

UNIVERSITY OF THE WESTERN CAPE



FACULTY OF LAW

Research paper submitted in partial fulfilment of the requirements of an LLM in
Law, State and Multi-level Government

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Mode: LLM (Structured)
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Research Paper Topic: The utility of King IV Principles on Corporate Governance in improving the state of accountability in local government.

Keywords: Ethical leadership, Local Government, King IV Report, Service Delivery, Constitution, Good Governance, Accountability, Corporate Governance, Municipal Council, Councillors

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GENERAL DECLARATION

I, Jennica Jasmine Beukes, do hereby declare that ‘The Utility of King IV Principles on Corporate Governance in Improving the State of Accountability in Local Government’ is my original work and has not been submitted for any degree or examination in any university or institution of higher learning. While I have relied on numerous sources and materials to develop the main argument presented in this thesis, all the materials and sources used have been duly and properly acknowledged.

Signed.....

Date.....

Supervisor: Dr Tinashe Chigwata

Signature.....

Date.....



DEDICATION

I dedicate this humble work to my beloved parents, my partner, my eldest brother and his wife, my closest cousin, the rest of my family and the youth in my community. May this achievement be a testimony that one is not limited by his or her personal circumstances but should instead be motivated, every day, to rise above it.



Acknowledgements

First and foremost, I want to thank God for giving me the wisdom, good health, ability, opportunity, and perseverance to complete this thesis. Without God's blessings, this achievement would not have been possible. I am indebted and thankful to Prof Jaap de Visser of the Dullah Omar Institute for extending financial support to me in 2018, without which I would not have been able to complete my LLM. I also would like to express my gratitude to my supervisor, Dr. Tinashe Chigwata; thank you for your unfailing guidance, advice, constructive critique and encouragement throughout my LLM. Finally, I thank my beloved parents, my partner, my eldest brother and his wife and the rest of my family for their inexorable support and encouragement during the process of writing this thesis.



TABLE OF ABBREVIATIONS

AGSA	Auditor-General South Africa
CoGTA	Cooperative Governance and Traditional Affairs
ESKOM	Electricity Supply Commission
GRAP	Generally Recognised Accounting Practice
ICCPR	International Covenant on Civil and Political Rights
MFMA	Local Government: Municipal Finance Management Act 56 of 2003
MPACs	Municipal public accounts committees
MSA	Local Government: Municipal Systems Act 32 of 2000
NGO	Non-governmental organisation



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CHAPTER 1: INTRODUCTION

1 PROBLEM STATEMENT

Local government is often described as the cornerstone of democratic government and it is the level or sphere of government that is physically closest to the people.¹ As a result, local government tends to have the most interaction with the citizens compared to other governments organised at higher levels. In many countries, local government renders essential public services that are needed for both human survival and economic development.² These include the supply of water and electricity, refuse removal, the provision of sanitation and housing, the regulation of land use, and the provision of health services. In South Africa, the Constitution of the Republic of South Africa, 1996 (Constitution) does not only position local government at the centre of public service delivery, but also has broader developmental duties. For example, section 152 of the Constitution requires local government to:

*‘(a) to provide democratic and accountable government for local communities;
(b) to ensure the provision of services to communities in a sustainable manner;
(c) to promote social and economic development;
(d) to promote a safe and healthy environment and;
(e) to encourage the involvement of communities and community organisations in the matters of local government.’³*

Section 153(a) of the Constitution further provides that *‘[a] municipality must structure and manage its administration and budgeting and planning process to give priority to the basic needs of the community and to promote the social and economic development of the community’*.⁴ Thus, it is clear that local government in South Africa, currently constituted by 257 municipalities, has a broader demanding developmental role that goes beyond mere public service delivery.

Despite municipalities being constitutionally tasked with performing the abovementioned functions and developmental duties, their performance does not meet the constitutional, legislative, and policy intentions. The Minister of Cooperative Governance and Traditional Affairs (CoGTA) announced, during the 2018 CoGTA budget vote, that 87 municipalities were

¹ Bekink B *Principles of South African Local Government Law* (2006) 16.

² Bekink (2006) 16.

³ Constitution of the Republic of South Africa, 1996 s152(1)(a)–(e).

⁴ Constitution s153(a).

identified as dysfunctional, and required urgent intervention.⁵ He also revealed that only 7 per cent of the country's 257 municipalities are functioning adequately, while 31 per cent of the municipalities are dysfunctional of which 11 of these municipalities are already under provincial administration in terms of section 139 of the Constitution.⁶ The Minister called for an aggressive turnaround of the country's municipalities in order to cure the inability of municipalities to deliver services and to prevent any further negative impacts on economic development.

The level of municipal debt, which is growing monthly across all municipal categories, is another indicator of the poor state of local government in South Africa. The Applied Constitutional Studies Laboratory established that municipal debt to the Electricity Supply Commission (ESKOM) has reached R17 billion, amounting to 20 per cent of ESKOM's total annual revenue.⁷ Due to failures by municipalities to pay Eskom for bulk electricity supply, it is estimated that 7.5 million people in South Africa are facing possible electricity cuts.⁸ After examining the overall debt of local government, the National Treasury established that municipalities owed its creditors R50.9 billion as of 31 December 2018.⁹ The National Treasury attributed this growing culture of non-payment for bulk services provided by municipalities to a leadership problem within municipalities, in particular, the leadership's failure to execute its legal mandate.¹⁰ This increase in debt has already resulted in certain municipalities becoming bankrupt and therefore, dysfunctional.¹¹ Thus, the municipal leadership's failure to execute its mandate to pay creditors timeously has placed many municipalities in vulnerable positions. In fact, the Auditor General of South Africa (AGSA) revealed that 31 per cent of municipalities have disclosed in their financial statements that they 'might not be able to continue operating' because of their poor revenue and budget management.¹²

⁵ Cooperative Governance and Traditional Affairs 'CoGTA Minister calls for the turnaround of all distressed municipalities and to go back to basics' available at <http://www.cogta.gov.za/?p=4490> (accessed 31 July 2018).

⁶ Dentlinger L 'Only 7% of SA's 257 municipalities well-functioning' available at <https://ewn.co.za/2018/05/15/only-7-of-sa-s-257-municipalities-well-functioning> (accessed 9 October 2018).

⁷ Constitutional Applied Studies Laboratory 'Public Finance Watch Research Brief: Issue 2' (2018) 1.

⁸ Constitutional Applied Studies Laboratory (2018) 1.

⁹ National Treasury *Local Government Revenue and Expenditure: First Quarter Local Government Section 71 Report for the Period: 1 July 2018-30 September 2018* (2018) 1.

¹⁰ National Treasury *Consolidated General Report on the Local Government Audit Outcomes* (2018) 1.

¹¹ Cooperative Governance and Traditional Affairs 'Minister Mkhize emphasis the role of local government in the energy landscape' available at <http://www.cogta.gov.za/?p=3365> (accessed 6 August 2018).

¹² Auditor General of South Africa *Consolidated General Report on the Local Government Audit Outcomes* (2017) 20.

Where municipalities are not delivering services, or not delivering quality services, the result has often been that members of the community take their frustrations to the streets in protest. Service delivery protests, most of which are violent, are thus a reflection of community frustration with these failures.¹³ The data provided for the years 2003 to 2018 illustrate that while the system of local government has been established with genuine intentions to positively affect democracy and to bring about social and economic delivery to the people, the system has not lived up to its expectations.¹⁴ It demonstrates that the well-developed institutions and legislation are not matched by responsive service delivery.

The AGSA observed that the main reason why the state of local government is deteriorating is that accountability continues to fail at this lowest level of government.¹⁵ The AGSA found that 2016/17 audit outcomes for local government regressed mainly due to a failure to uphold the principle of accountability. This is partially why, for instance, irregular expenditure increased from R16 212 billion for the year 2015/16 to R28 376 billion for the year 2016/17.¹⁶ Communities and the businesses that municipalities serve feel the impact of accountability failures in municipalities directly. It further places pressure on the country's overall finances, as the national and provincial government are forced to continuously rescue municipalities to keep them afloat.¹⁷

The poor state of accountability in local government suggests that interventions that have been adopted thus far are either not working or are insufficient. This further confirms that, despite efforts being made to improve the local sphere of government, municipalities continue to be hindered by challenges including that the formal municipal accountability system is ineffective and inaccessible to many citizens.¹⁸ Thus, there is a need to explore alternative interventions or complementary interventions to ensure that local government delivers on its mandate. The

¹³ Cooperative Governance and Traditional Affairs 'Back to basics: serving our communities better!' available at http://www.cogta.gov.za/cgta_2016/wp-content/uploads/2016/06/The-Back-to-Basics-Approach-Concept-Document.pdf (accessed 6 August 2018).

¹⁴ Buccus I & Mathekg R 'The Challenge of Local Government Structures in South Africa: Securing Community Participation' 11 available at http://www.clearcontent.co.za/storage/files/prev_Challenge_of_local_govt_structures_in_SA.pdf (accessed 6 August 2018).

¹⁵ Auditor General of South Africa (2017) 13.

¹⁶ Auditor General of South Africa (2017) 16.

¹⁷ Auditor General of South Africa (2017) 20.

¹⁸ Cooperative Governance & Traditional Affairs *State of Local Government in South Africa: Overview Report* (2009) 11

question is whether the implementation of the King IV Report on Corporate Governance (2016) will make a difference or change the state of accountability for the better. The Report is built on corporate governance principles such as ethical and effective leadership and corporate citizenship that have been traditionally applied in the private sector.¹⁹

2 SIGNIFICANCE OF THE PROBLEM

The poor state of service delivery and governance challenges in local government can be attributed partially to accountability weaknesses in local government. These challenges manifest themselves in widespread corruption and resource wastage, which impedes municipalities from delivering essential quality services. Where a municipality fails to deliver public services, it results in a breach of its constitutional mandate but more importantly it directly affects the lives of people. Lives are lost, diseases proliferate, and living conditions deteriorate especially for marginalised members of society. The business community is not spared either as it depends on some municipal services for its operations. Violent service delivery protests are a common and frequent response to service delivery failures which protests threaten human life as well as both public and private property. It is therefore clear that if the poor state of accountability is not addressed, a local government capable of discharging its developmental duties that is envisaged in the constitutional, legal and policy framework, will never be realised.

3 RESEARCH QUESTION

The above discussion has demonstrated that local government has not been living up to its potential and fulfilling its constitutional and developmental mandate. Service delivery continues to fail in most municipalities with adverse effects on citizens' well-being and economic development. The discussion demonstrated that this failure can be attributed to a lack of accountability at local level. The question is what is the utility of the King IV Principles on Corporate Governance to improve the state of accountability in South African municipalities? This is the overarching question that this paper seeks to answer, by *inter alia*, discussing how the principles can be incorporated in local government.

¹⁹ Institute of Directors Southern Africa *King IV: Report on Corporate Governance for South Africa* (2016) 4.

4 ARGUMENT

It is argued that service delivery failures, which are common challenges for South African municipalities, are unlikely to be resolved unless accountability is restored. This argument is informed by the fact that decentralisation is likely to deliver when local governments are accountable. Thus, while it is important to equip local government with a variety of powers, responsibilities, and resources, accountability will ultimately indicate whether local government will live up to its potential or not. It is further contended that the King IV Principles can be effective in arresting some of the accountability failures in municipalities if correctly incorporated at the local government level.

5 LITERATURE SURVEY

Local government is often known as the level of government that has the most significant contact with citizens.²⁰ In most countries, it is the level or sphere of government that has the ‘first point of contact between an individual and a governmental institution’.²¹ In South Africa, local government, its objectives, powers and responsibilities enjoy constitutional recognition. In this regard, Thornhill argues that municipalities should exercise these constitutional powers in a manner that maximises their impact on social development and economic growth and to democratise development.²² Thus, local government is responsible for making decisions about the provision of services for the betterment of communities, including the marginalised members of society.²³ These decisions directly impact on the livelihoods of individual citizens and the operations of organisations and private businesses.²⁴ It is thus important that municipalities are held accountable for such decision-making as a failure to do so could negatively impact socio-economic growth and service delivery in general.

According to Napier, the expectation in democratic systems is that ward or constituency representatives and political parties, as well as constitutional and statutory structures, should, through a variety of mechanisms, including periodic elections, reports, and public participation

²⁰ Chigwata T & De Visser J ‘Local Government in the 2013 Constitution of Zimbabwe: Defining the Boundaries of Local Autonomy’ (2017) 10(1) *Hague Journal on the Rule of Law* 153.

²¹ Thornhill C ‘The Transformed Local Government System: Some Lessons’ (2008) 43 *Journal of Public Administration* 492.

²² Thornhill (2008) 497.

²³ Masehela K, Mamogale M & Makhado R ‘Should Municipalities Account to the Legislature? Issues of Parliamentary Oversight and Service Delivery’ (2012) 47(1) *Journal of Public Administration* 345.

²⁴ Masehela K, Mamogale M & Makhado R (2012) 344.

processes, provide explanations or justifications for their actions or inaction to the public.²⁵ Accountability, at local level, can thus be defined as the duty to explain or answer for one's conduct and being subjected to a constant monitoring process either by national and provincial governments, independent institutions, civil society, or communities at large.²⁶ Accountability within local government is crucial to ensure the good stewardship of taxpayers' money when municipalities exercise their powers and perform their duties.

One of the constitutional mandates of local government is to 'ensure the provision of services to communities in a sustainable manner'.²⁷ Steytler and De Visser caution that the '*unwise, inefficient, negligent or corrupt use of municipal funds seriously undermine a municipality's ability to meet its constitutional mandates*'.²⁸ Effective controls over expenditure to ensure that municipal officials account for their actions or lack thereof are therefore necessary to ensure that public funds are spent appropriately and sustainably. Reddy and Sikhakane identify accountability tools, such as expenditure controls, as important tools for ensuring that public needs, legitimate demands, and entitlements are adequately addressed.²⁹

While vast literature on the importance of accountability in local government and how it can be promoted exist, no one has analysed the utility of the King IV Principles in improving the poor state of accountability in local government in South Africa. Reddy and Sikhakane wrote on the types of accountability and elaborated on how each of these concepts can be strengthened in municipalities as well as its benefits.³⁰ Reddy and Sikhakane further distinguish between hierarchical accountability, professional accountability, legal accountability, and political accountability.³¹ Vyas-Doorgapersad and Ababio wrote on the illusion of ethics for good local governance in South Africa but restricted their argument to the Code of Conduct for Public Servants as issued by the Public Service Commission.³²

²⁵ Napier C 'Accountability: An Assessment at the Local Government Sphere' (2007) 42(4) *Journal of Public Administration* 378.

²⁶ Napier (2007) 376.

²⁷ Constitution s152(1)(b).

²⁸ Steytler & De Visser *Local Government Law of South Africa* (2017) 14-5.

²⁹ Sikhakane B & Reddy P 'Public Accountability at the Local Government Sphere in South Africa' (2011) 4 *African Journal of Public Affairs* 86.

³⁰ Sikhakane & Reddy (2011) 86-89.

³¹ Sikhakane & Reddy (2011) 86-89.

³² See Vyas-Doorgapersad S & Ababio E 'The Illusion of Ethics for Good Local Governance in South Africa' (2010) 6 *The Journal for Transdisciplinary Research in Southern Africa* 411-427.

Some scholars have written on the importance of ethical leadership in local government. De Visser, for instance, argue that the Code of Conduct for Councillors is a tool that is available to hold councillors accountable and thereby improving the status of accountability in local government.³³ He further claims that compliance with this Code would ensure that councillors act with integrity and it would indeed remedy the lack of responsiveness on the part of councillors towards their citizens and minimise corruption and maladministration involving councillors.³⁴ De Visser's contribution was however limited to a discussion of only one accountability mechanism namely, the Code of Conduct for Councillors. The analysis in the problem statement, however, suggests that the existing accountability mechanisms including codes of conduct are inefficient to render the desired outcome.

Other scholars focus on how effective leadership can improve the state of accountability in local government. Hartley,³⁵ Marsh,³⁶ and Hickey³⁷ opine that literature on management competencies of leaders have been dominated by discussions of generic frameworks but have not addressed the competencies needed for managing in a politically-led organisation where issues of accessibility of services, participation in decision-making, and greater responsiveness are imperative. These scholars focus on competencies such as intellectual and management competencies to ensure effective leadership in municipalities. Several scholars agree that the existing legislation on local government pertaining to the minimum competencies of municipal leaders adequately provides for effective leadership to be maintained in municipalities.³⁸ The legislation, however, pays very little attention, if any, to the competency requirements for councillors to effectively do their job. It, therefore, becomes clear that despite the vast literature on accountability at the local level in South Africa, there remains many gaps that require attention. Even more so given that the state of accountability in municipalities remains poor. This paper, therefore, explores the utility of the King IV Report in improving the status of accountability. It is the first of its kind to undertake such an exploration.

³³ De Visser 'Local Accountability: Enforcing the Code of Conduct for Councillors' (2006) 1.

³⁴ De Visser (2006) 2.

³⁵ See, Hartley J & Lawton A *Leading Communities: Competencies for Effective Community Leadership* (1998) 54–54.

³⁶ See, Marsh M 'Leadership and Leading: Leadership Challenges' (2006) 36(4) *American Review of Public Administration* 382–384.

³⁷ See, Hickey G, Iles P & Macaulay M 'Mapping the Ethics Network in English Local Government' (2007) 19(1) *Viesoji Politika ir Administravimas* 7–15.

³⁸ Sibanda M 'Control, Ethics and Accountability in the Financial Management Performance of Eastern Cape Municipalities' (2017) 52(2) *Journal of Public Administration* 313; Oberholzer C & Diedericks J 'Municipal Leadership Collectively Responsible' (2013) 38(5) *Journal of Public Administration* 42.

6 CHAPTER OUTLINE

This study comprises of five chapters. Chapter 1 is the introductory chapter which provides the problem statement, the significance of the research problem, research question, argument, literature survey, chapter outline and the methodology of the study. Chapter 2 discusses why accountability is important in local government and how it can be promoted. Chapter 3 examines the state of local government in South Africa particularly focusing on accountability mechanisms both in legislation and in practice. Chapter 4 analyses the selected King IV Principles and discusses how these principles can be operationalised in municipalities to improve accountability. Chapter 5 concludes with major findings and conclusions.

7 METHODOLOGY

This is a desktop-based study which will make use of both primary and secondary sources. The primary sources include the Constitution, various Acts of Parliament, by-laws, proclamations, regulations, bills, and statutes as well as case law. The secondary sources include the *White Paper on Local Government* of 1998, textbooks, chapters in books, journal articles, internet articles, newspaper articles, and conference speeches and press statements relevant to King IV, accountability, and local government in general.

The logo of the University of the Western Cape, featuring a stylized classical building with columns and a pediment, with the text "UNIVERSITY of the WESTERN CAPE" below it.

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CHAPTER 2: ACCOUNTABILITY IN LOCAL GOVERNMENT

1 INTRODUCTION

In paragraph 1 of chapter 1, it was pointed out that local government in South Africa is failing to meet its service delivery and development responsibilities. The AGSA attributes this failure partially to accountability which continues to fail within municipalities.³⁹ This chapter, therefore, seeks to understand why accountability is important for local government to function effectively. This entails establishing the expected outcomes of a functioning system of local government. If accountability is central to an effective functioning of local government, what are some of the ways in which it can be promoted in a decentralised system of government? The chapter briefly discusses the potential of decentralisation before examining the importance of accountability at a local level. Vertical and horizontal mechanisms of promoting accountability are then explored followed by the conclusion.

2 WHY DO GOVERNMENTS DECENTRALISE?

Decentralisation can be defined as the transfer of authority and responsibility for public functions from the central government to subordinate or quasi-independent government, organisations or the private sector.⁴⁰ It is generally categorised into devolution, deconcentration, delegation, and privatisation.⁴¹ Within the first three categories, decentralisation can result in the diffusion of economic, fiscal, administrative and/or political powers or authority. Several countries, especially in the developing world⁴², have adopted decentralisation programmes to realise the benefits linked to democracy, development, and peace, among others.⁴³ This section will briefly discuss the potential of decentralisation to show what local governments can achieve if they are effective.

2.1 Decentralisation and democracy

The argument that democracy and decentralisation are inseparable was raised over a century ago.⁴⁴ Therefore, the argument raised here is not a new phenomenon.

³⁹ Auditor General of South Africa (2017) 13.

⁴⁰ Litvack J, Seddon J & Others *Decentralization Briefing Notes* (1999) 2.

⁴¹ See De Visser (2005) 17 for a further discussion on decentralisation.

⁴² Over the past two decades, 80 per cent of all developing and transitioning countries have undertaken some form of decentralisation. See Crawford G & Hartmann C *Decentralisation in Africa: A Pathway out of Poverty and Conflict?* (2008) 7.

⁴³ See De Visser (2005), Litvack et al (1999), Heller (2001) and Shah & Thompson (2004).

⁴⁴ Widmalm S *Decentralisation, Corruption and Social Capital: From India to the West* (2008) 36.

Decentralisation has the ability to promote political participation, democratic pluralism, accountability, and responsive governance.⁴⁵ With regard to political participation, Article 25 of the International Covenant on Civil and Political Rights (ICCPR) provides that: *'every citizen shall have the right and opportunity ... to take part in the conduct of public affairs, directly or through freely chosen representatives'*.⁴⁶ As decentralisation brings the government closer to the people, political participation is strengthened at the grass-roots. In this way, decentralisation has the potential to establish an environment that is conducive for the establishment of new political spaces at a local level to strengthening citizenship. Citizenship is strengthened as members of the public are transformed from passive subjects into politically aware and educated citizens capable of engaging effectively with authorities at a local level.⁴⁷ In addition, citizenship is strengthened as it allows for the poor and marginalised who are not often well represented at the national level to influence decision-making at local level. Therefore, decentralisation deepens democracy. Democratic participation is therefore strengthened through decentralisation as it increases the voice of ordinary people in the affairs of a country.⁴⁸ Shah and Thompson, however, note that where civic participation is lacking in local government, there is a greater risk that interest groups and local elites may capture local governments and direct resources towards their own priorities rather than towards the provision of public services and poverty alleviation.⁴⁹ Therefore decentralisation also has the potential, through citizen participation, to strengthen accountability and minimise corruption at local level. However, decentralisation can fail where elected representatives do not engage in meaningful participation with interested stakeholders but merely adopt a check-box approach to participation, in order to make certain decisions whilst complying with procedural requirements. In this case, accountability is weakened and decentralisation is likely to fail. Therefore, decentralisation has the potential to deepen democracy where there is real political participation by the citizens, including marginalised members of the society.⁵⁰

⁴⁵ See De Visser (2005), Shah (2000), Litvack et al (1999).

⁴⁶ International Covenant on Civil and Political Rights, 1966 (1976) 999 UNTS 171 art 25.

⁴⁷ Siddie A *Decentralisation in South African Local Government: A Critical Evaluation* (unpublished PHD thesis, University of Western Cape, 2011) 43.

⁴⁸ World Bank (2001) 108.

⁴⁹ Shah & Thompson (2004) 23.

⁵⁰ United Cities and Local Governments 'Key issues for local governments: Decentralisation' available at http://www.uclg-decentralisation.org/sites/default/files/tripticdcal_eng_last.pdf (accessed 11 June 2019).

2.2 Decentralisation and development

Decentralisation has the potential to promote development in many ways. According to Weimar 'decentralisation is viewed as part of building a more viable, balanced state which can deliver goods and services and contribute to wealth creation or poverty reduction'.⁵¹ Government can thus become more responsive when it is in closer proximity to its taxpayers. This further enhances allocative efficiency by matching the provision of public goods and services with citizens' preferences which may not be possible under centralised governance.⁵² Ojendal and Dellnas posit that where the state is positioned locally through decentralisation, it is made increasingly available.⁵³ In this way, it becomes progressively exposed to demands made by broad segments of its population.⁵⁴ Decentralisation thus increase responsiveness to citizens' unique demands. Through matching resources according to the needs of diverse groups at local level, local interests and preferences are closely reflected in the delivery of public services.⁵⁵ Therefore, by bringing government closer to the people, decentralisation provides a structural and institutionalised avenue through which the local community can exert influence in the formulation and implementation of developmental policies and the determination of their development in general.⁵⁶

2.3 Decentralisation and peace

As decentralisation refers to the process where powers and responsibilities are transferred for public functions from the central government to subordinate or quasi-independent government⁵⁷, decentralisation consequently leads to power sharing at vertical levels. Therefore, if what is contested is control over territory, decentralisation may contribute to peace-building. In this way, decentralisation presents members of a particular community with the opportunity to govern themselves through locally elected representatives. The consequence of this is that decentralisation accommodate diversity where local communities have the

⁵¹ Weimar B *Decentralization of the African State- or State Building Through Local Governance- A Paradox? Challenges to Governance and Decentralization in Mozambique*. Report on the Conference 'Bringing the State Back in: The New Roles and Responsibilities of the 21st Century State' (2009) 47.

⁵² Gatti R & Fisman R 'Decentralization and Corruption: Evidence Across Countries' (2002) 83 *Journal of Public Economics* 326.

⁵³ Ojendal J & Dellnas A *The Imperative of Good Local Governance: Challenges for the Next Decade of Decentralization* (2013) 14.

⁵⁴ Ojendal & Dellnas (2013) 14.

⁵⁵ Kauzya J 'Decentralization: Prospects for Peace, Democracy and Development' (2005) DPADM Discussion Paper 5.

⁵⁶ World Bank 'Political decentralization' available at <http://www.worldbank.org/publicsector/decentralization/political.htm#2> (accessed 21 February 2019).

⁵⁷ Litvack et al (1999) 2.

opportunity to self-govern.⁵⁸ Further, where peace already exists, decentralisation has the potential to sustain such peace. This is done through shared governance, where the concern is not who has power over whom, but rather how such powers can be exercised for the well-being of all people.⁵⁹ In countries where the state had failed, such as Cambodia, Rwanda, Sudan, Iraq and Somalia, or where it was about to fail such as Mozambique, Indonesia and Uganda, decentralisation and the reconstruction of local government constituted part of the state-building effort.⁶⁰ In this way, decentralisation was aimed at restoring peace within these countries. Ojendal and Dellnas, however, warn that decentralisation reforms, although in principle inclusive, if designed poorly can systematically exclude certain groups such as ethnic minorities or the poor; or result in the exclusion of territorial lines.⁶¹ Such cases of exclusion are naturally a driver of conflict and may thus hamper peace-building (as was the case in Yugoslavia).⁶² It can be concluded that in order for decentralisation to have the effect of promoting and sustaining peace, its processes and local government must be such as to promote inclusive representation of all groups.⁶³ Therefore, where decentralisation reforms are properly designed it may work to consolidate and stabilise states.

3 THE IMPORTANCE OF ACCOUNTABILITY IN LOCAL GOVERNMENT

The previous section established that decentralisation has potential on many fronts. International literature, however, cautions that it is not any decentralisation programme that is likely to reap benefits usually associated with decentralisation. Manor, for instance, identifies three essential ingredients that must be present for decentralisation to be successful. These are (a) substantial powers must be devolved to elected bodies at lower levels; (b) substantial resources must be devolved to lower levels and; and (c) accountability mechanisms must be developed to ensure that local government is accountable.⁶⁴ Substantial powers must be devolved to elected bodies at lower levels so that local officials are able to make essential decisions on issues that affects the lives of people at the local level.⁶⁵ Substantial resources are necessary given that what local government can achieve partially depends on the resources they

⁵⁸ Crawford & Hartmann (2008) 12.

⁵⁹ Kauzya (2005) DPADM Discussion Paper 12.

⁶⁰ Ojendal & Dellnas (2013) 14.

⁶¹ Ojendal & Dellnas (2013) 15.

⁶² Ojendal & Dellnas (2013) 15.

⁶³ Swiss Agency for Development and Cooperation SDC *SDC Policy Democratisation, Decentralisation and Local Governance* (2016) 21.

⁶⁴ Manor J 'Understanding Decentralization: Key Issues' in Ojendal J & Dellnas A (ed) *The Imperative of Good Local Governance: Challenges for the Next Decade of Decentralization* (2013) 32.

⁶⁵ Manor (2013) 32.

have available.⁶⁶ The last condition, an accountable local government, is the most important ingredient for the purpose of this study. This chapter will, therefore, be limited to a discussion of the accountability ingredient.

According to the World Bank, accountability is one of the cornerstones of good governance.⁶⁷ Accountability entails the development of objective standards that are utilised to evaluate the ongoing effectiveness of public bodies and public officials.⁶⁸ These objective standards thus serve as a means by which municipalities and its leadership can be held responsible for their action (or inaction) when utilising public resources and authority.⁶⁹ Cronje and Smit provide that accountability means that the responsible public servants will be expected to account for outcomes, positive or negative, for that portion of the work directly under their control.⁷⁰ Parker and Gould further provide that accountability is also associated with the concept of honesty and ethics.⁷¹ Furthermore, Koppell provides that accountability has five different dimensions namely, transparency, liability, controllability, responsibility, and responsiveness.⁷² Accountability mechanisms that are developed should, therefore, be aimed at ensuring that these elements are given effect to.

The need for accountability mechanisms can be best described through Bentham's principle: '*the more strictly we are watched, the better we behave*'.⁷³ With regard to accountability in local government, Ribot and Agrawal argue that if powers are decentralised to actors who are not accountable to their constituents or who are accountable only to themselves, then decentralisation is not likely to accomplish its stated aims.⁷⁴ Their argument is supported by Crawford who conducted a study to determine the extent to which decentralisation has

⁶⁶ Manor (2013) 32.

⁶⁷ World Bank 'Accountability in governance' available at <https://siteresources.worldbank.org/PUBLICSECTORANDGOVERNANCE/Resources/AccountabilityGovernance.pdf> (accessed 5 February 2019).

⁶⁸ Kathyola J & Oluwatoyin J *Decentralisation in Commonwealth Africa: Experiences from Botswana, Cameroon, Ghana, Mozambique and Tanzania* (2011) 9.

⁶⁹ Kathyola & Oluwatoyin (2011) 9.

⁷⁰ Cronje G & Smit P *Management Principles: A Contemporary Edition for Africa* 3 ed (2002) 192.

⁷¹ Parker & Gould (2000) in Randa F & Tangke P (eds) 'Developing Accountability Model of Local Government Organization: From Managerial Accountability to Public Accountability (Naturalistic Study on Local Government Tana Toraja) 211 (2015) *Social and Behavioural Science* 666.

⁷² Koppell J 'Pathologies of Accountability: ICANN and the Challenge of Multiple Accountabilities Disorder' (2005) 65(1) *Public Administration Review* 95.

⁷³ Lindberg S 'What Accountability Pressures Do MPs in Africa Face and How Do They Respond? Evidence from Ghana' (2010) 48(1) *Journal of Modern African Studies* 117.

⁷⁴ Ribot J & Agrawal A 'Accountability in Decentralization: A Framework with South Asia and West Africa' (1999) 33 *Journal of Developing Areas* 478.

contributed to democratic deepening in Ghana. He established that decentralisation did not live up to its potential.⁷⁵ This was due to various shortcomings identified at a local level which undermined and weakened both the accountability of elected representatives to the public and the local administrative officials to elected representatives.⁷⁶

When local government is not accountable, several ills can threaten the realisation of the benefits associated with decentralisation. These include corruption, fruitless and wasteful expenditure, and maladministration. Accountability, among other key ingredients, is, therefore, a *sine qua non* for local government to be effective in any country. There are two main types of accountability: horizontal or vertical.

Horizontal accountability refers to the restraint of state institutions by other state institutions which might, therefore, include executive, legislative and judicial oversight of agencies.⁷⁷ Ferguson defines horizontal accountability as an umbrella-like approach to policy the government's obligations such as development, policy development, and general public management practices.⁷⁸ He further provides that horizontal accountability can be experienced across all levels of government (across boundaries between units of a single department or agency or among multiple departments or agencies).⁷⁹ Oduor states that horizontal accountability includes activities such as an in-depth scrutiny by government institutions on misuse of public resources by other public agencies and branches of government.⁸⁰ On a local level, horizontal accountability is embodied in the checks and balances internal to local government. Horizontal accountability can be promoted through various ways including, internal controls, oversight committees, performance agreements, codes of conduct and complaint and response mechanisms.

Vertical accountability reflects the hierachial relationships and levels of access and control and includes non-state actors and the public.⁸¹ Vertical accountability involves mechanisms

⁷⁵ Crawford G 'Making Democracy a Reality? The Politics of Decentralisation and the Limits to Local Democracy in Ghana' 2009 *Journal of Contemporary African Studies* 75.

⁷⁶ Crawford (2009) 75.

⁷⁷ Caparini M 'Controlling and overseeing intelligence services in democratic states' in Born H & Caparini M (eds) *Democratic Control of Intelligence Services: Containing Rogue Elephants* (2007) 24.

⁷⁸ Ferguson D 'Understanding Horizontal Governance' (2016) Research Brief available at https://www.academia.edu/3993409/WHAT_IS_HORIZONTAL_GOVERNANCE 1 (accessed 22 January 2019).

⁷⁹ Ferguson D 'Understanding Horizontal Governance' (2016) Research Brief 1.

⁸⁰ Oduor C *Institutionalising Social Accountability in Devolved Governance* (2015) 45.

⁸¹ Caparini (2007) 24.

through which citizens, mass media, and civil society seek to enforce standards of good performance on local officials.⁸² Relly views vertical accountability as the non-state approach.⁸³ At a local level, vertical accountability, therefore, deals with external sources or actors that hold local officials accountable from outside the institution of local government.⁸⁴ Diamond and Morlino provides that this form of accountability is identified as ‘vertical’ because it runs upward from citizens to leaders.⁸⁵ Vertical accountability is promoted through various mechanisms such as reporting, auditing, democratic elections, intergovernmental supervision, mass media, and civil society. The chapter will discuss selected mechanisms of fostering accountability at both horizontal and vertical level.

3.1 Reporting and auditing

Reporting is essential to ensure that local government accounts for how it spends public funds, how it performs its functions to give effect to its objectives and, to determine whether good governance practices are upheld in municipalities. According to Nickson, in most countries, the duty to report on local government performance and to audit municipalities is entrusted to an independent body.⁸⁶ In other smaller countries, the Ministry of the Interior or the Ministry of Finance exercise this function.⁸⁷ Municipalities must report to the relevant institution either quarterly or annually. From these reports, these institutions conduct an audit to accurately reflect the municipality’s status and to provide interested stakeholders with reliable information as to enable them to scrutinise the conduct of the municipality’s affairs and to exercise their collective powers to reward, control or remove those to whom that conduct has been confided.⁸⁸ In this way, the audit reports serve as a mechanism to enforce accountability as it seeks to evaluate municipal performance against the municipal budget.⁸⁹

⁸² World Bank ‘Accountability in governance’ available at https://www.google.com/url?url=https://siteresources.worldbank.org/PUBLICSECTORANDGOVERNANCE/Re-sources/AccountabilityGovernance.pdf&rct=j&frm=1&q=&esrc=s&sa=U&ved=0ahUKEwi_q-n99YDgAhVDUxoKHT-AroQFggcMAI&usg=AOvVaw2DlmLSYQ8jsNtbPMeDau0X (accessed 22 January 2019).

⁸³ Relly E ‘Examining a Model of Vertical Accountability: A Cross-National Study of the Influence of Information Access on the Control of Corruption’ (2012) 29 *Government Information Quarterly* 336.

⁸⁴ Relly (2012) 336.

⁸⁵ Diamond L & Morlino L ‘The Quality of Democracy: An Overview’ (2004) 15(4) *Journal of Democracy* 25.

⁸⁶ Nickson A ‘Where is Local Government Going in Latin America?’ in Issues’ in Ojendal J & Dellnas A (ed) *The Imperative of Good Local Governance: Challenges for the Next Decade of Decentralization* (2013) 135.

⁸⁷ Nickson (2013) 135.

⁸⁸ See, *Caparo Industries Plc v Dickman* [1990] 2 AC 650.

⁸⁹ Institute of Chartered Accountants *Audit Quality Fundamentals-Audit Purpose* (2006) 9.

In terms of auditing, the role of an independent auditing body is particularly attractive as it is better positioned to give a transparent, honest, and accurate opinion of the state of local government. Auditing is an essential component for accountability as it provides an independent view of the extent to which local government officials are faithfully, efficiently and effectively executing their functions.⁹⁰ Therefore, from these audit opinions or reports, interested stakeholders such as higher tiers of government, civic organisations and ordinary people can hold local officials accountable. Audit reports further equip higher tiers of government to determine the kind of intervention mechanisms required to rectify problems. Audit reports can also provide ordinary people and civil society with proof to analyse whether local government has been performing adequately. In doing so, independent auditing bodies perform an important function as it provides certainty and paints a clear picture of how municipalities are performing against the legislation and policy targets. The effectiveness of such independent bodies in strengthening accountability may be diluted where the institution is not independent or adequately resourced. It is, therefore, important that they remain free from any personal or external impairments in order to maintain an independent attitude and appearance.⁹¹ The impact of an independent auditor on accountability is also dependent on the cooperation of the municipalities itself. An independent auditing body's impact on accountability is thus also likely to be minimal where municipalities do not comply with their duty to submit financial reports timeously or if they submit poor financial statements.

3.2 Intergovernmental supervision

In most countries with decentralised systems of government, higher levels of government are often tasked with supervising the affairs of local government.⁹² Supervision refers to higher spheres of government that provide regulatory frameworks within which local authorities are to exercise their powers and perform their functions. Supervision of local government activities is essential to ensure that local government operates efficiently and effectively. Supervision by higher spheres of government over local government is carried out in several ways, including regulation, monitoring and intervention.⁹³ Litvack *et al* provide that without central monitoring, there can be no assurance that functions of national importance are performed adequately once

⁹⁰ Stipak B & O'Toole D 'Performance Auditing in Local Government: Current Use and Future Prospects' (1990) 22(2) *State and Local Government Review* 51.

⁹¹ Stipak & O'Toole (1990) 53.

⁹² Steytler N 'Introduction' in Steytler N (eds) *The Place and Role of Local Government in Federal Systems* (2005) 7

⁹³ Steytler (2005) 7.

they have been decentralised. Monitoring refers to the establishment of mechanisms aimed at continuously evaluating the general performance of local government.⁹⁴ It is undertaken to determine whether there is compliance with the relevant legislation and policies that apply to local government by evaluating municipal practices, its internal controls and by investigating allegations of mismanagement.⁹⁵ Machingauta argues that the power to monitor the performance and compliance of local government must be coupled with the power to cause an investigation into suspected acts of misconduct and non-compliance.⁹⁶ Manor states that when elected bodies at local level do not perform as required, other tiers of government should be empowered to intervene in the local affairs of a municipality.⁹⁷ The act of intervention means to involve oneself in a situation, especially for the purpose of influencing or altering a situation.⁹⁸ In this context, it refers to the instance where higher tiers of government involve itself in the affairs of local government in order to correct identified shortcomings.⁹⁹ Intervention can be effective in ensuring that those responsible for creating problems in local government are held accountable. The nature and scope of intervention powers, however, vary from country to country. It is however important that the necessary procedural requirements and oversight mechanisms complement such intervention powers to prevent the abuse of such powers.

3.3 Codes of conduct

Codes of conduct are an important mechanism of not only promoting horizontal accountability but also for vertical accountability. Codes of conduct contain both open guidelines about desirable behaviour and closed guidelines pointing at prohibited behaviour.¹⁰⁰ In a municipality, the codes of conduct can be used to hold elected officials and staff to account by measuring their conduct against these provisions and enforcing sanctions where necessary. Embedding a code of conduct can contribute to the emergence of ethical leaders and staff and thus responsible corporate citizens. This is supported by a study conducted by Somers who

⁹⁴ Machingauta N 'Supervision of Local Government' in De Visser J, Steytler N & Machingauta N (eds) *Local Government Reform in Zimbabwe: A Policy Dialogue* (2010) 142.

⁹⁵ Matkin D 'Before There was Enron, There was Orange County: A Study of Local Government Financial-Oversight Committees' (2010) 30(3) *Public, Budgeting and Finance* 30.

⁹⁶ Machingauta (2010) 143.

⁹⁷ Manor (2013) 44.

⁹⁸ Machingauta (2010) 144.

⁹⁹ Machingauta (2010) 144.

¹⁰⁰ Nijhof A, Cludts S & Laan A 'Measuring the implementation of codes of conduct: An assessment method based on a process approach of the responsible organisation' available at <https://core.ac.uk/download/pdf/11457954.pdf> (accessed 8 February 2019).

found that there is a greater sense of ethics and integrity in organisations which had a code of conduct.¹⁰¹ The effectiveness of the code of conduct is however dependent on its continuous implementation. Ayee points out that codes of conduct are not effective on their own as those who follow them are not the corrupt ones.¹⁰² Instead what is required is for the code of conduct to be *enforced* against those who are in breach of such code. This requires positive action by other officials who are mandated with the function to ensure that there is compliance with the code of conduct. The codes of conduct should also be publicised to make it easier for the public, media, and civil society to play their watchdog function. The role of the relevant body in ensuring that the codes are enforced is important because where codes of conduct are not effectively and constantly implemented against wrongdoers in local government, accountability is weakened and unlawful and unethical conduct is instead tolerated and allowed to go unchecked. This often results in the deepening of problems usually associated with decentralisation.

3.4 Internal oversight structures

Municipal oversight is of critical importance in order to ensure that public funds are allocated effectively.¹⁰³ Internal oversight structures refer to those structures within a municipality that are required to carry out, *inter alia*, internal audit, evaluative and investigative functions. In addition to this, these structures also provide support to the council in order to improve the governance of a municipality. In most countries, there is often a requirement for each council to establish some structures, known as committees, which are responsible for carrying out delegated functions such as exercising oversight on behalf of the council.¹⁰⁴ Chen and Wu posit that committees offer three main benefits: knowledge specialisation, task division efficiency and accountability.¹⁰⁵ Such Committees can promote accountability in municipalities by ensuring that the executive and the administration account for how they exercise powers and functions. This is achieved by increasing supervision over them using committee structures.¹⁰⁶ The nature of committees established by the council, however, varies from country to country.

¹⁰¹ Somers M 'Ethical Codes and Organizational Context: A Study of the Relationship Between Codes of Conduct, Employee Behaviour and Organizational Values' (2001) 30(2) *Journal of Business Ethics* 185–195.

¹⁰² Ayee J 'Corruption and the Future of the Public Service in Africa' (2002) 35 *Law and Politics in Africa* 21.

¹⁰³ Honadle B, Costa J & Cigler B *Fiscal Health for Local Government: An Introduction to Concepts, Practical Analysis and Strategies* (2003) 134.

¹⁰⁴ Humes S *The Structure of Local Governments Throughout the World: A Comparative Introduction* (1959) 95.

¹⁰⁵ Chen K & Wu A 'The Structure of Board Committees' (2016) *Working Paper* 17-032 at 7.

¹⁰⁶ Matkin (2010) 29.

For example, committees can vary in size, status and power.¹⁰⁷ Humes distinguishes between *ad hoc* committees and standing committees. The former refers to committees that are established to perform a specific function and their existence terminates upon the completion of that task. The latter, on the other hand, is a continuing body although its membership might change.¹⁰⁸ The most common committees are oversight committees (portfolio or otherwise) municipal public account committees, and internal audit committees. In fact, survey research demonstrates that nearly half of all local governments have oversight committees such as an audit committee.¹⁰⁹ In most cases, these committees report directly to the council. Committees are an important accountability mechanism as they aid the municipal council to exercise its oversight function. A robust debate between the council and administration is essential to hold the executive and administration accountable. However, to do so council requires information. Committees may be viewed as the eyes and ears of a council, equipped with the skills and expertise to detect any questionable activities in the execution of a municipality's function. Therefore, through these committees, the council is furnished with information that empowers it to engage in meaningful interactions with the executive and senior management. Given the important role they play, it is important that these committees are equipped with the necessary resources to enable them to perform their functions effectively. Matkin further provides that the effectiveness of a committee itself is likely to depend on the independence of their membership, the expertise of their membership and the functions that they will perform.¹¹⁰

3.5 Democratic elections

Representative democracy means that citizens are sovereigns that delegate their functions to the agents, that is the politicians.¹¹¹ Therefore, the key to making modern representative democracies work is through delegation. The citizens delegate the authority to make important political decisions to a large and differentiated class of politicians who then act in their name and place.¹¹² This is in line with the general argument that 'in a democracy, the question of government ought to be decided by the governed' because the authority to exercise political

¹⁰⁷ Humes (1959) 96.

¹⁰⁸ Humes (1959) 94–95.

¹⁰⁹ See West J & Berman E 'Increasing Urban Government Financial Accountability: The Role of Multiple Stakeholders' (2002) 14(4) *Journal of Public Budgeting, Accounting and Financial Management* 497–534.

¹¹⁰ Matkin (2010) 31.

¹¹¹ Giannetti D & Benoit K *Intra-Party Politics and Coalition Governments* (2009) 25.

¹¹² Giannetti & Benoit (2009) 26.

power resides ultimately in the people.¹¹³ One way of exercising this decision is through democratic elections.

In most countries, democratic elections are the main vertical accountability tool available to citizens to hold local representatives accountable for their performance. Grant provides that electoral choice is a key mechanism of accountability such that public office may be forfeited if citizens trust and support in a particular political party is lost.¹¹⁴ It should, however, be noted that in order for elections to be deemed as an effective accountability mechanism, they must be regular, free and fair. It is only when elections are regular, free and fair that the true election choice of the local community is likely to be reflected.¹¹⁵

Moreover, elections are a crucial mechanism which enables citizens and other political parties to work together to establish accountability. According to Strøm and Müller, competitive political parties are without a doubt one of the most important organisations on which democratic accountability rests.¹¹⁶ This is because it is the political parties that must ensure accountability in all stages of delegation (from voters to their elected representatives (the legislators), from the legislators to the head of the executive branch, from the head of the executive branch to the heads of different executive departments and from the heads of different executive departments to their respective civil servants).¹¹⁷

However, accountability may be weakened and citizens, in turn, may be poorly served by politicians when political parties fail to achieve what they were voted into office for. For example, citizens may not be able to keep their agents honest and diligent once they have assumed office and instead those politicians may engage in unethical activities. However, in democracies such as South Africa there are other accountability mechanisms that serve as checks on political parties behaviour such as the courts and the media to mention a few.¹¹⁸

3.6 Reporting back mechanisms

Reporting back mechanisms can also be effective in promoting accountability at a local level. These are mechanisms that are aimed at establishing lines of communication between

¹¹³ O'Flynn I *Deliberative Democracy and Divided Societies* (2006) 34.

¹¹⁴ Grant U *Local Government Decision-Making: Citizen Participation and Local Government Accountability* (2002) 15.

¹¹⁵ Grant (2002) 15.

¹¹⁶ Strøm K & Müller W 'Parliamentary democracy, agency problems and party politics' in Gianetti D & Benoit K (2006) 25.

¹¹⁷ Strøm & Müller (2006) 26.

¹¹⁸ Strøm & Müller (2006) 27.

interested stakeholders and local authorities. Reporting back mechanisms include for example mass meetings or the publishing of information in newspapers and on the internet, among other platforms. According to Manor, many countries have included in systems of decentralisation a requirement that councillors have regular mass meetings with the local community.¹¹⁹ In certain countries, these meetings allow for decisions to be taken. However, in other countries, participants are merely permitted to discuss local issues, question councillors, and select beneficiaries of government programmes.¹²⁰ During such meetings, local citizens can be informed of how the municipality is addressing their concerns and ways in which the implementation of local programmes can be improved. The information provided to citizens during these meetings is critical as it enables members of the community to hold councillors accountable when these decisions are not implemented. While mass meetings may have the potential to strengthen downward accountability, Manor states that this mechanism often does not do much to ensure downward accountability.¹²¹ Mohan and Stokke support this contention and state that in many countries, development organisations and governments are finding that participation programmes do not result in sustainable, influential forms of voice expressions that impact on the incentives facing public officials and thus the outcomes of the governance process.¹²² In such instances, accountability is weakened. Thus, it is important to ensure that where such report back mechanisms are used, that they are meaningful.

3.7 The role of civil society and media

Civil society can play a fundamental role in holding local government accountable. Shoki defines civil society as ‘*a range of organised groupings that occupy the public space between the state and individual citizens*’.¹²³ While civil society organisations are regulated, they are neither formed, nor controlled by the state or the private sector.¹²⁴ In this way, civil society organisations maintain operational independence.¹²⁵ Civil society organisations can question issues such as poor service delivery, corruption, compliance with legislation and ethical

¹¹⁹ Manor (2013) 36.

¹²⁰ Manor (2013) 37.

¹²¹ Manor (2013) 37.

¹²² Mohan G & Stokke K ‘Participatory Development and Empowerment: The Dangers of Localism’ (2000) 21(2) *Third World Quarterly* 254.

¹²³ Chakaipa S ‘Local Government Institutions and Elections’ in De Visser J, Steytler N & Machinguata N (eds) *Local Government Reform in Zimbabwe: A Policy Dialogue* (2010) 57.

¹²⁴ Chatiza K ‘Can Local Government Steer Socio-Economic Transformation in Zimbabwe?’ in De Visser J, Steytler N & Machinguata N (eds) *Local Government Reform in Zimbabwe: A Policy Dialogue* (2010) 17.

¹²⁵ Chatiza (2010) 17.

standards.¹²⁶ Further, civil society organisations can uncover potential abuses or misuse of public funds, thus, providing an independent mechanism of holding municipalities accountable. Civil society organisations can produce valuable information and mobilise the local community to apply pressure and call on local officials to account for their actions or non-action. Similarly, the media performs a similar function in society. The media's core function is to disseminate accurate, unbiased and reliable information pertaining to the affairs of a municipality, whether good or bad; to enable stakeholders to formulate their own opinions and to hold a municipality accountable on this basis.¹²⁷ The media is thus a mechanism that gives a voice to different segments of society. At the same time, the media acts not only as a watchdog by observing political processes at a local level and then reporting thereon, but it is also a means through which local representatives can communicate and interact with interested stakeholders.¹²⁸ Grant and Devas state that local media is an important mechanism for spreading political news and public information but they often do not have the required resources to undertake investigative journalism,¹²⁹ thus making them less effective to ensure accountability. It should further be noted that while civil society organisations and the media have the potential to strengthen vertical accountability in local government, they may not live up to their potential if they are not independent or captured by elites. Moreover, they require a conducive operating environment and adequate resources which tend to be absent in most African countries.

4 CONCLUSION

This chapter has demonstrated that, if local government is to be effective, it is critical that mechanisms are developed to ensure both horizontal and vertical accountability. Where these mechanisms are effective, along with the other essential conditions mentioned above, local government has the potential to live up to its promises. However, as Manor suggests, where any of these conditions are absent, local government (and therefore decentralisation) will fail. In addition, where any of these conditions are present but weak, local government will function less than well.¹³⁰ Hence it is important for these accountability mechanisms to not only be present in municipalities but also function effectively in municipalities. This further

¹²⁶ Goncharenko G 'The Accountability of Advocacy NGOs: Insights from the Online Community of Practice' (2018) *Accounting Forum* 2.

¹²⁷ Swiss Agency for Development and Cooperation SDC (2016) 21.

¹²⁸ Swiss Agency for Development and Cooperation SDC (2016) 21.

¹²⁹ Grant U & Devas N 'Local Government Decision-Making- Citizen Participation and Local Accountability: Some Evidence from Kenya and Uganda' (2003) 23 *Public Administration and Development* 311.

¹³⁰ Manor (2013) 32.

demonstrates that there is a nexus between the potential of local government and accountability mechanisms in local government. The more effective these accountability mechanisms are, the more likely it is that local government will live up to its promises. However, the less effective these accountability mechanisms are, the more likely it is that local government will fail to fulfil its objectives. Effective accountability mechanisms are therefore an absolute requirement to hold local government accountable in practice. The next chapter seeks to establish if the South African local government system entrenches mechanisms of promoting accountability.



CHAPTER 3: THE STATE OF ACCOUNTABILITY IN SOUTH AFRICAN LOCAL GOVERNMENT

1 INTRODUCTION

The discussion in the previous chapter demonstrated that accountability is an absolute requirement for local government to live up to its potential. The purpose of this chapter is to establish whether the South African system of local government has necessary mechanisms of promoting and sustaining accountability in municipalities. If these mechanisms are in place, the question is whether they are effective in practice. It is argued that while South Africa has a variety of mechanisms designed to promote accountable local government, most of them have thus far failed to bring the desired result. The chapter briefly discusses the place and role of local government in South Africa to contextualise the study. It then examines the mechanisms that are available to promote accountable local government. Conclusive remarks are provided last.

2 THE PLACE AND ROLE OF LOCAL GOVERNMENT

Section 40(1) of the Constitution provides that in the Republic, government is constituted as national, provincial and local spheres of government which are distinctive, interdependent and interrelated.¹³¹ The word ‘distinctive’ confirms local government’s autonomy as a sphere of government and it determines the manner in which local government should perform its functions.¹³² The words ‘interdependent’ and ‘interrelated’ in turn refer to the constitutional commitment to an overall system of cooperative government in South Africa.¹³³ The autonomy of local government is further confirmed in section 151(3) of the Constitution which provides that ‘*a municipality has the right to govern, on its own initiative, the local government affairs of its community, subject to national and provincial legislation, as provided for in the Constitution*’.¹³⁴ Therefore, from these provisions, it can be established that the place of local government is entrenched in the Constitution as a distinctive, interrelated and interdependent sphere of government. Local government, as the sphere of government that is physically closest to the people, has been constitutionally assigned broader developmental duties and specific service delivery mandate, as stated in paragraph 1 of Chapter 1.

¹³¹ Constitution s40(1).

¹³² Bekink (2006) 63.

¹³³ Bekink (2006) 63.

¹³⁴ Constitution s151(3).

Municipalities are required to structure and manage their administrations, budgeting and planning processes in order to give priority to the basic needs of their respective communities and to promote the social and economic development of these communities.¹³⁵ The Constitution provides that the executive and legislative authority of a municipality is vested in its municipal council (council).¹³⁶ This makes local government a hybrid system of government.¹³⁷ Section 156 of the Constitution provides that a municipality has executive and legislative authority in respect of, and the right to administer, the local government matters listed in Part B of Schedule 4 and Part B of Schedule 5 of the Constitution and any other matters assigned to it by national and provincial legislation.¹³⁸ Part B of Schedules 4 and 5 lists a variety of important matters such as electricity and gas regulation, water and sanitation services, land-use planning, municipal health, municipal roads traffic and parking, and refuse removal.¹³⁹ Thus, municipalities have a variety of powers and functions needed in achieving their objectives and fulfilling their developmental mandate.¹⁴⁰

As observed in the previous chapter, the fulfilment of local government's service delivery and developmental mandate does not only require that local government has significant relevant powers but also sufficient resources to fund the delivery of public services. The Constitution recognises that municipalities require sufficient resources by granting them a variety of resource-raising measures.¹⁴¹ Section 229(1)(a) to (b) provides that subject to the Constitution, a municipality may impose rates on property and surcharges on fees for services provided by or on behalf of the municipality and if authorised by national legislation, other taxes appropriate to local government.¹⁴² In addition to this, local government is entitled to an equitable share of revenue raised nationally to complement local revenue-raising effort.¹⁴³ Local government may also receive other allocations from national government revenue that can either be provided on a conditional or unconditional basis.¹⁴⁴ De Visser and Steytler argue that as a result of local government's constitutional revenue-raising powers, local government is largely self-sufficient

¹³⁵ Constitution s153(a).

¹³⁶ Constitution s151(2).

¹³⁷ *Democratic Alliance and Another v Masondo NO and Another* 2003 (2) SA 413 (CC) para 21.

¹³⁸ Constitution s156(1)(a)-(b).

¹³⁹ Constitution s156(3).

¹⁴⁰ De Visser (2007); Maloba (2015); Steytler & De Visser (2016).

¹⁴¹ Cameron R 'Vertical Decentralisation and Urban Service Delivery in South Africa: Does Politics Matter?' (2014) 32 *Development Policy Review* S85.

¹⁴² Constitution s229(1)(a)-(b).

¹⁴³ Constitution s227(1)(a).

¹⁴⁴ Constitution s227(1)(b).

and has thus developed a more autonomous status.¹⁴⁵ As a consequence, local government, especially most urban municipalities, is less reliant on transfers from national government.¹⁴⁶ In fact, transfers make up only 26 per cent of municipal budgets whereas, on provincial level, such transfers constitute 97 per cent of provincial budgets.¹⁴⁷ Hence, most municipalities have a sound financial base.

It can be observed from the above discussion that local government in South Africa does indeed have substantial relevant powers and functions. These are complemented by a variety of revenue streams to fund the delivery of public services. Thus, it can be concluded that, in a significant number of municipalities, the failure of service delivery cannot be directly attributed to the absence of sufficient powers, functions and resources. As observed in paragraph 3 of Chapter 2, sufficient powers, functions and resources are necessary but are not the only ingredients for an effective system of local government. Local government must also be accountable. The key question, therefore, is whether provision is made in local government law for municipalities to be accountable. This question is the focus of the following section.

3 ACCOUNTABILITY IN LOCAL GOVERNMENT

The South African local government system is regarded by many as highly developed particularly concerning its institutions and legislation. The system enshrines a variety of mechanisms designed to foster and sustain accountability in municipalities. Channels for accountability are multiple and take many forms. There are internal mechanisms of fostering accountability such as democratic elections, codes of conduct, performance agreements, internal controls and oversight committees. There are also external mechanisms, which mainly involve the role of external actors such as the national and provincial governments, independent institutions, civil society, and the media. This section discusses some of the key mechanisms provided in local government legislation of promoting and sustaining accountability at local government level.

3.1 Codes of conduct

The Local Government: Municipal Systems Act 32 of 2000 (MSA) provides for codes of conduct that both local political and administrative officials should adhere to when carrying

¹⁴⁵ De Visser J & Steytler N *Multi-Level Government in South Africa, Ethiopia and Kenya* (2018) 14.

¹⁴⁶ De Visser & Steytler (2018) 14.

¹⁴⁷ De Visser & Steytler (2018) 14.

out their respective duties.¹⁴⁸ The codes of conduct require, *inter alia*, that councillors and municipal staff perform the functions of office in good faith, honestly and in a transparent manner.¹⁴⁹ They are also required to act in the best interest of the municipality and in such a way that the credibility and integrity of the municipality is not compromised.¹⁵⁰ Councillors and administrative officials are prohibited from using their respective positions, privileges or confidential information for private gain or to improperly benefit other people.¹⁵¹ They should at all times disclose any direct or indirect interests in a matter before council.¹⁵² It is noteworthy that the codes of conduct prescribe the expected conduct of councillors and staff while at the same time limiting how and for what purposes decisions are to be made. In this way, the codes of conduct are important accountability mechanisms for ensuring that decisions are taken for a legitimate governmental purpose. Section 37(e) of the Municipal Structures Act requires the Speaker of the council to ensure that councillors comply with the Code of Conduct for Councillors.¹⁵³ Breaches of the Code of Conduct for municipal staff members are dealt with in terms of the disciplinary procedures of the municipality.¹⁵⁴ Item 14 of Schedule 1 and Item 14A of Schedule 2 of the Municipal Structures Act provides for the disciplining of officials that contravene the codes of conduct.¹⁵⁵

Even the public has a role to play in reporting any unethical conduct from municipal officials. While the Code of Conduct is silent on this, it is argued that this role arises from the fact that the community comprises one of the essential structures that make up a municipality as envisaged in section 2 of the MSA. Therefore, by reporting incidents of alleged unethical conduct from municipal officials, it should be viewed as forming part of the community's obligations to contribute to democratic and accountable local government. This approach has already been adopted by the City of Cape Town. In terms of the City's Ethics Code, members of the public are encouraged to raise concerns about the activities of its officials, through their Fraud Hotline, so that they can be investigated and acted upon.¹⁵⁶

In practice, however, a significant number of councillors and officials do not always exhibit the required conduct when carrying their roles. The perceived, alleged, and proven cases of

¹⁴⁸ See, MSA Schedule 1 and 2.

¹⁴⁹ MSA Schedule 1 Item 2(a); MSA Schedule 2 Item 2(b).

¹⁵⁰ MSA Schedule 1 Item 2(b); MSA Schedule 2 Item 2(d).

¹⁵¹ MSA Schedule 1 Item 6(1); MSA Schedule 2 Item 4(1)(a).

¹⁵² MSA Schedule 1 Item 7; MSA Schedule 2 Item 5.

¹⁵³ Municipal Structures Act s37(e).

¹⁵⁴ MSA Schedule 2, Item 14.

¹⁵⁵ MSA Schedule 1, Item 14; MSA Schedule 2, Item 14A.

¹⁵⁶ See City of Cape Town *Ethics Code: C27/08/16* (2016) 8.

corruption and maladministration that involve municipal officials all contribute to the perception that codes of conduct are either not implemented or simply not taken seriously.¹⁵⁷ The only way to check corruption is to hold others accountable for corrupt activities. However, the AGSA established that this is not the case as action is not always taken against wrongdoers. The leadership's inaction (including both the head of administration and the council) has created a culture of no consequence management in municipalities.¹⁵⁸ The report also confirmed that, although prohibited by legislation, contracts to the value of R15 million were awarded to suppliers in which councillors themselves had an interest.¹⁵⁹ The *Act Report 2018*, Corruption Watch also reported that corruption in municipalities increased from 6,4 per cent in 2017 to 9,2 per cent in 2018.¹⁶⁰ This evidence suggests that the codes of conducts of councillors and municipal staff are not being enforced sufficiently, in the process undermining accountable local government.

3.2 Performance agreement

Section 57 of the MSA provides that a municipal manager of a municipality and managers who are directly accountable to the municipal manager are required to have in place a performance agreement that must be concluded on an annual basis between themselves and the municipal council.¹⁶¹ The performance agreement must further include the following: performance objectives and targets that must be met, and the timeframes within which these must be achieved; standards and procedures for evaluating performance and intervals for evaluation and; the consequences of substandard performance.¹⁶² Performance agreements make it clear that senior municipal management must answer for the delivery or non-delivery of certain services and the achievement of particular objectives. As such performance agreements can be a useful mechanism of ensuring accountability of municipal officials to the council. They enable a council to monitor and review the performance of the administration and to hold them accountable for any under-performance by enforcing sanctions for substandard performance.

In practice, as in the case with codes of conduct, performance agreements are not effective in ensuring accountability in municipalities due to many reasons. This is partially because

¹⁵⁷ De Visser (2006) 2.

¹⁵⁸ Auditor General of South Africa (2017) 22.

¹⁵⁹ Auditor General of South Africa (2017) 15.

¹⁶⁰ Corruption Watch *Act Report 2018* (2018) 8.

¹⁶¹ MSA s57(1)(b).

¹⁶² MSA s57(4)(a).

performance agreements are not always deemed as important for governance in municipalities. In the 2011/2012 financial year, the AGSA established that 36 of the municipal managers appointed in the same financial year, did not have signed performance agreements.¹⁶³ The AGSA further established that mayors had not signed the performance agreements of 36 municipal managers while the performance agreements of 37 municipal managers did not comply with the provisions of the MSA.¹⁶⁴ The AGSA also found that in 33 municipalities, 20 per cent of senior managers did not have signed performance agreements whereas, in 85 municipalities, performance evaluation for municipal managers were not conducted.¹⁶⁵ Not having signed performance agreements can have important ramifications for a municipality. This is because the signature proves that the municipal official has applied his or her mind to be bound by the terms set out in the performance agreement. Otherwise, it would be difficult to argue that a contract was concluded on the basis of the principles of offer and acceptance. In *Minister of Justice and Constitutional Development v C J C Myburgh and Others*,¹⁶⁶ the court confirmed that ‘a contract comes into existence when, and only when, the written document... has been signed by both parties’.¹⁶⁷ This rule derives from the common law of contract applicable to contracts. Therefore, in such instances where the performance agreements are not signed, it may become increasingly difficult to hold municipal officials accountable in that, theoretically speaking, they are not bound to render performances in accordance with the standards provided for in the performance agreements. Courts have, however, held otherwise in practice. In *Strickett v Mathabeng Local Municipality*,¹⁶⁸ the court made it clear that section 57(1) of the MSA merely requires that an agreement in writing is adopted and acted upon and that a signature is not required.¹⁶⁹ It is not clear why the court made this ruling in respect of performance agreement which, by its very nature, is a normal contract whereas it has held otherwise in respect of other employment contracts as mentioned above. It is argued that this ruling may be incorrect. All contracts, such as performance agreements, are also subject to the laws which arise by operation of law such as the laws that derives from the common law of contract as mentioned above. Further, it is clear as evidenced by the AGSA that the failure to sign performance agreements in municipalities is problematic, hence the AGSA has reported

¹⁶³ Auditor-General of South Africa *Consolidated General Report on the Local Government Audit Outcomes 2011-12* (2012) 17.

¹⁶⁴ Auditor-General of South Africa (2012) 17.

¹⁶⁵ Auditor-General of South Africa (2012) 17.

¹⁶⁶ (JA 46/15) [2017] LC.

¹⁶⁷ *Minister of Justice and Constitutional Development v C J C Myburgh and Others* (JA 46/15) [2017] LC at para 21.

¹⁶⁸ (4583/2010) [2011] ZAFHC 133 (18 August 2011).

¹⁶⁹ *Strickett v Mathabeng Local Municipality* (4583/2010) [2011] ZAFHC 133 (18 August 2011) at para 6.

thereon for a number of years. To avoid future disputes regarding the enforceability of the performance agreements against an under-performing municipal official, and to ensure compliance with the common law of contract, it is thus submitted that that all performance agreements should be signed.

Five years later, during the 2016/17 financial year, the AGSA reported that, while performance management has improved over the years, accountability continues to fail in municipalities due to, *inter alia*, not implementing consequences for poor performance.¹⁷⁰ A study conducted by Myataza in selected municipalities in the Eastern Cape Province also found that performance management is overall weak in municipalities. The findings of the study suggest that poor performance management was due to non-submission of performance reports for audit purposes.¹⁷¹ Thus, while performance agreements have the potential to engender accountability, they are yet to live to their potential as officials are largely not held accountable for under-performance.

3.3 Internal oversight structures

Legislation makes provision for the establishment of structures, in the form of committees and units, to undertake the oversight function. Every municipal council is required to establish an audit committee, which is an independent advisory body mandated to advise the council, political office-bearers, the accounting officer and the management staff of a municipality or the board of directors.¹⁷² The committee advises on matters relating to, *inter alia*: risk management; the adequacy, reliability, and accuracy in financial reporting and information; effective governance and; performance management.¹⁷³ The committee can be an important tool of fostering financial accountability by providing the council with credible findings, based on its analysis of the information received from the administration, which the council can use to hold its executive or administration to account.¹⁷⁴ Municipal councils are also allowed¹⁷⁵ to

¹⁷⁰ Auditor-General of South Africa (2017) 67.

¹⁷¹ Myataza N 'Internal Oversight as a Catalyst for Improved Financial Management in Eastern Cape Municipalities: The Role of Municipal Public Accounts Committees and Internal Audit Units' in Chigwata T, de Visser J & Kaywood L (eds) *Developmental Local Government Series: The Journey to Transform Local Government* (2019) 225.

¹⁷² MFMA s166(2)(a).

¹⁷³ MFMA s166(2)(a)(ii), (iv), (vi) and (v).

¹⁷⁴ De Visser J, May A & Steytler N *The Quality of Local Democracies: A Study into the Functionality of Municipal Governance Arrangements* (2009) 14.

¹⁷⁵ It should be noted however that with the upcoming amendment to the Municipal Structures Act, municipalities will be legally required to establish MPACs.

establish other oversight committees, such as the municipal public accounts committees (MPACs), to exercise oversight. MPACs, for instance, perform various functions including the assessment of the contents of the annual report, making recommendations to the council when it adopts the oversight report and annual report, examination of financial statements and audit reports, the consideration of improvements from the previous financial statements and audit reports and to advise council thereon.¹⁷⁶ They also ensure that the recommendations of the AGSA and the audit committee are implemented.¹⁷⁷ Thus, the MPACs can perform valuable functions in ensuring accountability in local government.

In practice, several factors bring into question, the effectiveness of internal oversight structures, such as committees, in fostering accountability. Myataza established that internal oversight structures are often not adequately supported by heads of departments of municipalities and the findings made by structures such as internal audit units, are often unfairly challenged and, in some instances, rejected by managers.¹⁷⁸ This seriously undermines the effectiveness of these oversight structures and as such, weakens accountability in municipalities. In the Mpumalanga province, the AGSA established that accountability continues to fail because, among other reasons, of the municipal management's failure to implement the recommendations of MPACs and audit committees.¹⁷⁹ In other cases, the committees are ineffective as they lack the expertise to perform their functions effectively. For example in the Limpopo province, the AGSA noted that regressions were reported as a result of, *inter alia*, audit committees and MPACs failure to rigorously review information submitted to them.¹⁸⁰ The AGSA also determined that most MPACs still do not have adequate capacity to fulfil their functions and municipal councils have been slow to address this matter.¹⁸¹ This lack of adequate capacity has had a negative impact on the effectiveness of the committees in assisting the council in ensuring accountability. Thus, despite their potential, internal oversight structures are yet to contribute meaningfully to accountable governance across all municipalities.

¹⁷⁶ Auditor-General of South Africa (2017) 88.

¹⁷⁷ Auditor General of South Africa *Consolidated Report on Local Government 2012-13* (2013) 95.

¹⁷⁸ Myataza N (2019) 225.

¹⁷⁹ Auditor General of South Africa (2017) 64.

¹⁸⁰ Auditor General of South Africa (2017) 64.

¹⁸¹ Auditor General of South Africa (2017) 68.

3.4 The role of national and provincial governments

The responsibility to ensure that local government is accountable is also shared by the national and provincial governments. These spheres of government are empowered to supervise, by regulating, monitoring and supporting municipalities.¹⁸² If these supervisory mechanisms fail to bring about the desired result of ensuring that a municipality delivers on its executive obligation, the provincial government is empowered to intervene in local affairs in terms of section 139 of the Constitution.¹⁸³ This accountability mechanism limits the autonomy of local government by enabling a provincial government to interfere with the autonomy of a municipality.¹⁸⁴ Section 139(4) of the Constitution also allows the provincial executive to intervene when a municipality cannot or does not fulfil their obligation to approve a budget or any revenue-raising measures necessary to give effect to the budget.¹⁸⁵ Further, section 139(5) of the Constitution requires a provincial executive to intervene if a municipality, as a result of that crisis, continues to be in breach of its mandate to provide basic services or to meet its financial commitments.¹⁸⁶ The province must also intervene if a municipality admits that it is unable to meet its obligations or financial commitments. The national government is required to intervene where a provincial government is unable or unwilling to intervene to rectify the above mentioned financial crisis.¹⁸⁷ An intervention may take the form of issuing a directive to the council, describing the extent of the failure to fulfil their obligations and stating the steps that must be taken to meet its obligations.¹⁸⁸ It may take the form of assumption of the relevant responsibility within the particular municipality¹⁸⁹ or dissolution of a council and appointment of an administrator, in its place until a new council has been elected.¹⁹⁰ A temporary budget and a financial recovery plan can also be put in place. Thus, provincial and national governments have far-reaching supervisory powers to deal with problems at the local level and ensure that municipalities are accountable.¹⁹¹

¹⁸² Cooperative Governance and Traditional Affairs (CoGTA) *National Guidelines on Provincial Support, Monitoring and Intervention in Relation to Municipalities* (2014) 14.

¹⁸³ Constitution s139.

¹⁸⁴ De Visser J & November J 'Overseeing the Overseers: Assessing Compliance with Municipal Intervention Rules in South Africa' (2017) 9 *Hague Journal Rule of Law* 110.

¹⁸⁵ Constitution s139(4).

¹⁸⁶ Constitution s139(5).

¹⁸⁷ Constitution s139(7).

¹⁸⁸ Constitution s139(1)(a).

¹⁸⁹ Constitution s139(1)(b).

¹⁹⁰ Constitution s139(1)(c).

¹⁹¹ See *White Paper on Local Government*, 1998 at 63–64.

In practice, supervisory powers are not effectively exercised when required. CoGTA noted that provincial and national government face key challenges to carry out their constitutional supervisory mandate over local government¹⁹², thus making them less effective. It further stated that the support and monitoring that is currently being provided to all municipalities require a higher level of co-ordination and customisation to the needs of individual municipalities.¹⁹³ The Department established that there is a weak correlation between the number of municipalities that are financially distressed or underperforming and the number of section 139 interventions that have been made in this regard.¹⁹⁴ As stated in paragraph 1 of Chapter 1, a 2018 study conducted by the Applied Constitutional Studies Laboratory found that municipal debt to ESKOM has reached R17 billion by December 2018, amounting to 20 per cent of Eskom's total annual revenue.¹⁹⁵ It established that 80 per cent of municipalities that are the worst defaulters for payment of bulk services to ESKOM have rather escaped provincial and national intervention.¹⁹⁶ Thus, most provincial governments and the national government have failed to act in accordance with their respective constitutional obligation to intervene when it is required.¹⁹⁷ Failure to intervene in such instances means that municipal officials responsible for any misdeeds are not called to account. The results are often that corruption, resource wastage, and maladministration in municipalities, among other ills, which erode trust in local government, go unchecked.

3.5 The role of independent institutions

The Constitution provides for the establishment of independent institutions aimed at strengthening accountability and democracy, in general. These include the Public Protector,¹⁹⁸ the South African Human Rights Commission,¹⁹⁹ the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities,²⁰⁰ the Commission for Gender Equality,²⁰¹ and the AGSA.²⁰² The AGSA has perhaps the most direct function in ensuring that local government is accountable. The AGSA is mandated, by the Constitution, to

¹⁹² CoGTA (2014) 8.

¹⁹³ CoGTA (2014) 8.

¹⁹⁴ CoGTA (2014) 8.

¹⁹⁵ Constitutional Applied Studies Laboratory 'Public Finance Watch Research Brief: Issue 2' (2018) 1.

¹⁹⁶ Constitutional Applied Studies Laboratory (2018) 1.

¹⁹⁷ Constitutional Applied Studies Laboratory (2018) 1.

¹⁹⁸ Constitution s181(1)(a).

¹⁹⁹ Constitution s181(1)(b).

²⁰⁰ Constitution s181(1)(c).

²⁰¹ Constitution s181(1)(d).

²⁰² Constitution s181(1)(e).

audit and report on the accounts, financial statements and financial management of all municipalities.²⁰³ After auditing, the AGSA is required to submit its audit reports to any legislature with a direct interest in the audit report, and to any other authority as prescribed by national legislation.²⁰⁴ The Constitution requires all audit reports to be made publicly available to foster transparency.²⁰⁵ These reports often contain a number of recommendations for improving governance in municipalities. The AGSA provides accurate and reliable information about the true status of municipalities to all interested stakeholders. The audit reports provided by this supreme audit institution enable other stakeholders, such as the national and provincial governments and citizens, to hold local government accountable. In this way, the AGSA aids the role of these stakeholders in strengthening accountability in local government.

The challenge associated with the AGSA's role is that the AGSA's recommendations are often not implemented in practice. This was noted by the AGSA in the 2016/2017 Audit report who stated that:

*'The recommendations we made last year to improve audit outcomes and accountability, did not receive the necessary attention. This is evidenced by the findings from our audits that included attention not being paid to audit action plans, poor performance planning and budgeting (resulting in unauthorised expenditure of R12,6 billion) and regressions of varying degree in the status of internal control and the assurance provided by the different role players in local government'.*²⁰⁶

This challenge prompted, in 2018, an amendment of the Public Audit Act 25 of 2004 to empower the AGSA with more powers to enforce his or her recommendations.²⁰⁷ Another challenge that undermines the effectiveness of the AGSA as an accountability mechanism is the non-submission, late submission and submission of poor quality financial statements to the AGSA by municipalities. In terms of section 122(1)(a) MFMA:

*'Every municipality or municipal entity is required to prepare, for each year, annual financial statements which fairly and accurately presents the state of affairs of that municipality or municipal entity, its performance against its budget, its management of revenue, expenditure, assets and liabilities, its business activities, its financial results and its financial position as at the end of the financial year'.*²⁰⁸

²⁰³ Constitution s188(1)(b).

²⁰⁴ Constitution s188(3).

²⁰⁵ Constitution s188(3).

²⁰⁶ Auditor General of South Africa (2017) 2. See also, Auditor General of South Africa (2017) 3; 4; 10 and 17.

²⁰⁷ Public Audit Amendment Act 5 of 2018.

²⁰⁸ MFMA s122(1)(a).

However, financial statements often do not comply with these criteria and are thus not credible. Where financial statements are not credible, it becomes increasingly difficult to determine whether problems exist within the municipality. According to the AGSA, the failure to produce credible financial statements points to a lack of leadership and supervision as chief financial officers in municipalities do not review financial statements and the relevant supporting information before submitting them for audit purposes.²⁰⁹ It can be observed that while the AGSA has significant potential to promote accountability several challenges are constraining the AGSA's role. Only time will tell if the increased powers of the AGSA will have a meaningful impact on accountability in municipalities.

3.6 The role of the local community

The local community also play a role in holding local government accountable in many ways. Elections are the main mechanism through which citizens and communities, at large, can hold its council and councillors accountable. Ideally, the threat of loss of office that comes with organising regular elections induces councils and councillors to become more responsive to the wishes and needs of the electorate.²¹⁰ However, for local elections to serve as an effective accountability tool several conditions must be in place. As argued in paragraph 3.4 of Chapter 2, local elections are likely to act as an effective accountability mechanism when they are separated from national and provincial elections as is the case in South Africa where local elections are organised separately every five years.²¹¹ Further, voters must be willing to sanction their local representatives by looking at their past performance and by punishing poor governance by withdrawing their support.²¹² Steytler argues that '*unless political choices are made on good government concerns and not on ethnic or other considerations, a political will opposed to corruption and maladministration is unlikely to bloom*'.²¹³ This indeed is a major problem that currently exist in local elections where voting is not often based on the performance of councillors and councils but on voters' loyalty towards a certain party political party. In such cases, a directly accountability link between the voter and councillor is not achieved. Therefore, the effectiveness of local elections as an accountability tool in South

²⁰⁹ Auditor General (2017) 55.

²¹⁰ Schulz-Herzenberg C 'Elections and Accountability in South Africa' (2009) ISS Paper 188 at 1.

²¹¹ Helen Suzman Foundation 'The South African electoral system' available at <https://hsf.org.za/publications/hsf-briefs/the-south-african-electoral-system> (accessed 11 June 2019).

²¹² Schulz-Herzenberg (2009) 1.

²¹³ Steytler N 'The 'financial constitution' and the prevention and combatting of corruption: A comparative study of Nigeria, South Africa and Kenya' Paper delivered at Stellenbosch Annual Seminar on *Constitutionalism in Africa*, 'Corruption and Constitutionalism in Africa', 19 to 22 September, Stias, Stellenboch (2017) 26.

Africa will likely be achieved when citizens realise that they have a responsibility to exercise their right to vote responsibly.

3.7 Role of civil society and the media

In South Africa, civil society organisations play a two-dimensional role in local government. On one hand, they are often involved in the implementation of programmes funded by government.²¹⁴ On the other hand, they form a countervailing force that is necessary for providing checks and balances to public sector agencies.²¹⁵ Civil society organisations, therefore, play an integral role in ensuring that local government is accountable as it serves as a check on local government to prevent the abuse of powers and misuse of public funds. However, in practice, Kakumba provides that civil society organisations favour upward accountability as opposed to downward accountability to the citizens.²¹⁶ While it may not be effective in ensuring downward accountability to citizens, civil society organisations nevertheless act to ensure that local government live up to its potential and achieve its objectives. However, several civic organisations that operate at the local level in South Africa have been effective in their watchdog role by, *inter alia*, mobilising communities and resourcing them to question decisions of municipalities. For example, in 2014 the City of Cape Town put an end to a contentious stand-off between itself and the public, which had dragged on for more than 15 years by announcing their plans to halt plans to sell part of Princess Vlei Mall to developers.²¹⁷ This was made possible through the collective efforts of communities, environmentalists, academia and non-governmental organisations (NGOs).²¹⁸

The media also plays a crucial role in promoting accountability in local government. According to Norris, the media performs three key functions in ensuring that local government is accountable. First, the media is required to act as a watchdog over councillors and municipal officials and in this way promote accountability, transparency, and public scrutiny.²¹⁹ This is

²¹⁴ Fourie D & Kakumba U 'Assessing the Role and Capacity of Civil Society Organisations in Holding Local Government Accountable in Uganda' (2011) 42(2) *African Journal of Public Affairs* 57.

²¹⁵ Fourie & Kakumba (2011) 57.

²¹⁶ Fourie & Kakumba (2011) 55.

²¹⁷ IOL 'Delight at Princess Vlei decision' available at <https://www.iol.co.za/news/south-africa/western-cape/delight-at-princess-vlei-decision-1665075> (accessed 17 June 2019).

²¹⁸ Fester R 'Cape Town civic organisations- in search of meaningful participation' in Good Governance Learning Network *Developmental Local Government: Dream Deferred? Perspectives from Civil Society on Local Governance in South Africa* (2018) 17.

²¹⁹ Ashraf P 'The Role of Media in Good Governance: Paid News Culture of Media and the Challenges to Indian Democracy' (2014) 3(3) *International Research Journal of Social Sciences* 42.

achieved through highlighting failures of local government, maladministration by local officials, and corruption at a local level. The media has brought several cases of corruption and resource wastage in local government into the public's focus.²²⁰ Secondly, the media functions as a civic forum for political debate.²²¹ This facilitates informed electoral choices and actions. Thirdly, the media functions as the agenda-setter for policy makers, strengthening government responsiveness.²²² In South Africa, the media has often been accused of being bias, lacking credible reporting and of being captured by the elite.²²³ However, the media still plays an important role in promoting accountability at the local level.

3.8 Service delivery protests

The preceding sections discussed formal mechanisms of promoting accountability in municipalities. It should also be acknowledged that there are also informal mechanisms often used by the citizens such as service delivery protests. In South Africa, service delivery protests are a common feature of South Africa's democracy that is often utilised by citizens to state their concerns and to hold local government accountable. Protests are usually carried out to emphasise a community's dissatisfaction with the lack of service delivery, the quality of services rendered and the state of public representation at the grass-roots level.²²⁴

In practice and as stated in paragraph 1 of Chapter 1, when members of the community become frustrated by a lack of responsiveness by municipalities, they often retaliate by taking their frustrations to the streets and engage in protest actions against the relevant municipality. The importance of protest action as a powerful advocacy tool utilised to hold government accountable has been recognised by the courts.²²⁵ In *Mlungwana and Others v S and Another*,²²⁶ the court held that section 12 of the Regulation of Gatherings Act 205 of 1993,²²⁷ which required that a convener of a gathering give notice of an assembly of more than 15 people, limits the right to assemble peacefully and unarmed which is entrenched in section 17

²²⁰ For example, it is the media that brought the VBS scandal, where municipal funds were invested into VBS bank unlawfully, to the public's attention.

²²¹ Ashraf (2014) 42.

²²² Ashraf (2014) 42.

²²³ Mbindwane B 'Media bias: South Africa needs specialist media to end prejudice' available at <https://www.dailymaverick.co.za/opinionista/2015-08-17-media-bias-south-africa-needs-specialist-media-to-end-prejudice/> (accessed 17 June 2019).

²²⁴ Booysen S 'With the Ballot and the Brick: The Politics of Attaining Service Delivery' (2007) 7(1) *Progress in Development Studies* 21.

²²⁵ *Mlungwana and Others v S and Another* 2018 (1) SACR 538 para 10.

²²⁶ 2018 (1) SACR 538 (WCC).

²²⁷ Regulation of Gatherings Act 205 of 1993.

of the Constitution.²²⁸ The court referred to the *Garvas*²²⁹ case which noted that protesting is a way of giving a voice to the voiceless. In this way, service delivery protests serve as a mechanism that enables citizens to speak up about matters such as corruption, maladministration, and resource wastage. According to Municipal IQ, service delivery protests at the end of September 2018 was at an all-time annual high with 198 protests compared to the previous record of 191 in 2014.²³⁰ This is an indication that citizens are becoming more and more aware of protest action as a means of voicing their concerns relative to other formal mechanisms of accountability. The increase also suggests that the state of service delivery by municipalities is not getting any better.

4 CONCLUSION

This chapter discussed the state of accountability in local government. It was established that while local government is constitutionally well positioned to deliver on its service delivery obligations and development mandate, by among other ways, being empowered with substantial powers and resources, it is failing to live up to its potential partially due to a lack of accountability. The chapter discussed some accountability mechanisms that have been established to ensure that local government is accountable. Evidence provided, however, indicates that these accountability mechanisms are not yet to be effective due to several reasons, including material non-compliance and non-implementation of the applicable legislation. Accountability in local government continues to fail because important role players such as provincial and national governments, municipal councils, committees, and local communities are not doing enough to ensure that this sphere that is closest to the people is accountable. The critical question, therefore, remains what can be done to improve the state of accountability in local government. Are King IV Principles useful in arresting this undesirable situation? This question will be interrogated in the following chapter.

²²⁸ *Mlungwana and Others v S and Another* para 95.

²²⁹ *SATAWU and Another v Garvas and Others* 2013 (1) SA 83 (CC).

²³⁰ Municipal IQ '2018 service delivery protest reach an all-time annual record- 18 Oct 2018' available at http://www.municipaliq.co.za/index.php?site_page=press.php (accessed 28 March 2019).

CHAPTER 4: THE UTILITY OF KING IV PRINCIPLES IN ADDRESSING THE STATE OF ACCOUNTABILITY IN LOCAL GOVERNMENT

1 INTRODUCTION

In Chapter 2 it was established that accountability is one of the essential ingredients of an effective system of local government. Chapter 3 established that South Africa possess some of the key ingredients, including accountability mechanisms, needed for local government to live up to its potential. However, it was also demonstrated that while accountability mechanisms are in place, they are not effective in ensuring that local government is accountable. The lack of accountability in local government was identified in paragraph 1 of Chapter 1 as one of the main causes behind service delivery failures in South Africa. Against this background, it raises the question of how can accountability be enhanced at local government level? What can the public sector learn from the private sector regarding accountable governance? This Chapter explores whether, by utilising the corporate governance principles of King IV Report that are applicable to municipalities, accountability can be strengthened in local government. It interprets these principles and demonstrates how they can be applied in municipalities. This chapter provides, a brief background of the King Reports and related principles on corporate governance. It then discusses the application of selected King IV Principles in local government with an objective to establish how they can be incorporated in municipalities to address the accountability failures.

2 A BRIEF BACKGROUND TO KING IV REPORT ON CORPORATE GOVERNANCE

In 1994, the King Report I on Corporate Governance was published by the King Committee, headed by former High Court Justice Mervin King S.C. King I incorporated a Code of Corporate Practices and Conduct that was the first of its kind in South Africa.²³¹ The purpose of the King I Report was to promote the highest standards of corporate governance in South Africa particularly in the private sector. By doing so, King Report I established recommended standards of conduct for boards and directors of listed companies, banks and certain state-owned enterprises.²³² King Report II was released in 2002. It extended the list of institutions to which the King Report apply, including private entities and organs of state.²³³ The King Report

²³¹ Cliffe Dekker Attorneys *King Report on Corporate Governance for South Africa* (2002) 2.

²³² Lourens S & Reddy T 'Company Law: The importance of King IV's principles on Corporate Governance' *StraussDaily* 22 May 2018.

²³³ Lourens & Reddy 22 May 2018.

III succeeded King II in 2009²³⁴ and contained 75 principles for promoting good governance.²³⁵ The King IV, which was published in 2016 and came into effect on 1 April 2017, is the latest report.²³⁶

While all four King Reports are premised on ethical and effective leadership, King IV is different in that it was drafted to make its application to all organisations such as the private and public sector, large or small and for-profit and non-profit organisations, easier.²³⁷ King IV, unlike its predecessors, has moved away from the ‘apply or explain’ to ‘apply and explain’. There are seven concepts that form the building blocks of King IV namely: ethical leadership, the organisation in society, corporate citizenship, sustainable development, stakeholder inclusivity, integrated thinking and integrated reporting.²³⁸ King IV further highlights the desired governance outcomes that the principles are designed to achieve namely: ethical culture, good performance, effective control and legitimacy.²³⁹ Another innovation of King IV is the inclusion of sector supplements for municipalities and other sectors. The purpose of providing for sector supplements is to provide high-level guidance and direction on how the King IV Principles should be interpreted and applied in municipalities and other organisations.²⁴⁰ King IV thus makes it easier for these principles to be incorporated in municipalities to promote good governance.

3 THE UTILITY OF KING IV

The King IV Report has reduced the 75 principles in King III to 17 principles of which 16 of these principles apply to municipalities.²⁴¹ The 16 principles are listed in table 1 below.

Table 1: King IV Principles that are applicable to municipalities²⁴²

Principle 1: The council should lead ethically and effectively.

Principle 2: The council should govern the ethics of the municipality in a way that supports the establishment of an ethical culture.

²³⁴ Lourens & Reddy 22 May 2018.

²³⁵ King IV (2016) 7.

²³⁶ Lourens & Reddy 22 May 2018.

²³⁷ King IV (2016) 6.

²³⁸ King IV (2016) 4.

²³⁹ King IV (2016) 36.

²⁴⁰ King IV (2016) 75.

²⁴¹ King IV (2016) 6.

²⁴² King IV (2016) 81–85.

Principle 3: The council should ensure that the municipality is and is seen to be a responsible corporate citizen.

Principle 4: The council should appreciate that the municipality's core purpose, its risks and opportunities, strategy, business model, performance and sustainable development are all inseparable elements of the value creation process.

Principle 5: The council should ensure that reports issued by the municipality enable stakeholders to make informed assessments of the municipality's performance and its short, medium and long-term prospects.

Principle 6: The council should serve as the focal point and custodian of corporate governance in the municipality.

Principle 7: The council should comprise the appropriate balance of knowledge, skills, experience, diversity and independence for it to discharge its governance role and responsibilities objectively and effectively.

Principle 8: The council should ensure that its arrangements for delegation within its own structures promote independent judgment and assist with balance of power and the effective discharge of its duties.

Principle 9: The council should ensure that the evaluation of its own performance and that of its committees, its speaker and its individual councillors, support continued improvement in its performance and effectiveness.

Principle 10: The council should ensure that the appointment of, and delegation to, management contribute to role clarity and the effective exercise of authority and responsibilities.

Principle 11: The council should govern risk in a way that supports the municipality in setting and achieving its strategic objectives.

Principle 12: The council should govern technology and information in a way that supports the municipality setting and achieving its strategic objectives.

Principle 13: The council should govern compliance with applicable laws and adopted, non-binding rules, codes and standards in a way that supports the municipality being ethical and a good corporate citizen.

Principle 14: The council should ensure that the municipality remunerates fairly, responsibly and transparently so as to promote the achievement of strategic objectives and positive outcomes in the short, medium and long-term.

Principle 15: The council should ensure that assurance services and functions enable an effective control environment, and that these support the integrity of information for internal decision-making and of the municipality's external reports.

Principle 16: In the execution of its governance role and responsibilities, the council should adopt a stakeholder-inclusive approach that balances the needs, interests and expectations of material stakeholders in the best interests of the municipality over time.'

The question of how to incorporate these principles in municipalities is yet to be answered. It has been acknowledged that some of these principles may possibly conflict with existing local government legislation.²⁴³ In such a scenario the relevant piece of legislation should obviously prevail. However, where King IV demands a higher standard of governance than what is

²⁴³ King IV (2016) 76.

provided in legislation, a municipality should aspire to achieve that higher standard in the interest of sound governance.²⁴⁴ Thus the fact that King IV advocates for a higher standard of governance (as will become clear later in this Chapter) does not necessarily mean that this amounts to a conflict.²⁴⁵ A conflict would only arise when King IV and legislated provisions cannot be reconciled.²⁴⁶ Further, King IV makes it clear that the principles are applicable to category A, B and C municipalities as provided for in the MSA.²⁴⁷ It is noted that municipalities may vary in size, resources and extent and complexity of activities.²⁴⁸ King IV nonetheless provides that municipalities should still align with the principles and consider the practices of King IV.²⁴⁹ While all the 16 principles may have a direct or indirect positive effect in improving the state of local government, the chapter will only examine the eight principles whose incorporation in municipalities is likely to directly impact on accountability. The Constitution states that the legislative and executive authority of a municipality is vested in its municipal council.²⁵⁰ It further provides that a '[m]unicipal council makes decisions concerning the exercise of all the powers and the performance of all the functions of the municipality'.²⁵¹ Thus, there is no doubt that the council is the highest governing body of a municipality vested with all decision-making authority. King IV Report recognises this constitutional reality by placing the municipal council at the centre of its interventions designed to improve municipal governance. It places the obligation to implement corporate governance principles squarely on the council and demand a certain level of conduct from its members. The Report recognises that the role of a council is demanding and thus, necessitates a diversity of skills in its membership. The paper will discuss these obligations, responsibilities, and expectations below.

3.1 Ethical and effective leadership

Rossouw notes that unlike its predecessors, King IV recognises that good governance does not start with principles, rules or procedures, but with the character of those tasked with upholding good governance.²⁵² Pava and Krausz support this notion and state that companies with positive

²⁴⁴ King IV (2016) 76.

²⁴⁵ See n 267, 44.

²⁴⁶ King IV (2016) 76.

²⁴⁷ King IV (2016) 79.

²⁴⁸ King IV (2016) 79.

²⁴⁹ King IV (2016) 79.

²⁵⁰ Constitution s151(2).

²⁵¹ Constitution s160(1)(a).

²⁵² The Ethics Institute 'King IV: Focus on ethical leadership, not ethics management' available at <https://www.tei.org.za/index.php/resources/press-releases/7285-king-iv-focus-on-ethical-leadership-not-ethics-management> (accessed 5 May 2019).

ethical leadership experienced improved performance in their finances.²⁵³ Hildreth states that ‘while people want results from [local] government, it takes money to make them happen’.²⁵⁴ Therefore, the fiscal health of a municipality is important. Above all, it is an indication of a municipality’s ability to provide adequate, uninterrupted services to their constituents.²⁵⁵ Therefore, from the findings made by Pava *et al*, it can be deduced that ethical leadership is of paramount importance to promote the financial health of a municipality and, thus, to enable it to provide quality essential services.

Furthermore, in a study conducted by Agbim, it was found that there is a significant nexus between ethical leadership and corporate governance.²⁵⁶ King IV defines corporate governance as the exercise of ethical and effective leadership by the municipality towards the achievement of the following: an ethical culture, good performance, effective control, and legitimacy.²⁵⁷ Therefore, ethical and effective leadership is essential to enable municipalities to achieve the stated themes of corporate governance. Even the courts have set the record straight on issues of ethical leadership. In the case of *Mpofu v South African Broadcasting Corporation Ltd and Others (Mpofu case)*,²⁵⁸ the court confirmed that good governance is based on a clear code of ethical behaviour and personal integrity exercised by leadership.²⁵⁹ The court further emphasised that in dealing with the affairs of any organisation there must be ethical behaviour.²⁶⁰ King IV recognises the importance of ethical leadership to the effective performance of any organisation such as a municipality. Principle 1 of King IV requires the council to lead ethically and effectively.²⁶¹ In fact, ethical leadership forms the foundation upon which all 16 principles applicable to municipalities are based on. What does ethical and effective leadership entail in a municipal context?

²⁵³ Pava M & Krausz J ‘The Association Between Corporate Social-Responsibility and Financial Performance: The Paradox of Social Cost’ (1996) 15(3) *Journal of Business Ethics* 322.

²⁵⁴ Hildreth W ‘Financial management: The centrality of the fiscal in local government and politics’ in Gargan J (eds) *Handbook of Local Government Administration* (1997) 159.

²⁵⁵ Honadle, Costa & Cigler (2003) 1.

²⁵⁶ Agbim K ‘Effect of Ethical Leadership on Corporate Governance, Performance and Social Responsibility: A Study of Selected Deposit Money Banks in Beneu State, Nigeria’ (2018) 2 *International Journal of Community Development & Management Studies* 28.

²⁵⁷ King IV (2016) 11.

²⁵⁸ (GPHC) unreported case no 13815/2008 (19 May 2008).

²⁵⁹ *Mpofu v South African Broadcasting Corporation Ltd and Others* (GPHC) unreported case no 13815/2008 (19 May 2008) para 64.

²⁶⁰ *Mpofu v South African Broadcasting Corporation Ltd and Others* para 64.

²⁶¹ King IV (2016) 40.

Ethical leadership is exemplified by integrity, competence, responsibility, accountability, fairness, and transparency.²⁶² It involves the anticipation and prevention, or otherwise amelioration, of the negative consequences of the municipality's activities and outputs on the economy, society and the environment and the capitals that they use and affect.²⁶³ Conversely, effective leadership is results-driven. It involves the achievement of strategic objectives and positive outcomes.²⁶⁴ Effective leadership includes, but also goes beyond, an internal focus on effective and efficient implementation.²⁶⁵ King IV notes that in order for the council to offer effective leadership, it must itself embody the ethical characteristics mentioned above.²⁶⁶ King IV, therefore, requires that members of the council, individually and collectively, cultivate these characteristics and exhibit them in their conduct. In this way, King IV complements section 195(1)(a) of the Constitution which requires that a high standard of professional ethics be promoted and maintained.²⁶⁷ This raises the question of how ethical leadership can be promoted in municipalities.

The traditional approach of fostering ethical leadership is by way of enforcing codes of conduct, conducting ethical training and establishing the ethics committee.²⁶⁸ This is the approach that has been adopted in the South African local government. For example and as discussed in paragraph 3.1 of Chapter 3, the Code of Conduct for Councillors provides that councillors should perform their functions in good faith, honestly, transparently, in the best interests of the municipality and without compromising the municipality's credibility or integrity.²⁶⁹ In *Kannaland Municipality v Minister for Local Government, Environmental Affairs and Developmental Planning in the Western Cape and Another*²⁷⁰ the court found that councillors continue to conduct their responsibilities in an unethical manner despite the presence of these mechanisms.²⁷¹ It is therefore argued that these mechanisms can only be effective in maintaining an ethical culture in municipalities, not in creating ethical leadership itself. While ethics can be taught, integrity, responsibility and fairness develop overtime. A two-day course or even a university module is unlikely to radically change a person's ethical

²⁶² King IV (2016) 20.

²⁶³ King IV (2016) 20.

²⁶⁴ King IV (2016) 20.

²⁶⁵ King IV (2016) 20.

²⁶⁶ King IV (2016) 44.

²⁶⁷ Constitution s195(1)(a).

²⁶⁸ See Chen T (2001); Witten H (2001); Disoloane (2012).

²⁶⁹ Municipal Structures Act, Schedule 1 Item 2(a)-(b).

²⁷⁰ (WCHC) unreported case no 20763/13 (24 March 2014).

²⁷¹ *Kannaland Municipality v Minister for Local Government, Environmental Affairs and Development Planning in the Western Cape and Another* (WCHC) unreported case no 20763/13 (24 March 2014).

conduct. Ethical leaders are groomed. Instead of investing resources in ethics education for councillors with tainted background it is better for political parties to nominate or field candidates whom they have sufficient reason to believe that are ethical and effective. Prior to their nomination, thorough background checks should thus be conducted to determine whether or not the candidate has previously been found guilty of any misconduct. It should follow that candidates that are found to have engaged in, and who are found to be guilty of, misconduct should not be nominated as potential councillors. If political parties continue to field candidates with questionable morals, as has been the case for a while, then they run the risk of losing votes in the next local government elections.

Principle 2 of King IV states that the council should govern the ethics of the municipality in a way that supports the establishment of an ethical culture.²⁷² An ethical culture is one in which ethical behaviours are insisted upon and rewarded, but also one in which the ability to question and challenge decisions and actions is entrenched.²⁷³ The council should assume responsibility for the governance of ethics by setting the direction for how ethics should be approached and addressed by the organisation.²⁷⁴ As a point of departure, an ethical culture is dependent on ethical and effective leadership as exemplified by the council. This is supported by a study conducted which found that 75 per cent of the 8 000 respondents agreed that the organisation's leader plays the most important role in establishing ethical standards for the organisation.²⁷⁵ Brown, Trevino and Harrison thus provide that leaders should demonstrate normatively appropriate conduct through personal actions and interpersonal relationships and by promoting such conduct to followers through communication, reinforcement and decision-making.²⁷⁶ In this way, the council should communicate ethical expectations through formal processes such as the Code of Conduct for Staff as set out in Schedule 2 of the MSA. In addition to this, the council should ensure that thorough background checks are conducted in the recruitment and selection process to ensure that positions are filled with ethical employees. An ethical culture should further be maintained through effective ethics management. This requires that, *inter alia*, the council adopt whistle-blowing and ethics policies and put in place complaint mechanisms to ensure that any unethical conduct can be reported and acted on accordingly.

²⁷² King IV (2016) 44.

²⁷³ Naidoo R *Corporate Governance: An Essential Guide for South African Companies* 2 ed (2010) 258.

²⁷⁴ King IV (2016) 44.

²⁷⁵ Lloyd H & Mey R 'An Ethics Model to Develop an Ethical Organisation' (2010) 8(1) *SA Journal of Human Resource Management* 2.

²⁷⁶ Brown M, Trevino L & Harrison D 'Ethical Leadership: A Social Learning Perspective for Construct Development and Testing' (2005) 97 *Organisational Behaviour and Human Decision Process* 120.

3.2 Calibre of councillors

A discussion on effective leadership in municipalities is not complete without discussing the calibre of councillors. According to Statistics South Africa, a major problem in South Africa is that councillors cannot apply their minds to the documents of a municipality.²⁷⁷ Educational, skills and experience requirements do not form part of the eligibility criteria for the position of councillor.²⁷⁸ The result is that most people occupying the positions of a councillor are incapable of discharging their duties effectively, including, holding the executive accountable. It should thus be noted that this is one area where King IV sets a higher standard than provided for in law.²⁷⁹ King IV recognises the importance of capacity of councillors for the effective discharge of political functions in a municipality. Principle 7 of King IV states that the council should comprise the appropriate²⁸⁰ balance of knowledge, skills, experience, diversity and independence for it to discharge its governance role and responsibilities objectively.²⁸¹ King IV is setting the record straight that the calibre of councillors that compose a council is critical for improving the performance of the council.²⁸² Knowledge and skills speak to educational qualifications, educational seminars relevant to local government, training workshops that are aimed at building capacity in local government as well as qualification through long-term practical experience. Experience refers to the experience that is necessary for the successful execution of a councillor's functions and powers. This may require diversity in experience such as law, accounting, human resource management or public administration. In addition, given the increasingly digital environment in which municipalities operate, having a technology expert on council could be a strategic advantage for the municipality.²⁸³

Further, principle 7 of King IV requires that elected councillors are diverse and independent. Diversity implies that the council should comprise of members who have a diverse set of skills,

²⁷⁷ Statistics of South Africa *2011 Edition* (2011) 11.

²⁷⁸ See, s158(1) of the Constitution.

²⁷⁹ See n 234 above, 40.

²⁸⁰ The word 'appropriate' is not defined in King IV. It is argued that this should be read as referring to the knowledge, skills, experience, diversity and independence as is necessary for the effective discharge of municipal functions and matters incidental thereto.

²⁸¹ King IV (2016) 83.

²⁸² King IV (2016) 83.

²⁸³ Deloitte 'Diversity in the boardroom' available at

https://www2.deloitte.com/content/dam/Deloitte/za/Documents/governance-risk-compliance/za_Deloitte_KingIV_Board_Diversity_01032017.pdf (accessed 30 May 2019). This is also in line with principle 12 of King IV which requires that the 'council should govern technology and information in a way that supports the municipality setting and achieving its strategic objectives'. To discharge this function, the council should have keen insight into the IT environment. This emphasises the need for specialised skills on the council in this regard.

knowledge and experience but of different age grouping, cultural background and gender, among other differences.²⁸⁴ This would result in the local community being better represented on the council as it allows for enhanced representation of different interest groups. This is confirmed by research which revealed that diverse groups outperformed homogeneous (that is, groups of the same like) groups because the diverse group more carefully evaluated the information at hand which was absent from a homogeneous group.²⁸⁵ Another study confirmed that after the introduction of a 40 per cent gender quota in the directors' post, it was found that female directors are 'more likely than their male counterparts to probe deeply into the issues at hand' by asking more questions, leading to more robust deliberations.²⁸⁶ It is arguable, therefore, that from a diverse council would flow various views that result in positive interaction and yield results in decision-making that represents the interests of all stakeholders.

Independence refers to the exercise of objective, unfettered judgement.²⁸⁷ In *Law Society of South Africa and Others v President of the Republic of South Africa and Others*,²⁸⁸ the court stressed that public powers must always be exercised within the constitutional bounds and in the best interest of the people.²⁸⁹ Therefore, in order for councillors to be deemed as being independent, councillors should exercise their judgement in the interest of the local community. It may be difficult for councillors to be 'independent' if they belong to a political party that determines policy positions to be taken in the council. However, the argument is advanced that when political parties formulate a policy, all of its members, including those who will serve on the council should participate in the policy formation process. In this regard, a councillor will be dependent on, and should be guided by, the information pertaining to the policies already agreed upon but the basis on which conclusions are drawn by such a councillor should be independent.

In terms of the above, King IV recommends the following: that political parties should deploy councillors with the necessary skills, knowledge, and experience to ensure that they are able to perform their functions diligently.²⁹⁰ The above recommendation, however, excludes

²⁸⁴ King IV (2016) 13.

²⁸⁵ Phillips K, Liljenquist K & Neale M 'Better Decisions Through Diversity' *Kellogg Insight* 1 October 2010.

²⁸⁶ Deloitte 'King IV: Diversity in the boardroom' available at https://www2.deloitte.com/content/dam/Deloitte/za/Documents/governance-risk-compliance/za_Deloitte_KingIV_Board_Diversity_01032017.pdf (accessed 30 May 2019).

²⁸⁷ King IV (2016) 13.

²⁸⁸ 2019 (3) SA 30 (CC).

²⁸⁹ *Law Society of South Africa and Others v President of the Republic of South Africa and Others* 2019 (3) SA 30 (CC) para 3.

²⁹⁰ King IV (2016) 83.

independent councillors. An independent councillor refers to a councillor who was not nominated by a party as a candidate.²⁹¹ Thus a political party will not be able to ensure that independent councillors comply with the above criteria as independent candidates are nominated by members of the community. In this regard, it appears that King IV is not sufficient in that it does not make mention of the position of independent councillors and how these principles may apply to them

King IV also recommends that a strong emphasis be put on in-depth induction for newly elected councillors at the start of a new political term in the interest of bolstering knowledge on the council.²⁹² The council should further ensure the establishment of professional education programmes for councillors that run for the full term of office to ensure the building of competence.²⁹³ It is, however, possible for councillors who possess the required skills, knowledge, and experience to not perform adequately once they are in office. Attached to this requirement should thus be the duty to exercise their functions with the reasonable care, skill, and diligence²⁹⁴ that would be expected by a person carrying out the same functions as that of a councillor. This provides for a performance standard to which underperforming councillors conduct could be tested to ascertain whether or not there is merit to sanction that councillor for his or her performance. This would ensure that skilled, knowledgeable, and experienced councillors further perform their functions according to standard and can be held accountable for any substandard performance when they are elected into office.

3.3 Reporting for accountability purposes

Reporting is a critical function without which accountability will be difficult to establish. Regular reporting can provide useful information which enables other stakeholders to undertake their role such as oversight. Reporting is also essential for the local community as it provides them with information relating to, and serves as a guide on, the utilisation of public

²⁹¹ Municipal Structures Act, Schedule 1, Item 1.

²⁹² King IV (2016) 83.

²⁹³ King IV (2016) 83.

²⁹⁴ This duty is derived from the corporate sector. Section 76(3)(c)(i) of the Companies Act 71 of 2008 requires that a director of a company, when acting in that capacity, exercise the powers and perform the functions of a director with the degree of care, skill and diligence that may reasonably be expected of a person carrying out the same functions in relation to the company as those carried out by that director.

funds and the performance of a municipality.²⁹⁵ It is for this reason that legislation imposes reporting obligations on municipalities in South Africa.

Municipalities are required to produce monthly, quarterly, and annual reports which focus on, among others, their performance against the municipal budget and against service delivery plans. For example, section 71(1) of the MFMA requires that the accounting officer of a municipality submit monthly reports, to the mayor and the relevant provincial treasury. The report should illustrate the state of the municipality's budget reflecting all relevant particulars (such as the actual revenue, per revenue source, actual borrowings, actual expenditure per vote, actual capital expenditure per vote, the amount of any allocations received, the actual expenditure on those allocations, etc) for that month and for the financial year up to the end of that month.²⁹⁶ Councillors are required to report to local communities at least quarterly on council matters, including the performance of the municipality against established indicators.²⁹⁷ Section 121(2)(b) of the MFMA also requires municipalities to submit annual reports to the AGSA, the relevant provincial treasury and the provincial department responsible for local government in the province.²⁹⁸ Apart from these reporting functions, there is also a general reporting obligation which requires the accounting officer of a municipality to submit to the National Treasury, the provincial treasury, the department for local government in the province or the AGSA information, returns, documents, explanations, and motivations as may be prescribed or required.²⁹⁹ King IV recognises the importance of reporting to enable the various accountability mechanisms to take effect. Principle 5 of King IV requires that the council ensure that reports that are issued by the municipality enable stakeholders to make informed assessments of the municipality's performance and its short, medium- and long-term prospects. This calls for reporting beyond mere compliance or the check-box approach. The King IV Report does not only recognise the need for municipalities to report on their activities but also the need for such reports to be presented in a manner that enables stakeholders to easily assess the performance of a municipality. King IV defines these stakeholders as:

'The groups or individuals that can reasonably be expected to be significantly affected by a municipality's activities, outputs or outcomes, or whose actions can reasonably be

²⁹⁵ Kwame A 'Can Reporting of Local Government Performance Enhance Citizens' Engagement?' (2015) 44(4) *African Institute Insight Journal* 178.

²⁹⁶ MFMA s71(1).

²⁹⁷ MSA Schedule 1 Preamble.

²⁹⁸ MFMA s127(2)(b).

²⁹⁹ MFMA s74(1).

expected to significantly affect the ability of the municipality to create value over time.³⁰⁰

The MSA provides that a municipality consists of the political structures and the administration of a municipality as well as the local community of that municipality.³⁰¹ The Constitution requires local government to provide democratic and accountable government to local communities.³⁰² Thus, there is no doubt that the local community is the primary stakeholder of a municipality. Other important stakeholders are however national and provincial governments, NGOs and the AGSA, among others.

Besides the issue of stakeholders, another critical element of principle 5 relates to the kind of information provided by these reports. In words, does a report present information in a manner which allows the relevant stakeholder to make sense of it? It can be argued that the easy assessment of municipal performance is likely to be enhanced if the following conditions are met: the timeous publication of reports, the presentation of factual information and the presentation of information in a manner which is easy to understand. While the first two conditions are regulated, the last one is arguably not. Even with such regulation some municipalities still fail to provide factual information on time. This was revealed by the AGSA's audit report for the 2016-17 financial year which established that performance reports of 62 per cent of the municipalities had material flaws and were not credible enough for the council or for public use.³⁰³ Without credible information, it would be difficult for the local leadership to make sense of where they are going wrong and to institute corrective measures where necessary. Similarly, it would be difficult for stakeholders to evaluate the performance of the municipality and to make informed decisions in holding local government accountable. The result is that accountability cannot be effectively enforced.

In *The President of the Republic of South Africa and Others v M & G Media Ltd* 2011 (2) SA 1 (SCA), Sachs J correctly stated that:

'Open and transparent government and a free flow of information concerning the affairs of the state is the lifeblood of democracy. It is impossible to hold a (local) government accountable that operates in secrecy'.³⁰⁴

³⁰⁰ King IV (2016) 17.

³⁰¹ MSA s2(b)(i)-(ii).

³⁰² Constitution (1996) s152(1)(a).

³⁰³ Auditor-General of South Africa (2017) 14.

³⁰⁴ *The President of the Republic of South Africa and Others v M & G Media Ltd* 2011 (2) SA 1 (SCA) para 1.

Therefore, to ensure that reports produced by a municipality meet the objective of enabling stakeholders to make informed assessments of the municipality's performance, such reports must be of adequate quality yet easy to read and comprehend. This means that the information provided should be presented in such a manner that enables an average citizen to read and understand. This can be achieved by, instead of providing long and complicated reports as required by legislation (budgets, annual reports etc.), compiling shorter and simplified versions of such reports for the consumption of the local community (a citizens' guide, citizen's budget etc). In addition to this, these reports should be published on a municipality's website for public consumption. Participation structures, including ward committees, can be utilised to distribute these public-friendly reports or documents to those who are not able to access the website. Thus, principle 5 has brought another dimension to reporting for accountability purposes which is not adequately covered by legislation.

3.4 Measuring the performance of political actors and structures

There is no doubt that performance evaluation should be part of interventions designed to improve municipal governance. It seeks to monitor an individual or department's progress and success against a municipality's strategic objectives and its financial capacity.³⁰⁵ Performance evaluation can be effective in detecting any poor performance and to improve such performance while simultaneously ensuring accountability for substandard performance.³⁰⁶ King IV recognises the importance of performance evaluation in ensuring an effective system of local government. Principle 9 of King IV provides that the council should ensure that the evaluation of its own performance and that of its committees, its speaker and individual councillors, facilitate the continuous improvement of their performance and effectiveness.³⁰⁷ This is not a new requirement as the MSA states that a municipality must establish a performance management system³⁰⁸ in order to promote a culture of performance among its political structures, political office bearers, councillors and in its administration.³⁰⁹ Section 19(2) of the Municipal Structures Act also provides that the council must annually review the needs of the community, its priorities to meet those needs, its processes for involving the

³⁰⁵ Mosse R & Sontheimer L *Performance Monitoring Indicators Handbook* (1996) 3.

³⁰⁶ Shah A *Public Sector Governance and Accountability Series: Performance, Accountability and Combatting Corruption* (2007) 19.

³⁰⁷ King IV (2016) 84.

³⁰⁸ MSA s38(a).

³⁰⁹ MSA s38(b).

community and its organisational and delivery mechanisms for meeting the needs of the community.³¹⁰ In addition to this, the council is required to review its (the council's) overall performance in achieving these objectives.³¹¹ However, King IV demands a higher standard of performance evaluation by encouraging closer collaboration between the council and political parties on the manner and form in which the performance of councillors, the speaker, the mayor and council, at large, should be assessed.³¹²

King IV further requires that the results of the performance evaluations of the council, its committees, speaker and individual councillors be responded to by the council as to achieve continuous improvement in its performance and effectiveness.³¹³ This should be done to provide the councillors with an opportunity to provide reasons for any poor performance and to receive guidance, assistance or training in this regard to promote continuous improvement in their performance. It is submitted that where performance evaluation reveals any substandard performance, it should be responded to with appropriate sanctions as well. In this regard, unethical performance must be responded to by the Speaker of the council through enforcing the code of conduct against the relevant councillor. In addition, poor performance must be punished in subsequent elections by the citizenry. However, as discussed in paragraph 3.6 of Chapter 3, the citizenry is unlikely to hold poor-performing councillors accountable at the polls, unless political choices are made on good government concerns and not on other considerations. In South Africa, due to its apartheid past, groups are still sharply divided along racial and ethnic lines. These divisions, along with the strong mistrust by non-whites that came about as a result of apartheid, have led to groups supporting political parties consisting, mostly, of members from their own race or ethnicity.³¹⁴ Therefore, loyalty to political parties is still, unfortunately, one of the key considerations when individuals decide who to vote for.

In the most extreme case, that is where performance evaluations reveal continued substandard performance, such councillors should be deemed as unfit to hold office. Consequently, he or she should be removed from office and replaced by a candidate that possess the necessary skills, knowledge, and experience to perform the functions of that office effectively. This is where the role of political parties comes in to recall or replace their members who have a proven

³¹⁰ Municipal Structures Act s19(2)(a)-(d).

³¹¹ Municipal Structures Act s19(2)(e).

³¹² King IV (2016) 84.

³¹³ King IV (2016) 84.

³¹⁴ It is for this reason that Jung and Shapiro (1995) argue that in South Africa, voting takes place along racial lines.

track record of substandard performance.³¹⁵ Thus, King IV is calling for closer collaboration between the council and political parties around performance evaluation of political office bearers.

The challenge, once again, comes with independent councillors whose performance should also be evaluated, like any other councillors. With regard to independent councillors, only their constituency can hold them accountable during elections. The fact that they are very few independent councillors means that political parties nonetheless still have a very important role to play in holding their representatives in councils for their performance.

3.5 The importance of rule of the law to accountable local government

Chapter 3 paragraph 4 demonstrated that municipalities are failing partially due to material non-compliance and non-implementation of laws and regulations that are applicable to local government. The failure on the part of council to ensure compliance with material legislation in municipalities has partially resulted in accountability being weakened.³¹⁶ The rule of law is important as it is the mechanism through which other stakeholders can lawfully hold officials answerable for their actions (or the lack thereof). Compliance with the rule of law is important to ensure good governance in municipalities by, for instance, ensuring prudent spending of public funds. King IV has set the record straight that there cannot be accountability at the local level without the rule of the law. Principle 13 of King IV states that '*the council should govern compliance with applicable laws, non-binding rules, codes and standards in a way that supports the municipality being an ethical and good corporate citizen*'.³¹⁷ This principle raises several questions that are critical to improving accountability in local government.

The MSA provides that the municipal manager is responsible and accountable for, *inter alia*, the management of the municipality's administration in accordance with applicable legislation.³¹⁸ However, King IV places the responsibility to govern (that is to control, influence or regulate) compliance with legislation, rules, codes and standards on the council

³¹⁵ This is plausible in the context of councillors that are elected through proportional representation. However, with regards to ward councillors (that is, those that are directly elected to represent and serve the people of a specific ward) it becomes difficult. The only recourse available in this instance is for the constituency to hold them accountable at the polls for substandard performance.

³¹⁶ Auditor General (2017) 2.

³¹⁷ King IV (2016) 85.

³¹⁸ MSA s55(1)(b).

and not on the municipal manager. The reasoning behind this is that it is the council and not the municipal manager, that is ultimately accountable to citizens and other stakeholders. However, given that the municipal manager is appointed by and accountable to the council a closer collaboration between the two is expected to ensure effective compliance.

King IV has also moved away from the common belief that the rule of law is merely about complying with applicable legislation. It emphasises that municipalities should also respect and implement non-binding rules, standards, and codes. Non-binding rules refer to rules that the municipality adheres to on a voluntary basis such as best practices for reporting, disclosure, or governance. Codes present standards of conduct expected of municipal officials, including the council. In this way, the code exemplifies the core professional values and behaviours underpinning the most encountered ethical considerations, as discussed above.³¹⁹ Therefore, put simply, codes refer to policies that are related to conduct and discipline. For example, Codes of Conduct and codes of best practices such as the United Nations Global Compact Principles which is derived from the Universal Declaration of Human Rights, International Labour Organisation's Declaration on Fundamental Principles and Rights at Work, Rio Declaration on Environment and Development, and the United Nations Convention Against Corruption.³²⁰ Compliance with these codes, therefore, put municipalities in a position to operate in a manner that enables them to meet international obligations in the areas of human rights, labour, environment and anti-corruption. Standards are aimed at achieving the optimum degree of order in a given context through establishing specifications and procedures that should be complied with when decisions are taken³²¹ Standards are necessary to ensure, for example, that a document is of reasonable quality, accuracy and verifiability. Examples of standards include, the International Auditing and Assurance Standards Board's International Engagement Standards that assurance services are required to comply with. Another example is the requirement by the National Treasury that municipalities financial statements are compliant with the Generally Recognised Accounting Practice (GRAP) standard.³²²

The last important aspect of principle 13 is that compliance with the rule of law is not an end in itself. It should lead to a 'municipality being an ethical and good corporate citizen'. Good

³¹⁹ Workability International 'Code of Practice' available at <https://www.workability-international.org/about-workability/code-of-practice> (accessed 28 May 2019).

³²⁰ United Nations Global Impact 'The ten principles of the UN Global Compact' available at <https://www.unglobalcompact.org/what-is-gc/mission/principles> (accessed 30 May 2019).

³²¹ Hatto P *Standards and Standardization Handbook* (2010) 5.

³²² National Treasury *Generally Recognised Accounting Practice (GRAP)* (2015) 6.

corporate citizenship requires that the council view a municipality as an integral part of the broader society in which it operates.³²³ The municipality is afforded standing as a juristic person in a society with rights and corresponding responsibilities.³²⁴ It is, therefore, necessary that the council consider not only the performance of a municipality but also the impact of a municipality's operations on society and the environment. As a responsible corporate citizen, the council should ensure that the municipality protects, enhance, and invest in the well-being of the economy, society, and the environment. In *Minister of Water Affairs and Forestry v Stilfontein Gold Mining Company*³²⁵ the court noted that one of the characteristics of good governance is social responsibility and accordingly held that the relevant respondents acted irresponsibly by not addressing the issue of water pollution in exercising its decision.³²⁶ Therefore, compliance should be governed to ensure that stakeholders view the municipality as doing the right thing (by achieving their objectives) whilst protecting, enhancing and investing in the well-being of the economy, society and the environment.

3.6 The importance of internal oversight

In paragraph 3.4 of Chapter 3 it was observed that internal oversight structures can be effective in promoting accountability in municipalities. This is recognised by principle 15 of King IV which requires the council to ensure that assurance services and functions enable an effective control environment and that these support the integrity of information for internal decision-making and of the municipality's external reports.³²⁷ What are these assurance services and functions? How are they important to ensure an effective control environment? Assurance services include, but are not limited to, assurance engagements performed by independent, internal or external assurance service providers (such as an internal audit unit or the AGSA). Assurance services are required to provide, by way of reporting, a conclusion designed to enhance the degree of confidence of the intended users other than the responsible party about the outcome of the evaluation or measurement of a subject matter against criteria.³²⁸ Assurance functions includes, *inter alia*, the municipality's line functions that own and manage risks and the municipality's specialist functions that facilitate and oversee risk management and

³²³ King IV (2016) 11.

³²⁴ King IV (2016) 11.

³²⁵ (7655/05, 7655/05) [2006] ZAGPHC 47 (15 May 2006).

³²⁶ *Minister of Water Affairs and Forestry v Stilfontein Gold Mining Company* at para 16.9.

³²⁷ King IV (2016) 86.

³²⁸ King IV (2016) 9.

compliance.³²⁹ In local government, structures that perform these functions include MPACs, internal audit units and audit committees. Therefore, legislation adequately provides for assurance services and functions in municipalities.³³⁰

A control environment refers to the set of standards, processes and structures that provide the basis for carrying out internal control³³¹ in a municipality. Effective control is achieved through strengthened internal controls and monitoring systems that are effective to, *inter alia*: safeguard the assets of the municipality; ensure that information received and provided is accurate and reliable; resources are utilised to promote effective, economic and efficient delivery of services and; ensure that management policies and procedures are implemented and followed religiously. According to the Institute of Internal Auditors, an effective control environment is characterised by the following elements: integrity and ethical values, effective management, competent personnel and, adherence to policies and practices.³³² Therefore, in this context, the function of assurance services in municipalities should be to assess and identify potential risks that may result in the failure of any of the elements of a controlled environment. An effective control environment should be able to detect and reduce opportunities for maladministration, corruption, and resource wastage in a municipality.

As observed in paragraph 3.3 of Chapter 3, legislation provides for assurance services and functions such as internal audit units and MPACs.³³³ King IV is emphasising that these internal oversight structures must exercise their functions to ensure the integrity of information (information-integrity). Information-integrity refers to the trustworthiness and dependability of the information.³³⁴ More specifically, it refers to information that is reliable, accurate, and credible. Legislation makes adequate provision for this. The capacity of these structures to undertake their role including producing reliable information, therefore, becomes crucial. Principle 15 directs the council to ensure that these assurance structures live up to their potential by fulfilling the above objectives. It should thus be the primary role of every council to ensure that these assurance providers are effective. The council should ensure, among other things,

³²⁹ King IV (2016) 9.

³³⁰ See for example, MFMA s165(2)(b) and 166(2)(a).

³³¹ Deloitte 'COSO-Control environment' available at <https://www2.deloitte.com/ng/en/pages/audit/articles/financial-reporting/coso-control-environment.html> (accessed 7 May 2019).

³³² Institute of Internal Auditors 'Auditing the control environment (2011)' available at [https://www.iaa.nl/SiteFiles/IIA_leden/Auditing_the_Control_Environment\[1\].pdf](https://www.iaa.nl/SiteFiles/IIA_leden/Auditing_the_Control_Environment[1].pdf) (accessed 10 March 2019).

³³³ See Chapter 3 paragraph 3.3.

³³⁴ Malik K 'Information Integrity Analysis and Design: A UML Based Approach' (2005) 9(1) *Paradigm* 66.

that assurance providers have a clear mandate and know what is expected of them; members of assurance structures are properly qualified to execute their functions diligently; have access to required information which they receive within strict timeframes, and that those assurance providers are adequately resourced. Furthermore, in Chapter 3 it was demonstrated that internal oversight structures are ineffective in promoting accountability in municipalities partially due to the fact that their recommendations are often not implemented or adhered to in municipalities.³³⁵ Thus, it becomes important that the council ensure that the feedback received from assurance services is taken seriously, that their recommendations are duly implemented and that sanctions are enforced where so required.

3.7 Stakeholder participation

Stakeholder participation in local government is essential to provide all interested stakeholders with full opportunities to share concerns, views, influence decision-making, build their commitment to the participatory process, ensure implementation of adopted measures and to ensure the sustainability of plans and decisions.³³⁶ However, in practice, it is estimated that less than 3 per cent of the national population have actually participated in the affairs of municipalities.³³⁷ This is so despite the MSA as well as the Constitution requiring that the council of a municipality involve the local community in the affairs of the municipality.³³⁸ King IV seeks to address this gap. Principle 16 of King IV provides that in the execution of its governance role and responsibilities, the council should adopt a stakeholder-inclusive approach that balances the needs, interests, and expectations of material stakeholders³³⁹ in the best interest of the municipality over time. King IV recognises that a municipality does not function in isolation but in relation with other stakeholders. Material stakeholders refer to any group that is directly affected by a municipality's operations or whose role has direct implications on a municipality's operations. As mentioned above, the primary stakeholder of a municipality is its local community. The MSA defines a local community as:

'That body of persons comprising: residents of the municipality; ratepayers of the municipality; civic organisations and non-governmental, private sector or labour organisations or bodies that are involved in the affairs of the municipality; visitors and

³³⁵ See Chapter 3 paragraph 3.3.

³³⁶ Almoradie A *Networked Environments for Stakeholder Participation in Water Resources and Flood Management* (2014) 11.

³³⁷ Powell D 'What is wrong with local government?' available at http://sadelivery.co.za/files/back_issues/delivery/Edition20/talking%20governance%201409.pdf (accessed 9 December 2018).

³³⁸ MSA s4(2)(c); Constitution s152(1)(e).

³³⁹ These include civil society organisations, businesses in the municipal area, members of the community, suppliers of services, national and provincial government, auditors, etc.

*other people residing outside the municipality who, because of their presence in the municipality, make use of services or facilities provided by the municipality’.*³⁴⁰

The ‘residents’ referred to in this section include, among others, the youth, women, disabled people, pensioners and other marginalised groups. A stakeholder-inclusive approach would, therefore, require that the municipality also takes into account the needs of such groups who are residents within that municipality’s jurisdiction.

Besides the local community, other material stakeholders include the private sector, NGOs, national and provincial governments, including, bulk services providers, such as ESKOM and water boards. Therefore, it is necessary that a municipality consider all the interests of its different stakeholders. The stakeholder-inclusive approach recognises that a municipality has many stakeholders that may negatively affect a municipality to achieve its strategy and long-term sustained growth.³⁴¹ This is supported by Freeman who provides that an organisation cannot survive without the support of its stakeholders.³⁴² In terms of this approach, the legitimate interests and expectations of stakeholders should be considered when the council makes decisions.³⁴³ An interest or expectation is deemed to be legitimate if a reasonable and informed outsider would conclude it to be valid and justifiable in the circumstances on a legal, moral or ethical basis.³⁴⁴ This approach, therefore, demands that the interests of a municipality extend to include that of other material stakeholders. This principle of King IV calls for the need for a council to have a legal duty to balance the interests of the municipality and its material stakeholders when it makes decisions that may adversely affect any of their material stakeholders. Further, principle 16 also requires a balancing of interests in the ‘*best interest of the municipality over time*’. This means that the municipality’s interests ought to retain primacy. Therefore, the council should prioritise the interests of other material stakeholders only if this is likely to promote the success of the municipality over time. This is necessary to ensure that municipalities would continue to deliver quality services in future.

Every council should, therefore, identify the material stakeholders of the municipality, their interests and expectations and align these with the municipality’s strategic objectives. The starting point is for the council to ensure the implementation of processes aimed at promoting

³⁴⁰ MSA s1.

³⁴¹ Cassim M, Cassim R, Shev J & Others *Contemporary Company Law* 2 ed (2012) 495.

³⁴² Freeman R *Strategic Management: A Stakeholder Approach* (1984) 13.

³⁴³ King IV (2016) 17.

³⁴⁴ Institute of Directors Southern Africa *King Report on Governance for South Africa* (2009) 100.

appropriate disclosure of these interests and expectations.³⁴⁵ The council should then ensure that its management develops, for adoption by the council, a strategy and stakeholder engagement policies for the regulation of the municipality's relationships with all its stakeholders.³⁴⁶ This process requires active and regular communication with the relevant stakeholders.

4 CONCLUSION

This chapter discussed the utility of selected King IV Principles on Corporate Governance in improving accountability in local government. It was established that the principles have the potential to improve accountability in municipalities if incorporated sufficiently in municipal governance. The chapter demonstrated that ethical and effective leadership forms the basis on which all principles of King IV rests. Therefore, ethical, and effective leadership is an absolute requirement is a *sine qua non* for accountability in local government. Further, King IV seeks to improve accountability in municipalities by providing recommended practices that set the bar higher than what is required by local government legislation. For example, among the concrete practices recommended by King IV which set a higher standard than the current laws and policies of local government, is the requirement that the council should comprise the appropriate³⁴⁷ balance of knowledge, skills, experience, diversity and independence for it to discharge its governance role and responsibilities objectively.³⁴⁸ In this way, the principles complement the existing legislation. In other cases, King IV Principles fill certain gaps in the law which have created accountability challenges in local government. King IV places the obligation to implement its principles squarely on the council as it is ultimately accountable for any poor performance. Moreover, the council is the highest decision-making body of a municipality vested with all the legislative and executive powers. Thus, there is no doubt that any measures designed to improve municipal accountability should target the council and spearheaded by the council to promote ownership.

³⁴⁵ Cassim (2012) 497.

³⁴⁶ Cassim (2012) 497.

³⁴⁷ The word 'appropriate' is not defined in King IV. It is argued that this should be read as referring to the knowledge, skills, experience, diversity and independence as is necessary for the effective discharge of municipal functions and matters incidental thereto.

³⁴⁸ See n 270 above.

CHAPTER 5: CONCLUSION

1 INTRODUCTION

South Africa has one of the most advanced systems of local government in terms of institutions and legislation. The Constitution empowers local governments with specific functions and powers (legislative, executive, and revenue-raising) to ensure that local governments are responsive and accountable. The Constitution and legislation provide a variety of mechanisms (institutional and procedural) at both vertical and horizontal levels to ensure that local government is held accountable. However, despite these mechanisms, evidence suggests that accountability continues to fail in local government. This means that the current accountability mechanisms that are in place are ineffective and/or inadequate. The result is that, instead of local government being accountable, responsive, and responsible, it is often perceived as a sphere of government that is primarily to blame for poor service delivery owing to factors such as corruption, maladministration, and resource wastage.

There is no doubt that if local government fails due to weaknesses in accountability, public service delivery will also fail given that municipalities are the core-face of service delivery in South Africa. This makes urgent interventions to enhance the effectiveness or complement the existing accountability mechanisms crucial to ensure that local government remains accountable. The primary objective of this paper was to understand the problems associated with accountability in municipalities and explore ways in which they can be addressed. Towards this end, the paper explored the utility of the King IV Principles in addressing some of these problems. Due to word count limitations applicable for a research paper, only the application of selected principles that are likely to have a direct impact on accountability were discussed, instead of all the 16 principles. The purpose of this chapter is to provide major findings and conclusions of the study.

2 FINDINGS OF THE STUDY

2.1 Accountability is important if local government is to be effective

Chapter 2 sought to establish the significance of accountability to an effective system of local government. It commenced by briefly analysing the potential of decentralisation and the ingredients that are necessary for local government to live up to its potential. It was established that while local government has significant potential with regard to the realisation of democracy, development, and peace, among other objectives, it is unlikely to deliver on such

objectives unless it is accountable.³⁴⁹ This finding is not new in academic literature. It resonates with scholars, such as Ribot and Agrawal, who argue that if powers and resources are decentralised to local actors who are not accountable to their constituents or who are accountable only to themselves, then decentralisation is not likely to accomplish its stated aims.³⁵⁰ Therefore, accountability is necessary for local government to live up to its potential. Where local governments are not accountable, decentralisation will likely promote, among other ills, corruption, and resource wastage.

2.2 The state of accountability in South African local government is poor

Having established that local governments are unlikely to be effective unless they are accountable, Chapter 3 sought to examine whether South Africa has accountability mechanisms in place to ensure that local government is accountable and if so, whether they are effective in practice? If not, what are the challenges that are hampering their effectiveness? The paper established that there are a variety of mechanisms that are in place to ensure that local government remains accountable. These include Codes of Conduct for Councillors and Staff, performance agreements, the intervention powers of the national and provincial governments, the role of the AGSA and local elections. As indicated above, evidence, however, suggests that the accountability architecture is wholly ineffective in practice. For instance, while empowered with significant supervisory powers, the national and provincial governments have not been effective in ensuring that municipalities are accountable. The high number of service delivery protests³⁵¹ suggests that citizens have abandoned formal mechanisms of communicating their grievances and holding municipal officials accountable. Thus, there is no doubt that accountability in municipalities continues to fail.

2.3 King IV is useful in addressing accountability weaknesses in municipalities

In paragraph 3 of Chapter 2, it was stated that accountability has five different dimensions namely, transparency, liability, controllability, responsibility and responsiveness. After analysing King IV, it can be concluded that eight of the 16 principles that were selected for the purposes of this paper are likely to cater to these dimensions of accountability once

³⁴⁹ Other necessary ingredients include substantial powers and resources, and responsible supervision from senior governments. See paragraph 3 in Chapter 2.

³⁵⁰ Ribot J & Agrawal A 'Accountability in Decentralization: A Framework with South Asia and West Africa' (1999) 33 *Journal of Developing Areas* 478.

³⁵¹ See paragraph 3.7 of Chapter 3.

incorporated by municipalities. King IV seeks to address major issues that have resulted in accountability collapses in municipalities. Its principles emphasise, among other things, the importance of ethics, leadership, transparency, oversight, skills, and the rule of the law. These essential ingredients enable the council to effectively guard against and eradicate the exercise of functions in an arbitrary fashion, gross negligence and bad faith that have become common practice in most municipalities. Therefore, there is no doubt that all these ingredients are central to entrenching a culture of accountability in municipalities. The study found that of the eight selected principles of King IV that was examined here, it is only principle 7 of King IV that demands a higher standard than provided in local government law and policies.³⁵² The rest of the principles are nonetheless useful in that they supplement the existing legislation and policies through incorporating the recommended practices provided in King IV in this regard.

King IV seeks to change the belief that municipalities, by virtue of being public bodies, cannot be administered in a way private sector companies are run. By developing a set of 16 principles on corporate governance specifically for municipalities, King IV demonstrates that the concept of corporate governance, rooted traditionally in the private sector, has equal application in the municipalities.

2.4 King IV Principles can be implemented within the current legislative framework

One of the key attributes of King IV is that it prescribes higher standards of governance than what is ordinarily provided for by legislation. The study found that while King IV mentions that its principles set a higher standard of governance than provided in local government legislation, this study only found that to be the case in relation to principle 7 of King IV. All other principles that were examined can be reconciled with and supplement existing legislation. It would, however, be in the best interest of the municipality as well as its stakeholders to comply with the higher standard of governance as set out in principle 7 of King IV in order to address accountability weaknesses in municipalities. Principle 7 of King IV may, however, be difficult to implement within the current legislative framework. As stated above, the principle requires that the council to be composed by individuals who possess a diversity of knowledge, skills, and experience, which is currently not a legislative requirement for the position of councillor. This principle can, however, be implemented by political parties when nominating or selecting candidates to stand as councillors so that the challenges surrounding the inability of most councillors to undertake their functions effectively can be addressed. This may enhance

³⁵² See n 270 above.

the ability of councils, its committees, and individual councillors in undertaking their respective roles, including the oversight function which is the centre of accountability.

2.5 There is a need for gradual implementation of King IV Principles

While the King IV Principles apply to all types of municipalities, it may nonetheless be difficult for poorer municipalities, that lack the capacity, to implement these principles. For example, the establishment of professional education programmes for councillors that run for the full term of office to ensure the continuous building of competence on council for purposes of principle 7 of King IV can be a costly process. However, the benefit it offers such as an effective municipal council capable of holding its executive accountable, far outweighs the costs involved. It is, thus, recommended that poorer municipalities should adopt an approach that seeks to gradually and over time incorporate the principles. It would be useful for those municipalities to reflect on which principles should be prioritised over the others. The national and provincial governments can also provide the required support to these weak municipalities to enhance their capacity to incorporate King IV Principles in their governance. Metropolitan municipalities and some of the secondary cities, however, do have the means to implement all the discussed principles of King IV (and others that were not selected for the purposes of this paper) as they have the capacity to implement them. There is thus no need for them to gradually incorporate these principles over time. In fact, some of these municipalities, such as the City of Cape Town, are already implementing certain principles of King IV directly or indirectly.

2.6 Accountability is unlikely to improve unless the issue of ethics and leadership is addressed

King IV recognises the important role of council as the highest governing body of a municipality. It is the body that must be held accountable by the public and senior government for the affairs of a municipality. It is for this reason that the obligation to implement all the principles of King IV that are applicable to municipalities falls squarely on the council. It, therefore, becomes important that members that constitute the council are fit and proper for their purpose. This primarily requires that councillors are ethical and effective. Importantly, the study found that mere ethical management will not be sufficient to establish ethical leadership in municipalities. The starting point should be that only capable officials (both political and administrative) that possess the required ethical standards are elected into office and appointed into positions. Without ethical leadership it is unlikely that any intervention,

whether legislative or otherwise, will change the poor state of accountability in municipalities. There is thus no doubt that ethical and effective leadership is an absolute requirement for accountability issues to be resolved in municipalities.

3 CONCLUSION

Local government is at the centre of state delivery in South Africa as it is mandated to provide major basic services that have a direct impact on citizens' well-being. Practice, however, indicates that local government is failing to deliver on its demanding obligations. One of the reasons behind this failure, identified by the AGSA, among other institutions, is weaknesses in accountability. This suggests that accountability mechanisms that are in place are ineffective or inadequate. This study established that the incorporation of the King IV Principles can help arrest some of the accountability challenges. The King IV Principles have the potential to establish an effective control environment that is essential to mitigate risks that have arisen in municipalities and which have been detrimental to the municipalities and various stakeholders. King IV provides for a range of advantages that municipalities can benefit from, such as improved performance; integrated, simplified and quality reporting; commitment to stakeholder engagement; and council effectiveness. King IV places the obligation to implement its 16 principles designed to improve municipal governance on the municipal council. This is in recognition of the constitutional position that the council is the highest decision-making body of a municipality vested with all the legislative and executive powers of a municipality. For the council to effectively deliver on its role, King IV emphasises the importance of ethics, leadership, skills and experience in municipalities, particularly the council. This requires a rethink of the way in which local officials are elected into office, how they are appointed into certain positions, how their performance is evaluated, and how sanctions are enforced for poor performance and misconduct. Legislative interventions alone will clearly not solve the accountability challenges in municipalities. What is required is a combined effort from municipalities (both political administrative and administrative structures); national and provincial governments; independent institutions, such as the AGSA; political parties; and the general citizenry.

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