



THE QUALITY OF LOCAL DEMOCRACIES

A STUDY INTO THE FUNCTIONALITY OF MUNICIPAL GOVERNANCE ARRANGEMENTS

The present paper has been commissioned by the German Agency for Technical Cooperation (GTZ) in the context of the Strengthening Local Governance Programme (SLGP). The research and drafting of the paper was undertaken by Professor Jaap de Visser, Professor Nico Steytler and Ms Annette May all associated with the Community Law Centre (CLC) based at the University of the Western Cape (UWC) in Cape Town. The findings presented herein exclusively represent the opinion and point of view of the authors and not that of GTZ or partners of the SLGP. All unauthorized dissemination is prohibited.

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EXECUTIVE SUMMARY

This study examines the legal framework for municipal governance and analyses whether, in practice, the relationships follow the pattern as intended in the law. More than thirty interviews were conducted with office-bearers, councillors and officials in five municipalities which differed according to size, location and success levels.

Municipal councils exercise both legislative and executive functions. This was intended to facilitate hands-on governance and synergy between elected representatives, the executive and the administration. The proximity was meant to facilitate a more vibrant and responsive municipality that would ultimately result in efficient service delivery. This system, however, demands checks and balances and role definition in order to avoid role confusion, conflict and abuse of power.

Local government legislation establishes various organs within the municipality and broadly defines the functions of these organs. It also creates various instruments for accountability and oversight. Importantly, municipalities themselves must define the precise roles of their organs in delegations and terms of reference. These role definitions, terms of reference and instruments of accountability are intended to produce clear and sound internal municipal governance arrangements. This, in turn, is meant to define and shape the relationships within the municipal council and between the council and the administration. Whatever cannot be solved in strictly institutional or legal terms needs to be solved through agreed protocols, gentleman's agreements and working arrangements.

The result is a carefully crafted system of governance and oversight whose success is dependent on all constituent parts working in sync. Practically, if one component of the system is deficient, it has a detrimental knock-on effect which ultimately impacts municipal service delivery.

From the interviews, it is clear that role confusion exists between the various organs within municipalities. This has led to uncertainty and turf battles, shifting the energy of the council to technical issues and impeding efficient service delivery. Municipalities have not been sufficiently able to design and implement role divisions and agree on workable protocols.

This is compounded by a lack of appropriate oversight structures within the council. For example, the exclusive use of committee systems that facilitate limited participation by ordinary councillors (section 80 committees) minimises the ability of the council to exercise oversight over the executive. More broadly, the conflation of legislative and executive functions in the council has resulted in municipalities council becoming engaged mainly in the churning out of decisions, rather than in exercising oversight over the municipal executive and the administration. Related to this is the uncertain role of the speaker; a speaker presiding over a council that is presumed to be executive in nature is bound to throw up challenges.

Of equal concern are problems caused by the poor caliber and/or poor attitude of too many councillors. The knock-on effect of unqualified or uninterested councillors is poor or non-existent oversight over the administration. At the other end of the spectrum are councillors whose undue interference in the administration is a very real hindrance to service delivery.

A fundamental concern raised in all of the interviews, is the detrimental impact of excessive and undue political interference by external party political structures in municipal governance. Often “lead and command” relationships with external party structures are insidious and impact all aspects of municipal governance ranging from efficiency of decision-making in council to influencing the appointment of officials in the administration. Such relationships corrupt the intended system of municipal governance which is supposed to be based on participatory and representative governance that is driven by local imperatives.

The following recommendations emerge from the report:

- The capacity of councillors to participate meaningfully in council activities needs to be addressed. Political parties can assist by improving their recruitment of candidates for council membership. In addition, minimum requirements for councillors need to be considered. While these requirements may not be legislated, a framework for the required competencies and skills is necessary to guide recruitment and capacity building.
- Significant investment should be made into improving the oversight role of municipal councils. This may entail institutional changes, such as the establishment of section 79 committees, a more independent role for the Speaker and institutional support for councillors that is independent from the administration.
- A constitutional amendment to permit municipal councils to operate in a parliamentary model should be investigated. The parliamentary model should not apply to all councils but only to large councils. The threshold should be carefully considered but may be set at around 30 councillors.
- Significantly more support should be given to the development of proper protocols and terms of reference to address difficult relationships such as those between councillors and the administration, between the speaker and the mayor and between the speaker and the chief whip.
- In respect of the appointment of senior municipal personnel, competency frameworks should be more vigorously enforced by provincial governments, overseeing municipalities.
- Consideration should be given to removing the appointment of section 56 managers from the jurisdiction of the Municipal Council and permitting the MM to make those appointments. In addition, the Municipal Manager’s authority to initiate disciplinary proceedings against a section 56 manager should be clarified.
- Local caucuses should be afforded greater autonomy so that political decisions can be taken locally. Regional party structures should find a new balance between strategic, political guidance to local party caucuses and excessive interference. Consideration should be given to a legislative provision that prohibits party officials from being municipal employees.

1 INTRODUCTION

1.1 Outline and objective

The report contains an analysis of internal municipal governance arrangements and practice. The analysis is conducted with a view to isolating impediments to municipal service delivery brought about by the internal arrangements and/or how they are practiced.

The report commences with –

- an analysis of the main stakeholders in municipal governance and the legal framework surrounding those stakeholders; and
- an analysis of the legal and policy framework for governance and accountability instruments.

This serves to sketch the *intended nature* of the various relationships that are to be examined.

The second part of the report will relay the information and experiences gathered during interviews in municipalities. The aim of the interviews is to assess *whether in practice, the relationships indeed follow the pattern as intended in the law*. The final section deals with recommendations on how to deal with some of the difficulties that the empirical study revealed.

1.2 Methodology

The approach for the first part of the report was desktop study, analysing the relevant legislation. The approach that was used to arrive at the second part of the report is a qualitative, empirical study in terms of which in-depth interviews were conducted in four municipalities and a telephonic interview was conducted with a representative of a fifth municipality. The municipalities interviewed were four local municipalities (two small and two middle-sized) and a metropolitan municipality. In each municipality, the following key office-bearers and officials were interviewed:

- The (Executive) Mayor

- Executive councillors (i.e. members of the mayoral committee or executive committee)
- The Speaker
- The Majority party whip or council whip
- Councillors
- The Municipal Manager; and
- Section 56 managers/Directors (i.e. those managers that report to the Municipal Manager)

2 LEGAL FRAMEWORK FOR ORGANS OF MUNICIPAL GOVERNANCE

2.1 Introduction

This section presents a very brief overview of the most important organs within the municipality and the legal framework that guides their operation.

Most aspects of the relationships among the various elements have not been legislated; the municipality must determine these. Importantly, the Constitution places all legislative and executive powers of the municipality in the Municipal Council. The Constitution does not create municipal executives and does not create an office of the Speaker. This is done in the Municipal Structures Act, where a Speaker, the municipal executive and other structures and office-bearers are provided for.

What will emerge during this report is that the absence of a constitutionally entrenched separation of powers between the legislative and the executive forms an important backdrop to the challenges in a municipality's internal functioning. This challenge is illustrated by the two questions below.

- The first question is: who directs the administration? In a system where executive and legislative powers are separated, the executive directs the administration and the legislature oversees the executive. The legislature has only an indirect relationship with the administration; the ultimate control, i.e. the power to appoint administrators, is reserved for the executive. However, in a municipality, the Municipal Council is ultimately the

executive decision maker and therefore plays a role in directing the administration. This is borne out by, amongst other things, the fact that the Municipal Council plays a role in the appointment of administrators.

- The second question is: what is the position of the chairperson of the Municipal Council? In a system where executive and legislative powers are separated, the portfolio of the chairperson of the legislature is clear: it is in charge of the legislative arm of government and has little or no formal influence over the executive (except when the executive participates in the legislature). Again, the position in local government is different: the chairperson of the Municipal Council presides over an organ that is not exclusively legislative in nature. The Municipal Council is an executive decision maker and the Speaker presides over meeting where executive decisions are taken.

In each municipality, councillors, executive councillors and officials thus work together very closely in a complex environment. The close interaction between politicians and officials is one of the strengths of local democracy because it brings the administration in close and frequent contact with political representatives of communities. However, uncertainty about the roles and responsibilities of councillors, executive councillors and staff members can lead to tension and conflict within the municipality.

2.2 Delegations

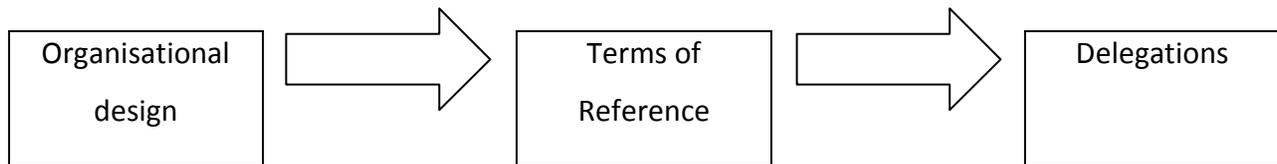
The Municipal Systems Act instructs the municipality to “develop a system of delegation that will maximise administrative and operational efficiency and provide for adequate checks and balances”. Administrative and operational efficiency dictates that the Municipal Council should delegate certain powers.

The Municipal Structures Act provides for the creation of municipal executives (an executive mayor or an executive committee) and describes their functions. However, a municipal executive has no legal powers other than the powers delegated to it by the Municipal Council. It is thus critical that the Municipal Council develops an adequate framework for the delegation of powers.

2.3 Terms of reference

Delegations cannot be separated from the Terms of Reference that the law instructs municipalities to adopt for each political office-bearer, political structure and the Municipal Manager. The “Roles and Responsibilities” within a municipality are given content through both delegations and the Terms of Reference.

In practice, delegations and responsibilities revolve around three strategic documents within the municipality that are closely interlinked. Two of those are legal requirements, namely the section 53 Terms of Reference and the delegations. The third one, the organisational design (or organogram) is not a legal requirement but a real document in every municipality.



2.4 Executive systems

As stated above, the Municipal Structures Act provides a framework for executive systems in municipalities.

There are two types of executive systems, namely the executive committee (exco) system or the executive mayor system. The system that applies to a particular municipality is largely determined by the provincial government.¹ In an executive committee system political parties and interests that are represented in the council are represented on the executive committee of the council. The guiding principle is proportionality or, at least, fairness. The council elects one exco member to serve as mayor of the municipality. The mayor presides over meetings of the executive committee and performs functions assigned to him or her by the municipal council or the executive committee. These duties may range from ceremonial duties to more substantive duties and powers considered necessary to fulfill the mayoral oversight function. A

¹ All provinces, except KwaZulu-Natal have adopted a framework that envisages both executive committees and executive mayors. In KwaZulu-Natal, the executive mayor type has been excluded.

weak mayor and a strong exco may be the defining features of this system but this depends entirely on the extent to which the council has delegated authority to the mayor. As exco reports to the council and the exco members are elected by the council, the exco members are accountable to the council (not to the mayor).

The second option is the executive mayoral system. This system is characterised by a powerful mayor, who is assisted by a mayoral committee. Members of the mayoral committee are appointed by the executive mayor and report directly to him or her. The mayoral committee is not a committee of the municipal council.² It is appointed by the executive mayor and automatically terminates when the executive mayor ceases to hold office. It is there to assist the executive mayor in the execution of his or her functions, and the executive mayor may dismiss the members of the mayoral committee, who are directly accountable to the executive mayor, not to the council.

2.5 Executive Mayor

The Mayor is the head of the executive and is the interface between the council and the municipal administration. The mayor exercises oversight over the implementation of council decisions and policy directives. The mayor must review the performance of the municipality to ensure its efficiency and effectiveness as well as the sustainability of service provision to communities. As such, the mayor is expected to have the necessary knowledge to understand the roles and responsibilities of the municipal manager (head of the municipal administration) and the skills to ensure that these roles and responsibilities are complied with.

2.6 Committees

The functionality of the internal governance arrangements in the municipality are to a large extent determined by the functionality of the committee system. The Structures Act provides that a municipality, taking into account the extent of its functions and powers, the need for delegation and the resources available, may establish committees. It may establish section 79

² See *DA vs Amos Masondo* 2003 (2) BCLR 128 (CC).

and/or section 80 committees, which are named after the provision of the Structures Act that regulate their establishment. According to section 79 of the Structures Act, 'a municipal council may establish one or more committees necessary for the effective and efficient performance of its functions or the exercise of any of its powers'. Section 79 committees are established by the Council from among its members. The council determines the functions of the committees and may delegate powers and duties to them. Section 80 committees are established by the Council from its members to assist the executive mayor. The executive mayor or the executive committee appoints a person from the executive committee or mayoral committee to chair each committee and may also delegate powers and duties.

A section 79 committee reports to the council while a section 80 committee reports to the executive mayor. A municipality has substantial discretion on how to structure its committee system; for example, a municipality may choose to establish only section 80 committees. The manner in which a municipality uses that discretion can have consequences for the capacity of the council to hold the executive accountable.

2.7 The Speaker

The Municipal Council elects a Speaker. The statutory duties of the Speaker are determined in the Municipal Structures Act. The Speaker must:

- preside at council meetings;
- ensure that council meets at least quarterly;
- maintain order during council meetings;
- ensure that council meetings are conducted in accordance with the rules and orders of the council; and
- ensure compliance in the council and its committees with the Code of Conduct.

Where there is an alleged breach of the Code of Conduct, the speaker has a duty, in terms of the Code of Conduct for Councillors to investigate. The Speaker does not, however, decide on

the disciplining of a councillor; this power is reserved for the Council (and, as far as dismissal and suspension is concerned, the MEC for local government).

The speaker is not accountable to the executive of the municipality but he or she is accountable to the council. He or she must exercise his or her duties within the rules determined by the council.

As noted above, the precise role and function of the Speaker cannot be explained by mere reference to the statutory functions. The speaker also performs duties and exercises powers delegated to him by the municipal council. The precise role of the speaker will therefore depend on the internal arrangements made by the municipality itself. In practice, the Speaker is often tasked with important additional functions, related to community participation, such as the establishment of ward committees.

It clear, however, that the Speaker's main functions relate to council meetings and the integrity of council and councillors.

The formulation of the terms of reference for the speaker in terms of the Systems Act is critical for carving out a municipality-specific role for the speaker.

2.8 Chief whip

The chief whip is not a statutory organ within the municipality; it does not feature in the legislation. It has, however, been given statutory and financial status in the policy framework for full-time councillors in that, depending on the municipality's size, a 'council whip' may be remunerated on a full-time basis.

The chief whip, which exercises functions as part of the functioning of the council, must be distinguished from the party whips, which operate as party functionaries only. Chief whips generally are there to assist the Speaker in enforcing discipline among councillors and ensure the efficient management of council meetings and committee systems. The governance role of the chief whip in the municipality exists on the basis of the fact that the council may delegate powers to a councillor.

2.9 Oversight committee

A relatively new development in local government is the establishment of a so-called 'oversight committee'. More and more municipalities establish an oversight committee, a section 79 committee that thus reports to the council, which functions as a public accounts committee. Its focus is on oversight and it plays a particularly important role in overseeing the performance of the executive and the municipal administration. Its terms of reference should delineate its role from the role of, for example, the audit committee. For example, oversight committee would assist the municipality in considering the annual reports, in considering Auditor-General reports and formulating a response to them, in responding to claims regarding irregular, wasteful or fruitless expenditure etc.

2.10 Audit Committee

The audit committee is an important instrument that establishes the financial accountability of the municipal executive to the municipal council. Each municipality must have an audit committee. With the majority of the members of the committee coming from outside the municipality and with no councillors as its members, the committee functions as an independent advisory body that advises the council on the proper financial management of the municipality. Appointed by the Council and consisting of at least three persons, the committee engages in an external, objective review of the municipality's finances. The information that is generated by this committee can be used by councillors in their engagement with the executive. The committee reviews the annual financial statements to provide the council with an authoritative and credible view of the financial position of the municipality, the municipality's efficiency and effectiveness and its overall level of compliance with the MFMA, the annual Division of Revenue Act and any other applicable legislation. The Committee must respond to the council on any issues raised by the Auditor-General and must in addition, investigate the municipality's financial affairs at the request of the council.

2.11 Municipal Manager

Whereas the Mayor is the head of the executive and the Speaker is the guardian of the integrity of council and councillors, the Municipal Manager is the head of the administration and the accounting officer. The Municipal Manager is appointed by the Council.

The Constitutional Court has recognised that the appointment of the municipal manager is “a key structure of municipality and not merely a personnel appointment as contemplated in s 160(1)(d) of the Constitution”.

As accounting officer, the municipal manager carries the overall responsibility for the municipality’s financial affairs. It is therefore essential that the person appointed as a municipal manager has the relevant skills and expertise to perform the duties associated with that post. Generally, the municipal manager performs the functions and exercises the powers that are delegated or assigned to him or her by the municipal council. However, the Systems Act provides a framework of duties for the municipal manager.

The municipal manager is the custodian of all records and documents of a municipality. He or she is responsible for the formation and development of an administration. This administration must be managed by the municipal manager in accordance with the Systems Act and other legislation applicable to the municipality. Included in his or her duties is the task of establishing a professional staff compliment and to ensure furthermore that they deliver and perform.

The municipal manager is responsible for the implementation of the municipality’s IDP and must ensure that the administration is equipped to carry out the task of implementing the IDP. The municipal manager is also responsible for the management of the provision of services to the local community. In addition, the municipal manager must see to the administration and implementation of the municipality’s by-laws, and national and provincial legislation applicable to the municipality.

2.12 Managers directly accountable to the municipal manager

Managers who are directly accountable to the municipal manager are often termed ‘section 56 managers’, with reference to the provision in the Systems Act that provides for their appointment. As their label indicates, they report to and are subordinates of the municipal

manager. However, these section 56 managers are appointed by the municipal council, after consultation with the municipal manager. A section 56 manager must have the relevant skills and expertise to perform the duties associated with the post and, is directly accountable to the municipal manager.

2.13 Instruments of accountability

The local government legislation introduces an elaborate array of instruments of accountability that are designed to enable the Municipal Council to exercise oversight over the executive and the administration and for the executive to exercise oversight over the administration. The most important instruments are briefly discussed below.

2.13.1 Annual report

A mayor of a municipality submits an annual report for each financial year. The purpose of the report is to record the activities in the year under review and measure the municipality's performance against its budget. It also promotes the municipality's accountability for decisions made throughout the year to the local community. Included in the annual report are, at least-

- the annual performance report;
- the financial statements as submitted to the Auditor-General;
- the Auditor-General's audit report on the results of the performance measurements and the financial statements;
- if required, details of the corrective action taken or planned by the relevant municipality in response to the report;
- an assessment of any arrears of municipal taxes and service charges and whether the revenue-raising objectives set in the budget have been met; and
- the recommendations of the audit committee.

The mayor must submit the report, together with the report of entities under the municipality's sole or shared control, to the council within seven months after year-end.

Once the annual report is tabled by the mayor, the council must consider it promptly and adopt, within two months, an oversight report. The oversight report comments on the annual report, which must conclude by approving the report with or without reservations, reject the report or refer the report back for revision of those components that can be revised.

The annual report serves as an instrument to promote the accountability of the municipal executive to the municipal council. This is evident from the fact that the process does not end with the mayor presenting the report to the council and the council simply accepting or rejecting the report. The annual report is rather followed by the council issuing an oversight report. This takes the presentation of annual report from a mere activity report to an instrument through which the executive accounts to the council.

It is also important to note that the mayor is obliged to submit, in addition to the annual report, a quarterly report to the council. This quarterly report must explain to the council the implementation of the budget and the financial state of affairs of the municipality. The report must be submitted within 30 days of the end of each quarter.

2.13.2 Service delivery and budget implementation plan

The service delivery and budget implementation plan (SDBIP) is defined in the MFMA as “a detailed plan approved by the mayor of a municipality (...) for implementing the municipality’s delivery of municipal services and its annual budget”. It must indicate the monthly projections of revenue to be collected by source and operational and capital expenditure by vote. It must also determine, as a minimum, the service delivery targets and performance indicators for each quarter. The SDBIP is drafted by the municipal manager and must be approved by the mayor within 28 days after the approval of the budget by the council. The revenue and expenditure projections for each month, and the service delivery targets and performance indicators for each quarter, as set out in the SDBIP, are made public.

Even though the SDBIP is not a document that is adopted by council, it serves as an important oversight tool for municipal councils. It is the annual, hands-on implementation plan that the council can hold the executive accountable for.

The SDPIB also serves an important role in performance management. It is the basis for the annual performance agreements concluded with the municipal manager and all senior managers.

2.13.3 Budget statement

A further rule that facilitates administrative accountability is the production of monthly budget statements. The MFMA requires the municipal manager to submit a statement on the state of the municipal budget to the mayor by no later than ten working days after the end of each month. The statement includes information about:

- actual revenue;
- actual borrowing;
- actual expenditure, per vote;
- actual capital expenditure; per vote
- the amount of any allocation received; and
- actual expenditure against those allocations

The statement explains variances from the projected revenue by source, expenditure projections by vote or the service delivery and budget implementation plan.

It also explains any remedial or corrective steps to be taken to ensure that the projected revenue and expenditure remain within the budget.

The monthly budget statements represent an instrument that can be used by the municipal executive to keep the municipal administration accountable in relation to the state of the municipal budget.

2.13.4 Mid-year budget and performance assessment report

The mid-year budget and performance assessment report is another similar instrument that the mayor can use to exercise oversight role over the municipal administration. The municipal

manager must assess the performance of the municipality during the first half of the financial year.

The mid-year budget and performance assessment report is the overture towards the adjustment budget. The mayor considers it in the same way as the monthly budget statements.

2.13.5 Performance agreements

Performance agreements are another important instrument designed to promote the accountability of the municipal administration. The appointments of municipal managers and section 56 managers are subject to a performance agreement. The performance agreement incorporates a performance plan which should specify key objectives, key performance indicators and target dates. The key objectives, which are set by the council based on the IDP and its budget, describe the main tasks that need to be done.

The assessment of the employee is undertaken by an evaluation panel. This evaluation panel of five or six members has to be established for the purpose of evaluating the performance of the employee. Included in this panel are the executive mayor/mayor, chairperson of the audit committee, member of mayoral committee, mayor and/or municipal manager from another municipality and, where applicable, ward committee member (on a rotational basis). The evaluation of the employee's performance will form the basis for providing bonus and for progression to the next higher remuneration package.

These contracts are designed to be used to hold managers accountable for their successes or failures. The performance-orientated approach is also forward-looking as it opts for remedial or developmental support in lieu of taking drastic measures in the case of unacceptable performance by the managers.

3 FINDINGS AS REGARDS PRACTICE

3.1 Introduction

From the above discussion of the legal framework for internal governance, it is clear that there is an elaborate legal framework that –

- establishes the various organs within the municipality and broadly determines their functions;
- instructs municipalities to equip these organs with a terms of reference and appropriate powers; and
- provides an elaborate array of instruments that should facilitate checks and balances among, and accountability between the various organs.

However, the reality is that the quality of internal governance within municipalities is often not what it should be.

Role confusion between the various organs within a municipality, councillor interference in the administration, a lack of councillor oversight over the administration are but a few themes that have been at the heart of the debate about municipal governance.

This part of the report relays the content of the interviews conducted with political office-bearers and officials of three municipalities.

The answers, comments and explanations offered by the interviewees are presented within a structured narrative, discussing the various relationships in the municipality.

3.2 THE ACCOUNTABILITY RELATIONSHIP BETWEEN COUNCIL AND THE ADMINISTRATION

In law the council exercises control and supervision over the administration. This is done by the council as a collective, the executive mayor (or executive committee) and the mayor over the municipal manager (MM) alone and the administration collectively.

3.2.1 Relationship between the council (collective) and the administration

There is a general sense that municipal councils do not exercise their oversight function effectively over the administration due to inactive councillors. Many respondents, when asked their opinion on the subject of oversight, were skeptic about the performance of councillors.

MM: *We submit financial statements on a monthly basis, we submit the SDBIP, annual report. All the reporting is there but there is no real oversight.*

MM: *Of the 39 councillors, there are perhaps 6 or 7 that engage meaningfully.*

MM: *In my previous job, there was a councillor who was very popular in his community. However, throughout the entire term of office, he has never, ever said a word in the council.*

MMC: *I feel that there is not enough opposition participation. We don't get much input or debate on the issues, which is not the healthiest scenario. Obviously if we need to we put it to a vote but there is not enough debate.*

On the contrary, the benefits of strong oversight where it is working, are clear:

Official: *That's why we have these clean audits because of the oversight that is exercised by our councillors.*

Two obvious causes for inaction are (a) the widely reported poor quality of councillors, and (b) the absence of appropriate oversight structures in councils.

3.2.1.1 Poor caliber of councillors

It has been a general complaint that the poor caliber of councillors jeopardises the oversight function. Often it is an attitudinal problem.

Mayor: *There is little oversight. Our councillors are lazy. We took a decision to dissolve all the committees because there were always problems with the quorum. Now issues are discussed at plenary. We only have a Rules Committee and a Labour Forum.*

MM: *So often, we see councillors that show up at the meeting and rip open the envelope with the documents for the meeting while the chairperson opens the meeting.*

Director: *There is no sense of urgency. We can arrange a meeting with councillors for 9:00 am. They will show up at 10:00 am as if nothing has happened.*

Chief whip: *There is a disease of non-performance among our councillors.*

MMC: *I don't think the opposition members on my section 80 committee have enough knowledge of engineering and development to comment to the degree necessary. It's only when it affects their ward. They try to do the best for communities. Other than that there's not much. I can almost say that they are happy to be guided by us as the ruling party.*

Director: *Councillors spend hours discussing remuneration and cell phones. Not what they have achieved in communities. It should be legislated that councillors report at least once a month on their activities in the communities.*

Often it is a question of a lack of skills. Many councillors are not equipped with the necessary educational skills to read the minutes, let alone a financial statement, or grasp the issues under discussion.

Speaker: *The majority of councillors are not employed and attend all meetings. Of all the councillors only the speaker and chief whip are employed. The majority of councillors do not have skills. Even the chairpersons of portfolio committees are unemployed, unskilled persons. Exco members get more pay than councillors. They are supposed to do more than councillors but they do nothing.*

Director: *Out of 18 councillors only 6 or 7 know something about local government. Only 2 or 3 can read a budget. There are councillors who do not understand English, can't read it. They are not real leaders.*

Chief Whip: *From the ANC only the mayor, the speaker and the Chief Whip [the latter two are teachers] can read and write. The councillors brought in by REC can't read the reports. In the council only 5 people talk. The rest is quiet. The mayor said they are just voting cattle.*

Director: *Most councillors are illiterate. All of our councillors have laptops with 3G internet access cards. I guarantee you that every single one of those have been given to their children. I asked the Mayor for minutes of the meeting, the Mayor no longer has a laptop. All councilors were given email addresses to enable communication amongst councillors. Not a single councillor knows their email address.*

The lack of skills is recognised by councillors themselves and they are fully aware of their inadequacies and the consequences thereof:

Chief Whip: *When the MM reports, we can't detect a problem. We can't understand the finance reports. We can't see whether we are bankrupt. It's a game that we don't understand. There is no transparency.*

Chief whip: *The skills are lacking among councillors. The councillor was just vocal in his ward or organisation. Some of them are very old; it's difficult to make them change...*

An acting mayor, who had been unemployed for ten years before the 2006 election, complained as follows:

There is no helping hand to help me. How am I going to cope? We are lacking in capacity. There has been no training when we were elected as councillors. It is not possible to hold the administration accountable because we do not know the field. Officials know more. Our ability to oversee is limited. I am not so equipped. I am the chair by name with nothing inside. I know nothing. ... [At Exco] I remain quiet for 2 hours at the meeting. It is a matter of reading [which I do not do].

For the underskilled and unemployed, the position of councillor is the most lucrative position of employment that can be obtained. It is thus a very prized position that does not always attract the appropriately skilled persons. Given the fact that the majority of councillors do not have other employment, the councils start working as if they are a full-time council, thus not enabling the skilled, employed persons to participate.

The consequences of an unskilled council are inevitably that the administration dominates and that its accountability becomes meaningless. Officials will determine what goes onto the agenda.

Speaker: *The agenda should be informed by the portfolio committees but not really. It is informed by the officials.*

Officials can also prevent matters from coming onto the agenda. Also, if a matter was on the agenda and proved to be difficult, the officials can make the item disappear.

Chief Whip: *The chairs are not knowledgeable. They rely on officials and don't follow up on decisions. They don't monitor implementation. If officials see a problem coming, they take an item off the agenda.*

The other side of the coin from an unskilled, but active council is that it may simply ignore the sound advice of the MM or indirectly punish the MM if he or she refuses to budge to their request that is manifestly illegal. MMs thus frequently complained that their technical advice, contrary to council preferences, often causes tensions.

MM: *For example, when the councillors went on a trip overseas, they organised for a brochure to be printed overnight. The cost was R15000. I refused to sign the requisition because there was no basis for the expenditure and it would have been fruitless and wasteful expenditure. The councillors had to organise the money themselves. This caused considerable tension and the councillors would not speak to me for three months.*

3.2.1.2 Lack of appropriate council structures

The ability of a council to exercise proper accountability over the executive and the administration can be facilitated by the appropriate structures of council. The committees of councils play a key role in this regard. A general trend is the establishment of section 80 committees to the exclusion of section 79 committees. Some municipal councils do not have any section 79 committees. Most often, committees perform a management function, making decisions rather than maintaining oversight. This is particularly apparent in larger municipalities. The approach is to focus on section 80 committees that assist in the executive

management of the municipality, rather than investing in section 79 committees that are concerned primarily with oversight.

In large councils the absence of section 79 committees, performing explicit oversight role, leads to frustration and a sense of uselessness. The quarterly council meetings are not an appropriate forum to raise sector specific issues. Councillors who are not drawn into the mayoral committees feel left out.

A municipality that operates with an executive mayor and section 80 portfolio committees, with little or no section 79 committees, substantially reduces the capacity of the council to exercise an oversight role over the executive. This may be compounded when the few section 79 committees that a municipality has established are not portfolio committees but committees that are reserved for generic issues, such as matters related to discipline or rules of order. Detailed debate about policy options, the implementation of policy, the performance of the municipal administration etc. then take place in a section 80 committee.

Members of the council are represented in section 80 committees as well. However, chairpersons of these committees, who are appointed by the executive mayor from among the members of the executive, facilitate the information flow from the committees to the executive.

This curtails the capacity of ordinary councillors to exercise an oversight role. The deliberations and recommendations of a section 80 committee meeting are conveyed to the executive through a member of the executive in a meeting that may very well be held behind closed doors. This also means that councillors that have a seat in section 80 committees have no knowledge on how the recommendation of the latter was delivered to the mayoral committees. In a municipality that is dominated by section 80 committees, the room for an ordinary councillor to exercise oversight is therefore limited.

Opposition councillor: *The problem with section 80 committees is that they are sometimes just “talk shows” with no power. For example an issue is dealt with, matters are thoroughly thrashed out in the committee, but in open council, a different approach is taken... what sometimes happens is that after the section 80 committee reaches a*

decision, the chair, when he comes to mayco, becomes partisan, and may even revert to the position he held before the section 80 committee.

Opposition councillor: *I get complaints from councillors that with the exception of my committee, which I chair, ordinary opposition councillors who are appointed to other section 80 committees have no room to debate, what they say does not matter.*

One municipality resorted to abolishing their committee system altogether. It operates a system whereby an informal plenary meeting precedes the formal council meeting. The informal plenary meeting is designed to fulfil the function of a committee system, namely to discuss items before the council meeting and iron out difficulties before the item is tabled in council.

Mayor: *There is little oversight. Our councillors are lazy. We took a decision to dissolve all the committees because there were always problems with the quorum. Now issues are discussed at plenary. We only have a Rules Committee and a Labour Forum.*

A further element pertaining to the effectiveness of the functioning of council, is clear role definition regarding the implementation of oversight functions. One problem highlighted was the lack of clarity about who should follow up on the implementation of council resolutions - the speaker or the mayor? In some councils, it is the speaker that checks if council resolutions are implemented, in accordance with a register of resolutions.

Chief Whip: *There is a resolution book. But because there are monthly meetings, there is not enough time to implement resolutions. The mayor also does not check if resolutions are implemented. The speaker's office is not staffed. They can't check the implementation of resolutions either.*

Speaker: *The concept is that council exercises oversight over the mayor. I can't go to staff members and do my own thing. The only staff members that I can hold to account, are my own staff.*

Speaker: *I don't have a resolutions book. This still lies with corporate services. Perhaps I should have a resolutions book so that I can follow up.*

The establishment of one oversight committee does not appear to address the issue adequately as the opinions differ about its role. Most often, it is not designed as a broad oversight committee but as a public accounts committee.

MM: *There is confusion in our council about the role of the oversight committee. We only use it for the annual report.*

Speaker (of same municipality): *We do not restrict the oversight committee. They are not restricted to public accounts. They can demand or oversee whatever they want to. It's general oversight. We have given them that leeway. Financial statements is one thing but if they pick up anything else, they can follow up.*

3.2.2 Relationship between the executive and the municipal manager

The Systems Act and the MFMA impose various duties on the executive mayor to perform as well as to exercise supervision over the municipal manager. The latter function is often not performed as a result of a lack of skills on the part of the mayor.

3.2.2.1 Skilled mayor or executive committee

The lack of skills in council and the resultant lack of ability to hold the administration to account are also likely to manifest itself in the position of executive mayor or executive committee. If the mayor or exco does not have the necessary skills, he or she will not be able to monitor the MM, with the consequence that the entire municipality may suffer. This is recognised by both the MMs and the mayors.

MM: *We need a major injection into our executive. Government needs to develop an interest in training and capacitating them. Our MayCO member for finance knows nothing about finance. 80% of our budget is taken up by our Technical Department, yet none of our executives have any technical expertise.*

Municipal managers are aware of the new requirements placed on a mayor, but the need for a skilled mayor with executive functions could lead to tension between the mayor and the MM.

Acting MM: *Today's mayor should also be a technocrat. There is thus a very thin line between the mayor and the MM. There is a clash of roles. The mayor is a political appointment, yet he must oversee the finances. The MFMA is very clear on this. There is a burden on the MM if the mayor cannot do the work. The mayor can't be ceremonial. The fundamental deficiency of the system is that the mayor gets elected because he is popular, but must then assume some technocratic functions. There is a constant fighting for turf to control between the mayor and the MM. A municipality thrives where the mayor is a technocrat.*

3.2.2.2 Performance appraisal of municipal manager

The key instrument to oversee the efficiency and effectiveness of the municipal manager is through the performance management system. This system can often sour relations between the executive and the MM if it is not properly implemented. One problem has been the setting of unrealistic targets for the MM.

MM: *I have been confronted with impossible targets and objectives. For example, at one occasion the target was suggested around housing delivery. This was based on a R43 million grant from the provincial government. However, the EIA [environmental impact assessment] takes at least 18 months. You can have money and land but if you don't have permission to build At the end of the year I must prove that I built 3000 houses. The MM must then provide reasons of why the non-delivery happened. This could be due to IGR complications or political decisions, for example if the council takes a decision 3 months before the end of the financial year.*

The evaluation of the MM is in itself a skilled exercise, often falling outside the capability of the council. Yet it must make the final decision whether a bonus should be paid.

Director: *The MM is evaluated by the council. The Council requested an outside body to do so. A bonus was recommended but council only agreed that he gets 1/3 of the bonus.*

3.2.3 Relationship between individual councillors and the administration

The intended relationship is unclear. The only definition that is given in the law is a negative one: councillors may not interfere in the administration (Code of Conduct for Councillors), while, at the same time, councillors must be effective representatives of their constituency to resolve problems.

The practice that has developed in most municipalities is that councillors (the more active ones) go directly to managers, by-passing the MM. Although theoretically councillors should work through the MM, this is simply not feasible. It creates a huge bottleneck and endless delays.

***Director:** The MM is often away on meetings. Section 56 directors cannot work through the MM. They deal directly with portfolio committees and councillors. All the chairs of the portfolio committee work directly with s 56 directors. Councillors come directly to managers. It must be possible otherwise it would be unworkable and time wasting. The previous MM welcomed this practice as long as he was kept informed.*

What can make the practice problematic is when there are no clear guidelines of how councillors interact with the administration and how the MM is kept informed about the councillor's dealing with an official. There is thus an absence of Terms of Reference that stipulate protocols for interaction between councillors and the administration.

There appears also to be no clear and common understanding about the meaning of "interference". There seems to be at least two ways at looking at interference. The first, benign, way is to ensure that municipal officials do what they supposed to do – to ensure that they clear drains when there is a problem. The other form of interference is trying to get officials not to follow rules and policies.

***Director:** We have clear credit control policies. If you don't pay your accounts within a certain number of days, your services will be cut off. But community members come to councillors who, in turn, exert pressure on officials. It's not uncommon to get calls in the night for services to be restored.*

***Executive Councillor:** The problem with the administration is that they do everything by the book. Sometimes you can't do everything by the book. Jy moet die hartklop van die*

community ken [you must know the heartbeat of the community]. You need to ask, what is really important here, playing by the book or meeting a need? For example, there was an important meeting on a housing programme. We canvassed the meeting in the community. On the day, all the people were waiting at the bus stop for transport to the meeting. We spoke to one of the directors, asking them where the transport was. He replied that it should have been arranged beforehand and he was not authorised to hire the buses without getting 3 quotes. Die mense staan en wag daar. Wat moet ek vir hulle van quotes se? [the people are waiting, should I tell them about quotes?] I called some people in town and arranged for transport for the people. I gave it to the director afterwards. They were not happy with me.

There is often an appreciation by officials and the public of the efforts of conscientious councillors that press officials for answers and the fulfilling of duties.

Acting MM: *She [the councillor] interfered a lot in the administration. She helped to keep me on my toes. She wanted to know every detail. She is very much a bully. But I have grown because of her.*

Opposition Councillor: *They [members of the public] come to me because of the results I can deliver. I act very hands on. If there is a problem with sewage, I go and look at the problem. I then phone the chief engineer responsible directly to get results. If I would go through the MM I would wait months for an answer. I deal directly with officials that do the clearance of drains. They are the operational personnel. I also see that the complaint is attended to. I have a good relation with all departments. ... I do not get results by working through the council. I get results by working directly with officials.*

Interference in the negative sense is when the object of interaction by the councillors is to get the administration to perform a favour for the councillor or for the party to which the councillor belongs. Often, there is no practice of sanctioning councillors for transgressing the Code of Conduct.

Opposition councillor: *On the code of conduct: “Met daai papier kan ek mee gaan braaivleis hou” (“with that paper can I go and braai”). Councillors drive with council vehicles. They interfere in the administration.*

3.3 The working relationships in the council

The effective functioning of council is much dependent on how the various structures of council work collaboratively and in a mutually supportive way. The lack of clear role definitions of the various structures may also impact negatively on the operation of the council.

3.3.1 Relationship between speaker and mayor

One of the more problematic relationships in council is between the speaker and the mayor. Problems are often caused by confusion about the speaker’s mandate, exacerbated by the absence of clear Terms of Reference for the Speaker.

Speaker: *Constitutionally, I am asked by the Constitution to exist; not to chair meetings but to preside over issues that affect this entity.*

Mayor: *Sometimes there is conflict between the speaker and the mayor. For example, the Speaker wants to know why he is not invited to Mayco Meetings.*

Speaker: *First thing when I got elected is to ask: where is my job description? It really does not exist for the speaker. Legislation does not deal with oversight, does not deal with ward committees.*

A related problem is that a full-time speaker frequently attracts functions that fall outside of the traditional role of a speaker.

Mayor: *It is difficult to divorce the question [of roles] from the capacities of our speaker. Our speaker is involved in the roll-out of the EPWP programme. Only a capacitated speaker could do that. It entails training and recruitment of people to work for the programme, e.g. cleaning stormwater pipes, potholes etc. The speaker has to recruit from different wards. I agree that this falls outside of the jurisdiction of the speaker. But we have a [full-time] speaker that is multi-skilled.*

The problem is one of an oversupply of capacity. If the speaker is an active politician, the position becomes a springboard for the position of the mayor. If the speaker has capacity, the normal functions of overseeing the limited council meetings, leads to the search for new, unsanctioned, avenues of for the exercise of power.

3.3.2 *Relationship between speaker and chief whip*

Relations within the council are further complicated where the chief whip is a full-time position. Role confusion with the speakers often occurs.

Speaker: *We have a chief whip because of the numbers we have. The role division depends on the individual person. We need proper delegations, before we can appropriate funds to that office. The Speaker's role is a legislative issue. There is no Chief Whip in the Systems Act. (...) If we don't delegate issues properly, we may find Chief Whips becoming Speakers and people challenging that.*

Chief whip: *There is overlap between the speaker and the chief whip. Both look at the welfare and conduct of councillors. The only 'weapon' used is to try to understand each other. There is no clear differentiation of rules. This creates tension and may even lead to conflict.*

Chief whip: *The Chief Whip is closer to the councillors than the Speaker and is better placed to evaluate them.*

Speaker: *The problem is more pronounced in the bigger municipalities that have a full-time whip that has a large group of councillors 'behind him or her' and teams up against the mayor or the speaker.*

A further difficulty with respect to the position of a chief whip that is full-time is that in some cases, this so-called 'council whip' in effect does not serve the council but the majority party.

Chief whip: *I am the Chief Whip of the council and the Chief Whip of the party. There is no separate party whip in my party.*

In some instances, the full-time chief whip is accorded a role that goes beyond the political management of the council into the realm of the executive and the administrative.

Chief whip: *It is my task to oversee the administration and particularly the members of the party that were deployed into the administration.*

Speaker: *It is almost as if the Chief Whip is the most important person who directs the mayor and the speaker in terms of party politics.*

3.3.3 Relationship between speaker and councillors

The speaker is responsible for the maintenance of discipline in council and compliance by councillors to the Code of Conduct. Many respondents complained about a lack of discipline among councillors. It is clear that there is a considerable problem in this area. In contrast, the framework for disciplining councillors in terms of the Municipal Systems Act is hardly used. The formal use of available sanctions occurs infrequently.

Speaker: *If a councillor gives me a headache in council, I chase him out of the chamber. No one has yet refused to leave. I call them in the next day and talk it out. No formal disciplinary proceedings against councillors have yet been held.*

Mayor: *Councillors are transgressing in a major way. There are complaints against councillors. When we want to address the issues, the political parties deliberately delay the process. We have never issued fines to councillors. We have never punished a councillor for not attending a meeting. It's difficult if you need the vote of that councillor.*

In contrast, if the speaker's authority is respected by all councillors, the enforcement of the Code of Conduct can be a credible exercise, even in the extreme case of the Speaker investigating the Mayor:

Speaker: *Charging the Mayor for disciplinary issues is difficult. One time, I had to investigate the Mayor. There were issues that were hanging over the Mayor's head. I never suspected the Mayor to be guilty of a transgression but, for the sake of transparency, we had to undertake the investigation and take it to council. My authority*

to do so was never challenged by the Mayor. The Mayor responded very well. I told the Mayor that it will be seen to be a credible investigation if you are independent of it. We took it to council and it was agreed that the Mayor had not transgressed.

3.3.4 Relationship between opposition parties and council decisions

Given the organization of the council along party lines where the executive mayor system is applied, the marginalisation of opposition parties in council has been raised.

MM: *Opposition councillors cannot partake fully in the affairs of the council. They are mostly in the dark. They can only be reactive to the agendas. If they want to put matters on the agenda, the ruling coalition simply shrugs them off. Sometimes, you then miss out on important information. Sometimes they bring qualitative inputs but they are ignored.*

3.4 The relationship between political parties and the municipality

One of the most contested relationships that negatively affects the proper functioning of a municipality, is the interference of political parties outside the established political channels. Most distressing was the direct interference of political parties in the functioning of the administrations. Interference takes a number of forms – from seeking to influence decisions to the appointment of political office holders to positions in the administration.

3.4.1 Relationship between political party and the council

The intended relationship between the political party and the council is not always clear. A party gains control of a council when its councillors are in the majority (or in a coalition). The councillors from one party form a caucus who decides how the councillors will debate and vote in council and its committees. What is unclear is the relationship between the caucus and the party political structures outside council. Does the caucus have an autonomous voice on issues affecting the municipality only (such as appointments of section 56 managers), or is it simply executing mandates from party political structures, such as regional committee on all matters, including appointment decisions? What, then, is the legitimate influence that a regional party structure may exercise on the caucus and when does such influence undermine the municipal

governance arrangements? At what point does the political party become a governance entity of its own within the municipality? What are the indicators of such development? How is that phenomenon distinguished from legitimate party politics? The difficulties around this problem have surfaced in the interviews.

There would appear to be definite attempts by political party structures other than the council caucus to micro-manage the municipalities. This is easily effected through a very strict culture within the political party of following the political hierarchy. The caucus needs to consult with the branches and the regional leadership before taking a decision; this negatively impacts on the efficiency of decision making as it results in delays.

Mayor: *Always having to revert to the party's regional structures is sometimes simply not feasible. It takes so long that you can lose out on opportunities. An international company wanted to base its operations in our municipality. It would have brought R3 million upfront to the municipal area even before full operations were based here. We could just caucus it without reference to the regional structures. However, the other party in our council had to go to consult senior party structures first. International investors don't care about politics- you can't waste time like that, you'll lose out on opportunities.*

Political parties can also obstruct the effective management of council affairs, by for example hampering the disciplining of councillors.

Mayor: *Councillors are transgressing in a major way. There are complaints against councillors. When we want to address the issues, the political parties deliberately delay the process. We have never issued fines to councillors. We have never punished a councillor for not attending a meeting. It's difficult if you need the vote of that councillor.*

The most contested form of interference is where the council must make technical decisions on appointments. Whereas the political party structure would see appointments to the municipal administration as part of its deployment function, the caucus experiences it as a lack of trust in its good judgment.

Speaker: *[On the issue of deploying officials against the wishes of the municipality] It is a question of not trusting the system after you have deployed people in there [as councillors]. Parties must develop recruitment systems that they can trust. Deploy cadres that they believe in. So that they get reports, saying: "we have appointed this person, he's qualified and skilled, having gone through the appropriate system. Finished."*

The political interference occurs at both regional and provincial levels:

Mayor: *We were at loggerheads with the Regional Executive Committee. They wanted to micromanage the council through the Chief Whip. They wanted to dictate appointments. They had a vested interest in the Supply Chain Management Unit. But the mayor and the speaker stood against it. In the end, the Regional Executive Committee was disbanded by the Provincial structures.*

Chief Whip: *The REC directs the council. Councillors come with a mandate from the REC. They have then an instruction, for example, whom to employ. The REC agreed who the new acting MM should be without the council's consensus.*

Other times, there is conflict with the provincial structure, rather than with the region:

Speaker: *The mayor was not deployed by the Province. He was only endorsed by the Region and the council. The mayor is now charged with defying the Province. Mind you, the mayor, the poor soul, he is not sitting in the Region, he is not sitting in the Province. He is simply elected when we go to council. Now he is charged and [may be] expelled.*

The consequence is that where the council is not seen as exercising real power, its legitimacy as a political organ is profoundly questioned.

Speaker: *The community has lost confidence in us because we do not have authority in council although we are the speaker, mayor and chief whip. We cannot be removed by the caucus because we are the only professionals on the council. The caucus shows no respect of the mayor, a stalwart of the struggle.*

The marginalisation of the caucus is further exacerbated if political office holders (or the regional executive) are appointed to the administration, a development that is returned to below.

3.4.2 Relationship between political party and the administration

In law, there is no intended relationship between the political party and the administration. Political influence is exerted by political parties via the political arm of the municipality. The reality is often different. Political parties exert influence directly on the administration. It is important to identify these practices and examine their effect on governance arrangements.

3.4.3 Political appointments

It is a widespread practice that councils, constituted by political actors, make appointments on the basis of political affiliations rather than skills and experience. Here the principal actor is the council who, acting in the narrow interest of the majority party, makes the decision on the appointment of the MM and section 56 managers. A case that reached the courts is that of the appointment of the MM of Amatole municipality. The judgment is summarised below:

Dr. Vuyo Mlokoti applied for the position of MM of Amatole. He was shortlisted and interviewed together with another candidate, Mr. Zenzile. Dr Mlokoti's performance in the assessments and interviews was significantly better than the performance of Mr Zenzile. Despite the fact that he was the best qualified for the job, the appointment was decided in terms of the ANC's deployment policy. The ANC's Regional Secretary instructed the ANC caucus to appoint Mr. Zenzile. The executive mayor obtained two legal opinions, both of which indicated that appointing Mr. Zenzile would be illegal. The Regional Secretary addressed the ANC caucus before the relevant meeting and the caucus resolved to withhold the opinions from the council. At the meeting, Mr. Zenzile was appointed. Dr. Mlokoti challenged the decision and the council decision was not only set aside but replaced by the court with the appointment of Dr. Mlokoti. Part of the judgment is a record of the communication between the executive mayor and the ANC's Regional Secretary. This record puts it beyond doubt that the relationship between the

ANC's Regional Secretary and the executive mayor around this issue was one of 'command and control'.

The deployment of party loyalists is a reality that is widely recognized by councillors and administrators. Equally evident are the consequences of such a political appointment. Once a political appointment has been made, the incumbent is beholden to the party.

Director: *There are requests from councillors and from the party for certain people to be appointed.*

Acting MM: *The ANC wants to control the position of the MM. It is a key position. The tendency is that it should go to party members because it is real power. If you don't follow the line, the councillors can remove you. They can adopt a motion of no confidence or start an investigation and pending that, a suspension. These are hard facts.*

The appointment criteria set by the dplg are hardly persuasive. There is also a deep understanding under most stakeholders that political appointments are not in the best interests of a municipality.

Acting MM: *Dplg sets criteria for MMs. This is not working. MMs are appointed on political connections. There are political influences and the MMs will have to compromise. In the end the municipality is going to suffer.*

MM: *There has been political interference in the appointment of directors. For example, in this municipality they appointed a lawyer with no financial competence as a CFO. You can employ a consultant to go through all the competence testing according to the regulations but in the end, the councillors can override any test, any recommendation. The regulations then mean nothing in the end.*

The result of a political appointment is that a person with the necessary skills or experience is not appointed:

Speaker: *The appointment of the Acting MM was by instruction of the ANC. He was only recently appointed as a director, with no experience since he came from a provincial department.*

Not only is the MM often a political appointee, but also the section 56 managers. In this regard the MMs complain that they have too little control over the appointment of section 56 managers.

MM: *I have had stand-offs where I had to tell the Council: "If you want me to appoint this guy, he will have to be trained extensively. He does not have the qualifications."*

Once a political appointment has been made, the difficulties of the MM start. He or she must serve two masters: the formal legal prescripts or the wishes of the party. This often leads to unbearable strains. In one case, the MM, who was a political appointee, resigned because he was encountering "political problems".

Speaker: *He could no longer face taking instructions from the ANC structures. He was hospitalised from stress.*

An official, appointed to a finance management position due to political considerations, spoke frankly about the pressures that follow:

Director: *You are also victimised if you are a political appointment. Politics are about doing favours. It is not what you do in the administration. You as manager have to do things you don't want to do. ... An example is the payment of allowances for being in acting positions. You earn extra being in an acting position. You take both salaries for two jobs but you do only one. Thus the more acting positions there are, the more double payments there are. The Portfolio Committee stopped this. Only two such positions left.*

This is contrary to the Systems Act. I brought this information to EXCO. This is not right, but due to influence, two officials kept their two salaries contrary to my advice. I am defeated. The mayor was overruled by the majority of the ANC caucus.

Another official, who was appointed on merit, nevertheless faced pressure from councillors from day one:

Director: *On the first day that I got here, a councillor said to me “we can make you leave if you don’t do what we say”. I was very surprised.*

At times, it appears as if the position of Municipal Manager has little to do with requirements of professionalism and administrative leadership skills:

Speaker: *The MM’s administration and skills are excellent, they speak for him. Even the opposition councillors have complete respect for him. But the party won’t keep him because he refuses to tow the party line.*

MM: *I have been around for eighteen months and I would be surprised if I see the end of term, even in our municipality where there is no political interference. The reality is that politicians are circulating faster than five years. My mayoral committee has been reshuffled twice in terms of membership and portfolio.*

It may take exceptional strength and courage on the part of the administrator to withstand the pressures:

MM: *My stance is the following: I don’t have a memory. The moment that we have to remember what we said, what we promised, it becomes impossible. I tell my managers the same. The point should be: you’re appointed on merit and there are no favours pulled. It’s easy to say but not easy to practice, though.*

There is an apparent disregard for formal requirements as there is little comeback if dplg or National Treasury regulations are not followed:

Director: *The new finance lady, she has no qualifications for the job. .. The whole council interviewed her. The Council said that statutory requirements were merely guidelines. The Treasury regulations were not applied. The Auditor-General will pick it up, will report*

to provincial legislature, the legislature will haul the mayor before SCOPA, but there is nothing to be done. It cannot be rectified.

Once the MM is a political appointment, it inevitably follows that his or her appointments would follow a similar course. Moreover, in a small town with high unemployment, the political pressures are to appoint more staff (according to political preferences) despite the inability to deliver services to the community. The municipality thus becomes an employment bureau for the party with little concern for the broader community. As the central aim is the advantaging of party members, legal rules standing in the way are ignored. This leads of corruption and maladministration.

3.4.4 Political office holder as municipal official

The extreme case of political interference is the appointment of a party office holder to a position in the administration, which not only affects the administration but also the functioning of the council. It is not uncommon for senior management to be populated by party officials. In one municipality, the Director in the Speaker's Office is Secretary of the subregion of the party. In another municipality (outside of the sample), one of the directors is the Regional Secretary.

Mayor: *The ANC is trying to move away from having office-bearers in governance structures. It's a problem if the MM is a political office-bearer because he would not want to account to junior councillors and other parties will see him as a partisan person.*

At times, party officials are appointed in positions below the section 57 appointments, where DPLG and Treasury's competency rules are less of an impediment. The appointment of a party official who occupies a position higher than any councillor, to an administrative post, runs havoc with all the legal lines of accountability. For example, the distinction between the political and administrative functions of the municipality disappears where the official (who is a party office holder) attends party caucus meetings. First, the council becomes subsidiary to the official and the latter gives the mayor and speaker instructions.

Acting MM: *The district MM is the REC chair. This is not good for the administration. As a senior ANC member, he does not want to take instructions from council. I am told that the district mayor does not greet the MM. As mayor you have to toe the line.*

Speaker: *Because of his political position he gives instructions on the Acting MM. When Acting MM is away, he was acting MM. He then appoints people he wants. When it comes to him, we are not suppose to say anything. He will phone me and tell me what to do.*

Acting mayor: *He [party office holder and municipal official] also attends meetings of the caucus and when he is told to go by the caucus, he says he is a REC member. Even councillors resent that the REC member who is a clerk tell them what to do. The REC member is a deputy director but he does nothing. We can't go to the provincial ANC because it must go through the REC and so he can block it.*

Second, where the party officials are in a position below the MM, the latter cannot exercise disciplinary supervision, even if there are allegations of maladministration, absenteeism, etc. If they get special perks contrary to the law (e.g. extra pay for acting positions on top of their first job), it is difficult to take them away. In practice the official gives the MM instructions, rather than the other way around.

Speaker: *He has more power than the acting MM. The MM cannot discipline him. This brings the municipality down.*

The result is that the political appointee gets privileged treatment. If there are public political events, such as president of the relevant political party visiting the district, the official takes off and works for the party. The untouchable position of such a political figure has a demoralising impact on other staff members as they see how the applicable legal rules do not work.

Director: *It is very difficult to discipline the deputy director now. The MM cannot act against him. He does what he pleases. There are complaints against him but the MM is powerless. ... The council cannot take on their political senior. Other senior managers do not like this. They are getting fed up.*

Where the internal organisation of the party works otherwise, i.e. it does not permit situations where officials outrank the MM or the mayor, this immediately has a positive effect on the ability of the municipal manager to control the administration.

MM: *I don't have political interference in my interaction with staff members because, in terms of the party structures, I will never have the situation where I have to discipline a person who is at a higher level than the mayor. That is simply not how the party structure works. I don't know whether the party does that deliberately but in our case, that's the way it is.*

3.4.5 Political interference in other administrative decisions

While appointments do not occur on a daily basis, political interference from political officials from outside the council has also been encountered. MMs complain that party officials have sought to instruct them how to perform their job.

MM: *One time, the Regional Leadership of the political party walked into my office to insist that I review a dismissal. I told them to go to the mayor.*

MM: *There are some narrow escapes but if you buckle once, you suck up to the politicians forever. If you approach your job professionally, there should not be any problems. I warn the DA and the ANC equally and this builds confidence.*

MM: *In our municipality, the biggest reason for our success is that there is no political interference in appointments or in debt collection processes.*

In some instances the attempts at interference are blatant and uncompromising.

Mayor: *I have here a letter written by the Regional Secretary of the [party] to the Municipal Manager. The letter says: "It has come to our attention that the [party] has not been given any vacancies yet to fill. In future, all future vacancies in the municipal administration are to be discussed with the Chief Whip of the [party]."*

Acting MM: *There is political interference with the MM on a daily basis. The problem is: a councillor asks me to do something unlawful. If the MM refuses the councillor thinks*

the MM does not belong to his camp. I get requests from councillors – for example, “give my niece a position”.

3.5 The relationship between the municipal manager and the administration

The assumption is that there is a strong hierarchical structure with the MM at the top. Practice reveals, however, ambiguities and contradictions. There is legal uncertainty about the hierarchical relationship between the MM and the section 56 managers – does the MM or the council have the final say over them?

MM: *There is also uncertainty as to whether the MM can discipline a section 57 manager. I don't know. It creates uncertainty: do you formulate a charge and then recommend to the Mayor and the Council to discipline? It's a difficulty because the MM signs the contract.*

Mayor: *There is confusion around who can discipline s 56 managers. The law says that the MM can't discipline the director. This should be changed. It should be under the MM. It is clear that the MM appoints so it should be within the MM's ambit.*

4 RECOMMENDATIONS

4.1 Introduction

The main aim of the study was to investigate the areas of conflict in municipal governance and examine the background to these conflicts. On the basis of the case studies, and the comments of office holders and officials, a number of recommendations are put on the table for further discussion. It was not possible, within the scope of the study, to fully investigate and test these recommendations so they would need to be further examined.

4.2 The accountability relationship between council and the administration

4.2.1 Relationship between the council (collective) and the administration

4.2.1.1 Poor caliber of councillors

There is a strong sense that councils will be able to perform their function of overseeing municipal administration adequately only if they are equipped to do so. A number of interviewees were of the opinion that political parties should prioritise the recruitment of skilled and knowledgeable political candidates instead of trying to manage municipalities *after* they have deployed political leaders in there.

Speaker: *Parties must make sure that they recruit competent, knowledgeable people on their lists. Then they don't have to fear that they will misrepresent them.*

A more radical proposal was that there should be a set of minimum criteria for councillors.

Chief Whip: *Councillors come here to earn money. They should understand what they are supposed to do. You must have gone to school to be a councillor. They can't read the agenda and the minutes or reports. The majority in the council don't read. An old man is sleeping in the council. He only speaks Setswana. There must be a qualification of some sorts. We are taking illiterates in. At R132 000 per year it is the best salary they will ever earn as illiterates.*

4.2.1.2 Lack of appropriate council structures

In law the governance system for municipalities is fundamentally different from the governance system at national and provincial level. While the national and provincial governments function in terms of a parliament system with a clear separation of powers between the legislature and the executive in functioning, there is a fusion of legislative and executive functions in municipal councils.

In the national and provincial governments there is a considerable degree of distance between the executive and the legislature. Consequently, there is a 'natural' division of responsibilities; parliament legislates and oversees the executive, which, in turn, is responsible for the implementation of legislative programmes. There is thus also no discussion as to which of the two branches directs the administration because the executive only controls the administration. In local government, the municipal council is both the legislature and the executive of the municipality. Municipal executives receive their executive authority from the

council by delegation. Without those delegated powers, municipal executives are powerless. This means that municipal executives derive their authority, not from the law but from the council. The division of roles between the municipal executive and the council is therefore defined by both a system of classic political accountability and a system of delegation of authority by the council to the executive. It is only the truly large municipal councils of metropolitan municipalities that operate as *de facto* legislative assemblies. However, even those municipal councils are forced by law to perform certain 'non-delegable' administrative functions; appointing senior managers is one of them. Moreover, even those municipal councils are authorised, by virtue of their status as the source of executive authority, to act as a 'senior' to the executive rather than as an overseeing legislature. It is thus also not only the municipal executive that directs and controls the administration. Municipal councils have a legitimate and constitutionally mandated interest in exercising control over the administration.

The confusion about the role of the municipal council as both an executive and oversight body manifests itself in the monitoring of the implementation of council resolutions. Once a resolution has been adopted and recorded in the resolutions book, the question is who is responsible to ensure it is implemented. The executive responsibility lies with the executive mayor or the executive committee. As the principal political officer, the mayor must ensure that the administration implements resolutions. The task of the council is to see whether the mayor is fulfilling that task. At the moment there is an inconsistent practice, where the function of following up on resolutions is allocated to the mayor or to the speaker. By giving the speaker the function of monitoring the administration, that office starts to perform an executive function, leaving the mayor out of the line of accountability. What is required is a uniform system which clearly allocates the role of following up on the implementation of council resolutions to the appropriate political officer holder. First, there should be a book recording the resolutions adopted. Second, the mayor is the appropriate office holder to see to the execution of resolutions – his or her responsibility is to ensure effective administration also in regard to the carrying out of resolutions. Third, the council must oversee whether the resolutions have been carried out and hold the mayor or the executive committee accountable on this score.

In general, Municipal Councils should change from machines that churn out decisions, prepared by the administration, into representative bodies that adopt policy and oversee the administration.

Given that all provincial legislatures, with memberships between 80 and 30 MPLs, operate within the parliamentary model of separation of powers, the question arises whether councils with membership in excess of 30 councillors (which constitute the majority of councils), should also not be functioning in line with a clear separation of its legislative (and mainly oversight) function from its executive function. Without changing the law, this would entail the use of section 79 committees as oversight committees over the executive committee and the executive mayor (and the mayoral committee).

A parliamentary model for larger councils would entail removing the executive functions from council and entrusting those to the executive on a permanent rather than a delegated basis. The executive councillors would operate more directly with the relevant departments. Policy and executive decisions would be generated by the administration, signed off and politically driven by the executive. The investments that municipalities currently make in section 80 committees would move into section 79 committees that are transformed into strong, specialised oversight committee with access to research capacity.

While the latter option would require a fundamental rethink of the functioning of councils, larger municipalities can, within the confines of the current legal system, already invest in better functioning section 79 committee systems with the specific aim of increasing the oversight role of council. This is already happening sporadically in a number of municipalities.

Speaker: *My oversight committee deals with the annual report and with the Auditor-General's report. The Speaker's Office is also involved with the Audit Committee that evaluates the books and we have the internal audit unit. Those are our checks and balances. But I think that section 80 must be divorced from section 79. The Mayoral Committee must account to section 79 committees like the Minister accounts to Parliament. It can't be the Minister also chairing the Portfolio Committees! When I say there's no accountability it's a matter of how the laws were confused at this level.*

In municipalities that have invested in better functioning section 79 committees, the relationships have been clarified substantially and are distinguishable from political lines.

Official: *The MMC comes to the section 79 committee on invitation. The MMC should not be a member of the section 79 committee because usually, he or she is a senior party member and the members of the committee see him or her as a leader.*

The capacity of councillors is again pointed out as the Achilles Heel, particularly in smaller municipalities:

MM: *If you look at the practical side. The majority of councillors can't read a council agenda. Now you're asking that councillor to chair a committee where he's not engaged in the day-to-day operations. You will have far more unreasonable expectations from a section 79 process because of that inherent capacity problem. To be honest, the argument does hold ground that you don't want a section 79 because you don't want to be transparent. However, operationally, who is best suited to do what is required?*

Speaker: *I agree with that concept. I think it's a wonderful idea. The mayor is not in favour of it but I would support it. However, we only have a small council, our MMCs cannot be chairs of those committee so now I must go to the others and say; you must chair these committee, you must become a specialist and guide your committee. Where am I going find that here?*

However, this should not be a reason to shy away from clarifying responsibilities and facilitating stronger oversight. What it does mean is that significant investment is needed to enhance the capacity of chairpersons of section 79 committees as well as these committees' access to administrative and research support to enable them to adequately oversee the administration.

4.2.2 Relationship between the executive and the municipal manager

From the field study the need for skilled mayors has become abundantly clear. In order for them to perform their function of interface with the administration they must have the necessary knowledge to understand the roles and responsibilities of the municipal manager and

the skills to ensure that they are complied with. The call thus frequently heard is for the political parties to ensure the necessary skilled persons are elected as mayors.

Once a skilled mayor is in place, a clear differentiation of roles between that position and that of the MM should be established. What are the executive responsibilities of the mayor and where do the responsibilities (and decision making) of the MM start? Clear terms of reference are thus required.

The point was often made that the legal framework contains sufficient instruments to create an efficient municipality. The onus is on the stakeholders in the municipality to make current work:

MM: *We have a culture of knowing exactly what is required and at what time. We don't fight the system anymore. At this stage it is a matter of using the system that is there at a more efficient rate.*

4.2.3 *Relationship between individual councillors and the administration*

It is clear that in practice that the linear model of interaction between councillors and the administration occurring only through MM, is not feasible. Council committees deal directly with the relevant line managers as do individual councillors with regard to matters raised by the public. It is simply not practical that all communication between a councillor and the administration is channeled through the MM's office as that will be too time-consuming.

However, the interaction should not be unregulated. A municipality should draft a protocol for interaction between councillors and the administration in terms of which the MM is also notified of such interaction. In municipalities that succeeded to manage the interaction, the importance of the protocol was emphasised:

Mayor: *We have adopted a 'complaints book'. This works very well. Councillors, who want to bring issues to the attention of the administration, write this into the complaints book. They are given a reference number and are guaranteed to receive feedback from the relevant director or department. The complaint is then forwarded to the relevant administrative unit who then follows up and provides feedback to the councillor. Importantly, the quality of the director's response to the complaints book is part of the*

director's performance agreement so there is an incentive on the part of the director take the complaints book seriously.

4.3 The working relationships in the council

As the municipal council operates in terms of a number of office holders and committees, the effective functioning of a council depends much on the co-operation and coherent distribution of functions between the various institutions and persons. The starting point is clear role definitions.

4.3.1 Relationship between speaker and mayor

The relationship between the speaker and the mayor is often problematic because there is confusion about the speaker's mandate, exacerbated by the absence of clear Terms of Reference for the speaker. A full-time speaker also frequently attracts functions that fall outside of the traditional role of a speaker. The clear formulation of Terms of Reference for the Speaker is thus important, remaining within the broad parameters of the legislative framework.

The delineation of executive and legislative responsibilities will assist this process. It will charge the Speaker, in addition to community participation issues, with controlling the functioning of council and the functioning and support of oversight committees. In a municipality that had succeeded to manage these potential tensions, the importance of clear job descriptions and the need to work according to agreed protocols was emphasised:

Speaker: *The first thing is: an independent speaker's office. We have a Speaker's Office budget. The problem is to whom do the staff in the Speaker's Office report? Until the legislation gets revised, the staff falls within the ordinary administration but there is a gentlemen's agreement that the staff report to the speaker. That gentlemen's agreement works. Many speakers don't have a budget or have no control over it. In terms of our delegations, no money is spent from the Speaker's budget without my approval. Of course, in terms of the MFMA there are other procedures and the MM must sign it off and procurement etc. Formally it lies with Corporate Services but they*

understand that this HOD is actually divided in two. If you have clear job descriptions you can avoid much of the conflict.

4.3.2 Relationship between speaker and chief whip

While this relationship can at time be strained, the proper functioning of the chief whip particularly in relation to the speaker should be clearly defined in terms of a protocol between the council and the political parties. This is of particular importance where the chief whip is a full-time position in large municipalities.

4.3.3 Relationship between opposition parties and council

If a more parliamentary model of governance is adopted in councils, then the place of opposition parties in the functioning of the council will be clarified. If there are only section 80 committees, forming part of the executive and populated with only majority party members only, opposition councillors will have a more structured role to play in section 79 committees of oversight. The same applies to majority party councillors in large municipalities; they cannot all be members of section 80 committees. Having section 79 portfolio committees enables both opposition and majority party councillors to play a meaningful role in the council proceedings.

4.4 The relationship between political parties and the municipality

Political parties are built into the system of local governance. They provide the democratic basis and legitimacy for policy choices. The overwhelming majority of councillors are elected on a party political ticket. Yet, practice suggests that political parties can also prejudice good governance. The challenge which this poses developmental local government is how to structure the relationship between political parties on the one hand and the council and the administration on the other.

4.4.1 Relationship between political party and the council

There is a case to be made out that a line should be drawn between the legitimate exercise of influence by political party structures external to the council, and the proper functioning of the

majority party caucus in the council. Theoretically, members of the caucus are accountable to the voters and wards in the municipality who elected them. Yet, party caucuses function within clear party hierarchies. This applies to parties across the board. The DA national leadership instructed the mayor of Cape Town, Peter Marais, to resign. It could also have proceeded by instructing the Cape Town caucus of the DA to pass a motion of no confidence in the mayor and thus remove him from office. The ANC has a similar hierarchical structure. At the Polokwane Conference, a few elements of decentralized decisions making were introduced with regard to the election of premiers, but the notion of provincial political influence in the appointment of mayors prevailed. The decision of nominating mayors rests now with the PECs, and no longer with the national leadership. The regional executive committees (for each district and metropolitan municipality) must submit three names to the PEC in the order of priority from which the PEC may then selected the candidate. The decision of the mayor of a local municipality is thus not in the hands of the ANC caucus of the local council.

Given the fact that political parties will assert the rule that local political leadership are centrally or provincially determined, the question is whether there is nevertheless a distinction to be drawn where regional (or provincial) party structures should not be in the driving seat? While the deployment of party faithful to the offices of mayor could be regarded as legitimate party concern, are there discrete areas where local caucus should have preeminence? From the councillors, two suggestions were put forward. First, once the leadership has been anointed by the regional party structures, the party must have the trust in the leadership to make decisions. The failure of a political party to allow the majority caucus to make decisions (often after negotiation with minority parties) negatively impacts the legitimacy of the council. A mayor (or caucus) that receives instructions on the governance issues of the council loses its legitimacy in the eyes of the community.

Speaker: *The problem comes in where the local caucus is not the decision maker, where people outside of the municipality are taking decisions. In our municipality, the caucus is an autonomous body. The national or regional structures don't interfere, unless we go to them.*

The second suggestion is that political influence is only legitimate in so far as policy issues are concerned. The external party structures have no legitimate interest in the appointment of officials. Such matters should be left to the council to apply the necessary guidelines provided by the dplg and the National Treasury.

4.4.2 Relationship between political party and the administration

The Constitution establishes, among others, two fundamental principles of public administration: the first is that “efficient, economic and effective use of resources must be promoted” (section 195(1)(b)). This entails that persons who are equipped to do the job at hand must be appointed. The second principle is that the public administration must provide services that are impartial, fair, equitable and without bias (section 195(1)(d)). The dplg and the National Treasury publish guidelines and regulations to structure the decisions of councils when they make key appointments in the administration. The object of these guidelines and regulations is to ensure that persons are appointed who are fit for the exceedingly demanding positions of municipal manager, chief financial officer and others managers. Appointments on grounds of political considerations, and not the skills and experience of the person, undermine the two fundamental objectives of a good administration. If incompetent persons are appointed, the effectiveness of the municipality will be compromised. Moreover, a political appointee is likely to be accountable to his or her political masters rather than the council as a whole, which may compromise the impartial delivery of services.

4.4.3 Political appointments

There is widespread agreement on the destructive consequences of political appointments for the efficient and effective functioning of a municipality.

MM: *Municipalities are failures because of that essential problem. If you are told whom to appoint, you are doomed because your skills base is tarnished and your credibility is tarnished. In our municipality, the biggest reason for our success is that there is no political interference in appointments or in debt collection processes.*

Much more difficult is articulating ways of avoiding this form of political interference. The first approach calls for greater political maturity by political parties. Parties are called upon to recruit better councillors and then have greater trust in, and ensure autonomy for the local caucus:

Speaker: *It's a question of not trusting the system after you have deployed people in there. Parties must develop recruitment systems that they can trust. Deploy cadres that they believe in. So that they get reports, saying; we have appointed this person, he's qualified and skilled, we have gone through the system. Finished.*

Mayor: *If you elect a public official, you should be able to trust him or her. The party can keep tabs on the general political ethos but it is impractical and unnecessary to do more than that.*

Another call that was made was that parties, if deployment into the administration remains a strategy, must ensure that their favoured candidate meets the minimum statutory requirements.

MM: *My argument is: if you want to stuff an appointment down my throat, find the guy that meets the requirements then at least he's qualified. Don't give me a lawyer when I need a CFO.*

An area that can be addressed through legislation is the appointment of section 56 managers. There appear to be very few, if any, genuine strategic advantages for a Municipal Council to have the power to appoint section 56 managers. The ability to cement coalition agreements or reward party loyalists is exercised at great cost to the municipality. The Municipal Council's role in appointments can be minimised by excluding section 56 managers from their jurisdiction.

MM: *It would certainly be better if the MM would appoint the directors. It would make my life easier.*

Acting MM: *Here the council does not give much room for the MM. The MM should appoint senior staff. Why give me garbage, why not allow me to appoint my dream*

team. Lesser appointments are made by MM but that depends on whether MM was not a political appointment.

The appointment of section 56 managers by the MM is also likely to assist in reducing staff turnover.

Director: *No section 57 managers have been appointed here in a long time. This is Hollywood, everyone is acting. Even the MM was acting.*

Mayor: *All of our current HODs have been employed on merit - and it shows. There has even been a dramatic reduction in staff turnover.*

However, once the MM is a political appointment, then it becomes inevitable that he or she will also make political appointment to lesser positions, as the MM is in the debt of his or her political masters.

Director: *It thus makes no difference whether MM or council makes appointments [of section 56 managers]. If the MM is an political appointment, his appointments will also be political.*

To counter political influence, more emphasis could be placed on the rigid use of criteria.

Mayor: *The MM may be a political appointment, but if there are criteria, it may help, but criteria are not always followed.*

Many interviewees have lost faith in the council making sound appointments and prefer that an external body makes the key appointments.

Speaker: *How to appoint. We need to get an outside body to make choice.*

Director: *There should be criteria in legislation about appointments to senior positions. Autonomous local government is nonsense. We should make use of the National Treasure or DPLG to make appointments. They should have voting rights on appointment committee.*

The single public service was for some interviewees the answer to the problem of political influence.

Acting MM: *A single public service is a good thing. Senior managers will report to the Minister of Public Administration. The role of the council will be at a minimum. This could improve matters.*

4.4.4 Political office bearers as officials

Perhaps the most insidious form of political interference is the appointment of political office holders to administrative positions. Interviewees were adamant that a clear separation between the party and the administration should be maintained. One municipal manager expressed the need for separation as follows:

MM: *I have declined to take up positions within the political party as I don't think I should be in the centre of politics. I think it would be very suitable if that were to be made official, through a legislative amendment. It would build confidence in the administration.*

In terms of the Constitution a clear legislative rule is required making the holding of an office in a party incompatible with a position in the civil service.

This legislation should offer a definition of what constitutes political office, which may be determined, in individual cases, in terms of the relevant party's Constitution.

4.5 The relationship between the municipal manager and the administration

The confusion about who disciplines the section 56 managers – the council or the MM – should be clarified by legislative changes. The recommendation is that the Municipal Manager, as head of the administration, should at least be given the authority to initiate disciplinary proceedings against a section 56 manager. The question may be whether, given the context of the section 56 manager being a council appointee, the council needs to approve disciplinary action taken against a section 56 manager. However, the MM's authority to initiate disciplinary proceedings will go a long way towards clarifying his or her position.

How this issue is addressed will inevitably tie up with the larger question of who should have the authority to appoint them – the council or the MM. If the recommendation is followed that

the MM appoints, it follows that the MM also disciplines in terms of council's policy but without the council's approval.

5 SUMMARY OF THE RECOMMENDATIONS

In brief, the following recommendations are made:

1. The capacity of councillors to participate meaningfully in council activities needs to be addressed. One of the key issues raised was the call on political parties to further improve their recruitment of candidates for council membership.
2. Minimum requirements for councillors need to be considered. While these requirements may not be legislated, a framework for the required competencies and skills is necessary to guide recruitment and capacity building.
3. Local caucuses should be afforded greater autonomy so that political decisions can be taken locally. Regional party structures should find a new balance between strategic, political guidance to local party caucuses and excessive interference.
4. There should be significant investment in the oversight role for municipal councils. This may entail institutional changes, such as the establishment of section 79 committees, a more independent role for the Speaker and institutional support for councillors that is independent from the administration. It also entails investment in the capacity of councillors, particularly those that chair section 79 committees.
5. A constitutional amendment to permit municipal councils to operate in a parliamentary model should be investigated. The parliamentary model should not apply to all councils but only to large councils. The threshold should be carefully considered but may be set at around 30 councillors.
6. Significantly more support should be given to the development of proper protocols and terms of reference to address difficult relationships such as those between councillors and the administration, between the speaker and the mayor and between the speaker and the chief whip.

7. Competency frameworks for the appointment of senior municipal personnel should be more vigorously enforced by provincial governments, overseeing municipalities.
8. Consideration should be given to removing the appointment of section 56 managers from the jurisdiction of the Municipal Council and permitting the MM to make those appointments.
9. Consideration should be given to a legislative provision that prohibits party officials from being municipal employees.
10. The Municipal Manager's authority to initiate disciplinary proceedings against a section 56 manager should be clarified.