



PAPER II: MUNICIPAL ACCOUNTABILITY: ASSESSING MUNICIPAL ACCOUNTABILITY TOOLS

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MUNICIPAL ACCOUNTABILITY: ASSESSING MUNICIPAL ACCOUNTABILITY TOOLS¹

EXECUTIVE SUMMARY

Establishing municipal accountability

Municipal accountability can be established through various types of instruments. Some of these instruments directly establish accountability. Other types of instruments do not directly establish accountability but facilitate the flow of information on government conduct and performance which, in turn, are essential for the purpose of establishing accountability.

Accountability of municipal council to local communities

The mechanisms through which locally elected representatives can be accountable to the public include, among other things, elections, public meetings and formal grievance procedures.

It is submitted that the electoral system for local government itself may not in all respects establish direct accountability links as there are serious difficulties in defining community accountability for PR councillors. The constituency element in the electoral system, namely that of ward representation, appears not to have generated a strong enough direct link between communities and ward councillors. It is suggested that the failure to maximise on this institution of accountability has its roots in the quest of political parties to manage the fielding of candidates.

The open meeting requirements in the Systems Act seem to go far enough to ensure that municipal meetings do not take place away from public scrutiny, thereby facilitating the accountability of local representatives to the public. The Systems Act provides a clear obligation on the municipal manager to provide the public with notice that sets out the date, time and venue of all meetings.

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The Systems Act provides citizens with mechanisms to lodge appeal, make petitions and express their view on the performance of the council. These formal grievance procedures play an important role in achieving accountability although much depends on the manner in which the municipality gives effect to it. Municipal accountability to the public is further promoted by the Systems Act and, more specifically, the Code of Conduct for councilors which encourage councillors to report back at least quarterly to their constituencies on the performance of the municipality.

Peer-accountability

Peer accountability represents the accountability of the executive to the municipal council. A number of institutions and rules that promote municipal accountability can be identified.

A transparent executive is essential in order to promote accountability. However, since the mayoral committee is not regarded as a committee of the council, it can conduct meetings on important topics away from public scrutiny including the council. The law also allows the executive committee to close all of its meetings. It is suggested that the law must be changed to make it impossible for both the executive and mayoral committee to close all their meeting.

The capacity of the municipal council to make its executive accountable is also affected by the particular configuration of the committee system that a municipality opts for. 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. A response to this problem may be formulated by the municipality itself when it establishes an 'oversight committee'.

The audit committee is another important committee that establishes the financial accountability of the municipal executive to the municipal council. The Committee serves as an institution that provides the council with the necessary information to make the executive accountable with regard to matters of financial management.

The annual report serves as 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.

Administrative accountability

Administrative accountability, which is the accountability officials to the elected representatives, can be established through institutional arrangements and rules specifically designed to make accountability work.

Municipalities have the legal power to control their bureaucracy. However, the manner in which regional party structures engage in the detail of municipal politics results in municipalities being made dependent on instruction from party structures on the appointment of senior and middle management vacancies.

Rules that establish the accountability of the municipal administration to the executive include the service delivery and budget implementation plan (SDBIP), budget statement and mid-year budget and performance assessment report. A danger that is inherent in the position of these rules and instruments is that they are viewed by the council and the administration as a financial instrument only.

The performance agreement, if implemented properly, helps to bring to an end the days of “free-floating manager” who do not meet set delivery targets but escape responsibility, thus, establishing accountability. However, a large number of municipalities have to yet institutionalise a performance management system and the actual number of managers that have entered into a separate performance contract agreement is not encouraging.

Conclusion

The South African system of local government, by and large, provides for instruments that help to establish municipal accountability. It is suggested that the disjuncture between the decentralised system of governance and the centralised rule within political parties poses a specific challenge to the achievement of better accountability.

Furthermore, a fundamental debate on the appropriateness of the constitutional fusion of legislative and executive powers may be necessary so as to clarify accountability relationships, particularly in larger municipalities. In areas where further progress is needed, the progress need not necessarily be pursued through legal reforms as focused support to municipality may go a long way to addressing these concerns.

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1. INTRODUCTION

Statistics provided by the Department of Provincial and Local Government (DPLG) in 2005 reveal that municipalities continue to experience huge difficulties in delivering services. According to the information, “203 ‘municipalities’ could not provide sanitation to 60 percent of their residents, 182 were unable to provide refuse removal to 60 percent of their residents; 155 could not provide water for 60 percent of properties, 122 could not provide electricity to 60 percent of homes; 116 were unable to provide housing for 60 percent of their residents; and 42 were unable to execute 50 percent of their functions”.² In short, poor service delivery continues to plague South African local communities. These difficulties can be attributed to a variety of factors, including capacity constraints, intergovernmental blockages and inefficient funding streams. However, an essential feature of the discussion around improving the performance of the local government system is the question of responsiveness and accountability. Research shows that many of the service delivery protests centre around a lack of responsiveness on the part of the municipality. The issue of municipal accountability therefore tops the agenda of the local government review process that is currently underway. Out of the first eight questions that the DPLG has posed, three of them directly deal with municipal accountability³: How can councils ensure that mayoral committees are held accountable? What is the best way of holding councillors accountable to local communities? What role should organised local government play in improving the performance and accountability of municipalities?

It is these same questions, quoted above, that this short paper attempt to address. It seeks to examine the most salient parts of the system that is put in place to instill a culture and practice of accountability.

This paper is decidedly narrow in its approach. It focuses on the legal and institutional framework for accountability and asks the question as whether there are areas for legal and/or policy reform that relate to legal and institutional areas. This question is

² Atkinson, 2007, 60.

³ DPLG, 2007, 11.

asked against the backdrop of the review of the White Paper on Local Government and any possible legal reforms that may emanate from that.

In doing so, it focuses on and reviews the tools and instruments that are designed to establish this culture and practice of accountability of local government. It evaluates whether the South African local government system provides for adequate instruments to establish municipal accountability and makes remarks as to the outside factors that impinge on this institutional and legal system.

Three types of accountability can be identified within the context of local government in South Africa. First is the accountability of the municipal council to local citizens, referred to as 'vertical downward accountability'. The second type of accountability relates to the horizontal accountability of municipal executives to the elected representatives, which in this case is the municipal council. Because of the fusion of executive and legislative function in the municipal council, we think it is appropriate to call this type of accountability 'peer-accountability'. The last form of accountability pertains to the accountability of the local bureaucracy to the municipal council. We shall consecutively deal with each type of accountability. Before that, however a brief discussion of the concept of accountability is in order.

2. ACCOUNTABILITY DEFINED

Accountability has become a critical part of public governance. As a concept that originally emerged as an element of public finance management (i.e. "computing and giving account for the expenditure of public funds), the concept of accountability now goes beyond the domain of public finance and applies to a wide array of important decisions and authorities that are responsible for making those decisions. At the centre of the concept of accountability is the checking and balancing of potential abuse of power by public officials with the objective of limiting the potential for corruption of public offices and officials.⁴ The domain of accountability has, however, expanded, through time, from the proper exercising of power to include accountability for improving the efficiency and reducing waste in carrying out public programme. It has

⁴ Posner, 2007, 336.

also further expanded, as of late, “to focus on the effectiveness of government in meeting publicly desired outcomes for programme and operations”.⁵

3. INSTITUTIONS, RULES AND BEHAVIOUR

Municipal accountability can be established through various types of instruments. Some of these instruments directly establish accountability; they are institutions of accountability. A good example is the election of public representatives. Other types of instruments do not directly establish accountability but facilitate the flow of information on government conduct and performance which, in turn, are essential for the purpose of establishing accountability. They can be called the rules of accountability. The duty to conduct council meeting in public is one such type of accountability tool. The increasing expansion of the concept of accountability and its application is also accompanied with the introduction of new tools and instruments that are essential to promote accountability. With the expansion of the concept of accountability came, for example, “the institutionalization of performance measures and reports designed to provide more systematic information on government results”.⁶

A final aspect of accountability relates to the extent to which the stakeholders in the accountability system, which includes politicians, bureaucrats, political parties and civil society, are taking proper ownership of system. In other words, are the institutions and rules being utilised? Are they being utilised adequately or are the institutions and rules of accountability being thwarted?

4. MUNICIPAL COUNCIL ACCOUNTABILITY TO LOCAL COMMUNITIES

An essential feature of municipal accountability to local communities is that citizens play a direct role in holding decision makers to account. The focus here is on the accountability of elected representatives to the public. This form of accountability is based on the assumption that accountability is enhanced through representation; as such it is the prime example of an institution of accountability.

⁵ Posner, 2007, 336.

⁶ Posner, 2007, 336.

The mechanisms through which locally elected representatives can be accountable to the public include, among other things, elections, public meetings, formal grievance procedures and recall. A brief introduction of each of these instruments of accountability is followed by the evaluation of their place and role in South African local government.

4.1 Elections

Elections are a key mechanism of vertical accountability. The assumption underlying a decentralised system of government that establishes local democracy is that local elections will enhance accountability and there is evidence that underscores the potential of local democracy in enhancing accountability. For example, in a recent study of voting behaviour in India, Khemani compared the vigilance of voters in local elections with the vigilance of voters in national elections. For the purpose of this study, vigilant voters were voters who evaluate incumbents on the basis of their *overall performance during the entire term of office* as opposed to myopic voters who are persuaded by *outcomes achieved immediately before elections*.⁷ The report critically investigated the proposition that in local elections, voters are able to evaluate their leaders on the performance throughout their term while, in national elections, voters are misguided by outcomes immediately before the election. The study found robust evidence that the proposition is true. For example, voters rewarded *local leaders* for local income growth over the entire term of office and punished them for growth in inequality over the entire term of office. In contrast, voters rewarded *national leaders* for national income growth and fall in inflation only in the year immediately before elections.⁸ This study adds to the argument that accountability is enhanced by decentralisation. However, the question is whether South Africa is currently realising this benefit of local democracy.

Much of the effectiveness of an election as a mechanism for accountability lies in the structure of the electoral system. The regularity of election and the extent of genuine voter choice are also important factors. The focus here is on the electoral system and the electoral practice.

⁷ Khemani 2001: 1.

⁸ Khemani 2001: 7.

A combination of proportional and constituency-based elections constitutes the electoral system for local government in South Africa.⁹ Unlike the fully proportional system of election (PR) at the provincial and national level, the injection of a constituency-based election into the local government election system introduces an element of direct accountability. The ward councillors are directly linked to a constituency, which means they have a direct line with the community they represent. Where applicable, they also sit as a chairperson of ward committees and such see their function as intermediaries between the community and the municipality underlined. This direct link is conspicuously absent in the case of PR councillors. The PR councillors are not made directly accountable to constituencies although there has been a suggestion that PR councillors be assigned to wards.¹⁰ This obviously limits the accountability of elected representatives. The lack of direct accountability is more glaring at the level of district municipality. Sixty percent of the district councillors are indirectly elected by the constituent local councils while the rest are directly elected through proportional party representation list. That means all district councillors are not directly linked to a constituency.

The fact that ward councillors are directly linked to a constituency does not mean that this institution of accountability in fact produces genuine accountability. A key reason for instances of weak accountability of ward councillors has to do with the manner in which important stakeholders in the accountability system are taking part in it. The role of political parties is, for example, an important factor in that senior party structures appear to play overly decisive roles in the selection of ward candidate.¹¹ In the case of the ANC, for instance, the choice of a candidate for a ward is initiated at the level of the ANC branches. However, the choices of the ANC branch members are often eclipsed by the zonal and regional offices of the ANC who then replace the preferred candidate of the ANC branches with their own choice of ward candidate. This practice, which is not exclusive to the ANC, may do damage to the process of establishing a culture of local democracy and accountability by the fielding of

⁹ Local Government: Municipal Structures Act 117 of 1998. See also Local Government: Municipal Electoral Act 27 of 2000.

¹⁰ De Visser, 2005.

¹¹ Benit-Gbaffou, 2007, 30.

candidates that are “unknown locally”.¹² Friedman remarks that disgruntled residents “clearly feel that they did not choose those who were nominated to represent them. Leaving the choice of candidates to local people could not make voters trust their councillors less and may prompt them to place more faith in them.”¹³

Because of the crucial role that the party is made to play in the choice of candidates, these candidates, who are too often unknown to their localities, labour to appease not their constituency but the political party that fielded them. The carrot and stick for reelection thus lies not with the constituency or even the local branch but with the upper branches of the party. This introduces an important accountability deficit in the system of local government.

One of the practical manifestations of this is that ward candidates rarely speak against the policies of the party even when there is a clear dissatisfaction about the policy among the constituency they seek to represent. A case study on pre-paid electricity systems, clearly revealed this trend:

In Eldorado park, [...] where government has just started installing a pre-paid electricity system and where some residents individually express their financial incapacity to pay and livelihood disarray, an ANC branch executive member admitted: “Personally, I am not favourable to [the pre-paid system]; but...politically I am supporting it.”¹⁴

The voting pattern that has been evident in the last elections also implies that ward councillors have no reason to feel accountable. The outcome of elections is determined by identity allegiance more than a considered appraisal of performance. It has been said that councillors do not lose sleep over concerns that underperformance will cause him or her to lose his or her seat in the council. As Atkinson has aptly observed, “[m]alpractices and inefficiencies do not get punished at the voting stations,

¹² Benit-Gbaffou (2007, 30) states the choices of ward candidates is often the function of “the power and political network of such candidates within the party than to his or her embedeness into a specific ward constituency”.

¹³ Friedman, 2007, 5.

¹⁴ Benit-Gbaffou, 2007, 30.

as people do not appear to vote according to their views of past performance”.¹⁵ The trend suggest that a poorly performing councillor does not cause a shift in the support for the party but rather to “a decreased turnout pattern or to other signs of discontent and hopelessness”.¹⁶ In conclusion, the fact that ward councillors are directly linked to a constituency has not directly translated into local accountability.

This deficit in local accountability begs the question whether a recall procedure would be an appropriate vehicle to enhance local accountability. Neither the Constitution nor any of the legislation provides for a recall procedure. This instrument is often regarded as an important form of electoral accountability. Recall is a procedure by the electors to exercise their right to end a term of an elected official before the next election is held by gathering a required number of signatures from registered voters in a single constituency.¹⁷ This important form of vertical accountability basically represents an initiative by citizens. Some, with the view to make councillors more accountable, may suggest the introduction of a recall procedure into the South African electoral system. It is, however, important to note that the right of recall needs to be compatible with the electoral system. If the electoral system is candidate-based as opposed to party-based, compatibility is less of a problem. The electoral system at the local government in South Africa is not fully candidate-based and thus issues of compatibility are evident. First, the PR aspect of the electoral system is not easily amenable to a recall procedure. The application of a recall procedure requires, by definition, the direct linking of an elected official to a constituency. The electors can only recall elected official that represent their constituency. In the mixed system of election adopted at the local government level where 50% of councilors are elected from party list on a proportional basis, it is not clear how voters can exercise the right to recall a specific representative nominated by a party. Second, even though the right to recall might be feasible in relation to ward councillors, complications such as the question as to who (the party or the voters) fill the vacancy caused by a successful recall render this instrument difficult to fit into the overall electoral system.

¹⁵ Atkinson, 2007, 74.

¹⁶ Benit-Gbaffou, 2007.

¹⁷ Smith and Stewart, 1998, 38.

The upshot of this quick review of electoral issues is that the electoral system for local government itself may not in all respects establish direct accountability links; there are serious difficulties in defining community accountability for PR councillors. The electoral system is designed in such a manner that it places political parties at the centre of local democracy. The constituency element in the electoral system, namely that of ward representation, appears not to have generated a strong enough direct link between communities and ward councillors. It is suggested that the failure to maximise on this institution of accountability has its roots in the quest of political parties to manage the fielding of candidates, thereby, too often eclipsing local preferences.

4.2 Open meetings

The safeguarding of transparency is an important rule of accountability. Open council and committee meetings can facilitate the accountability of local representatives to the public. Council meetings that are conducted “at odd times or in obscure locations” cannot be expected to bring about the desired result of accountability.¹⁸

Section 160(4) of the Constitution provides that all meetings of a council and those of its committees must be open to the public as well as the media. This is also restated in section 19 of the *Local Government: Municipal Systems Act 32 of 2000* (Systems Act). Both the Constitution and the Act, however, recognise that “the nature of the business being transacted” in a meeting may deem it “reasonable” for the council to exclude the public and the media from attending a particular meeting.

There are, however, meetings that must always be open to the public and the media. A meeting of a council or any of its committees that discusses or votes on the following matters cannot be conducted behind closed doors¹⁹:

- (A) by-law, the budget;
- (B) (an amendment to) the Integrated development plan (IDP);
- (C) the performance management system and its amendment;

¹⁸ Devas and Grant, 2003, 310.

¹⁹ S 20 Systems Act.

(D) a service delivery agreement.

Incidentally, it is important to note that the Act obliges the Council to provide space for the public in its meeting venues, in as much as its financial and administrative capacity permits.²⁰ It can also make rules to regulate access to and public conduct at, council and committee meetings.²¹

The open meeting principle that Constitution and the Systems Act declare is given practical effect by section 19 of the same Act which states that council meetings must, in principle, be preceded by public notification. It obliges the municipal manager of a municipality to notify the public of the time, date and venue of every ordinary meeting of the council as well as special or urgent meetings of the council. The only caveat that spares the municipal manager from this obligation is time constraint in the case of special or urgent meetings of the council. Otherwise, the municipal manager is obliged to notify the public at all times including special or urgent meetings.²²

The Systems Act envisages that the municipal council adopts a by-law that specifies the circumstances in which meetings of a council or of its committees might be closed.²³ According to section 19(1(b)) a by-law cannot, however, deviate from the restriction imposed on closed meetings by section 19 (1(a)) and broaden the circumstances in which meetings can be held away from public scrutiny. In other words, the circumstances under which the by-law allows for meeting behind closed doors must be reasonable in light of the nature the business being transacted (i.e. the nature of the items on the agenda).

The public meeting requirements in the Systems Act seem to go far enough to ensure that municipal meetings do not take place away from public scrutiny although much depends on the internal arrangements or rules of order of each municipality. The requirement ensures that the public is not denied access to council meetings. The Act provides a clear obligation on the municipal manger to provide the public with notice

²⁰ S 20(4) (a) Systems Act.

²¹ S 20(4) (b) Systems Act.

²² S 19(b) Systems Act.

²³ S 20(1(b)) Systems Act.

that sets out the date, time and venue of all meetings with the singular exception of special or urgent meetings which by their nature may make such advance notice impossible. Although the Act does not specifically require the municipal manager to notify the subject matter of council meetings, it can safely be assumed that the duty of the obligation to notify also includes conveying the agenda of the meeting to the public and the media or, at least, making it available on request.

It is important to note that the obligation to notify is, however, imposed on the municipal manager in relation to council meetings only. Section 19 (2) makes no reference to public notices in relation to committee meeting. In light of the express requirement for notification of council meetings, the absence of any such requirement for committee meeting might be taken as a strong indication that the municipal manager or the chairperson of the relevant committee is not obliged to provide the public with notice about such meetings. Although this does not necessarily result in the exclusion of the public and the media from committee meetings, it allows ample room for committee meetings, where important deliberations and decisions makings are conducted, to be held away from public scrutiny. This obviously impacts negatively on the capacity of the public to hold the municipality accountable. It is suggested that committee meetings must be preceded by advance public notice. This does not necessarily mean that the municipality or the relevant committee must use TV ad or even newspaper to make the announcement. It is submitted that it suffices for the municipality to post the date, venue and agenda of committee meetings on the official notice boards of the municipality or its website, if there is any.

4.3 Report-back

Accountability lines can also be established through reporting mechanisms. In this regard, the Systems Act obliges a municipality to provide mechanisms for reporting back to the community.²⁴ The Code of Conduct for councillors is more specific in this regard as councillors are encouraged to report back at least quarterly to their constituencies.²⁵ This means that a ward councillor must report back to his ward on

²⁴ S 17(2(e)) Systems Act.

²⁵ Schedule 1 Systems Act.

the performance of the municipality, thus, fostering the accountability of ward councillors.

It is not, however, clear, how the report-back obligation applies to PR councillors. This has to do with the fact that PR councillor's constituency is not clear as the election does not directly link them to a constituency. Steytler and De Visser suggest that the execution of this obligation by the PR councillor "depend on how the municipality has organised its community participation strategy."²⁶ They illustrate this by stating that "[i]n municipalities where PR councillors have been assigned to wards, for example, the ward become the PR councillor's constituency for the purpose of this provision".²⁷

4.4 Formal complaint, appeal and petition procedures

Formal complaint procedures also play an important role in achieving accountability. Mechanisms must be in place for citizens to lodge appeals, make petitions and express their view on the performance of the council. Instruments like opinion surveys and polls, which can serve as barometers that gauge citizen satisfaction with local government services, can be very instrumental in facilitating accountability. This might also include the use of suggestion boxes although the placing of suggestion boxes does not necessarily mean "that either citizens use them or that governments take any notice of what is put to them".²⁸

Section 62(1) of the Systems Act obliges the municipality to provide for an appeal procedure. If a person feels that a decision taken by the council, a committee, an office-bearer or a staff member has affected his right, he can make an appeal against the decision to the municipal manager. The municipal manager must then forward the appeal to the relevant appeal authority. The appeal authority must start dealing with the appeals within six weeks and must decide the appeal 'within a reasonable period'.

²⁶ Steytler and De Visser, 2008, 6-15.

²⁷ Steytler and De Visser, 2008, 6-15.

²⁸ Devas and Grant, 2003, 310.

The Systems Act also recognises the right of communities to petition municipalities, which must be exercised through mechanisms and in accordance with processes and procedures provided for in terms of the Systems Act or other applicable legislation.²⁹ This also includes the right to submit complaints. Section 5(1) provides that “members of the local community have the right to submit written or oral recommendations, representations and complaints to the municipal council or to another political structure, political office bearer or the administration of the municipality”. A corresponding duty of developing procedures to process the petitions and complaints is imposed on the municipality. The municipality has to receive process and consider petitions and complaints lodged by members of the public.³⁰ Members of the local community have the right to prompt response.³¹

The effectiveness of the right to petition and complain depends on the manner in which the municipality gives effect to it. Some municipalities, for example, reserve on their standard order of business of council meetings an item that relates to petitions from the public. Submissions from the public may thus feature at a council meeting, depending on whether the Speaker chooses to place them on the agenda. An opportunity may even be created for an opportunity to address the Council on the issue.

Without suggesting that such procedures are adequate for all municipalities, they bear testimony to the need for and scope for local creativity around such issues.

5. PEER ACCOUNTABILITY

Peer accountability refers to the accountability of the executive to the municipal council. In constitutional terms, there is no separation between the municipal executive and the municipal council as the council is vested with both legislative and executive powers.

²⁹ S 5(1) Systems Act.

³⁰ S 17(2) (a) Systems Act.

³¹ S 5(1) Systems Act.

However, a degree of separation is created through statutory law. The Local Government- Municipal Structures Act 117 of 1998 (Structures Act) provides for a number of ways in which a municipal executive can be organised.³²

One option is to adopt an executive committee system in which political parties that have a seat in the council are proportionally represented. A weak mayor and a strong council are the defining feature of this system, unless, of course, the mayor enjoys a wide range of delegated powers. Also important to note is that in this system of municipal executive members of an executive system are elected by the council. Another option for a municipality is to adopt a mayoral executive system which is characterised by a powerful mayor that is assisted by a mayoral committee. Members of the mayoral committee are appointed by the executive mayor.

The discussion in this section focuses on a number of peer accountability instruments that have recently been highlighted as areas where further improvement is necessary. First, three institutions of accountability will be assessed, namely the functioning of mayoral committees vis-à-vis the council. The other institution of accountability that will be assessed is the municipal committee system, i.e. the role of section 79 and 80 committees in enhancing accountability. This is followed by a brief discussion of the audit committee as an institution designed to enhance accountability. It finally touches on certain rules of accountability, most prominently the duty of the executive to submit an annual report.

5.1 The accountability of mayoral committee and executive committee

Information flow is essential in order to make a municipal executive account for its decisions and performances in terms of delivering services and meeting locally prioritised outcomes. This, however, presupposes transparency in the manner in which the executive carries out its tasks. The question is whether the institutional set up of the local government guarantees a transparent executive. Since the adoption of the mayoral executive system, there have been consistent complaints about the exclusionary effects of the mayor committee system. Much of these complaints emanate from a practice whereby the mayoral committee functions as a ‘cabinet’ that

³² Chapter four, Structures Act.

meets behind closed doors and tightly controls the information flows from the executive to the council.

As indicated earlier, section 20(2) of the Systems Act requires a municipal council and its committees to conduct meetings in public. It specifically prohibits the council and its committees from conducting closed session on certain topics. The application of the regime for open meetings to the mayoral committee depends, however, on whether or not the municipal executive can be considered as ‘a committee of council’. The Constitutional Court, in *DA vs. Masondo*³³ judgment, rules that the mayoral committee is not a committee of the council; it is rather considered as a committee that assists the executive mayor in the execution of his or her functions. Appointed by the executive mayor, the function of the committee comes to a close when the executive mayor ceases to occupy office. The executive mayor also has the sole power of appointing and dismissing member of the mayoral committee. The Committee is thus directly accountable to the executive mayor.

What is the implication of this for the purpose of accountability? The fact that the mayoral committee is not regarded as a committee of the council further supports, albeit not conclusively, the notion that a mayoral committee need not behave in the same transparent manner as a council committee or the council. Yet, the exclusion of the public and the media from mayoral committee meetings is not automatic. This is obvious from section 20(3) of the Systems Act which ‘makes provision for a mayoral committee to close its meetings’ thus suggesting that a mayoral committee can decide to hold its meetings in public. Neither is it applicable to mayoral committee only. This is clear from the fact that the same provision allows not only the mayoral committee but also the executive committee to close “*all* of [their] meetings” (emphasis added) as long as it is reasonable to do so having regard to the nature of business being transacted. That means the executive and the mayoral committee are not obliged to conduct open meeting even when items like by-law, budget, IDP, on which the council and other committees are obliged to have open meetings, are discussed.

The manner in which a mayoral committee functions in municipalities where it is adopted has raised issues relating to the capacity of councillors to hold the executive

³³ *DA v Masondo* 2003 (2) BCLR 128 (CC)

accountable. An important consequence of the fact that mayoral committee is not regarded as a committee of council is the centralisation of decision-making in the hands of the mayor and his mayoral committee. The lack of transparency in the mayoral committee meetings means the preparatory work for decisions by the executive mayor or even the decision themselves take place behind closed doors. Councillors that are not members of mayoral committee often claim that “they cannot influence decisions taken because they are not involved in the decision-making process of the mayoral executive committee, not even with regard to their own communities”.³⁴ The relationship between the mayoral committee and ordinary councillors “displays a lack of transparency, autocratic decision-making and accountability”.³⁵ In as much as the system might be “efficient in providing a strong direction to municipal strategies and policies”³⁶, the lack of transparency in the way that the committee functions makes it difficult for councillors to play their oversight role. The fact that the mayoral committee can meet behind closed doors on topics like by-laws, the budget, the IDP and the like denies the council the information flow that is necessary for it to make the former accountable.

Some may opt to defend the status quo and argue that the mayoral committee meetings must be held behind closed doors. This position is justified by pointing out that mayoral committees are adopted by coalition governments that are often too fragile to afford a public display of disagreements. Presenting a ‘closed front’ is then regarded necessary for a coalition to survive. The question is whether the imperative of presenting a ‘closed front’ overrides the principle that requires the council to exercise an oversight role over the executive. It is suggested that the need for a council to make an executive accountable is such a cardinal principle of good public governance that the imperatives of ‘coalition politics’ should not trample on it.

The argument for open meeting is stronger in the case of executive committee meeting as the imperatives of preserving a coalition are inapplicable to the latter; it is an automatic mix of parties and interests held together by an electoral system, not a

³⁴ Idasa, 8.

³⁵ Idasa, 14. A case study revealed that ‘members of the mayoral committee are too busy to give adequate time and attention to other councillors’. Idasa, 14.

³⁶ Benit-Gbaffou, 2003.

coalition commitment or agreement. It is suggested that the laws must be changed to make it impossible for both the executive and mayoral committee meeting to close all their meetings. Both the mayoral committee and the executive committee should be available and accessible for consultations.³⁷

5.2 Section 79 and 80 Committees

The capacity of the municipal council to make its executive accountable is also affected by the particular configuration of the committee system that a municipality opts for. Section 33 of 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. The committee system is made up of Section 79 and 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 can be established by the Council from among its members. 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.

Section 79 committee reports to the council while a section 80 committee reports to the executive mayor in the manner prescribed by the executive committee or the executive mayor.

³⁷ One may, however, argue that the mayoral committee is no different from a cabinet of ministers. Meetings of the cabinet are usually held behind closed doors. Why then, one may ask, we should insist that the meeting of the mayoral committee be open to the public. The answer to this pertinent question might lie in the peculiar nature of the South African municipal council. Quite unique to the South African local government is the fusion of executive and deliberative functions in one body, namely the municipal council.

The legal framework affords a municipality 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.

For example, 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.

Of course, members of the council are represented in section 80 committees as well. The problem is that the crucial role that is played by the chairpersons of these committees, who are appointed by the executive mayor from among the members of the executive, in facilitating the information flow from the committees to the executive 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 the 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 very much limited.

With the lack of transparency in mayoral committee meetings noted above, the domination of section 80 committees in the committee system of a municipality would represent a final straw on the capacity of councillors to make the executive accountable. Councillors that are not 'in government' will have little or no access to the executive.

A response to this problem may be formulated by the municipality itself when it establishes an 'oversight committee'. The oversight committee (a section 79

committee that thus reports to the council) then 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. Importantly, its terms of reference would have to be carefully crafted to reflect this role and to be clearly delineated from 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.

5.3 Audit Committee

Another important committee that contributes to the promotion of accountability is the Audit Committee which provides the council with the necessary information on the financial management of the municipality. Each municipality, according to section 166(1) of the *Local Government: Municipal Finance Management Act 56 of 2003* (MFMA), 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 member³⁸, 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”³⁹. Its contribution to ‘peer accountability’ thus lies primarily in the information that is generated for councillors to use in their engagement with the executive.

The Committee is tasked with four major functions⁴⁰: Firstly, it must advise the municipality, both the council (and its office-bearers) and the relevant officials on all matters relating to the financial management of the municipality. Second, it must review 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. Third, the

³⁸ S 166 (4) and (5) MFMA

³⁹ Steytler and De Visser, 2008, 11-36.

⁴⁰ S 166(2) MFMA.

Committee must respond to the council on any issues raised by the Auditor-General. Fourth, it must investigate the municipality's financial affairs at the request of the council.

In carrying out its tasks, the Committee enjoys access to the financial records and other relevant information of the municipality.⁴¹ It must also liaise with the internal audit unit of the municipality and the person designated by the Auditor-General to audit the financial statement of the municipality or municipal entity.⁴² The committee must at least meet four times a year.⁴³

The audit committee is an important instrument that establishes the financial accountability of the municipal executive to the municipal council. The Committee serves as an institution that provides the council with the necessary information to make the executive accountable with regard to matters of financial management.

5.4 Annual report

Another tool of peer-accountability is found in the duty of the mayor to submit annual report to the council. A mayor of a municipality is under obligation to submit 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.⁴⁴ It also promotes the municipality's accountability for decisions made throughout the year to the local community.⁴⁵ Included in the annual report are⁴⁶:

- a) the annual performance report prepared in terms of the Systems Act;
- b) the Auditor-General's audit report on the results of the performance measurements and, if required, details of the corrective action taken or planned by the relevant municipality in response to the report;

⁴¹ S 166(3) (a) MFMA.

⁴² S 166 (3) (b) MFMA.

⁴³ S 166 (4) (b) MFMA.

⁴⁴ S 121(2) (a) (b) MFMA.

⁴⁵ S 121 (2) (c) MFMA.

⁴⁶ S 121 (3) MFMA.

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

The report must also include any explanations that may be necessary to clarify issues in connection with the financial statements.⁴⁷ It may also include any further information as determined by the council.⁴⁸

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.⁴⁹ 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.⁵⁰

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. The process of adoption of the report by the council also reflects the

⁴⁷ S 121 (3) (h) MFMA.

⁴⁸ S 121 (3) (i) MFMA.

⁴⁹ S 129 (1) MFMA.

⁵⁰ S 129 (1) MFMA.

importance of the annual report as accountability instrument of not only the council but also the local community. Council meetings that discuss the annual report or where decisions with regard to the report are to be taken must be open to the public and any organ of the state. A reasonable time must also be allowed for the discussion of any written submissions received from the local community or organs of the state on the annual report and for members of the local community or any organs of state to address the council.⁵¹ 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.⁵² The 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.

5.5 Assessment

An important question is whether there are fault lines in the design of the local government system that have given rise to a lack of accountability or responsiveness.

With regard to the rules of accountability, established by the Municipal Systems Act and the MFMA, it is suggested that they offer the municipal council an array of instruments to gather and secure information and put its executive to the test.

However, the above discussion reveals that, if the role of the ‘ordinary councillor’ is the prism through which the effectiveness of the accountability institutions is assessed, the conclusion is that these institutions may require attention. The exclusionary effect of the mayoral committee system is a case in point. Furthermore, a municipality’s committee system, which enjoys the benefits of local autonomy, may, depending on the configuration decided upon by the municipality, impede the oversight ability of committees. A solution may be found in the promotion of the establishment of oversight committees or perhaps in the tightening of the legal framework for council committees.

⁵¹ Representatives of the Auditor-General are entitled to attend and speak at any council meeting considering the report. S 13 (1) MFMA.

⁵² S 52(d) MFMA.

A fundamental point with regard to the effect of institutions on accountability is the Constitution itself which vests both legislative and executive functions in the council. This system inherently complicates the establishment of clear accountability lines between the municipal executive and the legislature. As a result of this system, the council itself bears the ultimate responsibility for any executive decision. Executive decision making by the municipal executive is based on the delegation of executive powers from the council to the executive. This delegation does not absolve the council of the responsibility for the decision taken in terms of delegated powers.

The rationale for this fusion of the two branches of government is the creation of direct involvement of the council in executive decision making so as to achieve a notion of community driven governance that is exercised as close to the citizen as possible. This rationale holds true in small municipalities with small councils at the helm. Is it, however, realistic to expect a metropolitan municipality to operate on the assumption that its council bears the ultimate responsibility for executive decision making? The creation of clear lines of accountability depends on clear demarcation of tasks. Currently, municipal councils are deemed to be responsible for executive decision making but have delegated this responsibility to the municipal executive. The council's task of overseeing the executive and the institutional framework that supports this task knows too many inconsistencies as was highlighted in the discussion on section 80 committees.

A separation of the legislative and executive roles and the allocation of these roles to distinct players in the municipal democracy would result in the municipal council moving more towards a classic legislature, akin to the legislatures at provincial and national level. It would thus focus on making law and overseeing the executive. It is expected that, particularly with regard to larger municipalities, this would result in a more focused role of municipal councils, clearer lines of accountability, a 'cleaning up' of the council agenda and a more evident and robust role for individual councillors as public representatives rather than decision makers.

6. ADMINISTRATIVE ACCOUNTABILITY

Administrative accountability is an essential element of local democracy. The accountability of officials to the elected representatives is based on the premise that the elected representatives are accountable to local communities and hence municipal

employees must be answerable to elected representatives. There are different mechanisms by which local government employees can be held accountable by the elected representatives. Some of them are institutional arrangements and others are rules specifically designed to make accountability work. In the following paragraphs, some of the most important tools to effect administrative accountability are discussed.

6.1 Bureaucratic control

The ultimate manifestation of administrative accountability is bureaucratic control: the power to control the hiring and firing of staff. Whether or not this institutional arrangement is in place, is the function of the approach to devolution, i.e. whether the devolution of power to local governments grants local government authorities the power to control local bureaucracy. The nature of control that local authorities exercise over local bureaucrats determines whether the reporting by the latter is vertical to the upper level of government or horizontal to elected representatives.

South African municipalities have the constitutional power to employ municipal officials under their own regulations, distinct from provincial and national laws.⁵³ That means the council may hire the personnel it needs for the effective performance of its functions. Unlike provincial administration, a municipal council is not bound to operate within a uniform national framework for the recruitment, appointment, promotion, transfer and dismissal of its personnel. This autonomy over personnel affairs complements the political autonomy of a municipality by freeing them from reliance on the central government and its bureaucracy to implement their local policy decisions. More importantly, for the purpose of this paper, since local bureaucracy is directed not from the centre but from the local government, bureaucrats have strong incentive to respond to the directives of the municipal council. It, in other words, facilitates local accountability. Central to the institutional arrangement for accountability between the executive and the administration is the position of the municipal manager: the municipality must hold the municipal manager accountable for the overall performance of the administration.⁵⁴

⁵³ S 160(1) (d)) Constitution.

⁵⁴ S 51(i) Systems Act.

The question is, however, whether practical and political realities permit municipalities to reap the benefits of bureaucratic control. While municipalities may have the legal power to control their bureaucracy, significant parts of that discretion are passed onto political structures outside of the municipality. The centrality of national political parties in local government and the manner in which regional party structures engage in the detail of municipal politics, results in municipalities being made dependent on instructions from party structures on the appointment of senior and middle management vacancies. This erodes the bureaucratic control of municipalities and harms the development of a relationship of accountability between the executive and the administration. It is suggested that a debate is needed on whether political parties that operate nationally and regionally have correctly struck the balance between implementing a national political vision and permitting the detail of municipal governance to be left to the forces at play in the municipal polity.

6.2 Rules of administrative accountability

The following paragraphs will outline some of the key rules to effect accountability between the municipal administration and the executive. They concern the service delivery and budget implementation plan, the budget statements, mid-year reports and performance agreements.

6.2.1 Service delivery and budget implementation plan

The service delivery and budget implementation plan (SDBIP) is defined in section 1(1) of the MFMA as “a detailed plan approved by the mayor of a municipality in terms of section 53(1) (c) (ii) 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.⁵⁵ It must also determine the service delivery targets and performance indicators for each quarter; and any other matters that may be prescribed.⁵⁶ Drafted by the municipal manager, the SDBIP must be approved by the mayor within 28 days after the approval of the budget by the council.⁵⁷ The mayor must ensure that the revenue and

⁵⁵ S 1(1) (a) MFMA.

⁵⁶ S 1(1) (b) MFMA.

⁵⁷ S 53 (C) (ii) MFMA.

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 no later than 14 days after the approval of the plan.⁵⁸

The SDPIB serves as a basis for performance agreement as the budget implementation aspect of the plan must be linked to the annual performance agreements concluded with the municipal manager and all senior managers.⁵⁹ The mayor of a municipality is especially obliged to take all reasonable steps to ensure that the annual performance agreements are linked to the measurable performance objectives approved within the budget and the SDBIP.⁶⁰

The SDBIP is a new instrument and most municipalities have only started drafting and adopting SDBIPs in earnest during the last two to three years. It may be too early to pass judgment on whether or not this statutory rule of accountability is making a significant enough contribution to enhancing administrative accountability. It is safe to say that, in its design, the SDBIP represents a genuine and promising step in the correct direction.

6.2.2 Budget statement

A further rule that facilitates administrative accountability is the production of monthly budget statements. Section 71 of 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, which must be in a prescribed format, should include the following:

- a) actual revenue, per revenue source
- b) actual borrowing
- c) actual expenditure, per vote;
- d) actual capital expenditure; per vote

⁵⁸ S 53(3) (a) MFMA.

⁵⁹ S 57(1) (b) Systems Act.

⁶⁰ S 53(1) (C) (iii) (bb) MFMA.

- e) the amount of any allocation received⁶¹; and
- f) actual expenditure against those allocations

The statement must include an explanation about any material variance from the projected revenue by source, expenditure projections by vote or the service delivery and budget implementation plan.⁶² It must also explain any remedial or corrective steps to be taken to ensure that the projected revenue and expenditure remain within the budget.⁶³ The amounts provided in the monthly budget statement must in each case be compared with the corresponding amounts in the approved budget.⁶⁴ The monthly statements must also include a projection of the revenue and expenditure for the rest of the financial year and any revisions from the initial projections.⁶⁵

The mayor, after receiving the monthly budget statement, must consider it and check whether the budget is being implemented in accordance with the implementation plan.⁶⁶ After analysing the statement, the mayor, if necessary, must issue appropriate instructions to the municipal manager to ensure that the budget is implemented in accordance with the implementation plan, and that expenditure and revenue collection proceed in accordance with the budget.⁶⁷ The mayor must also consider and, if necessary, revise the implementation plan.⁶⁸ Any revision with regard to the service delivery targets and performance indicators can only be effected, however, with the approval of the council after an adjustment budget has been approved.⁶⁹ In considering the statements, the mayor must also identify any existing, emerging or impending financial problems facing the municipality.⁷⁰

The monthly budget statements represent an instrument of regular accountability that

⁶¹ Section 1(1) of the MFMA defines allocation to mean intergovernmental transfers.

⁶² S 71(1) (g) MFMA.

⁶³ S 71(1) (g) MFMA.

⁶⁴ S 71(3) MFMA.

⁶⁵ S 71 (2) (a) MFMA.

⁶⁶ S 54(1) (a) and (b) MFMA.

⁶⁷ S 54 (1) (d) MFMA.

⁶⁸ S 54 (3) MFMA.

⁶⁹ S 54(1) (c) MFMA.

⁷⁰ S 54 (1) (e) MFMA.

can be used by the municipal executive to check on the works of the municipal administration in relation to the state of the municipal budget.

6.2.3 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 its oversight role over the municipal administration. The municipal manager must assess the performance of the municipality during the first half of the financial year by taking into account⁷¹:

- a) the monthly budget statements;
- b) the municipality's service delivery performance, and its targets and performance indicators set in the implementation plan;
- c) the past year's annual report and progress on resolving problems identified in the report; and
- d) the performance of every municipal entity under the sole or shared control of the municipality

The municipal manager must recommend on whether an adjustment budget is necessary and, when such an adjustment is necessary, recommend revised projections for revenue and expenditure.⁷² The mayor, after receiving the mid-year budget, must consider it in the same way as the monthly budget statements.⁷³ This assessment report, which must be done by 25 January each year, has to be submitted to the council by the mayor by 31 January each year.

The mid-year budget and performance assessment report serve the same purpose as the budget statement in terms of establishing the accountability of the administration to the executive. As the title of the report itself suggests, however, this particular form of reporting goes beyond the budget and includes the general performance of the municipality.

⁷¹ S 72 (1) (a) MFMA.

⁷² S 72(3) MFMA.

⁷³ S 54 (1) MFMA.

6.2.4 Financial instruments only?

A general point can be made regarding the use of these instruments to enhance administrative accountability. A danger that is inherent in the position of these rules and instruments in the MFMA is that they are viewed by the council and the administration as a financial instrument only. The SDBIP functions as the annual action plan for the municipal budget and thus holds great promise for the enhancement of the accountability of the administration towards the executive and the council. It is an instrument that, if used adequately, provides detailed insight into the short-term policy and spending priorities. For its part, the tabling of a mid-year budget and performance assessment report by the mayor in the municipal council is not merely a financial update; it is an opportunity for the council to exercise oversight and interrogate the report on whether or not the agreed policies and priorities are being implemented. This places requirements on both the administration and the council as to how to approach these instruments. For the municipal administration, it means that these instruments, most notably the SDBIPs and the mid-year assessments must be drafted in a collaborative effort of all municipal departments with the municipal manager, and not just the chief financial officer, taking a lead role. For the municipal council, it means that councillors must start displaying a greater awareness and keenness to examine and interrogate these documents.

6.3 Performance Agreement

The institutionalisation of performance agreements is another important instrument that is designed to promote the accountability of the municipal administration. The Systems Act instructs municipalities that their administration must be performance-oriented.⁷⁴ It mandates municipalities to promote a culture of performance management in their administration.⁷⁵

The Systems Act and the Local Government: Municipal Performance Regulations for Municipal Managers and Managers Directly Accountable to Municipal Managers (Municipal Performance Regulations) make the appointment of municipal managers

⁷⁴ S 51(c) Systems Act.

⁷⁵ S 38(b) Systems Act.

and managers responsible to the municipal manager subject to a performance agreement.⁷⁶ Municipal managers and their local councils are bound to negotiate a performance agreement. The agreement outlines the specific responsibilities and accountabilities of the employee. The agreement must incorporate 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.⁷⁷ 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.

The contracts will hold managers accountable for their success or failures. Of course this hard-love approach will not apply if the problems are because of resources and financial constraints outside the managers' control. 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.

The system, if implemented properly, helps to bring to an end the days of "free-floating manager" who do not meet set delivery targets but escape responsibility, thus, establishing accountability. However, two broad areas of concern must be highlighted. Firstly, a large number of municipalities have to yet institutionalise a performance management system and can therefore not yet implement any performance reviews of their senior management. Secondly, the actual number of

⁷⁶ S 57 Systems Act. See also S 24 Local Government: Municipal Performance Regulations for Municipal Managers and Managers Directly Accountable to Municipal Managers, 2006 (Government Gazette, Vol. 29089 No. 805) (Municipal Performance Regulations)

⁷⁷ S 27(d) Municipal Performance Regulations.

managers that have entered into a separate performance contract agreement is not encouraging. For example, at the end of 2006, only 44 percent of municipal managers' positions were filled with managers that have signed performance agreements with great variation between provinces. The figure for section 56 manager stood at about 43 percent. Thirdly, the elaborate and detailed legal framework for holding senior municipal management accountable stands in sharp contrast to the manner in which the stakeholders in the system are taking ownership of it. As alluded to above, there is no doubt that the appointment and performance appraisal of municipal senior management attracts a great deal of political interest. Too often, this goes beyond a genuine interest in securing quality and performance and develops into a system of political patronage. The political profile of these positions has contributed to the removal of decision making on these positions from the Council to political parties. There is widespread concern that the deployment of inadequately skilled individuals has had a destabilising effect on municipal administration.⁷⁸ The fact that 30% or more of senior municipal management has five or less than five years local government experience reveals a disconcerting trend towards appointment of inadequately skilled senior management.⁷⁹ For example, at the recent SALGA's Annual Conference in 2007, the question was asked whether the local government system is adequately protected against destructive politically inspired 'deployments' and whether indeed the legislation, rules and other conventions governing the LG system need to be sharpened to deal with this problem.⁸⁰ A question may be whether the system of council appointments of senior management is not attracting an inordinate amount of 'politics' to individual contract issues. It may then be argued that the institutional design is partly to blame for the negative effects of this. These negative effects must be balanced against the rationale for this system, namely a system designed to produce a senior municipal management team that understands, and operates in sync with its political principal.

⁷⁸ Atkinson 2007, 67.

⁷⁹ MDB 2007, 88.

⁸⁰ SALGA 2007, 59.

6.4 Capacity constraints

The accountability instruments that are put in place to promote administrative accountability are often compromised by non-institutional constraints of accountability. One such non-institutional constraint that is often linked to poor accountability is the capacity of local government staff. The argument has been that the limited capacity of local government staff often results in malpractice and poor internal accountability. Local government in South Africa does not have the ‘organisational experience’ and the know-how that is necessary to manage the “substantial budgets, complex legal requirements and sophisticated technical decision-making”⁸¹ that are inherent in the administration of local government. The capacity problems are, for example, evident in accounting and record keeping. As the reports of the Auditor-General reveals, municipalities across the country have not been able to submit financial statements on time.⁸² Capacity constraints were cited as the main reason behind the failure to submit municipal audits on time. The failure to prepare reports on time or deliver on an intended project should normally result in the council holding pertinent officials accountable. However, the fact that those capacity constraints are at the center of the failure to deliver services render issues of accountability impractical or, at least, contribute to weak accountability.

On the flip side of the capacity coin is another non-institutional constraint of accountability, namely the limited capacity of councillors, both in terms of education and experience, to decide, monitor and enforce accountability of officials. According to one research report, officials felt that “councillors do not provide adequate strategic direction, wasted time on agenda items which should be dealt with quickly and did not properly engage with items with major consequences for the governance of the

⁸¹ “A 2004 survey conducted by the Municipal demarcation Board...showed that many municipalities have fewer than five years of municipal experience (this applies to 48 percent of the managers in the North West province, 57 per cent of managers in Limpopo, 48 per cent of Free State managers, 34 per cent of Eastern Cape managers, and 33 per cent of Gauteng managers)” Atkinson, 61.

⁸² In the case of some municipalities, the outstanding financial report goes back to 1999. A recent report of the general –auditor, which noted an improvement in the improvements of municipalities that have submitted financial statement on time, indicated that 27 municipalities have a two year outstanding audit report while eleven municipalities have been outstanding since 2002-03, three since 2001-02 and one, the Great Kei municipality in the Eastern Cape since 1999-2000. More municipal audits in on time, says, auditor-general, *Business Day*, 25 may 2007.

area.”⁸³ The study also revealed that councillors do not have the capacity to monitor whether council decisions are being implemented or not.⁸⁴ Skill shortages on the part of councillor negatively impact the ability of municipal executive to hold the administration accountable.⁸⁵ As a result, accountability of officials is often weak.

This problem is more serious or complicated in cases where there is skill and education gap between councillors and municipal officials, with the latter being more skilled and educated. As one research noted, “bureaucrats tend to dominate discussion on projects and programmes because of their superior knowledge, providing little opportunity for the mayor executive committee to influence decisions and take action in line with the policies of the council”.⁸⁶ The skill differential between the senior officials and elected councillors in the favour of the former has severely hampered the ability of the latter to exercise its oversight role.⁸⁷

One can not also disregard the reluctance of councilors to hold local officials accountable. Where councillors are themselves engaged in malpractice and focused on enriching themselves, they hardly check on formal decision making processes and practices. As a person in the glass house refrains from throwing stones, the local councillors are also reluctant to act on local government officials that abuse their power fearing that a backlash from the officials might expose their corrupt practices.

⁸³ Wooldrige, Gotz and Duvange, 2003, 2.

⁸⁴ Wooldrige, Gotz and Duvange, 2003, 2.

⁸⁵ A study on members of the mayoral executive committee reveals that the latter “are people with experience in community development and mobilisation, but they do not have the formal qualifications and skills to manage portfolio committees such as infrastructure, assigned to them because they lack the technical skills and experience. Wooldrige, Gotz and Duvange, 2003, 2.

⁸⁶ Idasa, 8.

⁸⁷ It is often argued that “the skill differential between the more senior officials and elected councillors leaves councillors dependent on official’s recommendations and can create working tensions that can cause professional relations to descend into political wrangling”. Idasa, 8.

7. CONCLUSION

The South African system of local government, by and large, provides for instruments that help to establish municipal accountability. This paper discussed aspects of the institutions that facilitate accountability such as the electoral system, municipal executive structures and bureaucratic control. It also explored rules of accountability.

The paper discussed certain aspects of the statutory framework for local government that could be revisited to achieve better accountability. The transparency of mayoral committee meetings and the internal structuring of municipalities in committees are examples of areas where further progress is needed. This progress need not necessarily be pursued through legal reform as focused support to municipality may go a long way to addressing these concerns.

It is suggested that a fundamental debate on the appropriateness of the constitutional fusion of legislative and executive powers may be necessary so as to clarify accountability relationships, particularly in larger municipalities. Other fault lines that were highlighted related mainly to the manner in which the stakeholders in local government have taken ownership of the institutions and rules of accountability. It was, for example, suggested that the disjuncture between the decentralised system of governance and the centralised rule within political parties poses a specific challenge to the achievement of better accountability. The onus is primarily on political parties to reflect on these issues.

References

- Atkinson, D (2007) Taking to the streets: has developmental local government failed in South Africa? In Buhlungu, S et al, *South Africa State of the Nation 2007*, Cape Town, HSCR Press, pp 53-77.
- Benit-Gbaffou C (2007) Local councillors: Scapegoats for a dysfunctional participatory democratic system? Lessons from practices of local democracy in Johannesburg 3 *Critical Dialogue: public participation in review* 26-34.
- Cavoukian A and Mitchinson T (2003) *Making municipal government more accountable: The need for an open meeting laws in Ontario* available at www.ipc.on.ca accessed on 18-02-2008.
- Constitution of the Republic of South Africa Act 108 of 1996.
- *DA v Masondo* 2003 (2) BCLR 128 (CC)
- De Visser J (2005) *Developmental Local Government* Intersentia: Antwerpen
- Devas N and Grant U (2003) Local government decision making-Citizen participation and local accountability: Some evidence from Kenya and Uganda 23 *Public Administration and Development*, 307-316
- DPLG (2007) *Policy process on the system of provincial and local government: Background policy questions, process and participation* available at www.dplg.co.za accessed on 12-02-2008.
- Friedman, Steven “Are our councillors listening?” *Local Government Bulletin*
- Idasa, Municipal governance: Working of the mayoral executive system available at www.ksp.org.za/holores_mayorex.htm accessed on 22-02-2008.
- Local Government Municipal Structures Act 117 of 1998.
- Local Government: Municipal Electoral Act 27 of 2000.
- Local Government: Municipal Finance Management Act 56 of 2003
- Local government: Municipal Systems Act 32 of 2000.
- Local Government: Municipal Performance Regulations for Municipal Managers and Managers Directly Accountable to Municipal Managers, (Government Gazette, Vol. 29089 No. 805) 2006.
- Posner PL (2007) Accountability and transparency in *Unity in diversity “Learning from each other”* 4th International Conference on Federalism, Conference Reader.

- Smith PJ and Stewart K (1998) *Making local accountability work in British Columbia* available at www.sfu.ca/igs/reports/assests/intro.pdf accessed on 15-02-2008.
- Steytler N and De Visser J (2008) *Local government law of South Africa* LexisNexis: Durban.
- Wooldrige D, Gotz G and Duvenge J (2003) *Municipal governance the political administrative interface* available at http://www.ksp.org.za/holores_poladmn2.htm accessed on 22-02-2008