

## **The principles of municipal public administration and the requirements of performance management, capacity building, accountability and public participation**

### **19.1 Introduction**

The importance of the relationship between municipalities and residents as well as between municipalities and the two higher spheres of government have been emphasised in many previous chapters of this work. These relationships have been given constitutional importance and significance under the new overall constitutional scheme. Especially since the Constitution is the supreme law of the state, all constitutional requirements dealing with the public administration and the relations between the public and government institutions must be strictly complied with. Under the previous local government system, many of these issues were not legally enforceable or were largely downplayed in mostly provincial ordinances. This position has now changed fundamentally under the new constitutional dispensation.

As a basic point of departure, the meaning of administration (ie municipal administration) refers to the overall management of the public affairs of a certain organisation.<sup>1</sup> On a municipal level, public administration encapsulates a special relationship between politics and administrative organs. The politicians are concerned with the uses of power, whilst the administration is concerned with translating the political decisions into practical implementation. Furthermore, the political dimension is subject to change, whereas the administration is characterised by stability and routine.

In terms of public administration, it must be remembered that the concept includes aspects such as policy, decisions, staffing matters, organising, planning and also resource allocations. The concept also differs widely from one administration to an-

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<sup>1</sup> Craythorne (1997) 65.

other. Municipal administration is undoubtedly part of public administration in general, but it also has a more distinctive importance; for example:<sup>2</sup>

- It operates in a political field.
- It operates within the context of democratic notions of an open, responsive and accountable government institution.
- It is decentralised and, to a certain degree, self-financing.
- It is the part of government which is closest to the citizens of a particular state.

### **19.2 Basic aspects concerning municipal public relations**

All forms of government accept in general that their actions have to be acceptable by their subjects. This realisation provides the basis for the development of a relationship of trust and support between the state and its people. In modern day governments this relationship is very important because a government is generally accountable to the people who have elected it to power. This position is particularly true for local governments. Because local authorities provide essential goods and services which affect people directly, it is acceptable that the public at large should be sensitive about the performance of both political office-bearers and administrative staff components.

In contrast to the public relations activities of private enterprises which are directed at sales and profits, public relations programmes of public institutions are usually approached from the point of view of promoting general welfare. Public institutions are mostly monopolistic enterprises with no real competitors. This position has changed somewhat under the new South African constitutional scheme as competitiveness, accountability and responsiveness in providing services and attracting investment have become familiar catch-phrases. Because of their prominent caretaker roles in society, public institutions such as municipalities are subjected to various legal requirements in respect of the exercise and fulfilment of their functions.<sup>3</sup> It is further also an established requirement that public functionaries maintain high ethical standards. This position is so because of the important public responsibilities which municipalities must perform.

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<sup>2</sup> See Craythorne (1997) 71.

<sup>3</sup> See Cloete (1997) 152. The writer mentions that the public does not always understand the reasons for administrative red tape. There are often very good reasons for such requirements, however. The introduction of Public/Private Partnerships (PPP) has also boosted municipal competitiveness and profit targeting.

Municipal public relations are affected by every action of a political or staff representative. The activities of municipalities will always be evaluated carefully by local residents and other stakeholders. If respect is to be achieved, officials and political representatives should foster an attitude of commitment to the general public. It is thus safe to say that the state of public relations is largely dependent upon the conduct and performance of every functionary involved in public administration. Because of its importance, every municipality should appoint officials that are charged exclusively with the handling of its public relations.<sup>4</sup> One of the many difficult tasks of a public relations officer is to determine public opinion and attitudes and to accommodate such opinions and attitudes. Quick and reliable information is very important here.

### **19.3 The constitutional requirements affecting municipal public administration**

In light of the importance and responsibilities of public administration at large, the new constitutional scheme specifically entrenches certain basic values and principles that govern it. These basic values and principles are important to not only the public administration *per se*, but also the public services throughout all three spheres of government. Unless the Constitution is amended, the basic values and principles have been afforded supreme legal status and must be complied with.

#### **19.3.1 *The basic values and principles governing public administration***

In section 195 of the Constitution, the following values and principles relevant to the overall public administration are mentioned as follows:<sup>5</sup>

- A high standard of professional ethics must be promoted and maintained.
- Efficient, economic and effective use of resources must be promoted.
- Public administration must be development-orientated.
- Services must be provided impartially, fairly, equitably and without bias.
- People's needs must be responded to and the public must be encouraged to participate in policy-making.
- Public administration must be accountable.
- Transparency must be fostered by providing the public with timely, accessible and accurate information.

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<sup>4</sup> Such personnel are usually known as "public relations officers" (PROs) and "publicity officers" (media liaison officers).

<sup>5</sup> See the Constitution s 195(1)(a)-(i).

- Good human-resource management and career-development practices must be cultivated to maximise human potential.
- Public administration must be broadly representative of the South African people, with employment and personnel management practices based on ability, objectivity, fairness and the need to redress imbalances of the past to achieve broad representation.

All of the abovementioned values and principles are obligatory and must be complied with. The Constitution is clear on the fact that public administration must be governed by the democratic values and principles enshrined in the Constitution and not only those mentioned in section 195(1).<sup>6</sup> Apart from the values and principles mentioned, the Constitution confirms that the principles apply to the public administration in every sphere of government, organ of state and public enterprise. Without a doubt such principles are therefore relevant to all municipalities.<sup>7</sup> The Constitution further requires the enactment of national legislation which must ensure the promotion of the mentioned values and principles.<sup>8</sup> It is also permitted that the national legislation envisaged above may allow for differentiation between aspects regulating public administration between different sectors, administrations or institutions. In this regard the particular nature and functions of different sectors, institutions or administration should be taken into account when the legislation regulating the public administration is enacted. Furthermore, it seems clear from the Constitution that not all aspects concerning the public administration of all administrations or sectors should be precisely the same.<sup>9</sup> The national legislation envisaged in section 195 has been enacted as the Public Service Act.<sup>10</sup> *Inter alia*, the Act provides for the broad principles on the functioning of the public service in general, thereby also including various aspects important to municipal public administration. The Act must also be read in conjunction with section 197 of the Constitution, which in essence creates a public service for the entire Republic of South Africa. According to the Constitution, there is a public service within the overall public administration. Such public service must function

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<sup>6</sup> See the Constitution s 195(1).

<sup>7</sup> See the Constitution s 195(2)(a)-(c).

<sup>8</sup> See the Constitution s 195(3).

<sup>9</sup> See the Constitution s 195(4)-(6).

<sup>10</sup> 103 of 1994 as amended by Act 86 of 1998. Note that the Act is applicable to only the national and provincial spheres of government. Municipalities currently still determine their own conditions of service and determine their own salary scales.

and be structured in terms of national legislation, and the public service must execute the lawful policies of the government of the day loyally.<sup>11</sup> The terms and conditions in the public service must also be regulated by national legislation, and public service employees are entitled to a fair pension. No employee may be favoured or prejudiced because that person supports a particular political party or cause. Finally it is the responsibility of provincial governments to manage the public service in their administrations. They may do so only within a framework of uniform norms and standards applying to the public service.<sup>12</sup>

It was mentioned above that municipal administrations are clearly part of the public administration at large and that the principles and requirements mentioned in the Constitution and national legislation are equally applicable to them. Apart from the national legislative requirements for all administrations, certain specific aspects have also been included in selective laws dealing specifically with local government matters. Such legislative provisions will be discussed below. Finally, it must be pointed out that the Constitution also establishes a single Public Service Commission for the Republic of South Africa. The commission must be independent and impartial and must exercise and perform its functions in the interests of the maintenance of effective and efficient public administration and a high standard of professional ethics in the public service. The commission is regulated by national legislation and therefore it also plays an important role in overseeing and controlling aspects of public service and administration within the municipal public administrative domain.<sup>13</sup> The commission has various constitutionally entrenched powers and functions and also certain additional powers and functions prescribed by national legislation.<sup>14</sup>

### **19.3.2 Issues concerning municipal administration**

In follow-up of the constitutional requirements mentioned above, the new local government legislative framework also provides for aspects relevant to local public administration. According to the Local Government: Municipal Systems Act,<sup>15</sup> the local public administration is governed by the democratic values and principles embodied in section 195(1) of the Constitution. It is further provided that in the administering of

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<sup>11</sup> See the Constitution s 197(1).

<sup>12</sup> Refer to the Constitution s 197(2)-(4).

<sup>13</sup> See the Constitution s 196(1)-(2).

<sup>14</sup> See the Constitution s 196(4)(a)-(g).

<sup>15</sup> 32 of 2000.

its affairs, municipalities must strive to achieve the objects of local government as set out in section 152 of the Constitution and also comply with the duties of local governments.<sup>16</sup> In furtherance of the developmental duties of municipalities, the Systems Act determines that, within their administrative and financial capacity, all municipalities must establish and organise their administration in a manner that would enable municipalities to comply with various administrative and financial requirements. These requirements are the following:<sup>17</sup>

- to be responsive to the needs of the local community
- to facilitate a culture of public service and accountability amongst its staff
- to be performance orientated and focused on the objects and developmental duties of local government
- to ensure that its political structures, political office bearers and managers and other staff members align their roles and responsibilities with the priorities and objectives of the municipality's integrated developmental plan
- to establish clear relationships and to facilitate co-operation, co-ordination and communication between its political structures and political office bearers and its administration; and between its political structures, political office bearers and administration and the local community
- to organise its political structures, political office bearers and administration in a flexible way in order to respond to the changing priorities and circumstances of the municipality
- to perform its functions through operationally effective and appropriate administrative units and mechanisms, including departments and other functional or business units and also, when necessary, to perform such functions 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

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<sup>16</sup> See the Systems Act s 50(1)-(2).

<sup>17</sup> See the Systems Act s 51(a)-(m).

- to delegate responsibility to the most effective level within the administration
- to involve staff in management decisions as far as is practicable
- to provide an equitable, fair, open and non-discriminatory working environment.

The requirements mentioned above are subject to any applicable labour legislation, however. Applicable labour legislation will prevail if any inconsistencies arise.<sup>18</sup> It seems that the intention of the legislature was to allow municipalities considerable leeway in order to create an effective municipal administration, but not to do so at the expense of established and recognised labour interests.

#### **19.4 Principles of municipal accountability and public participation**

It is an historical fact that to a large extent community participation and municipal accountability were neglected under the former local government dispensation. One of the core elements of change was allowing people to have a say in the decisions that affected their lives. Participation and accountability of representatives are therefore not new concepts in South African public life. Under the new dispensation these concepts have been afforded significant recognition. The supreme law of the state now recognises that participation and accountability are core and crucial principles for ensuring sustainable, democratic and developmental local government. According to the founding provisions and the objectives of local government, the aim of the new constitutional dispensation is to establish a democratic government founded *inter alia* on the values of accountability, responsiveness and openness. These sentiments are echoed in the objectives of local government, which affirms the aim of providing democratic and accountable local governments for local communities and encouraging their involvement in local government matters.<sup>19</sup> With this new constitutional mandate, the principles of participation and accountability are central to the new local government dispensation and the final transformation of the previous system.

The process of ensuring participation and accountability in local government represents major challenges for all municipalities. The transition to the new system was long and difficult, and many adaptations were required in order to accommodate new structures and processes. Central to the success of establishing a new system has been the participation by citizens and the accountability of those in positions of

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<sup>18</sup> See the Systems Act s 52.

<sup>19</sup> See the Constitution ss 1 and 152.

power. There are many shortcomings in the new system, however, and constant development of participation and accountability is required.

#### **19.4.1 Participation, communication and partnerships**

The essence of the concept of participation is giving people, and more specifically local residents, a real say in decisions that affect their lives. In order to take part in such decision-making processes, people must have access to decision-making structures in order to make their voices heard. Real participation strengthens the legitimacy of municipal decision making. South African local governments face various challenges to ensure participation, however. Many members of society do not have the opportunities that others do to express themselves. The lack of resources and education often excludes people from participatory processes. There are two key ways in which participation can be facilitated. They are

- to improve and maintain existing channels of communication
- to form new and strong partnerships between municipalities and local stakeholders.

#### **19.4.2 Channels of communication**

It is a fact that in systems where there are open channels of communication meaningful participation usually occurs. The following different channels of communication should enhance participation between citizens and municipalities.<sup>20</sup>

- *As voters* One of the commonly known and important ways through which citizens can voice their opinions in terms of governmental decision making is through the process of voting. Every adult South African citizen has the right to vote and to take part in elections for any legislative body established in terms of the Constitution.<sup>21</sup> This constitutionally protected right is important not only to ensure a democratic society but also to allow the voters to have a direct say in the choice of their political leaders and their policies. As with all government structures, municipalities have an obligation to make voters aware of their right to vote and to motivate them to exercise such right.
- *As consumers of services* Most people have direct contact with their municipalities through the use of and payment for municipal services. Through this channel

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<sup>20</sup> See LGIS no 2 "Participation and Accountability" (1999) at 3-8.

<sup>21</sup> Read the Constitution s 19(3)(a).



of regular contact, many aspects of municipal decision making can be communicated.

- *As an organised interest group* People often organise themselves in different interest groups. Such groups include political parties, NGOs and a range of Community Based Organisations (CBOs) such as ratepayers associations, church groups etc. Business people also organise themselves into groups that look after their interests and the interests of the region. A local chamber of commerce is a good example of a business organisation that could have an important influence with the local authority and which could serve as an acknowledged and influential communication instrument.
- *Through specialised structures* Communication can also be significantly enhanced through specialised local structures. A ward committee is such a structure and could play a very important intermediary between local residents and their local municipality. Ward committees are best suited to detecting local problems and to communicating such problems quickly and effectively. Apart from ward committees, which interact with the specific ward representative, residents can also communicate and participate with their local municipality through their traditional leaders or other community organisations. The existence of traditional leadership in many regions in South Africa and its role and involvement with local municipalities should also provide a powerful mechanism for participating and communicating with their municipal structures.<sup>22</sup> It is essential that municipalities should ensure that the channels mentioned above are kept open and effective. To this end the new local government legislative framework provides specifically for a chapter on community participation.<sup>23</sup> A further example of a specialised structure is the existence of organised labour. Organised labour should also be consulted by municipalities when issues are considered that could have an impact on them. In the case of *SAMWU v City of Cape Town and Others*<sup>24</sup> the Supreme Court of Appeal stated that the provisions of sections 16-21 of the Systems Act foster

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<sup>22</sup> Municipalities can also ensure participation through the establishment of internal municipal committees, eg, an advisory committee. Such a committee is specifically formed to address the need for effective communication with the public and can act as a vital link between the municipality and its local community.

<sup>23</sup> See the Systems Act ch 4, which is discussed later in this ch.

<sup>24</sup> 2004 (1) SA 548 (SCA).

community participation in municipal decision-making processes. Such participation could include organised labour.<sup>25</sup>

#### **19.4.3 Participation through partnerships**

When channels of communication are open and effective, conditions are conducive for partnerships to be formed. Examples of these are partnerships between the municipality and the police in combating crime, and between local business enterprises to alleviate social upliftment. The new legal framework provides specifically for such programmes and partnerships.<sup>26</sup>

#### **19.4.4 The new legislative provisions regarding community participation**

Under the new local government legislative framework, specific provision has been made for ensuring and protecting the participation of local communities. Chapter 4 of the Municipal Systems Act features various legal obligations to which municipalities must comply. From the start the Act determines that municipalities develop a culture of municipal governance that complements formal representative government with a system of participatory governance. In an effort to achieve and develop such a culture, municipalities must encourage and create conditions for the local community to participate in the affairs of the municipality. Participation should include participation in:

- the preparation, implementation and review of the municipal integrated development plan
- the establishment, implementation and review of the performance management system
- the monitoring and review of performance in general, including outcomes and impact of performance
- the preparation of the municipal budget
- strategic decisions relating to the provision of municipal services.<sup>27</sup>

Municipalities must further contribute to building the capacity of the local community in order to enable it to participate, and to enable councillors and staff members to foster community participation. Municipal resources and funds that are allocated

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<sup>25</sup> Refer to the *SAMVU* case *supra* fn 24 at 551-555.

<sup>26</sup> See the Systems Act ch 4.

<sup>27</sup> Refer to the Systems Act s 16(1)(a)(i)-(v).

annually from the municipal budget should be provided in order to achieve the mentioned participatory objectives.<sup>28</sup>

Specific mechanisms, processes and procedures for community participation have also been provided for. The Systems Act determines that participation by the local community in the affairs of the municipality must take place through various mechanisms.<sup>29</sup> All municipalities must establish appropriate mechanisms, processes or procedures to enable the local community to participate in the affairs of the municipality. In this respect, municipalities must provide for

- the receipt, processing and consideration of petitions and complaints lodged by members of the local community
- notification and public comment procedures
- public meetings and hearings by the municipal council, other political structures and political office bearers, when appropriate
- consultative sessions with locally recognised community organisations and where appropriate, traditional authorities
- report-back mechanisms to the local community.<sup>30</sup>

When a municipality establishes mechanisms or processes of participation, it must take into account the special needs of people who cannot read or write, people who have disabilities, women and various disadvantaged groups. A municipal council may also establish one or more advisory committees to advise the council on any matter within the council's competence.<sup>31</sup>

A further important provision is that municipalities must communicate to their relevant communities information concerning *inter alia* the available mechanisms to encourage and facilitate community participation, the matters on which participation is encouraged and also the rights and duties of members of the local community.

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<sup>28</sup> See the Systems Act s 16(1)(b)-(c). It should be pointed out that the mechanisms to encourage participation must not be interpreted as permitting interference with a municipal council's rights to govern and to exercise executive and legislative authority. In instances where participatory schemes would interfere with municipal administration or the effective provision of services, such schemes must be overruled in favour of a municipality's right to govern and to exercise its functions and obligations. See the Act s 16(2).

<sup>29</sup> See the Systems Act s 17(1)(a)-(e). It is envisaged that participation must take place through (a) political structures; (b) other mechanisms, processes and procedures provided for in terms of the Systems Act; (c) other appropriate mechanisms, processes and procedures established by the municipality; (d) councillors; and (e) generally applying the provisions for participation as provided for in the Systems Act.

<sup>30</sup> See the Systems Act s 17(2)(a)-(e).

<sup>31</sup> See the Systems Act s 17(3)(a)-(d) and s 17(4).

When such information is being communicated by a municipality to its local community, it is obligatory for the municipality to take into account the language preferences and usage in the municipality and the special needs of people who cannot read or write.<sup>32</sup> Participation is also enhanced through giving notice to the public of municipal council meetings and giving them admission to these. It is now required by law that the municipal manager of a municipality give notice to the public of the time, date and venue of every ordinary meeting of the council and also special or urgent meetings, except when time constraints make such notice impossible.<sup>33</sup> As was stated elsewhere in this work, a municipal council must conduct its business in an open manner and may close its sittings only when it is reasonable to do so.<sup>34</sup> The constitutional requirement is reiterated in the new legislative framework. Meetings of a municipal council and of its committees are open to the public, including the media, and neither the public nor the media may be excluded from council or committee meetings except when:

- it is reasonable to do so because of the nature of the business being transacted *and*
- a by-law or resolution of the council specifying the circumstances in which the council/committee may close a meeting, authorises the council or committee to close the meeting to the public.<sup>35</sup> The public or media, may not be excluded, from a council or committee meeting when any of the following matters are being considered or being voted on:<sup>36</sup>
  - (a) a draft by-law tabled in council
  - (b) a budget tabled in council
  - (c) the municipality's draft IDP or amendments thereto, tabled in council
  - (d) the municipality's draft performance management system or amendments, tabled in council
  - (e) the decision to enter into a service delivery agreement in terms of section 76

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<sup>32</sup> Refer to the Systems Act s 18(1)-(2).

<sup>33</sup> See the Systems Act s 19(a)-(b). The manner in which the notice is to be given must be determined by the municipal council.

<sup>34</sup> See the Constitution s 160(7).

<sup>35</sup> See the Systems Act s 20(1)(a)-(b). Note that decisions by local governments are taken via specific resolutions or via the adoption of a by-law. Resolutions can however be *more easily amended* or changed than by-laws.

<sup>36</sup> See the Systems Act s 20(2)(a)-(f).

- (f) any other matter prescribed by regulation.

However, it is interesting to note that, subject to reasonability and the nature of the business being transacted, an executive committee and a mayoral committee may close any or all of its meetings to the public and media.<sup>37</sup> Finally, a municipal council, within its financial and administrative capacity, must provide space for the public in the chambers where the council or committees meet, and it may also take reasonable steps to regulate public access to and public conduct at such meetings.<sup>38</sup>

The new local government legislative framework also determines specific requirements in respect of communications to the local community. When a municipality needs to notify the community of anything through the media, it must do so in the local newspaper(s) of the area, in newspapers circulating in the area and in newspapers determined by the council to be newspapers of record; alternatively, notices can be sent by radio broadcasts covering the area of the municipality.<sup>39</sup> Any notification must be in the official language(s) determined by the council, with consideration of the language preference and usage within its area. Notices must also be displayed at the municipal offices. When a local community is invited to submit comments to the council, the invitation notice must state that municipal staff members will assist persons who cannot write. Similar provisions are set when members of the public are required to fill in forms. Persons who cannot read or write must be assisted.<sup>40</sup>

Specific provisions regarding the publicity of documents have also been included. According to the Systems Act, all documents that must be made public by a municipality in terms of a requirement of the Act, the Municipal Finance Management Act or any other applicable legislation must be conveyed to the local community by displaying the documents at the municipality's head and satellite offices and libraries, on the municipality's official website if available and by notifying the local community of the place and address where detailed particulars concerning the documents can be obtained.<sup>41</sup> Each municipality is also obligated to establish its own official website if it decides that it is affordable, and place on such website all information required under

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<sup>37</sup> The Systems Act s 20(3).

<sup>38</sup> The Systems Act s 20(4)(a)-(b).

<sup>39</sup> See the Systems Act s 21(1)(a)-(c).

<sup>40</sup> See the Systems Act s 21(2)-(5).

<sup>41</sup> See s 21A of the Systems Act as inserted by Act 44 of 2003 s 5. If appropriate, a notification mentioned above must invite the local community to submit written comments or representations to the municipality in respect of the relevant documents.

the Systems Act and the Municipal Finance Management Act. If no website is established, all relevant information should be displayed on an organised local government website sponsored or facilitated by the National Treasury. It is the overall responsibility of the municipal manager to ensure maintenance and regular updating of the electronic information of a municipality.<sup>42</sup>

Under the new legislative framework, the minister of local government is also authorised to make regulations or issue guidelines on various aspects concerning public participation in local municipal affairs. The minister should take into account whether municipalities have the capacity to fulfil extra regulatory or guiding requirements, however.<sup>43</sup>

#### **19.4.5 Local municipal accountability**

It was explained above that accountability is one of the founding values of the new South African constitutional state and is applicable to all spheres of government including the local government sphere. In essence, accountability refers to the need to explain or to defend certain actions or conduct. Accountability is needed to ensure that people in positions of power can be held accountable and responsible for their actions and conduct. Accountability therefore plays an important role in ensuring stability and acceptance of a particular democratic system. It ensures appropriate checks and balances for local residents with regard to their elective representatives. Accountability means not only taking responsibility, but also ensuring liability in certain instances. See, for example, the case of *Umzinto North Town Board v Moodley*.<sup>44</sup> In this case a duly appointed town treasurer, purporting to act under delegated authority, invested municipal funds contrary to the Local Authorities Ordinance<sup>45</sup>. The town treasurer/defendant argued that he was exempt from liability under the Ordinance. However, the court held *inter alia* that the defendant bore the onus of proving that he was entitled to an exemption, that he acted wilfully and knowingly that his investment decision was not covered by the ordinance and that his conduct

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<sup>42</sup> Read s 21B of the Systems Act as inserted by Act 44 of 2003 s 5.

<sup>43</sup> For more details refer to the Systems Act s 22(1)-(4). Note the difference between the words “responsible” and “accountable”. Responsibility refers to the fulfilling of a duty, whilst accountability also includes the obligation to provide answers for specific actions/conduct. See also the LG: Municipal Planning and Performance Management Regulations published under GNR 796 in GG 22605 of 24 August 2001. Item 15 of the regulations deals with community participation in respect of IDP and performance management.

<sup>44</sup> 1996 (1) SA 539 (D).

<sup>45</sup> Ordinance 25 of 1974 (N).

was not excused by the ordinance. He was thus liable for the damage caused by his actions.<sup>46</sup> All three components of a municipality must be accountable in municipal matters.<sup>47</sup> There seems to be a stronger awareness of the importance of accountability and our courts should take bold action if accountability is not assured.<sup>48</sup> A system which encourages participation also deepens local democracy, as citizens feel more confident about participating when they know that their inputs count and that those responsible can be held accountable. Accountability in local government further ensures that the actions of the council also reflect the aspirations of the relevant community.

#### **19.4.6 Establishing paths of accountability**

In view of the importance of local accountability, it is essential for all local governments to establish all possible paths/methods to enhance and assure a truly accountable government. There are therefore various paths of accountability, some within the municipality itself and others between the municipality and the particular local community. The following diagram provides an overview of the various paths.<sup>49</sup>

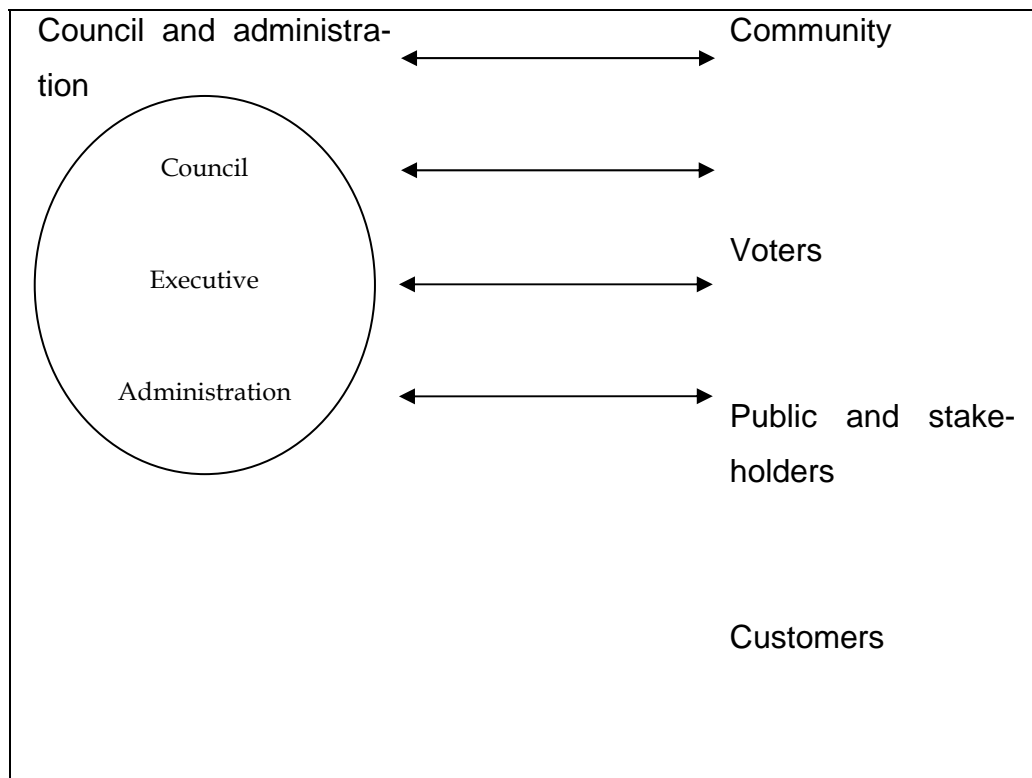
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<sup>46</sup> See the *Umzinto* case *supra* fn 44 at 543-545.

<sup>47</sup> The three components are the political office bearers, the municipal staff members and, to a lesser extent, the local community members.

<sup>48</sup> See in this regard the unreported case of *LR Brink and G Nieuwoudt v Die Speaker van die Munisipale Raad van Nala Plaaslike Munisipaliteit en een ander*, Free State High Court, December 10 2001 under case no 2125/2001. The case concerned mainly the suspension of two councillors from the municipal council. The court found on the facts that the grounds for suspension were frivolous and devoid of the rules of natural justice. The court held that the actions of certain councillors were so unreasonable and tainted by racism and maliciousness that it would be unfair to apply ratepayers' money to funding the action and that the costs of the matters should be paid by the relevant councillors out of their own pockets. The Constitution demands rational decision making, openness and fairness. Such features are essential to legitimacy, public confidence and acceptance of any administration. According to the Constitution, and more particularly s 152, municipal governments must be accountable governments. It is submitted by some legal experts that accountability can now be seen to extend further than the administrative organ itself and, in some extreme cases, can even mean personal accountability of those individuals who collectively make up the particular organ. See also Barrie G "Caveat town councillors" *Without Prejudice* (2001) 8. For a similar example of collective accountability, also refer to the Constitution ss 80(4) and 122(4), which allows the Constitutional Court to order unsuccessful applicants of the National Assembly or a provincial legislature to pay the legal costs of an application under the sections.

<sup>49</sup> Diagram taken from LGIS no 2 "Participation and Accountability" (1999) at 10.



As was mentioned above, a municipality is accountable to both institutions inside the municipality and to the public and other stakeholders outside the municipality. On the external level, municipalities are accountable to the public which they serve. External accountability manifests in different ways. There is, for example, the accountability of a ward councillor to the ward inhabitants. If the population of a ward is not satisfied with such a councillor, they should vote the person out of office in the next election. Non-ward councillors are also held accountable through pressure on the relevant political party that they represent. According to the new local government system, all councils must put an integrated development plan in place, which plan is linked with the five-year term of office of councillors. Councillors can thus be held accountable in respect of their performance relative to such an IDP. It is not only the political office-bearers that are accountable to the public, however; the municipal administration is also accountable. It must be emphasised that the relationship between the administration of a municipality and its local public is very important. Quality and professional service fosters public support and participation.<sup>50</sup> It is ultimately the

<sup>50</sup> Public accountability of municipal administrative staff has always been somewhat problematic, but in many municipalities it seems to have taken a turn for the worse. Both national and provincial governments have recognised the need for improvement in such regard. The *Batho Pele* (people first) programme is but one new initiative, which aims to ensure accountability through im-

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responsibility of each municipality to ensure that it has implemented effective mechanisms and procedures to ensure that accountability is achieved. It should further be pointed out that organised labour is also accountable to the broader community. Unions have a duty to encourage their members to serve their communities. Ultimately what is needed is a balance between the needs and aspirations of workers and the needs of the community towards affordable and accessible services.<sup>51</sup>

Accountability must also be provided for within a municipal administration. In such instances various forms of accountability can be distinguished. Firstly, there should be strong accountability between the executive authority and the municipal council. Under new policy directives and emerging legislation, the role of executive structures within the council has been enhanced. The introduction of a speaker particularly enhanced executive accountability to the council and public.<sup>52</sup> Apart from being accountable to the executive authority, the council and the administration are accountable to one another. The administration has to answer to the council's political leaders, but the leader must support the administration in doing its work. On this point it should be noted that the new developmental nature of local government, with its greater emphasis on participation and accountability, has resulted in many changes in the way in which municipalities function.<sup>53</sup> Accountability is also required between the municipality as employer and organised labour. Various strategies should be developed to ensure that workers have a say in the way in which a municipality is to function. Finally, municipalities are also accountable to the other spheres of government, which are reciprocally accountable to them. For example, municipalities are required to implement national and provincial development programmes, but both national and provincial governments have a supporting, co-ordinating and monitoring role with regard to municipalities. All in all, the three

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proved customer management and service provision. See LGIS no 2 "Participation and Accountability" (1999) at 11.

<sup>51</sup> According to the White Paper on Local Government, labourer' interests should not stand in the way of transformation or delivery objectives. It is envisaged that the new South African Local Government Bargaining Council must play a critical role in enhancing positive partnerships between labour, management, the council and, finally, the relevant local community.

<sup>52</sup> Refer to all the special functions that the speaker must perform and oversee. The speaker functions as a person who is charged with ensuring that the council and its structures are accountable for the way in which they function.

<sup>53</sup> The enforcement of party political idealism within a particular administration often does not encourage co-operation and can be very destructive. See LGIS no 2 "Participation and Accountability" (1999) at 14.

spheres of government have an overarching constitutional accountability to the new constitutional model and to the nation at large. Such accountability is founded on the Constitution itself, as it requires a system of democratic government founded on *inter alia* the values of accountability, responsiveness and openness.<sup>54</sup>

In an effort to ensure that accountability is achieved, many new initiatives have been implemented. It is submitted that these initiatives should go a long way towards enhancing and achieving accountability. Some of the new initiatives are summarised briefly as follows:<sup>55</sup>

- *Codes of conduct* Codes of conduct have been introduced for councillors, traditional leaders and officials. Such codes should ensure that those individuals act in the interest of the communities that they serve and that they are accountable for their actions.
- *Full-time appointed councillors* Full-time councillors will have more time to fulfil their functions, which should improve effectiveness and accountability.
- *New structures and functionaries* Under the new legislative system, new and enhanced structures and functionaries such as the office of the executive mayor and the new municipal manager have been created. These structures and functionaries have specifically allocated powers, responsibilities and functions and should also play an important role in ensuring municipal compliance to all its duties and objectives.
- *Performance management* Under the new system, municipal performance is measured against key performance indicators (KPI). The KPI should be set up in consultation with the public and other stakeholders and should encourage participation and accountability through regular monitoring.
- *Public rights and responsibilities* Residents in particular municipal jurisdictions have both rights and obligations. Such a system, which requires a balanced approach, should also enhance municipal accountability and effectiveness.

#### **19.4.7 Developing programmes for participation**

It was mentioned above, that all municipalities are now legally obliged to develop systems of public participation. Such development requires different phases. In the first phase, municipalities should build up a relationship with all the relevant stake-

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<sup>54</sup> Refer to the Constitution the Preamble and s 1(d).

<sup>55</sup> Refer to LGIS no 2 "Participation and Accountability" (1999) at 12.

holders in their communities and develop a shared vision for the area as a whole. All interest groups should be involved. This process can be initiated through various strategies such as publicity days and local media coverage. Care should be taken not to marginalise groups within communities. People must also see that the municipal initiative is genuine and that serious consideration is given to their involvement. The second phase should involve the internal restructuring of municipal administrations. Existing staff members and councillors should change their attitudes toward public participation and their own accountability. Once a new relationship has been established the new system of interaction and participation should be maintained.

From the discussion above it is clear that the new local government system is significantly different from the one that existed prior to the new constitutional dispensation. Municipalities are now constitutionally obliged to provide democratic and accountable governance for all local communities. New laws provide the basis for making the new system a reality. The key to the success lies in the capacity and willingness of all stakeholders to take the processes forward, however.

### **19.5 Aspects concerning municipal performance management and capacity building**

The new legislative framework for local government has also established new demands on the performance of municipal staff members to ensure that the objectives of local government are met. After the transformation process had been initiated, municipal administrations were faced with various new challenges and demands: municipal jurisdictions were enlarged, many service backlogs became evident, a new constitutional vision and place for local governments was created, new boundaries were drawn and finally a new legal framework for local governments was initiated. Special directives and assistance to municipal administrations are therefore essential in order to ensure a more efficient, customer-orientated and developmentally creative local government dispensation. In order to create such a system, proper performance management within all municipal administrations is generally regarded as a prerequisite; performance management is seen as a strategic tool that can encourage new attitudes, skills and competencies within the new local government dispensation.

In essence, performance management can be summarised as a process whereby municipalities seek to improve and monitor their functioning and accountability on an ongoing basis. Performance is then regularly assessed to determine whether plans

have been implemented, resources are being used effectively and whether the municipality is fulfilling its duties and responsibilities. If municipal performance management is implemented correctly, it should enable municipalities to deliver quality services in a cost-effective, efficient and accountable manner. In light of the fact that performance management is a new concept for local administrations, there is no uniform or general model available which municipalities can implement with guaranteed success. An effective and efficient performance management system must be developed to meet the unique circumstances that exist in modern local governments in South Africa.<sup>56</sup>

The previous local government dispensation never provided properly for a comprehensive performance management system. Consumers or the public at large never had the opportunity to measure the effectiveness of municipal service delivery and quality of services. Under the new constitutional requirements local governments are obliged to meet the basic needs of citizens, and especially provincial governments are tasked with monitoring the performance, capacity and effectiveness of municipalities within their respective jurisdictions. In follow-up on the constitutional provisions, the new legislative framework for local governments provides specifically for the enhancing of municipal performance management.<sup>57</sup> The need for a general performance management system for all municipal governments was already envisaged in the White Paper on Local Government. The White Paper confirmed that the aim of a new national performance management system is to:<sup>58</sup>

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<sup>56</sup> Under the new constitutional system, various systems have been proposed to establish an effective performance management system. One such proposal was the *Batho Pele* (people first) vision for managing performance in the broader public sector. The *Batho Pele* proposal is aimed at delivering the best service to the public. The proposal consisted of eight service delivery principles (ie consultation, service standards, access, courtesy, information, openness and transparency, redress and value for money). *Batho Pele* also aims at constantly improving the quality of services through the implementation of an eight-step process. Such steps, which could serve as an important guide for municipalities that embark on performance improvement programmes, are: identification of the customer; establishing customer needs and priorities; determining the current service baseline; identifying the improvement gap; setting service standards; gearing up for delivery; announcing service standards and finally monitoring delivery against standards and publishing the results. These principles should form the basis for any new local government performance management system. The overall aim is to make municipalities efficient, customer-orientated, developmentally creative institutions that enable citizens to obtain better service delivery. See LGIS no 2 "Performance Management" (1999) at 4-5.

<sup>57</sup> See the Local Government: Municipal Systems Act ch 6. The aim of the new legal framework is to: define goals and priorities; establish objectives, set indicators for performance, measure performance; review and adjust service delivery mechanism and finally to report on the progress made.

<sup>58</sup> Refer to the White Paper on Local Government (1998) at 51-52.

- assess the overall state of local government
- monitor the effectiveness of development and delivery strategies of municipalities and ensure that scarce resources are utilised efficiently
- provide early warning signals
- allow for performance comparison between municipalities across the country
- identify successful approaches or best practises
- provide a national set of performance indicators.

The envisaged system is not aimed at imposing additional burdens on municipalities but rather at seeking a change in the way in which municipalities perform and fulfil their duties and responsibilities.

#### ***19.5.1 The new legislative requirements regarding municipal performance management***

As was envisaged in the White Paper on Local Government, national legislation under the new local government dispensation specifically determines various aspects regarding municipal performance management. All municipalities are now legally obligated to establish and develop performance management systems (PMS) and to review such systems. The new legal requirements relevant to municipal performance management are briefly as follows:

- *The establishment and development of performance management systems* Each municipality established under the new local government dispensation must establish a performance management system that is commensurate with its resources, that is best suited to its circumstances and is in line with the priorities, objectives, indicators and targets contained in its integrated development plan. Municipalities must further promote a culture of performance management among their political structures, office bearers, councillors and municipal administrations. They must also ensure that their affairs are administered in an economical, effective, efficient and accountable manner.<sup>59</sup> Specific responsibility has been placed on the executive committee or executive mayor, whichever is applicable, or a committee of councillors appointed by the municipal council in the absence of an executive committee or executive mayor,

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<sup>59</sup> See the Systems Act s 38(a)-(c).

- (a) to manage the development of a municipality's performance management system
- (b) to assign certain responsibilities of the system to the municipal manager
- (c) to submit the proposed system to the municipal council for adoption.<sup>60</sup>

All municipalities must further establish mechanisms to monitor and review their performance management system.<sup>61</sup>

- *The core components and community involvement in municipal performance management systems* Every performance management system is required to include various core components. Accordingly, in terms of its performance management system and any other regulations and guidelines that may be prescribed, every municipality must incorporate and provide for the following.<sup>62</sup>

- (a) setting appropriate key performance indicators (KPIs) as a yardstick for measuring municipal performance, including outcomes and impact, with regard to the municipality's development priorities and objectives set out in its IDP
- (b) setting measurable performance targets for each of the development priorities and objectives
- (c) monitoring performance and measuring and reviewing performance at least once a year against the development priorities and KPIs
- (d) taking steps to improve performance where targets have not been met
- (e) establishing a process of regular reporting to the council, political structures, office bearers, staff, the public and appropriate organs of state.<sup>63</sup>

It is further also obligatory for a municipality to involve the local community in the development, implementation and review of the municipality's PMS and also to allow the community to participate in the setting of appropriate key performance indicators and performance targets.<sup>64</sup>

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<sup>60</sup> Refer to the Systems Act s 39(a)-(c).

<sup>61</sup> The new legal framework does not provide guidelines on what mechanisms should be employed. It seems that if it is left to each municipal council to decide on what mechanisms to employ to monitor and review performance. See the Systems Act s 40.

<sup>62</sup> See the Systems Act s 41(1)(a)-(e).

<sup>63</sup> In this regard, appropriate organs of state should include provincial governments which are tasked to oversee and monitor municipal performance. Ss 41(2) requires the PMS applied by a municipality to be so devised that it could serve as an early warning indicator of under-performance.

<sup>64</sup> See the Systems Act s 42. This section entrenches for the first time real and constructive public participation in respect of municipal performance control and oversight. It is submitted that

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- *The setting of key performance indicators and the audit of performance measurements* Under the new legal framework for local government, after consultation with the MEC for local government and organised local government nationally, the minister for local government may prescribe by regulation general key performance indicators that are appropriate and that can be applied to local government generally. The minister may also review and adjust those KPIs when necessary.<sup>65</sup> All municipalities are further required, in a manner determined by their council, to make known to the general public, both internally and externally, which KPI and performance targets are set by the municipality for purposes of its PMS. The results of such a PMS and performance measurements must be audited as part of the municipality's internal auditing processes and also annually by the auditor-general.<sup>66</sup>
- *Requirements regarding reports on the PMS and the making of regulations and guidelines* Apart from the establishment of a municipal performance management system, each municipality must prepare for each financial year an annual report consisting of *inter alia* a performance report. Such a performance report should reflect:
  - (a) the performance of the municipality and each external service provider during that financial year
  - (b) a comparison of the performances with the targets set for them and also the performances in the previous financial year
  - (c) measures taken to improve performance.<sup>67</sup>

It should be noted that an annual performance report must form part of a municipality's annual report as is determined in chapter 12 of the Municipal Finance Management Act.<sup>68</sup>

Apart from the reporting responsibility on the municipal manager, the newly enacted legislative requirements also place a similar responsibility on the MEC and the minister concerned. In this regard, the MEC for local government in a province is obliged

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this enhancement of public participation would significantly contribute to more active public involvement in municipal affairs.

<sup>65</sup> See the Systems Act s 43(1)(a)-(b). General KPIs must be included in a municipal PMS where applicable. See s 43(2).

<sup>66</sup> Refer to the Systems Act ss 44 and 45 respectively.

<sup>67</sup> Read s 46(1)(a)-(c) of the Systems Act as substituted by Act 44 of 2003 s 6.

<sup>68</sup> See s 46(2) of the Systems Act as amended.

annually to compile and submit to the provincial legislature and the national minister responsible for local government a consolidated report on the performance of municipalities in that province. The consolidated report must identify all municipalities that have underperformed during the year, as well as the proposed remedial action to be taken. The report must then be published in the *Provincial Gazette*.<sup>69</sup> Finally, the minister responsible for local government must annually compile and submit to parliament and the nine MECs for local government in the provinces a consolidated report of local government performance in general, in terms of general key performance indicators. Such a report must be published in the *National Gazette*.<sup>70</sup>

In confirmation of the fact that the new legislative requirements are not a complete legal system and in order to cater for the effectiveness of the system, the national minister is permitted to make regulations or to issue guidelines to provide or regulate certain issues. These are:<sup>71</sup>

- incentives to ensure municipalities establish PMSs within a prescribed period and comply to the Act
- the setting of KPIs by a municipality with regard to its development objectives
- the identification of appropriate general KPIs that can be applied to municipalities generally
- the regular review by a municipality of its KPIs
- the setting of a framework for performance targets by municipalities consistent with their development priorities, objectives and strategies set out in their IDPs
- mechanisms, systems and processes for the monitoring and measurement of performance by a municipality with regard to its development objectives
- the internal auditing of performance measurements
- the assessment of those performance measurements by a municipality;
- the assessment of progress by a municipality with the implementation of its IDP
- the improvement of performance
- any other matter that may facilitate the implementation by municipalities of an effective and efficient PMS or the application of chapter 6 of the Systems Act.

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<sup>69</sup> See the Systems Act s 47(1)-(2). The MEC is also tasked to submit a copy of the report to the NCoP S 47(3) of the Act.

<sup>70</sup> See the Systems Act s 48.

<sup>71</sup> See the Systems Act s 49(1)(a)-(k).



It is clear that the legislator's intention was to give the minister a wide authority to make regulations or to issue guidelines. When the minister makes regulations or issues guidelines he/she must take the capacity of municipalities into account and he/she must differentiate between different kinds of municipality.<sup>72</sup>

### **19.5.2 *Creating and maintaining an effective system of municipal performance management***

With reference to the abovementioned legislative requirements in relation to municipal performance management, two key elements seem to be significant. At first, each municipality will have to identify and prioritise those areas where performance improvement is most required. Such areas will include both external developmental priorities and internal transformation necessities. National government should assist municipalities by identifying common performance areas that are applicable to all municipalities, such as access to basic services such as water, sanitation, electricity and housing. Through national minimum standards, municipalities will be guided when defining their own goals within their unique circumstances and will consolidate existing fragmented approaches to services. The second key element is performance assessment. An objective performance assessment is crucial for the creation and maintenance of an economic, efficient and effective local government performance management system.<sup>73</sup>

Apart from the two key elements of an effective and efficient PMS, all performance management systems should contain six core elements. Each element is important to make the system work, and are discussed briefly as follows:

- *Performance measurement* Performance measurement requires a relatively objective framework for assessing performance. Measurement is achieved by setting

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<sup>72</sup> Refer to the Systems Act s 49(2)-(4). The minister is also permitted to phase in some or all of the applications of the provisions of the chapter on performance management, which provisions place a financial or administrative burden on municipalities.

<sup>73</sup> To illustrate the functioning of such an objective performance assessment system, imagine the following example: Two municipalities, A and B, with similar budgets, responsibilities and staff both decide to undertake similar-sized housing development projects. How would their respective performance with reference to the project be assessed? It is submitted that the first step would be to assess the economic factors of the project. Such measures look at the cost of resources. If one municipality spent more on materials, such a position would be one indication of performance. Cost measures alone can be misleading, as poorer quality material are cheaper. Quality is thus also important. The second phase of assessment should evaluate quantity and quality in relation to resources used. Finally the effectiveness should be evaluated. It is important to assess what effective contribution to the overall developmental objectives of a municipality has been achieved through the project. See also LGIS no 2 "Performance Management" (1999) at 11.

performance indicators and linking them to performance targets. Performance indicators indicate how performance will be measured; that is, the number of households to receive water connections. Performance targets again refer to the result to be achieved within a given timeframe (eg 5000 connections by yearend 2005). Performance indicators can be determined only once a municipality has identified the key objectives for development in its area and with the municipality's overall developmental goals and priorities in mind. Many municipalities have set various performance indicators through their development-planning processes. A distinction should be made between general performance indicators and local performance indicators. General performance indicators refer to such indicators that are applicable to all municipalities, while local indicators reflect particular local developmental priorities and objectives. Any KPI should ensure that the right area of performance is measured and that the quality of performance is also assessed. Part of any process of performance measurement involves the establishment of targets for each performance indicator. Performance is then measured within a given timeframe, according to whether targets for each indicator have been achieved. The setting of performance targets can be a somewhat complicated exercise and should ultimately result in realistic and achievable objectives. In determining proper targets it is suggested that certain guidelines be used and that a checklist be developed when targets are set for particular indicators.<sup>74</sup>

- *Performance monitoring and evaluation* The monitoring and assessment of the performance of municipalities is a crucial aspect of any successful PMS. Monitoring and evaluation are processes aimed at assessing the performance of municipalities and the people that work for them. It is important to note that the assessment of people refers not only to municipal staff members but also to external contractors that do work or provide services on behalf of a municipality. Generally speaking, performance monitoring is an ongoing process to determine whether targets are being met and whether development objectives are being

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<sup>74</sup> According to LGIS no 2 "Performance Management" (1999) at 14 the following guidelines and checklist questions should be useful in determining performance targets: Guidelines are preciseness and measurability, relevance to user, being demanding but realistic, approved by politicians and providing communication to the public. Checklist questions could include the number of each service provided, how many new services were provided in a year, what trends are impacting on the service, what customers expect, the municipality's realistic capacity and what other similar municipalities are achieving.

achieved. Performance management must be conducted very carefully, and information should not be manipulated to produce results that appear better than they really are. Uncompromising integrity of performance management is therefore essential. In contrast with the monitoring process, performance evaluation is a deeper and more detailed process of performance analysis. Such an evaluation process looks not only at whether a municipality is performing adequately but also at the areas of underperformance. All municipalities should make special arrangements to evaluate performance regularly. A further key element of the monitoring and evaluation process is so-called “performance auditing”. This process involves verifying that the measurement mechanisms and results are accurate and that proper procedures have been followed to evaluate and improve performance. The checks built into the new legislative framework should ensure objective verification of performance results and should ultimately enhance municipal service provision and compliance with the new constitutional demands.<sup>75</sup>

- *Performance reporting* Under the new legal framework, all municipalities are obliged to submit annual performance reports to the public and higher spheres of government. It is submitted that the reporting requirement should significantly enhance public participation and municipal accountability and should therefore be strictly enforced.
- *Capacity building* Without the necessary capacity, municipalities will not be able to perform and fulfil their duties and responsibilities. Municipal capacity building must therefore be a core element of a broader performance management strategy. Capacity building is a process of developing the ability for improved performance within municipalities and will be discussed in more detail elsewhere in this chapter.
- *Intervention* It was mentioned earlier that the Constitution allows and demands intervention into the affairs of local government when necessary. Especially the provinces are tasked with oversight and intervention powers into the affairs of municipalities when cases of non-performance are reported. Such interventions should be based on accurate diagnostic results, however, and should be undertaken on an objective basis. When intervention is allowed on subjective grounds

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<sup>75</sup> See LGIS no 2 “Performance Management” (1999) at 16-17. A further check on performance monitoring and evaluation is public participation. Public involvement and pressure for improved performance  
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or without proper justification, the new constitutionally entrenched status of local government as an independent sphere of government would be unnecessarily jeopardised. In this regard it should be emphasised that the ultimate aim of intervention is not to create a hierarchy of one sphere of government over another but to ensure that citizens receive the essential services that are promised under the new constitutional scheme.

- *Performance incentives* Ultimately the performance of any particular municipality and its staff depends on certain incentives within the PMS. Good performance should be rewarded whilst poor performance should be penalised. Various means of incentive are possible, such as fiscal and political motivators, rewards, competitions and individual motivational schemes.

### **19.5.3 Implementing performance management**

The implementation and maintenance of an effective PMS is in essence founded on the new constitutional foundation. All spheres of government are constitutionally obliged to fulfil their duties and responsibilities according to the constitutional prescriptions and to ensure a general system of democratic government that is accountable, responsive and open. Local governments are further tasked with specific developmental duties and the achievement of specified municipal objectives.<sup>76</sup> In order to determine whether such objects and duties are being met, a proper system of accountability and performance management is necessitated. Under the provisions of the Systems Act, a new legal framework for national performance management has been enacted. In essence, the new system will function as follows:

- *Step 1:* All municipalities must identify the areas that require performance measuring and improvement. This will be an integral part of the IDP process and the setting of development objectives.
- *Step 2:* Once the areas have been identified, a municipality will monitor and measure its performance by developing indicators and targets for each of the development priorities.
- *Step 3:* A municipality will then have to evaluate its performance and take steps to improve performance when targets are not being met.

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formance should be protected as an important part of the overall PMS of a municipal government.  
<sup>76</sup> See the Constitution ss 1, 152 and 153.

- *Step 4:* In addition to those areas identified by a municipality, some areas fundamental to the overall reconstruction and development of South Africa will be identified by national government, through consultation with key stakeholders such as SALGA and provincial governments.
- *Step 5:* Each municipality will be expected to report on these areas through the prescribed national indicators and targets.
- *Step 6:* A municipality will be able to exceed the targets set by national government, but it will not be able to perform below those targets.

To illustrate the practical application of the new PMS, the example is given of a municipality where 50% of the residents do not have access to clean drinking water. Water is arguably the single most essential municipal service, as it is needed for drinking, cooking, washing and cleaning. Without water, communities suffer severe discomfort and disease. As a first step, the particular municipality will identify water provision as an area that requires performance measuring and improvement. Water provision to all residents will be set as a priority with a correlating objective of giving all residents access to at least a certain number of litres of drinkable water per day. The objective will then translate into development strategies which could include major investment programmes in water schemes. Strategies could also include cross-subsidising between consumers if necessary.

As a second step, and once the area of performance have been identified, then a municipality will have to monitor and measure its performance. This is achieved through the development of KPIs and targets for each of the identified priorities. The following KPIs and targets could be relevant to the example mentioned above:

KPIs:

- the percentage of households that do not have access to water (measure growth)
- the bacterial count in water (measure quality of water)
- average time spent by community members (measure impact of scheme on community to bring water to their houses)
- percentage of residents paying for services (measure sustainability and financial impact).

Targets:

- to reduce households without water from 50% - 30% in two years
- to ensure quality of water is up to standard
- to reduce travel time for community to fetch water

- to ensure measures are taken to service payment collections better.

Under the third step, the municipality will have to evaluate its performance and will have to take steps to improve performance when targets are not met. Measurement mechanisms can include:

- keeping data of households with water
- testing water quality regularly
- surveying residents' activities and the implementation of a proper billing and credit control system.

Finally, the municipality must report on its performance management in each area as is required by law.

Although the many benefits of a proper PMS are very clear, the implementation of such a system does present various challenges. Challenges that are most common are limited financial resources, inadequate administrative capacity, poor public participation and a slow ability to adapt to the new legal order. In order for effective and efficient performance management to occur, it is suggested that all municipalities will have to commit themselves to this end and dedicate their energy to overcoming the different challenges and finding new ways to fulfil their duties and obligations. Other spheres of government must assist municipalities in this endeavour, but ultimately the responsibility lies with municipalities all over the country to start focusing on the new outcomes of municipal services and programmes.<sup>77</sup>

## **19.6 Aspects regarding municipal capacity building**

### **19.6.1 Introduction**

It is a general phenomenon all over the world that local governments are pushing for autonomy and decentralised decision making. More autonomy and decentralised powers often leave municipalities with many new performance demands, however. The position in South Africa under the new local government legislative framework is no different. The new local government dispensation has created strict legal demands on municipalities to comply and fulfil certain duties and responsibilities. Without a sufficient capacity, municipalities will not be able to fulfil such duties and

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<sup>77</sup> In order to enhance the new legislative requirements dealing with performance management the LG: Municipal Planning and Performance Management Regulations were promulgated. See GNR 796 in GG 22605 of 24 August 2001. The regulations provide for *inter alia* the nature of a performance management system, the adoption of a PMS, the setting of key performance indicators, general key performance indicators, the setting of performance targets and the monitoring review and internal auditing of performance measurements.

responsibilities, however. It is of paramount importance therefore that municipalities themselves, as well as the two higher spheres of government, ensure that municipal capacity is adequate to ensure compliance with their new constitutional and other legislative obligations. Municipal capacity building is thus regarded as one of the more important tools available to municipalities to ensure service delivery and the overall fulfilment of their duties and responsibilities. Capacity building should therefore form one of the strategic programmes that municipalities must put in place.

During the former local government dispensation, capacity building was often racially determined and did not support democratic municipal development. Under the new system municipalities have been afforded distinctive autonomy and powers and are supported to handle their own affairs in accordance with their own priorities. Capacity building should be a very important objective for all municipalities, as it will ensure various advantages. The following advantages will be secured through a solid municipal capacity:

- services are delivered as is legally required
- more powers can be delegated down to a municipal level
- better investment opportunities can be created.

Capacity building is therefore very important and should be done on the political, financial management and administrative levels. It speaks for itself that capacity building cannot be done without proper training.<sup>78</sup> With the restructuring of local government, the overall local government capacity building scheme had to be revisited and changed. It was especially envisaged that the new system should ensure the following results:<sup>79</sup>

- to respond to municipal needs
- to be acceptable and aimed at all people
- to offer capacity building that qualifies officials and frontline workers for promotion and further development

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<sup>78</sup> Under the former system two training bodies made up local government training. There was the Local Government Training Board (LGTB), established under the Local Government Training Act, and the Apprenticeship Training Board for Local Authorities (ATBLA), established under the Manpower Act. The two structures operated separately and addressed different fields in the training sector. Coordination was poor, and the absence of a common national vision on capacity building led to a lack of objectives, fragmentation of training programmes and poor staff development results. The two bodies later merged into the Local Government Education and Training Board (LGETB).

<sup>79</sup> See LGIS no 2 "Capacity building" (1999) at 5.

- to address the capacity building needs of rural municipalities
- to ensure the involvement of all role players to find solutions for municipal challenges.

### **19.6.2 Establishing a new local government training system**

In the White Paper on Local Government, a vision and framework was provided within which local government capacity building was to be developed. The previous system had to be changed to become a more flexible, decentralised and demand-driven system with continuous improvement of municipal staff members and political office bearers.<sup>80</sup> In response to the new changes and challenges of the new system, a new set of skills and competences had to be created to ensure an overall developmental local government. Various initiatives have thus been piloted in a variety of newly created capacity building programmes and schemes.<sup>81</sup>

In follow-up on the vision in the White Paper on Local Government, various laws have been passed or amended to give more meaning and substance to the new local government capacity-building system. See, for example, the Skills Development Act,<sup>82</sup> which Act requires a Sector Education Training Authority (SETA) to be established in every sector of the South African workforce in order to develop skills.

This LGSETA will be made up of representatives of both organised labour such as SAMWU and IMATU and organised employer's organisations, which are represented under SALGA. Specific functions have been envisaged for the new LGSETA to fulfil. Such functions include:<sup>83</sup>

- Preparing a Local Government Skills Plan.
- Implementing the Local Government Skills Plan by
  - (a) establishing learnerships
  - (b) approving workplace skills plans
  - (c) allocating grants to employers, education and training providers and workers

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<sup>80</sup> See the White Paper on Local Government (1998) at 115.

<sup>81</sup> Examples of some of the new competencies and capacity-building programmes are: councilors' code of conduct, falling under SALGA training; performance management, falling under the department of Constitutional Development; integrated development planning, falling under the department of Constitutional Development; local economic development, falling under the department of Constitutional Development and NGO's financial management; voter education, falling under the IEC and senior management development, falling under university-based training programmes. See LGIS no 2 "Capacity building" (1999) at 7.

<sup>82</sup> 97 of 1998.

<sup>83</sup> See LGIS no 2 "Capacity building" (1999) at 9.



- (d) monitoring local government education and training in the sector.
- Promoting learnerships by
  - (a) identifying work places for practical work experience
  - (b) supporting the development of learning materials
  - (c) improving the facilitation of learning
  - (d) assisting in the conclusion of learnership agreements.
- Registration of learnership agreements.
- Applying to SAQA for accreditation as an Education and Training Quality Authority (ETQA).
- Collecting Skills Development Levies and disbursing these to municipalities.
- Reporting on income and expenditure and the implementation of its sector skills plan to the Director-General of Labour.
- Appointing staff for the performance of its functions.

The Skills Development Act also introduces a new learnership approach to skills development. This approach requires a combination of institutional learning and workplace learning/experience. Skills development, which will require substantial financial resources, is financed largely through the Skills Development Levies Act.<sup>84</sup> The levies are not sufficient to meet the existing training needs, and it is clear that other funding sources such as private donors, business or even other spheres of government should be explored.

It was mentioned above that it is not only municipal staff members that are in need of new training, but also political office bearers. The new constitutional and other legislative requirements have placed important responsibilities on political representatives. In this regard SALGA has developed a so-called "councillor-training programme" for all councillors. In order to ensure quality in the new training programmes, the South African Qualifications Authority Act,<sup>85</sup> has established the South African Qualifications Authority (SAQA), which must oversee the implementation of a national qualifications framework (NQF). The NQF is seen as a new way of "grading" learning achievements by using eight NQF levels.<sup>86</sup> The new NQF ap-

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<sup>84</sup> 9 of 1999.

<sup>85</sup> 58 of 1995.

<sup>86</sup> The lowest NQF level is level 1, which is the equivalent of grades 7-9 of the traditional high school education grading system. Level 4 corresponds to grade 12. In future, most officials will be trained against the eight NQF levels.

proach towards learning is different from the past, as it is based on learning outcomes, which are measured by the ability of a learner after training to convert his/her learning into work performance. SAQA and the NQF also promote a system for the recognition of prior learning and so-called “life-long learning”. These initiatives should allow people gradually to qualify themselves and to help to develop the careers of staff members and ensure that local government becomes an attractive place of work.

### **19.6.3 Mechanisms to enhance municipal capacity building**

In light of the new legal requirements, it is obvious that all local governments will have to establish various training and development programmes. Such programmes and initiatives will necessarily be different for each of the different categories and types of municipality because of their diverse circumstances and responsibilities. In many instances, the new local government dispensation is characterised by various performance gaps, some of which can be filled only through the training of councillors, officials and other frontline workers. What municipalities need is a good training programme. In order to establish such a training programme municipalities need to determine which of the problems they encounter can be solved through building the capacity of staff and which cannot. In instances where internal capacity building cannot solve the problems, alternative approaches exist such as outsourcing or the conclusion of partnerships with other private or public institutions. It is also very important for municipalities to prioritise their capacity-building strategy as part of their integrated development plan. In this regard it is suggested that every IDP should incorporate a skills-development plan as a key component, which should facilitate capacity-building solutions within the municipality.<sup>87</sup> Under the new constitutional dispensation, all provinces are obliged to build the capacity of local governments. Various interactions and cooperation strategies must still be developed between municipalities and their respective provincial governments in order to fulfil the constitutional vision and obligations.

## **19.7 Conclusion**

In conclusion, it is submitted that the principles of public administration, performance management and municipal capacity building are currently in need of major trans

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<sup>87</sup> See LGIS no 2 “Capacity building” (1999) at 16.

formation. According to the new legal framework, an entirely new approach towards capacity building, performance management and public participation has been mandated. All municipalities will have to take and implement new initiatives to ensure compliance with the newly established legislative requirements. All in all one can conclude that the new vision for local government is to create an essentially customer-orientated public service. The codes of conduct for both councillors and staff members set out basic requirements for accountability and control. It is further submitted that the new legal framework indeed lays a sound foundation for a more people-orientated local government system, which should be able to meet the demands of all South African people and should ensure a better and brighter future for all.