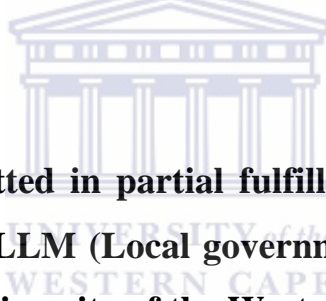


**Professionalisation of local government:
Legal avenues for enforcing compliance
with competency requirements**

By

Phindile Ntliziywana

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**A research paper submitted in partial fulfillment of the requirements
for award of the degree LLM (Local government and decentralisation)
in the Faculty of Law, University of the Western Cape.**

Supervisor: Dr Yonatan Fessha

Title page

Keywords

- Service delivery
- Developmental local government
- Protest marches
- Professionalism
- Work ethics
- Municipal administration
- Performance management
- Enforcement mechanisms
- Legal avenues
- Cadreship deployment



DECLARATION

I, Phindile Ntliziywana, hereby declare that **Professionalisation of Local Government: Legal Avenues for Enforcing Compliance with Competency Requirements** 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 LLM Degree in Local Government and Decentralization, University of the Western Cape.

Student: Phindile Ntliziywana

Signature: _____



Date: 13 November 2009

Supervisor: Dr. Yonatan Tesfaye Fessha

Signature: _____

Date: _____

DEDICATION

This dissertation is dedicated to my late father, Mfowomzi Joseph Ntliziywana and my ailing mother, Nokuphela Patricia Ntliziywana, for working tirelessly to ensure that we obtain what they themselves could not get; education. It is my hope that this achievement will encourage my mother to regain her good health and live to see more to come.

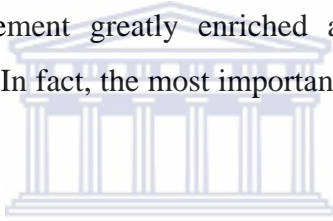
Phindile Ntliziywana



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ACRONYMS

SALGA	South African Local Government Association
DPLG	Department of Provincial and Local Government
CoGTA	Department of Co-operative Governance and Traditional Affairs
MSA	Local Government: Municipal Systems Act 32 of 2000
MFMA	Local Government: Municipal Finance Management Act 56 of 2003
ANC	African National Congress
REC	Regional Executive Committee
MDB	Municipal Demarcation Board
DME	Department of Minerals and Energy
IDP	Integrated Development Planning
CLLR	Councillor
PPPFA	Preferential Procurement Policy Framework Act
PPP	Public Private Partnership
KPI's	Key Performance Indicators
CCR's	Core Competency Requirements
KPA's	Key Performance Areas
SDBIP	Service Delivery and Budget Implementation Plan
MIG	Municipal Infrastructure Grant
EPWP	Expanded Public Works Program

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Chapter 1: Introduction

1.1 Background to the study

The Constitution of the Republic of South Africa¹ posits local government as the primary provider of community services by locating it as a first port of call for all communities. The objects of local government include, among others, ensuring the provision of services to communities in a sustainable manner and promoting social and economic development.² In essence, local government is made the epicenter of development and service delivery. These noble objectives resonate well with, and are particularly apt when one considers, the imperatives of ensuring service delivery and infrastructural development in previously disadvantaged communities.

As “the last point of the service delivery chain”,³ local government is supposed to be a sphere of government that is responsive to the needs of the communities and be able to provide services to address the glaring disparities occasioned by the unequal and racial distribution of resources.⁴ Local government must be in constant dialogue with communities to address these structural disparities and imbalances inherent in society. These constitutionally recognised mandates of local government are given effect to by way of a series of legislation.⁵

However, the trend shows that most municipalities have failed to live up to these objects. The common explanation is that most municipalities are grappling with many challenges, including lack of capacity, especially in critical areas such as technical, artisan as well as project management.⁶ Many municipalities have not been able to deal with the

¹ Constitution of the Republic of South Africa 1996 (hereafter Constitution).

² S 152(b) the Constitution.

³ *Beck and Others v Kopanong Local Municipality and Others* Case no 3772/2002 unreported (Orange Free State) (hereafter *Beck* case) para 18.

⁴ Steytler and De Visser (2007): 1-8.

⁵ Local Government: Municipal Structures Act 117 of 1998; Municipal Systems Act 32 of 2000, and Municipal Finance Management Act 56 Of 2003.

⁶ Yawa (2008): 1.

management of their finances adequately.⁷ This has given rise to misappropriation and corruption.

As a result, some municipalities have not been able to perform their functions of providing basic services to communities adequately. This has sparked some of the protest marches and disturbances witnessed in some municipalities across the country.⁸ Obviously, citizens are quite aware of their entitlements that correspond to their duties to pay for services.⁹ When services are not forthcoming, they become disgruntled and resort to mass action and disruptive protest marches.¹⁰ This study postulates and traverses the hypothesis that professionalising local government can go a long way in addressing the anomaly of poor or lack of service delivery.

1.2 Problem statement

As indicated above, this study is a response to the dilemma of poor service delivery or the lack thereof. In this regard, this study posits the professionalisation of local government as part of the solution. The focus is on the administrative arm of local government, which is the major conduit for service delivery. Professionalisation of local government is a broader theme. For the present purposes, focus will be devoted to the competency component which entails attracting qualified personnel competent to discharge local government responsibilities. However, it is not limited to attracting already competent and professional staff. It also entails developing the skills of existing staff. This definition, in essence, relates to qualification through training, learning and specialisation.¹¹ In essence, professionalisation of local government ensures that all employees act and behave in a professional way. In this regard, this study seeks to identify the competency standards set by the legislative framework and then explore the legal avenues for enforcing compliance, by the municipal administration, with such standards. This requires one to look at and answer the following questions:

⁷ Pycroft (2006): 147.

⁸ Yawa (2008): 1.

⁹ S 5 Local Government: Municipal Systems Act 32 of 2000 (hereafter Systems Act).

¹⁰ McDonald and Pape (2002): 17-37.

¹¹ Professionalisation of local government also means a greater commitment to the ethics of product and service quality. The latter denotes innovation, accountability and responsibility for own actions. It envisages good governance, professional work ethics and values in the conduct of local government affairs.

- What constitutes municipal staff?
- What is the content of the competency framework in question?
- What are the enforcement mechanisms currently in place?
- Whose role is it to enforce compliance with the competency framework?

Broadly speaking, enforcement can take two forms: hard enforcement and soft enforcement. The hard form of enforcement relates to giving incentives for compliance with the competency framework and dismissal for non-compliance. Softer enforcement, in turn, relates to correction and monitoring.

The structure of this study will be shaped along the lines of these questions.

1.3 Literature review

There seems to be consensus on the relevant literature that municipalities naturally need the services of persons qualified to perform tasks in specific disciplines (i.e. medical practitioners, lawyers, accountants, engineers, etc).¹² The authors on the subject further propose professionalisation of the whole staff component as a tool to combat maladministration, lack of skills and ultimately improve service delivery.¹³

The available literature on the subject agrees that professionalism in local government has produced highly competent and professional staff.¹⁴ Of importance is that the service quality provided by these professional officials is impeccable and does not detract from the service delivery and the developmental agenda of local government. Scheepers, in turn, argues that professionalisation of the occupation has benefits of better utilisation of resources by local government managers resulting in best value for money to local communities.¹⁵

¹² Craythorne (1997): 291, Nealer (2007): 161, 178.

¹³ Nealer (2007): 178.

¹⁴ Hill (1972): 171, Craythorne (1997): 291.

¹⁵ Scheepers (2004): 5.

The centrality of training in the professionalisation of local government is also underscored by a number of authors. Craythorne¹⁶ asserts that constitutionally and legally, municipalities are required to be efficient and effective, and that requires staff training. Nealer¹⁷ throws his weight in support of this idea when he recommends that professional leadership training for public officials is a useful vehicle to improve public service delivery in local government.

However, a *caveat* is sounded against the danger that professionals may, at times, become blinded by their own skill. This would give birth to professionals becoming blinkered and narrow in their views and seeking to elevate their speciality above all other needs as well as seeking an inordinately large share of the available resources.¹⁸

The survey of literature indicates that the benefits of professionalising the local sphere of government outweigh the disadvantages. Professionalisation of local government gives value for money in that the services offered by professional personnel are impeccable. The resources are furthermore better utilised and thus saving unnecessary costs.

There is a paucity of literature on professionalisation of local government. This paper therefore is trying to add to the scant literature in existence and by so doing fill the void in this field of research.

1.4 Significance of the study

The importance of this study may be questioned particularly because there is a torrent of legislation that is aimed at regulating the functioning of local government. In the light of such elaborate legislative framework, a study that seeks to professionalise the administrative arm of local government might be regarded as superfluous. Given that this mass of legislation governs the delivery of service and the developmental agenda of local government, it can be argued that it is a futile exercise to put in place further mechanisms that seek to improve local government competency, instead of giving effect to the

¹⁶ Craythorne (2006): 208.

¹⁷ Nealer (2007): 161.

¹⁸ Craythorne (1997): 291.

existing framework. However, the recent spate of service delivery protests buttresses the need to explore options to improve competencies and the work ethics of municipal staff in an attempt to improve service delivery.¹⁹ Professionalisation and personnel development in the municipal administration might go a long way in addressing the poor and sometimes lack of service delivery and consequently augment the developmental mandate of local government. This is all the more important given that the services that municipalities deliver have a direct and immediate effect on the quality of the lives of the people in the communities.

One of local government's key priorities is quality service delivery. Excelling in service delivery requires capable, committed and loyal staff that can translate vision into action. The attraction, development, retention and deployment of competent staff necessitate this study to adopt a focused approach to the professionalisation and personal development of municipal administration, with particular focus on senior managers in the local government sphere. This is in keeping with the Constitution which provides that public administration must be governed by the democratic values and principles enshrined in the Constitution.²⁰ These basic values and principles include the provision to the effect that a high standard of professional ethics must be promoted and maintained.²¹ The Constitution further provides that these principles attract application in the administration of every sphere of government.²² Consequently, professionalising and building the capacity of the administrative arm of local government is not only important but a constitutional imperative. This makes the study on the professionalisation of local government essential.

1.5 Methodology

This study shall adopt a critical analytical approach of the relevant literature available on the subject. As this approach suggests, desk-oriented research is the methodology that shall be employed herein. Primary and secondary materials are the main sources in this study. Concerning primary sources, the study relies on the Constitution and local

¹⁹ Seokoma (2009): 1.

²⁰ Section 195(1) Constitution.

²¹ Section 195(1)(a) Constitution.

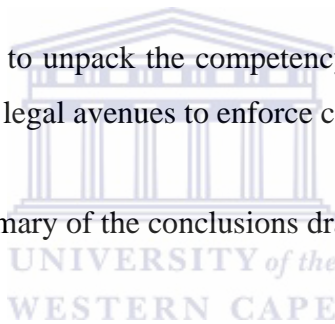
²² Section 195(2)(a) Constitution.

government legislation that embody the competency framework for municipal administration. It also makes reference to the relevant case law. The study also places considerable reliance on secondary sources including books, academic articles and regulations. Various internet sites will also be consulted for relevant data and information.

1.6 Overview of the chapters

This study is divided into four chapters.

- Chapter two provides a thorough exposition of the current state of local government with particular focus on service delivery or lack thereof and its link with the lack of capacity. It also attempts to establish a link between the cadreship deployment policy and the poor or lack of service delivery.
- The third chapter seeks to unpack the competency framework currently in place. It further introduces the legal avenues to enforce compliance therewith.
- Chapter four is the summary of the conclusions drawn in the course of the study.



Chapter 2: Local government, service delivery and the issue of capacity

2.1 Introduction

The aim of this chapter is to discuss the relationship between service delivery and the lack of capacity. In this regard, a thorough exposition of the current state of local government with particular focus to service delivery, or lack thereof, will be provided. This is followed by a discussion on the lack of capacity that is evident at the local government level. In relation to this, two points, which evidence poor performance or lack of service delivery, will be mentioned: the service delivery targets and service delivery protests. The skills deficit will be postulated as the major contributor to local government ineffectiveness. Finally, this chapter will attempt to establish a link between the cadreship deployment practice and the poor or lack of service delivery.

2.2 The evolution of local government

2.2.1 Status of local government before 1994

Before 1994, local government was a creature of statute. Local government was the lowest level of government in the hierarchical sense of the word and was constitutionally unrecognised and unprotected.²³ As a creature of statute, it possessed no powers or rights except those expressly or impliedly conferred upon it by a competent legislative authority. It served as the national and provincial governments' administrative arm. As a result, its continued existence depended on the whims of the central governments.²⁴ In the words of De Visser, local government structures before 1994 were subservient structure.²⁵

Furthermore, local government was characterised by a multiplicity of fragmented institutions that provided massively inequitable services to the different communities.²⁶

This unequal distribution of services was occasioned by the fact that these fragmented

²³ Steytler and De Visser (2007): 1-8.

²⁴ De Visser (2002) 223-243.

²⁵ De Visser (2005): 58.

²⁶ Steytler and De Visser (2007): 1-8.

institutions were racially segregated.²⁷ That made it possible for privileges to be dispensed to white areas to have a developed infrastructure, thriving business districts and valuable rateable property.²⁸ By contrast, the communities in the erstwhile Black, Coloured, and Indian areas were plagued by underdevelopment, poor services and a vastly inferior rates base.²⁹

2.2.2 Local government after 1994

In the new constitutional dispensation (post 1994 constitutional dispensation), local government has acquired a new status as a fully-fledged sphere of government with constitutionally protected powers. The Constitution, adopted in 1996, repositions local government as a full partner in the intergovernmental arena. It recognises local government as one of the three spheres of government that derives their powers directly from the Constitution.³⁰ Accordingly, the constitutional status of a municipality is markedly different from what it was under the pre-1994 era.

The new constitutional status of local government was confirmed by the Constitutional Court in *Fedsure Life Assurance and Others v Johannesburg Transitional Metropolitan Council*³¹ when it made it unequivocally clear that local government is no longer a public body exercising delegated powers. The court held that municipal council “is a deliberative legislative assembly with legislative and executive powers recognised in the Constitution itself”.³² Two principles can be deduced from the reasoning of the Constitutional Court.³³ Firstly, the institution of local government, and the powers of municipalities are now recognised and protected by the Constitution. In this regard, national and provincial governments are proscribed from impeding local government in executing its constitutional mandate.³⁴ Secondly, the exercise of municipal legislative

²⁷ Steytler and De Visser (2007): 1-8.

²⁸ *Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Metropolitan Council and Others* 1998 (12) BCLR 1458 (CC) (hereafter *Fedsure Life Assurance*).

²⁹ *Fedsure Life Assurance*.

³⁰ S40(1) Constitution.

³¹ *Fedsure Life Assurance*.

³² Bronstein (2007): 22-43.

³³ Steytler and De Visser (2007): 5-10ff.

³⁴ S 151(4) Constitution.

power is no longer a delegated function subject to judicial and administrative review but a political process that represents the will of the local residents.³⁵

2.3 The new mandate of local government

The new status of local government as an equal partner in the intergovernmental arena has marked a conceptual shift away from local government as an administrative service delivery agent and implementer of apartheid policies of provincial and national governments.³⁶ One of the constitutional objects of local government is “to ensure the provision of services to communities in a sustainable manner”.³⁷ In addition, however, the Constitution adds a developmental mandate by stating that a municipality must “structure and manage its administration and budgeting and planning process to give priority to the basic needs of the community”.³⁸ In the following sections, the content of each aspect of the local government mandate will be unpacked.

2.3.1 Developmental mandate

The developmental duties of local government are contained in section 153 of the Constitution and section 73(1) of the Systems Act.³⁹ It is submitted that sections 152 and 153 translate into four developmental principles: democracy, sustaining and improving an adequate standard of living, a safe and healthy environment and cooperative government.⁴⁰ The White Paper on Local Government,⁴¹ which is designed to establish the mechanisms by which developmental local government will be achieved, has further outlined the developmental vision of local government. It provides a workable definition of developmental local government. In terms thereof, developmental local government is “local government committed to working with citizens and groups within the community to find sustainable ways to meet their social, economic and material needs and improve

³⁵ S 151(4) Constitution.

³⁶ De Visser (2005): 69.

³⁷ S 152(1)(b) Constitution.

³⁸ S 153(a) Constitution.

³⁹ Local Government: Municipal Systems Act 32 of 2000 (hereafter Systems Act).

⁴⁰ De Visser (2005): 70.

⁴¹ *White Paper* (1998): 17.

the quality of their lives”.⁴² This commitment is, indeed, the foundation of the new constitutional vision of local government.⁴³

The White Paper identifies four basic characteristics of developmental local government.⁴⁴ The first is maximising economic growth and social development. Social upliftment and economic growth are in the forefront of developmental local government.⁴⁵ The second element is integrating and coordinating. It is the responsibility of the developmental local government to provide vision, leadership and coordination between the different role players.⁴⁶ The third characteristic of developmental local government relates to democratic development and public participation. Local government becomes the vehicle through which citizens work to achieve their vision of the kind of place envisioned by the Constitution. The fourth operational objective is moving ahead through the process of leading and learning.⁴⁷ Strong central guidance with an opportunity for innovation is encouraged by this element. However, municipalities are supposed to take a leading role in their communities and should learn from failures and successes of other local authorities.⁴⁸ They must become visionary and strategic in the way in which they operate.⁴⁹

2.3.2 Service delivery mandate

As indicated above, the constitutional basis for the service delivery mandate of local government is section 152(1)(b) of the Constitution. The Constitution mandates local government to ensure the provision of services to communities in a sustainable manner. The centrality of service delivery in the new system of local government was emphasised in *Beck and Others v Kopanong Local Municipality and Others*.⁵⁰ Rampai J held that local government is the important point where services have to be rendered as local municipality is the point of contact between the governor and the governed. The

⁴² *White Paper* (1998):17.

⁴³ Bekink (2006): 70.

⁴⁴ *White Paper* (1998): 38.

⁴⁵ Pycroft (1996): 238.

⁴⁶ Steytler and De Visser (2007): 1-20.

⁴⁷ Bekink (2006): 73.

⁴⁸ Bekink (2006):73.

⁴⁹ Bekink (2006):73.

⁵⁰ *Beck* case.

provision of services is thus a cardinal, if not the most important, function of every municipality. In this regard, some writers have even commented that if a municipality cannot or does not perform its service provision obligations, its existence is meaningless.⁵¹

Section 156(1) of the Constitution provides that “a municipality has the executive authority...and the right to administer” the functions in schedules 4B and 5B. The service delivery mandate of local government is, therefore, dictated and circumscribed by the functions and powers set out in these schedules. These services include: electricity and gas reticulation, firefighting services, municipal health services, municipal public transport, storm water management system in built in areas, and water and sanitation services limited to potable water supply system and domestic waste-water and sewage disposal.⁵² Schedule 5B, in turn, contains the following services: cemeteries and crematoria, cleansing, municipal roads, and refuse removal, refuse dumps and solid waste disposal.

Section 7(2) of the Constitution further buttresses the service delivery mandate of local government by enjoining the different spheres of government, including local government, to respect, protect, promote and fulfill the rights in the Bill of Rights, including socio-economic rights. In this regard, the Constitutional Court stated in *Grootboom* that socio-economic rights bind all spheres of government.⁵³ However, the level and nature of obligations vary considerably.⁵⁴ Where the socio-economic right has no direct intersection with the municipality’s functional area, the role of the municipality is contributory or supportive.⁵⁵ Yacoob J signified this in the context of the right of access to adequate housing, by asserting that the right to housing entails more than “brick and mortar”, “there must be land, there must be services, there must be a dwelling.”⁵⁶ These services include the provision of water, the removal of sewage and the financing of

⁵¹ Craythorne (1997): 391.

⁵² Schedule 4B Constitution.

⁵³ *Government of the Republic of South Africa v Grootboom* 2000 (11) BCLR 1169 (CC) (hereafter *Grootboom*) para 82.

⁵⁴ Steytler (2004): 163.

⁵⁵ Steytler (2004): 163.

⁵⁶ *Grootboom* para 35.

all of these.⁵⁷ The municipality must therefore play a contributory role by providing water and sanitation, cleansing and refuse removal.⁵⁸ However, in instances where there is a direct intersection between the socio-economic right and the municipality's functional area or areas, "local government would be responsible for the full spectrum of responsibilities to implement [such] right."⁵⁹

It transpires in the foregoing that the new local government order elevates the position of local government from being an implementer of Apartheid policies at the hands of the upper spheres of government to being an equal partner with a mandate derived directly from the Constitution. Furthermore, the local government mandate is now not only about dispensing services to passive recipients but also a vehicle through which citizens work to achieve their vision of the kind of place envisioned by the Constitution. The new mandate seeks to work with communities to find common solutions to their problems. It has empowerment and developmental elements to it. In the ensuing section, an exposition of lack of service delivery and the causes thereof will be canvassed.

2.4 Poor performance / lack of service delivery

South Africa has now established a system of "wall to wall" local government, responsible for basic service delivery and facilitating social and economic development at a local level. As indicated earlier, service delivery is one of the core duties of municipalities upon which performance and effectiveness assessments are based. This means that in every square meter of the territory of the Republic, there must be a local authority ready to deliver services to every citizen in the Republic. In practice, however, the efficiency and effectiveness of municipalities in discharging their basic service delivery obligations is under serious question. In what follows, the evidence of poor performance and the possible causes thereof will be canvassed.

2.4.1 Chronicle of evidence

The evidence of poor performance or lack of service delivery will be revealed in the discussion on the failure to meet service delivery targets and the concomitant service

⁵⁷ *Grootboom* para 35.

⁵⁸ Steytler (2004): 163.

⁵⁹ Steytler (2004): 163.

delivery protests. These are the manifestation of failure to deliver serviced to our communities.

2.4.1.1 Service delivery targets

In his State of the Nation Address in 2004, the then President Mbeki made bold assertions in outlining the long-term objectives to guide his administration.⁶⁰ These were in the form of delivery pledges with clear and definite targets and “concrete objectives in the language of commitment and statecraft”.⁶¹ These commitments relate to household services, health, social security, education and security. Concerning household services, the President pledged the eradication of sanitation buckets by 2007, access to clean running water by 2008, access to sanitation by 2010, universal access to electricity by 2012, access to basic shelter (upgrading informal settlement) by 2014.⁶² The then Minister of Provincial and Local Government announced practical measures to be taken to realise these targets, in his budget vote speech.⁶³ These measures included the deployment of a “high caliber team to support municipalities experiencing a short term need for intense hands on support”,⁶⁴ the launch of the Municipal Infrastructure Grant to allocate funds targeted at the provision of water, sanitation, solid waste and community lighting, among others.⁶⁵ The Minister further promised to train 5 000 councillors and senior officials by March 2006.⁶⁶ The discussion in this section is limited to household services in establishing substandard levels of performance by municipalities.

According to the statistics provided by the Department of Provincial and Local Government (DPLG) (as it then was) in September 2005, of the 284 municipalities only 203 managed to provide sanitation their residents, albeit to less than 60%.⁶⁷ In a similar vein, 182 municipalities fell short of providing refuse removal to even 60% of their residents.⁶⁸ At the end of 2007, the Free State province recorded the sanitation buckets

⁶⁰ Hemson and O’Donovan (2006): 12.

⁶¹ Hemson and O’Donovan (2006): 12.

⁶² Hemson and O’Donovan (2006): 12-13.

⁶³ Steytler (2004): 4.

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ Atkinson (2007): 60.

⁶⁸ Ibid.

backlog of 74%, followed by the Eastern Cape at 16%, whilst the remainder of the backlog was shared between the Northern Cape (6%), the North West (3%) and finally the Western Cape at 1%.⁶⁹ This led to the shifting of the bucket eradication deadline to 2010.⁷⁰ Given that these services fall squarely within the functional competencies of local government, the shift in goalposts signaled poor performance or slow service delivery by local government.

Regarding the commitment to provide access to clean running water by 2008, the DPLG figures indicated that of the 283⁷¹ municipalities 155 could not provide water to 60% of their residents.⁷² The failure to meet the access to water target was confirmed by the *Water and Sanitation Audit Report* released in March 2009. This report highlighted several concerns.⁷³ One of these concerns relates to the fact that 85% of the country's wastewater treatment works have a limited remaining useful life.⁷⁴ In addition, 90% of water treatment works are dilapidated.⁷⁵ The reports further highlighted that while Limpopo, Eastern Cape and Kwazulu-Natal have the biggest water backlogs, the water quality in Kwazulu-Natal, Mpumalanga, North West, and Northern Cape is below the acceptable health level.⁷⁶ This records another failure by local government to live up to expectations.

⁶⁹ Introductory remarks by L.B. Hendricks, Minister of Water Affairs and Forestry, during the discussion with municipalities on the eradication of bucket sanitation system in formal areas, Birchwood Executive Hotel and Conference Centre, Boksburg, Gauteng available at [http://www.search.gov.za/info/previewDocument.jsp?dk=%2Fdata%2Fstatic%2Finfo%2Fspeeches%2F2007%2F07071615451001.htm%40Gov&q=\(+\(hendricks\)%3CIN%3ETitle+\)%3CAND%3E\(category%3Ccontains%3Es\)&t=L+Hendricks%3A+Discussion+on+eradication+of+bucket+sanitation+systems](http://www.search.gov.za/info/previewDocument.jsp?dk=%2Fdata%2Fstatic%2Finfo%2Fspeeches%2F2007%2F07071615451001.htm%40Gov&q=(+(hendricks)%3CIN%3ETitle+)%3CAND%3E(category%3Ccontains%3Es)&t=L+Hendricks%3A+Discussion+on+eradication+of+bucket+sanitation+systems) (accessed on 01-09-2009).

⁷⁰ Nojiyela and Amisi The challenges of eradicating bucket sanitation in South Africa available at <http://www.ukzn.ac.za/ccs/files/Nojiyeza%20and%20Amisi%20Challenges%20of%20eradicating%20Bucket%20Sanitation%20in%20SA.pdf> (accessed on 01-09-09).

⁷¹ Mlokoti (2009): 6 indicates that there was a slight reduction in the number of local government structures in 2006 from 284 to 283 municipalities.

⁷² Atkinson (2007): 60.

⁷³ Newsletter 29 - Why do most municipalities fail to deliver? *The municipal outreach project* available at <http://www.eumunicipaloutreach.org.za/newsletters/newsletter-29-2013-why-do-most-municipalities-fail-to-deliver-2013-10-july-2009/> (accessed on 08-07-09).

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ Ibid.

With regard to access to electricity, 122 of the 284 municipalities could not provide electricity to 60 percent of homes in 2005.⁷⁷ With regards to the target of upgrading the informal settlement by 2014, the signs of poor performance were registered just months after the presidential announcement. In this regard, the DPLG's 2005 figures indicated that 166 municipalities could not even provide housing for 60% of their residents.⁷⁸

2.4.1.2 Service delivery protests

During the period 2004 to 2006, numerous municipalities across South Africa, particularly in the Black and Coloured townships, were marred by mass protests, marches, demonstrations and violent confrontations.⁷⁹ A wave of service delivery protest erupted in townships across South Africa over shoddy housing and poor public services.⁸⁰ As at 20 July 2009, the police reports recorded that in no fewer than 20 towns, disgruntled residents have taken to the streets in the past four weeks.⁸¹ Salga recently reported that there have been 63 protests, 58 of which took place after the 22 April elections.⁸² The residents in the townships resorted to venting their anger and frustration by violent protests, in some instances demanding that their towns be withdrawn from certain municipalities due to lack of services therein.⁸³ This continued countrywide community protests is an expression of a deep malaise within the realm of governance in the country and, more particularly, at the local level.

Service delivery protests were widespread in the years between 2004 and 2006. Between 1994 and 2004, just more than 50 protests against municipalities and their capacity to deliver basic services in communities were recorded.⁸⁴ In the years thereafter, the figures increased almost exponentially. The then Minister for Provincial and Local Government confirmed this in 2005 when he indicated that 90 per cent of the 136 local authorities

⁷⁷ Atkinson (2007): 60.

⁷⁸ Atkinson (2007): 60.

⁷⁹ Atkinson (2007): 54.

⁸⁰ SA hit by service delivery protests *Mail and Guardian Online*, available at www.mg.co.za/article/2009-07-22-sa-hit-servicedelivery-protests (accessed on 22-07-09).

⁸¹ Service delivery protests a warning sign for government *Mail and Government Online*, available at <http://www.mg.co.za/article/2009-07-20-servicedelivery-protests-a-warning-sign-for-govt> (accessed on 20-07-2009).

⁸² Masondo (2009): 5.

⁸³ Atkinson (2007): 54-5.

⁸⁴ SAIRR (2006): 551.

which were identified as in need of special and urgent financial assistance had experienced revolt in some form.⁸⁵ A report prepared by the Department of Safety and Security revealed that the years 2004/5 recorded 5085 legal protests and 881 illegal protests.⁸⁶ Another source recorded more than 6 000 protests in 2005 alone.⁸⁷

The underlying problem in all these protests is discontentment with poor service delivery or lack thereof.⁸⁸ Poor performance is at the centre of the discontentment. Christmas, in her article on service delivery protests,⁸⁹ indicates that the root cause of the service delivery protests is lack of service delivery. In some areas, factors like poor service delivery, unacceptable living conditions, weak management that had resulted in failed development projects, corruption and nepotism are cited as root causes of the problem.⁹⁰ The combination of poor service delivery, managers' comparative affluence amid residents' poverty and their inability to account for the municipalities finances were and still are provocative of these protests.⁹¹

In September 2004, the then President Thabo Mbeki summed up the state of affairs in South African municipalities when he expressed dismay about the inaction in Warden (Free State Province) in a speech to the South African Local Government Association:

Of course, resources are limited and government continues to ensure that basic services do reach our people as urgently as possible. But still, why would stinking buckets not be collected for two weeks? Why are the taps not fixed? Has there been representation to the Department of Water Affairs about both the taps and the sewerage? Has the local government leadership raised the problem with other spheres of

⁸⁵ Atkinson (2007): 58.

⁸⁶ van Dijk (2007): 665.

⁸⁷ Buccus (2009): 1.

⁸⁸ Bernstein (2007): 1.

⁸⁹ Christmas (2007): 7.

⁹⁰ Atkinson (2007): 55.

⁹¹ Bernstein (2007): 1.

*government, if so, what was the response? Is it true that councillors and officials don't attend meetings, and why?*⁹²

The inaction referred to and the protest marches chronicled above over shoddy services took place despite the fact that over the past ten years local government has been receiving an increasing percentage of national revenue at an average annual growth rate of 15 per cent.⁹³ Furthermore, in 2004, National Treasury reported the dramatic increases in municipal allocations in intergovernmental grants and indicated that the trend is expected to continue.⁹⁴ In the context of such rapid provision of funding for municipalities, one may wonder why there is poor performance by municipalities that spiral to popular discontent. As we shall see later, the poor performances chronicled above are partly attributed to lack of capacity.

2.5 Lack of capacity

It is suggested that the source of the problems faced by municipalities partly lies in the appointment of staff with inadequate formal qualifications, expertise and experience.⁹⁵ This is despite the fact that municipalities are complex organizations⁹⁶ that require a cadre of leadership with sound organisational experience, "...familiar with overseeing large organizations, substantial budgets, complex legal requirements and sophisticated technical decision-making",⁹⁷ for their effectiveness. This is especially the case in South Africa where the sphere of local government is governed by a web of legislation, prompting one author to describe the phenomenon as 'strangulation of local government'.⁹⁸ The system of local government that is put in place in South Africa requires skilled administrators "with a combination of managerial competence, organizational savvy and political sensitivity to perform their role effectively as

⁹² Mbeki (2004): 5.

⁹³ Select Committee of Finance (2004) Trends in intergovernmental finances for 2000/1-2006/7 available at <http://www.pmg.org.za/docs/2004/appendices/041110annualreport.doc> (accessed on 23-07-09).

⁹⁴ National Treasury (2004) available at http://www.treasury.gov.za/comm_media/press/2005/2005020201.pdf (accessed on 30-07-09).

⁹⁵ Atkinson (2007): 61.

⁹⁶ Atkinson (2007): 61.

⁹⁷ Atkinson (2007): 61.

⁹⁸ Steytler (2008): 6. This relates to the concern that municipalities are inundated with a torrent of prescriptive and complex legislation regulating their functioning. The sheer volume, style, nature and scope of the legislative framework is naturally not user-friendly to the officials lacking the requisite expertise.

champions of fundamental change”.⁹⁹ As indicated above, the status *quo* in South African municipalities paints a gloomy picture with regards hereto.

Atkinson argues that decision making by some municipalities is based on ignorance or lack of experience, especially in the light of the fact that municipalities, after the first democratic local government elections, were staffed by people with very limited experience in modern organizations.¹⁰⁰ A survey conducted by the Municipal Demarcation Board (MDB) revealed that many municipal managers have less than five years of municipal experience.¹⁰¹ This accounted for 57 per cent in Limpopo province, 48 per cent of municipal managers in North West province, 48 per cent of Free State managers, 34 per cent of Eastern Cape managers and 33 per cent of Gauteng managers.¹⁰²

The MDB national report further indicated that only 62% of district and local municipal managers have a university degree.¹⁰³ Only 60% of financial managers have a university qualification, mostly in finances.¹⁰⁴ The DPLG further reported that a survey conducted by the South African Institute of Civil Engineers found that 74 of the 231 local councils, and 4 of the 47 district councils had no civil engineers, technologists or technicians.¹⁰⁵ Those local and district municipalities which did not have engineers on their staff reported that on average 35 per cent of the existing posts were vacant, in addition to newly established posts not having been filled.¹⁰⁶ With these figures, it will be difficult for local government to achieve its developmental and service delivery mandates. The skills shortage became so dire in 2005 that there were suggestions of importing skilled

⁹⁹ DPLG (2005) A report on skills level in municipalities: Presentation on Portfolio Committee on Local Government available at <http://www.pmg.org.za/docs/2005/050906dplg.ppt#509,25>, recommendations (accessed on 23-07-09).

¹⁰⁰ Ibid.

¹⁰¹ Municipal Demarcation Board Survey (2005/5) Personnel Issue available at <http://www.treasury.gov.za/publications/igfr/2006/1g/6.%20Chapter%205%20-%20Personnel%20issues.pdf> (accessed on 23-07-09).

¹⁰² Atkinson (2007): 61.

¹⁰³ Steytler (2005): 4.

¹⁰⁴ Ibid.

¹⁰⁵ DPLG (2005) A report on skills level in municipalities: Presentation on Portfolio Committee on Local Government available at <http://www.pmg.org.za/docs/2005/050906dplg.ppt#402,1,Slide 1> (accessed on 20-07-09).

¹⁰⁶ Ibid.

people from countries such as India.¹⁰⁷ In this regard, the former President Mbeki called for a search for retired accountants, engineers and project managers.¹⁰⁸

The combination of inexperienced, poorly qualified staff, with similarly inexperienced councilors creates fertile ground for irregularities, malpractice and ineffective expenditure. In the 2000/1 financial year, it was reported that of the 543 audits that had been completed up to 30 September 2002 and for which audit reports had been issued, only 159 of the audit opinions expressed were not qualified.¹⁰⁹ This account only for 29 per cent of municipalities who got their finances correctly. Since then, we are still sitting with the same problem. An assessment on the national state of local government issued in October 2009 reveals that although there has been a reduction in the number of disclaimed and adverse audit opinions for municipalities for the year ended June 2008, more than a third of the 283 municipalities obtained either disclaimers or adverse opinions.¹¹⁰ The report further reveals that a further 57 municipalities received a qualified audit opinion, which brings the total of municipalities with qualified, disclaimer or adverse opinions to 153 (54.4%).¹¹¹

2.6 Cadreship deployment practice

The response of government to the skills shortage was the introduction of programmes that are aimed at accelerating infrastructure development in underdeveloped areas and improve service delivery. The Municipal Infrastructure Grant and Expanded Public Works Programme are seen as the financial drivers to accelerate the former and to address the skills gap.¹¹² Project Consolidate, by means of which the government responded to enlarge the local government capacity, was aimed at tackling “the lack of qualified managers, professional and technical personnel...”¹¹³ This is an indication that government is committed to making local government work.

¹⁰⁷ Atkinson (2007): 61.

¹⁰⁸ Atkinson (2007): 61.

¹⁰⁹ Ibid.

¹¹⁰ National State of Municipalities Assessment 2009:55 available at <http://www.pmg.org.za/files/docs/091017tas.pdf> (accessed on 12-11-09).

¹¹¹ Ibid.

¹¹² Mahlatsi (2006): 7.

¹¹³ Ibid.

The approach of political parties to municipal politics does not, however, assist in addressing the capacity deficit bemoaned above. Qualified personnel are often overlooked for political appointments. In this regard, Nealer has observed that many candidates are not appointed despite their high level of competence and experience, because municipalities make appointments on the basis of political and family ties.¹¹⁴ Mamphela Ramphele asserts that there are too many skilled professionals being denied job opportunities because they are outside of the party political networks that have captured civil-service jobs for patronage.¹¹⁵ In the result, in the words of Atkinson: “valuable skills have been lost, institutional memory had dissipated, senior posts had become sinecures for party faithful and junior posts have been filled by inadequately trained people”.¹¹⁶ This practice of deploying officials because of their personal and political connections is fuelling the appalling skills gap in the public service. It is, therefore, inimical to service delivery and the developmental mandate of local government. In this regard, the deputy Minister of Co-operative Governance and traditional Affairs, Yunus Carrim, has deplored what he calls “an emerging mutually destructive relationship between ANC [r]egional...structures and the municipal structure.”¹¹⁷



The evidence of political interference in the appointment of municipal staff was uncovered in a recent court case in the Eastern Cape.¹¹⁸ *Mlokoti v Amathole District Municipality* dealt with the appointment of a poorly qualified candidate for the municipal manager post over the candidate who displayed the requisite qualifications. The council of Amathole District Municipality and the regional structure of the ANC were slammed for colluding in a perverse deployment strategy.¹¹⁹ This strategy resulted in a less qualified individual being appointed as municipal manager despite the availability of an outstanding candidate. In the words of De Visser “[t]he manipulation of the process designed to obtain quality managerial leadership and calculated hiding of essential

¹¹⁴ Nealer (2007): 177.

¹¹⁵ Ramphele (2005): 4.

¹¹⁶ Atkinson (2007): 61.

¹¹⁷ Carrim (2009): 6 and 7.

¹¹⁸ *Mlokoti v Amathole District Municipality and Another* (1428/2008) [2008] ZAECHC 184.

¹¹⁹ De Visser (2009): 5.

information by the majority party in the council shows that, both the council and the party crossed [the] line and traveled on into a bewildering realm of cronyism.”¹²⁰ He furthermore finds a link between these practices, which are certainly not exclusive to the ANC, and the poor quality of services provided to communities.¹²¹ This shows that 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 development and service delivery mandates.

2.7 Concluding remarks

The new constitutional order, heralded by the 1996 Constitution, envisages the role of local government as more than merely providing services to the communities. It attaches a developmental mandate to local government by mandating it to maximise social upliftment and economic development. However, the lack of the necessary capacity to fulfill this mandate has frustrated the new constitutional vision of local government. Evidence of the failure to meet set targets and the concomitant popular discontentment pays testimony to the frustrated vision. In this regard, although the status of local government and its vision has changed for the better in relation to the other spheres of government, it is under peril from lack of capacity and the problem of deployment.

A nexus is established in the preceding sections between the lack of service delivery or poor performance and the concomitant outbreak of violent protests, on the one hand, and the poor or lack of capacity to deliver, on the other. This, in turn, is aggravated by cronyism, nepotism and political interference in municipal appointments. The problems as diagnosed suggest that part of the solution lies in staffing municipalities with competent individuals. This means the professionalisation of the system by substituting the cadreship deployment practice with the appointment of people with expertise, experience and savvy. Furthermore, strict entry requirements must be imposed to ensure that only qualified and proficient people are appointed. In the next chapter, attention will be devoted to the professionalisation of local government, with particular focus to

¹²⁰ De Visser (2009): 4.

¹²¹ De Visser (2009): 4.

unpacking the competency framework and legal avenues to enforce compliance therewith.



Chapter 3: Competency framework and legal avenues to enforce compliance with competency requirements

3.1 Introduction

In the preceding chapter, it was established that the spate of service delivery protests that dominated much of 2004 to 2009 is partly caused by poor performance or lack of service delivery, which is as a result of lack of capacity in local government. This, in turn, is caused by the employment of inexperienced, unqualified people, appointed merely on the basis of political affiliation.¹²² Furthermore, the non-existence of the culture of dismissal in instances where the public servants commit serious breach of their contracts breeds the inaction bemoaned previously. This has resulted in popular discontentment, which has spiraled to violent service delivery confrontations.

This chapter is premised on the idea that professionalisation of local government can go a long way in enhancing the capacity of local government to deliver services. The chapter examines the legal framework that sets out the competency standards and the mechanisms to ensure compliance therewith. The emphasis will be on how the legislative framework prescribes the staffing of municipal administration with people with expertise, experience and savvy and the management of their performance and competence. We commence this chapter by addressing the question of whether local government can employ the personnel it needs for the fulfillment of its constitutional mandate.

3.2 Municipal autonomy

The Constitution read with the Systems Act¹²³ firmly entrenches the autonomy of local government by providing that a municipal council “has the right to govern, on its own initiative, the local government affairs of its community...”¹²⁴ The Constitution further stipulates that the municipal council may employ the personnel it needs for the effective

¹²² National State of Municipalities Assessment 2009: 31 available at <http://www.pmg.org.za/files/docs/091017tas.pdf> (accessed on 12-11-09). This report on the state of Local Government in South Africa issued by the Department of Cooperative Governance and Traditional Affairs in October 2009 indicates that during one municipal assessment it was learnt that a former tea lady had become the CFO of that municipality.

¹²³ S 4(1)(a) Systems Act.

¹²⁴ S 151(3) Constitution.

performance of its functions.¹²⁵ The municipality's autonomy over the personnel affairs sets it apart from provincial government in that its administration is not part of the single public service.¹²⁶ Section 197 of the Constitution provides that the public service must function and be structured in terms of the national legislation. The Public Service Act,¹²⁷ the enabling legislation envisaged by section 197 of the Constitution, is applicable at national and provincial levels.¹²⁸ In essence, the recruitment, appointment, promotion, transfer and dismissal of members of the public service in the provincial administration must be done within the national framework.¹²⁹ That makes the national and provincial administrations part of a single public service.¹³⁰

The municipal administration, on the other hand, does not operate within the national framework highlighted above. The power to recruit, appoint, promote, transfer and dismiss municipal personnel is the sole preserve of the municipal council concerned. Each municipality is an employer and, as such, there are no uniform conditions of service.¹³¹ In fact, section 195(5) of the Constitution allows for different laws for various sectors, administrations or institutions in public administration. In the ensuing section, the competency framework designed to address poor performance of local government administration will be unpacked.

3.3 Local government competency framework

3.3.1 Constitutional framework

The constitutional basis for the professionalisation of local government lies in section 195(1) and (2).¹³² Section 195(1)(a)-(i) outlines the principles and values governing public administration. Accordingly, the public administration must:

- promote and maintain the high standard of professional ethics,
- promote efficient, economic and effective use of resources,

¹²⁵ S 160(1)(d) Constitution.

¹²⁶ Steytler and De Visser (2007): 8-5.

¹²⁷ 103 of 1994.

¹²⁸ Bodasing (2008): 23A-9.

¹²⁹ S 197(4); Steytler and De Visser (2007): 8-5.

¹³⁰ Steytler and De Visser (2007): 8-5.

¹³¹ Abdul-Hakim (2004): 10.

¹³² Motala and Ramaphosa (2002): 195.

- respond to peoples needs,
- provide services impartially, fairly, equitably and without bias,
- be accountable and transparent, and
- cultivate good human resource management and career-development practices to maximize human potential.

Section 195(2) of the Constitution, in turn, provides that these principles apply to administration in every sphere of government. In essence, these principles find application to the local sphere of government as well. This was confirmed by the Constitutional Court in *Premier, Western Cape* case where it held that:

Chapter 10 applies to all aspects of public administration prescribing the basic values and principles that have to be adhered to, making it clear that they apply to administration in every sphere of government....¹³³

The courts has also emphasised the importance of adhering to the principles enunciated above in the *Hardy Venture* case.¹³⁴ In *casu*, the High court was concerned with the failure by the respondent municipality to consider the applicant's application for approval of outdoor advertising and then the failure to address suitably the applicant's correspondence in connection therewith. The court held that the basic values and principles of public administration set out in s 195 of the Constitution were applicable and needed to be adhered to by the respondent municipality.¹³⁵ The court held further that the failure to adhere to these principles of public administration has a potential of generating inefficiency and unfairness, and consequently lapsing into a bureaucratic culture, which is inimical to the constitutional ethos. Furthermore, it held that professionalism, efficiency, fairness, accountability, transparency and accessibility are discreet values that ensure cost effective governance and administration.¹³⁶

¹³³ *Premier of the Province of the Western Cape v President of the RSA*, 1999 (4) BCLR 382 (CC) para 44.

¹³⁴ *Hardy Ventures CC v Tshwane Metropolitan Municipality* 2004 (1) SA 199 (T).

¹³⁵ *Ibid* para 9.

¹³⁶ *Ibid* para 11.

3.3.2 Legislative framework

The Municipal Systems Act¹³⁷ and the MFMA¹³⁸ are the primary pieces of legislation that give effect to the constitutional principles of a high standard of professional ethics in municipal administration. They also envisage the enactment of regulations to give substance to these principles.

The Systems Act complements the provisions of section 195(1) of the Constitution by setting forth basic values and principles governing local public administration. It provides that the administration of a municipality must be organised in such a manner that it is responsive to the needs of the residents and facilitates a culture of public service and accountability among staff.¹³⁹ The municipality is under a duty to provide, among other things, accountable government without fear or prejudice.¹⁴⁰ The administration must take measures to prevent corruption,¹⁴¹ ensure an equitable, fair, open and non-discriminatory working environment.¹⁴²

Furthermore, the municipal administration must be organised in such a manner that the roles and responsibilities of managers and other staff members are aligned with the priorities and objectives of the municipality's integrated development plan.¹⁴³ The municipal council must use the resources of the municipality in the best interest of the local community¹⁴⁴ and strive to ensure that municipal services are provided to the local community in a financially sustainable way.¹⁴⁵ Section 72 of the Systems Act enjoins the national minister responsible for local government to make regulations dealing with capacity building within municipal administration.¹⁴⁶ This mandate was realised when the Local Government: Municipal Performance Regulations for Municipal Managers and

¹³⁷ Local Government: Municipal Systems Act 32 of 2000 (hereafter Systems Act).

¹³⁸ Local Government: Municipal Finance Management Act 56 of 2003 (hereafter MFMA).

¹³⁹ S 6(2)(a) and (b) read with s 51(a) and (b) Systems Act.

¹⁴⁰ S 4(2)(b) Systems Act.

¹⁴¹ S 6(2)(c) Systems Act.

¹⁴² S 51(m) Systems Act.

¹⁴³ S 51(d) Systems Act.

¹⁴⁴ S 4(2)(a) Systems Act.

¹⁴⁵ S 4(2)(d) Systems Act.

¹⁴⁶ S 72(1)(d) Systems Act.

Managers Directly accountable to Municipal Managers¹⁴⁷ (hereafter Performance Regulations) was issued. They contain, *inter alia*, a framework for competency requirements and a basic job description for the posts of municipal managers and managers accountable to them. The Minister may also issue guidelines to provide for the establishment of job evaluation systems, measuring and evaluation of staff performance and corrective steps in the case of substandard performance, among other things.¹⁴⁸ Since 2006, there has been draft guidelines namely, Draft Competency Guidelines for Municipal Managers and Managers Directly accountable to Municipal Managers.¹⁴⁹ The fully-fledged guidelines are yet to be issued.

Another major piece of legislation that gives effect to the principles of professionalism outlined in section 195 of the Constitution is the MFMA. The MFMA regulates financial administration of municipalities. It governs the fiscal and financial affairs of the municipalities. In giving effect to principles of high standard of professional ethics in municipal administration, the MFMA requires officials to meet prescribed competency levels in financial and supply chain management.¹⁵⁰ It also enjoins the National Treasury to make regulations or issue guidelines that prescribe financial management competency levels for accounting officers, senior managers, chief financial officers, supply chain management officers and other financial officers.¹⁵¹ The Act further provides that these competency levels are not only relevant for the purposes of appointment but also for the development of staff to meet the required competency levels.¹⁵² In this regard, the National Treasury or provincial treasury may assist municipalities in training its officials.¹⁵³

The Regulations in terms of the MFMA have been promulgated as Local Government: Municipal Finance Management Act: Municipal Regulations on Minimum Competency

¹⁴⁷ 2006, GN R805, *Government Gazette* 29089.

¹⁴⁸ S 72(1)(b)(i), (iii) and (v) Systems Act.

¹⁴⁹ 2006, GN 347, *Government Gazette* 29723.

¹⁵⁰ Ss 83, 107 and 119 MFMA.

¹⁵¹ S 168 MFMA.

¹⁵² S 83(2) MFMA.

¹⁵³ S 83(3) MFMA.

Levels¹⁵⁴ (hereafter 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, and for head of supply chain management and supply chain senior managers. All these are aimed at explaining the Competency Regulations with specific reference to the relevant financial or supply chain management official.

In the ensuing section, the manner in which the Performance Regulations and the Competency Regulations and the guidelines thereto give flesh to the principles of professionalism will be canvassed. Focus will be devoted to the competency requirements for managers and officials at the senior management level contained therein. These relate to higher education qualifications, work related experience and core competencies as well as proficiency in competency areas. The sections that follow shortly will discuss these competency standards.

3.3.2.1 Qualifications

The first competency requirement giving effect to the constitutional principles of professionalism enunciated above is higher education qualifications. Both the Performance Regulations and the Competency Regulations prescribe minimum qualifications for the appointment of the municipal staff at a management level. This means that the appointment of municipal staff is made subject to the candidates meeting predetermined qualification standards.

¹⁵⁴ 2007, GN R493, *Government Gazette* 29967 (hereafter Competency Regulations).

With regards the qualification requirements of a municipal manager, the Performance Regulations provide that the municipal managers must have a recognised Bachelors degree in relevant fields.¹⁵⁵ The Competency Regulation in turn provides that the accounting officer must have a three years Degree and ‘higher Diplomas’¹⁵⁶ in relevant fields.¹⁵⁷ Section 1(1) read with s 60(a) of the MFMA provides that the accounting officer of a municipality refers to the municipal manager.¹⁵⁸ The National Treasury has also issued guidelines to give flesh to this competency requirement.¹⁵⁹ Accordingly, in order for someone to be appointed as a municipal manager, he or she must possess a Bachelors degree in a relevant field plus a Certificate in Municipal Financial Management.

The introduction of the minimum qualification requirements for the municipal manager is commendable given the fact that s/he ‘bears the primary responsibility to ensuring that local administration complies with the constitutional principles of professionalism’ enunciated above.¹⁶⁰ S/he is “a key structure of a municipality and not merely a personnel appointment as contemplated in s 160(1)(d) of the Constitution”.¹⁶¹ It is therefore important that the person appointed to the post of a municipal manager has the relevant skills and expertise to perform the duties associated therewith.¹⁶²

As regards the qualification requirements for senior managers and chief financial officers, the Competency Regulations and guidelines for each of these officials make a distinction between different categories of municipalities. In relation to a municipality, senior managers are defined as the managers referred to in section 56 of the Systems Act.¹⁶³

¹⁵⁵ Reg 38(1) Performance Regulations.

¹⁵⁶ A Certificate in Municipal Financial Management.

¹⁵⁷ Reg 3 Competency Regulations.

¹⁵⁸ In this section, these terms will be used interchangeably.

¹⁵⁹ Guideline for Municipal Competency Levels: Accounting Officers:

Municipal Regulations on Minimum Competency Levels (hereafter Guidelines on Accounting Officers’ Competency levels) available at

www.finance.gov.za/.../Guidelines%20for%20Accounting%20Officer%2021022007.pdf (accessed on 08-10-09).

¹⁶⁰ S 55 Systems Act.

¹⁶¹ *Executive Council of the Western Cape v Minister of Provincial Affairs and Constitutional Development; Executive Council of KwaZulu-Natal v President of the Republic of South Africa and Others* 1999 (12) BCLR 1360 (CC) para 109.

¹⁶² S 82(2) Local Government: Municipal Structures Act 117 of 1998 (hereafter Structures Act).

¹⁶³ Reg 1 Competency Regulations.

The first category relates to low capacity municipalities or medium capacity municipalities with an annual budget below 500 million in value. In this regard, the regulations require either a Bachelors degree in relevant fields and higher diplomas or a certificate in Municipal Finance Management for senior managers and chief financial officers.¹⁶⁴ The other category relates to high capacity municipalities or medium capacity municipalities with the annual budget of a value equal to or in excess of 500 million. As far as these are concerned, the Regulations prescribe that senior managers must hold an Honours Degree, a postgraduate certificate and a Diploma in a field relevant to a senior management position.¹⁶⁵ In the case of the chief financial officers, the regulations provide that they must have an Honours or postgraduate Degree in relevant fields or must be Chartered Accountants in South Africa.¹⁶⁶

Given that section 56 managers report directly to the municipal manager, they must be able to assist him or her in managing the municipality. As such, they should also possess the requisite skills and expertise to do so. The introduction of the competency requirements will go a long way in ensuring that the municipal administration complies with the principles of a high standard of professional ethics. Similarly, Given that the major role of the chief financial officers is to assist the municipal manager in effecting the financial administration and co-ordination,¹⁶⁷ they must have the competencies and proficiencies to be able to do that. The higher education qualification requirement is introduced to ensure that and thus professionalise the administrative arm of local government. At this rate, lethargy and unprofessionalism in municipal administration is surely to give way to the new ethos of professionalism.

¹⁶⁴Reg 7 Competency Regulations read with Guideline for Competency Levels: Senior Managers Municipal Regulations on Minimum Competency Levels (hereafter Guidelines for Senior Managers): 3 available at www.finance.gov.za/.../Guidelines%20for%20Other%20Senior%20managers%201022007 (accessed on 08-10-09).

¹⁶⁵ Reg 7 Competency Regulations read with Guidelines for Senior Managers.

¹⁶⁶ Reg 5 Competency Regulations read with Guideline for Municipal Competency Levels: Chief Financial Officers Municipal Regulations on Minimum Competency Levels (hereafter Guidelines on Chief Financial Officers' Competency Level): 1-3 available at www.treasury.gov.za/.../Guidelines%20for%20CFO%201022007.pdf (accessed on 08-10-09).

¹⁶⁷ S 77(2) MFMA.

However, the Performance Regulations exempt municipal managers or section 56 managers in the employ of a municipality who, on the effective date thereof, did not meet the prescribed higher education qualification requirements provided for in regulation 38, from compliance therewith.¹⁶⁸ Instead, the employer must ensure that such employee is assessed in order to identify competency gaps and to develop such employee.¹⁶⁹ Similarly, the Competency Regulations grant such municipal officials a period of grace until January 2013 to attain the necessary higher education qualifications.¹⁷⁰ In such event, continued employment of such officials is subject to a condition that they attain the requirements no later than 1 January 2013. The phased implementation of the qualification requirement means that the new municipal manager to be appointed after the upcoming local government elections will have to strictly comply with the competency framework, as will be seen in the section dealing with enforcement mechanisms.¹⁷¹

It transpires from the foregoing discussion that the entire staff component in the senior management positions must meet the higher education qualification requirements. Although this might not necessarily be a panacea to the problems at local government, it will certainly instill the principles of a high standard of professional ethics and address the capacity deficits prevalent therein. This will surely mitigate the issue about the overregulation of local government because municipal management will have the relevant expertise in the interpretation and implementation thereof. The qualification requirements will ensure less reliance on external consultants or experts and advice soliciting with the concomitant delays, and more implementation because the relevant officials will have the know how. It will go a long way in ensuring effective and efficient administration compliant with the principles of professionalism.

¹⁶⁸ Reg 39(4)(b) Performance Regulations.

¹⁶⁹ Reg 39(4)(a) Performance Regulations.

¹⁷⁰ Regs 15 and 16 Competency Regulations.

¹⁷¹ Reg 18 Competency Regulations.

3.3.2.2 Work related experience

Work related experience is the second competency requirement prescribed by Regulations. The Regulations not only prescribe higher education qualification, but also work related experience to enable the municipal managers and officials to capably and diligently discharge the responsibilities and perform the tasks conferred upon them by the Constitution, the Systems Act, the MFMA and other legislation applicable to local government.¹⁷² In essence, they must also have the skills and knowledge acquired informally through exposure and practice. They must know what the rubric says and the practical implication thereof. They must have the confidence acquired through experience when executing their responsibilities.

In this regard, the Performance Regulations and Competency Regulations contain similar provisions to the effect that the municipal manager must have a minimum of five years experience at senior management level.¹⁷³ The drafters seem to be convinced that five years at senior management level is sufficient to enable one to know and be in a position to implement the workings of a municipality. Concerning the work experience required of all senior managers, the Competency Regulations again make a distinction between categories of municipalities. In the case of low capacity municipalities or medium capacity municipalities with the annual budget valued below 500 million, the senior manager must have five years experience at middle management level.¹⁷⁴ In the case of high capacity municipality, the requisite experience is seven years at senior and middle management level, two of which must be at middle management.¹⁷⁵ The required work related experience for chief financial officers is the same as that of senior managers outlined immediately above and thus warrants no further elaboration. The experience gained through the number of years at senior management level would ensure that the municipal managers and other senior managers hit the ground running in discharging their obligations.

¹⁷² Reg 2 Competency Regulations.

¹⁷³ Reg 38(2) Performance Regulations read with Reg 3 Competency Regulations.

¹⁷⁴ Reg 7 Competency Regulations read with Guidelines for Senior Managers: 3.

¹⁷⁵ Reg 7 Competency Regulations read with Guidelines for Senior Managers: 3.

The kind of experience required of municipal officials signifies the importance of being at the coalface of service delivery. The local sphere of government is the most important sphere in that it deals with the hopes, dreams and aspirations of the communities. The frustration of those dreams can have dire consequences for the proper functioning of the municipality in question as has been evidenced by service delivery confrontations. In the result, employing experienced personnel with the right mindset, skills and level of commitment constitutes compliance with the principles of professionalism.

3.3.2.3 Competency areas

The other competency requirement that gives effect to the principles of professionalism is competency areas. These are qualities specific to a particular post, which are deemed essential for a proper and effective execution of the responsibilities attendant to that post. The Competency Regulations introduce this competency requirement for financial and supply chain management officials.¹⁷⁶ It should be born in mind that the municipal manager forms part of the financial officers under the MFMA as an accounting officer. Similarly, the Competency Regulations define senior managers, which are part of financial officers in term thereof, as managers referred to in section 56 of the Systems Act. Accordingly, section 56 managers also form part of financial officers. The competency areas relate to proficiencies in strategic leadership and management, strategic financial management, operational financial management, governance, ethics and values in financial management, financial and performance reporting, risk and change management, project management, legislation, policy and implementation, stakeholder relations, supply chain management and audit and assurance.¹⁷⁷

The Guidelines for Accounting Officer's Competency Levels that are issued to explain the Competency Regulations describe the proficiency levels that the municipal manager and other financial and supply chain management officials must possess concerning each competency area. These competency areas and the requisite proficiencies attendant thereto are generic to all financial and supply chain management officials. The only difference is that other financial and supply chain management officials, as opposed to

¹⁷⁶ Reg 3 Competency Regulations.

¹⁷⁷ Reg 3 Competency Regulations.

the municipal manager's role to lead the entire municipality, only lead a specific section of the municipality or within their area of responsibility. Their role towards the entire municipality is only contributory to and supportive of the overall role of the municipal manager. The focus of this discussion here is on the municipal manager.

The first competency area relates to strategic leadership and management. In relation hereto the municipal managers must have the ability to lead service delivery systems of a complex nature to manage the achievement of municipal strategies and goals.¹⁷⁸ The next competency area relates to strategic financial management. The required proficiencies relates to the ability to guide the management of an effective, economic and efficient function which is supported by effective financial management policies and practices.¹⁷⁹ The competency area relating to operational financial management requires the municipal managers to be able to guide the commissioning and operation of a financial system and maintain the sufficient working capital.¹⁸⁰ Regarding governance, ethics and values in financial management, the municipal managers must be able to establish and oversee the implementation of systems to encourage and enforce good governance, ethics and the codes of conduct.¹⁸¹ The next competency area relates to financial and performance reporting in terms whereof, the municipal managers must have the ability to guide and manage the financial and performance reporting process of the municipality.¹⁸² Risk and change management, in turn, requires the expertise to understand the risks associated with financial and supply chain management and changes in the municipal environment and to manage such for the municipality.¹⁸³

Project management, in turn, requires the ability to provide strategic direction and guide the overall project management of the municipality.¹⁸⁴ Regarding legislation, policy and implementation, the proficiencies required include knowledge and understanding of the municipality's environment (internal and external), the Constitution, national and

¹⁷⁸ Guidelines on Accounting Officers' Competency levels: 6.

¹⁷⁹ Guidelines on Accounting Officers' Competency levels: 7.

¹⁸⁰ Guidelines on Accounting Officers' Competency levels: 8.

¹⁸¹ Guidelines on Accounting Officers' Competency levels: 10.

¹⁸² Guidelines on Accounting Officers' Competency levels: 11.

¹⁸³ Guidelines on Accounting Officers' Competency levels: 13.

¹⁸⁴ Guidelines on Accounting Officers' Competency levels: 14.

provincial legislation and policy, and the legislative framework governing local government as well as the municipality's by-laws and policies and be able to guide, support and contribute to the formulation of policy.¹⁸⁵ Concerning the competency area relating to stakeholders relations, the municipal manager should have the basic knowledge and understanding of stakeholders and recognise the varying relations required with stakeholders and the impact on the municipality and the municipality's impact on its stakeholders.¹⁸⁶ The supply chain management competency area, in turn, obliges the municipal manager to be competent in establishing a fair, equitable, transparent, competitive and cost effective supply chain management function.¹⁸⁷ As to the last competency area relating to audit and assurance,¹⁸⁸ the municipal manager is required to enjoy the ability that would enable him or her to guide and oversee the establishment of an effective internal audit unit and audit committee.¹⁸⁹

The municipal council needs to be rigid and formalistic when it comes to higher education qualifications and work related experience in the appointment of municipal managers and other financial and supply chain management officials because the proficiencies just outlined come with experience and acquired skills, they are not inherent. The complexity of leading the municipality demands the municipal manager to have sound knowledge and capacity to lead the entire municipality and thus give effect to the principles of public administration relating to high standard of professional ethic as well as effective, efficient and economic use of resources. Furthermore, most municipalities deal with huge amounts of money and only people with expertise in financial management can effectively run them. The importance of qualifications and experience are abundantly evident in this regard. The competency areas, therefore, buttress the need to employ professionals to lead and manage the municipalities in order to ensure a municipality that is cost-effective and performance driven and above all, a municipality that adheres to principles of a high standard of professional ethics.

¹⁸⁵ Guidelines on Accounting Officers' Competency levels: 15.

¹⁸⁶ Guidelines on Accounting Officers' Competency levels: 16.

¹⁸⁷ Guidelines on Accounting Officers' Competency levels: 17.

¹⁸⁸ Which is not contained in the Regulations under municipal manager but included in the Guidelines.

Recruitment and employment of people with expertise in their areas of responsibility therefore reinforces the idea of professionalism.

3.3.2.4 Core competency requirements

The core competency requirements form part of the competency framework that is aimed at professionalising local government. Under core competency requirements, the Performance Regulations distinguish between core managerial competencies and core occupational competencies.¹⁹⁰ However, there is an overlap between the competency areas discussed immediately above and the core competency requirements to a significant extent. The discussion of the core competency requirements is, therefore, subsumed by the foregoing discussion on competency areas.

3.4 Concluding remarks

In the foregoing discussion, it transpires that in order for individuals to be appointed as senior municipal official, they should pass some stringent qualification requirements. Post appointment, they should further display certain proficiencies and competencies that are specific to the post. However, this competency framework rings hollow without proper enforcement mechanism. Legal measures should be put in place in order to ensure that the framework meant to make local government professional is effectively implemented. In the ensuing section, a thorough exposition of the legal mechanisms to ensure compliance with this competency framework is undertaken.

3.5 Enforcement mechanisms

The legislative framework not only provides for competency standards but also mechanisms to enforce those standards. Broadly speaking, there are two types of such mechanisms: internal and external mechanisms. First, a discussion of internal mechanism will be undertaken. These mechanisms relate to strategies that a municipality can take to ensure compliance with the competency framework. Next, external mechanisms will be canvassed. These relate to legal avenues that are available outside of the municipality. They are legal avenues that other spheres of government are empowered to use to enforce compliance with the competency framework at the municipal level.

¹⁹⁰ Reg 38(3) Performance Regulations.

3.5.1 Internal enforcement mechanisms

3.5.1.1 Appointment

The appointment process is one of the enforcement mechanisms available for a municipality that seeks to ensure compliance with the competency framework. The municipal council must appoint a municipal manager and section 56 managers, when necessary.¹⁹¹ In the case of section 56 managers, the municipal council must do so after consulting the municipal manager.¹⁹² It was held in the *Mgoqi* case¹⁹³ that this power vests exclusively in the council and that it cannot be delegated to any other political structure or office bearer. In this regard, the court made specific reference to the executive mayor in an earlier case.¹⁹⁴

The Systems Act provides that a person may only be appointed as a municipal manager or a manager directly accountable to a municipal manager in terms of a written employment contract complying with the competency framework.¹⁹⁵ The Performance Regulations provide that the validity of such contract is subject to the submission of original certificates, certified copies of professional, academic qualification and proof of previous employment prior to the signing of the employment contract.¹⁹⁶ This and other information must be lodged with the municipal council to enable it to appoint the candidate that meets the competency standards.¹⁹⁷

These provisions are not permissive and thus do not afford any margin of discretion to the council on whether to apply the qualification requirements or not. The case of *Mlokoti v Amathole District Municipality*¹⁹⁸ bears testimony to this. In *casu*, the court overturned the decision of the council overlooking a suitably qualified candidate and appointing a less qualified candidate. The court went on to order the appointment of the suitably qualified

¹⁹¹ S 82(1) Structures Act.

¹⁹² S 56(a) Systems Act.

¹⁹³ *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.

¹⁹⁴ *Mbana v Mquma Municipality* 2004 (1) BCLR 83 (Tk).

¹⁹⁵ S 57(1)(a) Systems Act read with Reg 4(1) Performance Regulations.

¹⁹⁶ Reg 4(4)(b) Performance Regulations.

¹⁹⁷ Reg 4(4)(d) Performance Regulations.

¹⁹⁸ (2009) 30 ILJ 517 (E).

candidate.¹⁹⁹ The discretion of the municipal council in appointing the municipal managers and section 56 managers must therefore be within the prescribed framework. The council is obliged to seriously consider and apply the competency framework because the appointment criterion is more or less predetermined. In the event that the candidate does not meet the competency requirements, the council must not appoint him or her, even if he or she is a better candidate. Appointment as a measure to enforce compliance with the competency requirements underscores that people who do not meet the competency requirements must not be appointed, even if comparatively they are better candidates.

3.5.1.2 Employment contract

Employment contract can be used as one of the measures to enforce compliance with the competency requirements. In this regard, section 57(1) of the Systems Act read with Regulation 2(1) to the Performance Regulations provides that municipal managers or section 56 managers can only be appointed as such in terms of the employment contract. This employment contract is subject to the terms and conditions of the Systems Act as well as the MFMA.²⁰⁰ In the case of the municipal manager, the employment contract is also subject to the responsibilities in terms of section 55 of the Systems Act and any other legislation imposing obligation thereto.²⁰¹ This means, therefore, the financial obligations imposed by the MFMA and the competency framework become part of the employment contract by incorporation. The employment contract must include a provision for the cancellation thereof in instances of non-compliance therewith or as a result of medical incapacity.²⁰² Consequently, the municipal manager and section 56 managers must be dismissed in instance of any failure to discharge responsibilities in terms of the contract. This will therefore ensure compliance with the competency framework.

¹⁹⁹ *Mlokoti* p 39.

²⁰⁰ Reg 4(1) Performance Regulations.

²⁰¹ Reg 4(1) Performance Regulations.

²⁰² S 57(6)(b) Systems Act read with reg 2(3)(b) Performance Regulations.

3.5.1.3 Performance management system

Chapter Three of the Performance Regulations provides for the performance management system applicable to municipal managers and section 56 managers.²⁰³ This is a system that provides a comprehensive system with specific performance standards to assist the employer, management and municipal staff to perform to the standards required.²⁰⁴ Under the performance management system, I will discuss the performance agreement and the performance evaluation.

3.5.1.3.1 Performance agreement

The performance agreement can play a major role in the enforcement of compliance with the competency standards. It is an instrument that can be used in this regard. Section 57(1)(b) of the Systems Act provides that the appointment of the municipal managers and section 56 managers is subject to a separate performance agreement. The performance agreement specifies the objectives and targets defined and agreed on with the employee. It communicates the employer's expectation of the employee's performance and accountabilities in alignment with the Integrated Development Plan, Service Delivery Budget Implementation Plan and the Budget of the municipality.²⁰⁵ It is used to assess whether the employee has met the performance expectations related to the job.²⁰⁶ It is also aimed at assisting in monitoring and measuring performance against target outputs.²⁰⁷ The Performance Regulations stipulate the dates on which the performance of the employee in relation to his performance agreement must be reviewed.²⁰⁸ In this regard, the performance reviews should take place four times a financial year.²⁰⁹

The introduction of these regulations signals a renewed commitment to the constitutional principles of professionalism outlined above. It ensures that the performance is monitored and measured against the targeted outputs and can be used to assess whether the

²⁰³ Msengana-Ndlela (2006): 1.

²⁰⁴ Msengana-Ndlela (2006): 1.

²⁰⁵ Reg 23(2) Performance Regulations.

²⁰⁶ Reg 23(5) Performance Regulations.

²⁰⁷ Reg 23(4) Performance Regulations.

²⁰⁸ Reg 28(1) Performance Regulations.

²⁰⁹ Reg 28(1) Performance Regulations.

employee has met the performance expectations related to the job.²¹⁰ This will go a long way in ensuring compliance with the competency standards and is therefore commendable.

3.5.1.3.2 Performance evaluation

Performance evaluation is another mechanism that can be used to enforce compliance with the competency standards. The Performance Regulations subject the municipal manager and the section 56 managers to a performance management system adopted by the council.²¹¹ In this regard, it provides for the performance assessment conducted in terms of the performance agreement. The purpose of the performance management is to assist the management and municipal staff, among others, to perform to the standards required.²¹² It outlines the criteria for assessing the employee. The municipal manager and section 57 managers must focus their performance towards the implementation and promotion of the Key Performance Areas.²¹³ The Key Performance Areas include basic service delivery, municipal institutional development and transformation, local economic development, municipal financial viability and management, and good governance and public participation.²¹⁴ They serve as the first component upon which the assessment is based.²¹⁵ Another component upon which the assessment is based relates to the Core Competency Requirements.²¹⁶ These incorporate generic managerial and leadership skills including problem-solving ability, people management skills, change management, customer focus that the manager must display.²¹⁷ The KPA's weigh 80% of the overall assessment while CCR's account for 20%.

The performance evaluation system is carried out through an evaluation panel. In the case of the municipal manager, the evaluation panel consists of the executive mayor or mayor; chairperson of the performance audit committee or the audit committee in the absence of a performance audit committee; member of the mayoral or executive

²¹⁰ Reg 23(5) Performance Regulations.

²¹¹ Reg 26(1) Performance Regulations.

²¹² Reg 26(2) Performance Regulations.

²¹³ Reg 26(4) Performance Regulations.

²¹⁴ Reg 26(6) Performance Regulations.

²¹⁵ Reg 26(5) Performance Regulations.

²¹⁶ Reg 26(5) Performance Regulations.

²¹⁷ Reg 26(8) Performance Regulations.

committee or in respect of a plenary type municipality; another member of council; mayor and/or municipal manager from another municipality; and member of a ward committee as nominated by the executive mayor or mayor.²¹⁸ For section 56 managers, the panel consist of the municipal manager; chairperson of the performance audit committee or the audit committee in the absence of a performance audit committee; a member of the mayoral or executive committee or in respect of a plenary type municipality, another member of council; and municipal manager from another municipality.²¹⁹

The evaluation of the manager's performance forms the basis for any rewarding of outstanding performance, including paying bonuses and progression to the next higher remuneration package.²²⁰ It is now a requirement that the determination of bonuses should be competency-based.²²¹ The payment of bonuses is subject to the outcomes of the evaluation in terms of the performance agreement and to an approval of such evaluation by the municipal council.²²² These requirements are aimed at 'mitigating the problem of disproportionate bonuses being paid to officials in dysfunctional municipalities'.²²³ Bonuses are to be awarded, as incentives for performance, on a sliding scale ranging from five percent to a maximum of 14 percent only to outstanding performers.²²⁴

Similarly, the performance evaluation forms the basis of the correction of unacceptable performance.²²⁵ In this regard, for the employee who displays unacceptable performance, systemic remedial, developmental support or corrective steps are provided to assist such employees to improve their performance before the problem worsens.²²⁶ Should those remedial measures prove fruitless, that constitutes a breach of contract for failure to discharge responsibilities under the contract and the performance agreement. In such

²¹⁸ Reg 27(4)(d) Performance Regulations.

²¹⁹ Reg 27(4)(e) Performance Regulations.

²²⁰ Reg 32(1) Performance Regulations.

²²¹ Msengana-Ndlela (2006): 1.

²²² Reg 8(2) and (3) Performance Regulations. See also Fessha (2006): 12.

²²³ Fessha (2006): 12.

²²⁴ Fessha (2006): 12.

²²⁵ Reg 32(2) Performance Regulations.

²²⁶ Reg 32(3)(a) Performance Regulations.

event, the employee's contract may be terminated on the grounds of breach thereof, or of the performance agreement.²²⁷ Other grounds include the unfitness or incapacity to carry out the required duties.²²⁸ The employer is also empowered to terminate the employment contract of a municipal manager or a section 56 manager on the grounds of unacceptable performance, and deliberate neglect in the discharge of duties under the employment contract or performance agreement.²²⁹

Consequently, while these Regulations provide incentives for outstanding performance, they also put measures aimed at reversing the scourge of underperformance and thus ensuring compliance with the competency standards. These Regulations seek to introduce a culture of dismissal which is uncommon in the South African public service. The common practice has been that incompetent officials are redeployed elsewhere and this undermines any sense of professionalism in the public service and most importantly in local government. The introduction of these Regulations will go a long way in ensuring that people are accountable for their actions or inactions and thus ensuring compliance with the competency standards.

3.5.1.4 Competency monitoring and reporting

Another mechanism to enforce compliance with the competency requirements enunciated above is competency monitoring and evaluation. The Competency Regulations enjoin the municipal manager and the chief executive officer, in the case of a municipal entity, to ensure the assessment of the competencies of all the financial and supply chain management officials.²³⁰ This is aimed at identifying the competency gaps and to address these at once.²³¹ In this regard, the municipal manager and the chief executive officer of a municipal entity must monitor and take the necessary steps to ensure compliance with the prescribed minimum competency levels for financial and supply chain management officials, including regular reporting.²³²

²²⁷ Reg 17(1)(c) and (2)(b) Performance Regulations.

²²⁸ Reg 32(3)(b) Performance Regulations.

²²⁹ Reg 17(a)-(f) Performance Regulations.

²³⁰ Reg 13 Competency Regulations.

²³¹ Reg 13 Competency Regulations.

²³² Reg 14(1) Competency Regulations.

The language of these provisions is not permissive. It brings across an understanding that any persistent failure to meet the competency standards and the concomitant poor provision of services represents a failure by the municipal managers to discharge their obligations in terms hereof. The municipal managers and chief executive officers are obliged to do all that is necessary to ensure compliance with the competency standards. This will, therefore, not only ensure compliance with the competency standards but also giving practical meaning to the principles of professionalism.

Competency monitoring and reporting is conducted as follows: each municipality is required to furnish half-yearly implementation returns to the National Treasury and the relevant provincial treasury for the period ending 31 December and 30 June.²³³ The returns to be submitted include consolidated information on all its municipal entities.²³⁴ The consolidated returns are to be furnished by no later than 30 January and 30 July respectively.²³⁵ The annual report of the municipality must reflect the information as at the end of the financial year to which it relates.²³⁶ A report on the compliance with prescribed competency levels must include the following information:

- (a) a total number of financial and supply chain management officials employed
- (b) a total number of officials whose competency assessments have been completed
- (c) a total number of officials that meet the prescribed competency levels, and
- (d) a total number of officials whose performance agreements contain timeframes for the attainment of competency levels as performance targets.²³⁷

The great potential to name the failures to meet the targets in the report and to shame the municipal manager for not doing all that is necessary to ensure compliance with the competences levels can serve as a catalyst for the municipal managers to monitor and take measure to ensure compliance with the competence framework.

²³³ Reg 14(2) Competency Regulations.

²³⁴ Reg 14(2) Competency Regulations.

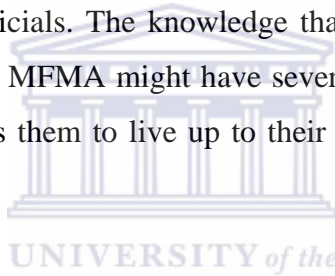
²³⁵ Reg 14(2)(a) Competency Regulations.

²³⁶ Reg 14(2)(b) Competency Regulations.

²³⁷ Reg 14(4) Competency Regulations.

3.5.1.5 Disciplinary and criminal proceedings

The last internal mechanism to enforce compliance with the competency standards is disciplinary and criminal proceedings. The Competency Regulations provide that any failure by the financial or supply chain management official to comply with any financial management responsibilities, functions and powers entrusted thereto in terms of the Act constitutes financial misconduct.²³⁸ As highlighted above, the municipal manager forms part of the financial officers as an accounting officer in terms of the MFMA. In this regard, the MFMA defines the act of misconduct for municipal managers, chief financial officers and other senior managers or officials who have delegated powers or duties in the area of financial management.²³⁹ The financial and supply chain management officials commit an act of misconduct if they fail to comply with or carry out a duty conferred upon them by the MFMA.²⁴⁰ The effectiveness of this mechanism lies in the fear it induces to other municipal officials. The knowledge that the failure to comply with or carry out obligations under the MFMA might have severe repercussions might serve as a necessary catalyst that compels them to live up to their responsibilities and thus ensure competence.



Once an allegation of financial misconduct has been made against any of these officials, the municipality must investigate the matter.²⁴¹ When such allegations are made against an official other than the municipal manager, the latter must oversee the investigation.²⁴² However, if the municipal manager is the one concerned, the mayor must oversee the investigation. If the investigation reveals a *prima facie* case, the municipality must institute disciplinary proceedings against the responsible official.²⁴³ Other act of financial misconduct borders on the criminal and therefore warrants criminal sanction. In this regard, the seriousness thereof carries a prison sentence of up to five years or an appropriate fine.²⁴⁴ Obviously, this will surely compel the financial and supply chain

²³⁸ Regs 2(3), 4(3), 6(3), 8(3) and 10(3) Competency Regulations.

²³⁹ S 171 MFMA.

²⁴⁰ S 171 MFMA.

²⁴¹ S 171(4)(a) MFMA.

²⁴² De Visser and Steytler (2007): 11-42.

²⁴³ S 171(4)(b) MFMA.

²⁴⁴ S 173 read with 174 MFMA.

management officials to diligently discharge the responsibilities and exercise the functions and powers assigned in terms of the MFMA to that official.

3.5.2 External enforcement mechanisms

Another type of measure to ensure that competency standards are complied with is external enforcement mechanisms. External enforcement mechanisms are mechanisms that are at the disposal of other sphere of government to enforce compliance with the competency standards. They are discussed in the ensuing paragraphs.

3.5.2.1 Provincial supervision

The Constitution requires provincial governments to play an important role of supervising local government in the performance of its functions. In fact, the South African democracy is a system of carefully worked out checks and balances, which exist to ensure that municipalities indeed become service delivery agents and that provincial governments play a supervisory role in this regard.²⁴⁵ The Constitution fortifies this position by referring to various obligations that are aimed at determining the relations between a province and a municipality. These obligations relate to regulation, monitoring, support of, and intervention by provinces in, municipalities. Regulation, as a form of supervision, sets the necessary framework within which the local government functions can responsibly be exercised.²⁴⁶ Monitoring, in turn, is a form of supervision which ensures that not only legislative framework is complied with, but which also indicates when support is required to enable local government to exercise its responsibilities fully.²⁴⁷ Support, in its turn, denotes the strengthening of existing local government structures, powers and functions and the prevention of a decline or degeneration of such structures, powers and functions.²⁴⁸ As to intervention, it refers to the competence (and often a duty) of the national and provincial government to direct activities and outcomes in the municipality.²⁴⁹ These obligations now find expression in the Structures Act, Systems Act and the MFMA.

²⁴⁵ Smith (2002): 1.

²⁴⁶ Steytler and De Visser (2007) 15-5.

²⁴⁷ Steytler and De Visser (2007) 15-5.

²⁴⁸ *In re: Certification of the Constitution of the Republic of South Africa*, 1996 (10) BCLR 1253 (CC) (hereafter *First Certification judgment*).

²⁴⁹ *First Certification judgment*.

It is important to note that not all forms of supervision are relevant for the purposes of enforcing compliance with the competency framework. Only the obligation to intervene in municipalities to direct activities and outcomes therein is relevant. The obligations to regulate, support and monitor are not cast in mandatory language as far as the enforcement of compliance is concerned. The obligation to regulate, for instance, cannot prescribe the details of what municipalities should do; it can only provide a framework within which to operate.²⁵⁰ Furthermore, the issue of whether or not the obligation to support is the prerequisite for intervention was put beyond doubt.²⁵¹ De Visser rightfully maintains that a province cannot forfeit its right, and in fact, its obligation to intervene merely as a punishment for not providing support.²⁵² That would stifle the good administration of the country.²⁵³ However, the obligation to intervene is complemented by the obligation to monitor in that the scope and extent of intervention is determined through monitoring. Even though the obligation to monitor does not constitute an external enforcement mechanism, its discussion is incidental to the discussion on intervention. Consequently, the discussion of the external enforcement mechanisms will be limited to monitoring and intervention.

3.5.2.1.1 Monitoring obligation

The Constitutional basis for monitoring of local government is set out in section 155(6)(a) of the Constitution. In regard thereto, provincial governments must take legislative and other measures to provide for the monitoring of local government in the province. The Systems Act gives content to this provision by providing that the MEC for local government must establish a system to monitor municipalities, the development of local government capacity and to assess the support needed to strengthen their capacity.²⁵⁴ As indicated below, there are various monitoring instruments contained in the Systems Act.²⁵⁵

²⁵⁰ De Visser (2005): 128.

²⁵¹ De Visser (2000):11.

²⁵² De Visser (2000):11.

²⁵³ De Visser (2000):11.

²⁵⁴ S 105(1) Systems Act.

²⁵⁵ De Visser (2005): 180.

The first instrument relates to the preparation of the annual report after each financial year. In regard hereto, section 46²⁵⁶ provides that the annual report must contain the performance report, audited financial statements, measures taken to improve performance and reporting requirements in terms of other legislation.²⁵⁷ Section 47 further empowers the MEC to compile and publish a consolidated report in the *Provincial Gazette* on the performance of municipalities in the provinces. This report must identify the municipalities that have under-performed and propose remedial steps. The report must thereafter be submitted to the provincial legislature, the national Minister and the National Council of Provinces.²⁵⁸ Consequently, the provincial executive can detect non-compliance with the competency standards in this way and apply external enforcement measures. The measures are external in the sense that they are taken at a provincial or national level.

The second instrument relates to section 105(2), which provides that the MEC can request municipalities for information by notice in the *Provincial Gazette*. The Act further commands the MEC to establish mechanisms, processes and procedures to monitor municipal capacity, the ability of municipalities to manage their own affairs and the need for assessing the support requirements of municipalities.²⁵⁹ In exercising this power, the Act provides that the MEC must rely as far as possible on the annual performance report and on the information received pursuant to section 105(2) before requesting for additional information.²⁶⁰ The extent of non-compliance with the competency standards can be identified in this fashion and enforcement measures commensurate thereto be taken.

The third instrument represents the most intrusive form of monitoring.²⁶¹ The MEC must request the municipal council to provide information or, if necessary, appoint a Commission of investigation, if there is reason to believe that a municipality cannot or

²⁵⁶ S 46 Systems Act.

²⁵⁷ S 46(1)(a) Systems Act.

²⁵⁸ S 47(3) Systems Act.

²⁵⁹ S 105(1) Systems Act.

²⁶⁰ S 105(3) Systems Act .

²⁶¹ Steytler and De Visser (2007): 15-15.

does not fulfill a statutory obligation or the MEC suspects maladministration, fraud, corruption or any other serious malpractice.²⁶² There are two key conditions that trigger the application of the provisions of section 106. This section must be applied if the MEC “has reason to believe that a municipality in the province cannot or does not fulfill a statutory obligation binding on the municipality.”²⁶³ The MEC must also apply this section “if he has reason to believe that...maladministration, fraud, corruption or any other serious malpractice has occurred”.²⁶⁴

Consequently, the duty to monitor does not only rely on the information presented by municipality in the form of performance report, audited financial statements, measures taken to improve performance and reporting requirements in terms of other legislation as contained in the annual report. The provincial government may also use a pro-active approach in monitoring compliance with the competency standards by requesting municipalities to furnish information that enable it to ascertain compliance and launching investigation. Up next, the external enforcement mechanism relating to intervention is discussed.

3.5.2.1.2 Intervention obligation

Another type of supervision is intervention. There are four types of intervention provided for in terms of the Constitution and the MFMA. Section 139(1) of the Constitution provides for the first type of intervention referred to as regular interventions. It provides that “when a municipality cannot or does not fulfill an executive obligation in terms of the legislation, the relevant provincial executive may intervene by taking any appropriate steps to ensure fulfillment of that obligation.”²⁶⁵ It is submitted that the term municipality should be seen as a holistic term, embracing the entire municipality with all its organs, workers and offices.²⁶⁶ A Chief Financial officer can fail to perform in a significant way and that might affect the ability of the municipality to fulfill its obligations. In such event, the provincial executive may issue a directive instructing the municipality to comply with

²⁶² S 106 Systems Act.

²⁶³ S 106 Systems Act.

²⁶⁴ Steytler and De Visser (2007): 15-11.

²⁶⁵ S 139(1) Constitution.

²⁶⁶ De Visser (2000): 5.

an obligation in terms of the legislation.²⁶⁷ In this regard, the provincial executive must direct the municipality to fulfill certain executive obligation within a specified time. This might be accompanied by an instruction to fire incompetent officials and hire officials who meet the competency requirements. The obligations relating to the competency framework are traceable to the Systems Act and the MFMA as the regulations that contain the competency standards give effect thereto.

If the municipality fails to implement the directive, the provincial executive can assume responsibility for the relevant obligation.²⁶⁸ The assumption of responsibility is only permitted in circumstances where it is necessary to meet the established minimum standards for the rendering of a service.²⁶⁹ The failure to implement a directive can relate to a failure to appoint competent officials and the concomitant failure to fulfill the executive obligation within the stipulated time. The competency standards constitute a perfect example of such minimum standards. In this regard, an administrator is designated and charged with ensuring that officials who meet the competency requirements are appointed and thus ensuring that the relevant obligation(s) are fulfilled and that they will be fulfilled in the future. The administrator must assume the responsibility of ensuring that the municipality is in a position to fulfill its obligations. The aim and the scope of the assumption of responsibility is therefore limited to the circumstance listed in section 139(1)(b). The aim of the assumption of responsibility must be to lift the municipality to minimum standards. The assumption of responsibility must therefore be to the extent necessary to ensure the fulfillment of that goal.

If the assumption of responsibility does not yield the envisaged results or is not successful, either because the municipal council offers resistance to the dismissal of incompetent officials or it is unwilling to co-operate with the administrator in resolving the problem, the council must be dissolved.²⁷⁰ An administrator must be appointed to ensure the continued functioning of the municipality until the election of the new

²⁶⁷ S 139(1)(a) Constitution.

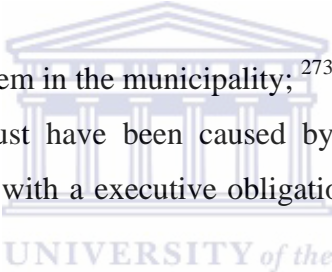
²⁶⁸ S 139(1)(b) Constitution.

²⁶⁹ S 139(1)(b)(i) Constitution.

²⁷⁰ S 34(3)(b) Structures Act.

council.²⁷¹ This would therefore give an administrator freedom to staff the municipality with people who meet the competency requirements and thus ensure continued fulfillment of the executive obligations. The function of the administrator comes to an end when the new council has been elected.

The second type of intervention occurs when a municipality experiences serious financial problems but at a stage where those problems can be remedied. This type of intervention is referred to as discretionary intervention because it is not cast in mandatory language. Financial problems refer to a municipality's inability to meet its financial commitments.²⁷² It also refers to inability or failure to manage its financial system soundly. Obviously, the lack of capacity is the main contributor in this regard. The circumstances that trigger this kind of intervention include the following:

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- (a) a serious financial problem in the municipality;²⁷³
 - (b) a financial problem must have been caused by or resulted in a failure by a municipality to comply with a executive obligation in terms of the legislation or the Constitution;²⁷⁴
 - (c) the conditions of an intervention in terms of section 139(1) of the Constitution, as discussed under regular interventions, must be met.²⁷⁵

The first step that must be taken is the imposition of a financial recovery plan to be implemented by the municipality.²⁷⁶ The aim of the plan is to secure the municipality's ability to meet its obligations to provide services or its financial commitments.²⁷⁷ The plan must relate to the resolving of the financial problem. Given that the common feature to any failure to provide basic serves or to meet financial commitments is incapacity or unfilled vacancies, the provincial executive must order the appointment of competent officials to those vacancies. In the event that the problem is cause by incapacity, the

²⁷¹ S 139(1)(c) read with s 35(2) Structures Act.

²⁷² S 135(2) MFMA.

²⁷³ S 136(1) MFMA.

²⁷⁴ S 136(2) MFMA.

²⁷⁵ S 136(2) MFMA.

²⁷⁶ S 143(3) and 145(1)(a) MFMA.

²⁷⁷ Steytler (2003): 6.

provincial executive must order the dismissal of incompetent official and that officials who meet the competency requirements be appointed. The plan has similar consequences to a directive issued in terms of section 139(1) in that the municipality is bound thereby to the extent necessary to achieve the objects of the plan.

If the municipality fails to implement the plan, the provincial executive must assume responsibility to the extent necessary in terms of section 139(1) by appointing officials who meet the requirements demanded by the competency framework and thus ensure that the municipality meets the established minimum standards.²⁷⁸ If the municipal council does not approve legislative measure (including a budget and revenue raising measures) to put the plan into practice either because of recalcitrance or cannot do so due to incapacity, the enforcement measure is to dissolve the council. In such event, the administrator is appointed to restore the capacity by appointing new competent officials who comply with the competency requirements. The functions of the administrator come to an end after the election of a new council.²⁷⁹ Consequently, compliance with the competency standards relating to financial management is enforced in this way.

This third type of intervention is mandatory and takes place in circumstances where the financial problem has escalated into a crisis. This type is provided for in section 139(5) of the Constitution. The circumstances or substantive requirements for the application of this type of intervention are that there must be a serious and persistent breach of obligations to provide basic services. There must also be a serious and persistent breach to meet its financial obligations, like the inability to maintain sufficient working capital (cash flow/short-term liquidity) to meet the needs of the municipality. It has been established earlier that the root cause of poor performance is lack of capacity. Once the above grounds are established, a two-stage process ensues. First, the provincial executive must impose a financial recovery plan prepared in terms of national legislation.²⁸⁰ The plan must direct the appointment of people capable of meeting the financial obligation of

²⁷⁸ S 145(3) MFMA.

²⁷⁹ S 139(1)(c) Constitution.

²⁸⁰ S 139(5)(a)(i) Constitution.

the municipality and set the timeframes for the resolution of the crisis, and the removal of those who lack the necessary capacity.

The second step constitutes the dissolution of the council if it fails to implement the plan. The administrator then proceeds with staffing the municipality with the right people who meet the competency standards without resistance from the council. It was noted earlier that one of the competency areas demands that the financial and supply chain management officials must possess proficiencies in operational financial management. The administrator should therefore ensure that the people he or she appoints have the requisite proficiencies to discharge their financial obligations. This type of intervention therefore enforces compliance therewith and other financial obligations.

This last type of intervention is mandatory and is occasioned by a failure to approve a budget or the revenue-raising measures necessary to give effect to the budget.²⁸¹ The only appropriate step in this regard is the dissolution of the council and calling of election within three months. In the interim, the administrator is appointed and the temporary budget approved. In the same way, if the administrator is convinced that incompetence is the root cause of the problem, she or he must dismiss the incompetent officials to give way to the appointment of officials with the necessary qualification and experience. This new team led by the provincial executive must approve a temporary budget to ensure the smooth running of the municipality. This therefore enforces compliance by municipal administration with the competency framework outlined previously.

3.6 Conclusion

In this chapter, it is established that the municipal administration does not form part of the public service regulated at the national level. Each municipality is the employer and there are no uniform conditions of service. Its autonomy enables it to govern its internal affairs relating to staff establishment. However, it is bound by the principles of professionalism. The Constitutional basis of the principles of professionalism with the legislative framework giving effect thereto is also established. The legislation in question

²⁸¹ S 139(1)(c) Constitution.

outlines the competency standards to ensure that municipal administration lives up to the principles enunciated in section 195 of the Constitution. This legislative framework does not only provide for competency standards, but also mechanisms to enforce those standards. It is noted that the competency framework would ring hollow without such proper enforcement mechanism. Finally, the competency standards and the mechanisms to enforce compliance therewith, if strictly used, can go a long way in ensuring that lethargy at local government level is eradicated and the culture of professionalism is instilled.

However, the fact that local government does not form part of the public service and that there are no uniform conditions of service between municipalities opens a hole in the enforcement of compliance with the competency framework. If the municipal manager or section 56 manager is dismissed for breach of contractual obligation or of performance agreement, that does not stop him or her from being employed by the next municipality or by other spheres of government. This has the potential of undermining the effectiveness of the enforcement mechanisms unless the idea of a single public service becomes a reality. It will ensure that the breach of contract is with the government (public service) not with the municipality. Consequently, any dismissal will not allow an official to be employed elsewhere.

The Performance Regulations and Competency Regulations provide a temporary loophole in the universal application of the competency framework and the enforcement of compliance therewith. In this regard, for municipal officials currently in the employ of a municipality, the immediate application of the competency framework is suspended until January 2013. At such time, the suspension will be lifted and they will be expected to satisfy the competency standards. This phased implementation of the competency requirements means that the fully-fledged implementation thereof will only take effect in the third term of local government. After the upcoming local government elections, the appointment of the new municipal managers will have to strictly comply with the competency framework. In the event of non-compliance, the officials concerned must simply not be appointed. In the meantime, systemic remedial and developmental

measures must be taken to ensure that in the next term of local government, the municipal administration complies with the competency standards. However, there are not sufficient avenues for enforcement at the appointment stage. If the municipal council appoints an incompetent municipal manager based on political considerations, the municipal autonomy shields it from any interference from other spheres. The autonomy to employ its own personnel has been taken too far, thus the call by the deputy minister of Co-operative Governance and Traditional Affairs, Yunus Carrim, to involve the MEC for local government in the appointment and suspension of municipal officials is particularly apt.²⁸²



²⁸² Carrim (2009): 9.

Chapter 4: Conclusion

This study is inspired by the deplorable state that the local sphere of government finds itself in. The paper postulates the professionalisation of administrative arm of local government as one of the solutions to the challenges that face local government with respect to service delivery. It is about addressing the capacity deficit evident at the level of local government. The discussion emphasised that the professionalisation of local government might not necessarily be a panacea to the anomalies and contradiction facing local government but will go a long way in tackling the crisis. The focus is on identifying legal avenues to enforce compliance with the competency framework.

The new constitutional order, heralded by the 1996 Constitution, envisages the role of local government as more than merely providing services to the communities. It introduces a developmental aspect to this role and mandates local government to maximise social upliftment and economic development. The discussion has revealed that the lack of the necessary capacity to fulfill this mandate frustrates the new constitutional vision of local government. This was evidenced by the failure to meet set targets and the resultant popular discontentment.

A nexus was established between the lack of service delivery or poor performance and the concomitant outbreak of violent protests, on the one hand, and the poor or lack of capacity to deliver, on the other. This, in turn, is caused by cronyism, nepotism and political interference in municipal appointments. It is argued that part of the solution lies in staffing municipalities with competent individuals. This means the professionalisation of the system by substituting the cadreship deployment practice with the appointment of people with expertise, experience and the necessary savvy. Furthermore, strict entry requirements must be imposed to ensure that only qualified and proficient people are appointed.

The complexity of local government requires skills in interpreting, analyzing and implementing intricate information in a multitude of environments. That demands formal

qualification, and experiential requirements. In this regard, and with the view to give effect to the principle of professionalism, the Constitution and the relevant local government legislation provides for basic values that govern municipal public administration. They further enunciate the competency framework for all municipal officials before and after appointment. The legislative framework further provides for certain proficiencies specific to the post in question to ensure effective performance of functions in the area of responsibility.

It is one thing to put in place the competency standards to make local government professional, it is quite another to ensure that municipalities comply with the standards. In this regard, the legislative framework not only enunciates the competency standards but also outlines the mechanisms to enforce compliance by municipal officials with those standards. Without the enforcement mechanisms, this competency framework would degenerate into being a white elephant. In this regard, both internal and external mechanisms that help to ensure that the competency standards are adhered to are put in place. The enforcement mechanism can serve to counteract cronyism, nepotism and political interference in the appointment of municipal officials, decried herein. Properly implemented, these mechanisms can go a long way in ensuring that the problems besetting local government are addressed.

There is a concern, however, with the staggered implementation of the competency framework. The concern lies in the fact that for the next three years, the competency standards cannot be strictly applied across the board. A period of grace is afforded to officials who did not meet the competency requirements on the effective date of the Regulations. This means that the service delivery crisis will persist for few years to come. Only in the third term of local government are the enforcement measures supposed to be applied vigorously.

Irrespective of the concern mention above, it is submitted that the constitutional and legislative framework introducing the competency standards and mechanisms to enforce compliance therewith is a step in the right direction. However, a culture of dismissal

should be introduced in municipal administration. The practice of redeploying a municipal official somewhere else in the event of serious breach of his or her employment contract is inimical to the ethos of professionalism and accountability. A carrot and stick approach is called for. This means that while effecting systemic remedial measures for a failure to comply with the conditions of employment is an appropriate measure, a persistent failure should constitute a ground of dismissal. Municipal officials are expected to comply with the competency standards in order to be in a position to discharge their responsibilities. Training as a form of correcting non-compliance therewith can only be done once. Even though the legislative framework introduces the culture of dismissal by listing the grounds upon which the official must be dismissed, it is not spelt out in clear language. It is not explicit on how many times the failure to comply with the competency standards should be. There is therefore a possibility of arbitrary and uneven application of the culture of dismissal unless regulations or guidelines are issued to regulate this aspect.

The practice of political parties undermines the promise that the standards offer in terms of professionalising local government when it comes to the appointment of the municipal officials. In this regard, the cadreship deployment practice not only frustrates the entry requirements demanded by the competency framework but also, wittingly or unwittingly, makes municipal officials beholden to the deploying party. In fact, the good comrades that are usually deployed are those who cannot dare challenge the deploying structure because they sometimes lack qualifications to be employed anywhere else. Deployment to municipal administration is, in a sense, a compensation for their unquestioning loyalty. Given that the municipal manager is the political appointee, his or her deployment on the party political card regardless of qualifications would greatly compromise the municipality. S/he would rather fail the municipality by staffing it with people on instruction rather than on merit, than to contradict or betray the deploying structure. Naturally, a person cannot bite the hand that feeds him. Their priorities are with the party more than they are with communities. A complete separation between party and institutions of governance, therefore, should be vigorously enforced and political parties should readily respect it.

Bibliography

Legal instruments

Constitution of the Republic of South Africa 1996.

Local Government: Municipal Structures Act 117 of 1998.

Local Government: Municipal Systems Act 32 of 2000.

Local Government: Municipal Finance Management Act 56 of 2003.

Public Service Act 103 of 1994.

Policy Documents

White Paper on Local Government, 1998, Ministry of Provincial Affairs and Constitutional Development, Department of Constitutional Development: Pretoria.

Local Government: Municipal Performance Regulations for Municipal Managers and Managers Directly accountable to Municipal Managers, 2006, GN R805, *Government Gazette* 29089.

Local Government: Municipal Finance Management Act: Municipal Regulations on Minimum Competency Levels 2007, GN R493, *Government Gazette* 29967.

Guideline for Municipal Competency Levels: Accounting Officers:
Municipal Regulations on Minimum Competency Levels.

Guideline for Municipal Competency Levels: Chief Financial Officers: Municipal Regulations on Minimum Competency Levels.

Guidelines for Municipal Competency Levels: Senior Managers
Municipal Regulations on Minimum Competency Levels.

Books

Bekink, B (2006) *Principles of South African local government Law* Durban: LexisNexis.

Craythorne, D.L (1997) *Municipal administration: The handbook* (4th edition) Cape Town: Juta.

Craythorne, D. L. (2006) *Municipal administration: The handbook* (6th edition) Cape Town: Juta.

De Visser, J. (2005) *Developmental local government: A case study of South Africa* Intersentia: Antwerp and Oxford.

Hill, D.M. (1972) *Democratic theory and local government*, London: George Allen and Unwin.

McDonald, D. A. & J. Pape (2002) *Cost Recovery and the Crisis of Service Delivery in South Africa*, Cape Town: Human Sciences Research Council Press.

Motala, Z. and Ramaphosa, C. (2002) *Constitutional Law: analysis and Cases* Cape Town: Oxford University Press Southern Africa.

Steytler, N & De Visser, J (2007) *local government law of South Africa* Durban: LexisNexis.

Venter, A. *et al* (2007) *Municipal management: Serving the people* Lansdowne: Juta & Company Ltd.

Chapters in Books

Atkinson, D. (2007) Taking to the streets: has the developmental local government failed in South Africa? In Buhlungu, S., et al (eds) *State of the nation: South Africa*, South Africa, Cape Town: Human Science Research Council Press 53-77.

Bodasing, A (2008) 'Principles and objectives of public administration in a constitutional democracy' in Chaskalson *et al* (eds) *Constitutional Law of South Africa* 2ed, Lansdowne: Juta Ltd and Company Ltd 23A1-23A58.

Bronstein, V. (2007) 'Local Government' in Chaskalson *et al* (eds) *Constitutional Law of South Africa* 2ed, Lansdowne: Juta Ltd and Company Ltd 22-43.

Hesmon, D & O'Donovan, M (2006) Putting numbers to the scorecard: presidential targets and the state of delivery in Buhlungu, S., et al (eds) *State of the nation: South Africa*, South Africa, Cape Town: Human Science Research Council Press 53-77.

Nealer, E. (2007) Local Government and Service Delivery in van der Waldt, G (ed) *Municipal management – Serving the people*, Lansdowne: Juta 147-164.

Nealer, E. (2007) Municipal Human Resource Management in van der Waldt, G (ed) *Municipal management – Serving the people*, Lansdowne: Juta 165-184.

Nealer, E. (2007) Municipal human resource management in van der Waldt, G (ed) *Municipal Management – Serving the people*, Lansdowne: Juta & Company Ltd 166-184.

Case Law

Beck and Others v Kopanong Local Municipality and Others Case no 3772/2002 unreported (Orange Free State).

Executive Council of the Western Cape v Minister of Provincial Affairs and Constitutional Development; Executive Council of KwaZulu-Natal v President of the Republic of South Africa and Others 1999 (12) BCLR 1360 (CC).

Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Metropolitan Council and Others 1998 (12) BCLR 1458 (CC).

Government of the Republic of South Africa and Others v Grootboom and Others 2000 (11) BCLR 1169 (CC).

Hardy Ventures CC v Tshwane Metropolitan Municipality 2004 (1) SA 199 (T).

In re: Certification of the Constitution of the Republic of South Africa, 1996 (10) BCLR 1253 (CC).

Mbana v Mnquma Municipality 2004 (1) BCLR 83 (Tk).

Mgoqi v City of Cape Town and Another, In re: City of Cape Town v Mgoqi and Another [2006] JOL 17349 (C).

Mlokoti v Amathole District Municipality and Another (2009) 30 ILJ 517 (E).

Premier of the Province of the Western Cape v President of the RSA, 1999 (4) BCLR 382 (CC).

Articles

Abdul-Hakim (2004) Single Public Service: challenges ahead 6(5) *Local Government Bulletin*:10-11.

Christmas, A (2007) Service delivery protests: failure to deliver or failure to communicate 9(4) *Local Government Bulletin* 6-7.

De Visser, J (2002) Local government powers *SA Public Law* 17 223-243.

De Visser, J (2009) Court condemns political interference in municipal manager's appointment 11(1) *Local Government Bulletin* 5-7.

De Visser, J (2009) New leaders, persistent challenges...what lies in store for local government? 11(2) *Local Government Bulletin* 4-6.

Fessha, Y. (2006) Tying municipal managers pay to performance 8 (3) *Local Government Bulletin*: 10-12.

Mahlatsi, L. K. (2006) State of the municipalities 8(1) *Local Government Bulletin*: 7-9.

Pycroft, C. (1996) Local government in the new South Africa: Public administration and development 16(3) *Wiley InterScience*: 195-289.

SAIRR (South African Institute of Race Relations) (2006) 2004/5 survey. Johannesburg SAIRR: 551-570.

Steytler (2003) intervention in municipalities: Amendment to section 139 of the constitution 5(2) *local government bulletin*:

Steytler (2004) Setting service delivery targets 6(3) *Local Government Bulletin*: 4-5.

Steytler (2004) Socio-economic rights and the process of privatizing basic municipal services 8(2) *Law, Democracy and Development*: 157-180.

Steytler (2005) 2004 Local government capacity: Municipal Demarcation Board national report 7(2) *Local Government Bulletin*: 1-4

Steytler, N. (2008) The strangulation of local government: Stifling innovation, experience and local responsiveness 10(1) *Local Government Bulletin* 6-8.

Van Dijk (2007) The social origins of the developmental state : reflections on South Africa and its local sphere of government 42(7) *Journal of Public Administration*: 664-675.

Papers

Scheepers, L.A. (2004) Professionalisation of local public administration management MPhil Thesis, School of Government: University of the Western Cape.

Smith, G The role of a province in the new local government dispensation: a Western Cape case study (2002), LLM thesis.

Masondo, A Media address by Salga chairperson, at the launch of Salga's 2008/09 annual report, Cape Town.

Presentation by the Deputy Minister of Co-operative Governance and Traditional Affairs, Yunus Carrim, at the Institute of Local Government Managers annual conference, 18 November 2009.

Internet

Bernstein, A (2007) State of local government: Sombre messages written in fire Business Day 08.05.07 available at http://www.cde.org.za/page.php?p_id=100 (accessed on 20-07-09).

Buccus (2009) Protests: rethinking the crisis Mail and Guardian online 07.27.09 available at <http://www.thoughtleader.co.za/imraanbuccus/2009/07/27/protests-rethinking-the-crisis/> (accessed on 02-09-09).

CoGTA (2009) Report on the state of Local Government in South Africa, available at <http://www.pmg.org.za/files/docs/091017tas.pdf> (accessed on 12-11-09).

DPLG (2008) *National Capacity Building Framework: In support of the Five Year Local Government Strategic Agenda (2008-2011)* available at www.thedplg.co.za (accessed on 4-06-2009).

DPLG (2005) A report on skills level in municipalities: Presentation on Portfolio Committee on Local Government available at <http://www.pmg.org.za/docs/2005/050906dplg.ppt#402,1,Slide 1> (accessed on 20-07-09).

Hough, M. (2008) *Violent Protest at Local Government Level in SA: A revolutionary potential?* available at http://www0.sun.ac.za/sdorm/index2.php?option=com_docman&task=doc_view&gid=52&Itemid=26 (accessed on 24-05-2009).

Introductory remarks by L.B. Hendricks, Minister of Water Affairs and Forestry, during the discussion with municipalities on the eradication of bucket sanitation system in formal areas, Birchwood Executive Hotel and Conference Centre, Boksburg, Gauteng available at [http://www.search.gov.za/info/previewDocument.jsp?dk=%2Fdata%2Fstatic%2Finfo%2Fspeeches%2F2007%2F07071615451001.htm%40Gov&q=\(+\(hendricks\)%3CIN%3ETitle\)+%3CAND%3E\(category%3Ccontains%3Es\)&t=L+Hendricks%3A+Discussion+on+eradication+of+bucket+sanitation+systems](http://www.search.gov.za/info/previewDocument.jsp?dk=%2Fdata%2Fstatic%2Finfo%2Fspeeches%2F2007%2F07071615451001.htm%40Gov&q=(+(hendricks)%3CIN%3ETitle)+%3CAND%3E(category%3Ccontains%3Es)&t=L+Hendricks%3A+Discussion+on+eradication+of+bucket+sanitation+systems) (accessed on 01-09-2009).

Mbeki, Thabo Address of the President of South Africa at the national conference of South African local government (SALGA), Cape Town, 29 September 2004 available at <http://www.info.gov.za/speeches/2004/04092915151008.htm> (accessed on 26-07-09).

Msengana-Ndlela (2006) Media briefing on Municipal Performance Management Regulations by Ms Lindiwe Msengana-Ndlela, Director General: Department of Provincial and Local Government (dplg) 1 August 2006 available at www.info.gov.za/speeches/2006/06080210451001.htm (accessed on 20-09-09).

Municipal Demarcation Board Survey (2005/5) Personnel Issue available at <http://www.treasury.gov.za/publications/igfr/2006/1g/6.%20Chapter%205%20-%20Personnel%20issues.pdf> (accessed on 23-07-09).

National Treasury (2004) available at http://www.treasury.gov.za/comm_media/press/2005/2005020201.pdf (accessed on 30-07-09).

Newsletter 29 - Why do most municipalities fail to deliver? *The municipal outreach project* available at <http://www.eumunicipaloutreach.org.za/newsletters/newsletter-29-2013-why-do-most-municipalities-fail-to-deliver-2013-10-july-2009/> (accessed on 08-07-09).

Nojiyela, S and Amisi, B (2008) The challenges of eradicating bucket sanitation in South Africa available at <http://www.ukzn.ac.za/ccs/files/Nojiyeza%20and%20Amisi%20Challenges%20of%20eradicating%20Bucket%20Sanitation%20in%20SA.pdf> (accessed on 01-09-09).

Ramphela, M (2005) *Citizenship as stewardship*, available at <http://www.networkingwomen.com/editorial.php?editorialid=20> (accessed on 22-07-09).

SA hit by service delivery protests *Mail and Guardian Online*, available at www.mg.co.za/article/2009-07-22-sa-hit-servicedelivery-protests (accessed on 22-07-09).

Select Committee of Finance (2004) Trends in intergovernmental finances for 2000/1-2006/7 available at <http://www.pmg.org.za/docs/2004/appendices/041110annualreport.doc> (accessed on 23-07-09).

Seokoma, B. (2009) *Voting for better life*, available at <http://www.ngopulse.org/article/voting-better-life> (accessed on 22-05-2009).

Service delivery protests a warning sign for government *Mail and Government Online*, available at <http://www.mg.co.za/article/2009-07-20-servicedelivery-protests-a-warning-sign-for-govt> (accessed on 20-07-2009).

Speech by Mrs LB Hendricks, Minister of Water Affairs and Forestry at the National Water Summit, Gallagher Estate, Midrand, Gauteng, 17 March 2008 available at <http://www.polity.org.za/article/sa-hendricks-national-water-summit-17032008-2008-03-17> (accessed on 01-09-09).

Yawa, H. (2008) *North West MEC for Developmental Local Government and Housing: Keynote address at the South African Local Government Association (SALGA) National Assembly, Mafikeng Civic Centre*, available at <http://www.info.gov.za/speeches/index.htm> (accessed on 29-04-2009).



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