adverse reference, form his or her employer;
- (g) being denied appointment to any employment, profession or office;
- (h) being threatened with any actions referred to in paragraph a –g above or;
- (i) being otherwise adversely affected in respect of his her employment, profession or office, including employment opportunities and work security.

The protection of whistleblowers is a powerful instrument to the Department of Local Government and Housing in Limpopo Province to combat unethical conduct because it protects an employee, whether in the private and public sector from being subjected to occupational detriment on account of having made a protected disclosure. The protection of whistle blowers will promote ethical conduct because is provide for certain remedies in connection with any occupational detriment suffered on an account of having a protected disclosure; and provide for procedures in terms of which an employee can, in a reasonable disclose information regarding improprieties by his or her employer.

4.2.2 Blacklisting corrupt public officials

Unethical conduct in Limpopo Province in the Department of Local Government and Housing strikes at the root of the welfare of the Limpopo Province and that of the future generations in this country. Public officials who perpetrate crimes must be punished with the maximum form of punishment provided for by the criminal law of this country. The Department must, with immediate effect, create a central database for blacklisting corrupt officials found guilty of unethical conduct under the State Information Technology Agency (SITA). Du Plessis (1981:4) argues that, in the United States of America, blacklisting of officials carries more deterrent value than the imposition of fines.

If serious corrupt officials are blacklisted for life without rejoining the public service, unethical conduct will probably diminish in the Department. The actions should be fair to the accused, consistent with the gravity of crime and reasonable and justifiable in an open and democratic society. Culprits must be blacklisted or penalized for minor offences, dismissed, prosecuted, and punished with the maximum sentence evil of punishment provided for by the Criminal Justice System of this country.

4.2.2 Training and development

The introduction of training and development programmes in ethics can assist to improve the skills and ability of public officials. It is impossible for all public officials to attend a university or tecknikon and study a particular discipline. Training and development thus becomes essential in any public institution in order for public officials to be acquainted with issues related to ethical conduct. The fact that public officials are selected for the suitability of their qualification for such position (job description) does not mean that that is all they need to be of maximum benefit to the public service. Task performance is a dynamic process that requires that individuals be optimally suited to the task at hand and to any other task they may be assigned which may require a specified of skills (Mafunisa,2000:3).

This requires, therefore that each official must continually be trained and developed while on the job. A personnel training is vital to the survival and development of both the organization and the individual employee. Through training individuals acquire and learn new refine work habits or useful knowledge that improves their performance-required tasks. Therefore, training involves the process of learning.

All newly appointed and serving public officials in the Department of Local Government and Housing should be given induction or orientation courses, clearly stating the vision, mission and values within the public service. Public and private training providers and tertiary institutions should take a lead to advise the Department of Local Government and Housing in arranging training courses for all public officials to promote ethical conduct. Service delivery capacity should be built within the Department of Local Government and Housing to minimize corruption, maladministration and inefficiency.

Training and retraining of public officials in ethics, performance management and service delivery will go a long way in addressing the services rendered by public officials. Training and development of public officials is essential for promoting ethical conduct and building a culture of accountability in the Department of Local Government and Housing.

4.2.3 Penalties

Penalties should be applied to root out unethical conduct. Corrupt public officials should be penalized for minor offences, dismissed and possibly prosecuted under the criminal code of major offences. Clarke (1983:297) argues that culprits should be demoted transferred to less lucrative or totally unsuitable jobs or reprimanded. In India penalty imprisonment carries more deterrent value than the mere imposition of fines. If serious offenders were dismissed, corruption would not persist in the Department of Local Government and Housing. Anti- corruption campaigns should be established and conducted with the aim of rooting out corruption.

4.2.4 Good incentive structures

Flanagan and Finger (2000:200) argue that an incentive structure should be structured in a way that will tackle the problem of unethical conduct. Public service incentive structures can only be effective if concluded by staff as truly acknowledging good performance. Singapore has been conspicuously successful in this endeavour. An anti-corruption strategy was put into place in the country, along with gradual pay rises, fair salary structures, and strict penalties. Now, Singapore's public service salaries are among the highest in the world, and its productivity and effectiveness widely recognized (Clarke 1983:297). In common with other countries, there will be occasional

Singaporean officials who succumb to the temptations of grand corruptions, but the problem of corruption is fairly under control.

Clarke (1983:297) argues that, the government of Uganda has undertaken the challenge of civil service reform with support from the World Bank and substantial bilateral assistance. In the course of this reform, all civil servants' benefits are being "monetarized". Public officials are now allowed to decide whether they wish to receive benefits or have them replaced with their monetary equivalent. It is hoped that this freedom to create discretionary spending with their benefit package will enhance the value they attach to their posts, decrease temptations to accept bribes, and lead to higher standards of service delivery to the public.

Rasheed and Olowu (1993:93) argue the to ensure that public officials devote all their efforts to the services expected of the public service, public service remuneration should strive to be comparable with those in the private sector.

Robinson (1991:150) augured that unethical conduct will be encouraged if public officials cannot maintain their living standards from the formal provisions of public service employment because they will be tempted to seek opportunity from unofficial or illegal activities provided by their official employment. It can be argued that good incentive structures assist in the promotion of ethical conduct.

4.2.5 Political Will

Political will is a crucial starting point for effective anti-corruption strategy and programme. No legislation can be effective unless there is a commitment in all spheres of government. In all efforts to combat corruption, the commitment to senior elected representatives and other public officials is pivotal (Caiden 1979: 295). To some extent, creating this political will and sustaining the momentum for reform depend on a strong civil society that is willing and able to press for change. Strong and active civil society can be a powerful tool for expanding awareness of corruption and often a key source of information of unethical practice.

4.2.6 Awareness and transparency

The Department of Local Government and Housing must create awareness, openness, accessibility and transparency on the issue of unethical conduct. This will include changing peoples' mindset through positive steps such as exposing corruption when it occurs, publicizing and highlighting the problem, including announcements, undertaking public campaigns and hosting anti-corruption conferences. Caiden (1979: 295) argues that, public officials should be trained to acquire a thorough knowledge of the control measures that apply to them. Typical corrupt and fraudulent schemes should be brought to the attention of the public officials concerned.

An awareness of the seriousness of unethical conduct should be created and it must be shown that unethical conduct is a multifaceted dragon with many heads. A natural instinct must be developed to identify irregularities and report them to the relevant authorities (Oldenburg 1987:509). When the prosecuting authorities come across a case which there are serious indications that the state assets may be alienated or may already be in the possession of a person not entitled to them –the Unit can take action either to attach these assets or to freeze them, which could ensure the recovery of assets.

4.2.7 Prescreening of educational qualifications

In this category, verifying the qualifications of all public officials will be the most effective mechanism to check whether public officials appointed have the required qualifications. The Public Service Commission is aware of the role it can play in this regard, having recently compiled a report on public officials who are ill qualified for the position in which they were appointed. An example that comes to mind is that of a Provincial Director of Local Government and Housing with a grade 10 (Standard 8) qualification, earning more than R400 000 per annum (Auditor -General Report 2001:8-9). Ethical conduct will be promoted Department of Local Government and Housing

verifies and screen educational qualifications before public officials are allowed into the system. Effective screening of new employees is crucial and no opportunities should exist to motivate illegal or unethical conduct. In addition, regular reinforcement and motivation to do right and to avoid wrongdoing through the dynamic enforcement of ethical codes should be part of the Department policies.

4.3 Institutions for combating unethical conduct

4.3.1 Criminal Justice System

Burchell and Milton (1991:67) define criminal justice as a system that should ideally incorporate the element of creative harmony, giving expression to social demands for effective and efficient crime control. Humanitarians demand that the sanctions of criminal law are to be imposed in a fair and just manner. Senna and Siegel (1993:137) refer to criminal justice as a legal wrong that is prohibited by criminal laws, prosecuted by the state in a formal court session, in the course of punishment, a sanction may be imposed.

Various authorities on public administration and development management acknowledge the value of a criminal justice system in combating unethical conduct. Hanekom, et al (1987:168) maintains that an independent judiciary is a great asset in the endeavour to promote the ethical conduct of public officials and political office bearers. Offences against the state must be brought before the Attorney- General (Bayat & Meyer 1994:228). The Attorney- General here refers to the National Director of Public Prosecutions. Landell-Mills and Serageldin (1991:15) emphasize the fact that a sound judicial system is a prerequisite for effective administration.

Judiciary institutions are independent bodies: they do not depend on external control opinion or livelihood (Allen, 1990:601). Sections 165 and 166 of the *Constitution of the Republic of South Africa Act (108 of 1996)* provides that the judicial authority of the Republic of South Africa vests in the court of law established by the Constitution and other law. The judiciary is independent, impartial and subject only to the Constitution and the law. No person and organ of the state may interfere with judicial officers in the execution of their duties. The courts are the Constitutional court; the Supreme Court of Appeal; the High court; The Magistrate court; and other courts established or recognized in terms of the Act of Parliament.

According to *Prevention and Combating of Corrupt Activities Act* (2004:44) any public official who is convicted of offence is liable – in the case of a sentence to be imposed by a High Court, to a fine or to imprisonment up to a period for imprisonment for life, in the case of sentence to be imposed by the regional court, to a fine or to imprisonment for a period not exceeding 18 years, or in the case of sentence to be imposed by the magistrate's court, to a fine or imprisonment for a period not exceeding five years. In addition to any fine a court may impose in terms of subsection (1) or (2), the court may impose a fine equal to five times of the value of gratification involved in the offence.

Rasheed and Olowu (1993:25) remark that the judiciary contributes to checking the abuse of administrative power and making public officials account for their actions. Legal disciplinary sanctions are instituted against erring public officials. Most judicial institutions attend to cases in public and give motivated reasons for their judgment after evidence has been heard. Court cases usually receive publicity from the press. The fear of being exposed to the public by the press is a factor that may discourage public officials from acting irresponsibly. For the courts of law to be effective in instilling a sense of accountability in public officials, their independence and objectivity should be maintained. If courts of law are impartial, independent

members of the public and public officials will have confidence in them (Cloete 1993:124).

The punishment of any corrupt public official in the South African criminal justice context is meted out in the form of a criminal trial conducted according to the rules of natural justice. According to Hoffman and Zeffert (1988:506) “a criminal trial is not a game; it is aimed at achieving justice by convicting the guilty and freeing the innocent”. There can be no question of punishing any allegedly corrupt public official in South Africa unless that public official’s conduct complies with the definition of corruption enshrined in the *Prevention and Combating of Corrupt Activities*, 2004 (Act 12 of 2004).

Mafunisa (ed) (2000:59) maintains that the South African criminal law defines requirements to be fulfilled before punishment can be effected in the context of the criminal justice process. In other words, the conduct of the allegedly corrupt public official should conform to general principles of criminal liability. Visser and Vorster (1987:223) maintain that such principles of criminal liability must reflect that, the conduct was a voluntary human act (subject to exceptions) was perpetrated with the requisite blameworthy state of mind (negligently or intentionally), and was unlawful.

Before the court can punish the public official accused of corruption, there should be relevant and sufficient evidence to prove the guilt beyond reasonable doubt. Hanekom and Thornhill (1983:104) argue that the success of judicial control in remedying or preventing corruption is limited since the courts act only on factual considerations and only when corruption can be proved.

Judicial institutions have the power to review the decisions of public service disciplinary committees in cases where personnel and financial regulations have been violated or alleged violated. A public official who has been expelled from the public service for unethical conduct has the right to take the matter to a court of law for redress. The negative decisions of courts of law may deter other public officials from violating personnel and financial regulations.

4.3.2. National Prosecuting Authority (NPA)

National Prosecution Authority (NPA) was created under *Section 179 Act 108 of 1996 Constitution* to institute criminal proceedings on behalf of the state and to carry out the necessary functions incidental to instituting criminal proceedings. The NPA was established on the 1st of August 1998 in terms of *Section 179 (1) of the Constitution Act 108 of 1996*.

Section 179 Act 108 of 1996 Constitution of the Republic of South Africa states that, the function of the National Prosecuting Authority of South Africa is to: investigate serious maladministration in connection with the affairs of any State institution; improper or unlawful conduct by employees of any State institution; unlawful appropriation or expenditure of public money or property; unlawful, irregular or unapproved acquisitive act, transaction, measure or practice having a bearing upon State property; intentional or negligent loss of public money or damage to public property; corruption in connection with the affairs of any State institution or unlawful or improper conduct by any person which caused or may cause serious harm to the interest of the public.

Section 7 Act 32 of 1998 of the National Prosecuting Authority Act makes provision for the establishment in the Office of the National Director of Public Prosecutions, of a Directorate of Special Operations, loosely referred to as the Scorpions. The aim of this Directorate of Special Operations (“Scorpions”) is to: investigate, and to carry out any functions incidental to investigations; gather, keep and analyze information; where appropriate institute criminal proceedings relating to offences or criminal activities committed in an organized fashion.

The NPA is and will remain integral part of the institutions for promoting ethical conduct of public officials and combating corruption. Investigations of unethical conduct by NPA will discourage public officials to conduct themselves ethically. Public officials know that if found guilty of unethical conduct, they may face both criminal and departmental actions.

4.3.3 Asset Forfeiture Unit (AFU)

The Asset Forfeiture Unit (AFU) was established in May 1999 with lawyers, forensic accountants and investigators to investigate cases out of alleged crime by ensuring that criminals do not benefit from ill-gotten gains and use their property to commit crimes. The National Director of Public Prosecutions (NDPP) created the AFU in order to ensure that the powers in the Act to seize criminal assets to fight against crime, and in particular organized crime. In recognition of the growth and increasingly important role played by the AFU, it became a full division of the National Prosecuting Authority (NPA) in 2001. Maluleke (2000:64) argues that where the government has suffered irrecoverable monetary or proprietary loss through acts of public service corruption, the offenders should have their movable or immovable properties attached by due process of civil law (in the context of civil justice).

The performance of the Asset Forfeiture Unit was higher than it expected when it started. Since the law was made in September 1999, the AFU has a success rate of over 90%. From the international perspective it was observed that the Asset Forfeiture Unit is vital in combating unethical conduct by hitting the crime bosses where it hurts most ([Www.npa.gov.za](http://www.npa.gov.za) 13 December, 2003:1). Prosecutors in the United States of America argued that Mafia bosses smiled after they are found guilty of unethical conduct as they receive a 20 years sentences- but burst out in tears when their favorite Rolls Royces went, when their houses went, when the children lost their expensive private education, when their wives lose their savings and their pensions.

The Asset Forfeiture Unit (AFU) has in nine months of the financial year 2003/2004 returned more than R100 Million to victims of crime and to the state. The AFU has also won 16 of the 20 judgments in which it was involved in 2003 financial year and has frozen assets in more than 170 new cases, valued at R170 Million. Over R50 Million has now been paid into the Criminal Assets Recovery Account more than all costs incurred by the AFU. The fear that the Asset Forfeiture Unit may attach movable or immovable properties of public officials guilty of unethical conduct will discourage public officials from acting irresponsibly. This Unit will help recover the

loss if any that, the Department of Local Government and Housing has suffered because of unethical conduct by public officials.

4.3.4 Special Investigating Unit (“SIU”) and Special Tribunals

The Special Investigating Unit (“SIU”) and Special Tribunals was established by proclamation NO.R 118/2001 in terms of the Act No.74/1996 to investigate matters involving serious maladministration and corruption. The SIU is a semi-independent statutory body tasked with investigation of fraud, corruption and maladministration of the state assets and monies. The SIU works closely with the National Prosecuting Authority of South Africa (NPA), the Asset Forfeiture Unit (AFU) and South African Police Services (SAPS). When the SIU comes across alleged criminal activity or uncovers criminal acts, it passes that information on to the relevant criminal investigating body for action. By doing this, it ensures that corruption of state monies and assets is pursued on a civil and criminal basis (Special Investigation Unit and Special Tribunals Act 2001: 1).

According to the *Special Investigation Unit and Special Tribunals Act* (2001:6), states that, the functions of a *Special Investigating Unit* are, within the framework of its terms of reference as set out in the proclamation referred to in section 2 (1) to: investigate all allegation regarding the mater

concerned; to collect evidence regarding acts or omissions which are relevant to its investigations and if applicable, to institute proceedings in a *Special Tribunal* against any parties concerned; to present evidence in proceedings brought before a *Special Tribunal*; to refer evidence regarding or which points to the commission of an offence to the relevant prosecuting authorities; from time to time as directed by the president to report on the progress made in the investigation and matters brought before the Special Tribunal concerned; upon the conclusion of investigation, submit final report to the President of the Republic of South Africa and at least twice a year submit a report to Parliament on the investigations by and activities, composition and expenditure of such Unit.

The *Special Investigating Unit* may subpoena any person to appear before it, and if applicable, to submit to it any book, document or object as specified in the subpoena, which may be relevant to the matter before it. *Special Investigating Unit* is a powerful instrument to promote ethical conduct because public officials will endeavour to perform their duties effectively and efficiently if they know that their actions may be investigated by *Special Investigating Unit* and be brought before the *Special Tribunals* to ascertain serious malpractices or maladministration in connection with the administration of the state institutions, state assets and public money as well as the conduct which may seriously harm the interest of the public.

If following an investigation, there is evidence of fraud, corruption and maladministration, the SIU is empowered to take civil action, in the Special Tribunals, to recover any state monies that may have been misappropriated or misused. By investigating and taking action where necessary, the SIU can save, protect, recover assets and monies of the Department of Local Government and Housing. It can be concluded that, the SIU is a powerful institution to promote ethical conduct and build a culture of accountability among public officials.

4.3.5 Public Protector

Section 182 (1) of the *Constitution of the Republic of South Africa Act* (108 of 1996), provides for the establishment of the Public Protector and authorizes the public protector to investigate according to his or her initiative or receipt of the complaint, any alleged maladministration, improper or dishonest act, omission or corruption, with respect to public funds, improper or unlawful enrichment, or receipt of any improper advantage, or promise of such enrichment or advantage, by a person as a result of an act or omission in the public administration of public institutions.

Section 182 of the *Constitution of the Republic of South Africa* 1996, authorizes the Public Protector to: (a) to investigate any conduct in state affairs or in the public administration in any sphere of government, that is alleged or suspected to be improper or the result in any impropriety or prejudice (b) report on such conduct and (c) to take appropriate remedial action. The Public Protector must be accessible to all persons and communities, and any report issued by the Public Protector must be open to the public unless exceptional circumstances to be determined in terms of National legislation require that a report be kept confidential.

The office of the Public Protector promotes ethical conduct and accountability. It is expected that public officials will behave ethically and as efficiently and effectively as possible, with the knowledge that the Public Protector may investigate unethical conduct and makes his or her findings to the public. The Public Protector as illustrated through the investigation of unethical conduct, will not only keep the Department aware of its responsibility and public accountability, but also help to instill acceptable behaviour and accountability of public officials.

4.3.6 Auditor-General

Section 188 (1) of the *Constitution of Republic of South Africa Act, 1996* (Act 108 of 1996) state that, the function of the Auditor-General is to

ascertain, investigate and audit all accounts and financial statements of all the departments of the central, provincial and local level of government, and any statutory body or other institution that is financed by public funds. At the request of the President, the Auditor-General may conduct performance audits. Du Toit (1991:67) remarks that, by being responsible for performance auditing, the Auditor-General judges policies and transactions in terms of 'value of money' principle. Whenever the Auditor-General exercises or performs his or her powers or functions in terms of the Constitution, he or she access all books, records and other documents and information relating to the accounts and financial statements of public institutions. The Auditor-General reports on the audited accounts to parliament.

All reports of the Auditor-General must be made public in order to comply with ethical practices. The Auditor-General serves as checks and balances to ensure sound administration. Public officials should therefore not regard these institutions negatively, but should assist them to perform their roles by, for example, providing any information and explanations they might require at any given time. Auditor-General must be independent and subject only to the Constitution, the law, and must be impartial and must exercise their powers and perform their functions without fear, favor and prejudice (Explanatory Manual on the Code of Conduct for Public Service 2002:14).

If the office of the Auditor-General is requested to investigate a complaint by a member of the public against any government department, it would expect the co-operation of employees in the department in providing whatever information is required. If the Auditor General finds irregularities in the financial administration of a department, the relevant department officials should not regard the findings negatively. They should understand and appreciate the Auditor-General's role and co-operates fully with the Auditor –General office to clear up the problems (Explanatory Manual on the Code of Conduct for Public Service 2002:14).

One case that generated specific public interest and was subsequently submitted to the office of the Auditor-General, was the appointment of an official to the post of deputy director in the Department of Local Government and Housing despite not having the required qualifications as laid down in the staff codes. The officer was subsequently suspended from duty after having been paid salaries and allowances amounting to R697 570, 67. Due to the delay in settling of the matter further expenditure amounting to R233 994, 93 was incurred for the financial year 2000/2001 and this expenditure was regarded as irregular (Auditor-General Report 2001:9).

The media will usually highlight incidents of maladministration reported to the Auditor-General. The reports of the Auditor-General are therefore

powerful instrument for enforcing accountability at all levels of government, provided members of the legislature, interest groups and the public insist upon the action against public officials responsible for maladministration. Office of the Auditor-General enhances ethics and accountability. Public officials will endeavour to perform their duties effectively and effectively if they know that their actions may be investigated to ascertain whether effective management principles are in place to ensure resources are procured economically, and utilized efficiently and effectively.

4.3.7 Commissions of enquiry

According to Cloete and Mokgoro (1995:16) unless the President providing for secrecy or confidentiality lays down a regulation for a particular commission, the legal position is such that all evidence, hearings and other matters concerning the commission are open to public scrutiny and inspection. Commissions of enquiry investigate allegations of maladministration by public officials and their findings can help to deter others. Most public officials are scared of becoming involved in maladministration because they are aware that public inquiry could result in them losing their jobs and being publicly castigated. The setting of commission of enquiry should be a testimony to intolerance and disapproval of unethical conduct.

If commissions of enquiry are to be effective in promoting ethical conduct and accountability, they should be fiercely independent and be able to maintain their independence, even under severe political and public pressure. The publicity accorded to and generated by a commission of enquiry is also important. Because of the publicity, the perpetrators of unethical conduct will be more careful, and further evidence may be discovered through members of the public who have suffered abuse and grasp at the chance of redress (Du Tiot 1991:68).

Public officials may be encouraged to utilize public resources efficiently and effectively if they know that commissions of enquiry will be appointed to investigate whether effective management principles have been taken to ensure this.

4.3.8 Public Service Commission

The public service has many mechanisms for identifying unethical conduct and recommending steps to obtain compliance with the provisions of personnel regulations and a Code of Conduct. An example of such a mechanism is the Public Service Commission, which was established in terms of Section 196 (1) of the Constitution of South Africa Act, 1996 (Act 108 of 1996). The Public Service Commission is competent to make

recommendations, give directions and conduct inquiries into the organization and administration of public service departments; conditions of service and matters pertaining thereto; personnel practices, including appointment, promotions, transfers and terminations of services; the promotion of efficiency and effectiveness, and the code of conduct.

According to Vil-Nkomo (1993:21) the Public Service Commission ensures effectiveness and contributes to conformity in the total system of governance. A unified system of governance suggests efficient and effective delivery of services, responsive public officials, and a focus on productivity and accountability. The public Service Commissions' function is to promote the constitutional values and principles of public administration in the public service.

Public Service Commission also emphasizes that a high standard of professional ethical must be promoted and maintained by public officials at all times in execution of duties. Thus Public Service Commission promotes ethical conduct and accountability in that it ensures public service departments follow sound principles of public administration for efficient, economic and effective use of resources, and that people's needs are responded to.

4.4 Concluding remarks

The problem of unethical conduct cannot be left unresolved, particularly because it is intolerable and harmful to the Department of Local Government and Housing in Limpopo Province. Its causes demand mechanisms that are effective in checking and minimizing it. In as much as there are various forms of unethical conduct, measures to uproot it also vary. This chapter was dedicated to measures and institutions for combating unethical conduct in the Department of Local Government and Housing. Measures for combating unethical conduct include: training and development, penalties, good incentive structures, political will, awareness and transparency, prescreening of educational qualifications, establishing a national integrity system, anti-corruption agencies, innovation of public procurement, project execution and concessions, and blacklisting corrupt public officials.

Institutions employed for combating unethical conduct in the Department of Local Government and Housing include: Criminal Justice System, National Prosecuting Authority of South Africa, Asset Forfeiture Unit, Special Investigating Unit and Special Tribunals, Public Protector, Auditor-General, Commissions of enquiry, Judicial institutions and Public Service Commission.

The next Chapter will focus on the conclusion of the study. It will indicate whether the research findings have rejected or supported the hypothesis.

CHAPTER 5

CONCLUSION

The members of the public expect public officials to act with professionalism and excellence in providing goods and service to the members of the public. This nature of the obligation in the conduct of public officials is found, apart from utilizing the money from the taxpayers and are paid for through taxes. The study drew attention to ethical issues of interest to public officials. For it is only when the causes of the problem are properly appreciated that unethical conduct can be reduced.

With this in mind, Chapter One dealt with the statement of the problem of how ethical conduct can be promoted in the Department of Local Government and Housing. Statement of hypothesis, delimitation of the study, significance and purpose of the dissertation, methods of investigation and situations affecting the research were also discussed.

Public officials have been appointed to serve members of the public and not to promote private and self interest. When newly appointed public officials

join the Department of Local Government and Housing, their values and attitudes should be directed and adjusted towards the public service, their job, their superordinates and the public service's Code of Conduct. A Code of Conduct for employees in the Department of Local Government and Housing was discussed in Chapter Two. The purpose and guidelines of the Code of Conduct was identified and discussed. These guidelines include: relationship with legislature and executive, relationship with the public, relationship among employees. Commitment to the Code of Conduct was discussed.

The values and principles for promoting ethical conduct in Section 195 (1) of the Constitution of South Africa Act (108 of 1996) were identified and discussed in Chapter Three. These values and principles of Section 195 (1) are: a) governed by democratic values and principles of the *Constitution*;

- (b) maintaining and promoting a high standard of professional ethics;
- (c) promoting efficient, economic and effective use of resources;
- (d) oriented towards development;
- (e) delivering services impartially, fairly, equitably and without bias;
- (f) responding to people's needs and encouraging public participation in policy matters,
- (g) accountable for its action;

- (h) transparent in providing the public with timely, accessible and accurate information;
- (i) cultivating good human resource management and career development practices to maximize human potential
- (j) broadly representative of the South African people, with employment and personnel management practices based on ability, objectivity, fairness, and the need to redress the imbalances for the past. Attempt was made as to how these values and principles could promote ethical conduct of public officials.

Chapter Four focused on measures and institutions for combating unethical conduct. Measures for combating unethical conduct include: protection of whistle blowers, training and development, penalties, good incentive structures, political will, awareness and transparency, prescreening of educational qualifications and blacklisting corrupt public officials, education and training.

Institutions employed for combating unethical conduct in the Department of Local Government and Housing include: Criminal Justice System, National Prosecuting Authority of South Africa, Asset Forfeiture Unit, Special Investigating Unit and Special Tribunals, Public Protector, Auditor-General, Commissions of enquiry, Judicial institutions and Public Service Commission. It was also argued that these measures and institutions would

help public officials to perform their duties effectively and efficiently by reducing the level of unethical conduct among public officials.

From the foregoing the question that arises in conclusion is: *What measures could be introduced to promote ethical conduct amongst public officials to enhance good governance and administration in Limpopo Province's Department of Local Government and Housing?*. To answer this question the following suggestions may be ventured.

- (i) Of 120 officials in the Department of local Government and Housing who responded to the question: "Were you offered training since joining the public service since May 1994"?. 80 per cent indicated that they did not. This tends to indicate that lack of interest by public officials to change form old and unacceptable attitudes into new and acceptable ones.
- (ii) The hypothesis more than half of all public officials in the Department of Local Government and Housing are not committed to their jobs and fail to abide by the provision of the Code of Conduct was supported by 67 per cent of all research respondents who indicated that, there should be strict enforcement of the Code of Conduct. Public officials must be penalized for failing to abide on the provisions of the Code of Conduct for the Public Service.

The Department of Local Government and Housing must not only ensure that public officials comply with the Code of Conduct but must also build the initial bond of commitment in the public. It can therefore, be concluded that a Code of Conduct should provide public officials with standards by which they can guide their own behaviour, measure their own performance and judge the behaviour and performance of subordinate public officials.

To create the public service climate that contributes to the promotion of ethical conduct, public officials need to set examples in their own ethical behaviour in the Department of Local Government and Housing. Disciplinary measures must be taken against public officials who set unethical examples such as performing functions ineffectively and inefficiently. This serves as examples because if public officials could show unethical conduct without being reprimanded the others would not be afraid to indulge themselves in the same conduct. The fact the those found guilty are punished have psychological effect on the public officials who are beginning to realize that perhaps the Department is serious about combating unethical conduct. All new appointees should be provided with Code of Conduct for public administration immediately after appointment.

(iii) The hypothesis that lack of education and training in ethics inhibit the promotion of ethical conduct is supported by most of the public officials in

the Department of Local Government and Housing in Limpopo Province. The Department of Local Government and Housing should encourage public officials to further education and training as they improve the quality of work. Continuing educational and training combat obsolescence, which refers to a reduction in effectiveness and inefficiency because of lack of knowledge or skills.

To perform the task effectively and efficiently, public officials need to constantly learn and develop new skills. Appropriate training in work values must be provided to public officials for them to be able to detect manifestations of unethical conduct. They must be able to collect, with the assistance of training officers, auditors, accountants and work-study officers, information about manifestation of unethical conduct. The aim is not to find out which forms of illicit conduct is more severe but also to deter unacceptable work values. If officials recognize that the manifestation of unethical conduct would be detected and intimately be punished, they would be less likely to undertake them.

(v) The hypothesis that good incentive structure and protection of whistle blowers reduces unethical conduct was supported by 90 per cent of all the officials in the Department of Local Government and Housing in Limpopo

Government is aware that a necessary precondition for the development of efficient, honest and well-motivated public officials committed to a positive work ethic is the introduction of equitable remuneration and employment conditions for the public officials.

Towards this objective, the Government committed itself to ensuring that an adequate minimum wage and equal pay for work of equal value are introduced at all levels of the public service. The Government also committed itself to the reduction of differentials in pay and benefits from the ratio of 1:25 to a ratio of 1:12 or lower in 1999. Public officials cannot justify getting involved with fraudulent practices such as keeping multiple jobs to sustain minimum living standards. Disciplinary measures must be taken against public officials who get involved with fraudulent practices. This will also deter other public officials from getting involved unethical conducts.

The onus is on every employee and employer to endeavor to comprehend and abide by the Code of Conduct for the Public Service. Officials who conduct their affairs, practices and behaviour in a way endorsed by the Public Service and the society will inevitably gain integrity, good reputation and encouragement and support of their peers and supervisors. Ethical conduct has to be linked to the social dimension of the public. A culture of good

governance must be borne in the Department of local Government and Housing. The Department of Local Government and Housing must devise, advocate and implement a Code of Conduct by which the employees must abide. Employees who deviates form the Code of Conduct must face appropriate disciplinary action or penalties. With a tough Code of Conduct, officials will be compelled to act in a professional and with integrity.

Whistle blowing should be given a good make over and be encouraged in the Department of Local Government and Housing. Once the whistle has been blown, the Department should respond or take action, even if there is a dispute as to the legitimacy of the unethical conduct. To facilitate the process of whistle blowing internally, which is the preferred option, the Department of Local Government and Housing should have an effective internal system to raise concerns. This system should, inter, alia, include:

- (a) a clear statement that malpractice is taken seriously in the Department and indication of what is seen as malpractice;
- (b) respect for the confidentiality of staff raising concerns and opportunities to raise issues outside the line management structures to the other parties or to provide alternatives;
- (c) access to independent advice and guidelines on how to arise concerns outside the Department if deemed necessary;

- (d) commitment by management to whistle blowing process and support whistle blowers and ;
- (e) proper communication channels to document and address wrongdoing.

Whistle blowing is crucial to the detection of fraud and corruption. Internal and external audits are not intended to detect or prevent corruption and fraud. For whistle blowing mechanisms to be effective, there must be effective protection of the identity of the whistle blower and effective follow-up of all bona fide disclosures. There is need for the establishment of hotline system. A data management system should be established for all hotline to provide a coherent recording of disclosures. A specific training course is needed to support the specialized staff working on hotlines to deal with reported unethical conducts by public officials.

A standard procedure should be developed for the Hotline Investigation Units. The responsibility for the day-to-day operation of the hotline must be at the appropriate management level, to ensure buy in of senior managers and staff within the Department. The Department of Local Government and Housing should publicize the promotion of Administrative Justice Act and the Promotion of Access to information Act and encourage the public to play a more active role in using these laws to combat unethical conducts and corruption.

Internal reporting should be used as this is the most appropriate level where the misconduct can take place and to ensure that employees do not use other channels like media before the matter can be handled properly. In addition internal committee could be established to take account of good practice and to facilitate the whistle blowing process. Whistle blowing should be viewed as communication phenomenon and that the Department of Local Government and Housing should ensure that it has communication strategy and internal structure in place.

Without wide, but targeted anti-corruption prevention and public programmes, neither the legislation nor enforcement structures will be successful in fighting unethical conducts. The three “pronged approach”- prevention, public education and investigation/prosecution –is today considered best practice in the area of anti-corruption. South Africa has for now adopted a more decentralized but co-ordinate organizational framework, but this does not mean that the “three pronged approach” cannot be pursued within such a Departmental arrangement. While much work in South Africa has been carried out in the area of strategic considerations and increased law enforcement capacity (investigation/prosecution), the same cannot be said about the prevention of corruption and public education in this regard.

This constitutes one of the major weaknesses of the present South African approach to corruption. Adequate organizational and budgetary arrangements need urgently to be put in place in order to implement far more structured anti-corruption prevention and public education programmes. While the existence of dedicated legislation, structures and budget are no guarantee for success in the fight against corruption, without such elements the programme has a scant likelihood of being implemented, monitored and evaluated. It is in the area of public education in particular, that the partnership with business and civil society is particularly important.

No central database of incidents neither of corruption, nor of disciplinary or criminal cases related to corruption exists in Department of Local Government and Housing. Thus they are unable to state the detected or suspected level of corruption that exists within their organizations. They are also unable to systematically learn from the incidents.

A central database is essential for three reasons:

- (a) Department of Local Government and Housing must be in a position to measure the incidence of corruption, even if only within the public sector. This is necessary in order to be able to evaluate whether or not current anti-corruption strategies (both preventive and reactive) are having any effect.

(b) The Department of Local Government and Housing, business and civil society should be able to learn from incidents of unethical conduct, how they take place, when and where they occur and the risk factors involved. This aspect should form a key component of an Anti- Corruption Strategy.

(c) Department of Local Government and Housing should be able to evaluate its profiles and take appropriate remedial steps. The measurement of corruption should not be based solely on cases reported. Although such indicators are important to measure the effectiveness of the integrated strategy. A combination of preventive measures, reactive measures and societal health measures are important indicators of the prevalence of corruption.

At present such indicators are based on almost entirely on perception: these are notoriously difficult to evaluate. Corruption is dynamic: its form, appearance and modus operandi change constantly. As a loophole is closed and controls strengthened, corruption individuals find other avenues. The data and learning process therefore also need to be dynamic. A system of continuous improvement and evaluation is a prerequisite.

It must be concluded that the coordination of all the efforts to the Department of Local Government and Housing that check unethical conduct will strengthen the fight against unethical conduct in particular public service corruption. However, for these efforts to be successful, the institutions for combating unethical conduct must 'walk their talk'. They must be impartial when dealing with corrupt officials irrespective of official's political, economic, religious, ethnic and social-cultural orientation.

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ANNEXURE A

Good morning /afternoon /evening. Kindly complete this questionnaire by encircling the most accurately or closely resembles your personal opinion or attitude regarding each scenario. Should your change your mind, cross out original choice and encircle a new alternative. It will be appreciated if you answer all the questions regarding each scenario. (Please note that the data collected through this questionnaire will only be used to argue the case on "*The promotion of ethical conduct in Limpopo Province with specific reference to the department of local Government and housing*" for academic research. Your response will be treated as confidential as possible.

Personal details

1. Gender: A. Male

B. Female

2. Highest academic qualifications:

A. Matric

B. Diploma

C. Degree

D. Honours

E. Masters

F. Doctorate/PHD

G.

3. Occupation: A. Administrative

B. Professional

C. Managerial

D... ..

Professional particulars

1. What do you understand by the concept “promoting ethical conduct”?
 - a) Execute duties in professional and competent manner
 - b) Recuse from any official action which may result in improper personal gain
 - c) Honest and accountable in dealing with public funds
 - d) Uses public service property efficiently and effectively
 - e) Democratic, accountable, transparent and open to the public
 - f)
2. Do you think public officials must behave ethically?
 - a) Yes
 - b) No
3. Do your managers motivate you?
 - a) Yes
 - b) No
4. If your answer in question 3 is no, why are you not motivated by your managers?
 - a) They behave unethically
 - b) Inability to carry out their assignment
 - c) Always not helpful
 - d) They don't have relevant skills and qualifications
 - e) They were not appointed on merit
 - f)
5. What are the causes of unethical conduct in your department?

- a) Poor management
 - b) Lack of accountability
 - c) Poorly aligned incentive structures
 - d) Over centralized decision making
 - e) Soft penalties against corrupters
 - f) Party politics
 - g) Inadequate training
 - h)
6. Did you receive orientation or training when you were appointed in local government?
- A) Yes
 - B) No
7. Was the training worthwhile?
- a) Yes
 - b) No
8. If the answer in question 7 is No, what do you think was the problem?
- a) Training needs to be identified
 - b) Environment not conducive for training
 - c) Training programs outdated
 - d) Officials studied different courses not public administration
 - e)
9. Is there anything done to improve ethical conduct in the department of local government and housing?
- a) Yes
 - b) No
10. If the answer in question 9 is yes, what do you think will improve ethical conduct?
- a) Education and training
 - b) Strict discipline and disciplinary measures

- c) Sentencing officials guilty of unethical conduct
 - d) Blacklisting officials through SITA (State Information Technology Agency)
 - e) Legal sanctions
 - f) Good incentive structures
 - g) Code of conduct
 - h)
11. Do you think unethical conduct prohibit the promotion of ethical conduct in the public service?
- a) Yes
 - b) No
12. If you answer in 11 is No, what do you think will promote ethical conduct in the public service?
- a) Education and training in ethics
 - b) Code of conduct
 - c) Discipline and disciplinary measures
 - d) Sentencing public officials
 - e) Dismissal
 - f) Penalties
 - g) Criminal justice systems
 - h) Prayers and blessings for forgiveness
 - i) Public service commission
 - j)
13. How satisfied are you on how the department is handling unethical conduct cases?
- a) Very satisfied/ no need for immediate improvement
 - b) Satisfied/ room for some improvement

- c) Neither satisfied/dissatisfied or needs improvement on limited aspects
- d) Dissatisfied/ needs attention
- e) Very dissatisfied/ needs urgent attention and improvement
- f).....

14. How committed do you think the department is to fight against unethical conduct? Would you say the department is.....?

- a. Very committed
- b. Committed
- c. Not very committed
- d. Not at all committed
- e.

15. Does the department have enough resources to fight unethical conduct?

- a) Have enough resources
- b) Needs more resources
- c) Needs few resources
- d) Needs a lot more
- e)

16. Public officials found guilty of unethical conduct could face a number of situations. Which of the following do you think is the most appropriate?

- a) Loose jobs and imprisoned
- b) Loose job & pay a fine
- c) Loose their jobs only
- d) Depends on the type of offence committed
- e)

17. Different people talk about the measures to combat unethical conduct in the public service of South Africa. For each of the following proposals tell me whether you think the measures are **very effective, effective, not effective or**

not at all effective in combating unethical conduct in the department of local government and housing.

- . Sentencing officials guilty of unethical conduct
- . Blacklisting officials through SITA (State Information Technology Agency)
- . National Anti corruption hot line
- . Legislation enabling prosecution and harsher sentences
- . Special Anti corruption courts
- . Asset Forfeiture Unit
- . Directorate on Special Operation (DSO)
- . NPA (National Prosecuting Authority of South Africa)
- . Forensic Auditing
- . Blacklisting corrupt officials
- . Good incentive structures
- . Education and Training
- . Pre screening educational qualifications
- . Regular Anti corruption conferences
- . Opposition parties acting as watchdogs

18. Do you think the level of unethical conduct has increase, decrease or stayed the same since you were part of the department of local government and housing?

- a) Increase
- b) Decrease
- c) Stayed the same
- d)

19. Why do you say this?

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20. Overall (in summary), what would you say were the major success in fighting unethical conduct in the department of local government and housing?

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.....

21. Overall (in summary), what would you say were the major failures in fighting unethical conduct in the department of local government and housing?

22. In your own words what do you understand by promoting ethical conduct?

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End of interview

Thank you for your time and inputs