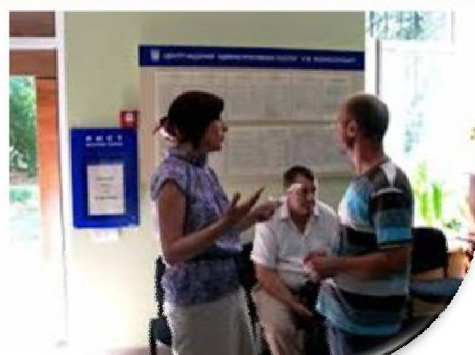
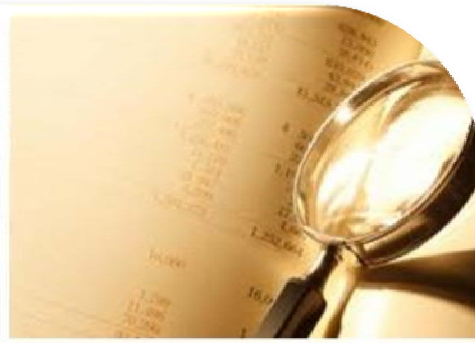




# cooperative governance

Department:  
Cooperative Governance  
REPUBLIC OF SOUTH AFRICA

## Research Weekly e-Alert OVERSIGHT IN THE LOCAL GOVERNMENT SPHERE



## OVERSIGHT IN THE LOCAL GOVERNMENT SPHERE

### 1. Introduction

Effective oversight is as difficult to accomplish as it is to measure accurately. Legislatures in the parliamentary system are generally weak on oversight as the majority of members seek to support the executive they have put in power, leaving much of the calling to account in the hands of the opposition parties.

The National Planning Commission (NPC) states on their website<sup>1</sup> that ministers and Cabinet are collectively answerable to the legislature in theory, but in practice, this line of accountability is weak. In many political systems the strength of political parties means that accountability to the party becomes more important than accountability to the electorate as “the past 100 years have seen a mostly irreversible growth in the power of the executive branch around the world”<sup>2</sup>.

As Butler argues, “ultimately any executive is held to account not by careful institutional design but by the efforts of a country’s citizens using the full range of its political institutions and associations”<sup>3</sup>. The NPC indicates that strengthening Parliament’s ability to **oversee** both its members and the executive could increase public confidence in Parliament and enhance democratic accountability.

Municipalities are constitutionally mandated to ensure democratic and accountable government. The democratically elected representatives need to account to the constituents they represent. Therefore, the same holds true for oversight by municipal councils. In November 2012, a research paper titled “Improving political oversight in municipalities: examining the law and practice surrounding oversight by the Council over the municipal Executive and the municipal administration” under the supervision of Prof. Jaap de Visser, was submitted at the University of the Western Cape. This e-alert draws on some of the insights and recommendations of this research paper.

### 2. Oversight Structures

The oversight model of the South African legislative sector<sup>4</sup> defines oversight as follows: “The proactive interaction initiated by a legislature with the Executive and administrative organs that encourages compliance with the constitutional obligation on the Executive and administration to ensure delivery on agreed-to objectives for the achievement of government priorities.”

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<sup>1</sup><http://www.npconline.co.za/pebble.asp?relid=66>

<sup>2</sup>Butler, A. 2009. *Contemporary South Africa*.

<sup>3</sup>*Ibid.*

<sup>4</sup>South African Legislative sector. 2012. Oversight model.

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

### **Section 79 Committees**

The chairperson of the section 79 committee can be any member of the council. The municipal council determines the functions of this committee and may delegate powers and duties to it. Although the section 79 committee reports to the municipal council, the municipal executive may alter or amend reports before it is submitted to the municipal council because the Municipal Structures Act makes provision that the executive is entitled to receive reports from committees of the municipal council and to forward these reports with recommendations to the council. The effectiveness of a section 79 committee is dependent on its terms of reference, as the council determines its powers and functions.

### **Section 80 Committees**

Section 80 of the Municipal Structures Act makes provision for the appointment of committees to assist the executive mayor or the executive committee. There may not be more section 80 committees than there are executive committee members or mayoral committee members. A section 80 committee is not a committee of the municipal council. It reports to the executive and is accountable to the executive. This leaves non-executive municipal councilors, who do not form part of the section 80 committee, with limited opportunity to conduct oversight. The matter is compounded where a municipality makes use of mostly section 80 committees who only report to the executive mayor.<sup>5</sup>

### **The Internal Audit Committee**

The Municipal Finance Management Act, 56 of 2003 (MFMA) obligates all municipalities to either establish an internal audit unit or to outsource that function. The internal audit unit initiates an organisational risk-based plan, which needs to focus on internal controls, risk and risk management, performance management, loss control as determined by the municipal manager.<sup>6</sup> The internal audit unit plays a critical role in auditing compliance with the legislative requirements<sup>7</sup> and reports to the municipal manager.

### **Audit Committee**

Section 165(2)(b) of the MFMA provides that the internal audit unit must report to an audit committee. Legislation prescribes that an independent audit committee needs to be established consisting of at least three persons with appropriate experience, the majority of

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<sup>5</sup>Williams, E-A. 2012. Improving political oversight in municipalities.

<sup>6</sup>South Africa. Municipal Finance Management Act, act 56 of 2003. Section 165(2) and (3).

<sup>7</sup>South Africa. Local Government: Municipal Planning and Performance management regulations, 2001. Section 14.

whom should **not** be in the employ of the municipality. The chairperson of the audit committee is appointed by the municipal council and reports directly to and advises the council.

The annual financial statements must be reviewed by the audit committee, who then has the task of informing the council on the adequacy and reliability of financial reporting and information.<sup>8</sup>

The establishment of an audit committee may enhance the independence and effectiveness of the internal audit unit, as the municipal manager needs to ensure that all reports regarding irregularities, risk, fraud and the like are submitted to the audit committee. This in turn ought to enable the council to improve oversight. The only way in which municipal councillors can exercise and improve oversight is by receiving regular reports on the activities of the administration.<sup>9</sup>

### **Municipal Performance Audit Committee**

In terms of section 45 of the Municipal Systems Act the results of performance measurement should be audited internally and by the Auditor-General. Regulation 14 (2) of the Local Government Municipal Planning and Performance Management Regulations obliges a municipality to appoint a performance audit committee to conduct the internal audit of the municipality's performance. The Municipal Performance Audit Committee reviews the performance of management and determines whether management adhered to the legislative framework governing performance management.

## **3. Oversight Mechanisms**

### **Annual Report**

Municipalities must annually prepare an annual report which must be submitted to the municipal council within nine months after the end of a financial year.<sup>10</sup> All municipalities must provide an honest and accurate account of progress /performance against the goals set by the municipal council.<sup>11</sup> The annual report is relevant as an oversight and accounting mechanism because it captures all the financial transactions that pertain to service delivery on an annual basis.

### **Oversight report**

Section 129 of the MFMA requires a municipality to prepare an oversight report over the annual report and to publish the same. The council of the municipality must consider the annual report of the municipality and any entity under the municipality's sole or shared control,

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<sup>8</sup>South Africa. Municipal Finance Management Act, act 56 of 2003. Section 38 a(2) and 166 (2) (iv).

<sup>9</sup>Williams, E-A. 2012. Improving political oversight in municipalities.

<sup>10</sup>South Africa. Municipal Finance Management Act, act 56 of 2003. Section 121(1).

<sup>11</sup>South Africa. National Treasury. 2006. *MFMA Circular No. 11: Annual report guidelines*.

and by no later than two months from the date on which the annual report was tabled in the municipal council, adopt an oversight report containing the council's comments on the annual report. However, no further formal oversight requirements are contained in the legislation.

The oversight report plays a key role in ensuring that the executive and administration are held accountable for performance. In terms of guidelines by National Treasury, the oversight committees should consist only of non-executive councilors.<sup>12</sup> The oversight report must be clearly distinguished from the annual report.

The oversight report is a report of the council and follows consideration and consultation on the annual report by the municipal council itself. After considering the annual report, the municipal council drafts the oversight report.

#### **4. Challenges for oversight in the municipal sphere**

The Constitution does not provide for a separation of powers in local government: "the executive and legislative authority of a municipality is vested in its Municipal Council".<sup>13</sup> The executive and the legislature are therefore not separate branches as is the case in the national and provincial spheres of government.<sup>14</sup>

The municipal council makes by-laws and needs to ensure that they are executed. The electorate knows that the council is responsible for policy making and governance. This places the responsibility on the *electorate* to hold the council accountable to implement their legislative mandate.

The Municipal Structures Act, Municipal Systems Act and MFMA give content to the constitutional provisions on the interface between the municipal council and the administration. The challenge is that *this legislative collective is difficult to implement* because the provisions are open to various interpretations.<sup>15</sup>

#### **Separation of roles**

The separation of roles between the council and administration is intended to strengthen the oversight function of councilors and it is fundamental for the achievement of the objects for local government in the Constitution relating to a democratic and accountable system of local government. Good governance and effective oversight and accountability are predicated on there being this separation of functions.

Although the Constitution does not provide for separation of powers within the municipality, the statutes provide for executive structures. The Municipal Structures Act, 117 of 1998

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<sup>12</sup>South Africa. National Treasury. 2006. MFMA circular no 32: the oversight report.

<sup>13</sup>South Africa. Constitution. Section 151(2)

<sup>14</sup>South Africa. Constitution. Sections 44 & 104.

<sup>15</sup>Williams, E-A. 2012. Improving political oversight in municipalities.

provides in section 7 for the establishment of various combinations of executive systems and participatory systems. The MEC for local government in consultation with municipalities can choose between three different systems of municipal government or a combination of those systems including the following:

- Collective executive system which allows for the exercise of executive authority through an executive committee in which the executive leadership of the municipality is collectively vested. The executive committee is a committee of the council, which receives reports from the other committees of the municipal council and must forward these reports with recommendations to the council, when it cannot dispose of the matter in terms of its delegated powers. Within the executive committee system, the council delegates powers and duties to the executive committee. The executive committee must report on all its decisions to the council;
- Mayoral executive system where the mayor exercises executive authority and is assisted by a mayoral committee. The Municipal Structures Act determines the functions and powers of executive mayors, which mirror that of the executive committee. In terms of the Municipal Finance Management Act, 56 of 2003 (MFMA), the mayor has a duty to ensure that the municipality performs its constitutional and statutory functions within the confines of the budget of the municipality and must report to the municipal council on all budget related matters. Practically the mayor cannot fulfil all these duties him or herself and therefore delegates it to officials within the administration;

The MFMA (S54(1)(b)-(d)) also provides that the mayor needs to ensure that the budget is aligned with the service delivery projections and may revise these service delivery targets and performance indicators only with the approval of the municipal council. A critical requirement is that the mayor must identify financial irregularities and report them to the council S54(1)(e) & (2). Should service delivery target or performance indicators be altered and if the municipality faces financial difficulties, the mayor must ensure that the public is notified; and

- Plenary executive system which limits the exercise of executive authority to the council itself

According to National Treasury circular 32 of 2006, the MFMA **assumes** a separation between councillors serving on the executive (i.e. mayor or executive committee) and non-executive councillors. This separation is vital to ensure council maintains oversight for the performance of specific responsibilities and delegated powers to the mayor or executive committee. Council oversees the performance of the administration through council and committee meetings. The mayor provides the link between the council and administration and is responsible for regular monitoring and for tabling reports before the council. Therefore, the administration is

responsible for the day-to-day operations. This separation avoids conflict of interest and a “referee/player” situation arising and is similar to the role played by Parliament.<sup>16</sup>

From the above it becomes clear that the legislative framework does not clearly define the separation between the council and the administration. This causes unwarranted political interference into the administration.<sup>17</sup>

## 5. Recommendations on improving oversight in municipalities

The following recommendations are made in the research paper<sup>18</sup> on improving oversight in municipalities:

- i. The ***executive mayoral committee system must be reviewed*** by National Government. This system allows for a monopolisation of administrative processes as the mayoral committee exercises direct control over the administration with the drafting and sanctioning of policies, by-laws and determining the developmental objectives of the municipality. Instead, what is required is a system in which the municipal council actively participates in the drafting and approving of policies.

The South African Local Government Association made recommendations that will enhance oversight, curb the abuse of power and enhance democracy, supporting the above in 2012 at its National Executive Committee meeting. SALGA recommends that in a fully separated municipality, the section 80 committees and the Mayoral Committee is overseen by the section 79 committees who will then be tasked with the political oversight function. It is furthermore recommended that the section 79 oversight committee be able to interrogate the actions and decisions of the mayoral committee, demand explanations and make recommendations to the council on matters considered by it.

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

The critical difference between section 79 and section 80 committees are that section 79 committees comprise of councillors from various political parties whereas section 80 committees only comprise of councillors from the ruling party. It is recommended that portfolio committees comprise of Section 79 committees instead of Section 80 committees.

In this regard, SALGA promotes together with National Treasury and the Department of Cooperative Governance the appointment of Municipal Public Accounts Committees to

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<sup>16</sup> South Africa. National Treasury. 2006. MFMA circular no 32: the oversight report.

<sup>17</sup>Williams, E-A. 2012. Improving political oversight in municipalities.

<sup>18</sup>Williams, E-A. 2012. Improving political oversight in municipalities



enhance oversight of the ‘executive’ of the municipality by council structures. The MPAC is a committee of the municipal council, appointed in accordance with section 79 of the Structures Act. It is also important to note that in metros and large category B municipalities it is, due to the number of councillors, easier to appoint section 79 oversight committees to provide oversight over the functions of the section 80 committees. Many of the smaller municipalities do not have enough councillors to appoint such section 79 committees and can only appoint one oversight committee tasked with the complete oversight role, but focusing mainly on compliance with the provisions of the Local Government: Municipal Finance Management Act, 2003.

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

## **6. Public Participation as an Oversight mechanism**

Effective public participation in oversight processes safeguards and promotes citizens’ Constitutional right, but it also places an obligation on councillors to provide feedback and share information in an accessible manner.

A significant challenge is the size of the average South Africa municipality. The country has 277 municipalities that serve a population of close to 48 million and cover a landmass of 1,220,813 square kilometres (Statistics South Africa 2007:1.1 and 2.1). Quick comparisons with Spain (50 provinces and 8,108 municipalities), and Germany (323 districts and 12,477 municipalities), show that South Africa’s municipalities are vast in size and population. From this comparison it can be concluded that municipalities are actually charged with a regional mandate. The size of the South African municipality is a considerable challenge for that municipality when it wants to realise effective community participation. This challenge relates specifically to rural areas. In the quest for economically viable municipal units with redistributive potential, the norm is that a number of towns are demarcated into one municipality together with their rural hinterlands, which are thus very extensive and, again, often diverse in character.<sup>19</sup>

A contradiction exists furthermore between the progressive legal framework for community participation and persistent incidences of protest targeting councillors and municipal administrations. Although government has created ample spaces, platforms and procedures for

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<sup>19</sup>De Visser, J. 2009. Developmental Local Government in South Africa: institutional fault lines. *Commonwealth journal of local governance*.



community engagement with local government, it is clear that communities still elect to take their grievances to the streets. These protests expose not only the current shortcomings in service delivery but also the presence of untapped local energy and involvement with municipal governance.

The Community Law Centre (CLC)<sup>20</sup> undertook research on civil society participation at national Parliament. It could be assumed that the findings will be replicated to a large extent at municipal level. It was found that:

- Public involvement has primarily focused on the legislative mandate not oversight and accountability mandates;
- Only a small number of focal areas attracted significant public participation;
- Strong drivers of public participation seem to be:
  - Controversy;
  - Overt politicisation of legislation and policy;
  - Organised pressure groups;
- Public participation is not sustained;
- Different individuals and organisations have different capacity, approach, experience and requirements;
- Much information-sharing is done in the name of ‘participation’;
- Many engagements however, are not successful in reaching depth of engagement – thus approach becomes tokenistic and not meaningful; and
- Limited budgets for meaningful participation will continue to be an obstacle as long as no clear strategy and plan to facilitate meaningful participation and oversight is in place.

The CLC recommended that:

- Systems for participation recognise differential access;
- An enabling environment considering the particular contexts of different groups be created;
- More emphasis be placed on marginalised and vulnerable groups and groups with fewer resources;
- Engagements with communities on the Integrated Development Plan (IDP), Budget and Annual report be driven by the value of ‘meaningful’ participation mindful that meaningful participation promotes empowerment and challenges power – this can be threatening if it challenges the power of those organising the participation; and
- A strategic plan for public participation which includes oversight be developed to develop the spaces for these meaningful engagements.

## **7. Conclusion**

Participation is not just about a chance for people to speak. People must feel that they have been heard and been taken seriously, even when solutions are difficult or seem impossible.

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<sup>20</sup>Community Law Centre. 2012. Human Rights Dialogue: public participation in oversight.

Until meaningful participation is entrenched in the governance system, communities may continue to choose to take their grievances to the streets.

The strengthening of the oversight model for local government has been raised frequently and the proposals by the research study analysed in this e-alert provides some direction in the areas which require attention: the review of the executive mayoral system, the establishment of multi-party oversight committees, the enhancing of the skills of those charged with oversight duties, and also the engagement of the public through well-considered meaningful participation.

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