

## Municipal personnel, labour relations and staffing matters

### 17.1 Introduction

It is an obvious observation that no municipality would be able to fulfil its obligations and duties without basic personnel administration and management. Not only are employees necessary, they have to be motivated, dedicated and properly trained. In light of their vast and diverse functions, municipalities need a mix of personnel that vary from general administrative officials, such as administrative clerks and office personnel, to highly qualified experts such as engineers, town planners, lawyers, accountants and personnel managers. Without the abovementioned personnel corps in place, no municipal government will be able to perform and fulfil its constitutional duties and obligations, and the Constitution specifically states that a municipal council may employ personnel that are necessary for the effective performance of its functions.<sup>1</sup> All municipalities therefore have to evaluate and determine their specific personnel needs in order to perform their functions. It goes without saying that it is not only the appointment of personnel that is important in this regard; so is the management, control and performance measurement of such personnel.

According to the Constitution, municipalities have significant powers regarding personnel matters.<sup>2</sup> One must be aware of the fact that other national or provincial legislation also impacts on personnel matters or even labour relations, however, and that municipalities may not act contrary to such laws.<sup>3</sup> When municipal personnel, also often referred to as the municipal administration, is discussed, it is again important to remember the three components that together complete a local government. All

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<sup>1</sup> See the Constitution s 160(1)(c).

<sup>2</sup> The Constitution s 156(5) states that a municipality has the right to exercise *any power* concerning a matter that is reasonable necessary for, or incidental to, the *effective performance of its functions* (own emphasis added). Since the appointment of personnel is essential for the effective performance of municipal functions, municipalities should be able to exercise strong powers in this respect.

<sup>3</sup> See the Constitution s 156(3).

municipal governments consist of a combination of political functionaries, administrative personnel and a specific local community.<sup>4</sup> Together the three components comprise a municipal government. The importance of a municipal personnel corps is thus self-evident. However, one should guard against possible confusion between municipal administrative personnel and office bearers representing political structures. Municipal personnel are not elected political representatives; they are employees in the normal sense of a municipal council.<sup>5</sup>

## **17.2 The broad organisational structure and overall personnel administration of local governments**

### **17.2.1 Basic organisational systems**

In the past the organisational structure of a municipal government could be compared with a human body:

- A particular structure (the skeleton) exists to ensure effectiveness.
- Staff (the muscles) are needed to perform functions and ensure movement
- A decision-making body (the brain) is required, through which communication is achieved between the decision-making body and the staffing component, which must then perform the instruction given.<sup>6</sup>

Broadly speaking, two types of organisational structure have been identified. There is the *mechanistic/closed type* of structure, in which duties are precisely defined and where a high value is placed on precision, specified job descriptions and strong loyalty to the organisation. Functional tasks are differentiated, and there is a hierarchical structure of command. The manager or head of the organisation is often deemed to be omniscient, as he or she possesses all important knowledge. Factors such as authority, coordination and efficiency are strongly emphasised. Job responsibilities are mainly routine, with most decisions and knowledge coming from the top. Contrary to the closed organisational structure, one finds the *organic or open type* of organisational structure. Such a structure was developed and adopted to handle

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<sup>4</sup> See ch 7 of the work and also the Systems Act s 2(b)(i) and (ii).

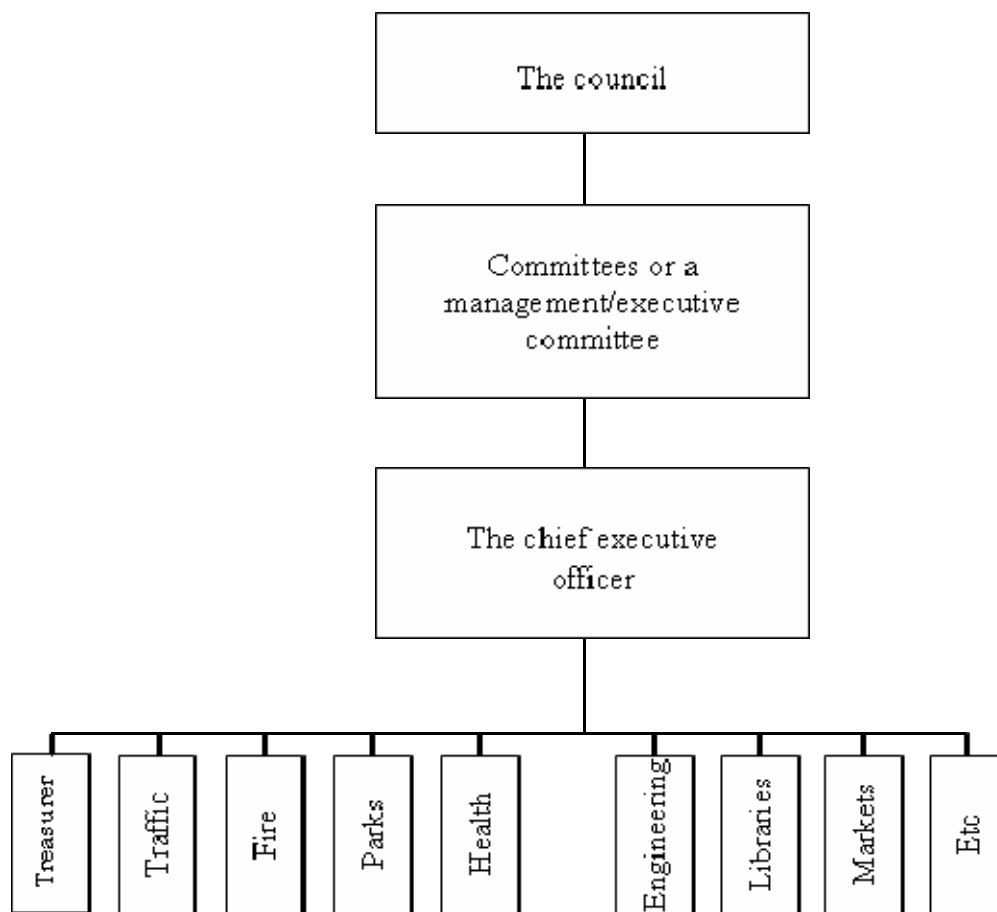
<sup>5</sup> Again notice should be taken of the fact that it is a municipal council, as a legal entity that acts as an employer and that appoints or concludes services/employment contracts with potential employees. The position regarding political office bearers, as was discussed elsewhere, is quite different. Anyone who is appointed by or in the service of a municipality is normally not eligible to be a member of the political component of that municipal council. Refer to the Constitution s 58(1)(a) and (b).

<sup>6</sup> See Craythorne (1997) 279.

unstable and continuously changing conditions. Many internal jobs have little formal definition, and functions are not precisely demarcated. Responsibilities and tasks are constantly redefined. In an organic structure the emphasis is on getting the job done, and thus individual responsibilities are not precisely defined.<sup>7</sup> It is also possible to find institutions that incorporate a combination of the two types of organisational structure.

From a municipal government point of view, municipalities exist to provide services to their inhabitants. They must therefore have a structure within which staff can be deployed and organised to ensure that the required services are indeed provided. Craythorne mentions that in the South African local government of the past it was usual to encounter two forms of organisational structure. One was identified as a long, flat organisation with many departments. The other form was more of a pyramidal type, with fewer departments.<sup>8</sup>

(A)

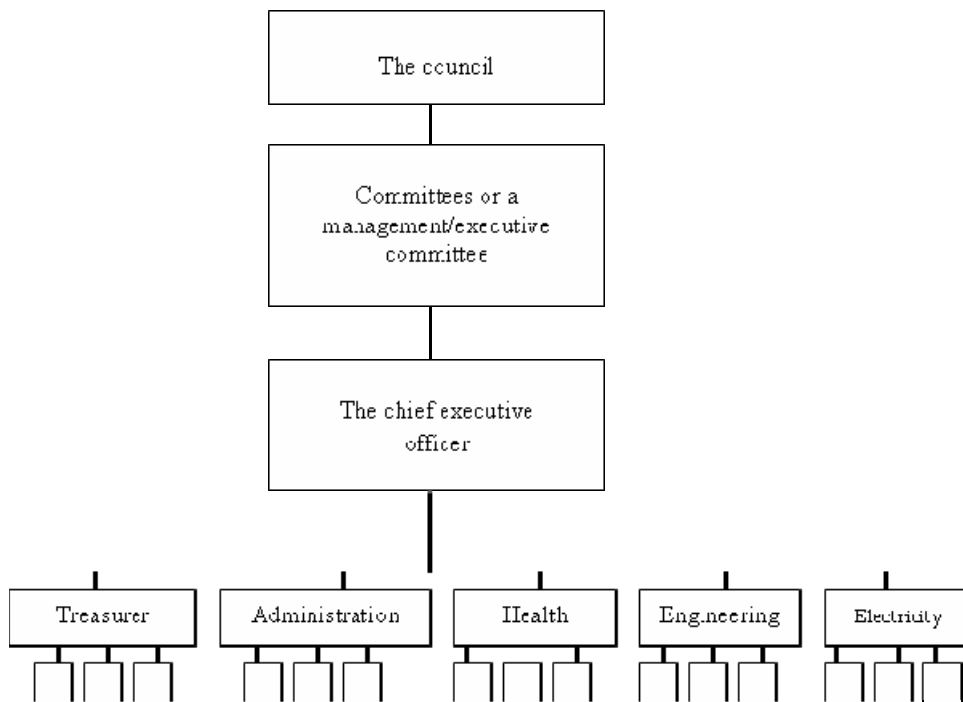


<sup>7</sup> See Craythorne (1997) 282-283.

<sup>8</sup> See Craythorne (1997) 283-285.

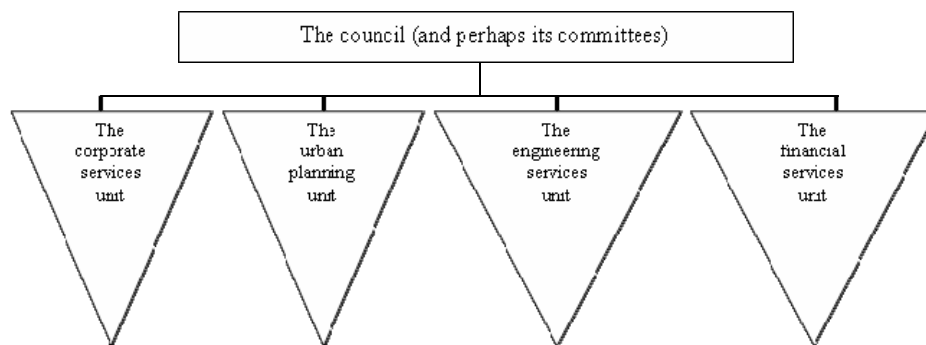
In more recent years, a new local government organisational structure, generally termed the business unit model, was developed. In such a model, the municipal organisation is divided into semi-autonomous business units. Especially from a concentration of skills and expertise point of view, the business unit model has definite advantages.

(B)



Specialised branches within departments

(C)



It is important to remember, however, that in a public-sector body, where control over policy and decision making is necessarily political, it is not possible to have a truly decentralised structure. Although many decisions should be delegated to strategic officials, ultimately the overall policy and political decisions must be made at municipal council level.

In the new local government dispensation, municipalities have been established and are constitutionally required to render effective, efficient and sustainable services. Depending on the services, this obligation often requires professional experts and technicians and a careful preplanning and evaluation of the organisational structure is thus essential. It is also generally accepted that the personnel of specialised services such as engineering, town planning, accounting and also legal services should not be lumped together, but should rather be placed within separate specialised units, which are then tasked with only that specialised service.<sup>9</sup>

### **17.2.2 Internal mechanisms to enhance organisational efficiency**

No organisation can be efficient and effective without certain control measures' being put in place. It is a fact of any organisational structure that not all members or staff can be expected to meet standards voluntarily. Measures of control in local governments arise from various sources, such as from the political leadership, internal leadership structures and even through public complaints and requests. The main objective of control within the public sector is to ensure accountability for everything the public authority does.<sup>10</sup> Another form of external control over the public sector is via the law and judicial structures. Many legal rules have been developed to ensure that the public service is regulated within certain minimum standards. The judicial structures are also properly empowered to oversee public sector compliance with the law.<sup>11</sup>

Local governments should further also guard against the familiar concept of empire building in public structures. Empire building arises mostly from personal motivations such as ambition, a desire for status, a lust for power and also professional jealousy. Status-driven and power-orientated personnel see the organisation in which they work merely as a tool for achieving personal goals. Ineffective and unnecessary empires are commonly developed through a process of lengthening work outputs

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<sup>9</sup> See Craythorne (1997) 290. In many instances, professional personnel are controlled and supervised by their professional body (eg the South African Law Society for attorneys, and a minimum standard of professionalism is required which may not be reduced or limited by political intervention. A municipality can therefore not prescribe to a professional employee such as a civil engineer to design structures that would not comply with minimum safety requirements but would save the municipality lots of money. Minimum professional standards may never be compromised.

<sup>10</sup> For more on this point see Cloete (1997) 184, and also Craythorne (1997) 297.

<sup>11</sup> Within the new constitutional dispensation of South Africa, the importance of control and minimum standard setting within the public sector is strongly echoed in the Constitution ch 10, which sets basic values and principles to which the public administration must adhere. See the Constitution s 195 in particular.

and by creating the impression that a certain post has more responsibilities than it really has. This is then followed by requests for additional posts and the upgrading of the original post to a unit supervisor or leader.

One should not mistake genuine personnel enlargements with the concept of empire building, however. Many municipalities in South Africa are facing severe shortages of qualified and properly trained personnel. There are many internal departments that are functioning with only 50% or even less of the minimum staff that are required to perform the particular workload. This situation has become critical since the commencement of the final phase of the new local government restructuring. Many newly established municipalities have lost vast numbers of highly trained and experienced municipal personnel and do not have appropriate replacements on hand. This situation has resulted in many inexperienced personnel being appointed to often strategic positions or municipal councils being indecisive in appointing and filling urgently needed vacant posts.

Since the beginning of the restructuring of local governments, it has always been envisaged that the overall internal organisational structures of all municipalities should be reviewed and reorganised. This is a difficult and ongoing process, however, and many local governments are in need of professional assistance to achieve a genuinely effective and streamlined municipal corps. Most jobs will have to be re-analysed to ensure that they are suitably defined.

Another important aspect of a municipal organisation is municipal leadership. Every municipal structure must have a leader that is not only knowledgeable in terms of local government affairs but who is also followed and respected by the general personnel corps. Municipalities differ from many other organisations in that they have a number of leaders, such as the councillors, the municipal manager, heads of department and sub-units. Each official in charge of a unit is a leader, but at a different level.<sup>12</sup>

No organisation can establish and maintain a successful organisational structure without a proper personnel administration in place. Personnel administration is a key activity in local government administrations and, if handled effectively, it will contribute significantly to the existence and maintenance of a healthy municipal organisa

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<sup>12</sup> See Craythorne (1997) 302-303.

tion. Even the smallest local authority must devote some of the time allocated to administrative duties to employment-related matters such as conditions of service and remuneration and recruitment/appointment procedures. Municipal councils should provide for at least the following regarding personnel management:

- a written service contract which explains the general conditions of service
- an employee file setting out the date of appointment, the position and basic remuneration package
- basic job description lists
- grievance and disciplinary procedures.

Every council should have a data base containing a record of all the posts and jobs in that council's service. In planning and improving on the structure of a municipal organisation, posts should be ranked and grouped together in appropriate departments or sectors. It is also a good policy to review the staff establishment periodically in order to ensure that the administrative structure is still streamlined and effective.<sup>13</sup> In recent years, many questions have been asked about the overall remuneration packages that are paid to municipal personnel. According to media reports, some municipal managers have even bigger remuneration packages than the president of the country. It follows, therefore, that an urgent investigation of how such remuneration rates are determined should be undertaken. Craythorne identifies methods that can be used to determine an acceptable remuneration rate for a particular post.<sup>14</sup> The methods are:

- to compare a post with a similar post in the private sector
- to compare posts between different municipal councils
- to use a cost of living index
- to look at customary or trade rates in a particular area.

Apart from establishing an effective administrative personnel corps, municipalities should also ensure that proper manpower planning initiatives are put in place. According to Craythorne, personnel planning is concerned with identifying the personnel needs of a particular organisation. Proper planning is required to replace those staff mem-

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<sup>13</sup> It is of interest to note that the staff component of a municipality constitutes a large proportion of the costs of that council's operating budget and that there has to be proper control over the number of posts permitted. Employee remuneration comprises a large part of a municipal budget, and it includes not only the basic salary packages but also issues such as housing subsidies, pension or provident scheme contributions, medical aid, life insurance, bonuses and long-service awards.

<sup>14</sup> See Craythorne (1997) 310-312.

bers who leave the organisation by resigning, retiring, or for other reasons. Personnel planning is essential if municipalities are to fulfil their objectives and duties.<sup>15</sup> Apart from personnel planning, municipal councils as employers should also spend considerable time on the motivation and development of their human resources. Often municipal employees work in unpleasant and highly stressful circumstances, and it is important for the managerial structures to ensure that employees are motivated. Without a motivated personnel corps the desired, and indeed required, results are not likely to be achieved. Various practical steps have been developed to motivate employees.<sup>16</sup>

One of the most important challenges facing the new local government dispensation is ensuring and building properly trained local government administrations. South Africa requires trained municipal employers in order to meet the needs of local populations. Without adequately trained personnel, many service standards will decline, and some municipal governments will not be able to fulfil and adhere to their new constitutional obligations. In an effort to enhance the training of municipal personnel, various initiatives have been introduced which, through proper application, could significantly boost training targets.<sup>17</sup>

### **17.3 New legislative provisions regarding municipal staff matters**

#### **17.3.1 *The appointment and employment conditions of municipal managers***

Under the new local government legislative framework, the head of the municipal administration is called the “municipal manager”.<sup>18</sup> In his/her capacity as the head of the administration of a municipality, the municipal manager is tasked with a wide range of responsibilities and is also the final accountable official for many municipal affairs. Both the responsibilities and accountable duties are subject to the policy directions of the particular municipal council, however.<sup>19</sup> It is generally accepted that

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<sup>15</sup> See Craythorne (1997) 317. In essence, personnel planning ensures that an organisation will have and continue to have a certain required number and quality of personnel that are able to perform the tasks of the organisation in order for it to be successful.

<sup>16</sup> Some of these steps are: to ensure that the organisation has a shared objective or mission statement; to enhance aspects of team spirit or esprit de corps; by sharing responsibility and authority; by rewarding excellence; by allowing inputs from employees in relation to work procedures; through proper training initiatives; by clearly identifying expectations and tasks; by introducing regular performance appraisals and by treating employees as human beings. See Craythorne (1997) 322-323.

<sup>17</sup> See Craythorne (1997) 323 *et seq.*

<sup>18</sup> This office was formerly known as the Chief Executive Officer (CEO) during the transitional phases, and the Town or City Clerk under the old dispensation.

<sup>19</sup> See the Systems Act s 55(1).



the municipal manager is the chief of a municipal administration and that he/she is also the chief agent of that municipality. This position has already been confirmed in a number of judicial decisions. In *Gcali NO v MEC for Housing & Local Government, EC*<sup>20</sup> the court held that in authorising the institution of legal proceedings, a town clerk acted as an agent for the municipality. Furthermore, when the interests of the municipality so demanded, the town clerk had to act as a *negotiorum gestor* on behalf of the municipality and had no authority to institute legal action on behalf of the municipality without instructions to do so.<sup>21</sup> In the case of *King William's Town TLC v Border Alliance Taxi Association (Bata)*<sup>22</sup> it was mentioned that the town clerk as chief executive officer was not merely the recipient of instructions, he/she was

- privy to the council's deliberations, debates and decisions
- in as good a position as any other to give evidence of the collective mind of the council over years
- the proper person/functionary to testify to the reasons for council decisions.

Such evidence is admissible and relevant to show that the council applied its corporate mind to a particular issue.<sup>23</sup> According to the new legal order, a municipal manager is responsible and accountable for the following:<sup>24</sup>

- the formation and development of an economical, effective, efficient and accountable administration that is equipped to carry out the task of implementing the municipality's IDP, to operate in accordance with the municipality's performance management system and to be responsive to the needs of the local community in order to participate in the affairs of the municipality<sup>25</sup>
- the management of the municipal administration in general
- the implementation of the municipality's IDP as well as the monitoring of progress with the implementation of the plan
- the management of the provision of services to the local community in a sustainable and equitable manner

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<sup>20</sup> 1996 (4) SA 456 (TkS).

<sup>21</sup> See paras E-H at 463.

<sup>22</sup> 2002 (4) SA 152 (E).

<sup>23</sup> See paras B-E at 156.

<sup>24</sup> See the Systems Act s 55(1)(a)-(q).

<sup>25</sup> It is therefore the municipal manager's responsibility to ensure that a proper municipal administration is established and maintained in order for that municipality to fulfil its obligations and duties.

- the appointment of staff other than the staff that are appointed by the municipal council itself<sup>26</sup>
- the management, effective utilisation and training of staff
- the maintenance of discipline of staff
- the promotion of sound labour relations and compliance by the municipality with applicable labour legislation
- advising the political structures and political office bearers of the municipality
- managing the communications between the administration and political structures
- carrying out the decisions of the political structures
- overseeing the administration and implementation of the municipal by-laws and other legislation
- the exercise of any power or performance of any duties delegated by the municipal council or other body under a sub-delegation to the (office of the) municipal manager
- facilitating the participation by the local community in the affairs of the municipality
- developing and maintaining a system whereby community satisfaction with municipal services is assessed
- ensuring or overseeing the implementation of national and provincial legislation applicable to the municipality
- performing any other function that may be assigned by the municipal council to the municipal manager.

A further important responsibility of the municipal manager is to ensure and oversee the municipality's financial and fiscal matters. The municipal manager is *ex officio* and *ex lege* the accounting officer of a municipality and as accounting officer he/she is responsible and accountable for

- all income and expenditure of the municipality
- all assets and the discharge of all liabilities of the municipality
- the proper and diligent compliance with the Municipal Finance Management Act.<sup>27</sup>

In light of the aforementioned, it is clear that from an administrative point of view the municipal manager is the final responsible and accountable person in relation to the

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<sup>26</sup> See the Systems Act s 55(1)(e) read with s 56(a). Note that the appointment of staff is subject to various legislative requirements, including the Employment Equity Act 55 of 1998.

<sup>27</sup> See the Systems Act s 55(2)(a)-(c) as amended by Act 44 of 2003. Refer also to ch 17 of this work.

general obligations and duties of a municipality. It goes without saying that the tasks and responsibilities of the municipal manager are enormous and that, unless he/she is assisted by a dedicated and effective municipal administration, it is difficult to imagine how all the responsibilities falling under such a post can properly be fulfilled.

In an effort to assist a municipal manager in the fulfilment of his/her responsibilities, the new legislative system developed for local government specifically envisages the appointment of managers that are directly accountable to the municipal manager. In this regard it is required that after consultation with the municipal manager a municipal council should appoint a manager (or managers) that are directly accountable to the municipal manager. The appointment of managers should enable a municipal manager to fulfil the diverse responsibilities vested in the position.<sup>28</sup> A person that is appointed as a manager must have the relevant skills and expertise to perform the duties that are associated with the post in question. For example, if a manager is appointed to manage municipal finance, that person must have the necessary skills and expertise to perform such duties. These are usually acquired through academic studies and practical experience.<sup>29</sup>

The appointment of municipal managers and other managers accountable to the municipal managers is further regulated through various legislative provisions. In this respect, it is required that a municipal manager or other managers be appointed to such posts only in terms of written employment contracts with the municipality and subject to separate performance agreements that are concluded annually between the council and the incumbents.<sup>30</sup> The performance agreement must be concluded within a reasonable time after a person is appointed and thereafter within one month after the beginning of the municipality's next financial year. When a performance agreement is concluded with a municipal manager, the agreement must be entered into with the municipality as represented by the mayor or executive mayor, and when

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<sup>28</sup> Note that it is the responsibility of the municipal council to appoint the managers under the municipal manager. Although prior consultation between the council and the municipal manager should take place, it is still the council's decision whom to appoint as managers. Only consultation is required; not consensus or agreement. It would be unwise to appoint managers with whom the municipal manager is not satisfied or comfortable, however. A strong and united managerial team should be pursued. Although the Systems Act refers only to the appointment of a manager, it is submitted that the intention of the legislator was the appointment of one or more such managers. See the Systems Act s 56(a).

<sup>29</sup> When managers or other personnel are appointed, the requirements of any applicable affirmative action policy should be considered. See the Systems Act s 56(b).

<sup>30</sup> See the Systems Act s 57(1)(a)-(b).

entered into with other managers, as represented by the municipal manager.<sup>31</sup> With regard to the performance agreement, it is required that such an agreement include:

- the performance objectives and targets that must be met, as well as the time frames within which targets must be met
- the standards and procedures for evaluating performance and intervals for evaluation
- the consequences of substandard performance.<sup>32</sup>

Finally, it is required that the employment contract for a municipal manager be concluded for a fixed term of employment, which term may not exceed a period ending two years after the election of the next council of the municipality. The term may thus be no longer than seven years.<sup>33</sup> The contract must also provide for a cancellation clause should there be non-compliance with the employment conditions.<sup>34</sup> Although the term of the contract must be fixed, it is possible for the renewal of the employment relationship. The only statutory requirements in this regard are that although the renewal of the employment contract is permitted it can be done only by agreement between the relevant parties. In the last instance, the municipal manager's employment contract must reflect the values and principles referred to in section 50 of the Systems Act, the code of conduct for municipal staff members as well as the management standards and practices that are contained in section 51 of the Systems Act. On this point it should be noted that the requirements relating to the em-

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<sup>31</sup> See the Systems Act s 57(2) and (3). The employment contract mentioned above must include details of duties, remuneration, benefits and other terms and conditions of the employment. All related employment particulars are subject to applicable labour legislation. It should be noted that under old-order laws, many of which are still applicable, issues such as medical aid schemes, pension schemes etc. were also addressed. Such aspects should be closely considered. See, eg, the case of *Munimed v Premier, Gauteng and Others* 1999 (4) SA 351 (T), where the court held that by establishing a medical aid scheme contrary to the provisions of s 79bis(1) of the Local Government Ordinance 17 of 1939 (T), the administrator had acted beyond the scope of his powers.

<sup>32</sup> The performance objectives and targets must be practical, measurable and based on the key performance indicators set out in the municipality's IDP. The provisions of the MFMA conferring responsibilities on the accounting officer of a municipality must be regarded as forming part of the performance agreement of a municipal manager. It should also be noted that bonuses based on performance may be awarded to a municipal manager or a manager directly accountable to the municipal manager after the end of the financial year and only after an evaluation of performance and approval of such evaluation by the municipal council. See ss 4A and 4B as inserted by Act 44 of 2003 s 8. Refer also to s 57(5) of the Systems Act.

<sup>33</sup> The normal term of a municipal council is 5 years plus the maximum 2 years mentioned above.

<sup>34</sup> Such conditions may also include the fulfilment or compliance with the relevant performance agreement conditions as were agreed upon. See the Systems Act s 57(6)(b).

ployment contract of a municipal manager may also be extended to the contract of any other manager that is directly accountable to the municipal manager.<sup>35</sup>

An aspect that has become very controversial in recent times is the remuneration packages that are paid to municipal managers and other managers. It is reported that in some instances, particularly where metropolitan councils are involved, the municipal managers earn very high remuneration packages; in some cases these are even more than members of the national government. This situation seems somewhat distorted and is currently under investigation. One must remember, however, that a municipal manager is not a political functionary in a municipal government, but is part of the administrative component. A comparison between the salary of such a person and a political functionary is therefore not necessary. Salaries of municipal staff members, including a municipal manager, form part of the public administration and should be regulated under such principles. In principle, it is advisable for government to structure the remuneration of the public service in a uniform manner within all spheres of government and after all relevant considerations have been taken into account. With regard to the remuneration of municipal managers or other managers, the Systems Act required that on or before 31 October of each year a municipality had to publish in the media the salary scales and benefits of the municipal manager and other managers directly accountable to the municipal manager.<sup>36</sup>

### ***17.3.2 Basic principles relating to local public administration and internal municipal organisation***

It was mentioned above that issues concerning the local public administration and internal municipal organisational structures are also regulated within the framework of national legislation and that compliance to such requirements must also form part of the conditions of employment of a municipal manager. With reference to the values and principles of local public administration, the new legislative framework states that the local public administration is governed by the democratic values and principles embodied in section 195(1) of the Constitution. Furthermore, in the administra-

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<sup>35</sup> See the Systems Act s 57(7). Note that the Act ss 50 and 51 deals with the basic values and principles relevant to local public administration and organisational requirements of municipal administrations respectively. Such requirements are discussed below.

<sup>36</sup> There seems to be no legislative regulation in relation to what such salaries or benefits should be. It is thus up to especially national government to regulate such issues via uniform legislative provisions. Note that s 58 was repealed by Act 44 of 2003 s 9.

tion of its affairs a municipality must strive to achieve the objectives of local government and the general duties of municipalities.<sup>37</sup>

Apart from the general principles that regulate public administration, all municipalities must establish and organise their administration, within their administrative and financial capacity, in a manner that would enable a municipality to achieve and comply with certain objectives/requirements. These objectives are the following:<sup>38</sup>

- to be responsive to the needs of the local community
- to facilitate a culture of public service and accountability amongst municipal staff
- to be performance orientated and focused on the objectives and duties of local government in general
- to ensure that political structures, political office bearers and managers and other staff members align their roles and responsibilities with the priorities and objectives set out in the municipality's IDP
- to establish clear relationships and to facilitate co-operation, co-ordination and communication between political structures, office bearers and the administration and the local community
- to organise the political structures, office bearers and the administration in a flexible way in order to respond to changing priorities and circumstances
- to perform municipal functions through operationally effective and appropriate administrative units and mechanisms, including through departments and other functional or business units; such functions, when necessary, may also be performed on a decentralised basis
- to assign clear responsibilities for the management and co-ordination of the administrative units and mechanisms
- to hold the municipal manager accountable for the overall performance of the administration
- to maximise efficiency of communication and decision making within the administration
- to delegate responsibility to the most effective level within the administration
- to involve staff in management decisions as far as is practicable

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<sup>37</sup> See the Systems Act s 50(1) and (2). The values set out in s 195 will be discussed in a separate chapter dealing with the basic principles concerning the public administration.

<sup>38</sup> See the Systems Act s 51(a)-(m).

- to provide an equitable, fair, open and non-discriminatory working environment.

Suffice it to say that the structuring and management of a municipal administration is quite a complex and extensive exercise. The internal arrangements are therefore likely to differ from one municipality to another as circumstances may require or depending on the category of municipality in question. There seem to be no uniform models of how a municipal administration should be established. What is certain, however, is that municipalities must establish and organise their administrations to ensure compliance with the set criteria, and the way in which the administration is structured and organised may vary from one municipality to another, as long as the minimum objectives are attained. Because of a possible conflict between municipal staff affairs and labour legislation in general, it is determined that in the event of any inconsistency between a provision in the Systems Act relating to municipal organisational matters, including the code of conduct for municipal staff members and any applicable labour legislation, such labour legislation should prevail.<sup>39</sup> In this regard it should be obvious that all municipalities under the new local government dispensation must familiarise themselves with applicable labour laws and developments and must ensure compliance with such laws.<sup>40</sup>

### **17.3.3 Municipal staff matters**

According to the Systems Act, it is the responsibility of the municipal manager to

- approve a staff structure for the municipality
- provide a job description for each post
- attach to the posts the remuneration and service conditions as may be determined
- establish a process or mechanism to evaluate the staff establishment regularly and, if necessary, to review such establishment and the remuneration or conditions of service.<sup>41</sup>

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<sup>39</sup> See the Systems Act s 52. In situations of conflict, provisions of the Labour Relations Act 66 of 1995, the Basic Conditions of Employment Act 75 of 1997 or other labour legislation will prevail over the aspects directed at the structuring and management of internal municipal administrations set out in the Systems Act or regulations made under the Act.

<sup>40</sup> For examples of such labour disputes see the cases of *Uitenhage Municipality v Molloy* 1998 (2) SA 735 (SCA) and also *Ntshotsho v Umtata Municipality* 1998 (3) SA 102 (Tk). Even part-time employees of municipalities are protected under labour laws, and they cannot be dismissed contrary to their employment contracts and without proper cause.

<sup>41</sup> These obligations do not apply to the employment contracts of managers directly accountable to the municipal manager. See the Systems Act s 66(1)-(2). The obligations on the municipal manager are subject to any applicable legislation and the policy framework that has been determined by the relevant municipal council. The protection given under any applicable legislation is to ensure

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All municipalities are obligated to develop and adopt appropriate systems and procedures that are directed at achieving fair, efficient, effective and transparent personnel administrations. Such systems and procedures must comply with applicable laws and are also subject to any applicable collective agreements that are in effect. The systems and procedures should provide for the following aspects:<sup>42</sup>

- the recruitment, selection and appointment of persons as staff members
- service conditions of staff
- supervision and management of staff
- monitoring, measuring and evaluating the performance of staff
- the promotion and demotion of staff
- the transfer of staff
- grievance and disciplinary procedures
- investigations of allegations of misconduct or complaints against staff
- the dismissal and retrenchment of staff
- any other matter prescribed by regulation.

It is the responsibility of the municipal manager to ensure that every staff member or relevant trade union has easy access to a copy of the staff systems and procedures. On the written request of a staff member, a copy or part of the relevant staff systems and procedures must be made available to that staff member. It is also the responsibility of the municipal manager to ensure that all staff members have been informed about the systems and procedures.<sup>43</sup>

Municipalities should also develop various capacity-building initiatives. All municipalities are obligated to develop their human resources capacities in order to perform their functions and to exercise their powers as is required by the Constitution and other applicable legislation. In this respect, the provisions of the Skills Development Act,<sup>44</sup> as well as the Skills Development Levies Act,<sup>45</sup> are of particular importance and must be complied with. Apart from any training levies required by law, a municipality may in addition provide in its budget for the development and training pro-

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that a municipal manager cannot unilaterally change or amend conditions of employment of members of staff. Strict requirements are set in this regard by mainly the Labour Relations Act.

<sup>42</sup> See the Systems Act s 67(1)(a)-(k).

<sup>43</sup> Refer to the Systems Act s 67(4)(a)-(c). Special attention must be given to informing staff members who cannot read.

<sup>44</sup> 97 of 1998.

<sup>45</sup> 9 of 1999.



grammes of municipal personnel. If a municipality does not have the financial means to provide additional funds for training, it may apply to the Sector Education and Training Authority (SETA) for local government for such funds. The SETA was established in terms of the Skills Development Act to assist municipalities in training programmes.<sup>46</sup>

#### **17.3.4 The code of conduct for municipal staff members**

Similar to the position regarding political office bearers of municipalities, all municipal staff members must adhere to a particular code of conduct that is very similar to the code of conduct applicable to municipal councillors. The code of conduct is set out in Schedule 2 of the Systems Act, and it states the following:

- *General conduct* All staff members of municipalities must at all times:
  - (a) execute loyally the lawful policies of the municipal council
  - (b) perform the functions of office in good faith, diligently, honestly and in a transparent manner
  - (c) act in such a way that the spirit, purport and objects of a municipal administration are promoted<sup>47</sup>
  - (d) act in the best interest of the municipality and in such a way that the credibility and integrity of the municipality are not compromised
  - (e) act impartially and treat all people, including other staff members, equally without favour or prejudice.<sup>48</sup>
- *Commitment to serving the public interest* In light of the fact that every municipal staff member is recognised as a public servant in a developmental local system, all staff members must:
  - (a) implement the provisions of organisational systems as is set out in section 50(2), (b)
  - (b) foster a culture of commitment to serving the public, together with a sense of responsibility for performance in terms of standards and targets
  - (c) promote and implement the basic values and principles of the public administration

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<sup>46</sup> For more details see both the Skills Development Act and Skills Development Levies Act mentioned above. Refer also to the Systems Act s 68(1)-(3).

<sup>47</sup> See the Systems Act s 50 for such objects.

<sup>48</sup> Refer to the Systems Act Sch 2 Item 2.

- (d) seek to implement the objectives of the municipal IDP and to achieve the performance targets set for each performance indicator
- (e) participate in the overall performance management system as well as the individual performance appraisal and reward system.<sup>49</sup>
- *Personal gain* A staff member of a municipality may not use his/her position or privileges or confidential information for private gain or to improperly benefit another person. Personnel may also not take a decision on behalf of the municipality concerning a matter in which that staff member, his/her spouse, partner or business associate has a direct or indirect personal or private business interest.<sup>50</sup> Furthermore, and unless a staff member has obtained prior consent from the council, no staff member may be a party to a contract for the provision of goods or services to the municipality or may not perform any other work for the municipality apart from the duties associated with his/her employment contract. Staff may also not obtain a financial interest in any business of the municipality or be engaged in any business, trade or profession, other than his/her work for the municipality.<sup>51</sup>
  - *Disclosure of benefits* Any direct benefit from a contract concluded between the municipality and a staff member or spouse, partner or business associate of such a staff member must be disclosed in writing and with full particulars. This disclosure does not apply to a benefit which a member of staff has acquired in common with all other residents of the municipality, however.<sup>52</sup>
  - *Unauthorised disclosure of information* Without permission, members of a municipal staff may not disclose to an unauthorised person any privileged or confidential information obtained. On this point, privileged or confidential information includes any information that
    - (a) is determined as such by the municipal council or any of its structures or functionaries
    - (b) is discussed in closed session by the council or a committee
    - (c) would violate a person's right to privacy

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<sup>49</sup> See the Systems Act Sch 2 Item 3.

<sup>50</sup> According to the Act, a "partner" refers to a person who permanently lives with another person in a manner as if they are married.

<sup>51</sup> See the Systems Act Sch 2 Item 4.

<sup>52</sup> See the Systems Act Sch 2 Item 5.

(d) is declared to be privileged, confidential or secret in terms of the law.<sup>53</sup>

- *Unduly influence* A staff member of a municipality may not unduly influence or attempt to influence the council, a structure, functionary, or councillor with a view to obtaining any appointment, promotion, privilege, advantage or benefit, or for such a benefit or advantage for a friend, associate or family member. Furthermore, members of staff may not mislead or attempt to mislead the council, municipal structures or functionaries in their consideration of any matter. No member of staff may be involved in a business venture with a councillor unless prior written consent of the council has been obtained.<sup>54</sup>
- *Receiving gifts, favours or rewards* Municipal staff may not request, solicit or accept any reward, gift or favour in return for
  - (a) persuading the council or any structure or functionary to exercise any power or perform any duty
  - (b) making a representation to the council or any structure
  - (c) disclosing any privileged or confidential information
  - (d) doing or not doing anything within that staff member's powers or duties.<sup>55</sup>

It seems from the wording of the item that an innocent gift received by a staff member for having done his/her work well or because he/she has "gone the extra mile" would not be in contravention of the code of conduct. Personnel should be very careful, however, and should not accept gifts from the public or immediately report such a gift or favour to their superiors or the speaker of the council. It is common practice for municipal staff to receive flowers, a box of chocolates, a bottle of wine or free tickets for a meal or sports happening as a gesture of appreciation from a member of the local community. The acceptance of such gifts should not be seen as a contravention of the code, but staff should be careful not to create a wrong impression. It is advisable for municipalities to establish a clear policy on such matters.

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<sup>53</sup> See the Systems Act Sch 2 Item 6. It should be noted that the prohibition to disclose information does not derogate from a person's right to access to information, which is provided for in terms of national legislation. For more, see the Promotion of Access to Information Act 2 of 2000.

<sup>54</sup> See the Systems Act Sch 2 Item 7.

<sup>55</sup> All staff must report to either a superior official or to the speaker of the council without delay any offer which, if accepted, would constitute a breach of this subitem. Municipal staff are thus obligated to report any attempts from other persons or institutions to solicit a bribe or to try and buy favours. Refer to the Systems Act Sch 2 Item 8.

- *Council property, payment in arrears and staff participation in elections* No member of a municipal staff may use, take, acquire or benefit from any property or asset owned, controlled or managed by that municipality. Again it is submitted that the circumstances of each case will be indicative of whether or not there is a real contravention of this prohibition. Innocent usage, without real benefit to the staff member, should not be regarded as a breach of this item.<sup>56</sup>

Similar to municipal councillors, no member of staff may be in arrears to the municipality for rates and services charges, for a period longer than three months. After this period, municipalities are permitted to deduct any outstanding amounts from staff members' salaries. This stipulation is somewhat controversial, however. Although it is acceptable that staff members and councillors should set an example regarding payment for municipal rates and service charges, it is not clear why outstanding amounts may be deducted from staff members' salaries but not from the salaries of councillors.<sup>57</sup> Furthermore, it seems unlawful to recover outstanding debts without an investigation regarding the merits of each case.<sup>58</sup> It is submitted that such automatic recovery of outstanding amounts should not be permitted, as it raises several legal and even constitutional issues. Municipalities should be obligated to follow the normal procedure applicable for the recovery of outstanding rates and services charges under the law in general.

A further and somewhat unclear provision in the code of conduct is that municipal staff are prohibited from participating in an election of the council of the municipality, other than in an official capacity or pursuant to any constitutional right. Staff members also have constitutional rights regarding the participation in municipal elections, and the purpose of this item is not clear.<sup>59</sup>

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<sup>56</sup> Eg, if a staff member uses the internet and prints a report for a personal use, or if member uses stationery that belongs to the council, such events should not constitute a breach of the code. The well-known maxim of South African law, namely *de minimus non curat lex*, should be applicable in such instances. See the Act Sch 2 Item 9.

<sup>57</sup> Cf Sch 2 Item 10 and Sch 1 Item 12A as inserted by Act 51 of 2002.

<sup>58</sup> It is quite possible for a municipal staff member to be in a dispute with his/her local municipality and subsequent employer regarding the correctness of a municipal account. To allow a council to deduct any amounts it deems outstanding from the salary of the staff member would not only negatively prejudice such a staff member, but would probably also not pass the test under the Bill of Rights s 36. A staff member should be able to argue that he/she is being treated unequally and that normal recourse under the law has been restricted.

<sup>59</sup> See the Systems Act Sch 2 Item 11. See also the Constitution s 19, which refers to the political rights of every adult citizen.

- *Sexual harassment* Following on other legislative prohibitions, no staff member of a municipality may embark on any action amounting to sexual harassment. The purpose of this item is self-evident, and breaches will depend on the circumstances of each case.<sup>60</sup>

Finally, the code of conduct obligates all staff members to report such possible breach without delay to a superior officer or to the speaker of the council whenever staff members have reasonable grounds to believe that there has been a breach of this code. Any breach or breaches of the code must be dealt with in terms of the relevant disciplinary procedures that are in force within the relevant municipality.<sup>61</sup> It is the responsibility of the municipal manager to ensure that a copy of the code of conduct or any amendments thereof have been provided to every member of the staff, if applicable. The municipal manager must also ensure that the purpose, content and consequences of the code have been explained to staff members who cannot read and furthermore to communicate to the local community the sections of the code that affect the public.<sup>62</sup>

#### **17.3.5 Miscellaneous aspects relevant to municipal staff members and the organisational structure of a municipal administration**

In order to address any shortcomings in the new legislative framework enacted to regulate the internal organisational structures of municipalities as well as related staff matters, the Systems Act allows the minister responsible for local government to make regulations or to issue guidelines covering a vast array of matters. In relation to the making of regulations, the Systems Act confirms that the following matters may be extended by regulations:<sup>63</sup>

- the procedure to be followed in appealing against decisions taken in terms of delegated powers and the disposal of such appeals
- the suspension of decision on appeal

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<sup>60</sup> See the Systems Act Sch 2 Item 12.

<sup>61</sup> It is thus safe to conclude that a *prima facie* breach of the code does not (allow or) permit a municipality to act against such a staff member other than according to the normal disciplinary processes. A breach of the code thus creates a ground or grounds for further disciplinary action and does not allow immediate termination of the employment relationship between the parties. See the Systems Act Sch 2 Items 13 and 14 as amended. Note that a breach of the code is not only a ground for dismissal or other disciplinary steps, but that such steps may include a suspension without pay for no longer than three months; a demotion; a transfer to another post; a reduction in salary, allowances or benefits or an appropriate fine. See item 14A as added by Act 44 of 2003 s 29.

<sup>62</sup> See the Systems Act s 70(1) and (2).

<sup>63</sup> See the Act s 72(1)(a)(i)-(vi).

- the setting of uniform standards for municipal staff establishments, municipal staff systems and any other matters concerning municipal personnel administration
- capacity building within municipal administrations
- training of staff, including in-house-training subject to national legislation<sup>64</sup>
- any other matter that may facilitate the application of the chapter and requirements regarding local public administration and human resources.

On the other hand, it is also provided that the minister may issue guidelines to provide for the following matters:<sup>65</sup>

- the establishment of job evaluation systems
- the regulation of remuneration and other conditions of service of staff members of municipalities
- the measuring and evaluation of staff performance
- the development of remuneration grading and incentive frameworks for staff members
- corrective steps in cases of substandard performance by staff members
- any other matter that may facilitate the implementation by a municipality of an efficient and effective system of personnel administration.

When making regulations or issuing guidelines, the minister must take into account the capacity of municipalities to comply with such matters and differentiate between the different kinds of municipality, according to their capacities. Issues regarding local public administration and human resources which place a financial or administrative burden on municipalities may be phased in by the minister. Such phasing in is done by notice in the *Government Gazette*.<sup>66</sup> Finally, it is also important to note that apart from relevant labour legislation that must be adhered to, municipalities are also obliged to comply with any collective agreements that have been concluded by organised local government within its mandate on behalf of local government in the specific bargaining council that has been established for municipalities.<sup>67</sup>

#### **17.4 Conclusion**

It can be concluded that municipalities, in similar fashion to all other private or public entities, need an effective and efficient personnel corps in order to fulfil their vast array

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<sup>64</sup> See again the Skills Development Act and Skills Development Levies Act.

<sup>65</sup> See the Systems Act s 72(1)(b)(i)-(vi).

<sup>66</sup> See the Systems Act s 72(2)-(4).

<sup>67</sup> See the Systems Act s 71.

of municipal services and obligations. There is no doubt therefore that municipalities must make every possible effort to maintain, control, educate, train and motivate their respective administrative functionaries. In the past, local governments too often neglected their personnel obligations and political ambitions overshadowed people-related interests.

Under the new local government dispensation a rejuvenated effort has been launched to protect and enhance municipal labour- and staff-related matters. Local government does not operate in an exclusive environment, however, and therefore must adhere to standard labour laws and practices. In light of the specific tasks and obligations of all local governments, it is very important for all municipal administrations to organise and structure their respective administrations in such a manner that optimal efficiency is obtained. Bureaucratic institutions should be avoided and regular evaluation of the organisational structure must be undertaken.

Various new initiatives have been incorporated into the new legal framework to ensure more professional and skilled local government administrations. Such initiatives include *inter alia* the introduction of key performance indicators to measure overall performance, fixed term service contracts for senior personnel and a comprehensive code of conduct for all administrative staff. A municipal manager as head and chief of the municipal administration has been legally entrenched and is finally tasked with overall personnel accountability. All municipal managers should have strong leadership and human relations qualities, and municipal councils must ensure that properly trained and suitably experienced candidates are appointed to such positions. The influence of the municipal manager is of fundamental importance to the overall success of a particular local government.

With due regard to the various constitutional requirements, such as the principles of the public administration and financial management, read together with the new criteria on municipal administrative management, it is submitted that local governments should be able to perform and fulfil their legal functions and obligations. There seems to be a stronger realisation that without effective and efficient municipal administrations most, if not all, local governments will not be able to succeed in their roles as the third branch of the overall governmental structure of a new and truly democratic state.