

**Insulating municipal administration from instability caused by  
coalitions: A case study of the Western Cape**

By

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A research paper submitted to the Community Law Centre, Faculty of Law, University of the Western Cape, in partial fulfillment of the requirements for the Degree of Master of Philosophy (Local Government and decentralisation).

Supervisor: Mr Derek Powell

## KEYWORDS

- Administrative and political dichotomy
- Appointment of municipal managers
- Cadreship deployment
- Coalitions
- Competency requirements
- Fluidity in local government
- Instability
- Insulating
- Legal framework
- Municipal administration



## DECLARATION

I, Mario Ricardo Baatjes, hereby declare that **Insulating municipal administration from instability caused by coalitions: A case study of the Western Cape** is my original work. It has never been presented to any other University or Institution. Where other people's works have been used herein, references have been duly provided, and in some cases, quotations made. This dissertation is, therefore, submitted in partial fulfillment of the requirements of the MPhil Degree in Local Government and Decentralisation, University of the Western Cape



Student:

Mario Ricardo Baatjes

Signature: \_\_\_\_\_

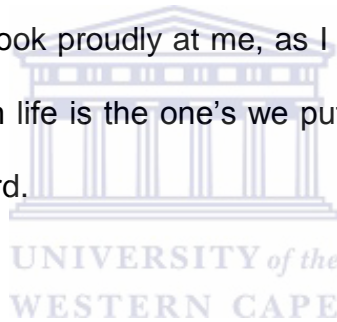
Date:

01 August 2011

## DEDICATION

This dissertation is dedicated to my mother, Marjorie Baatjes, who made personal sacrifices to ensure that her kids got what was needed in life i.e. to be self sustaining and independent. Even though she struggled in life, it was always her dream that her children should get an education at all cost. Without her encouragement, love and support, none of my achievements would have been possible.

Last, but not least, I want to dedicate this dissertation to my son, Leolyn Baatjes. I hope that one day he would be able to look proudly at me, as I do to my mother. May he always remember that the only limits in life is the one's we put in front of ourselves, everything else is attainable if you work hard.



Mario Ricardo Baatjes

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My very dear friend for her support, assistance and insightful suggestions made to improve the study.



My family for their love, encouragement and immeasurable support.

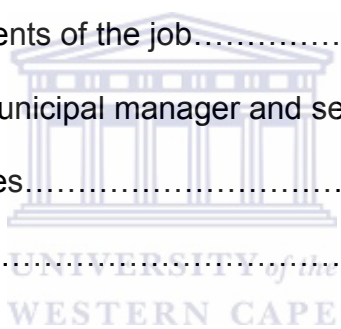
## ACRONYMS

ANC	African National Congress
CFO	Chief Financial Officer
COGTA	Department of Cooperative Governance and Traditional Affairs
DA	Democratic Alliance
DCoG	Department of Cooperative Governance
DPLG	Department of Provincial and Local Government
GDP	Gross Domestic Product
LGTAS	Local Government Turnaround Strategy
MEC	Member of Executive Council
MFMA	Local Government: Municipal Finance Management Act 56 Of 2003
MPR	Municipal Performance Regulations
MSA	Local Government: Municipal Systems Act 32 of 2000
SALGA	South African Local Government Association
SIU	Special Investigating Unit

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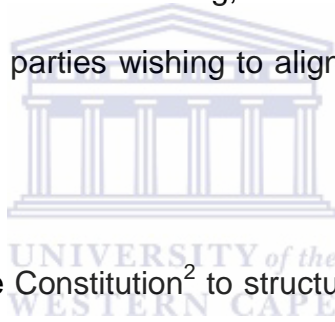
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# CHAPTER 1: INTRODUCTION

## 1.1 Background to the study

Instability in the administration of municipalities is a particularly serious problem in the Western Cape because of its large number of coalition councils. Coalitions have led to frequent changes in local governance and to constant changes in political and administrative leadership. Due to the fluidity in local government, the politics of the day have become synonymous with back-stabbing, secret agreements and arrangements between politicians and political parties wishing to align themselves in such a way as to gain control of the councils.<sup>1</sup>



A municipality is required by the Constitution<sup>2</sup> to structure and manage its administration and budgets, budgeting and planning processes so as to give priority to the basic needs of the community and to promote the social and economic development of the community.<sup>3</sup> Legislation further prescribes that “a municipality must within its administrative and financial capacity establish and organize its administration in a manner that would enable the municipality to establish clear relationships, facilitate coordination, cooperation and communication between (i) its political structures and political office bearers and its administration; (ii) its political structures, political office

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<sup>1</sup> Faull, J (2008) ‘How the splintered West will be won.’ Available at [www.hsf.org.za](http://www.hsf.org.za) (accessed on 25 May 2011)

<sup>2</sup> Constitution of the Republic of South Africa, 1996, (hereafter Constitution)

<sup>3</sup> Section 153 (a) Constitution

bearers and administration and the local community".<sup>4</sup> It may therefore be argued that a municipality subscribing to the abovementioned prescripts should be functioning effectively. However, in practice continuous administrative and political instability adversely impacts on a municipality's capacity to provide service delivery to the community.

The 2006 local government elections resulted in only four out of 30 municipalities in the Western Cape having a single party with more than 50% of the seats (outright majority). The remaining 26 municipalities were governed by coalitions of two or more parties. In 2001, Parliament introduced floor-crossing legislation which allowed Members of Parliament, Members of Provincial Legislatures and local government councillors to change their political party (or form a new party) and retains their seats when they did so.<sup>5</sup> As a result of the 2007 floor-crossing legislation, the number of municipalities with an outright majority increased to 7. Power changes continued to occur even after the 2007 floor-crossing as a result of by-election outcomes or new internal coalition arrangements.

Coalition government in the Western Cape remains a reality following the 18 May 2011 local government elections: the Democratic Alliance won 12 municipalities outright, the African National Congress won 1, and in 12 municipalities there was no outright winner.

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<sup>4</sup> Local Government: Municipal Systems Act (hereafter Systems Act), section 51 (e). Section 51 covers a range of requirements from A - M

<sup>5</sup> Department of Justice and Constitutional Development (2002-08-24). "General Notice of a Bill Amending the Constitution

Of the 12 last-mentioned municipalities, 7 municipalities produced hung municipalities, i.e. Bitou, Witzenberg, Laingsburg, Hessequa, Theewaterskloof, Matzikama and Prince Albert.

The constant political changes in municipalities under coalition councils have had three negative consequences:

1. The stability of administration has been negatively affected as a consequence of parties refusing to work with senior public servants that were employed by outgoing political parties;
2. Constant changes in the administration cause serious interruptions in service delivery; and
3. General instability and poor performance promote community protests.



The abovementioned negative consequences suggest that these acts constitute a political phenomenon that demands explanation and analysis.

Municipalities are responsible for delivering basic services that are needed to reduce the high levels of poverty in the country. Their ability or inability to deliver those services affects the other spheres of government. Stable administration is therefore essential, irrespective of changes in political arrangements.

This study focuses on the effects on the administration within municipalities in the Western Cape where coalitions are fragile.

## **1.2 Problem statement**

Effective, stable administration is crucial for local government to perform its constitutional mandate, but there is no “protection” of the continuity in administration where the political leadership of the municipality constantly changes. Unlike in other provinces, many municipalities in the Western Cape are not governed by a single political party but by coalition governments. In many instances, political alliances are forged between parties with different ideological and political beliefs. The biggest challenge to these “political partners” is to keep the coalition together once it is in power. The instability inherent in these coalition arrangements has led to wider instability in the Western Cape municipalities and has become a real problem. This study examines the problem of unstable administration due to changing coalition governments and proposes possible ways to insulate administrations from the adverse effects of coalitions. The study focuses on two main questions:

- Whether existing frameworks are sufficient to insulate the administration in municipalities from political changes.
- How best to deal with the appointment of municipal managers as well as managers directly accountable to the municipal manager.

### 1.3 Literature review

Local government's capacity to deliver services is an important indicator of effective local governance. There is an extensive body of literature on local government but very little scholarship on the correlation between fragile coalition agreements, administrative instability and service delivery failures.

Zwelethu Jolobe argues that "the Cape Metro's first term in the new system of local government was characterized by a crisis of governance and institutional ability. This was the consequence of the inability of the major political actors to establish an effective and sustainable governance coalition in the aftermath of the 2000 local government elections. The result was a prolonged period of political turbulence and institutional instability that saw government turnovers and the inauguration of three mayors in a space of three years, the effects of the executive instability, and consequent high turnover of senior management, has led to the decline of morale within the city's civil service."<sup>6</sup> Jolobe questioned whether a causal link existed in the relationship between different types of political coalitions and political stability.

Shumbana Karume argues that "the downturn to forming vote pooling coalitions is that it encourages pre election alliances between parties with very different ideologies. When

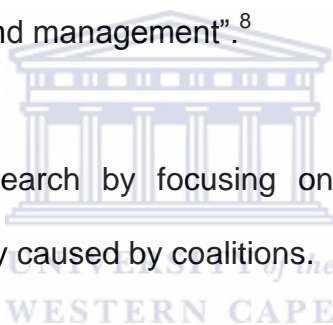
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<sup>6</sup> Jolobe, Z, 'Things fall apart, can the centre hold?' The state of coalition politics in the Cape Metropolitan Council. Available at [www.hsrcpress.ac.za](http://www.hsrcpress.ac.za) (accessed on 27 May 2011)

parties coalesce solely for the purpose of winning elections, these differences soon begin to take their toll, making their collapse once in power, imminent.”<sup>7</sup>

Both writers are in agreement that keeping coalitions together is difficult and coalition failures affect sound administration. That view is supported by a review undertaken by the Community Law Centre, UWC, which indicated that “political change in a municipality tends to have grave effects on the workings of both its political and administrative components. Moreover, these changes occur relatively often in local government; general elections, floor-crossing and the reconfiguration of governing coalitions may give rise to a change of leadership and management”.<sup>8</sup>

This study builds on this research by focusing on the problem of insulating the administration from the instability caused by coalitions.



## **1.4 Significance of the study**

The study fills a gap in the literature on local government in South Africa by analysing the link between fragile coalitions and constant changes in administrations. The study will further highlight the need for changes in the appointment of municipal managers. The study will provide information that could be used by future students, researchers, practitioners, civil servants, the Department of Co-operative Governance (DCoG), the

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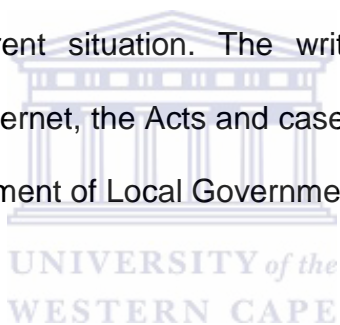
<sup>7</sup> Karume, S, (2003): 5. ‘Conceptual understanding of political coalitions in South Africa.’ Available at [www.eisa.org.za](http://www.eisa.org.za) (Accessed on 31 May 2011)

<sup>8</sup> De Visser et al (2007): ‘The quality of local democracies: A study into the functionality of municipal governance arrangements’: 677

South African Local Government Association (SALGA), political parties, and any other interested organisations that seek some stability in the administrative arm of local government.

## **1.5 Methodology of the study**

The research method to be used will be a quantitative and qualitative desktop study. The emphasis will be on analysing critically and reviewing current literature and legislation on the subject. The reason for adopting this method is that it allows for ascertaining an in-depth knowledge on the current situation. The writer will focus on observations, documents, reports, journals, internet, the Acts and case law as well as his experience as an official working in the Department of Local Government in the Western Cape.



## **1.6 Overview of the chapters**

The study is comprised of five chapters:

Chapter two provides an analysis of the political arrangements in the Western Cape municipalities from 2006-2011, focusing on the changes in the administration of the Western Cape municipalities.

Chapter three examines the legislative requirements and competency frameworks guiding municipalities in the appointment of municipal managers and managers directly



reporting to the municipal manager, focusing on the appointment criteria, the problems of nepotism and cadre deployment, and the need to divorce managerial appointments from undue political influence.

Chapter four focuses on national government's efforts to insulate administrations.

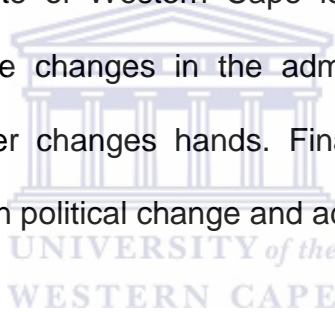
Chapter five consists of a summary with recommendations.



# **CHAPTER 2: POLITICAL POSITION OF THE WESTERN CAPE MUNICIPALITIES**

## **2.1 Introduction**

This chapter examines the fragility of coalition agreements in the Western Cape and the effect they have had on the stability/instability of municipal administration. These alliances were formed when no single party achieved a clear majority after elections. A perspective on the current state of Western Cape local political governance will be provided with emphasis on the changes in the administrative leadership (municipal managers) when political power changes hands. Finally, this chapter will attempt to establish the causal link between political change and administrative change.



## **2.2 Definition of coalitions**

In this paper, the concept of coalition has the following definition: “Building political coalitions is described as a process of organising parties collectively in pursuit of a common goal. The elements or actions that entail this process include, among others, the pooling of resources in pursuit of this goal, communication about the goal, forming binding commitments concerning this goal and an agreement on the distribution arrangement of the product that may result from achieving this goal. The precise actors

that make up such political coalitions consist mainly of individual legislators and political parties seeking purposely/explicitly to control the executive.”<sup>9</sup>

## 2.3 Historical overview

It is important to review the political landscape in order to understand the issues around political coalitions. In the 1999 national and provincial elections, KwaZulu-Natal (between the African National Congress (ANC) and the Inkatha Freedom Party (IFP) and the Western Cape (between the African National Congress and the New National Party (NNP) were the most contested provinces. Due to a history of political violence in the KwaZulu-Natal province, the two major parties saw the need to try and conduct responsible and constructive campaigns and to build an atmosphere of peace and cooperation both during and after the election period.<sup>10</sup> In the Western Cape, the two main political formations (NNP and ANC) fought fierce battles and were unable to reach or wanting to reach a coalition agreement and were more focused on opposing each other than to cooperate in a unity government.

After the 1999 provincial elections, the ANC became the largest party in the province due to it amassing 42% of the votes<sup>11</sup>. However, it became the official opposition due to its inability to acquire the required majority of seats in the legislature (50% plus 1). The NNP

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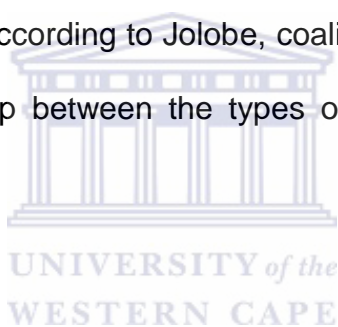
<sup>9</sup> Karume, S, (2003): 5

<sup>10</sup> Nijzink, L, and Jacobs, S, ( 2000) ‘Provincial and government formation in the Western Cape: The politics of polarisation’: 37- 49

<sup>11</sup> The 1999 election results are taken from Government Gazette, No. 20201, 11 June 1999, Electoral Commission, Results, Allocation of Seats and Basis for Determination of seats in respect of the election held on 2 June 1999: 20

and Democratic Party (DP) then formed a coalition government and elected their premier candidate.

After the 1999 provincial elections, local government was characterised by a crisis of governance and institutional instability. This was due to the inability of the major political factions to form sustainable local government coalitions. The Western Cape continues to experience political turbulence and institutional instability due to constant changes in the political leadership. The effects of the political instability cause a high turnover and general low morale amongst local government senior managers as they are constantly concerned about job security. According to Jolobe, coalition government formation raises questions about the relationship between the types of political coalitions and political stability.<sup>12</sup>



## **2.4 Dynamics of political coalitions**

“A political coalition is a temporary alliance of political groups formed in order to achieve a common purpose or to engage in some joint activity. The building of coalitions thus involves a process in which different parties come together to form a partnership collectively in pursuit of a common objective. This process can include the mobilization of resources in pursuit of the common goal, the formation of binding decisions and commitments concerning the common objective, and agreements on the distribution of political resources and patronage that may emerge from the realization of the

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<sup>12</sup> Jolobe, Z, (2007): 79

objective.”<sup>13</sup> Coalition governance can therefore be viewed as the ability of different political affiliations with differing political ideologies, constitutions, manifestos, etc. coming together for a common objective.

This section will give attention to Cabinet/executive coalitions and legislative coalitions.

### **2.4.1 Cabinet / Executive coalitions**

A cabinet or executive coalition refers to a Cabinet in a parliamentary government in which several parties come together and cooperate.<sup>14</sup> “Where there is no clear legislative majority - where the winning party after an election only achieves plurality, so producing a hung Parliament or municipal council - parties could be forced to come together in order to form a collective majority in the legislature and consequently a majority government<sup>15</sup>, e.g. City of Cape Town comprising of the DA, the African Christian Democratic Party (ACDP), the Freedom Front Plus (FFP), the African Muslim Party (AMP), the United Democratic Movement (UDM), the United Independent Front (UIF), and the Universal Party (UP).”<sup>16</sup>

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<sup>13</sup> Jolobe, Z, (2007): 78

<sup>14</sup> Karume, S, (2003): 5

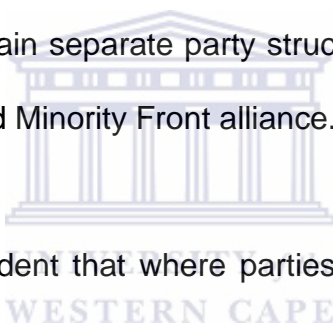
<sup>15</sup> Jolobe, S, (2007): 79

<sup>16</sup> Political Coalition in the Western Cape City of Cape Town after the 2006 elections

Cabinet coalitions consist of majority coalition cabinets and minority coalition cabinets. Majority coalition cabinets consist of parties which gained majority seats in a legislature, whereas minority coalition cabinets simply won a plurality but not a majority of seats in the legislature, e.g. the 2006 government formation as mentioned above.

## 2.4.2 Legislative coalitions

These coalitions are formed where parties support each other in parliamentary debates and votes, thereby forming partnerships for a particular purpose but still maintaining their identity at party level and maintain separate party structures, e.g. the DA/IFP alliance in KwaZulu-Natal and the ANC and Minority Front alliance.<sup>17</sup>



In the above instances it is evident that where parties do not win an outright majority, coalitions are formed. These coalitions are negotiated settlements between political parties, and the voters that voted them into power have no say over who will form coalition governments with whom. This in essence implies that political parties decide on forming coalitions without consulting the voters and thus 'rob' voters of the exercising of their democratic rights.

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<sup>17</sup> Karume, S, (2003): 5 and Jolobe, Z, (2007): 80

## 2.5 Political dynamics in the Western Cape municipalities

After the 2006 local government elections, only four of the 30 municipalities in the Western Cape were governed by parties with an outright majority, i.e. Hessequa (DA), Bitou (ANC), Swartland (DA) and Overstrand (DA)<sup>18</sup>. The result of this was a politically unstable political environment in local government in the Western Cape. Most municipalities entered into coalition arrangements where fierce negotiations and trade-offs were undertaken to ensure that a winner-takes-all phenomenon occurred.<sup>19</sup>

During 2007 only ten municipal councils<sup>20</sup> could be formed with a single party in government. The levels of instability, however, increased substantially in the rest of the municipalities during the floor-crossing period, with some municipalities changing political hands almost on a quarterly basis.

It was during these turbulent times that other political actors emerged and voters decided to give newer parties a chance, which split the votes even further. “Due to the inability of the majority of municipalities to gain an outright majority, the majority were hung councils, forcing the formation of political coalition in order to make up the 51% threshold needed to form stable majority executives. However, the important difference from the 2000 local

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<sup>18</sup> Information supplied by the Legislative Support sub-directorate at the Western Cape Department of Local Government

<sup>19</sup> Where a political party won the majority of the votes but did not attain an outright majority (50% plus one) it did not mean that they were governing in those municipalities.

<sup>20</sup> Information supplied by the Legislative Support sub-directorate at the Western Cape Department of Local Government.

elections is that there have not been any electoral coalitions, but rather executive and legislative coalitions forged as a result of hung councils.”<sup>21</sup>

The table below clearly illustrates the political formations in the Western Cape Municipalities since 2005.<sup>22</sup>

Municipality	31/10/2005	12/2/2007	12/11/2007	26/3/2008	8/4/2008	18/6/2008	11/12/2008	30/6/2009	11/2/2010	24/2/2010	3/2010
Metro	ANC	DA ID	DA ID	DA ID	DA ID	DA ID	DA ID	DA ID ACDP UDM	DA ID ACDP UDM	DA ID ACDP UDM	DA ID ACDP
West Coast DC	DA	ANC ID	ANC ID	ANC	DA ID	DA ID	DA ID	DA ID	DA ID	DA ID	DA ID
Matzikama	ANC	DA ID	ANC ID	ANC ID	ANC ID	DA ID SAFPA	DA ID SAFPA	DA ID	DA ID	DA ID	DA ID
Cederberg	ANC	ANC	ANC ID	ANC ID	ANC ID	ANC ID	ANC ID	DA	DA	DA	DA
Bergriver	ANC	DA ID	DA ID	DA ID	DA ID	DA ID	DA ID	DA ID	DA ID	DA ID	DA ID
Saldanha Bay	ANC	ANC ID	ANC ID NPP	ANC ID	ANC ID	ANC ID	ANC ID	DA ID IND	DA ID IND	DA ID IND	DA ID IND

<sup>21</sup> Jolobe, Z, (2007): 91

<sup>22</sup> Information supplied by the Legislative Support sub-directorate at the Western Cape Department of Local Government.



Swartland	DA	DA	DA	DA	DA	DA	DA	DA	DA	DA	DA	DA
Cape Winelands DM	ANC	ANC ID	ANC NPP	ANC NPP	ANC NPP	ANC NPP	ANC NPP	ANC NPP	ANC NPP	ANC NPP	ANC NPP	ANC NPP
Witzenberg	ANC	ANC	DA ID UIF	DA ID UIF	DA ID UIF	DA ID UIF	DA ID UIF	DA ID UIF	DA ID UIF	DA ID UIF	DA ID UIF	DA ID UIF
Drakenstein	ANC	DA ID	ANC	ANC	ANC	ANC	ANC	ANC	ANC	ANC	ANC	ANC
Stellenbosch	ANC	DA UDM KCA	DA ID UDM ACDP	ANC KCA IND ACDP	ANC KCA ID	ANC KCA ID	ANC UDM IND	DA ID IND ACDP UDM	DA ID IND ACDP UDM	DA ID IND ACDP UDM	DA ID IND ACDP UDM	DA ID IND ACDP UDM
Breede Valley	ANC	ANC	ANC DA	ANC NPP	ANC NPP	ANC NPP	ANC NPP	ANC NPP	ANC NPP	ANC NPP	ANC NPP	ANC NPP
Langeberg	DA	ANC	ANC	ANC	ANC	ANC	ANC	ANC	ANC	ANC	ANC	ANC
Overberg DM	ANC	ANC	ANC NPP	ANC NPP	ANC NPP	ANC NPP	ANC NPP	ANC NPP	ANC NPP	ANC NPP	ANC NPP	ANC NPP
Theewaterskloof	ANC	DA ID ACDP UDM	DA ID ACDP	DA ID ACDP	DA ID ACDP	DA ID ACDP	DA ID ACDP	DA ID ACDP	DA ID ACDP	DA ID ACDP	DA ID ACDP	DA ID ACDP
Overstrand	ANC	DA	DA	DA	DA	DA	DA	DA	DA	DA	DA	DA
Cape Agulhas	DA	ANC	ANC	ANC	ANC	ANC	ANC	ANC	ANC	ANC	ANC	ANC
Swellendam	ANC	DA ID ACDP	DA ID	DA ID	DA ID	DA ID	DA ID	DA ID	DA ID	DA ID	DA ID	DA ID
Eden DM	ANC	DA ID ACDP	DA ID ACDP	DA ID ACDP	DA ID ACDP	DA ID ACSP	DA ID ACDP	DA ID ACDP	DA ID ACDP	ANC	ANC	ANC

		VP ICOSA	VP ICOSA	VP ICOSA	VP ICOSA	VP ICOSA	VP ICOSA NPP	ICOSA			
Kannaland	ANC	DA ID ICOSA	NPP	NPP	NPP	NPP ANC	NPP ANC	NPP ANC	NPP ANC	NPP ANC	NPP ANC
Hessequa	ANC	ANC	ANC	ANC	ANC	ANC	ANC	ANC	ANC	ANC	ANC
Mossel Bay	ANC	DA ICOSA	DA	DA	DA	DA	DA	DA	DA	DA	DA
George	DA	DA ACDP VP	DA ID ACDP VP	DA ID ACDP VP	DA ID ACDP VP	DA ID ACDP VP	DA ID ACDP VP	DA ID ACDP VP	ANC ID ACDP	ANC ID ACDP	ANC ID ACDP
Oudtshoorn	ANC	DA ID CIVIC	DA ID ANC	DA ID ANC	DA ID ANC	DA ID ANC	DA ID ANC	DA ID ANC	DA ID ANC	DA ID ANC	DA ID ANC
Bitou	ANC	ANC	ANC	ANC	ANC	ANC	ANC	ANC	ANC	ANC	ANC
Knysna	ANC	ANC KFOR UM	ANC	ANC	ANC	ANC	ANC	ANC	ANC	ANC	ANC
Central Karoo DM	ANC	DA ICOSA LAING SB	-	ANC	ANC	ANC NPP ICOSA	ANC NPP ICOSA	ANC	ANC	ANC	ANC
Laingsberg	ANC	DA LAING SB	ANC DA	ANC DA	ANC DA	ANC NPP	ANC NPP	ANC NPP	ANC NPP	ANC NPP	ANC NPP
Prince Albert	ANC	DA ANC	DA ANC	DA ANC	DA ANC	DA ANC	DA ANC	DA ANC	DA ANC	DA ANC	DA ANC

Beaufort West	ANC	DA ICOSA	-	ANC DA	ANC DA	ANC NPP ICOSA	ANC NPP ICOSA	ANC ICOSA	ANC ICOSA	ANC ICOSA	ANC ICOSA
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The above table shows the effect that coalitions have had on the political governance in municipalities in the period 2005 – 2011. The table clearly illustrates the fact that most municipalities were governed by more than one political party. The effect that the constant political changes had on the administration, especially with regard to the appointment of municipal managers, is illustrated below.

During the period 2005 - 2011, only 5 out of the 30 municipalities in the Western Cape had no turnover in municipal managers. Fifteen municipalities had 2 - 3 municipal managers/acting municipal managers, and 10 municipalities had 4 or more municipal managers/acting municipal managers over the same period.

Most municipal managers were either suspended or faced disciplinary hearings. In many cases municipal managers were given golden handshakes to make way for preferred incumbents. This occurred mostly where political power shifted and politicians refused to work with municipal managers who were appointed by the previous political regimes. The most notable case in the Western Cape was the Mgoqi matter, which went to court over a dispute about the validity of the extension of the contract of employment of Mr Mgoqi by

the mayor of the Cape Metro at that time, Ms N Mfeketo.<sup>23</sup> Ms N Mfeketo unilaterally extended the contract of Mr Mgoqi (municipal manager of the City of Cape Town) prior to the DA taking control over the City of Cape Town. The DA challenged the extension of the contract based on the fact that it was procedurally unfair and also owing to the fact that they wanted to appoint their own municipal manager.

It is also important to note that most municipalities that experienced constant municipal manager changes either received support from the provincial government or are currently under investigation. Below are some examples of these municipalities.

Saldanha Bay Municipality: Since 2005, the municipality has had no fewer than 6 municipal managers and or acting municipal managers. It was during this time that the municipality was plagued with allegations of political turmoil and administrative concerns. On a daily basis the municipality was being reported on in the local media, with citizens complaining of inefficiencies and general disregard for their concerns. On 8 September 2008, a team from the Province was deployed to assist the municipality and to draft a turnaround strategy.

Stellenbosch Municipality: The municipality has had no fewer than 6 municipal managers and/or acting municipal managers since 2005. President Zuma recently requested<sup>24</sup> the

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<sup>23</sup> *Mgoqi v City of Cape Town and Another*, in re: *City of Cape Town v Mgoqi and Another* [2006] JOL 17349 (C) para 104-107.

<sup>24</sup> Proclamation No R3 GG No 33722, 14 January 2011

Special Investigating Unit to investigate fraud and corruption in the municipality and the matter is currently being investigated.

Swellendam Municipality: The municipality has had no fewer than 5 municipal managers and or acting municipal managers since 2005. The Standing Committee on Governance, in line with its constitutional mandate of the Provincial Legislature to perform oversight over the processes and affairs of local government, held a public meeting regarding service delivery issues in the Swellendam Municipality on Thursday, 19 March 2009. The meeting dealt with the Integrated Development Plans (IDP); the 2005/06 and 2006/07 Auditor General's Reports of the Municipality and service delivery in general.

George Municipality: The municipality has had no fewer than 5 municipal managers and or acting municipal managers since 2005 and is also under investigation by the Special Investigating Unit.

Oudtshoorn Municipality: The provincial government intervened in the municipality in 2007<sup>25</sup> in terms of section 139 of the Constitution because of allegations of maladministration, corruption, non-compliance with statutory obligations and serious malpractice which were ascribed to political instability and inexperienced political leadership. An administrator (Mr Louis Scheepers) was then appointed by the MEC responsible for local government, Mr R Dyantyi, to oversee the municipality and to

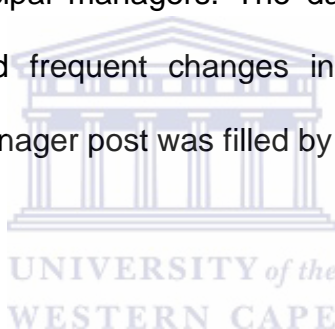
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<sup>25</sup> Parliament ATC No 102 – 2007, 12 September 2007

formulate a turnaround strategy. The appointment for six months was from 19 March – September 2007. The municipality is also under investigation by the Special Investigating Unit.<sup>26</sup>

## 2.6 Concluding remarks

From the data in the above tables we can see that the constant political changes and fragile coalition arrangements have had a negative effect on municipal administration, in particular the stability of municipal managers. The data shows a correlation between constant political changes and frequent changes in municipal managers. In some municipalities, the municipal manager post was filled by 3 or more incumbents in a period of 1 to 5 years.



Deputy Minister of Cooperative Governance and Traditional Affairs (COGTA), Yunus Carrim, noted that it appears that in far too many cases the problem is caused by political interference in the appointment or suspension of municipal managers. For example, there are cases of municipalities in which municipal managers or other managers are politically senior to the mayor. He also pointed out that effective management, leadership and oversight are not possible under these circumstances.<sup>27</sup> Wooldridge argues that there is an urgent need to increase national government's capacity to regulate and

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<sup>26</sup> Proclamation No R6 GG No 34001, 4 February 2011

<sup>27</sup> Carrim, Y, (2009). Accelerating Service Delivery and Management Development. Available at [www.cogta.gov.za](http://www.cogta.gov.za) (Accessed on 8 June 2011): 3

monitor the system of political appointments of, and local governments capacity to implement it.<sup>28</sup>

Constant political regime changes have left the administration in limbo, and have often divided the workforce according to party political affiliations. The current volatile political situation is cause for concern as everyone appears to be in expectation on whether the next power shift will happen. In the medium to long term, this situation will become untenable and a need to protect the administration from political changes seems the only obvious answer at this time. The frequency with which municipal managers are suspended and/or fired soon after political change occurs suggests that getting rid of individuals has come to supersede in importance concerns about employing and retaining skilled professionals. The next chapter focuses on the appointment of municipal managers and managers directly accountable to the municipal manager, with emphasis on the legal framework and competency requirements to enforce compliance.

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<sup>28</sup> Wooldridge, D, (2008) Consolidating Developmental Local Government: Lessons from the South African Experience: 475

## CHAPTER 3: LEGAL FRAMEWORK

### 3.1 Introduction

The previous chapter focused on the constant political changes in some Western Cape municipalities and the causal effect that this has had on the administration and specifically the municipal manager.

The aim of this chapter is to provide an overview of the legal framework guiding certain organs of the municipality, with specific emphasis on those provisions relating to the administration and its link with the council, proposed changes to insulate the administration from political interference, the criteria for appointing municipal managers and managers directly reporting to the municipal, and the problems of nepotism and deployment of cadres.

### 3.2 Constitutional provisions

The Constitution provides for the regulation of municipal administration in two ways: “Firstly, it extends municipal autonomy to the internal affairs of the municipality. Secondly, it provides for a rich set of values and principles that guide municipal administration.”<sup>29</sup> There are currently no legislative provisions dealing with coalitions per se. In terms of the Constitution, the executive and legislative authority of a municipality vests in its municipal

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<sup>29</sup> Steytler, N, and de Visser, J, (2007). Local Government Law of South Africa: 8-5



council.<sup>30</sup> The organisation of the administration<sup>31</sup> as well as the basic values and principles governing public administration<sup>32</sup> specifically deal with the functioning of the administration.

The Constitution<sup>33</sup> states that a municipality has the right to govern, on its own initiative, the local government affairs of its community. This is further amplified in the Systems Act<sup>34</sup> and receives further protection when the Constitution<sup>35</sup> is read together with the Systems Act<sup>36</sup>, which states that a municipality must do its work without undue interference.

The Constitution further stipulates that a municipality must structure and manage its administration<sup>37</sup> and may employ personnel that are necessary for the effective performance of its functions.<sup>38</sup> In essence two essential things are important here: one is that local government is an employer and the second is that local government can make its own appointments and decide on conditions of employment. "In fact, section 195(5) of the Constitution allows for different laws for various sectors, administrations or institutions in public administration."<sup>39</sup>

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<sup>30</sup> S 151(2) Constitution. Also see item 18 Local Government: Municipal Structures Act 117 of 1998 (hereafter Structures Act)

<sup>31</sup> S 51 Systems Act

<sup>32</sup> S 195 Constitution

<sup>33</sup> S 151(3) Constitution

<sup>34</sup> S 4(a) Systems Act

<sup>35</sup> S 151 (4) Constitution

<sup>36</sup> S 4(b) Systems Act

<sup>37</sup> S 153(a) Constitution

<sup>38</sup> S 160 (d)Constitution

<sup>39</sup> Ntlizwana, P, (2011). Professionalisation of Local Government: Legal avenues for enforcing compliance with competency requirements: 24

Even though provincial governments are responsible for the recruitment, appointment, promotion, transfer and dismissal of members of the public service in their administrations, this must occur within a uniform national framework.<sup>40</sup> This aspect of municipal autonomy is unlikely to be long-lived, however, as legislation towards a single public service, including local government, is on the cards.<sup>41</sup>

### **3.3 Legislative framework dealing with the municipal administration**

The Municipal Systems Act<sup>42</sup>, the Municipal Structures Act<sup>43</sup> and the Municipal Finance Management Act<sup>44</sup> govern the municipal administration. Section 4(2) of the Systems Act deals with the municipality's financial and administrative capacity, section 6 with the duties of a municipality's administration and section 51 with how a municipality's administration should be established within its administrative and financial capacity.

In terms of section 72<sup>45</sup> of the Systems Act, the Minister may make regulations<sup>46</sup> to regulate municipal staff matters and issue guidelines.<sup>47</sup> Ntlizwana<sup>48</sup> notes that "the fully fledged guidelines are yet to be issued and it appears that the National Minister is awaiting finalisation of the Local Government System Amendment Bill, whereafter the guidelines will hopefully be issued". The Local Government Systems Amendment Act

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<sup>40</sup> Steytler and de Visser (2007): 8-5

<sup>41</sup> Steytler and de Visser (2007): 8-5

<sup>42</sup> Systems Act

<sup>43</sup> Structures Act

<sup>44</sup> Local Government: Municipal Finance Management Act 56 of 2003 (hereafter MFMA)

<sup>45</sup> S 72(1)(a)(b) Systems Act

<sup>46</sup> Local Government: Municipal Performance Regulations for Municipal Managers and Managers Directly Accountable to Municipal Manager's. A framework for competency requirements, GN 805, GG 29089 (2006)

<sup>47</sup> Draft Competency Guidelines for Municipal Managers and Managers Directly Accountable to Municipal Managers. Establishment of job evaluation systems and measurement of staff performance management, GN 347, GG 29723(2006)

<sup>48</sup> Ntlizwana (2011): 27

was promulgated in July 2011 and goes a long way in addressing some of the challenges confronting local government.

In terms of the Structures Act, a municipal council must appoint a municipal manager who is the head of administration and also the accounting officer for the municipality, and, when necessary, an acting municipal manager.<sup>49</sup> It goes on to stipulate that a person appointed as municipal manager must have the relevant skills and expertise to perform the duties associated with that post.<sup>50</sup> “Bearing in mind that there are 283 municipalities (nine of which, the metropolitan areas, contribute 70% of our country’s GDP), there was just not enough leadership and competence to go round, which put our municipalities at severe risk of not being able to perform. Consequently, many of our municipalities have been bedevilled by infighting, as mayors, councillors, party ward councillors and managers compete in a scramble to meet community backlogs and needs. Mayors’ and municipal managers’ heads have rolled regularly in this unstable municipal environment.”<sup>51</sup>

The abovementioned legislation is further complemented by the Local Government: Municipal Finance Management Act (hereinafter referred to as the MFMA) which states that the object of the Act is to secure sound and sustainable management of the fiscal and financial affairs of municipalities and municipal entities by establishing norms and standards and other requirements.<sup>52</sup> “The Regulations in terms of the MFMA have been

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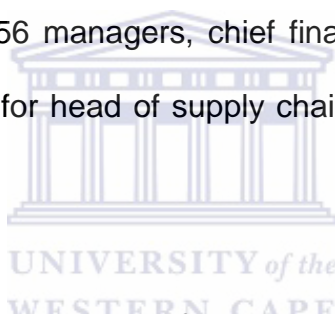
<sup>49</sup> S 82 (1)(a)(b) Structures Act

<sup>50</sup> S 82 (2) Structures Act

<sup>51</sup> Hasswell, R, (2009). The Municipal Imperative: 16

<sup>52</sup> S 2 MFMA

promulgated as Local Government: Municipal Finance Management Act: Municipal Regulations on Minimum Competency Levels<sup>53</sup> (hereinafter referred to as Competency Regulations). While the Performance Regulations in terms of the Systems Act provide for a generic managerial competency framework for municipal managers and section 56 managers, the Competency Regulations provide for general and minimum competency levels for financial and supply chain management officials. The National Treasury has also issued guidelines for the competency levels of each of the municipal financial and supply chain management officials to explain the Competency Regulations. In this regard, there exist separate guidelines for the competency levels of accounting officers (municipal managers), section 56 managers, chief financial officers, finance officials at middle management level, and for head of supply chain management and supply chain senior managers.”<sup>54</sup>



The focus will now shift to the appointment of municipal managers and managers directly reporting to the municipal manager, with specific emphasis on the appointment of the top six positions, nepotism and deployment of cadres.

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<sup>53</sup> GN R 493, GG 29967 (2007)

<sup>54</sup> Ntliziwana, P, (2011): 28

### **3.4 The appointment of municipal managers and managers directly accountable to municipal managers**

The appointment of municipal managers and of managers directly accountable to the municipal manager is regulated by the Structures Act<sup>55</sup> as well as the Systems Act.<sup>56</sup> The municipal manager may be regarded as the interface between the administration and the council. As accounting officer, the municipal manager carries the overall responsibility for the municipality's financial affairs.<sup>57</sup>

Due to the vast array of responsibilities expected of the municipal manager, it is imperative that the municipal manager and managers directly accountable to the municipal manager have the relevant skills and expertise to perform the duties associated with their positions.<sup>58</sup> The critical section 56 managers requiring the qualifications, skills and experience that need to be filled by a municipality include the Chief Financial Officer, Town Engineer, Town Planner, Human Resource Manager and the Communications Manager.<sup>59</sup>

Section 160(1) (c) of the Constitution provides that municipalities may employ personnel who are necessary for the effective performance of its functions. Section 82 of the Municipal Structures Act furthermore provides that only a municipal council can appoint a municipal manager. The challenge for local government will come with the introduction of

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<sup>55</sup> S 82 Structures Act

<sup>56</sup> S 56 Systems Act

<sup>57</sup> Steytler and de Visser (2007): 8-20

<sup>58</sup> S 82(3) Structures Act

<sup>59</sup> Hetherington (2010). Getting the right top six: 48

the Single Public Service Bill, which seeks to “integrate the public service and local government under the same legislative framework, to strengthen coordination between the spheres of government, eliminate fragmentation and make seamless service delivery a reality”<sup>60</sup>. This Bill will provide huge challenges for local government, as currently the employment and dismissal of municipal managers and managers directly accountable to the municipal manager are council prerogatives whereas public service employees (provincial and national) are guided by the Public Service Conditions of Service.

As the accounting officer of the municipality, the municipal manager is responsible and accountable for proper and diligent compliance with the MFMA.<sup>61</sup> The MFMA prescribes that the accounting officer (municipal manager), senior managers, the chief financial officer and other financial officials of a municipality must meet the prescribed financial management competency levels.<sup>62</sup> As was stated above, the National Minister has also implemented Draft Competency Guidelines for municipal managers and managers directly accountable to municipal managers as well as the Local Government: Municipal Performance Regulations for municipal managers and managers directly accountable to the municipal manager.

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<sup>60</sup> Issa, A. (2009). Single public service: Challenges ahead: 427

<sup>61</sup> S 55 (2)(c) MFMA

<sup>62</sup> S 83 (1) MFMA

### **3.5 The Local Government: Municipal Performance Regulations for municipal managers and managers directly accountable to municipal managers**

The focus of this section shifts away from the Performance Regulations<sup>63</sup> to the requirements for the position of municipal manager as contained therein. They specify that the job purpose should provide for:

- 1) leadership and direction of the administration of the municipality through effective strategies to fulfil the objects of local government provided for in the Constitution, 1996, and any other legislative framework that governs local government;
- 2) fostering relationships between the municipal council and the administrative arm of the municipality as well as other key stakeholders; and
- 3) creating an environment that defines the purpose and role of local government as a means to involve people in shaping the future of communities.

#### **3.5.1 Main accountabilities**

As the head of administration and the accounting officer of the municipality, the municipal manager is responsible and accountable for, and performs, the following functions:

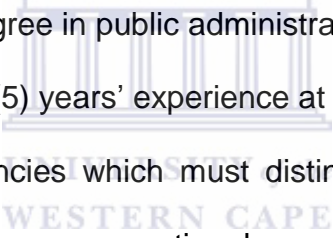
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<sup>63</sup> GN R805, GG 29089 (2006)

- a) municipal transformation and organisation development;
- b) basic service delivery;
- c) local economic development;
- d) municipal financial viability and management; and
- e) good governance and public participation.

### **3.5.2 Inherent requirements of the job**

The job description must provide for-

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- 1) a recognised B degree in public administration or relevant fields;
  - 2) a minimum of five (5) years' experience at senior management level;
  - 3) the core competencies which must distinguish between core managerial competencies and core occupational competencies; and
  - 4) core occupational competencies providing for knowledge, skills, communication and exceptional and dynamic creativity to improve the functioning of the municipality.

National Treasury has issued guidelines in terms of the competency requirements<sup>64</sup>. In terms of the guidelines, a person to be appointed as municipal manager should possess a

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<sup>64</sup> Guidelines for Municipal Competency Levels: Accounting Officers: Municipal Regulations on Minimum Competency Levels (Guidelines on Accounting Officers Competency Levels) Available at [www.finance.gov.za/Guidelines for Accounting Officers](http://www.finance.gov.za/Guidelines%20for%20Accounting%20Officers) (accessed on 3 March 2011)



Bachelor's degree in a relevant field plus a certificate in Municipal Financial Management.

The key issue for this chapter is not the competency standards per se, an issue where research exists, but the question – Who appoints the municipal manager and other managers?

### **3.6 Who appoints the municipal manager and Section 56 managers?**

In terms of the Structures Act, a municipal council must appoint a municipal manager who is the head of administration and also the accounting officer for the municipality, and, when necessary, an acting municipal manager. The Structures Act furthermore requires of the executive committee or executive mayor to submit a report and recommendation to the municipal council on the appointment and conditions of service of the municipal manager and a head of a department of the municipality.<sup>65</sup> The constitutionality of the statutory instruction to appoint a municipal manager was first challenged in *Executive Council of the Western Cape v Minister for Provincial Affairs and Constitutional Development*<sup>66</sup>, on the basis of municipal autonomy, in particular the municipality's right to decide over personnel appointments.<sup>67</sup>

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<sup>65</sup> S 30 (c) Structures Act

<sup>66</sup> *Executive Council of the Western Cape v Minister for Provincial Affairs and Constitutional Development of the Republic of South Africa; Executive Council of Kwazulu-Natal v President of the Republic of South Africa and Others* 1999 (12) BCLR 1360 (CC) at para 107-109

<sup>67</sup> Steytler and de Visser (2007): 8-20

In *Mbana v Mnqunma Municipality*<sup>68</sup> the court had to decide whether the executive mayor bound the municipality to the employment contract with Mbana. The facts in this case were that Mr Mbana, after an interview for the municipal manager's post, received a letter of appointment from the executive mayor. The mayor subsequently entered into a 5-year employment contract with him on behalf of the municipality. His contract was terminated a month after his appointment due to the fact that the municipality argued that the executive mayor had no authority to enter into contract with Mr Mbana on behalf of the municipality. The court referred to section 160 of the Constitution, read together with section 82 of the Structures Act and concluded that the municipal council, and no other person, has the right to appoint the municipal manager.<sup>69</sup>

In the matter of *Manana v King Sabata Dalindyebo Municipality*<sup>70</sup> (hereinafter the Manana matter), the court had to rule on the legality of the appointment of Mr Manana to the position of Manager: Legal Services and the adjustment of his salary accordingly. The Court in this matter argued that the resolution of the municipal council to appoint Mr Manana and to adjust his salary accordingly, was invalid as the power to appoint employees vested in the municipal manager and not in the municipal council. The Supreme Court of Appeal (SCA) confirmed that in accordance with section 151(2) of the Constitution the executive authority of a municipality does not vest in its municipal manager, but it vests in its municipal council.

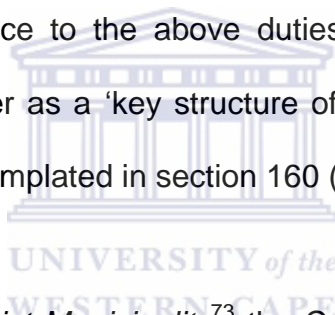
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<sup>68</sup> *Mbana v Mnqunma Municipality* 2004(1) BCLR 83 (Tk)

<sup>69</sup> Mettler, G, (2004). Who appoints the Municipal Manager?: 361

<sup>70</sup> *Manana v King Sabata Dalindyebo Municipality* (345/09) [2010] ZASCA 144 (25 November 2010)

The judgment in *Mgoqi v City of Cape Town*<sup>71</sup> supported the interpretation that the power to appoint the municipal manager was a prerogative of the municipal council that could not be delegated. “Firstly, the Court pointed at the absence of any reference to the appointment of the municipal manager in section 60 (1) of the Systems Act, which provides that the determination of the municipal manager’s remuneration, benefits and conditions of employment may be delegated to an executive committee or executive mayor. Secondly, section 30(5) of the Structures Act, which requires the executive to submit a report on the appointment of the municipal manager before the council proceeds with an appointment, stands in the way of delegating the power to the executive. Thirdly, with reference to the above duties of the municipal manager, the notion of the municipal manager as a ‘key structure of a municipality and not merely a personnel appointment as contemplated in section 160 (1)(d) of the Constitution.’<sup>72</sup>



In the *Mlokoti v Amathole District Municipality*<sup>73</sup> the Court was requested to review the decision of the Amathole District Municipality in the appointment process of the position of municipal manager. Dr Mlokoti and Adv Zenzile applied for the municipal manager position and both their names were submitted to council for a decision. The panellists scored Dr Mlokoti higher than Adv Zenzile and it appears that he was the preferred candidate. The Regional Executive Committee (REC) of the ANC instructed its caucus to appoint Adv Zenzile, which it subsequently did. Adv Zenzile was then appointed as the

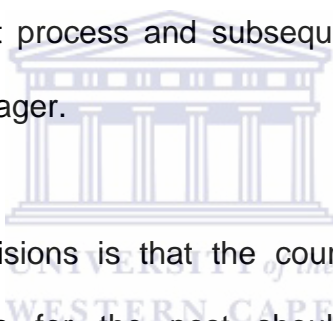
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<sup>71</sup> *Mgoqi v City of Cape Town and Another* (2006) JOL 17349 (C) para 104-107

<sup>72</sup> Steytler and de Visser, (2007): 8-25

<sup>73</sup> *Vuyo Mlokoti v Amathole District Municipality and Mlamli Zenzile*, unreported judgment, Case No:1428/2008, 6 November 2008

municipal manager after which Dr Mlokoti requested reasons from the municipality on why he was not appointed into the position. Dr Mlokoti then sought a review by the High Court on the decision of the municipality not to appoint him into the municipal manager position. The Court ruled that "...an usurpation of the powers of [Amathole]'s council by a political body which, on the papers, does not appear even to have had sight of the documents relevant to the selection process including the findings of the interview panel. In my view, the involvement of the REC of the ANC in the circumstances described in [the letter] constituted an unauthorised and unwarranted intervention in the affairs of [Amathole]'s council."<sup>74</sup> The Court in this judgment was clearly not happy with the ANC's involvement in the appointment process and subsequently ordered that Dr Mlokoti be appointed as the municipal manager.



The significance of these decisions is that the courts have clearly highlighted that competence and requirements for the post should be the overriding factor in appointments, not political allegiance and/or political interference in administrative processes.

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<sup>74</sup> de Visser (2009): 7

### 3.7 Deployment of cadres

The Concise Oxford Dictionary<sup>75</sup> defines 'cadre' as "a group of activists in a communist or any revolutionary organisation; a basic unit esp. of servicemen, forming a nucleus for expansion when necessary". It defines 'deployment' as "a cause to spread out from a column into a line; spread out into this way; bring into effective action". Many candidates are not appointed despite their high levels of competence and experience because municipalities make appointments on the basis of political and family ties.<sup>76</sup> Hoffman observes that the ethos is that loyal cadres do what the party expects of them, not what they want to do for the party.<sup>77</sup> He goes further to note that opacity, cronyism and patronage displace openness, fairness and accountability when smoke-filled back rooms are the venue for the appointment (deployment) of members of the public administration.

The Deputy Minister of CoGTA, Yunus Carrim, stated that in some municipalities the rules of accountability and the rule of law were superseded by patronage and loyalty to the party. He stressed further that in these places you end up with the wrong people in municipal office, the wrong culture taking root, and little hope for professionally run administration.<sup>78</sup>

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<sup>75</sup> Concise Oxford Dictionary

<sup>76</sup> Nealer, E, (2007). Local Government and Service Delivery: 177

<sup>77</sup> Hoffman ( 2010): 11

<sup>78</sup> Carrim (2009): 3

A consequence of cadre deployment is that unqualified and incompetent people are placed in positions of great responsibility and then they fail to deliver on the service mandate of the government. According to Hoffman, section 195 of the Constitution is also relevant, providing as it does that public administration at all levels of government be governed by the democratic values and principles that efficient, economic and effective use of resources must be promoted and that good human resource management and career development practices, to maximise human potential, must be cultivated.<sup>79</sup>

According to Ntliziywana the deployment of cronies with little or no capacity is related to the evident skills deficit and undermines the new status of local government, frustrating its local developmental and service delivery mandates.<sup>80</sup> This is further amplified by Wooldridge<sup>81</sup> who states that a poorly managed system of political appointments has significant potential to destabilise local government. She further quotes Verheijen and Rabrenovic, noting that the presence of a stable and professional administration is a key requirement to keep state affairs moving in situations characterised by high levels of political discontinuity, such as state transitions, unstable coalition governments or frequent executive reshuffles.

Deputy Minister Yunus Carrim stressed that developmental local government could not work without skilled, capable and ethical people serving the citizens of this country to the best of their abilities.<sup>82</sup>

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<sup>79</sup> Hoffman (2010): 11

<sup>80</sup> Ntliziywana (2011): 21

<sup>81</sup> Wooldridge (2008): 475

<sup>82</sup> Carrim (2009): 3

A summary of the interchanging role of the Council and Executive Mayor in relation to the administration will now be discussed.

### **3.8 Council**

The need for a separation of powers between council, the executive and the administration is intended to strengthen the oversight function of councillors and ensuring that each organ can continue with its work without undue influence and hindrances. The executive mayor (executive head) and municipal manager (administrative head) are the main links between the administration and the council. The administration is responsible for the day-to-day operations of the municipality as well as the executing authority of council decisions. If this separation is properly managed then there should not be any conflict of interests, as each organ will know exactly what their roles and functions are without anyone feeling that their power are being usurped.

### **3.9 Executive mayor**

The executive mayor is the political head of the executive and plays a strategic role in identifying the needs of the municipality.<sup>83</sup> The mayor is also responsible, for reviewing programmes and services, for ensuring that priority areas are addressed and for recommending the best possible strategies to ensure service delivery. In terms of legislation, the executive mayor is responsible for monitoring the management of the

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<sup>83</sup> S 56 Structures Act

municipality's administration in accordance with the directions of the municipal council.<sup>84</sup> In this regard it would be expected of the executive mayor to articulate council decisions to the administrative head (municipal manager) and to oversee the actual implementation of council decisions by the administration. This would require of the executive mayor to be the interface between the administration and the council and to have the skills and expertise to monitor compliance. This in itself requires an astute personality that can rise above party politics to ensure not only that council decisions are implemented but also that the administration is protected from undue influences.

### **3.10 Managing the administrative and political dichotomy**

The appointment of managers directly accountable to a municipal manager is contained in section 56 of the Systems Act.<sup>85</sup> Local public administration is governed by the democratic values and principles embodied in section 195 (1) of the Constitution<sup>86</sup>. The municipal manager is the head of administration and as such is responsible for ensuring of the policy implementation of the municipal council<sup>87</sup>. The municipal manager is appointed by council and herein lies the dilemma, as most appointments are thought to be political by nature.

The municipal council is responsible for appointing a manager directly accountable to the municipal manager, after consultation with the municipal manager. It is a requirement

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<sup>84</sup> S 56(1)(d) Structures Act

<sup>85</sup> S 56 Systems Act. Managers are called s 56 managers with reference to the provisions in the Systems Act that guides their appointment

<sup>86</sup> S 50 Systems Act

<sup>87</sup> S 55 Systems Act



that a person appointed as a manager must have the relevant skills and expertise to perform the duties associated with the post in question, taking into account the protection or advancement of persons or categories of persons disadvantaged by unfair discrimination. The High Court in the Mlokoti judgement<sup>88</sup> ruled unequivocally on the alleged practice of cadre deployment and interference by political parties in the appointment process of council. This matter will be further discussed and analysed in chapter four of this research paper.

Cooper<sup>89</sup> argues that the job of the public administrator is more difficult in that he or she operates in highly charged political environments in which the rights, duties and obligations of the ordinary citizen more often than not result in significant tension with the elected representatives and those that advise them. Scheepers<sup>90</sup> asserts that contemporary South Africa makes a pertinent question relevant, namely, should public administrators emphasise efficiency and neutral competence, or representivity and political responsiveness.

The Systems Act is quite clear that there should be a clear distinction between the political and administrative arm of local government and prohibits a councillor from giving direct instructions to the administration, except where the law provides<sup>91</sup>. In terms of

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<sup>88</sup> *Vuyo Mlokoti v Amathole District Municipality* (case No 1428/2008, 6 November 2008, Eastern Cape High Court. Judge JD Pickering indicated that "...the involvement of the regional Executive Council of the ANC ...constituted an unauthorized and unwarranted intervention in the affairs of Amathole District Municipality's council. The councillors of the ANC supinely abdicated to their political party their responsibility to fill the position of municipal manager with the best qualified and best suited candidate on the basis of the qualifications, suitability and with due regard to the provisions of the pertinent employment legislation..."

<sup>89</sup> Cooper, TL, (1984): 147

<sup>90</sup> Scheepers, L, (2004) *Professionalisation of Local Public Administration Management*:

<sup>91</sup> Schedule 1, item 11 Systems Act

section 119, as contained in Chapter 12, certain offences and penalties are prescribed where a councillor attempts to influence the administration as well as the administration acceding to such requests<sup>92</sup>. The writer is not aware of any case in the Western Cape where a municipality invoked this provision, and this raises questions on its applicability.

### 3.11 Concluding remarks

There is an inevitable reliability that the lines between the administration and councilors become blurred and at times may compromise the ability to co-operate and co-exist. The ideal would be for councilors to refrain from interfering in the work of the administration and for the administration to carry out policy decisions of the municipal council diligently without trying to divert it to their own interest. Graham stated that most of the literature on the political-administrative dichotomy seems to be focused on dispelling the idea that such a dichotomy exists.”<sup>93</sup> Wooldridge mentioned that “a discussion of the legislative framework for regulating the political-administrative interface must be prefaced by a caution that there are limits to what can be effected through legislative instruments.”<sup>94</sup> It appears that what is required is a legislative framework regulating this political-administrative interface that has the support of the majority political parties to ensure its implementation and adherence.

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<sup>92</sup> S 119, Chapter 12 Systems Act

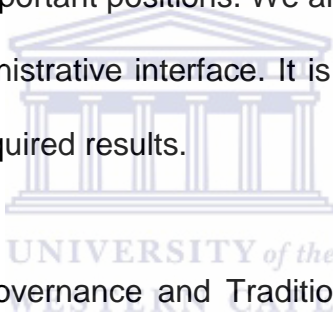
<sup>93</sup> Graham, J, (2006). As cited by Wooldridge, D, Lessons Consolidating Developmental Local Government: 471

<sup>94</sup> Wooldridge (2008): 472

## **CHAPTER 4: GOVERNMENT INITIATIVES TO DEAL WITH INSULATING THE ADMINISTRATION**

### **4.1 Introduction**

In the previous chapter we focused on the appointment of municipal managers and managers directly accountable to the municipal manager. What was evident in the preceding chapter was the fact that the person with the right expertise and knowledge should be appointed to these important positions. We also attempted to indicate the need for regulating the political–administrative interface. It is important to note that legislating every action will not yield the required results.



The Ministry of Cooperative Governance and Traditional Affairs (COGTA) compiled a report in 2009 (State of Local Government in South Africa)<sup>95</sup> due to the fact that local government systems were showing signs of distress. This and other initiatives by government will now be discussed and critically analysed in this chapter.

### **4.2 State of Local Government in South Africa Overview Report**

The State of Local Government Report was produced after assessments were done in all nine provinces between April and August 2009. The assessments were designed to ascertain the root causes of the current state of distress in many of the country's

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<sup>95</sup> Overview report on the National state of local government assessments, 2009

municipalities.<sup>96</sup> The report highlighted that political leadership is a defining characteristic of an effectively functioning municipality. The report pointed to the following reasons for distress in municipal governance:

- a) tensions between the political and administrative interface;
- b) poor ability of many councillors to deal with the demands of local government;
- c) insufficient separation of powers between political parties and municipal councils;
- d) lack of clear separation between the legislative and the executive;
- e) inadequate accountability measures and support systems and resources for local democracy; and
- f) poor compliance with the legislative and regulatory frameworks for municipalities.



The report also highlighted that the political-administrative interface resulted in factionalism and a battle over access to resources rather than ideological or policy differences. “The lack of values, principles or ethics in these cases indicates that there are officials and public representatives for whom public service is not a concern, but accruing wealth at the expense of poor communities is priority.”<sup>97</sup> Other concerns highlighted in the report alluded to:

- a) the absence of rules or procedures for dismissals, suspensions and disciplinary cases;

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<sup>96</sup> Overview report on the National state of local government assessments (2009): 10

<sup>97</sup> Overview report on the National state of local government assessments (2009): 10

- b) non-conclusion of performance agreements by municipal managers and managers directly accountable to the municipal manager;
- c) competency for some senior and middle management level posts not being regulated (e.g. technical heads of infrastructure, CFO's etc.)
- d) incidence of irregular or inappropriate appointment, e.g. in one municipality a former tea lady was appointed as CFO.

### **4.3 Local Government Turnaround Strategy (LGTAS)**

The LGTAS was informed by the State of Local Government Report<sup>98</sup> and the Local Government Indaba and was endorsed by Cabinet in December 2009.<sup>99</sup> The aim of the LGTAS was to mobilise government and society at large to deal with the factors undermining Local Government and to restore the communities, confidence in the country's municipalities, while improving their performance.<sup>100</sup> The LGTAS highlighted some areas of concern which included serious leadership and governance challenges in municipalities and political parties that undermine the integrity and functioning of municipal councils through intra- and inter-party conflicts and inappropriate interference in councils and administrations. Some of these concerns were classified in short term and long term plans. We have already seen some progress being made with the short term plans, which included certain amendments to the Systems Act.

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<sup>98</sup> State of Local Government Report identified the key problems and root causes of problems in municipalities

<sup>99</sup> Local Government Turnaround Strategy (2009-2014)

<sup>100</sup> Local Government Turnaround Strategy (2009-2014): 4

#### 4.4 Local Government: Municipal Systems Amendment Bill, 2010

The object of the Local Government Systems Amendment Bill is to amend certain provisions of the Local Government Systems Act (32 Of 2000). Some of these amendments will be highlighted and critiqued below. In terms of the amendments, a person appointed as municipal manager or acting municipal manager must at least have the skills, expertise, competencies and qualifications prescribed by regulation.

In its entirety most of the amendments are positive moves to eliminate the chances of unqualified people taking up municipal managers' positions purely based on their political affiliation. The amendments should have required of municipal councils to report the outcome of the interview process<sup>101</sup> and proposed candidate to the MEC for review within seven (7) days, after which if the MEC do not respond, it will be assumed that the vacancy may be offered to the preferred candidate. This will allow for a process of checks and balances and certain questionable decisions being addressed prior to making an offer and entering into lengthy and costly legal processes after a person has been appointed into the position of municipal manager.

In terms of the new proposed amendment<sup>102</sup> dealing with the waiving of requirements for appointment of municipal managers, I am of the view that this allows for abuse and non-commitment by municipal councils due to the fact that they are allowed to apply to the Minister to waive certain requirements. As the previous chapter showed, the post of

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<sup>101</sup> S 54 (A) 7(a) Systems Amendment Bill [B22-2010]

<sup>102</sup> S 54 (A) 10 Systems Amendment Bill [B22-2010]

municipal manager is a complex one that requires someone who fulfills all of the requirements, and this should be non-negotiable.

In terms of the amendment of section 56 (1)(a), the municipal council, after consultation with the municipal manager appoints a manager, directly accountable to the municipal manager. This section gives a political feel to the process of appointment of managers' directly accountable to the municipal manager. It would have been ideal to erase this item and to amend it in such a way that the municipal manager accepts full responsibility and accountability for the appointment of S56 managers'. Unless a municipal manager has the power to hire and fire staff, s/he cannot be in control of the organisation, and prevailing centres of power remain a risk<sup>103</sup>. Council's role will merely be to check that processes have been followed and that the best candidate is appointed. This will be more in line with council's role of overseeing the administration and by not getting involved in it.

In terms of the changes proposed in section 57 (A), which deals with "employment by other municipalities of dismissed municipal employees and municipal employees who are subjected to a disciplinary process", the Bill proposes certain fundamental changes but then raises more questions than answers with section 57 (A)(4&5)<sup>104</sup>. In point 4 it is stated that the Minister may prescribe acts of misconduct in respect of which no period need expire before a person may again be employed in a municipality. The writer is of the opinion that if sufficient safeguards are built in to deal extensively with the misconduct

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<sup>103</sup> Powell, Steytler & de Visser (2011): Unpublished opinion piece

<sup>104</sup> Local Government: Municipal Systems Amendment Bill, 2010: 13, GG No 33189, 14 May 2010,

hearing and appeals procedures that point 4 and 5 would become superfluous and become an escape clause for those wanting to abuse the system.

If the legislators want to ensure that employees found guilty of misconduct do not jump from municipality to municipality, they should rather ensure that employees with charges pending receive swift justice that finds them either guilty (not eligible for re-employment at another municipality) or innocent (able to apply for another vacancy at a municipality). We cannot have a process where justice is delayed and employees are then unable to move in the absence of justice being served. We should be cognisant of the fact that our municipalities are political by nature and some municipal employees are dismissed and/or suspended for political reasons. It would have been prudent for the legislators rather to have focused on requiring of municipalities to send all dismissals and or suspensions of municipal managers to the MEC in the province concerned. This should be similar to the provisions dealing with the Code of Conduct for Councillors<sup>105</sup>, which requires the Council to inform the MEC and to request for dismissal of councilors in certain instances.

#### **4.5 Concluding remarks**

Deputy Minister Carrim stated that there are clear problems at the political-administrative interface, and this is shown in the consistently high number of vacancies in management, suspension of managers, and acting appointments. A National Treasury presentation to

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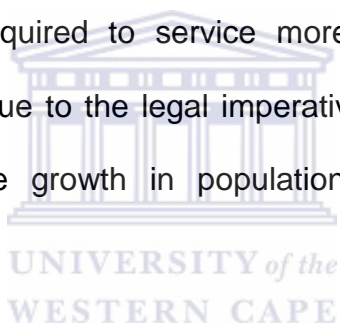
<sup>105</sup> Schedule 1, item 14 Systems Act



Parliament in 2008 showed that the number of vacancies in Municipal Manager and Chief Financial Officer positions increased dramatically in the six months immediately after the last municipal elections. According to the Deputy Minister, by December 2006, the vacancy rate for both positions stood at around 20%.<sup>106</sup>

While many of the legislative requirements appear to be in place, closer examination shows that, while there may be compliance with the letter of the law, the spirit is sorely lacking.

Local government is being required to service more people with apparently fewer resources. This is especially due to the legal imperative to provide free basic services but is also influenced by the growth in population and the proliferation of new developments.



The majority of municipal staff, including CFO's and municipal managers, is suffering from exceptionally low morale as they have had to face many changes which are impacting on their ability to be effective leaders.

Deputy Minister Carrim<sup>107</sup> stressed that government is concerned about the high turnover of senior municipal managers, the suspension of senior managers for long periods on full pay, the tardiness of municipalities to process allegations against senior managers, the huge financial consequences for municipalities fighting dismissals and suspensions of

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<sup>106</sup> Carrim (2009): 3

<sup>107</sup> Carrim (2009): 3

municipal officials in court and the unjustified huge pay-outs that officials receive. He emphasised that national government as well as the public are fed up<sup>108</sup> with these manifestations.



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<sup>108</sup> My emphasis

## CHAPTER 5: CONCLUSION AND RECOMMENDATIONS

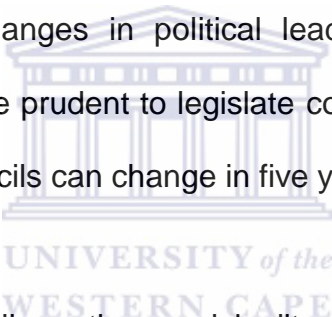
This study has tried to highlight the need to insulate the administration especially where constant political changes affect a municipality, however, this should not be seen as an endorsement of the protection of municipal officials that are corrupt, lazy, incompetent etc.

The current legislative frameworks are an attempt by government to regulate the local government affairs, yet at times it appears that individuals are openly trying to flout these laws. The arrogance by some politicians and administrators in appointing cadres and flouting tender procedures are cause for concern and should be rooted out. The frameworks as policies will not have the desired effect on their own, and it is proposed that implementation should be non-negotiable and punishment for non-compliance should be severe. The framework goes a long way in curbing the re-appointment of officials at other municipalities; however, it does not address the re-emergence of politicians. Political parties should stand firm in their resolve to root out corruption and looting of state resources for personal gain, and should act harshly against politicians that deliberately and negligently makes themselves guilty of such tendencies.

The State of Local Government in South Africa Overview Report paints a bleak picture of the current state of local government. This becomes even more problematic when considering the fact that most municipalities are still unable to submit credible audit reports. It is thus imperative that qualified and experienced administrators be appointed

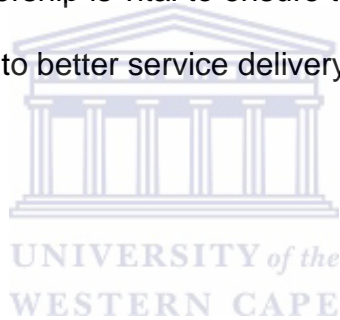
without political affiliations. Coupled with this we require political leadership that is vigilant and keeps administrators accountable through its committees and council.

The current legislative amendments on their own will not yield the required results unless it is followed up with vigorous implementation policies. It is recommended that the legislators should address the following amendments and enforce compliance to ensure that municipalities become more stable and the line is drawn between politicians and administrators.

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- Due to the constant changes in political leadership and their effect on the administration, it would be prudent to legislate coalitions as well as the number of times that municipal councils can change in five years;
  - Review legislation that allows the municipality to recommend the appointment, dismissal and/or suspension of municipal managers to the MEC in the province and for him/her to review the matter. This will be the same as when a municipality recommends for the dismissal and or suspension of a councillor, but where the final say remains with the MEC.
  - Removing the jurisdiction for the appointment of section 56 managers from the municipal council and allowing the municipal manager to make such appointments. This will minimise the effect of political appointments, nepotism and cronyism.

- Change the type of municipalities to executive committee systems, thereby allowing parties to be represented according to the wishes of the electorate. This will ensure that the wishes of the electorate are effected and parties are represented according to the number of votes received.

We have just seen a round of amendments to the Systems Act and other initiatives by government, however there is no doubt that more should be done, and hopefully the abovementioned proposed changes to legislation should address some of these concerns that is bedeviling local government. Striking a balance between the administration and political leadership is vital to ensure the sustainability of municipalities. This in itself should transcend into better service delivery to the communities they serve.



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