Corruption is a universal problem but the degrees of severity differ quite significantly from country to country. Its effects can seriously limit the development of national economies and undermine good governance. Corruption erodes stability and trust, and it damages the ethos of democratic governance.

The prevalence of corruption points to a dearth of ethical leadership and a breakdown in the institutions that are supposed to enforce good governance practice and it constitutes a major threat to democracy and the rule of law.

In an effort to stamp out the vice, a number of anti-corruption initiatives are underway internationally and South Africa has participated in many of them. This has helped inform South Africa’s National Anti-Corruption Strategy.

This paper discusses corruption particularly in the South African local government sphere and the responses that allegations and acts of corruption have elicited from the South African government at all levels and its anti-corruption agencies.
Definition and Types of Corruption

Different countries and scholars have diverse definitions and interpretations of corruption. However, the notion of ‘abuse of public or private office for personal gain’ is central to all of them.

Social science scholars define corruption in terms of certain basic considerations: First, corruption is related to the performance of the duties of a public office. According to Nye (1967:966) corruption is, ‘behaviour which deviates from the normal duties of a public role because of private – regarding (family, close private clique), pecuniary or status gains; or violates rules against the exercise of certain types of private – regarding influence. This includes such behaviour as bribery (use of reward to pervert the judgement of a person in a position of trust); nepotism (bestowal of patronage by reason of descriptive relationship rather than merit); and misappropriation (illegal appropriation of public resource for private regarding uses)’.

Second, corruption is related to the concept of exchange derived from the theory of the market. Van Klaveren (2001:26) argues that a bureaucrat views public office as an enterprise from which to extract extra-legal income. As a consequence, the civil servant’s compensation package ‘does not depend on an ethical evaluation of his usefulness for the common good but precisely upon the market situation and his talents for finding the point of maximal on the public’s demand curve’. In an economy pervaded by high levels of government regulations, civil servants may devote most of their time and effort to assisting entrepreneurs to evade state laws and statutes. In exchange the civil servants are paid extra-legal income (Mbaku 1992:146).

The definition of corruption is also couched in terms of the public interest, as argued by Friedrich (1972:15). He asserts that a pattern of corruption may be said to exist whenever a power holder who is charged with doing certain things, receives monetary or other rewards which favour whoever provides the reward. In return, this damages the public image of the group or organisation to which the functionary belongs, more specifically the government.

The definition by Nye (1967) provides a point of departure. Several parts of his definition are important, particularly his emphasis on public roles. If an official fights with a partner or abuses a child, that may be assault but it is not corruption. The nature of corruption that Nye is describing is that which only involves the behaviour of an official in his or her public role. This definition, therefore, covers situations where money winds up in the pockets of the official or a relative, but it does not cover situations where the goal of the abuse is to benefit the official’s political party, ethnic group, etc.

Evidence indicates that corruption is sometimes perpetrated in order to benefit a third party.

The Watergate scandal in the United States of America, for example, certainly involved illegalities, but most of the illegal acts were intended to benefit the President’s party, to ensure that the Republicans won in the 1972 presidential election, and later to prevent the embarrassing disclosure of the Nixon administration’s role in arranging the cover-up of the original burglary. While Richard Nixon frequently did abuse his office for personal gain (for example, by remodelling his mansion at government expense, and by padding his tax returns), the basic Watergate episode itself was not intended to enrich the President or his advisors.

A similar example in South Africa is narrated by Andrew Feinstein in his book After the Party. Feinstein believes that Thabo Mbeki, then Deputy President of South Africa and also Deputy President of the ruling African National Congress (ANC) at the
time of the arms deal, solicited funds particularly from the British company BAE/SAAB, not for his personal gain, but to fund the ANC’s election campaign (Feinstein 2007). In a dossier submitted to Parliament in 2006, Member of Parliament, Patricia de Lille alleged that she had evidence of three payments by warship supplier ThyssenKrupp on 29 January 1999 each of R500 000, to the ANC, the Nelson Mandela Children’s Fund and the Community Development Foundation in Mozambique, a charity associated with Mandela’s wife, Graça Machel.

In South Africa, the National Anti-Corruption Forum at its 1999 conference defined corruption as ‘any conduct or behaviour in relation to persons entrusted with responsibilities in public office and which is aimed at obtaining undue gratification of any kind for themselves or for others’. This definition seems more inclusive and encompasses the various forms and intentions of corruption that Nye in his definition is silent about.

The Prevention and Combating of Corrupt Activities Act (12 of 2004) outlines a framework for the strengthening of measures to prevent and combat corruption, provides investigative measures in respect of corruption and enterprises convicted of corrupt activities relating to tenders and contracts and provides for extraterritorial jurisdiction for corruption and offences relating to corrupt activities. The Act itself does not list various categories of corruption. The OECD, UN Convention as well as the National Anti-Corruption Summit agreed on the following as various forms of corruption:

a) **Bribery:** bribery involves the promise, offering or giving of a benefit that improperly affects or intends to affect the actions or decisions of a public official. This benefit may accrue to the public official, another person or entity. A variation of this manifestation occurs where a political party or government is offered, promised or given a benefit that improperly affects the actions or decisions of the political party or government.

b) **Fraud:** this involves actions or behaviour by a public official, other person or entity that fool others into providing a benefit that would not normally accrue to the public official, other persons or entity.

c) **Embezzlement:** involves theft of resources by persons entrusted with the authority and control of such resources.

d) **Extortion:** involves coercing a person or entity to provide a benefit to a public official, another person or entity in exchange for acting (or failing to act) in a particular manner.

e) **Abuse of power:** involves a public official using his/her vested authority to improperly benefit another public official, person or entity or (using the vested authority) to improperly discriminate against another person, official or entity.

f) **Conflict of interest:** involves a public official acting or failing to act on a matter where the public official has interest or another person or entity that stands in a relationship with the public official, i.e. a public official considers tenders for a contract and awards the tender to a company of which his/her partner is the director.

g) **Favouritism:** involves the provision of services or resources according to personal affiliations of a public official. An example would be a Mayor ensuring that only persons from his/her political organisation are successful in tenders or in getting employed.

h) **Nepotism:** involves a public official ensuring that family members are appointed to public service positions or that family members are awarded contracts.
Global and Regional Mechanisms to Fight Corruption

Globalisation has fuelled trans-national corruption both in the private and the public sectors. To tackle this, the United Nations adopted a Convention against corruption in 2003.

The UN Convention outlines the responsibilities of the signatory countries in the creation of legislation to combat corruption. It envisions promoting integrity, accountability and proper management of public resources and provides definitions and clear guidelines on what constitutes an act of corruption in the public and private sector and in trans-national activities. It further recommends actions that should be taken to strengthen the organisational capacity of governments to deal effectively with corruption.

The African Union Convention on Preventing and Combating Corruption was also adopted in 2003, just before the UN Convention. The former’s purpose is to provide a framework for combating, preventing, detecting and eradicating corruption in member states through policy coordination and legislation. The AU Convention acknowledges the negative impact corruption has on the development agenda and the need for cooperation between states to combat it.

The SADC Protocol against Corruption came into effect in 2001 with similar aims as the AU Convention, with the hope of strengthening cooperation between states to deal with corruption and to harmonise legislation and policy.

Overall, the objectives of all three agreements are complementary. Central to the guidelines that they provide are the definitions of what constitutes a public official and the different acts of corruption. The definition of a public official is crucial in determining whether corruption has taken place. It must be noted that the three protocols do not have the same definition of a public officer with the UN providing a broader explanation while the other two are more specific.

The Benchmark

According to the National Anti-Corruption forum, ‘the most critical element in the fight against corruption is the culture and ethos in government and civil society that should permeate everyday activities.

The ethos and culture within government and civil society can be built through communication and training, most importantly, through a process of continual dialogue on ethical issues. In the absence of a positive ethos, even the best rules, systems, procedures and institutions will not be able to curb corruption and unethical behaviour.’

The key pillar of the local state’s anti-corruption strategy is the facilitation of a strong community participation element at all levels of the operation of the municipalities including exposing and reporting corruption.

Of great concern is the failure of most local municipalities to establish and maintain dialogue with civil society to ensure transparency and accountability — the key performance indicators for local government as articulated in the five year Strategic Agenda of Local Government. There is also a discernible disdain for public participation and municipalities appear to regard this as a source of unnecessary irritation.

The key pillar of the local state’s anti-corruption strategy is the facilitation of a strong community participation element at all levels of the operation of the municipalities including exposing and reporting corruption. Community participation can entrench a culture of transparency where communities are able to demand accountability from elected representatives and appointed administrators with regard to services being rendered. With the existence
of strong community participation, elected representatives will be compelled to engage with communities regarding, among other things, anti-corruption initiatives as a concrete demonstration of their commitment to good governance and compliance with legislation.

Access to information and transparency: Greater access for citizens and news media to government information including budgets, detailed information on government revenue, disclosures of top public officials and politicians of all financial interests and transparency of political party finances. Research on the cause, nature and extent of corruption and regular anti-corruption conferences that bring together all sectors and stakeholders.

Oversight and watchdogs mechanisms: A national anti-corruption hotline, the verification of qualifications of all potential incumbents in the public service, opposition parties and civil society acting as watchdogs over government activities, parliamentary oversight, the creation of a national non-statutory independent body to advise and coordinate the implementation of anti-corruption policies.

Criminal Justice Response: Legal protection for whistleblowers, tougher legislation enabling more prosecutions and harsher sentences for corruption, more resources to investigate and prosecute corruption cases, the creation of special anti-corruption courts, a single dedicated agency to fight corruption, fighting organised crime and prosecution of high-profile individuals.

Moral and ethical values: Codes of conduct to promote professional ethics in government, increased commitment by political leaders to fight corruption and fraud, more emphasis on moral values in schools and religious community, as well as a greater emphasis on promoting moral values in everyday life.

Public service reforms: The barring of corrupt officials from holding public office, increased salaries and bonuses for government employees, greater internal financial controls, internal audits on government spending as well as the blacklisting of businesses proved to be involved in corruption.

Key elements of an effective anti-corruption strategy

A review of international guidelines on anti-corruption and anti-corruption strategies from developed countries reveals that most strategies are anchored on the following elements:

There is little to fault with the design or development of the local anti-corruption strategy itself — the key issue lies with the implementation of the strategy. To understand the shortcomings in its implementation one needs to look at the laws and policies around anti-corruption as well as the performance of enforcement agencies.

South Africa’s anti-corruption strategy is informed by, and is in line with, international approaches. Yet the problems of corruption and unethical leadership appear to be worsening. There is little to fault with the design or development of the local anti-corruption strategy itself — the key issue lies with the implementation of the strategy. To understand the shortcomings in its implementation one needs to look at the laws and policies around anti-corruption as well as the performance of enforcement agencies.
Constitutional provisions

The Constitution of South Africa (108 of 1996) commits South Africa to an ethical, accountable and democratic system of governance. However, this commitment was made against the historic background of various self-governing entities which are now incorporated into one state. At least some of these previously relied on centralised political control which actively sought to quarantine government from scrutiny and oversight. Legislative and administrative measures were implemented to transform this inheritance.

There are many legislative and administrative provisions in the Constitution that contribute to good governance and anti-corruption not discussed in detail in this paper. One particularly important structure is the Public Protector. Section 18(291) of the Constitution allows the Public Protector 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 could result in any impropriety or prejudice.

The legislative framework

In his first State of the Nation address in June 1999, then President, Thabo Mbeki spoke extensively about corruption and reiterated the commitment of the South African government to honesty, transparency and accountability as well as the government’s determination to act against those who transgressed these norms. He highlighted the importance of enacting the Protected Disclosures Act, which protects whistle blowers and the implementation of the Public Finance Management Act to ensure proper controls pertaining to the accountability of public finances. The Local Government Anti-Corruption Strategies were launched with a commitment to prevent corruption and focus on improving municipal governance, performance and accountability as one of the three strategic priorities. To demonstrate its commitment to the fight against corruption the government subsequently passed the following legislation:

- Protected Disclosures Act (26 of 2000)
- Promotion of Administrative Justice Act (3 of 2000)
- Prevention and Combating of Corruption Activities Act (12 of 2004)
- Promotion of Access to information Act (2 of 2000)
- Public Finance Management Act (1 of 1999)
- Public Service Act Proclamation 103

The Prevention and Combating of Corruption Activities Act came into effect in 2004. Chapter 2 of the Act outlines offences in respect of corrupt activities. These are covered under sections 3 to 21. The Act excludes members of the legislative authorities, the judiciary and the prosecuting authority. However, sections 7, 8 and 9 deal with these respectively. It further separates the agents and foreign public officials from the public officer in sections 5 and 6. Section 10 looks at corruption relating to employment. Part 4 of the Act refers to specific acts of corruption including: contracts, procurement processes, sports events and games of chance. Part 5 addresses conflict of interest and unacceptable conduct in the acquisition of public goods and services. Part 6 provides for accessories to corrupt activities and for attempting to, inducing or conspiring to commit corruption.

The general offence of corruption identifies certain activities that could be construed as corruption under the Prevention and Combating of
Corrupt Activities Act in section 3. Such activities include:

- Misuse or selling of information or material acquired in the course of exercising, carrying out or performance of any powers, duties or function arising out of a constitutional, statutory, contractual or any other legal obligation;
- The abuse of a position of authority;
- A breach of trust;
- The violation of a legal duty or a set of rules;
- Any action designed to achieve an unjustified result; and
- Unauthorised or improper inducement to do or not to do anything about an illegality.

These are used to test whether there could be a corrupt relationship between parties. These provisions are in agreement with those contained in the international protocols and are further entrenched in various other statutes in South Africa.

In general, offences relating to corruption can vary in terms of the form they take but in most cases they have financial implications.

South Africa thus has a relatively sophisticated and comprehensive framework, which deals with transparency in procurement and financial management, empowers the general public to acquire information and to challenge administrative decisions and provides a good basis on which to combat and prevent corruption at all levels of the public sector.

**Anti-corruption enforcement agencies**

In this section, we briefly discuss the role of enforcement agencies in the fight against corruption in South Africa. Some of the agencies operate nationally, some provincially and some at a local government level.
### Agency/Institution | Role
--- | ---
South African Police Services | Criminal investigation.
Directorate of Special Investigations | Criminal investigation, prosecution and recovery of monies from organised crime.
Special Investigating Unit | Investigates and takes legal action to prevent and recover state monies and assets.
Independent Complaints Directorate | Investigates allegations of misconduct or criminal offences committed by any member of the SAPS.
Auditor-General | Ascertains, investigates and audits all the accounts and financial statements of all the departments of the national, provincial and local levels of government, and any statutory body or other institution that is financed wholly by public funds.
Public Protector | Investigates misconduct and makes recommendations.
Public Service Commission | Investigates, monitors, and evaluates organisations, administration and personnel practice of public servants, and promotes constitutional values.
National Intelligence Agency | Provides intelligence support.
Department of Public Service and Administration | Determines national and public sector policy.
Special Investigative Unit | Investigates misappropriated public monies and recovers them by using civil remedies.

**Civil society involvement in the fight against corruption**

Clearly from the above discussion, it is not possible to infer a strong civil society involvement in the fight against corruption. While there could be numerous activities happening in little pockets around the country, these are not necessarily coherent or integrated in any way.

The Good Governance Surveys (GGS) conducted by Afesis-corplan in various district municipalities in South Africa reveal that citizens generally appear to believe that the institutions charged with the role of combating corruption are ineffective and there is no political will to stamp out the vice. The downside to all this is that citizens, in utter frustration, are increasingly joining service delivery protests because they feel like their grievances are not being attended to. A frequently mentioned complaint is that municipalities are steeped in corruption.

The Good Governance Surveys (GGS) conducted by Afesis-corplan in various district municipalities in South Africa reveal that citizens depend mainly on the local municipalities and the South African Police to act against corruption.
RECENT INCIDENTS OF CORRUPTION

What follows is a presentation of a number of incidents of corruption in local government. The context for many of these is the absence of proper financial management systems. Public institutions that lack strong financial controls provide fertile ground for corruption. Too often, municipalities ignore the reports of the Auditor-General (AG) or fail to furnish the AG with the necessary financial records on which to base meaningful audits.

According to the Auditor General’s Report for 2006/2007 (published in 2007), more than 60% of municipalities could not account for the revenue they received. This implies that they were unable to show how and when financial transfers from government took place and could not provide proof of where the amounts listed in their financial statements came from. Fifty percent could not account for the bulk of their expenditure and therefore their financial statements could not be trusted (Auditor General’s Report 2007:1).

The worst performing municipalities in this regard were in Limpopo, Mpumalanga, North West, the Northern Cape and the Free State where up to 80% received disclaimers. This meant that the information in their statements could not be verified while some completely failed to submit the statements (Auditor General’s Report 2007:1). Out of 40 municipalities, 30 (75%) received the worst case audit opinions (adverse and disclaimer). A statement by the Eastern Cape’s MEC, Sicelo Gqobana, indicated that the provincial government would invoke section 139 of the Constitution to intervene in Buffalo City, Amahlati, Mbashe, Mngquma, Alfred Nzo and Koukamma Municipalities. He had already placed the Koukamma, Alfred Nzo and Mngquma municipalities under complete administration, while Buffalo City, Amahlathi and Mbashe were under review (Algoa FM 2009).

The Sundays River Valley (SRV) municipality in the Eastern Cape is also among municipalities that have been placed under administration in accordance with section 139 of the Constitution. This occurred after an audit was done due to the poor financial state of the municipality and irregular processes of awarding tenders and lease agreements, all of which negatively impacted on service delivery. The audit uncovered gross financial mismanagement, fraud, corruption and the shameless flouting of procurement procedures. Municipal officials were charged with financial misconduct involving more than R9 million intended for water infrastructure, used instead to cover municipal expenses such as salaries creditors and general expenses (Masondo 2009). Out of the 1140 service providers on the municipal database, 59 were found to be municipal employees while another 42 were indirectly linked to municipal employees.

Moreover, Maxhoba Trading and Vuma Co–operatives (some of the listed service providers) were awarded contracts for which they had never tendered. They were allegedly contracted to install ceilings and plaster about 1728 houses in Nomathamsanqa in Addo. Both companies do not appear on the bid evaluation committee minutes of a meeting held in December 2007 (Dimbaza 2009). In another case Mr Joseph Saki was paid R450 000, apparently for construction services rendered to the municipality, but there is no evidence of any contract between him and the municipality. In another contractual dispute the municipality paid a Mr Banzi an amount of R350 000 out of court. The payment according to the audit report was considered as fruitless expenditure (Dimbaza 2009).

The Alfred Nzo District Municipality is another municipality recently placed under provincial administration (Magenu 2009). In spite of its weak financial base and poor service delivery performance,
the municipality controversially paid performance bonuses to the executive managers. More recently, municipal officials were allegedly involved in a fraud case involving R28 million meant for rural development in Mt. Ayliff. Ten of the accused officials were arrested while attending an urgent municipal meeting. Computers, laptops and files were confiscated by the police, so that further investigations could be conducted. Investigations had been going on since 2005 when irregularities were detected in a R52m sanitation project called Siyazakha. It was discovered that ghost companies were being awarded tenders.

Before provincial government’s intervention, Mpumalanga’s Mbombela Municipality, was plagued by instability and poor service delivery due to administrative and governance challenges. The municipality was placed under provincial curatorship in February 2009. The municipality has been characterised by poor service delivery with allegations of mismanagement and corruption, infighting between the mayor and the speaker, and ongoing controversy around 2010-related coordination. It was reported that the ANC had called for the sacking of senior council official Jimmy Mohlahla, who blew the whistle on alleged abuse of power and corruption in the R1 billion stadium project (Rorke and CNS 2008). Mr Mohlahla was later murdered in circumstances that remain unclear.

In yet another case the municipality attempted to force out an impoverished community of farm workers from their 118 hectare land with the intention of constructing the R1 billion Mpumalanga 2010 stadium. The land was valued at R63 million and the municipality allegedly bought it from the community for R1 following a secret negotiation (Ntsaluba 2008). The chairman of the Matsefane Trust, Terry Mdluli and the then Mayor, Justice Ntsibande failed to declare that they were business partners in a tourism company, along with another municipal official. The community won the case in the Pretoria High Court where the sale and transfer of the land was declared to have been grossly illegal.

Reports also indicate that up to R1 billion has disappeared from the Ekurhuleni metropolitan municipality coffers. Predictably, when the allegations came to light, political parties, councillors and senior municipal officials engaged in a flurry of allegations and counter-allegations leaving the general public confused as to who was telling the truth (Vos 2008). An internal forensic audit into the affairs of the Ekurhuleni Metro is also said to have revealed that it was paying more than R10 million too much for an information and communication technology (ICT) tender (Institute for Security Studies 2008:6). It is alleged that the circumstances around the awarding of the tender were fraught with controversy. The municipality’s former executive director of ICT and later Chief Financial Officer, Colin Pillay, is said to have been both a shareholder of the offending company and one of its directors. The municipality’s executive mayor, Duma Nkosi was reported to have resigned after being implicated in acts of corruption, involving maladministration, improper dealings with public money, financial misconduct, gross negligence, dishonesty and dereliction of duty.

In Swellendam Municipality the Mayor, Jan Jansen, is alleged to have been involved in blatant acts of nepotism. His son’s company was awarded several tenders by the municipality. It was reported that the Swellendam municipal manager made a confirmation that business transactions took place between the municipality and a company trading as Group 4, of which Jansen’s son was a director. Irregularities were detected when a council decision was taken to investigate the awarding of small tenders to this company (Makinana 2008).
In Msunduzi Municipality in KwaZulu-Natal, a disgraced former head of the Department of Agriculture who left his job under a cloud over R125 million that he could not account for, was allegedly awarded a R12,8 million contract to dredge a canal in Pietermaritzburg, though his company lacked the required capacity. Because of his poor reputation, political opponents and community members challenged his involvement. The award of the tender to him in spite of his past was an indictment of the municipality’s tendering system and the integrity of the parties involved.

In Makhado Municipality, the South African Municipal Workers Union led a protest march demanding the immediate suspension of the mayor and other high-ranking municipal officials allegedly involved in the awarding of a tender at Waterval to Renkie Building Construction. It is alleged that the owner of the company received almost R2 million more than he originally tendered for, yet he never completed the work he was contracted to do (De Swardt 2008). The municipality’s technical team is allegedly composed of the mayor’s relatives and people from her home area with allegations that 30 employees had been unfairly dismissed in order to create vacancies for her relatives and friends of the municipal manager.

Overall, the impact of such acts is far reaching and seriously constrains the quality delivery of services. Politically, corruption subverts normal processes of democracy and undermines good governance and economically it distorts the efficiency of both government and businesses. Corruption also reduces compliance with construction, environmental, and other regulations, reduces the quality of government services and infrastructure, and increases budgetary pressures on government. Indirectly, corruption risks people’s lives especially when shoddy building plans are approved and infrastructure compromised.

**Why corruption persists**

A major challenge the country faces, is that it does not have a strong state champion determined to fight corruption. The anti-corruption campaign appears disjointed with members of civil society, the media and certain state institutions achieving minimal success. There remains a high number of corrupt public and private sector officials, waiting in the wings to take advantage of a transforming state. A culture of greed, fuelled by the ever-present wealth gap in South Africa, continues to destroy personal integrity at all three spheres of government. Factors contributing to worsening levels of corruption and unethical practices include:

- Lack of political will;
- Ineffective criminal justice action regarding cases of corruption;
- Lack of management expertise and skills resulting in poor management systems;
- Lack of financial resources resulting in inadequate resource allocation;
- Lack of cross-sectoral and strategic coordination; and
- Weak civil society resulting in limited institutional mechanisms to deal with corruption.

In addition, weak oversight systems with regard to local government are also a contributing factor. Relatively autonomous municipalities that control considerable budgets have been established in areas where, prior to 1994, no form of local government existed. Moreover, in many of these areas, the municipality is the main employer and source of work in the area. The lack of enforcement and oversight that could be employed by national and
provincial governments, at the instigation of a vigilant civil society, may have contributed to the proliferation of corruption in local government.

Conclusion
The architecture of anti-corruption agencies and strategies in South Africa is impressive but this has had little impact in many local authorities. Clearly, the implementation of local government anti-corruption strategies needs strengthening.

Moreover, civil society should be involved in a more positive manner in the anti-corruption drive. A more convincing political commitment is needed to expose, dismiss, prosecute and recover from perpetrators.

Checks and controls within the public sector that work within and transcend institutional boundaries need to be strengthened. The criminal justice system and anti-corruption bodies need to provide the necessary scope and resources to conduct their work. Overall, much of the responsibility for lacklustre anti-corruption initiatives lies with individuals who have the authority to implement policy and to enforce compliance.
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**NOTES**

1 Adapted from Langseth (2000).
