

THE UNIVERSITY OF THE WESTERN CAPE
LAW FACULTY

Improving political oversight in municipalities: examining the law and practice surrounding oversight by the Council over the municipal Executive and the municipal administration.

Research Paper submitted in partial fulfilment of the requirements for the LLM Degree in the Faculty of Law of the University of the Western Cape

Elizabeth-Ann Williams (8741112)

Supervisor: Prof Jaap De Visser

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DECLARATION

I, Elizabeth Ann Williams, do hereby declare that this research paper *Improving Political Oversight in Municipalities: examining the law and practice surrounding oversight by the Council over the executive and the municipal administration* is my original work and that to the best of my knowledge and belief, has not previously, in its entirety or in part, been submitted to any other university for degree or diploma. Works of others cited or referred to are accordingly acknowledged.

Signed.....

Date.....



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List of keywords listed in proposal

Accountability

Audit committee

Corporate governance

Executive Committee

Local Municipality

Mayoral Committee

Oversight

Service delivery protests

Section 79 Committee

Section 80 committee



List of abbreviations used in the research paper

COGTA Department of Co-operative Governance and Traditional Affairs

IDP Integrated Development Plan

MFMA Municipal Finance Management Act 56 of 2003

REG Regulation

SDBIP Service Delivery and Budget Implementation Plan

SALGA South African Local Government Association



Chapter 1 Introduction

1.1 Background to the Study

The advent in 1994 of democracy in South Africa changed the regulatory framework of local government. South African citizens were freed from the shackles of an oppressive regime and experienced democratic rule. Freedom from Apartheid came with promises of a better life for all and the realisation of constitutionally protected human rights. The preamble to the Constitution lays the foundation for an open and democratic society with a Bill of Rights, recognising the injustices of the past and aiming to improve the quality of life of all citizens. The majority of the electorate supported a constitutional mandate, which set the foundation for democracy and bestowed a positive obligation on all spheres of government to ensure the enforcement of the Bill of Rights, as well as an obligation to ensure that the majority of people experience a better life. As part of the new constitutional dispensation, South Africa adopted a three-sphere system, comprising of national, provincial and local government. As such, municipalities derive powers directly from the Constitution. The Constitutional Court held that the constitutional status of local government is fundamentally different now as it was when Parliament was supreme and the existence of local government was dependent on superior legislatures.¹

Municipalities are constitutionally mandated to ensure 'democratic and accountable government.'² The democratically elected representatives need to account to the constituents they represent. To reinforce the constitutional mandate, the following legislation was introduced to regulate local government:

- Local Government: Municipal Finance Management Act 56 of 2003,³
- Local Government: Municipal Systems Act 32 of 2000,⁴ and
- Local Government: Municipal Structures Act 117 of 1998.⁵

¹ *Fedsure Life Assurance v Greater JHB TMC* 1999(1) SA 374 (CC) at paragraphs [35-39] and [393-394].

² S151(2) Constitution.

³ Hereinafter referred to as the MFMA.

⁴ Hereinafter referred to as the Systems Act.

⁵ Hereinafter referred to as the Structures Act.

The policy and legislative framework was developed to ensure, amongst other things, that adequate internal oversight structures could be implemented at a municipal level.

The Constitution provides that the executive and legislative authority of municipalities vests in the municipal council.⁶ This Constitution gives the power and duty to the municipal council to exercise the necessary discretion with the formulation and adoption of policies and bylaws in the areas that are listed in Part B of Schedule 4 and Part B of Schedule 5 of the Constitution.⁷

In the first 8 months of 2012, 79,20% of protests turned violent.⁸ There have been more violent protests in the first 8 months of 2012 than there were total protests in 2011. There remains strong public discontent with municipal service delivery throughout South Africa. The Overview Report on the State of Local Government in South Africa, issued by the Department of Co-operative Governance and Traditional Affairs(COGTA),⁹ highlighted that disfunctionality and instability within municipalities creates opportunities for fraud and corruption to take place. This led to the implementation of the newly formed Local Government Turn Around Strategy.¹⁰ The COGTA report has identified a number of deficiencies within the current structures and institutional systems of municipalities and has, as such, identified the need to review appropriate procedures and practices to implement critical changes within local government.

The following root causes were identified, namely:

- 'deployment issues and interference by political parties;
- no clear distinctions between Councils and the administrations;
- unclear boundaries between political representatives and the administration;

⁶Section 151(2) Constitution.

⁷Section 156(2) Constitution.

⁸ De Visser J and Powell D 'Service Delivery Protest Barometer' pg 1.

⁹Hereafter referred to as COGTA.

¹⁰COGTA (2010) 'Local Government Turn Around Strategy' pg 12.

- System Act code of conduct not being enforced;
- poor political management and leadership;
- insufficient application of oversight function on all levels;
- insufficient controls within the system;
- no clear framework or lack of understanding of party- municipal relations;
- poor councillors skills base in many areas;
- nepotism, cronyism, poor ethics and weak accountability frameworks;
- political factionalism results in territorial economic elites, and
- political factionalism undermines democratic principles.¹¹

The COGTA report thus suggests that the challenges within municipalities is due to the lack of capacity, inadequate financial management systems and various external factors, such as patronage and cronyism.¹²

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1.2 Statement of the Problem

This study critically analyses whether the legal framework, governing local government, provides for adequate legal instruments to improve oversight and accountability and whether municipalities are making effective use of the available legal instruments.

The key question in this research paper is how internal oversight within municipalities can be improved with specific reference to the various mandatory reporting obligations in terms of the MFMA and various other legislative obligations of local government.

¹¹COGTA (2009) 'The State of Local Government in South Africa Overview Report National State of Local Government Assessments' pg 72.

¹²COGTA (2009) 'State of Local Government in South Africa' pg 26.

1.3 Focus and rationale of the study

The study will focus on specific oversight mechanisms, which need to be implemented within the municipal council and the administration in terms of the legislative framework. This study will also analyse by way of a case study the internal oversight mechanisms within the Drakenstein Municipality and compare this to the legislative framework and the policy framework for local government. This study will look at municipal governance with specific reference to the MFMA, the functioning of the mayoral committee and the municipal council, the mandate and function of the Audit Committee and the Internal Audit Unit, the implementation and effectiveness of the Integrated Development Plan¹³ and the Service Delivery and Budget Implementation Plan¹⁴, performance management and the separation of powers between the municipal council and the administration. The analysis will highlight shortcomings in the current legislative framework and develop recommendations in order to improve internal oversight.

Recommendations will be made in order to improve the current oversight mechanisms employed by municipalities. The study is limited in that it does not deal with oversight that national and provincial governments need to exercise over municipalities.

Whilst a lot of studies had been conducted on improving political oversight at national and provincial level, little is understood about it in local government due to the lack in concrete empirical research at a local government level. This study contributes towards an understanding of the legal framework surrounding the improvement of oversight at a political and administrative level.

1.4 Methodology

The study will be based on legislation, desktop research, case law, academic journal articles, circulars, the Auditor-General reports and the internet which are used extensively. A case study of the Drakenstein municipality will also be conducted which will include an analysis of reports and council minutes.

¹³ Hereafter referred to as the IDP.

¹⁴ Hereafter referred to as SDBIP.

Chapter 2

Definition of key concepts and Legal and Policy Frameworks of Local Government and Systems and Structures of Municipalities

2.1 Defining Oversight

Defining oversight within local government is not easy because information concerning oversight within local government is limited. Furthermore, limited empirical research has been conducted in this regard. Most of the information relates to oversight conducted in other spheres of government namely provincial and national government. Senay and Besdziek argue that there is no definition of oversight in dictionaries of political terminology.¹⁵

They define 'oversight' in the South African provincial context as:

'the proactive interaction initiated by a legislature with the Executive and administrative organs of a province that encourages compliance with the constitutional obligation on the Executive and administration to account to the public's elected representatives and which advances the ideals of good government, development and co-operative governance.'¹⁶

In the Oversight and Accountability Model of Parliament, oversight is defined as a constitutionally mandated function of the legislative organs of state to scrutinise and oversee the executive action of any organ of state.¹⁷ The Oversight and Accountability Model of Parliament, provides that oversight entails the informal and formal, watchful, strategic and structured scrutiny exercised by the legislature in respect of the implementation of laws, the application of the budget, and the strict observance of statutes and the Constitution.¹⁸ These definitions will guide the course of the research.

¹⁵Senay C and Besdziek D (1999) *'Enhancing Oversight in South Africa's Provinces Institutions and Concerns'* pg 3 of 28.

¹⁶Senay C and Besdziek D (1999) *'Enhancing Oversight in South Africa's Provinces Institutions and Concerns'* pg 6 of 28.

¹⁷Parliament (2009) *'Oversight and Accountability Model'* pg 6.

¹⁸Parliament: (2009) *'Oversight and Accountability Model'* pg 6.

2.2 Importance of Oversight

In the context of international requirements the importance for oversight has been highlighted by being able:

- ‘to detect and prevent abuse, arbitrary behaviour or illegal and unconstitutional conduct on the part of the government and public agencies. At the core of this function is the protection of the rights and liberties of citizens;
- to hold the government to account in respect of how taxpayers’ money is used. It detects waste within the machinery of government and public agencies, thus it can improve the efficiency, economy and effectiveness of government operations;
- to ensure that policies announced by government and approved by Parliament are actually delivered. This function includes monitoring the achievement of goals set by legislation and the government’s own programmes; and
- to improve the transparency of government operations and enhance public trust in the government, which is itself a condition of effective policy delivery.¹⁹



Oversight is thus an integral part of any democratic dispensation. Within the municipal context the municipal council is directly elected by the electorate it represents and thus has the constitutional mandate to conduct oversight over the administration and the executive. In terms of the findings of COGTA, effective oversight will have to be exercised in order to monitor:

- ‘the extent to which service delivery is implemented within municipalities;
- to what extent municipalities are optimising the revenue base;

¹⁹Parliament (2009) ‘Oversight and Accountability Model’ pg 7.

- whether municipalities are able to meet their developmental mandate by providing free basic services;
- whether the municipality is compliant with legislation, as well as implementing good governance; and
- whether municipalities are recruiting experienced and qualified staff²⁰.

As accountability is one of the tenets of a democracy, the purpose of improving internal oversight in local government is to hold the municipal executive and the administration accountable should they fail to implement the constitutional mandate of local government. The municipal council must improve oversight over the administration and the executive by implementing critical checks and balances to ensure that the municipality implement the constitutional mandate.

The implementation of oversight will have a positive impact as it may lead to improved service delivery and accountability. The council will be able to monitor whether the administration implements the constitutional mandate. The improvement of oversight will contribute to re-orienting policies, by-laws and budgets in favour of communities. Incidences of wasteful expenditure, corruption, and under-spending will be minimised and there will be more revenue to spend on the developmental duties of local government. The improvement of oversight will also ensure that policies and by-laws are drafted to cater for the specific needs of communities. Improving systems for political oversight within municipalities will limit political interference into the administration and ensure that the municipal manager and senior managers are accountable to the municipal council.

²⁰COGTA (2010) pg 46-47.

2.3. Legal and Policy Framework

2.3.1 No separation in terms of the Constitution

Local government is an autonomous sphere of government and derives its powers directly from the Constitution.²¹ The Structures Act provides that each municipality must have a municipal council.²² The Constitution does not provide for a separation of powers in local government:

“the executive and legislative authority of a municipality is vested in its Municipal Council”.²³

So therefore the executive and the legislature are not separate branches as is the case in the national and provincial spheres of government.²⁴ The municipal council makes by-laws and needs to ensure that they are executed. The electorate knows that the council is responsible for policy making and governance. This places the electorate in a position to hold the council accountable to implement their legislative mandate. The Structures Act, Systems Act and MFMA give content to the constitutional provisions on the interface between the municipal council and the administration. The challenge is that this legislative collective is difficult to implement because the provisions are open to various interpretations.

2.3.2 The choice of executive structures in terms of statutory law

This discussion will focus on the executive structures to facilitate a better understanding of the separation of powers at a municipal level. Though the Constitution does not provide for separation of powers within the municipality, the statutes provide for executive structures. Discussion will focus on the executive structures to facilitate a better understanding of separation of powers at a municipal level. The Structures Act provides for categories of municipalities and lists various municipal types that are possible within each category. The Structures Act makes provision that various combinations of executive systems and participatory systems

²¹S151 (2) Constitution.

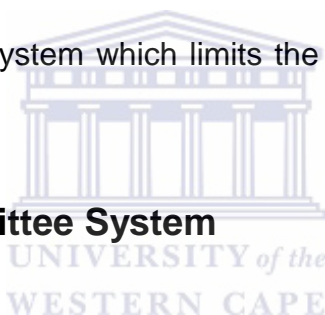
²²S18(1).Structures Act.

²³S151(2) Constitution.

²⁴Ss 44 &104 Constitution.

can be established.²⁵ The executive system of government is the structure through which executive authority is exercised in a municipality. The MEC for local government determines the type of system by publishing a notice in the *Provincial Gazette* in terms of section 12 of the Structures Act.²⁶ The MEC for local government in consultation with municipalities can choose between three different systems of municipal government or a combination of those systems including the following:

- Collective executive system which allows for the exercise of executive authority through an executive committee in which the executive leadership of the municipality is collectively vested;
- Mayoral executive system where the mayor exercises executive authority and is assisted by a mayoral committee; and
- Plenary executive system which limits the exercise of executive authority to the council itself.²⁷



2.4 The Executive Committee System

2.4.1 Composition/ Election

The Constitution provides that the council may elect an executive committee subject to national legislation.²⁸ A municipality may establish an executive committee if it is of a type that is empowered to establish an executive committee as explained above. The Structures Act provides that the executive committee members must be elected within 14 days after the municipal council's election.²⁹ The committee's term of office expires when a new municipal council is elected.³⁰

The Act furthermore provides that parties and interests represented in the municipal council are represented in the executive committee in substantially the same

²⁵S7 Structures Act.

²⁶S12(3)(c) Structures Act.

²⁷S7 Structures Act.

²⁸S160(1)(c) Constitution.

²⁹S45 Structures Act.

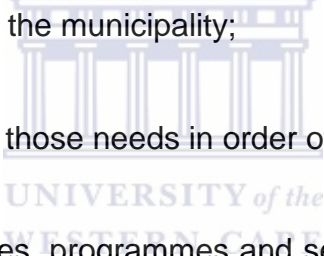
³⁰S46(b) Structures Act.

proportion as they are represented in the municipal council.³¹ However, the municipal council may use alternative mechanisms to elect an executive committee, provided it complies with section 160(8) of the Constitution.³²

One member of the executive must be elected by the council as the mayor and may serve a maximum of two consecutive terms.³³ The executive committee must report on all its decisions to the council.³⁴ The council may remove one or more or all the members of the executive committee, but must notify the members beforehand.³⁵

2.4.2. Functions of the Executive Committee

The Structures Act provides that the executive committee is the principal committee of the council.³⁶ The executive committee has specific functions in terms of the Structures Act namely to:

- 
- identify the needs of the municipality;
 - review and evaluate those needs in order of priority;
 - recommend strategies, programmes and services to the municipal council to address priority needs through the integrated development plan and estimates of revenue and expenditure taking into account any applicable national and provincial development plans;
 - recommend or determine the best methods, including partnership and other approaches, to deliver those strategies, programmes and services to the maximum benefit of the community;
 - identify and develop criteria in terms of which progress in the implementation of the strategies, programmes referred to in subsection (2)(c) can be

³¹S43(2) Structures Act.

³²S43(3) Structures Act.

³³S45 & 48(6) Structures Act.

³⁴S44 Structures Act.

³⁵S53 Structures Act.

³⁶S44(1)(a) Structures Act.

evaluated, including key performance indicators which are specific to the municipality;

- evaluate progress against the key performance indicators;
- oversee the provision of services to the community in a sustainable manner;
- perform such duties and exercise such powers as the municipal council may delegate to it;
- annually report on the involvement of the communities and community organisations in the affairs of the municipality; and
- ensure that regard is given to public views and report on the effect of consultation on the decisions of the municipal council.³⁷

The Act furthermore provides that the executive committee is a committee of the council, which receives reports from the other committees of the municipal council and must forward these reports with recommendations to the council, when it cannot dispose of the matter in terms of its delegated powers.³⁸ Within the executive committee system, the council delegates powers and duties to the executive committee.³⁹

2.4.3 Mayoral Executive System

The discussion will now turn to the other executive system, namely the executive mayoral system.

The executive leadership of the municipality is vested in the executive mayor and not in a collective committee, as is the case in a collective executive system.⁴⁰ The executive mayoral system is characterised by a powerful mayor who is assisted by a mayoral committee.⁴¹

³⁷ Ss44(a)-(h) Structures Act.

³⁸ S44(1)(b) Structures Act.

³⁹ S7(b) & 48(1) Structures Act.

⁴⁰ Bekink B *Principles of South African Local Government Law* (2006) 129.

⁴¹ De Visser J, Steytler N & May A (2009) 'The Quality of Local Democracies A Study into the Functionality of Municipal Governance Arrangements' pg 11.

The term of office of the executive mayor runs concurrently with that of the council, unless the mayor needs to vacate office before expiry of the political term.⁴² The Structures Act determines the functions and powers of executive mayors, which mirror that of the executive committee.⁴³ The executive mayor has the same functions as the executive committee see paragraph 2.3.2. According to Bekink, the mayoral executive system should provide for decisive leadership and rapid-decision making, which is useful in larger and complex municipalities.⁴⁴

2.4.4 Mayoral Committee

The executive mayor exercises executive authority with the assistance of a mayoral committee.⁴⁵ The executive mayor may appoint and dismiss members of the mayoral committee.⁴⁶ The Structures Act provides that the executive mayor:

- 'must appoint a mayoral committee to assist him or her;
- may delegate specific responsibilities to each member of the committee; and
- may delegate any of the executive mayor's powers to the respective members.⁴⁷
- The mayoral committee is dissolved when the executive mayor ceases to hold office.⁴⁸ The mayoral committee members play a dominant role within the municipality and usually have considerable powers.

2.4.5 Role of the mayor in terms of the MFMA

The MFMA bestows various financial responsibilities on the mayor, which is vital when it comes to municipalities complying with the constitutional mandate and the

⁴²Ss57 (b) & 59 Structures Act.

⁴³S56(2) Structures Act.

⁴⁴Bekink B *Principles of South African Local Government Law* (2006) 128.

⁴⁵S60 Structures Act.

⁴⁶S60 Structures Act.

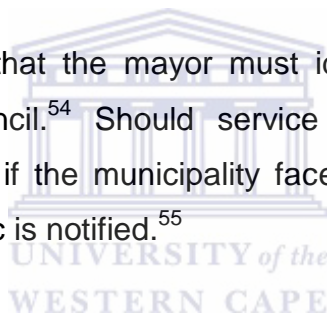
⁴⁷S60 (a)-(c) Structures Act.

⁴⁸S60(4) Structures Act.

prescripts of the MFMA.⁴⁹ Cognisance must be taken of the fact that reference to the mayor in the MFMA refers to both the executive mayor and the executive committee.⁵⁰ The MFMA provides that he or she must provide political guidance over the fiscal and financial affairs of the municipality. The mayor may monitor the exercise of responsibilities of the municipal manager and chief financial officer, but may not interfere in the exercise of those responsibilities.⁵¹ The mayor has a duty to ensure that the municipality performs its constitutional and statutory functions within the confines of the budget of the municipality and must report to the municipal council on all budget related matters.⁵² Practically the mayor cannot fulfil all these duties him or herself and therefore delegates it to officials within the administration.

The MFMA provides that the mayor needs to ensure that the budget is aligned with the service delivery projections and may revise these service delivery targets and performance indicators only with the approval of the municipal council.⁵³

A critical requirement is that the mayor must identify financial irregularities and report them to the council.⁵⁴ Should service delivery target or performance indicators be altered and if the municipality faces financial difficulties, the mayor must ensure that the public is notified.⁵⁵



2.5 Separation of Politics from Administration

2.5.1 Separation of the Council and Municipal Administration

Discussion will focus on the separation of the council and the administration because of the close link at an institutional and legislative level. The legislative framework does not clearly define the separation between the council and the administration and it causes unwarranted political interference into the administration. According to Svava one of the most important and enduring theoretical constructs in public administration is the politics-administration

⁴⁹S52 MFMA.

⁵⁰S 59(1)(a)-(c) MFMA.

⁵¹S52(a) & (b) MFMA.

⁵²S52(d) MFMA.

⁵³S54(1)(b)-(d) MFMA.

⁵⁴S54(1)(e) & (2).

⁵⁵S54(3) MFMA.

dichotomy model.⁵⁶ The premise of the model is based on the rationale of insulating public administration practice from political interference. The dichotomy model as it applies to local government holds that:

- ‘the city municipal council does not get involved in the administration,
- the city manager has no involvement in shaping policies;
- the manager occupies the role of a neutral expert who efficiently and effectively carries out the policies of the municipal council.’⁵⁷

Svara furthermore argues that administrators do not exercise discretion, for to do so open the door to interpreting policy and how to apply it. Municipal managers are politically appointed by the council who generally favour candidates who are aligned to the party or coalition that govern that municipality. By the same token municipal managers cannot divorce themselves from political influence and patronage. Similarly senior management are also politically appointed and have to assist in the facilitation of policy making.

Separating politics from the administration will curb political meddling and thereby the council’s ability to conduct proper oversight. The council will still be in control of the administration, but at the same time allow administrators to maintain their independence to adhere to professional values and standards and be responsive towards the public.⁵⁸ The advantage of separating the municipal administration from politics is that it will improve political accountability and oversight. It will make the political practices more accountable to the legislative framework. The effective implementation of such a separation within municipalities will assist in ensuring that officials act politically impartial in implementing the council’s mandate. Furthermore, separating the municipal administration from politics will curb political meddling in the administration and officials can voice their agreement or discontent without fear of victimisation when they become aware that policies or by-laws are implemented to advance political ideologies.

⁵⁶Svara JH (1998) ‘*The politics –administration dichotomy model as aberration*’ pg 176.

⁵⁷Svara JH (1998) ‘*The politics –Administration dichotomy model as aberration*’ pg 179.

⁵⁸Svara JH (1998) *The politics –Administration dichotomy model as aberration* pg 179.

In order to establish if such a separation of politics and the administration exists in local government the legal framework, as it pertains to the municipal administration, will be discussed with particular reference to the appointment of the municipal manager, the appointment of senior managers often referred to as section 56 managers and the recruitment of municipal staff. These appointments have a direct bearing on the administration as the municipality is dependent on a competent personnel corps that is separated from the political structures, is minimally influenced and not susceptible to political manipulation.

2.5.2 Appointment of the Municipal Manager

Crucial appointments within the municipal administration are that of the accounting officer. The Systems Act provides that the council must appoint a municipal manager as head and accounting officer of the administration.⁵⁹ The appointment of the municipal manager is not merely a staff appointment as contemplated in section 160(1)(d) of the Constitution.⁶⁰ The Systems Act regulates the appointment of the municipal manager.

Legislation prohibits the municipal council to delegate the appointment of the municipal manager to the municipal executive.⁶¹ The Systems Act provides that the municipal council also appoints the managers directly accountable to the municipal manager.⁶² The municipal council merely needs to consult the municipal manager when it appoints senior managers.⁶³

Furthermore, in terms of the Systems Act the municipal council must advertise the post nationally.⁶⁴ In terms of The Systems Act both the MEC and Minister monitor these appointments whereas previously the council was solely responsible for these appointments.⁶⁵

⁵⁹S54 A Systems Act.

⁶⁰*Executive Municipal Council of the Western Cape v Minister of Provincial Affairs and Constitutional Development Executive Municipal Council of KwaZulu- Natal v President of the Republic of South Africa* 1999(12) BCLR1360 (CC) at para 109.

⁶¹*Mbana v Mquma Municipality* 2004(1) BCLR 83 (Tk) and *Mqoqi v City of Cape Town and another; City of Cape Town v Mqoqi and another* 2006(4) SA 355(C) 574.

⁶²S56(1)(a) Systems Act.

⁶³S56(1)(a) Systems Act.

⁶⁴S56(3)(a) & (b) Systems Act.

⁶⁵Ss56 (4A) & (b) Section 56 Systems Act & Section 82(1)(a) Structures Act.

2.5.3 Competency requirements and disqualifications

A report of the Department of Co-operative Governance and Traditional Affairs on the State of Local Government in South Africa bemoans the fact that the competency levels for critical middle and senior municipal management positions are not regulated.⁶⁶ There are three sets of laws that govern competency requirements and disqualifications namely the Systems Act and its regulations, the MFMA and the National Treasury Minimum Competency Regulations for Accounting Officers of 2001. The person appointed as municipal manager must have the prescribed qualifications, including skills, expertise and competencies.⁶⁷

The Systems Act makes specific provision that individuals need to possess “skills”, “expertise”, “competencies” and “qualifications” in order to be appointed as municipal manager.⁶⁸ This is complemented by regulations of the National Treasury on the Minimum Competency Levels for Accounting Officers, senior managers, finance officials and other officials responsible for supply chain management of municipalities.⁶⁹ Accounting Officers are also required to have the core occupational and managerial competencies as described by the Municipal Performance Regulations.⁷⁰ In terms of the Systems Act an appointment is null and void if the candidate did not have the prescribed skills, expertise, competencies and qualifications or the appointment was made in contravention of the Act.⁷¹

In *Allen Paulse v Oudsthoorn Local Municipality* the municipal council’s appointment of a municipal manager was reviewed against the provisions of section 54 A of the Systems Act with particular reference to whether the appointment of a municipal manager is subject to regulation 38. Regulation 38 provides that in order to be appointed candidates must possess a minimum of five (5) years’ experience at senior management level.⁷² The municipality shortlisted five candidates, namely Mar. TT Mnyimba, Mr T Paulse, Dr E Rankwana, Mr D du Plessis and Mr K Rosenberg. Besides the interviews which were conducted, the candidates were

⁶⁶COGTA (2009) *The State of Local Government in South Africa Overview Report National State of Local Government Assessments*’ pg 31.

⁶⁷S54A(2) Systems Act.

⁶⁸S56(1)(ii)(b) Systems Act.

⁶⁹National Treasury (2001) *Guideline for Municipal Competency Levels: Accounting Officers*’ pg 1.

⁷⁰Provincial and Local Government(2001) *Municipal Planning and Performance Management Regulations*.

⁷¹S 56(2)(a)&(b) Systems Act , the Minister may waive any of the requirements listed.

⁷²*Allen Paulse v Oudtshoorn Local Municipality* unreported Case No: 25790/2011 para 54 and 55.

subject to integrity and competency tests. During the selection process the report submitted to the council only contained the interview results in terms of which Mr TT Mnyimba was the better candidate. It did not include the scores on competencies required in terms of regulation 38. The selection panel appointed Mr TT Mnyimba. The court declared the appointment of Mr TT Mnyandi as 'null and void'.⁷³ The appointment was declared 'null and void' because the candidate did not possess the minimum competencies. The judgment reveals that the appointment of a municipal manager is subject to the provisions of regulation 38. It is the contention of this study that though the Court did not decide on the issue regarding alleged political interference, this case is illustrative of cadre deployment as even though the candidate did not possess the minimum competencies, the selection process was manipulated to ensure a particular outcome.

This case illustrates that an appointment is null and void if the candidate did not have the prescribed skills, expertise, competencies and qualifications or the appointment was made in contravention of the Act.

2.5.4 Functions of the Municipal Manager

As accounting officer, the municipal manager has various responsibilities conferred by statute as well as those conferred to him in terms of delegations. The municipal manager serves as the interface between the political-structures, office bearers, and the municipal administration.⁷⁴ The municipal manager may delegate and sub-delegate any of the statutory powers, functions and duties to staff members with the approval of the municipal council.⁷⁵ The Systems Act provides that as head of the administration, the municipal manager is subject to the policy directions of the council and is responsible and accountable for the exercise of various functions.⁷⁶ De Visser asserts that one of the key challenges in transformation of local government is defining the roles of the municipal manager in relation to the executive committee or executive mayor of the municipality.⁷⁷

⁷³ *Allen Paulse and Oudtshoorn Local Municipality* unreported Case No: 25790/2011 para 85.

⁷⁴ Steytler N & De Visser J (2009) *Local Government Law of South Africa* pg 8-21.

⁷⁵ Ss55 & 59(4) Systems Act.

⁷⁶ Ss 55(1)(a)-(q) & 55(2)(c) of the Municipal Systems Act provides that the Municipal Manager is responsible for accountable Administration, implement IDP, Performance Management System, manage the Administration, advise political structures, political office bearers, ensure compliance with the MFMA.

⁷⁷ De Visser J (2001) *Roles and Responsibilities of the Municipal Manager* pg 1.

2.5.5 Appointment of section 56 managers

In light of the various responsibilities bestowed upon the municipal manager, it is critical that such a person needs to be supported by competent staff in order to perform these duties.⁷⁸ Section 56 of the Systems Act provides that the municipal council after consultation with the municipal manager appoints managers directly accountable to the municipal manager. Such persons must have relevant skills and expertise to perform the duties associated with the post.⁷⁹ The same structure as outlined in paragraph 2.5.2 applies to the appointment of section 56 managers.

2.5.6 Appointment of other staff

The municipality needs to appoint staff other than section 56 managers to ensure the successful implementation of its functions. The Systems Act provides that the municipal manager must develop an organogram, which needs to be submitted to the municipal council for approval.⁸⁰ It is the responsibility of the municipal manager to:

- 'provide a job description for each post on the staff establishment;
- attach to the post the remuneration and service conditions as may be determined; and
- establish a process or mechanism to evaluate the staff establishment regularly.⁸¹

The authority to approve a staff establishment is the statutory power of the municipal manager.⁸² The council approves the staff establishment which is developed by the municipal manager. The municipal manager makes the staff appointment onto that establishment. Though in practice appointments may be

⁷⁸S 55 (e) & (f) Systems Act.

⁷⁹S 56 (a) & (b) Systems Act.

⁸⁰S 66(1)(a) Systems Act.

⁸¹S66 (b-d) Systems Act.

⁸²S55 (e) Systems Act.

delegated in terms of a system of delegations, it is not prudent to do so. The fact that the organogram needs to be approved by the municipal council implies that the council has the power to review it and make the necessary changes, if need be.⁸³ The council thus exercises oversight over staff appointments.

2.5.7 Political Appointments

Research has shown that the appointment of a party official, who occupies a position higher than any councillor to an administrative post, runs havoc with all legal lines of accountability.⁸⁴

Partly as a result of the public outcry regarding such political appointments; the Municipal Systems Amendment Act now provides that the municipal manager and managers directly accountable to the municipal manager may not hold political office in a political party or structure thereof.⁸⁵ The provision does not apply to municipal staff members other than senior management level.⁸⁶ This is a problem because there may be junior officials who occupy influential political positions within political structures. This may once again have a direct bearing on the implementation of oversight by the council. If the administration consist of junior staff who occupies influential positions with political parties, the likelihood exists that they may not want to be held accountable by the municipal council where some councillors may be their juniors at a party political level. Politically affiliated administrative staff members may then wield considerable power in the administration and within the municipal council.

The Systems Act prohibits political interference into the administration.⁸⁷ A municipal councillor may not interfere in the administration or give instructions to any employee of the municipal council, unless mandated to do so.⁸⁸ No councillor may obstruct or attempt to obstruct the implementation of a municipal council decision, or encourage or participate in any conduct, which would cause or

⁸³S66(1)(a)-(d) Systems Act.

⁸⁴De Visser J, Steytler N, Mays A (2009): *The Quality of local democracies: A Study into the functionality of Municipal Governance Arrangements* pg 41.

⁸⁵S56A(1) Systems Act.

⁸⁶ Good Governance Learning Network (2010): *Submission on the Local Government Municipal Systems Amendment Bill to the Department of Cooperative Governance* pg 3.

⁸⁷Item 11 (a) Schedule 1 Systems Act.

⁸⁸S11(a)-(d) Systems Act.

contribute to mal- administration.⁸⁹ The MFMA also provides protection against political interference into the administration and stipulates that it is a criminal offence for a municipal councillor to attempt to influence the municipal manager, any other staff member or an agent of a municipality not to enforce an obligation in terms of the Systems Act, other legislation, a by-law or a municipal council decision.⁹⁰ The offence is punishable by a fine or imprisonment of up to two years. The MFMA is explicit in prohibiting municipal councillors from interfering in the administration of tenders by providing that municipal councillors may not be part of the evaluation of tenders nor sit in as an observer thereto.⁹¹

2.5.8 Summary

The above discussion indicated that improving political oversight within municipalities has a clear and critical purpose. The law provides for the establishment of executive structures and seeks to separate politics from the administration. However, there are several flaws in improving political oversight within municipalities. These flaws can be categorised into too much interference by the council on the administration, executive dominance, cadre deployment, lack of accountability, weak legislative institutions, the lack of separation of power between the council and the administration. The challenge within municipalities is that the council approves the organogram of the institution. This is a challenge in that councillors do not necessarily have the competence and experience to understand the institutional requirements of municipalities. Furthermore, both the Systems Act and Structures Act provide a legal framework for the appointment of the municipal manager and senior managers by the municipal council. The exercise of oversight is thus complicated as the municipal council now needs to monitor staff members and structures that it approved. Administrators respond to the directives of the council rather than to the administration.⁹² This implies that administrators may be tempted to align themselves with the political ideology of the ruling elite. This compromises the administrative integrity. When administrators share the same platform with politicians, perceptions are formed in terms of affiliation and relation.

⁸⁹S11(a)-(d) Systems Act.

⁹⁰S117 MFMA, Schedule 1, s 11 Systems Act.

⁹¹S117 MFMA.

⁹²Fessha Y: (2008) Paper II: *Municipal Accountability: Assessing Municipal Accountability Tools* pg 29.

These flaws negatively affect the implementation of political oversight over the administration. In the next chapter this will be further examined by analysing oversight structures and mechanisms within local government.



Chapter 3: Oversight Structures and Mechanisms

3.1 Introduction

The legislative framework provides for the implementation of various structures and mechanisms within the municipality to facilitate oversight. Mechanisms in this context refer to processes implemented by the council to conduct oversight whereas structures are institutional arrangements within the administration to ensure oversight is implemented. The council plays a critical role in ensuring that adequate use is made of these.

This discussion will focus on the various structures that facilitate oversight, namely section 79 committees, section 80 committees, the internal audit unit, the audit committee and the municipal performance audit committee.

The oversight mechanisms which will be reviewed are the Annual Report, the Oversight Report, the Integrated Development Plan⁹³ and Service Delivery and Budget Implementation Plan⁹⁴, budget statements, performance agreements and performance evaluations. The municipal council may use all these structures and mechanisms to exercise oversight.

3.2 Oversight structures

3.2.1 Committee System: Choice between Section 79 and Section 80 committee

The council needs to take decisions whether or not portfolio committees will be established and whether such committees will be established in terms of section 79 or section 80 of the Structures Act.

The Structures Act provides generic requirements for the establishment of committees. These committees may assist the council to conduct oversight. A

⁹³Hereafter referred to as IDP.

⁹⁴Hereafter referred to as SDBIP.

municipality may establish a committee provided for in the Act if the establishment of such a committee is necessary taking into account the following indicators to determine if such a committee is appropriate namely:

- ‘the extent of the functions and powers of the municipality;
- the need for the delegation of those functions and powers to the committee in order to ensure efficiency and effectiveness in their performance of those functions and powers; and
- the section 79 committee and section 80 committees serve different purposes and are accountable to different entities.’⁹⁵

It should be noted that the capacity of the municipal council to conduct oversight over the executive is influenced by the committee system configuration. This is because the mayoral committee is not a committee of the council and can conduct meetings on important council matters without divulging the content of such meetings or opening it up for public scrutiny.

Section 33 of the Structures Act provides for the establishment of committees. This section provides that with the establishment of committees cognisance must be taken of the extent of the functions and powers of the municipality; the need to delegate the powers in order to ensure efficiency and effectiveness in their performance; and the financial and administrative resources of the municipality available to support the proposed committee.⁹⁶ Committees may be established to assist the council to conduct oversight.

3.2.2 Section 79 committees

The municipal council may establish section 79 committees to assist it to exercise oversight over the administration. Section 79 committees are not chaired by a member of the executive and are thus chaired by a non-executive councillor. A non-executive councillor in this context refers to a member who was elected, but does

⁹⁵S33Structures Act.

⁹⁶S33(b)(i) - (iii) Structures Act.

not serve on the executive. The chairperson of the section 79 committee can be any member of the council.⁹⁷ It can be a member of the opposition, coalition or the ruling party. The council appoints the chairperson, may remove a member of a committee at any time, may authorise a committee to co-opt members of the public within the limits determined by the council and may determine a committee's procedure.⁹⁸

The municipal council determines the functions of this committee and may delegate powers and duties to it.⁹⁹ The section 79 committee reports to the municipal council. However, the municipal executive may alter or amend reports before it is submitted to the municipal council because the Structures Act makes provision that the executive is entitled to receive reports from committees of the municipal council and to forward these reports with recommendations to the council.¹⁰⁰ The municipal executive thus has the discretion to determine whether reports should be altered or not.¹⁰¹

The section 79 committee may co-opt members from the public in an advisory capacity and play an oversight role for the effective performance of functions of the council.¹⁰² A section 79 committee could be used to exercise oversight, as it reports to the council. Section 79 committees can be used by the council to solicit input from the community with regard to the development of policies and developmental projects in terms of legislation. The effectiveness of a section 79 committee is, however, dependent on its terms of reference, as the council may delegate powers and functions to it. The section 79 committee would only be able to function according to that mandate.

3.2.3 Section 80 Committees

Section 80 of the Structures Act makes provision for the appointment of committees to assist the executive mayor or the executive committee. There may not be more section 80 committees than there are executive committee members or mayoral

⁹⁷S79(b) Structures Act.

⁹⁸S79(2)(c)-(f) Structures Act.

⁹⁹S79(2)(a) & (b) Structures Act.

¹⁰⁰Ss56(1) & 44 (1) Structures Act.

¹⁰¹S 44(1)(a) Structures Act.

¹⁰²Paradza G, Mokwena L, Richards R(2010) 'Assessing the role of Municipal Councillors in service delivery at local government level in South Africa' pg 12.

committee members.¹⁰³ The council determines who serves on the section 80 committee but the municipal executive appoints the chairperson.¹⁰⁴ The executive committee or executive mayor may delegate powers and duties to the committee.¹⁰⁵ A section 80 committee is not a committee of the municipal council. It reports to the executive and is accountable to the executive. Though such a committee might be representative of all parties, it must be chaired by a member of the executive and reports to the executive.¹⁰⁶ These committees are tasked to develop policies and proposals and determine which policies are submitted to the municipal council to be enacted as policy.¹⁰⁷

This is a disadvantage as decision-making maybe centralised within the section 80 committees that report directly to the executive.

It is contended that in a section 80 committee system, deliberations regarding policy options and the implementation thereof, the performance of the municipal administration all take place solely in section 80 committees, the content of which is conveyed to the executive through a member of the executive.¹⁰⁸ This, however, does not imply that all members of the section 80 committee have knowledge of whether the committee's recommendation was delivered to the mayoral committee.¹⁰⁹ Another disadvantage is that non-executive municipal councillors who do not form part of the section 80 committee have limited opportunity to conduct oversight.¹¹⁰ The matter is compounded where a municipality makes use of mostly section 80 committees who only report to the executive mayor.

3.2.4 Fundamental differences between section 79 and section 80 committees

A section 79 committee may be constituted in exactly the same way as a section 80 committee but the fundamental difference is thus that it may be chaired by a non-executive councillor.

¹⁰³S80(2) Structures Act.

¹⁰⁴S80(3)(a) Structures Act.

¹⁰⁵S80(3)(a)-(b) Structures Act.

¹⁰⁶De Visser J (2009) '*Municipal Council as legislator and executive; the ideal overtaken by reality*'

¹⁰⁷Paradza G, Mokwena L, & Richards R (2010) '*Assessing the role of Municipal Councillors in service delivery at local government level in South Africa*' pg 12.

¹⁰⁸Fessha YT (2008) 'Holding the Municipal Executive to Account' Local Government Bulletin pg 796.

¹⁰⁹Fessha YT (2008) 'Holding the Municipal Executive to Account' Local Government Bulletin pg 796.

¹¹⁰Fessha YT (2008) 'Holding the Municipal Executive to Account' Local Government Bulletin pg 796.

3.3 The internal audit unit and audit committee

3.3.1 Internal audit unit

The International Standards for the Professional Practice of Internal Auditing (ISPPIA) defines internal auditing as an independent, objective assurance and consulting activity designed to add value and improve an organisation's operations.¹¹¹ It helps an organisation accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes.¹¹² The Constitution provides the basis for National Treasury to prescribe measures to ensure both transparency and expenditure control in each sphere of government by introducing generally recognised accounting, uniform expenditure classifications; and uniform treasury norms and standards.¹¹³ The MFMA obligates all municipalities to either establish an internal audit unit or to outsource that function.¹¹⁴

The aim of such a unit is to assist municipal managers to effectively discharge their fiduciary duty. The internal audit unit initiates an organisational risk-based plan, which needs to focus on internal controls, risk and risk management, performance management, loss control as determined by the municipal manager.¹¹⁵ Section 165 of the MFMA provides that the internal audit unit of a municipality must advise the municipal manager and report to the Audit Committee on the implementation of the internal audit plan and matters relating to:

- 'internal audit;
- internal controls;
- accounting procedures and practices;
- risk and risk- based management, and

¹¹¹National Treasury (2009) *'Internal Audit Framework'* 2nd Edition pg 5.

¹¹²National Treasury (2009) *'Internal Audit Framework'* 2nd Edition pg 5.

¹¹³S 216 (1) Constitution.

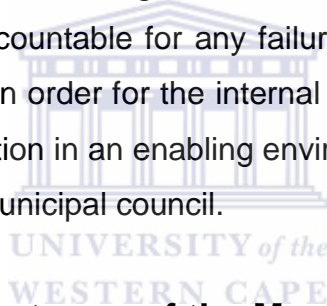
¹¹⁴S165 (1)& (3) MFMA.

¹¹⁵S165 (2)& (3) MFMA.

- performance management.¹¹⁶

The Municipal Planning and Performance Regulations require that the internal audit unit assess the functionality of the municipality's performance management system, to ensure that it complies with the Systems Act. The internal audit unit plays a critical role in auditing compliance with the legislative requirements and reports to the municipal manager. The unit furthermore reports on the extent to which the key performance indicators are reliable in measuring progress towards the achievement of performance targets and submits quarterly reports on the audits to the municipal manager and the performance audit committee.

The internal audit unit can also assist the council in improving oversight over the administration. The municipal council may use the information generated by the internal audit unit to exercise oversight. The council can ask questions, probe and hold the administration accountable for any failures to perform and in the event of any financial misconduct. In order for the internal audit unit to add value it needs to be able to conduct its function in an enabling environment, without interference from the administration or the municipal council.



3.3.1.1 Audit Committee in terms of the Municipal Finance Management Act

Section 165(2)(b) of the MFMA provides that the internal audit unit must report to an audit committee. Legislation prescribes that an independent audit committee needs to be established consisting of at least three persons with appropriate experience, the majority of whom should not be in the employ of the municipality.¹¹⁷ The audit committee does not form part of the administration but in practice the head of the internal audit unit performs a secretarial function to assist the audit committee. The chairperson of the audit committee is appointed by the municipal council and reports directly to and advises the council.¹¹⁸

¹¹⁶S166(2)(a)(i)-(ix) & (b) MFMA.

¹¹⁷S166(4)(a) MFMA.

¹¹⁸S166(5) & 166(2)(a) MFMA.

The purpose of the municipality's internal audit and audit committee is to identify risks that the municipality could be exposed to and to advise the council accordingly.¹¹⁹ The MFMA provides that the audit committee and internal audit unit must advise the council on internal financial controls, the outcome of internal audits which were conducted and review annual financial statements.¹²⁰ Furthermore, both the audit committee and the internal audit unit must provide the council with an objective assessment of the financial position of the municipality, as well as its efficiency and effectiveness, risk management, performance management, effective governance and performance evaluation.¹²¹

A municipal councillor may not be a member audit committee. The audit committee must meet as often as required, but at least four times a year.¹²² The annual financial statements must be reviewed by the audit committee, who then has the task of informing the council on the adequacy and reliability of financial reporting and information.¹²³ The establishment of an audit committee may enhance the independence and effectiveness of the internal audit unit, as the municipal manager needs to ensure that all reports regarding irregularities, risk, fraud and the like are submitted to the audit committee. This in turn ought to enable the council to improve oversight. The only way in which municipal councillors can exercise and improve oversight is by receiving regular reports on the activities of the administration.

3.3.1.2 Municipal Performance Audit Committee in terms of the Municipal Systems Act and Municipal Systems Act Regulations

The legislative framework dictates that the executive committee or executive mayor must manage the development of the municipality's performance management system.¹²⁴ Section 45 of the Systems Act states that the results of performance measurement must be audited internally and by the Auditor-General. Regulation 9 of the Municipal Planning and Performance Management Regulations obliges a municipality to appoint a performance audit committee to conduct the internal audit

¹¹⁹ S166(2)(a)(i) & (b) MFMA.

¹²⁰ S166(2) & 166 (2)(a)(ii) MFMA.

¹²¹ S166(2) & 166 (2)(a)(ii) MFMA.

¹²² S166(4)(b) MFMA.

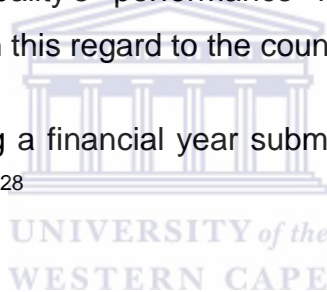
¹²³ S38(a)(ii)&166(2)(iv) MFMA.

¹²⁴ S39 Systems Act.

of the municipality's performance.¹²⁵ The Municipal Planning and Performance Management Regulations does not prohibit a councillor from being a member of the performance audit committee.¹²⁶

The Performance Regulations require municipalities to establish a separate Performance Audit Committee or extend the role of their existing Audit Committee.¹²⁷ Regulation 14 of the Municipal Performance Management Regulations states that one person on the committee must have expertise in performance management. The Municipal Planning and Performance Management Regulations provides clear guidelines on how performance audits must be conducted namely:

- 'review the quarterly reports submitted to it;
- review the municipality's performance management system and make recommendations in this regard to the council of the municipality; and
- at least twice during a financial year submit an audit report to the municipal council concerned.¹²⁸



The Municipal Performance Audit Committee is critical in improving the oversight role of the municipal council, as it reviews the performance of management and determines whether management adhered to the legislative framework governing performance management. The committee may access municipal records for the purpose of auditing, may summon anyone and may request information from anyone.¹²⁹

The Municipal Performance Audit Committee must ensure that all auditing complies with the Municipal Planning and Performance Regulations. The Performance Audit Committee verifies that the measurement mechanisms are accurate and that proper procedures are followed to evaluate and improve performance. Auditing the performance of senior management within the administration is important as the

¹²⁵ Reg14(1) Municipal Planning and Performance Regulation 2001.

¹²⁶ Reg2(a) Municipal Planning and Performance Regulation 2001.

¹²⁷ Reg14(1) Municipal Planning and Performance Regulation 2001.

¹²⁸ Reg4 (a)(i)-(iii) Municipal Planning and Performance Regulation 2001.

¹²⁹ Reg14(4)(iii) Municipal Planning and Performance Regulation 2001.

outcome of such audits may be used by the council to conduct oversight. The aim of performance auditing is to evaluate the measures implemented, which will enable the municipal council to assess whether resources are procured economically and utilised efficiently and effectively.

In the next section, the various mechanisms which the council can use to conduct oversight will be discussed.

3.4 Oversight Mechanisms

The oversight mechanisms that will be reviewed are the Annual Report, the Oversight Report, the IDP and the SDBIP, budget statements and performance evaluations. All these structures and mechanisms may be used by the council to conduct oversight.

3.4.1 Annual Report



Municipalities must annually prepare an annual report which must be submitted to the municipal council within nine months after the end of a financial year.¹³⁰ Every municipality and municipal entity must prepare an Annual Report for each financial year in accordance with the MFMA.¹³¹ The purpose of the Annual Report is:

- ‘to provide a record of the activities of the municipality or municipal entity;
- to provide a report on performance in service delivery and budget implementation;
- to provide information that supports the revenue and expenditure decisions made, and
- to promote accountability to the local community for decisions made.’¹³²

¹³⁰ S121(1) MFMA.

¹³¹ S121(1) MFMA.

¹³² S121(2)(a)–(c) MFMA.

All municipalities are obligated to report on all aspects of performance providing a true, honest and accurate account of the goals set by the municipal council and the success or failures in achieving these goals.¹³³ The Annual Report is a key performance report to the community and stakeholders and, once approved by the municipal council, must be placed on the municipal website.¹³⁴ In terms of the MFMA all municipalities must provide the following information in their Annual Report:

- ‘the annual financial statements;
- the Auditor-General’s report on the financial statements;
- any explanations that may be necessary to clarify issues in connection with the financial statements;
- an assessment by the Accounting Officer on any arrears on municipal taxes and service charges;
- particulars of any corrective action taken or to be taken in response to issues raised in the audit reports;
- any information as determined by the municipality entity;
- any recommendations of the Audit Committee, and
- any information as may be prescribed.¹³⁵

The Annual Report is relevant for oversight as it is may be used to ensure transparent governance as it reports on the performance for the year.¹³⁶ The annual report is the most important report regarding all the operations and functions of the municipality. It provides a detailed record of service delivery, income and

¹³³ National Treasury (2006) MFMA *Circular No.11* Municipal Finance Management Act No.56 of 2003.

¹³⁴ National Treasury (2006) MFMA *Circular No.11* Municipal Finance Management Act No.56 of 2003.

¹³⁵ S12(3) MFMA.

¹³⁶ National Treasury (2007/07-2012-2013) *Local Government Budget and Expenditure Review* 85.

expenditure and financial allocations. The council can use the Annual Report to determine the financial state of the municipality and whether service delivery targets were implemented within the constraints of the budget. It is relevant as an oversight and accounting mechanism as it captures all the financial transactions that pertain to service delivery on an annual basis.¹³⁷

3.4.2 Oversight Report

The council of the municipality must consider the annual report of the municipality and any entity under the municipality's sole or shared control, and by no later than two months from the date on which the annual report was tabled in the municipal council, adopt an oversight report containing the council's comments on the annual report.¹³⁸ The comments to be submitted by the council must include a statement whether the council has:

- 
- approved the annual report with or without reservations;
 - rejected the report; or
 - referred the annual report back for revision on those components that can be revised.¹³⁹

The oversight report plays a key role in ensuring that the executive and administration are held accountable for performance. In terms of the Guidelines by National Treasury the oversight committees should consist only of non-executive councillors.¹⁴⁰ An oversight committee is established for the 'detailed analysis and review of the annual report and the drafting of an oversight report that may be taken to full council for discussion'.¹⁴¹ The oversight report must be clearly distinguished from the annual report.¹⁴² The oversight report is a report of the council and follows

¹³⁷ S38(a)(ii) MFMA & National Treasury (2007/07-2012-2013) *Local Government Budget and Expenditure Review* 85.

¹³⁸ S129 MFMA.

¹³⁹ S129 MFMA.

¹⁴⁰ National Treasury MFMA *Circular No 32 of 2006*.

¹⁴¹ National Treasury MFMA *Circular No 32 of 2006*.

¹⁴² National Treasury MFMA *Circular No 32 Municipal Finance Management Act No.56 of 2003* pg 4 of 17.

consideration and consultation on the annual report by the municipal council itself.¹⁴³ After considering the annual report, the municipal council drafts the oversight report. This oversight report is important as it may be used by the council to determine whether the administration is performing in terms of the developmental objectives as determined during the Integrated Development Planning process.

The oversight report is relevant as it will give the municipal council an indication whether the resources of the organisation are used efficiently, effectively and economically.

3.5 Integrated Development Plan (IDP) and Service Delivery and Budget Implementation Plan (SDBIP)

The IDP is the strategic planning document of the municipality and outlines how the municipality aims to achieve the developmental objectives of local government, as well as to give effect to its developmental duties as set out in the Constitution. The IDP is a statement of the municipal council's vision for the long-term development of the municipality and must emphasise the municipality's most critical development and internal needs. The IDP is thus a key development instrument.

The IDP must:-

- 'link, integrate and co-ordinate plans and proposals for the development of the municipality;
- align the resources and capacity of the municipality with the plan;
- be compatible with national and provincial development plans and planning requirements binding on the municipality in terms of legislation.¹⁴⁴

The Systems Act and the Municipal Planning Regulations provide that the IDP must be integrally linked to budget projections, based on the development priorities, objectives and performance targets set by the municipality.¹⁴⁵

¹⁴³National Treasury MFMA *Circular* No 32 Municipal Finance Management Act No.56 of 2003 pg 4 of 17.

¹⁴⁴S25 (1) (a)(b)(e) Systems Act.

The Systems Act makes the executive committee or executive mayor responsible for the implementation, evaluation and monitoring of the IDP.¹⁴⁶ The MFMA requires the mayor to provide general political guidance over the budget process and the priorities that must guide the preparation of the budget.¹⁴⁷ This task includes integrating the municipality's IDP and the budget.¹⁴⁸

The accounting officer of a municipality is responsible for the implementation of the municipality's approved budget.¹⁴⁹ The MFMA provides that the municipal manager must, no later than 14 days after the approval of the annual budget; submit to the mayor a draft Service Delivery and Budget Implementation Plan (SDBIP) for the budget year together with the draft annual performance of the municipal manager and all senior managers.¹⁵⁰ The SDBIP sets out monthly or quarterly service delivery and financial targets aligned with the annual targets set in the IDP and budget.¹⁵¹ The SDBIP thus outlines the available funding for the IDP projects. It must also determine the service delivery targets and performance indicators for each quarter.¹⁵² The SDBIP and IDP need to be fully aligned. The SDBIP lays the basis for the performance agreements of the municipal manager and senior managers.¹⁵³ The IDP and SDBIP commit that the municipal manager and administration are responsible and accountable for meeting predetermined and set service delivery targets.

The SDBIP thus provides the vital link between the executive, the municipal council and the administration and facilitates the process of holding management and executive accountable for performance. The SDBIP is a critical monitoring tool that facilitates concurrent oversight over the execution of the budget. A properly formulated SDBIP will ensure that appropriate information is circulated internally and externally for the purposes of monitoring the execution of the budget, and the performance of senior managers. The National Treasury Circular provides that the

¹⁴⁵S26(h) Systems Act; Regulation 2(3)(a) Municipal Planning Regulations & Regulation 6(a) Municipal Planning Regulations.

¹⁴⁶S30 Systems Act.

¹⁴⁷S53(1)(a) MFMA.

¹⁴⁸Steytler N & De Visser J(2009) *Local Government Law of South Africa* 2ed pg11-26.

¹⁴⁹S69(1) (a) & (b) MFMA.

¹⁵⁰S69 (3)(a)(b)MFMA.

¹⁵¹National Treasury (2008) *Local Government Budgets and Expenditure Review* pg 75.

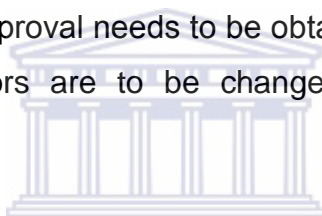
¹⁵²S53(c)(bb)MFMA.

¹⁵³National Treasury (2008) *Local Government Budgets and Expenditure Review* pg 75.

SDBIP is 'essentially a management and implementation tool which sets in-year information, such as quarterly service delivery and monthly budget targets, and links each service delivery output to the budget of the municipality'.¹⁵⁴ The SDBIP can thus be used by the council as an implementation and management tool to monitor whether the IDP is adhered to.

3.5.1 Adoption and content

The mayor is obligated to ensure that the final SDBIP is approved within 28 days after the approval of the budget.¹⁵⁵ The council delegates the authority of the drafting and implementation of the SDBIP to the municipal manager and senior managers.¹⁵⁶ Because the SDBIP is a management and implementation plan (and not a policy proposal), it is not required to be approved by the municipal council. It is, however, tabled before the municipal council and published for information.¹⁵⁷ The municipal council's approval needs to be obtained only in the event that targets and performance indicators are to be changed, following the approval of an adjustment budget.¹⁵⁸



This means that the mayor or municipal manager may not on their own accord decide to revise service delivery targets in the event of poor performance.¹⁵⁹ Thus, when performance targets are not met, the administration can be held accountable and corrective measures can be implemented.

3.5.2 Relevance for oversight

The SDBIP is critical in the implementation of oversight, as it is a tool by which the municipal council can monitor if the administration is implementing the development plan which was determined during the formulation of the IDP. It contains specific programme and project objectives, with deliverables, timeframes and budgets in which the administration must achieve specific measurable outcomes. The National

¹⁵⁴National Treasury (2005) MFMA *Circular No. 13 Municipal Finance Management Act No. 56 of 2003* pg 2.

¹⁵⁵S53(c)(ii) MFMA.

¹⁵⁶S55(j) Systems Act.

¹⁵⁷National Treasury (2005) MFMA *Circular 13 Municipal Finance Management Act No. 56 of 2003* pg 3 of 3.

¹⁵⁸National Treasury (2005) MFMA *Circular 13* pg 3 of 3.

¹⁵⁹National Treasury (2005) MFMA *Circular 13* pg 3 of 3.

Treasury Guide to Municipal Finance and Management for Councillors describes the SDBIP as a tool that gives meaning to in-year reporting based on the monthly projections of revenue and expenditure that is aligned to the annual budget approved by council.¹⁶⁰ The municipal council can use the SDBIP to conduct oversight over all aspects of the administration with the submission of the monthly, quarterly and mid-year reports.

3.5.3 Budget Statements

A municipality may incur expenditure only in terms of an approved budget. Any other expenditure amounts to unauthorised expenditure, which is defined as expenditure which was not incurred in terms of an approved budget.¹⁶¹ The budget is the central policy and governance instrument of a municipality, setting spending priorities and controlling expenditure.¹⁶²

The municipal manager must submit a monthly budget statement to the mayor and provincial treasury within ten working days at the end of each month.¹⁶³ These statements include information about the actual revenue, actual borrowing and actual expenditure per vote, the amount of any allocation received and actual expenditure against those allocations.¹⁶⁴ The budget statements explain whether any adjustments or deviations were made in terms of what was initially planned of expenditure projections by vote or the SDBIP.¹⁶⁵ Thus the budget statement gives an indication if there was a change in terms of the planned expenditure which was to be incurred for projects. With the submission of the budget statements the council ought to be fully informed if there were any deviations or amendments in terms of what was initially planned in terms of the SDBIP. The timely submission of the monthly budget statements is crucial in ensuring that revenue is spent in accordance with the SDBIP, as well as to identify financial problems which the municipality may face. The council can use the monthly budget statements to determine whether the administration is on track in terms of the developmental

¹⁶⁰National Treasury,(2006) *A Guide to Municipal Finance for Councillors* pg 77.

¹⁶¹S15 MFMA.

¹⁶²Steytler N. & De Visser J (2009) *Local Government Law of South Africa* pg 11-15.

¹⁶³S71(1) MFMA.

¹⁶⁴S71(5) & S71(1) MFMA.

¹⁶⁵S 71(5) & S71(1) MFMA.

mandate, which is determined in the formulation of the IDP and the expenditure projections by vote or the SDBIP.

Though the council does not receive the monthly budget statement, legislation does not prohibit it to request these statements in order to conduct oversight. It is submitted that neither the municipal manager or the mayor may refuse to provide the council with the budget statements as the council is legislatively mandated to conduct oversight and may use the budget statements to conduct oversight. Should the council request these monthly budget statements, they can be used for oversight. It furthermore gives the municipal council insight as to whether any adjustments were made within the planned projections and whether any corrective measures need to be implemented in the event where the administration either over spent or under spent against planned projections. The council can thus use the monthly projections as an oversight mechanism to hold the senior management accountable and it can also be used as a continuous monitoring tool with regard to the performance agreements of the senior management.

3.6 Performance Agreements

The Systems Act provides that the appointments of the municipal manager and managers directly accountable to the municipal manager are subject to an employment contract and a separate performance agreement.¹⁶⁶

The legislative framework indicates that performance agreements, as well as the employment contracts must contain cancellation clauses in the event of substandard performance or non-compliance with the employment contract or performance agreement.¹⁶⁷ These performance agreements are essential as they are designed to promote accountability and to determine if the administration is implementing the key objectives set by the council in terms of the IDP and key performance indicators. Performance agreements form an integral part of the budgeting and IDP processes. Once the budget has been approved by the municipal council, the mayor can approve the SDBIP and annual performance agreements of the municipal manager and other senior managers.

¹⁶⁶S57 (a) & (b) Systems Act.

¹⁶⁷S57(6)(b) Systems Act.

Though the municipal council appoints the municipal manager, the performance agreement is concluded between the municipal manager and the mayor. Section 56 managers enter into a performance agreement with the municipal manager.¹⁶⁸ The council obtains copies of the performance agreements of Section 56 appointments. Section 75 of the MFMA provides that the accounting officer of a municipality must place on the municipal website all performance agreements required in terms of section 57(1)(b) of the Systems Act. Though the council does not get copies of the performance agreements, it may access them once they are placed on the website.¹⁶⁹ Both the IDP and SDBIP could have the potential to assist the municipal council to determine if senior management have performed in terms of their performance agreements.

The Municipal Performance Regulations for Managers provide that payment of performance bonuses must be subject to affordability after the end of the financial year.¹⁷⁰ It furthermore provides that performance bonuses may only be awarded after an evaluation of the performance has been completed and the evaluation must have been approved by the council as reward for outstanding performance.¹⁷¹ In terms of the Regulations it is thus clear that performance bonuses are subject to the signing of performance agreements and the council should ensure that it conduct oversight over the performance of the senior managers and that the agreements are in place.

3.7 Summary

This chapter presented an overview of the structures and mechanisms to conduct oversight. Having identified the relevant legal provisions, structures and mechanisms to conduct oversight, the next chapter conducts a review on how these oversight structures and mechanisms were implemented by the Drakenstein municipality.

¹⁶⁸S57(2)(c) Systems Act.

¹⁶⁹S21B Systems Act & 75 MFMA.

¹⁷⁰Reg 8 Municipal Performance Regulations for Managers.

¹⁷¹Reg 8(1) Municipal Performance Regulations for Managers.

Chapter 4: Case Study of Drakenstein Municipality

4.1 Introduction

Drakenstein Municipality will be reviewed as a case study for the period from 2006 until 18 May 2011. This chapter provides an introduction to the role and functioning of the mayoral committee, the municipal council and oversight mechanisms within the municipal council. This chapter will review whether internal oversight was done within the municipality and how it can be improved.

4.2. Composition of the Council from 2006 to 18 May 2011

From 2006 to 18 May 2011 the Drakenstein Municipality was governed by the African National Congress¹⁷² in coalition with the Independent Democrats¹⁷³ and various smaller political parties. In the council which consisted of 61 seats, the ANC coalition majority had 33 seats in the council compared to the 28 seats of the Democratic Alliance¹⁷⁴ as the main opposition.

4.2.1. Composition and Role of the Mayoral committee during the period 2006 to 18 May 2011

During the period under review Drakenstein Municipality had a mayoral committee to assist the executive mayor. The mayoral committee consisted of 7 ANC members, 5 of the ID and 1 of the New National Party.¹⁷⁵ While the ANC was in control of the council, smaller coalition partners often sided with the DA which led to an unstable political environment, particularly in July 2007 when the DA took over the council for a period of three months, with the support of the smaller political parties.

¹⁷²Hereafter referred to as ANC.

¹⁷³Hereafter referred to as ID.

¹⁷⁴Hereafter referred to as DA.

¹⁷⁵Drakenstein Municipality Minutes Council Meeting dated 26 April 2006 item 6.1.

4.3 Committee system

4.3.1 Introduction

As mentioned in chapter two, various committees may be established to assist the executive mayor to implement and to assist the council to exercise oversight over the administration. The council may use these section 79 or section 80 committees to monitor whether the administration is delivering in terms of its developmental mandate and to make relevant recommendations, if needed. The role and functions of the various committees within the Drakenstein Municipality will be reviewed, as well as the functioning of the municipal council, and the reporting of the various committees to the council.

4.3.2 Section 80 Committees in Drakenstein

During the period under review the municipality had five directorates namely Finance, Corporate Services, Social Services and Infrastructure and Planning. At the council meeting dated 26 April 2006 the following section 80 portfolio committees and terms of reference were approved:

- 'Corporate and Strategic Services Committee;
- Financial Services Committee;
- Planning Committee;
- Social, Economic and Rural Development Committee;
- Housing and Infrastructure Committee, and
- Sport, Recreation, Youth, Culture and Community Safety Committee.¹⁷⁶

The size and representation of the section 80 committees, which were approved in 2006 comprised of the following parties:

¹⁷⁶Drakenstein Municipality Minutes Council Meeting dated 26 April 2006 item 6.1 (hereafter Municipal Council Minutes)

Corporate and Strategic Services:	4 ANC, 3 DA, 1 ID, 1 Federal Democrats,1 African Christian Democratic Party
Financial Services:	4 ANC, 3 DA, 1 ID, 1 Western Cape Community Party(WCC), 1 Freedom Front
Planning:	4 ANC, 3 DA, 3 ID
Sport, Recreation, Youth, Culture and Community Safety:	4 ANC, 3 DA, 2 ID, 1 WCC
Housing and Infrastructure	4 ANC, 4 DA, 2 ID
Social, Local Economic and Rural Development	4 ANC, 4 DA, 1 ID

Though the ANC coalition dominated the above mentioned section 80 committees, it was thus composed of councillors from various political parties in line with legislation.¹⁷⁷ The executive mayor appointed the chairpersons and deputy chairpersons of the section 80 committees.¹⁷⁸

Though the law allows for the establishment of section 79 committees, Drakenstein Municipality established only section 80 committees on 26 April 2006. At that same municipal council meeting dated 26 April 2006, the opposition proposed an amendment to the recommendation of the executive mayor and tabled a motion that section 79 instead of section 80 committees be established.¹⁷⁹ The Speaker, however, ruled that the amendment materially changed the proposal, and therefore could not be considered in terms of the Rules of Order.¹⁸⁰ Importantly, the proposal of the establishment of section 79 committee was not debated. It is submitted that the ruling party did not realise the importance section 79 committees could play in conducting oversight. The establishment of section 80 committees only reflects that the ruling party wanted a greater measure of control over the committees, without necessarily considering oversight.

¹⁷⁷Municipal Council Minutes dated 26 April 2006 item 6.1.

¹⁷⁸Drakenstein Municipality Council Agenda dated 27 July 2006.

¹⁷⁹Municipal Council Minutes dated 26 April 2006 item 6.1.

¹⁸⁰Municipal Council Minutes dated 26 April 2006 item 6.1.

The terms of reference that was approved for the Corporate and Strategic Services Committee included auditing as one of its functions.¹⁸¹ At a council meeting held on the 30th of March 2006, before the establishment of section 80 committees, the opposition enquired whether the Audit Committee submitted any reports to the council. They were referred to the relevant section in the Annual Report dealing with the Audit Committee.¹⁸² It would appear as if the ruling party did not understand the role and function of an audit committee therefor the opposition was simply referred to the provision in the annual report dealing with the Audit Committee. At the time, Drakenstein Municipality did not have an Oversight Committee consisting of councillors, but had an Audit Committee and a Performance Audit Committee consisting of members of the public.¹⁸³ Though the legal framework affords the municipality substantial discretion on how to structure its committee system, it would have been in the interest of good governance and democracy if a section 79 committee consisting of councillors had been established.

4.3.3 Public Accounts Committee

In 2007, after the floor-crossing period, the ID and the DA formed a coalition party and were in control of the council.¹⁸⁴ During this period a section 79 Standing Committee on Public Accounts was established.¹⁸⁵

At the council meeting held 30 August 2007, the ANC and the Federal Democrats indicated that they could not support the establishment of the Standing Committee on Public Accounts, as it would in their view be a duplication of the Audit Committee and portfolio committees.¹⁸⁶ The matter was put to a vote and 30 votes were cast for the establishment of the section 79 Committee on Public Accounts, while 27 councillors abstained from voting.¹⁸⁷ It is important to bear in mind that the main function of the audit committee is to advise the council on the proper financial management of the municipality¹⁸⁸ The oversight committee (standing committee on

¹⁸¹ Municipal Council Minutes dated 26 April 2006.

¹⁸² Municipal Council Minutes dated 30 March 2006.

¹⁸³ Municipal Council Minutes dated 30 March 2006.

¹⁸⁴ Municipal Council Minutes dated 30 March 2006.

¹⁸⁵ Municipal Council Minutes dated 30 March 2006.

¹⁸⁶ Municipal Council Minutes dated 30 March 2006.

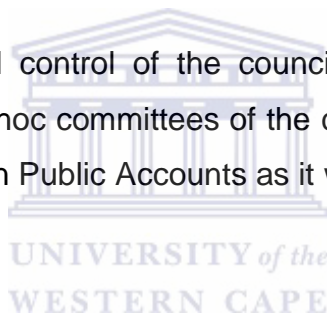
¹⁸⁷ Municipal Council Minutes dated 30 March 2006.

¹⁸⁸ Steytler & De Visser *Local Government Law of South Africa* (2009) pg 11-47.

public accounts) on the other hand is usually used for the purpose of considering the annual report and making recommendations to the council. The establishment of an oversight committee is not legislatively compulsory as in the case of the audit committee. The municipal council has a discretion whether to establish an oversight committee. The view of the opposition in this instance creates the impression that they did not view oversight as important and was not aware that it needs to be conducted by the council.

The chairperson of the oversight committee alluded to above was a member of the coalition party. It would have been advisable, if the chairperson of the oversight committee had been a member of the opposition instead of the ruling party coalition. This signifies that there was a limited understanding of the importance of oversight, more specifically the independence of a section 79 Committee on Public Accounts.

When the ANC regained control of the council, all section 79 and section 80 committees as well as ad-hoc committees of the council were disbanded as well as the Standing Committee on Public Accounts as it was viewed as a duplication of the audit committee.¹⁸⁹



4.3.4 Procedure for compilation and submission of the Oversight Report.

Both the annual and oversight report is a requirement placed on municipalities and may assist the council in conducting and improving oversight. The annual report is a key reporting instrument for municipalities whereas the oversight report on the other hand contains detailed analysis and review of the annual report and is submitted at the end of the financial year. This section discusses two aspects of the procedure for the compilation and the submission of the oversight report, in order to highlight that the process can be manipulated to achieve a specific outcome. The manner in which Drakenstein Municipality managed the submission of the oversight report reflects that outcomes were manipulated.

¹⁸⁹Minutes of a Special Meeting of the Municipal Council dated 21 September.

4.3.4.1 Executive Interference

In Drakenstein the chairperson of the Oversight Committee submits the draft Oversight Report to both the mayoral committee and the council.¹⁹⁰ The chairperson first reports to the executive mayor, who approves or rejects it or refers the Oversight Report back for revision.¹⁹¹ Thus the draft report is first submitted to the mayoral committee and only then to the municipal council.¹⁹² The mere fact that the draft oversight report is first referred to the mayoral committee and not the council is indicative that the outcome may be manipulated. The oversight report should be submitted to the council whose duty it is to conduct oversight.

4.3.4.2 Administrative Interference

Contrary to the intention behind the regulatory framework, the administration facilitates the process of compiling the Oversight Report in Drakenstein municipality.¹⁹³ The minutes of the Annual Report Oversight Committee indicate that: *“Strategic Planning Unit will send out the second draft to the executive management team, if they are satisfied, it will be sent to the Annual Report Oversight Committee for scrutiny or to make comments and add additional information.”*¹⁹⁴

The mere fact that the second draft is sent to the executive management team is an indication that the Oversight Report is not an objective report. Executive sanction is given to the report before it is sent to the Oversight Committee. It is submitted that the top management team of Drakenstein municipality should not be involved in the process, as their involvement affords them the opportunity to influence reporting.

¹⁹⁰ Chairperson Annual Report Oversight Committee to Executive Mayoral Committee 23 March 2011 and the Council 30 March 2011 dated 4 March 2011 Ref No: 9/1/2 pg 1.

¹⁹¹ Chairperson Annual Report Oversight Committee to Executive Mayoral Committee 23 March 2011 and the Council 30 March 2011 dated 4 March 2011 Ref No: 9/1/2 pg 1.

¹⁹² Chairperson Annual Report Oversight Committee to Executive Mayoral Committee 23 March 2011 and the Council 30 March 2011 dated 4 March 2011 Ref No: 9/1/2 pg 1.

¹⁹³ Minutes of the Meeting held with the Annual Report Oversight Committee dated 4 November 2009.

¹⁹⁴ Drakenstein Municipality Minutes of the Meeting held with the Annual Report Oversight Committee dated 4 November 2009 pg 6.

The above practice is not necessarily illegal though. The Structures Act makes provision that the executive mayor is entitled to receive reports from committees of the municipal council and to forward these reports with recommendations to the Council.¹⁹⁵ The Regulation of Drakenstein: Roles and Responsibilities of the Council, Political Structures, Office bearers and municipal manager provide that where the Council has appointed section 79 committees, such committees should submit their reports and recommendations via the mayoral committee.¹⁹⁶ The same Regulations make provision that, should the mayor wish to submit an amended or different recommendation to the municipal council, he or she may do so.¹⁹⁷ According to the Regulations, this process allows consultation with the mayor, while at the same time allowing the Oversight Committee the opportunity to fulfil their mandate of reporting to the council.¹⁹⁸ However the fact that the committee needs to submit its recommendations via the mayoral committee indicates that the mayoral committee may amend oversight reports before they are submitted to the council.

This practice does not enhance oversight as genuine oversight would entail that oversight reports are submitted directly to the municipal council.



4.3.4.3 Content of the Oversight Committee Report in respect of the Drakenstein Municipality Annual Report 2008/2009 and 2009/2010

In this section the shortcomings of the content of the oversight reports will be highlighted. The Drakenstein's Oversight Committee Report in respect of the Annual Report 2008/2009 and 2009/2010 reflects on the challenges facing the municipality and makes recommendations on how to overcome them.¹⁹⁹ The report of the Oversight Committee consisted of two oversight reports over the two years. An analysis of the Oversight Report reveals that it did not provide a detailed

¹⁹⁵S56(1) Structures Act.

¹⁹⁶Drakenstein Municipality Council Agenda 'Roles and Responsibilities of Council, Political Structures, Office Bearers and Municipal Manager item 3.3.7.3.1 pg 18 'dated 27 November 2008 pg 18.

¹⁹⁷Drakenstein Municipality Council Agenda 'Roles and Responsibilities of Council, Political Structures, Office Bearers and Municipal Manager 'dated 27 November 2008 pg 18.

¹⁹⁸Drakenstein Municipality Council Agenda 'Roles and Responsibilities of Council, Political Structures, Office Bearers and Municipal Manager 'dated 27 November 2008 pg 18.

¹⁹⁹Minutes of the Meeting held with the Annual Report Oversight Committee dated 4 November 2009.

analysis of the annual report as required.²⁰⁰ It did not explicitly refer to any of the issues, which the Annual Report Oversight Committee indicated as outstanding in the Annual Report.²⁰¹ For example the 2008/2009 Annual Report, which was released for public comment, did not include audited financial statements and it did not include the Auditor General's report as required by section 121(3) of the MFMA. Neither did it include particulars of any corrective action needed, or recommendations of the municipality's Audit Committee as required by section 121(3)(j) of the MFMA. The Oversight Committee of the municipal council could thus not have been in a position to provide a comprehensive Oversight Report, because of the non-availability of accountability reports. Though this had a negative effect on the municipal council exercising oversight, the mere fact that there is no record which indicates that the matter was dealt with creates the impression that it might not have been addressed. It would appear that the council conveniently overlooked a very important aspect of oversight by not reviewing substantive documentation.

Though the Auditor-General's report of 2009/2010 was attached as an annexure to the Oversight Report which was ultimately submitted to the municipal council, the Oversight Report did not make any reference to the audit or accountability concerns that were raised by the Auditor-General.²⁰²

Whenever the opposition party was not in agreement with the Oversight Report, it could only voice its discontent. An example of this is the fact that the opposition abstained from voting on the adoption of the Oversight Committee Report in respect of the Annual Report for the 2009/2010 Financial Year.²⁰³

The 2009/2010 Oversight Report lacks pertinent information. For example, the minutes of the Oversight Committee indicate that "directorates do not capture information correctly in the IDP", but no reference is made to it in the Oversight Report, nor is there any mention of this issue in the recommendations.²⁰⁴

²⁰⁰Chairperson Annual Report Oversight Committee to Executive Mayoral Committee 23 March 2011 and the Council 30 March 2011 dated 4 March 2011 Ref No: 9/1/2 pg 1-5.

²⁰¹Section 129(1)(a)-(c) MFMA.

²⁰²Drakenstein Municipality Oversight Committee Report in respect of the Annual Report 2009/2010 item 5.

²⁰³Minutes of An Ordinary Meeting of the Municipal Council dated 30 March 2011 item 7.1.

²⁰⁴Chairperson Annual Report Oversight Committee to Executive Mayoral Committee dated 23 March 2011 and the Council 30 March 2011 dated 4 March 2011 Ref No: 9/1/2 pg 1-5.

Furthermore, the Oversight Report of 2009/2010 does not make any reference to the mayoral “ward projects”, yet this was discussed in the minutes of the meeting held with the Annual Report Oversight Committee.²⁰⁵ The Oversight Report is thus not used for the intended purpose, namely to improve oversight of the municipal council over the administration. This is as a result of the lack of information in the report itself.

4.4 Functioning of the Council

4.4.1 Reporting by the Executive Mayor to the Municipal Council

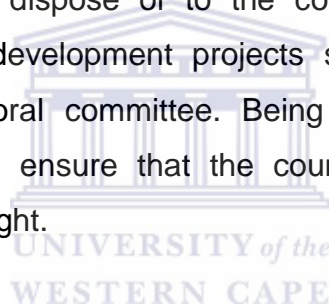
The municipal council is enabled to conduct oversight with the provision of regular reports. These reports, however, need to be interrogated. This requires that the administration provides detailed and comprehensive reports to the council, which must have a full understanding of the content of the reports. Councillors must assess the content and the implications of reports submitted to it.

The administration of Drakenstein regularly forwards reports to all councillors to be informed of the state of affairs within the municipality. However, this does not necessarily mean that all councillors understand the content of the reports. Non-executive councillors are often junior members within the municipal council and do not have sufficient influence or experience within the system to challenge administrative shortcomings.

In practice it appears as if the municipal council in Drakenstein has limited capacity to conduct oversight and conducting oversight is viewed as the role of opposition parties. This assertion is based on the fact that council minutes do not reflect that the council questions the various aspects of non-compliance, for example those referred to in the oversight report. In most instances, the municipal council merely goes through the motions of oversight by receiving reports and posing questions in relation to matters of clarification. There also appears to be no platform for constructive engagement and interrogation.

²⁰⁵Chairperson Annual Report Oversight Committee to Executive Mayoral Committee dated 23 March 2011 and the Council 30 March 2011 dated 4 March 2011 Ref No: 9/1/2 Annexure A pg 2.

As a general practice, section 56 managers attend municipal council meetings. There are no internal records of the council requesting briefings on financial reports in relation to for example the feasibility and sustainability of development projects. Normally presentations are made to the mayoral committee by consultants regarding development projects and afterwards the administration makes a formal submission to the mayoral committee, who then approves it and notifies the municipal council. An example of a development project whereby the role of the council was marginalised is the Paarl Waterfront development, which served at the mayoral committee since 30 July 2008. Presentations by consultants were only made to the mayoral committee.²⁰⁶ The council was notified of the decision to approve the development project and was provided with background information contained in the agenda. The municipal council was thus not privy to these presentations and had insufficient information to make informed decisions. Even though legislation provides that the mayoral committee only needs to forward matters, which it cannot dispose of to the council,²⁰⁷ it is recommended that presentations regarding development projects should be made concurrently to council and to the mayoral committee. Being privy to presentations outlining development projects will ensure that the council has sufficient information to conduct meaningful oversight.



4.4.2 Internal Audit Unit

As indicated in chapter three, the role of an internal audit unit is that it should assist the municipal council to implement effective oversight mechanisms through the implementation of internal control systems. Despite the fact that Drakenstein Municipality has an internal audit unit, it is suggested that it was not optimally utilised during the period 2006 to 18 May 2011.

Drakenstein's internal audit unit may only investigate upon instruction from the municipal manager.²⁰⁸ An example of this is the motion by the opposition requesting that an investigation be conducted by the internal audit unit pertaining to the purchasing of flags and international trips in relation to the 2010 World Cup project

²⁰⁶Minutes Meeting Executive Management and Mayoral Committee dated 16 September 2009 item 4: Presentation Paarl Waterfront Development.

²⁰⁷S44(b)Structures Act.

²⁰⁸Fraud Prevention Policy: Drakenstein Municipality pg 7 of 10.

as related to Drakenstein Municipality.²⁰⁹ In this instance the ruling party held that the questions raised in the motions were adequately answered by the administration.²¹⁰ The opposition requested that their objection to the above and to the fact that the motion was not put to the vote, be recorded.²¹¹ In this instance the Internal Audit Unit could only have investigated matters when instructed to so by the municipal council. It is the contention of this paper that the challenge is that the internal audit unit's involvement in investigations is determined by the ruling party.

4.4.3 Audit Committee

The Audit Committee in Drakenstein Municipality plays a critical role in promoting accountability by providing the municipal council with information on the financial management of the municipality. Drakenstein Municipality established an Audit Committee in 2007.²¹²

The council minutes reflect that performance appraisal was one of the duties of the Audit Committee.²¹³ The Audit Committee consisted of two accountants, one chartered accountant, an attorney and a community worker.²¹⁴ None of these Audit Committee members had experience or were qualified in performance auditing which led to the committee being disbanded. The minutes reflect that the members of the disbanded Audit Committee were to be replaced with committee members with expertise in performance management. However this did not materialise.²¹⁵ This seriously affected the council's ability to conduct oversight.

The municipal council approved another Audit Committee charter in October 2009.²¹⁶ The Performance Audit Committee was not active during the 2009/2010 financial year as the chairperson of the Performance Audit Committee was only appointed in March 2010 and the Performance Audit Committee held its first meeting on 19 April 2010. Bearing in mind that the Audit Committee needs to report directly to the municipal council, it is prudent to note that in Drakenstein Municipality

²⁰⁹ Municipal Council Minutes dated 25 October 2007 pg 8.

²¹⁰ Municipal Council Minutes dated Thursday, 25 October 2007 pg 8.

²¹¹ Municipal Council Minutes dated 25 October 2007 pg 8.

²¹² Municipal Council Minutes dated 13 December 2007 item 7.8.

²¹³ Municipal Council Minutes dated 30 March 2006 item 7.8.

²¹⁴ Municipal Council Minutes dated 30 March 2006 item 7.6.

²¹⁵ Municipal Council Minutes dated 27 February 2007 item 7.2.

²¹⁶ Municipal Council Minutes dated 29 October 2009 item 7.5.

provision was made that the executive mayor or her nominee attends the Audit Committee meetings on invitation of the Audit Committee in order to ensure direct communication on issues raised.²¹⁷ The presence of the mayor should enhance matters relating to oversight; however, in practice it could also be a way of influencing oversight reporting of the Audit Committee or intimidating the Audit Committee.

4.5 Performance Management

4.5.1 Practice of the Council engagement with performance agreement

This section highlights shortcomings in how the performance management system in Drakenstein Municipality was implemented during the 2009/2012 financial year. The tabling of the performance agreements at the council needs to be done simultaneously or prior to the public publication of the performance agreements in terms of section 53(3)(b) of the MFMA so as to enable the council to conduct oversight. However, this does not always happen. For example, there is no record of municipal council minutes, indicating that performance agreements of the municipal manager and the executive directors had been submitted to the mayoral committee and the municipal council for the 2009/2010 financial year for notification purposes.

It is important to note that in reviewing the municipality's performance management system, the performance audit committee must focus on economy, efficiency, effectiveness and impact in so far as the key performance indicators and performance targets set by the municipality are concerned.²¹⁸ The mere fact that no record exist that performance agreements were submitted to the mayoral committee and the council is tantamount to non-compliance with governance and transparency principles. This in turn had an impact on oversight, as the municipal council was not informed of what was contained in the performance agreements in terms of section 57(1) and (2) of the Systems Act.

²¹⁷ Municipal Council Minutes dated 26 January 2011 pg 48 item 7.4.

²¹⁸ Reg 14 (4)(b) Municipal Planning and Performance Management Regulations.

It appears as if the council was deliberately impeded in its oversight function, because no record exists, which indicates that this matter was addressed by the municipal council or the mayoral committee. There is also no record that performance management agreements of executive directors were signed before the regulatory deadline in terms of section 57 of the Systems Act. This implies that there were no agreed upon indicators against which the council could measure whether the municipal manager and executive directors were indeed performing. This in itself hampers the municipal council to exercise effective oversight. Though Drakenstein Municipality has a municipal website since 2006, the performance agreements were not posted on the municipal website.²¹⁹ It is important to note that the municipal council appoints the executive directors in terms of section 57 of the Systems Act and as such ought to be informed of the performance agreements. However, there is no evidence which indicates that the performance agreements of the municipal manager and the executive directors for the 2009/2010 financial year had been tabled at the mayoral committee and the council for notification purposes.²²⁰

The failure to submit performance agreements reflects that the administration could fabricate that they were implementing the developmental mandate as determined in the IDP process, even when there were no performance agreements against which this could be measured. In the audit conducted by the Auditor-General this incident of non-compliance was detected.²²¹ The non-compliance with section 45 as highlighted in the Auditor- General report clearly indicates that the performance contracts were not compiled and approved at the beginning of the financial year.²²² The municipal council minutes do not indicate whether the municipal council commented on the matter and if so, how it was addressed. The municipal council was thus not in a position to exercise effective oversight as to whether the municipal manager and executive directors were performing.

²¹⁹ S21B (a)-(2) Systems Act "...each municipality must establish its own official website...if affordable, place on that official website information required ...in terms of this Act or MFMA, if not affordable, it must provide the information in terms of legislation referred to in subsection (1)(b) for display on an organised website sponsored or facilitated by National Treasury."

²²⁰ S 57(2)(a) Systems Act "...performance agreements must be concluded within reasonable time and thereafter within one month after the beginning of the financial year."

²²¹ Drakenstein Municipality Auditor's report of the Auditor-General to the Western Cape Provincial Legislature and the Council on Drakenstein Municipality dated 30 November 2010 'Internal Auditing of Performance Measurement' pg 112 item 17.

²²² Drakenstein Municipality Auditor's report of the Auditor-General to the Western Cape Provincial Legislature and the Council on Drakenstein Municipality dated 30 November 2010 'Internal Auditing of Performance Measurement' pg 112 item 17.

4.5.2 Drakenstein's implementation of PMS

Section 45 of the Systems Act provides that performance must be audited. Failure to implement section 45 of the Systems Act may have adverse consequences for Drakenstein Municipality, including the application of unrealistic targets for performance management systems, thus compromising performance reward systems. As explained in chapter three, the performance management system can be used by the municipal council to conduct oversight to determine if the performance targets set by the municipality are economic, efficient and effective and if it has the desired impact in terms of services rendered to the community.

As discussed above, the municipality failed to comply with section 57(1)(b) of the Systems Act because the council did not conclude performance agreements with the municipal manager and section 56 appointees for the 2005/06 and 2006/07 financial years within the prescribed time frame. The performance agreements were not published on the website as determined by the Systems Act, reflecting that there was deviation from the regulatory framework.

In its report the Auditor General provided that the municipality failed to develop and implement mechanisms, systems and processes for auditing the results of performance measurement as part of its internal audit processes required in terms of section 45 of the Systems Act.²²³ The report furthermore highlights that the Performance Audit Committee did not review the quarterly reports of the internal auditors.²²⁴ The Auditor -General reported that planned and reported performance targets were not specific, in that they failed to identify the nature and required level of performance. Also, that the required performance was not measurable and not time bound, as it did not specify the deadline for delivery.²²⁵

The internal auditors failed to submit quarterly reports to the Auditor-General to prove that performance information was audited.²²⁶ There was thus no record of legislative compliance and reliability in measurement of indicators. This implies that

²²³Chapter 4: Audited Financial Statements and Related Information pg 112.

²²⁴Chapter 4: Audited Financial Statements and Related Information pg 112.

²²⁵Chapter 4: Audited Financial Statements and Related Information pg 112.

²²⁶Drakenstein Municipality Auditor-General Report 2009.

there was no submission of quarterly reports by senior management to the municipal manager and Audit Committee.

For two consecutive years the Auditor-General reported that the performance management system at Drakenstein Municipality was not in place.²²⁷ This had detrimental consequences for the manner in which the Drakenstein municipal council implemented oversight. The municipal council was put in a position where it could not detect under-performance and implement corrective action. Most importantly with the performance management system not in place, the municipal council could not effectively conduct oversight. There was a lack of political will to interrogate the fact that performance management systems were not in place. Importantly, the municipal council did not address the non-compliance issues that were raised by the Auditor-General. Thus the municipal council failed to exercise oversight. Based on the municipality's non-compliance with section 45 of the Systems Act one can conclude that the municipality created a false impression that senior officials had met the required standards, as set out in the performance agreements.



4.5.3 Political Culture: Mayoral Committee in Practice

Paradza et al. argues that the interaction of political parties in a municipality influences the way in which councillors can perform their roles.²²⁸ Politics set the tone and influence relations between the various interest groups.²²⁹ By the same token political systems allow for multi-party agreements to ensure majority governance and provide some political stability. However, practice in the Drakenstein Municipality shows that it becomes detrimental to the developmental objectives of local government. In the Drakenstein Municipality, like in many other municipalities, party political factionalism and the subsequent creation of new political alliances and elites contributed to a progressive deterioration.²³⁰ Thus, whenever the mayoral committee of Drakenstein decided on a particular course of action, the decision was carried even if the decision was rejected by the opposition

²²⁷ Paarl Post Weakness or irregularities in report on Municipality 2008-06-19.

²²⁸ Paradza G, Mokwena L & Richards R (2010) 'Assessing the role of municipal councillors in service delivery at local government level in South Africa' pg 65.

²²⁹ Paradza G, Mokwena L & Richards R (2010) 'Assessing the role of municipal councillors in service delivery at local government level in South Africa' pg 65.

²³⁰ COGTA (2010) 'State of Local Government in South Africa' pg 10.

in the council. Even though party members may have wished to question decisions, they were not in a position to do so because non-executive councillors did not form part of the mayoral committee and were effectively silenced. Besides party political caucus meetings, there was no platform within the council where non-executive councillors could interrogate issues or questioned decisions. The decisions that were made by the mayoral committee were endorsed and the opposition parties could only voice their discontent. with regard to decisions taken.

The legislative framework makes provision that only issues which cannot be disposed of by the mayoral committee in terms of its delegated authority are referred to the municipal council.²³¹ The municipal council thus decides how much the mayoral committee may dispose of. It would appear that within the Drakenstein executive mayoral committee system and because of the political majority, the council only 'rubberstamps' mayoral committee decisions. An example of this would be the adoption of the revised Performance Management Policy in June 2008, where the smaller parties were not in favour of the revised policy and as such objected to the amended policy.²³² In as much as the adoption of this reflects the practice of democracy, it was against the wishes of smaller parties. Instead of this issue being debated what happened was that the matter was immediately put to a vote without the objections of the smaller parties being considered and the proposal of the executive mayor and mayoral committee was accepted.²³³ Failure of the council to take cognisance of the objections to performance management practices had detrimental consequences for oversight because it reflected that objections had little impact on ruling party will.

4.5.4 Summary

This chapter examined the law and practice surrounding oversight by the council over the municipal executive and the municipal administration. This was done by examining how Drakenstein municipality deviated from the legislative prescripts for local government. It provided an analysis of the functioning of the municipal council

²³¹ S44(1)(b) Structures Act.

²³² Municipal Council Minutes dated 19 June 2008 item 7.1.

²³³ Municipal Council Minutes dated 19 June 2008 item 7.1.

and the implementation of oversight by the council. An analysis was provided on the emergence of oversight committees.

This chapter cites examples of the disregard of the principles of oversight with the establishment of Section 79 and Section 80 committees, the compilation of the Oversight report, the establishment of the Audit committee and the development of a performance management system. While this may be reflective of a disregard to the principles of oversight, it also reflects that the legislative prescripts are open to manipulation and interpretation. The fact that municipal governance systems and processes can be manipulated through political expediency is not conducive to good governance.



Chapter 5: Summary and Recommendations

5.1. Introduction

This chapter aims to present the summary of the findings and the conclusions that can be derived from the analysis.

5.2 Summary of findings

In Chapter 2 the paper dealt with the legislative framework of local government as it relates to the systems and structures of municipalities. It reflected on the lack of separation of powers in terms of the Constitution and the choice of executive structures available to municipalities. This chapter highlighted that a lack of separation of powers within the council is a challenge to good governance and service delivery, because if the municipality fails to design appropriate internal oversight systems it may lead to the abuse of power, mal administration, fraud and corruption.

Chapter 3 examined the structures and mechanisms for oversight which may be used within the municipality such as the IDP, SDBIP and performance agreements. It reflects on the role and functions of political structures such as section 79 and section 80 committees as it relates to oversight, as well as the internal structures such as the internal audit unit and the oversight report.

It concluded that the municipal council needs to ensure that adequate use is made of the internal audit unit and the audit committee.

This chapter concluded that, by utilising the annual report and monthly budget statements and other mechanisms, the municipal council can improve oversight, to determine whether the municipality was afforded value in terms of the budget that was spent and the viability and sustainability of projects.

5.3 Case Study of the Drakenstein Municipality.

Chapter 4 focused on oversight in the Drakenstein municipality. It located the institution within the timeframe from 2006 to May 2011 and critically analysed the broader oversight mechanisms and practice of the Drakenstein Municipality. It used the executive mayoral system as a point of reference and in this regard it focuses on the choice of section 79 and section 80 committees. It also analysed the various oversight mechanisms in place at this institution including the internal audit unit, the audit committee and uses documents and records from the institution to critically analyse the operation in terms of content and compliance with the MFMA and Systems Act. It was held that members from the ruling party dominated these committees because the ruling party determined the number of councillors from each respective party who would serve on these committees. This case study illustrated that though there were various committees which the municipal council might have established to assist it in conducting oversight, these were only established to ensure legislative compliance. The municipal councils failed to make adequate use of the mechanisms and structures afforded to it in terms of the legislative framework to ensure that oversight was effectively conducted.

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The Drakenstein's Oversight Committee Report was a clear example of the failure to do oversight in the municipality in that it did not provide a detailed analysis of the Annual Report nor did it include audited financial statements or the Auditor General's report. It furthermore did not include particulars of any corrective action needed, or recommendations of the municipality's Audit Committee. Due to the non-availability of accountability reports the Oversight Committee of the municipal council was not in a position to provide a comprehensive Oversight Report. This had a negative effect on the municipal council exercising oversight. The Oversight Report did not make any reference to performance highlights, even though it is a legislative requirement that performance must be audited. The council was not placed in a position to determine if performance targets set were achieved. The Oversight Report lacked critical information which was needed in order for the council to conduct effective oversight.

It can be concluded from this case study of Drakenstein municipality that both political and administrative systems require vast improvement as it relates to the establishment of systems and practices on how to conduct oversight.

5.4 Recommendations

The scope of this research paper is too limited to effectively deal with all the aspects of maintaining and sustaining effective and efficient oversight and accountability systems, but it may add value to the body of knowledge surrounding oversight and accountability within local government. More specifically the research paper aims to support and improve oversight in the Drakenstein Municipality. Thus the following recommendations are made:

5.4.1 Review of the Executive mayoral System

The executive mayoral committee system must be reviewed by National Government. As indicated in chapter four, this system allows for a monopolisation of administrative processes as the mayoral committee exercises direct control over the administration with the drafting and sanctioning of policies, by-laws and determining the developmental objectives of the municipality. Instead, what is required is a system in which the municipal council actively participates in the drafting and approving of policies. Several recommendations regarding the review of the executive mayoral system is made by the South African Local Government Association.²³⁴ SALGA recommends that in a fully separated municipality, the section 80 committees and the Mayoral Committee is overseen by the section 79 committees who will then be tasked with the political oversight function.²³⁵ It is furthermore recommended that the section 79 oversight committee be able to interrogate the actions and decisions of the mayoral committee, demand explanations and make recommendations to the council on matters considered by it.²³⁶ These recommendations will enhance oversight, curb the abuse of power and enhance democracy.

²³⁴ Hereafter referred to as SALGA.

²³⁵ SALGA (2012) *Separation of Functions A Differentiated Model of Accountability and Oversight* pg 22.

²³⁶ SALGA (2012) *Separation of Functions A Differentiated Model of Accountability and Oversight* pg 22.

5.4.2 Oversight Committees

Municipalities should be compelled by legislation to ensure the establishment of multi-party oversight committees.

The critical difference between section 79 and section 80 committees are that section 79 committees comprise of councillors from various political parties whereas section 80 committees only comprise of councillors from the ruling party. It is recommended that portfolio committees comprise of Section 79 committees instead of Section 80 committees. A member of the ruling party may still chair the committee or alternatively the position of chairperson should rotate. This would advance democracy and curb the abuse of power.

It is recommended that various oversight committees with relevant expertise comprising of non-executive councillors in terms of section 79 are elected. The aim of these oversight committees should be to monitor and evaluate the respective directorates to ensure that projects listed in the IDP are successfully implemented. This analysis will then be submitted to the respective portfolio holder and the municipal council. These oversight committees assist the council with conducting continuous oversight. The municipality must develop a framework and indicators on how oversight will be conducted which is submitted to the council for approval. These oversight committees should submit reports with the monthly budget statement. Such information will provide the council with a comprehensive picture of administrative performance.

5.4.2.1 Internal Audit

It is recommended that the internal audit unit be tasked with the analysis of the annual report and monthly budget statements and that the analysis of these reports be submitted via the audit committee to the municipal council. Oversight will be greatly enhanced if the audit committee submits regular monthly reports to the municipal council regarding all aspects of financial and legislative compliance.

5.4.2.2 Annual Report and oversight report

Bearing in mind that the oversight report is based on the Annual Report, it is important that all components of the Annual Report should be made available and discussed at the oversight committee before it is submitted to the council.

A committee consisting of councillors should draft the oversight report, without any assistance from the administration. The only role the administration must play in the process is to provide relevant information.

6. Capacity for oversight

It is recommended that municipal councils conduct an analysis of councillors from the various political parties who possess the relevant skills and expertise to analyse and interrogate reports. These councillors may then be elected to serve on oversight committees. Political parties should ensure that candidates receive proper training prior to being nominated. Political parties should ensure that they educate potential councillors before nomination and hold councillors accountable to a code of ethics; which is rigorously enforced at a party political level. A minimum standard of qualification should be required in order to be nominated. Once elected, they would have to undergo continuous training to equip them to conduct oversight.

6.1 Research assistance for councillors

It is recommended that municipal councils address the lack of capacity to conduct oversight, by ensuring that there is a directorate within the administration to assist councillors with research and conducting oversight. If competent and qualified researchers are appointed, the council could be kept abreast with information and policy changes that have an impact on governance. These researchers will provide valuable information and can assist councillors on request and may also research matters on request by the various portfolio and oversight committees. If councillors are provided with research material pertaining to the various structures and mechanisms which can be implemented to conduct oversight, they will be well

informed and can formulate informed opinions when submissions are made by the administration. Furthermore, the skills of councillors can be significantly developed and improved with the provision of research material. This research directorate should be located within the Speaker's office and should be charged with the mandate to assist oversight and portfolio committees. The directorate should administratively report the municipal manager but be independent. Councillors should liaise directly with the researchers who will be the link to the administration. The researchers should assist the councillors with the following:

- analysis of the annual report;
- analysing of financial statements including monthly budget reports which are submitted to the council; and
- analysing of the IDP and SDBIP and how it interlinks with the performance agreements;

From the discussion above, it is clear that even though the legislative framework does not explicitly state how oversight should be implemented, the legal framework makes adequate provision for it to be implemented in all aspects of municipal governance. Oversight is critical for good governance and can only be improved within an environment where quality, ethical leadership is provided and where administrative appointments are made based on academic qualifications and skill rather than political affiliation. In this regard the council needs to exercise its oversight function in order to ensure that the senior management within the municipality is committed to carrying out its responsibilities.

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