

*"The responsibility is in our hands"*

# Report of the Independent Committee of Inquiry into the State of Municipalities in Gauteng

# 2021

Marking 20 Years  
of Democratic Local  
Government in Gauteng





TABLE OF  
CONTENTS

PART 1

Foreword by the MEC.....8

Message by the Chairperson.....10

Members of the Committee.....11

Executive Summary.....12

Introduction.....21

PART 2

Sound Financial Governance.....32

Institutional Capabilities.....66

Good and Cooperative Governance.....74

Public Participation and Community Engagement.....99

Effective Service Delivery.....108

Conclusion.....117

PART 3

*List of Appendices*

Appendix 1: Relevant legislation.....126

Appendix 2: Terms of Reference of the Committee.....130

Appendix 3: Meetings held.....133

Appendix 4: Large Power Users.....136



4IR	Fourth Industrial Revolution
AGSA	Auditor-General of South Africa
ANC	African National Congress
B2B	Back to Basics
BRT	Bus Rapid Transit
CBD	Central Business District
CDW	Community Development Worker
COE	City of Ekurhuleni
COI	Committee of Inquiry
COJ	City of Johannesburg
COT	City of Tshwane
CoGTA	In the report this refers to the <u>Gauteng</u> Department of Cooperative Governance and Traditional Affairs
CoGTA-N or national CoGTA	National Department of Cooperative Governance and Traditional Affairs
CSP	City Support Programme
DA	Democratic Alliance
DDM	District Development Model
DM	District municipality
DME	Department of Mineral Resources and Energy
DSD	Department of Social Development
DWS	Department of Water and Sanitation
ELM	Emfuleni Local Municipality
EPWP	Expanded Public Works Programme
ES	Equitable Share
FCJ	First Certification Judgment
FFC	Financial and Fiscal Commission
GDH	Gauteng Department of Health
GDP	Gross Domestic Product
GPG	Gauteng Provincial Government
GPT	Gauteng Provincial Treasury
GVA	Gross Value Added
ICM	Intermediate Cities Municipal Support Programme
ICT	Information and communication technology
IDP	Integrated Development Plan
IGR	Intergovernmental Relations
IUDF	Integrated Urban Development Framework
LED	Local Economic Development
LGFF	Local Government Fiscal Framework
LM	Local municipality

LPU	Large power user
MCR	Minimum competency requirements
MEC	Member of the Executive Council
MFMA	Municipal Finance Management Act
MIG	Municipal Infrastructure Grant
MISA	Municipal Infrastructure Support Agency
MOU	Memorandum of Understanding
MNC	Multinational Corporation
MPAC	Municipal Public Accounts Committee
mSCOA	Municipal Standard Chart of Accounts
MTREF	Medium Term Revenue and Expenditure Framework
NCOP	National Council of Provinces
NDP	National Development Plan
NERSA	National Energy Regulator of South Africa
NICD	National Institute for Communicable Diseases
NT	National Treasury
OPCA	Operation Clean Audit
OPMS	Organisational Performance Management System
OUTA	Organisation Against Tax Abuse
PAIA	Promotion of Access to Information Act
PEC	Provincial Executive Committee
PFMA	Public Finance Management Act
PPE	Personal protective equipment
PTNG	Public Transport Network Grant
RWC	Rand West City
SALGA	South African Local Government Association
SANDF	South African National Defence Force
SAPS	South African Police Service
SCM	Supply Chain Management
SDBIP	Service Delivery and Budget Implementation Plan
SDM	Sedibeng District Municipality
SETA	Sector Education and Training Authority
SIU	Special Investigation Unit
SOE	State Owned Entity
SONA	State of the Nation Address
TOR	Terms of Reference
UIFW	Unauthorised, irregular, fruitless and wasteful
USDG	Urban Settlement Development Grant
WRD	West Rand District

## List of Tables

Table 1: Back to Basics and COI Focus Areas

Table 2: 2019/20 Unaudited Financial Results of Gauteng Municipalities

Table 3: 2019/20 Debtors Age Analysis (Metropolitan and Local Municipalities)

Table 4: Operational and Capital Allocations to Municipalities: Post Adjustment-2019/20

Table 5: Changes in the 2020/21 MTREF

Table 6: Revenue Funding and Key Cost Drivers for 2020/21

Table 7: 2020/21 National Transfers to Gauteng Metropolitan Municipalities

Table 8: Minimum Competency Compliance Status (31 March 2020)

Table 9: Categories of Municipalities and Permissibility for an Executive Mayoral System

Table 10: Access to Piped Water by Household – Gauteng Local Municipalities, 2016

Table 11: Access to Refuse Disposal by Household – Gauteng Municipalities, 2016

## List of Figures

Figure 1: Process Adopted by the Committee for Engagements with Municipalities

Figure 2: List of Committee Meetings

Figure 3: NICD Covid-19 Daily Report (08 October 2020)

# PART ONE





## FOREWORD BY THE MEC



**Mr Lebogang Isaac Maile**  
(MEC: Human Settlements,  
Urban Planning and COGTA)

**W**hy an independent Committee of Inquiry into the state of municipalities in Gauteng, one might be tempted to ask? After all, haven't we had enough of Commissions and Committees of Inquiry in contemporary South Africa, with no tangible change in modus operandi, ethos and impact? Before endeavouring to provide a cogent answer, it would be most prudent to traverse the journey that our municipalities have gone through since the birth of our democracy in 1994.

We entered into our new democracy in 1994 and adopted a new constitutional order in 1996 with a dedicated chapter, Chapter 7, which is the bedrock of the kind of local government we want to see in South Africa. Translating the visionary aspirations of the Constitution into a

functional model of local governance, the White Paper on Local Government was published in 1998. The implementation of this model soon exposed the fault lines between legislation, service delivery, and our capacity to achieve our objectives. Government responded to the emerging challenges with a range of initiatives and Gauteng was part of these.

Besides individual, municipal-driven efforts to capacitate officials for the new developmental local government model, which required a unique skills set for public officials, large programmes were embarked upon. Project Consolidate, launched in 2007, was an admission that there were critical weaknesses in the internal capacity of many municipalities to discharge their responsibilities. Programmes such as

JIPSA and Siyenza Manje followed, with the latter programme having government invest almost a billion Rands between 2006 and 2009.

Yet despite our delivery achievements, our governance system remained a cause for concern. It was clear that much needed to be done to support, educate and, where needed, enforce implementation of legislation and systems. By 2014, almost half of our country's municipalities were in distress. There were arguments that the new way of working in democratic local government has diverted attention from important fundamentals, and the Back to Basics (B2B) model was conceived.

Here in Gauteng, we are currently implementing the B2B model, yet challenges still remain. In 2021 we find ourselves on the brink of yet another quantum leap, as we implement the District Development Model. We have reached a point as government where we need to find innovative solutions to our challenges, both internally and externally. As we move to the 2021 local government elections, we therefore considered it useful to get an independent, expert insight into the state of our municipalities, hence the Committee of Inquiry, with seasoned experts and professionals deliberating on local government related matters.

The Committee of Inquiry was an exercise in soliciting an alternative view on how to resolve our manifold challenges. It may serve the purpose of confirming the validity of some of our current strategic work, it may also tell us they think we are heading in the wrong direction. The Committee has now concluded its work; a meticulous, conscientious and thorough process and is releasing its observations, findings and recommendations in this report.

Early in 2020 the work of the Committee was interrupted by the Covid-19 outbreak, which made the task much more difficult. However, through persistence, the assessment has been completed. Of great interest to all stakeholders should be the key issues that are highlighted by the Committee. These should form some kind of framework for how we go about tackling issues within our municipalities, fixing the problems of local government and improving service delivery with the ultimate aim of giving the people of Gauteng a better quality of life and increased living standards.

We want to thank the Chairperson and members of the Committee for their diligence and efforts in carrying out this herculean task and give our assurance that we will do our utmost to ensure that the sterling work that they have done in this regard, will result in an improvement in the performance of our municipalities and translate into a better life for all citizens of Gauteng.

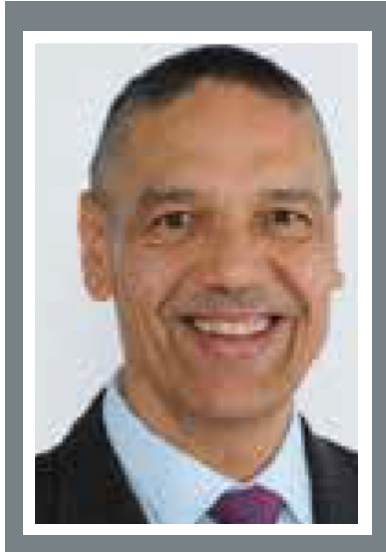
### **Lebogang Maile MPL**

MEC: Human Settlements, Urban Planning, Cooperative Governance and Traditional Affairs





## MESSAGE BY THE CHAIRPERSON



**Adjunct Professor - Trevor Fowler**  
Chairperson of the Committee

the municipalities, it found dedicated people who had put in place the basic systems of governance.

The COI found that municipal managers and senior staff worked in a terrain, that in certain cases were extremely difficult, where there were instances of anonymous threats on their lives, interference from political leadership and in several cases where the COI had difficulty obtaining meetings because the workload of officials did not permit the time. In these cases, the leadership necessary to deliver services effectively was undermined. The COI also found that the Gauteng Departments of Finance (Treasury) and Cooperative Governance and Traditional Affairs (CoGTA) had dedicated staff and officials who recognised many of the challenges faced by the communities and municipalities but did not have sufficient capacity to make a meaningful impact on the functioning of the municipalities.

**T**he Committee of Inquiry (COI) into municipalities in Gauteng worked in accordance with the Terms of Reference provided by the Member of the Executive Council, Honourable Lebogang Maile. The members of the Committee, individually and collectively, had a wealth of experience in local government and had dedicated their lives to creating conditions where all the residents of municipalities in Gauteng can live a better life and constantly improve their lives. The COI's members had a breadth of professional experience in community work, legal matters, local, provincial and national government administration, the financial and auditing sectors, service delivery, legislative and oversight matters as well as municipal administrative and political leadership. In the course of its numerous interviews with officials of each of

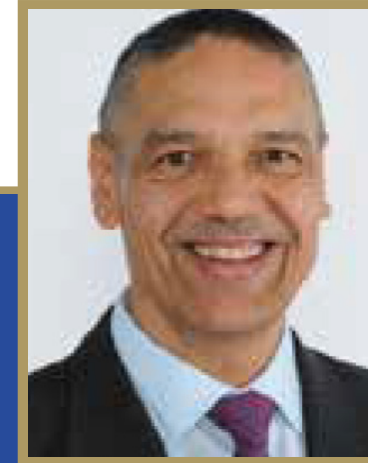
The Committee found that there is a significant effort in monitoring compliance by the municipalities to the detriment of a dynamic understanding of the bigger picture of leadership within the municipalities. It is leadership which is going to transform municipalities to be effective instruments of change to address the challenges of poverty, unemployment, inequality and discrimination against women and children. It is a collective responsibility of the political and administrative leadership, in national, provincial and local government, to put in place measures which will give effect to the vision of developmental local government.

I, on behalf of the members of the Committee, wish to express our gratitude and appreciation to the MEC for this opportunity of contributing to building local democracy in the Gauteng province. After twenty years since the current form of local government was launched, it is hoped that this contribution will leave municipalities in a better place today, than we found it in yesterday.

Finally, the Committee would like to extend their thanks and appreciation for the inputs and contributions of each person who assisted in producing this report.

**Adjunct Professor - Trevor Fowler**  
Chairperson of the Committee  
01 February 2021

## Members of the Committee of Inquiry



Adjunct Professor  
Trevor Fowler



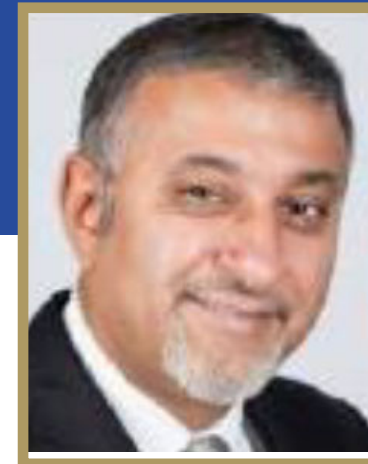
Paul Seerote



Pam Yako



Advocate Aldrin Moodley



Ahmed Adam Jooma



Koketso Calvin Seerane



Glenda Steyn



Suresh "Ash" Sewnarain



# EXECUTIVE SUMMARY

The mandate provided to the Committee of Inquiry by the MEC for CoGTA in Gauteng focused on the need for sound financial governance and viability, institutional capability, good governance, public participation and efficient service delivery in municipalities in Gauteng. In evaluating this, the Committee followed a process of municipal briefings and engagements, as well as follow-up queries where relevant. Over 50 meetings were held by the Committee, in order to extensively analyse and assess municipal data and feedback from the engagements, together with further deliberations with other relevant stakeholders.

The primary issues detailed by the Committee can be summarised as follows:

- *Leadership considerations including the vision and direction of a municipality; support from stakeholders; and whether there is a detailed understanding of the municipal environment.*
- *Public accountability considerations looked at the responsiveness and accountability of the leadership and management of the municipality, as well as its planning, decision-making and implementation.*
- *Good governance considerations examined issues such as the long-term strategy of the municipality, adherence to the legislative framework, the development and implementation of policies, etc.*
- *Sound financial management examined aspects including the liquidity, operating capital, accounting records, revenue and tariffs of a municipality.*
- *Considerations for service delivery include the perceptions of service delivery together with actual service delivery levels and standards across municipalities.*
- *Institutional capability considerations looked at the systems that support service delivery objectives, such as monitoring and evaluation, and the efficiency of staff.*

Key observations from each of the five focus areas are discussed below.

## Sound financial governance and viability

Sound financial governance and viability intends to help municipalities transform areas into cohesive, integrated spaces with improved quality of life for all residents. In order to assess this key performance area, all critical areas of financial management were examined using Auditor-General of South Africa (AGSA) reports as a useful departure point. In July 2020, the AGSA expressed concern about the financial governance of most of Gauteng's municipalities.

Realistic budgeting based on accurate revenue projections is the foundation of sound financial governance. However, in Gauteng the recurring inclination towards preparing unfunded budgets indicated serious challenges with regards to the administrative and political will to make difficult choices on expenditure linked to realistic revenue. One of the key recommendations in this regard, is the close monitoring by Provincial Treasury and CoGTA of the municipal budget preparation cycle in order to reduce the propensity to adopt unfunded budgets. Many other weaknesses pertaining to financial management, including inadequate cash flow, could also be mitigated by credible budgeting.

A number of municipalities face challenges with respect to revenue collection and therefore create unrealistic expectations based on potential revenue. There is a need for urgent revision of forecasts given the socio-economic conditions that prevail. Debt collection is another vital aspect of financial management, with many municipalities battling with the appropriate outsourcing of debt collection. This has led to questionable decisions in terms of the value-for-money derived from debt collection arrangements as well as some contestation on the legality of specific arrangements.

The increase in creditors outstanding is significant and the amounts owing to Rand Water and Eskom, amongst others, places the financial recovery and sustainability of many municipalities at risk. There is a need for long-term solutions to create funded budgets and a gradual redemption of the creditor's book. Government debt owing to municipalities remains a contentious issue despite the establishment of a dedicated forum to address this matter. The capacity to manage intergovernmental debt needs to be drawn into the broader support role of provincial government.

Municipalities have been urged to eliminate all unnecessary expenditure and to create a bias towards service delivery. However, this is thwarted by increasing salary costs. This budget imbalance between salaries and services remains a cross-cutting issue with institutional capability, skills development and service delivery imperatives.

Poverty in South Africa remains one of the country's key challenges, with many South Africans struggling to pay for services or having become accustomed to not paying for a variety of reasons. This situation is likely to worsen if local and district economies are not considerably improved and people view their obligation to municipalities as secondary to all other obligations. While the equitable share of revenue aims to address this deficit, the responsibility to provide free basic services for indigent people cannot be sustained by municipalities on their own. National and provincial governments have a collective and shared responsibility with municipalities to create a socio-economic environment that protects indigent people and ensures access to basic services, while maintaining the sustainability of municipalities. The deficiencies in municipal indigent registers were highlighted by the Covid-19 pandemic and demonstrated the need for improved focus on this critical management tool.

The Committee could not fully, at a technical level, scrutinise unauthorised, irregular, fruitless and wasteful (UIFW) expenditure as required by the Terms of Reference, given time and resource constraints. Instead, it is proposed that areas of concern should be investigated by the relevant departments and agencies. Whilst Municipal Public Accounts Committees (MPACs) have been processing UIFW reports, their efforts have been diluted by slow implementation and inadequate oversight.

Procurement and the weaknesses in the supply chain management systems are of concern. Resources within municipalities are scarce and dwindling. The Covid-19 pandemic has exacerbated this situation. The tender systems utilised do not ensure value for money, and in some instances raise a red flag about possible fraud and corruption. Other warning indicators include the abuse of deviations (Regulation 36) and the utilisation of tenders by other organs of the state (Regulation 32). Greater monitoring of this is needed. Proper contract management is an imperative and the extensive practice of extending contracts both in scope and time are of concern.

Most municipalities have little or no internally funded capital budgets. Consequently, grant funding remains vital for service delivery. National and provincial governments, in terms of Section 154 of the Constitution, must provide adequate support to municipalities to improve their viability. However, many of the fundamental flaws in the financial environment of municipalities are beyond pure financial management. Unless water and electricity losses are addressed and economic growth is stimulated, the financial viability of municipalities will not undergo the desired turnaround.

## Institutional capability

In order to ensure effective functioning in any municipality, there is a need for appropriate institutional capability. This includes sound operational and delivery systems and the required human resources that facilitate compliance with all applicable legislation. Whilst compliance on its own does not ensure effective service delivery, such delivery cannot be attained without compliance.

There is a concern that whilst municipalities may have minimal vacancies, a number of critical skills are not available in key departments including finance and technical service delivery. This skills shortage is exacerbated by the difficulty to entice and retain those with experience, competence and qualifications at smaller municipalities.

Political stability is also important to complement institutional capability. Following the 2016 local government elections, governance by political coalitions increased. This impacted upon the appointment of appropriate personnel, as obtaining ratification from Council had been delayed or denied in some instances, based on specific party political priorities.

The Committee also found that the human resources environment is often inappropriately structured and further eroded by frequent labour issues. The lack of performance management and the resultant consequence management for transgressions and non-performance is of concern.

A final key issue in this focus area is the need for mitigation of capacity deficiencies in order to ensure strong institutional capabilities and the achievement of the service delivery core objectives of both local and district municipalities. CoGTA has a key role to play in this regard given its constitutional mandate, whereby in terms of Section 154, it is obliged to enable mandatory provincial and national support to municipalities.

### Good governance

Many external factors impact on municipalities, some of which are beyond their scope and control, but the practice of good governance is obligatory. Municipal councils, and their functionality and effectiveness in terms of their oversight role, is pivotal to good governance. In terms of Section 79 and Section 80 of the Local Government: Municipal Structures Act No. 117 of 1998, committees are established to assist Council and the Executive Mayor, respectively, to exercise its powers and perform its functions effectively. The functionality of these committees, frequency of meetings, quality of reports and monitoring of implementation must aspire to the highest standards of good governance in all municipalities. While the administration drives the technical support of the municipality, accountability and oversight must be exercised by political office bearers on behalf of citizens.

The Audit Committee is one of the vital mechanisms to ensuring good governance of a municipality. Skilled and resolute actions by the Audit Committee enhance governance. The Chairpersons of Audit Committees have an especially important

role in relaying their findings to Council. The Integrated Development Plan (IDP) as well as the municipal budget is central to the performance of a municipality. The credibility and accessibility of these processes could be enhanced by various improvements in the current systems being employed. CoGTA must deepen its support by facilitating coordination between national and provincial departments and the IDP of municipalities. Municipal IDPs should also define the development trajectory of an area down to ward level, inclusive of local, provincial and national projects. The resultant Service Delivery and Budget Implementation Plans (SDBIP), the annual funded plans based on the municipality's approved IDP, must show proper monitoring and evaluation, and culminate in credible performance assessments. There is an urgent need for adjustments of SDBIPs to accommodate the financial and socio-economic implications of the Covid-19 pandemic.

There is also evidence of inadequacies in terms of a cohesive strategy which is inclusive and encompassing of local, district, provincial and national priorities. Greater performance will be achieved when it is possible to measure against targets set instead of perpetual crisis management.

Emphasis is also placed on the implications and proper implementation of Section 154 of the Constitution. Glaring deficiencies are evident in this, and national and provincial government should account for the support that they are providing to municipalities in terms of Section 154. The Department of CoGTA is required to coordinate all provincial government departments and entities, in fulfilling its cooperative governance mandate, to ensure effective support to local government. SALGA also has a critical role to play in this regard in championing the needs of its member municipalities.

The evolving political landscape in the province has seen a proliferation of coalition governments. This recent trend is likely to grow and become a prominent feature in local municipalities. The key question that emerges is how to insulate and stabilise the municipal administrations from political instability that may arise from shifting coalitions. Within communities there are valuable resources such as ward committees and

Community Development Workers (CDWs). These valuable resources could play a significant role in enhancing democracy and providing bi-directional communication between residents and the municipality. However, their effectiveness can be improved. Every ward in Gauteng should have a ward committee. Where these are not established, they should be speedily established and where legislative ambiguity exists, CoGTA should assist in clarifying this in order to ensure procedural implementation.

### Public participation

Public participation in government decision-making is a constitutional imperative in South Africa and requires concerted effort to ensure an inclusive, participatory form of governing that extends beyond the ballot box. Whilst municipalities tend to ensure public participation during the IDP and budgeting processes, this is often a formal, compliance-driven exercise and is generally not as widespread or effective as intended. Mass action, petitions, interaction with commerce and industry and a number of other processes can all contribute to the envisaged participation by the public in governmental decision-making and strategic planning.

The public participation schedule that is utilised during the IDP process in Gauteng minimises the impact of public input and is regarded as flawed. There is also a lack of education on the intention of public participation, resulting in localised issues being addressed out of context with broader municipal, provincial and national priorities. The outcome is frequently unrealised expectations and the alienation of residents.

Public participation should be enhanced by ward committees – the absence of these bodies weakens the communication chain between municipalities and residents.

The onset of the Covid-19 pandemic and the resultant lockdown limited the traditionally utilised means of public participation. Some municipalities in the province made use of alternative and electronic mechanisms to encourage public participation, although there were varying degrees of success. However, this experience may serve to enhance the public participation process in the future in order to broaden access to the process.

### Service delivery

Whilst service delivery of basic services such as road infrastructure, the supply of electricity and water, refuse removal and sewerage systems in Gauteng is comparatively high, the disparity between suburban and township areas, and informal settlements, is stark.

The maintenance and development of the infrastructure for basic services is under strain because of, amongst others, skills deficiencies and funding constraints within municipalities.

The lack of revenue received for services either through non-payment, inadequate collection mechanisms, technical and non-technical losses, tariffs that are not cost reflective, or the direct supply of the services by other government entities, has led to a significant backlog in the maintenance of existing infrastructure and expansion of the networks across Gauteng.

Reliable delivery of municipal services is imperative for local and district economic development. In order to stimulate the economy, create jobs and reduce poverty, government as a whole needs to pay significant attention to the service delivery environment within municipalities, in terms of Section 154 of the Constitution.

It is also important to recognise the resident from a business perspective, as a paying client of traded services, and not only as a consumer. This adjustment in focus is essential to ensure quality services are rendered for a price which may exceed the input cost in order to generate a surplus that can be spent on developmental needs.

Whilst the mandate of each sphere of government is specific, there are significant overlapping contexts. As a consequence, appropriate, strong, cooperative government is not only essential but mutually beneficial. An adversarial relationship between the spheres or their departments results in deficiencies in service delivery and the alienation of the public. This should be mitigated by mutual support,



avoiding duplications, consultations, cooperation and compliance in order to fulfil the mandate of each sphere and department.

## Conclusion

In fulfilling its mandate, the Committee examined the information provided by each municipality, together with its developmental status, and recorded observations, findings, and recommendations. The primary overarching issue emerging from this assessment is that weak and inadequate individual and collective governance are at the heart of the difficulties confronting municipalities. It is therefore critical that the political and administrative leadership of the national and provincial Departments of CoGTA, together with Gauteng's municipalities, consider the observations, findings, and recommendations contained in this report.

Twelve key issues were synthesised through the work of the Committee, including:

- *A dedicated vision for each region*
- *Leadership*
- *Developmental local governments vs compliance*
- *A business approach to municipal services*
- *Evidence based policy and decision-making, monitoring and evaluation*
- *Accountability and oversight*
- *National / provincial support (Section 154)*
- *Political Stability to Enhance Development*
- *The future of district municipalities*
- *Cooperative governance*
- *The Local Government Financial Framework*
- *Transparent, fair, value for money, competitive procurement (ethical)*

Key elements of each of these issues are discussed in the figure overleaf.

In concluding, it should be noted that the Committee is of the view that urgent steps must be taken if the Premier's 2020 vision of 'Inclusive Growth and Shared Prosperity' is to be realised. As he indicated: 'The future of our country and our province is in our hands.' This calls for individual and collective action in strengthening municipalities,

improving leadership and ensuring effective implementation of programmes to deliver the society envisioned in our Constitution, one where the achievement of human dignity, equality and freedom is realised.

The Committee hopes that the aspects and recommendations raised in this report will be gainfully utilised by Gauteng CoGTA, provincial government and national government, to put its municipalities on a trajectory of visible improvement to the benefit ultimately of all communities in the province. This responsibility is indeed in their hands!





### A DEDICATED VISION FOR EACH REGION

- There are many similarities between the 11 municipalities, however each one has distinct set of issues and unique operating environment.
- While each municipality has to fit into overall vision of GPG, they also require a distinct vision based on their unique characteristics.
- A 'one-size-fits-all' approach would not necessarily be effective.
- Role of CoGTA to ensure provincial and national vision is reflected in municipalities.
- District vision must be aligned upward and downward to each LM. Focus will be according to regional priorities. Targets must be clear and monitored.

### A BUSINESS APPROACH TO MUNICIPAL SERVICES

- Municipalities are not pure business (as in a private sector business) where pure profit underpins a business. Quality of life and services, are the 'profits' of a municipality.
- Trading services though require a business-like approach which was not evident at most municipalities.
- The profits derived from trading services such as water and electricity, sewerage and refuse removal are greatly reduced by not adopting a business-like approach. Tariff modelling is therefore compromised.

### LEADERSHIP

- The issue of leadership both politically and administratively has to be dealt with systematically with specific goals in a long-term developmental plan to which the leadership must strive to achieve. The goals must be both over the period of an electoral term as well as over an extended period.

### EVIDENCE-BASED POLICY AND DECISION-MAKING, MONITORING AND EVALUATION

- The lack of research capacity at Districts prompted the Committee to look at GPG and CoGTA in particular to establish that there is also a lack of this vital resource at provincial level.
- The result of this condition is that very little decision-making, or policy planning, is based on solid data and dedicated research for specific areas.
- The default modus operandi is therefore reactive decision-making rather than long-term strategic planning.
- For all municipalities, the reporting trend is to report activities that GPG then reacts to. This 'after-the-fact' method has allowed municipalities to make many ill-advised decisions, where GPG could have provided better guidance or intervened.
- GPG and the municipalities must strive to make evidence-based policies and decisions.

### DEVELOPMENTAL LOCAL GOVERNMENT VS COMPLIANCE

- Many provincial and national departments focus primarily on compliance.
- Compliance is a non-negotiable aspect of good governance.
- However, it was noted that compliance vis-a-vis the developmental trajectory of an area must be seen collectively.
- It must also be considered that compliance does not always translate into positive growth for an area unless other important factors are considered.
- This principle is well captured by the establishment of the Cities Support Programme within National Treasury.

### ACCOUNTABILITY AND OVERSIGHT

- The administrative-political interface emerged regularly during the Inquiry as a sensitive area that officials were reluctant to discuss candidly.
- Most officials tried to convince the Committee that the interface was healthy and that their political principals were upholding the legislative requirements.
- The Committee examined the issues of unfunded budgets (as one example) and were able to deduce that:
- The role of Municipal Managers in submission of unfunded budgets raised questions about accountability of accounting officers.
- The oversight role of the political leadership came into question.
- The political will of municipal Councils to make tough choices was questioned.
- The political-administrative interface to set out an objective (a funded budget) and the role of each to achieve the objective was examined.

### NATIONAL / PROVINCIAL SUPPORT (SECTION 154)

- When municipalities were asked if they enjoyed sufficient support from national and provincial government to deal with their challenges, in most instances they felt unsupported.
- The role of national and provincial government to fulfil its mandate in term of Section 154 of the Constitution has been incorrectly applied for a long time.
- The instance of Merafong City in relation to S154 support is interesting in that for several years the municipality was having to account for progress in relation to areas of support identified as a part of S154 support. The accountability should be the other way around.
- Section 154 is never activated. It is instead an ongoing, never-ending, responsibility on national and provincial government to provide support to every municipality. The responsibility for Section 154 is not a CoGTA responsibility. It is a GPG responsibility that requires every provincial department to be asking what support they are providing to municipalities.
- Coordinate targeted support.

### COOPERATIVE GOVERNANCE

- The work of the Committee focused a spotlight on the effectiveness of cooperative governance in South Africa.
- After the first democratic elections in 1994, government was faced with the challenge of promoting cooperation and intergovernmental relations, as provided in Chapter 3 of the Constitution.
- Section 41 of the Constitution encourages the three spheres of government to cooperate with one another in mutual trust and good faith.
- While every component of government has a responsibility to fulfil this mandate, CoGTA should serve as the custodian of ensuring this happens effectively.
- If municipalities are faced with a problem, national and provincial CoGTA should drive cooperative facilitation to address this.
- The previous 'IDP Week' method that the Department used as a single point of coordination (national / provincial / local) prior to municipalities adopting their IDP/budgets should be brought back and perhaps aligned to the District Development Model.
- Transparency of coalition agreements is critical.

### THE FUTURE OF DISTRICT MUNICIPALITIES

- With regard to district municipalities, the overriding question that kept emerging was, 'where to from here?'
- District municipalities in an urbanised province like Gauteng, were established to:
  - Play a predominantly coordinating role for its locals,
  - Provide capacity where needed,
  - Be the strategic and research base for its local municipalities,
  - Drive the regional Growth and Development Strategy.

### THE LOCAL GOVERNMENT FINANCIAL FRAMEWORK

- According to the report of the Auditor-General (2018/19), only one of the 11 municipalities in Gauteng can be categorised as being in good financial health while the remaining 10 are either 'of concern' or 'requiring intervention'.
- In July 2020, the AG expressed the view that 'there is a financial cul-de-sac that many of the local municipalities and districts have already reached across the whole country, with a few and limited exceptions.'
- Twenty-two years after the 1998 Local Government White Paper we have extensive experience and data that show that the Local Government Fiscal Framework (LGFF) has fallen out of sync with the economic and social conditions that prevail in South Africa today.
- The three sources of funding for a municipality i.e. own revenue, equitable share of national revenue, and other funding sources show that municipalities are unable to collect on own revenue, that the equitable share does not bridge the shortfall-gap adequately and that other funding streams are strained and limited.
- CoGTA must champion a review of the LGFF and ensure that the District Development Model addresses both the financial funding model of local municipalities, and regional economic development through a single point of coordination of all three spheres. The FFC would play a pivotal role in this regard.

### POLITICAL STABILITY TO ENHANCE DEVELOPMENT

- The experience at City of Tshwane and City of Johannesburg has shown how this arrangement impacts on the administrations.
- During the engagements with the administrations, it was evident that officials were being cautious in spelling out the impact of political stability on the administration.
- While political parties contested for majority coalitions, many crucial decisions could not be taken by Councils that were unable to table important reports for resolution.
- The Committee recognised that the need for a coalition government is an electoral outcome therefore it is the right of political parties to enter into coalitions.

### TRANSPARENT, FAIR, VALUE FOR MONEY, COMPETITIVE PROCUREMENT (ETHICAL)AL

- With regard to matters of procurement, the Committee found that much needs to be done to improve compliance and capacity of suitably skilled and ethical managers in supply-chain departments in municipalities.
- The value-for-money that municipalities derive from procurement is often questionable in relation to market related costs.
- Tightening up of supply-chain management will drastically reduce unauthorised, irregular, fruitless and wasteful expenditure.
- While transparency in procurement is challenging in some ways, the provincial drive to implement the Open-Tender system must be continued and passed on to municipalities. It will take time for such a system to mature, but it will bear long-term benefits.
- National and provincial government must provide strong and clear leadership in relation to the 'Thirty-Percent- Local' spend. Every municipality engaged expressed concerns about interpretation and implementation.
- The most significant 'red-flag' was in relation to emergency procurement. The problems with expenditure on Covid-19 bears testimony to this.
- With time and resources, the Committee would have conducted a more detailed investigation on the use of Regulation 32 and Regulation 36. CoGTA should undertake this.

## 12 KEY ISSUES





# INTRODUCTION



*“Action without vision is only passing time, vision without action is merely daydreaming,  
but vision with action can change the world.”*  
Nelson Rolihlahla Mandela



# Background

Prior to the establishment of the Committee of Inquiry (COI) into municipalities in Gauteng, the province had faced an unprecedented situation in South Africa’s democratic history. In 2016, local government elections resulted in four of Gauteng’s 11 municipalities not having a clear majority party winner. Two of the four municipalities were able to form coalition governments while the other two formed minority coalition governments, relying on support of a party outside of the coalition to attain a majority. This period was also marked by substantial societal mobilisation against corruption, inequality, poverty and unemployment. The upsurge of discontent across the country is considered a key factor in the resignation of President Zuma in 2018 as well as major changes in the national leadership of the governing party (the African National Congress) and its official opposition (the Democratic Alliance).

In Gauteng, there were a number of specific causes of general unrest. The first of these was the loss of R51 562 568.00 and R77 374 602.00 in Merafong City Local Municipality and West Rand District Municipality respectively, as a result of the collapse of the VBS Mutual Bank. The total loss nationally to government institutions, through the VBS saga, was over R1.2 billion. The second issue was the deployment of South African National Defence Force (SANDF) troops to assist Emfuleni Local Municipality in stemming the flow of raw sewage into the Vaal River, the main source of drinking water for Gauteng and parts of the North West Province. This spillage, of 150 million litres-a-day of raw sewage into the Vaal, was preceded by the collapse of municipal finances. The third key issue to note is the economic recession that was faced by the country, including the associated job losses and hardship in 2017. The economy contracted for two quarters: -0.3% in the last quarter of 2016 and -0.7% in the first quarter of 2017. This situation was worsened when South Africa was downgraded by credit rating agencies. The final challenge was the crippling five week strike in the Rand West City Municipality during which period residents were without services. This strike

took place after a dispute about salary increases as a result of re-categorising the municipality to level 6, following the merger of Randfontein and Westonaria Local Municipalities in 2016.

The challenges were broadly outlined by the Premier of Gauteng in the 2020 State of the Province Address:

*“We are now at a crossroads, where we can either find pathways to inclusive growth and shared prosperity or descend further into the abyss of extreme poverty, unparalleled inequality and consequent social unrest. The future of our country and our province is in our hands.”*

It is against this background and general concern with the functioning of local government that the Member of the Executive Council of Gauteng (MEC) Lebogang Maile took action, creating a Committee of Inquiry to assess local government in Gauteng. The Committee, in the course of its engagements with officials and other stakeholders in each municipality, identified 12 key issues of concern. These are detailed in further chapters. However, in its early discussions the members of the Committee identified leadership and public accountability to be key concerns of society, requiring intense focus during the engagements. This leadership, to ensure the effective implementation of visions and plans, is a key issue raised throughout the report, and remains critical in ensuring that implementation is actioned and visions are realised.

## Establishment of Committee

On 20 August 2019, the Gauteng Provincial MEC for Human Settlements, Urban Planning and Cooperative Governance and Traditional Affairs announced the establishment of a Committee of Inquiry to assess the state of municipalities in Gauteng. The Committee was tasked with the responsibility of examining the performance and internal affairs of municipalities, looking at sound financial governance and viability, institutional capability, good governance, public participation/community engagement, effective service delivery and whether municipalities are fulfilling their constitutional mandate. The MEC appointed Mr Trevor Fowler as the Chairperson with seven additional members serving on the Committee. The Members of the Committee are reflected earlier in the report.

## Legal Basis for the Inquiry

In 2019, the Auditor-General of South Africa (AGSA) released a consolidated report on the 2017/18 financial year of audit results in the Gauteng Province. This report indicated a regression in the audit outcomes of Gauteng municipalities, which was a clear cause for concern. The MEC, as the executive authority, deemed it necessary to establish an independent Committee of Inquiry in terms of the Public Finance Management Act (PFMA) Regulation 20.1, to investigate the slow progress in the overall performance and institutional development of the municipalities and recommend a different, cost effective, comprehensive, and systematic approach to municipal governance.

## Committee and Commissions

The Committee of Inquiry established by the MEC partially utilised the staff of the Department of Human Settlements, Urban Planning and Cooperative Governance and Traditional Affairs as the secretariat. During the course of the engagements with municipalities and stakeholders the COI was often referred to as the ‘Commission of Inquiry.’ It is important to note that there are significant differences between a ‘Committee of Inquiry’ and a ‘Commission of Inquiry.’ The latter has judicial powers, including the power of subpoena with extensive research, investigative and legal support. On the other hand, a Committee of Inquiry conducts its work by gathering evidence through interviews of senior personnel and information collected by request from the stakeholders and institutions with which it interacted. Consequently, important areas such as fraud and corruption could not be fully investigated. Where prima facie evidence was found or suspected, these are brought to the attention of the relevant departments and authorities. The PFMA (Part 8), Regulation 20.1 offers the following definition for Commissions and Committees of Inquiry:

COMMISSION	COMMITTEE
“Commission” means a commission of inquiry appointed by the President or the Premier of a province to investigate a matter of public concern, and does not include any permanent commission, board, council, committee or similar body, whether appointed pursuant to any law or otherwise.	“Committee” means a committee of inquiry appointed by the executive authority and includes an interdepartmental committee of inquiry, but does not include any permanent commission, board, council, committee or similar body, whether appointed pursuant to any law or otherwise.

The Committee relied on the management, legal and local government experience and knowledge of its members to draw attention to the many pieces of legislation that regulate local government and the country as a whole. The most important pieces of legislation that the Committee referenced are listed in Appendix 01.



## Terms of Reference

The work of the Committee was guided by a Terms of Reference which directed that it inquire, make findings, report on and make recommendations to the MEC concerning the following, guided by the Constitution, relevant legislation, policies and guidelines:

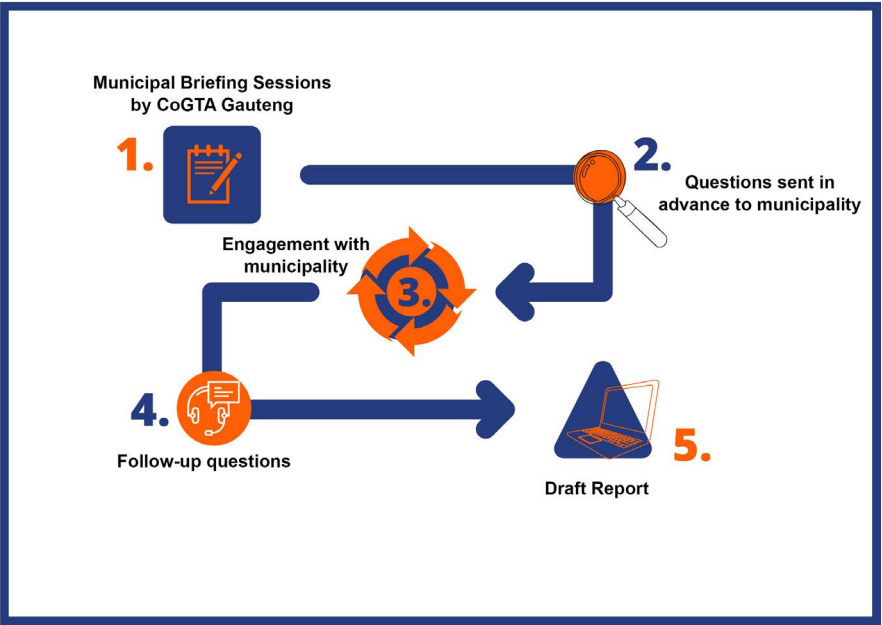
- *Whether and to what extent municipalities are fulfilling their constitutional mandate as outlined in Section 152 of the Constitution of the Republic of South Africa, 1996, which is to:*
  - *Provide democratic and accountable government for local communities;*
  - *Ensure the provision of services to communities in a sustainable manner;*
  - *Promote social and economic development;*
  - *Encourage the involvement of communities and community organisations in the matters of local government; and*
  - *Provide a safe and healthy environment.*
- *Whether and to what extent the Gauteng Provincial Government, within the systems of co-operative governance, is fulfilling its constitutional responsibilities in terms of Section 154(1) of the Constitution which dictates amongst others, that provincial governments, by legislative and other measures, must support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their functions.*
- *To conduct an inquiry into the following:*
  - *All allegations of maladministration, fraud, corruption or any other serious malpractices that have occurred or are occurring in municipalities.*
  - *Why there is minimal progress, in relation to the abovementioned pillars of local government?*
  - *Why municipalities are unable to spend the Municipal Infrastructure Grant?*
  - *The primary causes of violent service delivery protests.*

The complete Terms of Reference is contained in Appendix 02.

## Methodology and Work Schedule

The Committee commenced with its work in September 2019, starting with the West Rand District and its local municipalities, and concluding with the City of Tshwane in September 2020. The Committee adopted the following methodology to conduct its inquiry:

Figure 1: Process Adopted by the Committee for Engagements with Municipalities



Since its inception, the Committee met over 50 times between September 2019 and October 2020. A total of 25 of these meetings were physical face-to-face meetings while 26 meetings were held as virtual meetings as a result of the national lockdown due to the Covid-19 pandemic. A full list of meetings held is contained in Appendix 03.

Figure 2: List of Committee Meetings



In relation to the Terms of Reference noted above, the Committee was able to obtain a global view of all the areas to be looked into. However, given limited investigative powers and resources, it was not able to conduct a detailed investigation into fraud, corruption, and maladministration. Areas that did raise concern have been flagged for further investigation by the Department. The advent of the Covid-19 pandemic also curtailed public consultation, which would have been important to correlate with the reports presented by municipalities. The Committee did solicit information into public protests, but without public engagements the observations and findings in this regard were limited.

Once the Committee had concluded the draft reports for the district municipalities and their locals, and the metropolitan municipalities, these were sent to the relevant municipalities for comment. Responses were received from the City of Johannesburg and City of Ekurhuleni. The Committee also worked from information provided by municipalities and these were corroborated by available data from provincial and national departments, as well as from SALGA.

## The Five Pillars and Back to Basics

The Back to Basics (B2B) programme was adopted as a government wide programme on 18 September 2014, during a Presidential Local Government Summit. The B2B focus areas became the key focus areas for the Committee of Inquiry. The synergy between the focus of the Committee and the B2B can be seen in the table below.

Table 1: Back to Basics and COI Focus Areas

No.	Back to Basics Focus Areas	Focus Areas of the Committee of Inquiry
1	Put people and their concerns first and ensure constant contact with communities through effective PUBLIC PARTICIPATION platforms.	Public Participation
2	Create conditions for decent living by consistently DELIVERING MUNICIPAL SERVICES to the right quality and standard. This includes planning for and delivery of infrastructure and amenities, maintenance and upkeep, including the budgeting to do this. Ensure no failures in services and where there are, restore with urgency.	Service Delivery
3	Be WELL GOVERNED and demonstrate good governance and administration - cut wastage, spend public funds prudently, hire competent staff, ensure transparency and accountability.	Good Governance
4	Ensure SOUND FINANCIAL MANAGEMENT and accounting, and prudently manage resources so as to sustainably deliver services and bring development to communities.	Sound Financial Management
5	Build and maintain sound INSTITUTIONAL AND ADMINISTRATIVE CAPABILITIES administered and managed by dedicated and skilled personnel at all levels.	Institutional Capabilities

## The Key Considerations of the COI

A number of key considerations were detailed by the Committee. These are listed below.

Firstly, leadership considerations include whether the municipality has a clearly defined direction; whether it considers the objective conditions in the municipal environment; whether there is support from stakeholders such as the community, council, management and staff; and finally, whether there is an understanding of the intricacies of the municipal environment and how to effectively enable implementation.

Public Accountability considerations include whether the leadership and the management of the municipality assumes responsibility; are they responsive to the concerns of the residents; is there transparency in how it conducts its affairs; whether they strive for consensus with society through public involvement in the identification of the needs of communities, the planning, decision-making and implementation of plans; and whether the leadership and management feels accountable to the residents and communities within its jurisdiction.

Considerations for Good Governance include whether there is a developmental vision; developing a long-term strategy and road map from the vision; accountability to the public; adherence to a judicial framework; public participation in the decision-making and affairs of the municipality; transparency, consistency and fairness in the decisions, development and implementation of policy; understanding the objective conditions in the environment; and most importantly, measuring and assessing progress within the constraints or opportunities of the objective

conditions of the environment in order to achieve goals towards the municipal vision.

The key considerations examined for Sound Financial Management are liquidity, operating capital, accounting records, and ensuring that revenue is properly recorded and deposited in the municipality's bank account regularly.

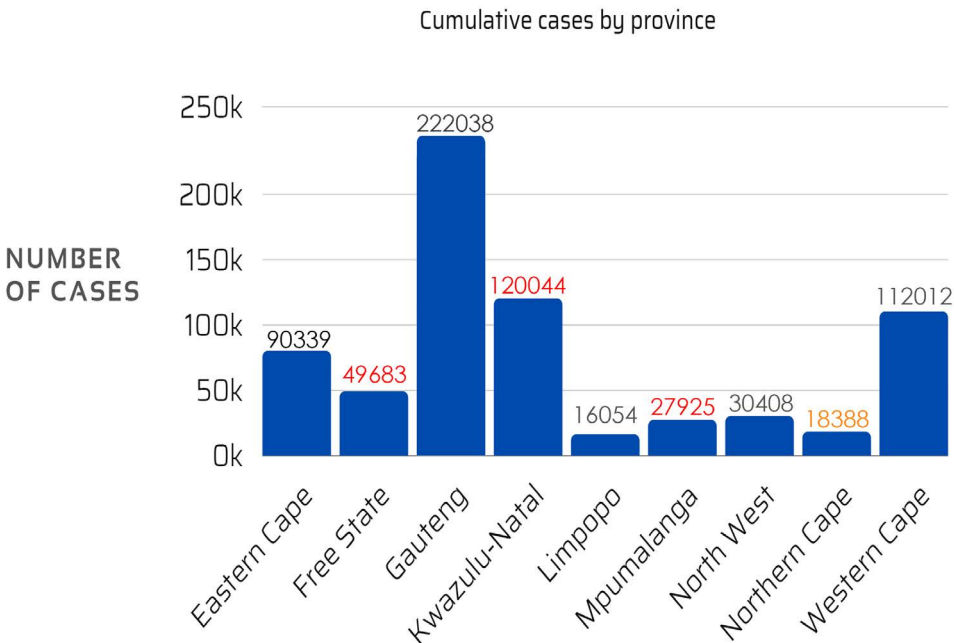
Considerations assessed for Service Delivery include perceptions of service delivery which are scientifically surveyed by the Gauteng City Region Observatory measuring the perception of people on their services, including the affordability of tariffs, the fairness in delivery and areal distribution of services, the reliability of services and the quality of the product the service delivers.

Finally, key considerations for Institutional Capability include the systems which support the service delivery objectives; the effectiveness and efficiency of the staff and management of the municipalities; the systems of oversight, monitoring and evaluation to measure and assess the progress to the development goals; and finally the capability to solve developmental problems to attaining the municipality's vision.

## The Impact of Covid-19 on the Work of the COI

When the Committee began its work in September 2019, the biggest challenge anticipated was the requirement for intensive engagement with 11 municipalities, most of which were struggling financially at that point. By the time the Committee concluded its work in October 2020, the world was a different place altogether. Gauteng, as the most urbanised province in South Africa, has been one of the hardest hit by the Covid-19 pandemic and the eventual impact on Gauteng municipalities is likely to be very significant. The Committee endeavoured to gauge the financial and social impacts of this pandemic, but by the conclusion of the report, the pandemic was still prevalent, and a period of great uncertainty still exists.

Figure 3: NICD Covid-19 Daily Report (08 October 2020)





# About the Report

*Part One* of the report includes a foreword by the MEC and message from the Chairperson of the Committee. It also contains an Executive Summary highlighting the central points that are covered in more detail in the report, and the key issues emanating from the work of the Committee.

*Part Two* of the report covers an introduction, the background to the establishment of the Committee, the legal basis for doing so, the Committee's methodology and work schedule and other key considerations.

*Part Three* of the report details key observations, findings and recommendations for each of the five focus areas investigated by the Committee. These include sound financial governance, institutional capabilities, good and cooperative governance, public participation and community engagement, and effective service delivery.

*Part Four* of the report includes the Conclusion and all relevant Appendices.

It should be noted that this report is based on the Committee's analysis of the information with which it was supplied, through engagements with municipalities, provincial and national government and other relevant stakeholders. A significant amount of information was obtained, analysed and synthesised by the Committee in order to reach the conclusions and recommendations stated in the report.







## SOUND FINANCIAL GOVERNANCE

*“Concern for man and his fate must always form the chief interest of all technical endeavours.  
Never forget this in the midst of your diagrams and equations.”*  
ALBERT EINSTEIN

---



# Sound Financial Governance

Sound financial governance is essential for all municipalities and the overall sustainability of the local governance system. Gauteng’s position as the economic hub of South Africa significantly increases this responsibility for all municipalities and, to a greater degree, for the three metropolitan municipalities. This is as a result of the concentration of economic activity within these municipalities, and their sizeable contribution to the economy of the province and the country as a whole.

The metropolitan municipalities of Gauteng accounted for 30% of the South African Gross Value Added (GVA) in 2013.<sup>1</sup> The broader city region including the Emfuleni, Mogale City and Rand West City (RWC) local municipalities accounted for 45% of the national economic output.<sup>2</sup>

The contraction in the manufacturing sector, and particularly in the manufacture of steel, has led to significant decline in the regional Gross Domestic Product (GDP) of the Sedibeng district area, from its high of 7% in 2011. Sedibeng contributed 5% of South Africa’s manufacturing value-add in 2015.<sup>3</sup> The manufacturing value-add growth rate for Gauteng had slowed dramatically to an average of 0.05% in the four years between 2012 and 2015.<sup>4</sup> This includes the manufacturing hub of the West Rand. The overall economic decline had continued until the sharp contraction in the economy as a result of the Covid-19 pandemic.

The metropolises aside,<sup>5</sup> Gauteng is a province that has high urban densities in the form of large towns that have the potential to evolve into cities themselves. Two such urban areas are at the core of two local municipalities in the province. Mogale City Local Municipality in the West Rand District is concentrated around the large town of Krugersdorp, and its local economy is underpinned by mining and manufacturing. Emfuleni Local Municipality (Emfuleni) in the

1. Gauteng Province Socio-Economic Review and Outlook 2016.

2. Gauteng City Region Observatory.

3. Gauteng Socio Economic Survey, pps 24 and 28. Gauteng’s manufacture value-add is 41% of national and Sedibeng contributes 12% of that.

4. Ibid, p24

5. Gauteng is contrasted to the overwhelmingly rural Limpopo; North West; Northern Cape; Free State and Mpumalanga. Kwazulu-Natal, the Eastern Cape and the Western Cape are the location of four of the eight metropolitan municipalities while the Free State has one.

Sedibeng District has at its core Vanderbijlpark and Vereeniging, the result of an industrial hub that had been driven by a now rapidly declining steel industry. The financial sustainability of all municipalities is linked to their underlying local economic capabilities that translate into municipal revenue.

Historically evolved realities suggest a range of difficulties across municipalities in the province. The approach taken by the Committee is broadly generic but does consider the differences that present themselves in the financial governance of local, district and metropolitan municipalities. In line with the overall TOR of the COI, the focus was on extracting the central core issues that are relevant to most municipalities. Specific examples of the challenges and difficulties are provided as illustrations where relevant.

Some trends in these difficulties and challenges were evident prior to the arrival of the Covid-19 crisis and have been sharply exacerbated by it. Others are expected to emerge as a result of the crisis, placing greater strain on the finances of Gauteng municipalities.

The service delivery and technical endeavours actually achieved by municipalities are a product of many factors, including how the municipal finance value chain is managed in order to deliver the municipality’s chief interest: improving the quality of life of its residents. This includes addressing ‘leakages’ from the budgeted amounts relating to the level of efficiency of expenditure management in achieving delivery, such as inefficient procurement. It also includes revenue and collection choices that lead to forfeited revenue. Examples here include a lack of fiscal effort, such as poor billing practices and debt management. Both of these aspects of the revenue and expenditure equation are within the ambit of accountability of municipal councils and their financial

administrations. The policy constraint on the fiscal potential of a municipality lies outside of its revenue legislative-making mandate. This includes the

## The Role of GPG and NT in Municipal Financial Oversight

- Section 216 (1) of the Constitution requires that legislation create the NT “and prescribes measures to ensure transparency and expenditure control in each sphere of government...”
- The MFMA is the legislation applicable for the municipal sphere of government. Section 5 (1) of the MFMA states that the NT must “enforce compliance with the measures established in terms of section 216 (1) and to “promote the object of [the MFMA]...with in the framework of co-operative government....”
- To promote the objects the NT exercises oversight over municipal finances by monitoring and investigating but may not intrude. The NT is meant to only provide advice and guidance.
- The exception is the withholding of funds if there is ‘persistent and material breach’ of Section 216 (1) requirements established by the MFMA and the NT framework.
- The GPT must “assist the NT in enforcing compliance with the withholding of funds and monitor compliance with the MFMA by municipalities, the preparation of budgets and their implementation.”
- In terms of Section 5(4)(c) of the MFMA, a Provincial Treasury “may exercise any powers and must perform any duties delegated to it by the NT in terms of this Act.”
- Section 5(8) requires that “A provincial treasury must submit all information submitted to it in terms of this Act to the NT on a quarterly basis, or when requested.”
- Section 6 of the MFMA permits the Minister of Finance to “delegate any of the powers or duties assigned to the NT in terms of this Act to [sub-section (1)(b)] the MEC responsible for a provincial department, as the Minister and MEC may agree.”

6. Section 229 of the Constitution of the Republic of South Africa, 1996, states that subject to some restrictions (not of relevance here), ‘a municipality may impose in terms of sub-section (1) (a); rates on roperty and surcharges on fees for services...; and (1) (b) if authorised by national legislation, other taxes, levies and duties appropriate to local government or to the category of local government into which that municipality falls...’ Municipalities may not impose national taxes (Income Tax, VAT, GST and Customs Duties). Section 2(1) of the Local Government Municipal Property Act No. 6 of 2004 permits unicipalities to ‘levy a rate on property in its area.’ Section (2) requires that ‘A municipality must exercise its power to levy a rate on property subject to (3) (a); Section 229 of the Constitution and to the (3) (c); the rates policy it must adopt in terms of the LG Municipal Property Act.’ As stated Section 229 requires that any additional ‘tax’ such as the local business tax currently under consideration by the National Treasury (NT), may require the introduction of national legislation to enable and regulate the municipalities in the levying of this new tax , if adopted as government policy.

7.A Critical Evaluation of Local Government Equitable Share; Public Research Institute, pp 58-69.

design of the Equitable Share (ES) formula that relates to the allocation of national revenue to individual municipalities. This is a responsibility of the Financial and Fiscal Commission (FFC) accountable to Parliament.

Of the revenue forfeited, only the matter of low tariffs may be attributed, in part, as being outside of the control of the municipality. This is as a result of regulatory bodies such as the National Energy Regulator (NERSA) being involved in their approval. Similarly, structural obstacles or policy constraints on fiscal levels include: whether a revenue earning function is assigned to, for example, a district municipality; the taxes that municipalities are permitted to raise (property rates);<sup>6</sup> and the priority given to local government in the allocations made vertically by sector departments.

A further revenue impact flows from the upper limit on the tariff to be charged by municipalities to its customers as set by NERSA, compared to the lower limit set on tariffs that Eskom determines for its direct customers within the same municipalities. An example of this is the supply of electricity directly by Eskom to Soweto in Johannesburg (see Public Participation Chapter).

Overall, the weight of responsibilities of municipalities is perceived to be at a disproportionately greater level than the division of revenue allocations. This is illustrated by the finding that municipalities nationally had an operational funding shortfall against own revenue of R36 billion in 2019. An additional shortfall of R20 billion relating to capital expenditure was estimated. The upper limit of this combined estimate was R68 billion.<sup>7</sup>

Overall, the weight of responsibilities of municipalities is perceived to be at a disproportionately greater level than the division of revenue allocations.



Similarly the allocation of funds to provincial departments to perform housing development and primary health care functions, do not necessarily reflect where the function is actually performed and the costs borne.<sup>8</sup> For instance, Johannesburg has 80 clinics that it operates and funds, compared to the 12 of the Provincial Health Department.<sup>9</sup> The Gauteng Department of Health (GDH) ran 372 clinics throughout the province in 2019. The budgetary transfer to the GDH for the 2019/20 financial year was R51 billion. Of this, R645 million was allocated to the municipalities for primary health care, HIV and AIDS and Emergency Medical Services.<sup>10</sup> The funding for primary health care functions to municipalities is disproportionately low in comparison to the costs of the function performed.

The Constitution requires the national and provincial government ‘to assign to a municipality and subject to agreement and subject to any conditions, the administration of matters listed in Part A of Schedules 4 and 5...,’ to the Constitution. The function must ‘necessarily relate(s) to local government,’ and ‘that matter would most effectively be administered locally [and] that the municipality has the capacity to administer it.’<sup>11</sup>

The role of the Gauteng Provincial Treasury (GPT) in exercising oversight and providing support to the local and district municipalities was looked at to determine the impact on municipal financial governance. The legislative role and function of the GPT is contained in the MFMA and is executed within a framework prescribed by the National Treasury NT. It therefore acts largely as an ‘agent’ of the NT, in relation to municipalities within Gauteng.

The roles of both the national (CoGTA-N) and Gauteng (CoGTA) Departments of Cooperative Governance and Traditional Affairs in supporting the municipal finance

value chain is dealt with more directly in the section on Good and Cooperative Governance. In this chapter, the role of the (NT) is more directly assessed. The GPT does not support the metropolitan municipalities as this is beyond its mandate. The role is largely confined to monitoring in conjunction with the NT.

Areas of focus in this chapter are the budget, revenue generation including debt management, and, broadly, cost and expenditure as well as loss or ‘leakage’ management. The management of grants and procurement complete the picture. Within each of these technical endeavours, evidence was received on the state of finances within municipalities and challenges were highlighted.

### Committee Observations

Provincial government has a budget and Integrated development Plan (IDP) assessment function as part of its oversight role over local municipalities. It does not have this role in relation the metropolitan municipalities. This is left largely to the NT, although GPT does conduct simultaneous municipal Standard Chart of Accounts (mSCOA) in-year monitoring of local municipalities and metros with the NT. Municipal budgets are assessed and commented upon prior to their being tabled, and upon adjustment. Despite the GPT indicating reservations as to the unfunded status of budgets as an outcome of its assessments, municipal councils continue to pass these budgets.

The rectification of unfunded budgets is within the control of the municipalities with appropriate assistance by the GPT. However, the GPT does not have any direct mechanism to enforce compliance based on the distinct accountability of

the municipal sphere of government. This is the case too for the NT in relation to the metropolitan municipalities. This is discussed more fully in the Cooperative Governance Chapter of this report.

Local municipalities approve budgets that demand a high and unrealistic level of revenue collection.

The inability of local municipalities to produce funded budgets at the first attempt is exacerbated by several different political and administrative factors. The budgeting process in most municipalities is driven largely by compliance requirements and to meet prescribed submission deadlines. This detracts from a more considered approach based on the unique developmental agenda and individual chief interests of each municipality. This may be a contributing factor to the number of local municipalities that produced unfunded municipal budgets (not supported by monetary flows) for the years up to and including the 2018/19 financial year.

The easy escape route in adopting the revenue projections by those local municipalities that have passed unfunded budgets is to place unrealistic expectations on the administration to sustain the collections at the budgeted levels. While higher collection targets could drive higher levels of performance improvements in collections, these should not be unrealistic as the result is a vast imbalance between collections and actual expenditure.

In contrast, the budgets of all three metropolitan municipalities for the 2018/19 year were based on realistic projected collection levels. This is a result of relatively stable administrations despite all of the metropolitan municipalities being governed by coalition councils. Ekurhuleni had a collection rate of 95%, while the two other metropolitan municipalities posted a surplus for 2018/19.

A core challenge for many of the local municipalities is insufficient focus during the budgeting process to make difficult yet pragmatic decisions that would deliver a fully funded budget. Very often the approach is to approve expenditure levels that are not consistent with realistic revenue levels. In the case of metropolitan municipalities, the historic basis for their funded budgets is the matching of expenditure to realistic expected revenue flows based on billings projected for the year.

The budgets of many local municipalities are based on unrealistic projected collection levels of revenue and hence often contrary to benchmarking the projections based on the actual collection levels from the previous financial years. In the case of the metropolitan municipalities, strain on collection levels had begun to manifest by the end of the 2018/19 financial year. This led to the revision of revenue collection projections that were matched with simultaneous adjustments to expenditure to align to the anticipated billing and collection.

An additional factor that impacts negatively on revenue projections is the accumulation of uncollected revenue from year to year. This is not factored into the revenue projections for a current year’s budget, impacting on the realistic debt recovery that is anticipated.

Despite the review of IDPs and budgets by national and provincial government, projects and programmes implemented by other spheres of government are often not included in a municipal IDP.

The fundamentals of good budgeting within most local municipalities are often ignored by including programmes and projects in the IDP, Service Delivery and Budget Implementation Plan (SDBIP) and budget that, in reality, will be unfunded during the financial period. The IDPs

8. *ibid*; p52 et seq concludes that an evaluation of the current municipal fiscal framework is not possible without COGTA resolving the allocation of powers and functions between the local and the other two spheres of the government. This considerable variance in the allocation of powers and functions allocated to local municipalities nationally is based on capacity considerations. This is often a substitute for building the capacity of municipalities to assume the function. In Johannesburg the provincial function is performed by the municipality without adequate concomitant monetary flows from the province.

9. Oral representation of clinic numbers at the Sitting of the Committee held via zoom with the City of Johannesburg, 6 August 2020.

10. Gauteng Department of Health Budget Vote 2019/20

11. Section 156 (4) of the Constitution.



and budgets do not sufficiently and effectively capture national and provincial programme activities within a municipality. This is despite the review of the IDP conducted by CoGTA and the GPT. An additional factor may be whether it is possible to include these programmes in the budget dependent on whether their funding is gazetted as an allocation to a municipality.<sup>12</sup>

Once fixed costs are deducted from actual revenue, little of the remaining budget is left for expenditure in local municipalities. In some instances, if the full-costing method is applied, municipalities would have a deficit after deducting fixed costs such as salaries, employee-related third party payments (such as medical aid and pension fund contributions), loan payments and fixed contracted services. Municipalities are therefore using expenditure budgets that are based on revenue that will not necessarily materialise during the budget period.

12. The NT in its submission to the Committee on 14 September 2020 indicated the failure to gazette allocations by a province as a factor in the budgeting and IDP finalisation.

The inclusion of community requests for projects in the IDP, when matched against revenue and expenditure realities, leads to these projects either being postponed or never materialising. There is a need to communicate a more realistic expectation to residents by making the IDP and budget more accessible and so manage expectations relative to budgetary constraints.

The mid-year adjustment budget is indicative of the weaknesses in the initial budgeting decision-making. Rarely, if ever, does a municipality do a realistic or conservative revenue projection, which necessitates an upward adjustment to the budget. The gradual shrinking of own-funded capital budgets has led local municipalities to become totally dependent on grants for capital projects, for example the Municipal Infrastructure Grant (MIG).

Revenue collection from property rates, water and electricity consumption, and waste disposal (services) had shown a decreasing trend by the end of the 2018/19 financial year, which was anticipated to continue in the light of shrinking local economies and growing unemployment. This is a national trend, and the result is increasing local government deficits. In the same year both Ekurhuleni and Tshwane posted moderate surpluses and Johannesburg had a negative revenue variance.

Cyclical and accurate billing of municipal customers for service consumption and property rates and levies is the base of effective revenue collection. Challenges related to bills issued included internal and external factors and the management of the billing system in municipalities.<sup>13</sup> This led to inconsistencies in billing practices with a negative impact on both revenue and the reputation of the billing system.

The external issues relate to access to meters to be read, and incorrect own readings being conveyed by residents. Tampering and vandalism of meters by

communities is prevalent. Invoice delivery failure or delays through the Post Office cause considerable frustration.

A silo approach to the work, including the numerous systems used for billing, indicates a disintegrated revenue value chain. There is a lack of seamless system integration for updating of information on billing systems and processing transactions.<sup>14</sup> Information is not fed to revenue departments frequently and timeously.<sup>15</sup> Customer billing information<sup>16</sup> and property rates data<sup>17</sup> is often not updated regularly. The same is true for information on replaced meters or relating to indigents. For example, in Emfuleni some municipal officials are registered as indigents and some indigents have multiple properties.



13. A billing system can be defined as a combination of software and hardware that receives service usage information, groups this information for specific accounts or customers, produces invoices, creates reports for management, and records or posts payments made to customer accounts.

14. In Ekurhuleni there is inadequate notification and monitoring between the service departments and the finance department. In Tshwane there is a lag between notification to customers and the accompanying journal entries.

15. This includes between the technical and revenue departments.

16. Such as ID, company registration and cell phone numbers, and email and postal address details.

17. Such as the failure to record property improvements, re-zoning, sub-divisions, building alterations or completions, and illegal structures timeously. Property market values are incomplete and inaccurate between the General Valuation and the financial system information. There is a lack of capacity within the valuation units especially in local municipalities



Customer frustration is exacerbated as a result of damaged and faulty meters that are not repaired timeously; incorrect accounts rendered due to incorrect tariff application; and prolonged billing estimates.<sup>18</sup> Estimated accounts are sometimes not transparently understood by customers. In Tshwane, estimates have been necessary as new conventional meters were not properly calibrated when smart prepaid meters were replaced. Clients complain about the raising of deposits as security against arrears as this triggers an increase in their municipal accounts. In Johannesburg, the slow clearing of suspense accounts and resolution of customer queries is of concern. Customer service centre and call centre employees are not efficient in the handling of queries. In mitigation of its billing problems, Johannesburg adopted a regionalisation strategy at the start of the 2019/20 financial year. Regional offices now offer some key services that were not available previously, such as dedicated and skilled billing back office resources.<sup>19</sup>

An emphasis is placed on convenience and self-service to reduce queries and walk-in service requirements. The integrity of the billing system is to be enhanced with the introduction of online capturing of meter readings, application for payment arrangements and applications for new services.

Inconsistent billing is noted in many local municipalities. Merafong City, Rand West City (RWC) and Emfuleni local municipalities present the greatest challenges. In Emfuleni, unregistered housing developments cannot be billed. In Merafong City, some properties are not classified on the valuation roll. Some meters cannot be located or were replaced with prepaid meters, yet bills continue to be issued. There have been instances where the item for refuse removal has reflected different fees in different months. Oddities occur when reservoirs and roads are billed!

In RWC, valuation roll information has not been consolidated for the two original

municipalities. The property values have a direct impact on tariffs<sup>20</sup> and as such this results in a huge revenue loss for the municipality. In Mogale City, the manual maintenance of the valuation roll has led to inaccurate information and is labour intensive. Midvaal indicated that meter readings are not accurate when the meter is poorly visible.

There is a diversity of financial systems in use by different municipalities and some of these are outsourced to be managed by third party service providers. This poses a risk to the municipal billing system and potentially undermines financial viability<sup>21</sup> based on the choice of financial system, and the level of control over the system by the affected municipalities.

Revenue collection by implementing credit control policies in local municipalities is largely dependent on outsourced services for debt collection. This has led to a loss of critical skills in revenue departments in municipalities. Should this function be brought in-house, consideration should be given to human resource capability.

Gains made in revenue collection across many of the municipalities are eroded by the growing debt reality. The situation is worsening and requires urgent resolution. A significant 75% of revenue collected across local municipalities is realised from suburbs, business, including large power users, and government. 85% of the outstanding debt is from household customers representing R49.8 billion of the total R58.3 billion outstanding.

The collection levels, despite being relatively healthy for 2018/19, indicate a poor capacity to implement credit control and debt collection by the metropolitan municipalities. This is reflected in the level of debt outstanding in Johannesburg at

18. Estimates lead to customer complaints relating to billing accuracy increases. These are not always promptly addressed and resolved. Frequent over and under estimations cause a problem when actual readings are obtained. Customers question the integrity of the billing system and are reluctant to pay for metered services. Disputes not resolved on time create mistrust of the municipal billing capability and, in some cases, animosity. There are many problems relating to the time taken to resolve customer queries and complaints.

19. Lesedi has also opted for a regionalisation approach and the introduction of an electronic portal to address a similar set of issues as Johannesburg.

20. The long outstanding mines disputes have led to an estimated revenue loss of R100 million per month.

21. Mogale City Local Municipality is a case in point where the choice of financial system has had an impact on the financial ability of the municipality.

the end of 2018/19, with 80% in the category of debt outstanding for longer than 120 days, and just 4% outstanding for between 90 and 120 days. In contrast, Ekurhuleni had 71% of debt outstanding in the same period, with no amounts outstanding beyond that. Tshwane has 62% of debt outstanding for longer than 120 days.

In many instances the effectiveness of external service providers to improve revenue and to collect on old debt is questionable. The example of MBD/TCR at Emfuleni and Rand West City shows that financial decline was not arrested by the use of this service provider.<sup>22</sup> The 'Right-To-Collect' model used by MBD/TCR is fundamentally flawed.<sup>23</sup> Given the experiences of using this collection model, the value for money derived by the municipality is questionable. The upfront cash injection by MBD/TCR is more akin to a loan and the legality of this model is questionable.

The metropolitan municipalities have not had any notable difference to their revenue from debt recovery, as is illustrated by the 38 third party collectors in Johannesburg. More significant is the extensive use of impairment of debt that indicates the challenge of poor credit and debt control management in the metropolitan municipalities.

There is an anomaly in the determination of impairments by municipalities. For example, Johannesburg did not collect 5% of its target and that should have been impaired in 2018/19. Instead the municipality impaired 76% of outstanding debt and that means that the amount against which impairments are recognised is closer to



22. It appears that no cost benefit analysis of this contractual arrangement was conducted in advance. There appears to have been no difference to the revenue of the municipality despite the engagement of the debt collector.

23. The transfer of the right to collect resembles the sale of a debtor's book when considered in relation to the onerous terms on which a lump sum was advanced; that resembles a loan.

The three metros significantly exceeded their budgeted impairment amounts. The AGSA raised this issue of increasing levels of impairment and writing off of debt as a major concern.

81% as the amount not collected in 2018/19 is generally not pursued for collection.

Johannesburg made provision for the impairment of R20.3 billion of the municipality's debt (including entities) out of a total consumer debt of R26.7 billion in 2019.

Similarly, the debt impairments for Ekurhuleni

were R9.1 billion against a gross debtor's book of R14 billion. The balance of R4.9 billion does not indicate what proportion is in respect of the 2018/19 year. Tshwane made provision for an impairment of R9.7 billion of the municipality's debt (including entities) out of a total debt of R12.8 billion in 2019.

The actual impairments for 2019 exceeded the budgeted impairment amounts significantly for all three metropolitan municipalities of Gauteng. On a consolidated basis, including both the municipality and their entities, Johannesburg exceeded the budgeted allocation by 145%, Ekurhuleni by 277% and Tshwane by 145%. The Auditor-General of SA (AGSA) has expressed concern about the growing level of impairment and the writing off of debt.

The debt impaired is weighted in favour of older debt and indicates an attempt by the metropolitan municipalities to focus on collecting debt outstanding for shorter



periods. The debt impaired by Johannesburg that was outstanding for more than 120 days comprised 80% of its total debt impairment allocation. Only 6% of all debt impaired by Johannesburg was outstanding between 90 and 120 days. In contrast, Ekurhuleni had an impairment allocation of 77% for the same outstanding period, with no allocation for periods beyond that. In the case of Tshwane all of the allocation was in respect of debt outstanding for longer than 180 days. However, the continuation of the trend to impair debt as it ages and recedes in recoverability due to the debt collection capacity of the metropolitan municipalities, is indicated prior to the Covid-19 crisis and has been exacerbated by it.

There are various potential revenue sources that are effectively lost to municipalities and therefore not factored into revenue projection. This includes a margin by private residential estates on the municipal tariff for services.<sup>24</sup> A further example is the provision of parking by the private sector that affects the potential revenue base from parking tariffs. The sale of land for development that is certain and quantifiable is also not factored into the projections. Revenue is lost on water supply by municipalities as a result of mines receiving water licenses or being supplied directly by Rand Water, for instance.<sup>25</sup>

Losses on revenue to bulk purchasers of water and electricity in the manufacturing and mining industries as a result of bypassing the municipality is often justified on the basis of their inability to service the industries effectively, and on the impact of these industries on both the local, provincial and national economies.

The NT is currently reviewing ways of improving the municipal fiscal base by according greater fiscal powers. The development charge framework is being refined and a Local Business Tax is being investigated.

There is a lack of capacity within all municipalities and at all levels of government to determine service tariffs effectively; and in the case of property rates, capacity is almost non-existent.

The deteriorating trends in tariffs reflects the need for more appropriate tariffs as this is a significant factor in revenue underperformance and the recovery of costs to achieve a margin. There is inadequate support from national government to municipalities on this matter. The ambit of the legislation is restricted to new tariffs and processes required to be followed by the NT. NERSA and the Water Boards drive tariff setting and this is a challenge to municipalities in setting cost reflective tariffs with a margin that will still be affordable to customers.

Tariffs are not specifically tailored by all municipalities despite the NT having identified this as an area of revenue forfeit and loss. To this end the NT published a circular in 2019, a consolidated tool and a practical manual to assist with the implementation.

Equitable share allocation assumptions do not adequately address the extent of functions and responsibilities of municipalities.

The City Support Programme (CSP) is supportive of the grant framework, providing support to metropolitan municipalities on their own revenue generational capabilities such as efficient borrowings, the use of developmental charges and appropriate land valuations.

Reform of the CSP by the NT is aimed at enhancing infrastructure, housing and access to private sector financing with the objective of greater economic inclusion and access to services.<sup>26</sup>

24. The charges are in some instances included in the levies charged by private estates or stated separately. The transparency of the disclosure aside, the unregulated nature of this activity is a concern that needs to be examined.

25. The Water Services Act 108 of 1997 gives effect to the constitutional right to access to sufficient water. The Act recognises municipalities as Water Service Authorities with the mandate to manage access to water and the delivery of water services. National and provincial government have a monitoring and oversight role. The obligation to support municipalities in discharging this mandate by building their capacity is an aspect of the overall obligations placed by Section 154 of the Constitution on these two spheres. Section 154 is discussed in the Chapter on Governance that follows.

26. This reform is aimed at addressing the R3.2 trillion spent between 1999 and 2019 with very little economic return.



Both the South African Local Government Association (SALGA) and national CoGTA have indicated that the equitable share allocation assumptions do not adequately address the extent of functions and responsibilities of municipalities. The current manner of division of revenue is also of concern and these have been represented to the Financial and Fiscal Commission.

The deteriorating revenue performance has impacted the ability to pay creditors with average payment periods increasing. This is a particular risk in relation to the Rand Water and Eskom accounts of municipalities. With the exception of Midvaal and Lesedi, the rest of the local municipalities are in arrears with their bulk purchases account with Rand Water. Emfuleni and Merafong City have signed payment arrangements whilst there are no payment arrangements with Mogale City and Rand West City. Emfuleni is not honouring its payment arrangement. Rand Water has engaged the newly appointed Administrator to resolve the payment arrangement that is not being honoured. Merafong City has a two-year payment arrangement for its overdue amount which includes servicing of the current account. The arrangement is not being honoured due to low collection owing to Covid-19. Rand West City cited cash flow challenges due to Covid-19 and agreed to pay as and when they collect.

Again with the exception of Midvaal and Lesedi, the rest of the local municipalities have overdue accounts with Eskom. Mogale City has a reducing overdue account however the rest of the municipal accounts are increasing. Eskom continues to explore direct payments by large power users through securing court orders or judgements if municipalities are not paying. Municipalities were requested to prioritise payment of bulk accounts when they received Covid-19 relief funds.

The bulk purchases accounts relating to Eskom and Rand Water of the metropolitan municipalities are up to date and current. The extent of losses due to maintenance backlogs (technical) and unauthorised consumption is significantly high with all metropolitan municipalities recording water losses of over 30%. It is noted in the context of technical losses that the capital maintenance budgets of all the metropolitan municipalities is at about half the 8% of revenue required to be spent to prevent infrastructure and plant replacement, a significant cause of losses.

The absorption of cost and inflationary pressures as indicated by Ekurhuleni would not arise if the full-costing method is applied. This has implications for the tariff structure, particularly in the case of electricity. The already deteriorating capacity of the revenue base to pay for services before the lockdown, and the full effect on revenue going forward not having been determined, indicates that a greater degree of reliance will



Unauthorised, Irregular, Fruitless and Wasteful Expenditure is a major financial spillage, reflecting financial control, compliance and wider governance lapses

have to be placed on reserves despite NT support.

Illicit usage occurs across the metropolitan municipalities including in suburbs, townships and informal settlements. Growing informal

settlements, particularly in the south of Johannesburg have led to considerable non-technical losses. Illicit connection has placed strain on the electricity infrastructure and caused the need for increased maintenance and replacement of transformers and sub-stations.

Credible and updated indigent registers are not available at many local municipalities. Two components of the increasing numbers of indigent households relate to registered indigents and those that are factually indigent but may not be registered. The growing number of indigent households is a drain on local government finances.

Unauthorised, Irregular, Fruitless and Wasteful Expenditure (UIFW) is a major financial spillage within the municipalities. In Johannesburg, the UIFW in 2014/15 stood at R4 billion and in the 2019 year at R12 billion, up R2 billion from the previous year. Ekurhuleni had an increase of 12% between the 2018 and 2019 years. In Tshwane, irregular expenditure increased by 14% and fruitless and wasteful expenditure by 38% between these years. Unauthorised expenditure declined in Tshwane by 53% in the same period.

The increase in UIFW expenditure over the years reflects financial control, compliance, and wider governance lapses in the entire process of originating, considering and authorising expenditure in order to prevent these from occurring. It also reflects the slow pace of investigating and resolving UIFW with consequences for accountabilities and recovery of funds, aside from the deterrent effect of criminal sanction where appropriate.

In respect of UIFW expenditure, the slow implementation of recommendations from the Municipal Public Accounts Committees (MPAC) is of concern. The legal requirements in this regard must be fully complied with to ensure clean governance. While many issues requiring investigation emanate from MPAC reports, investigations may also be necessary in matters outside of MPAC reports that carry a level of suspicion. Where criminal charges need to be laid or civil action taken for the recovery of money, these are often not being pursued expeditiously. Furthermore, most municipalities have shown deficiencies in their supply chain management.

One of the institutional capability building activities that the MFMA area of the GPT conducts is to build sound financial governance structures such as MPAC, Audit Committees, and SCM Committees. However, most of the focus is on rendering technical support, conducted mainly through training. The relevant monitoring function relates to procurement activities in municipalities such as demand management, acquisitions and disposals, and service delivery compliance. However, compliance levels are low, and the monitoring function is restrictive in that it cannot anticipate a breach of regulations, nor does the capacity building of governance structures appear to have had an impact.

The ability to pay creditors within 30 days is illustrated in the servicing of the bulk purchases accounts without default by the metropolitan municipalities. Despite trade creditors being largely met within the 30-day period (Johannesburg has 80% of its trade creditors as current), the pressures on the already low existing cash flow sensitivities of the municipalities are evident. In Johannesburg, the current ratio achieved in 2019 was 1.1:1 against a benchmark range of 1.5-2:1. The same is projected for the 2020 year.

The cash to cost coverage ratio was anticipated to decline from 48 days in 2019 to 39 days in 2020, with a further decline by 1% projected for 2021. In Tshwane, the current ratio remains precarious having improved from 0.8:1 in 2018 to 0.98:1 in 2019. The cash to cost coverage improved from 1.26 months in 2018 to 1.72 months in 2019. The City of Ekurhuleni and the City of Tshwane were identified by the NT as being in financial distress at the end of June 2019 as a result of these poor ratios.

There is excessive use of deviations from supply chain regulations often as a result of poor planning, fraud or corruption.

Furthermore, most municipalities have shown deficiencies in their supply chain management as indicated by the level of contribution of this area to UIFW. An example is Tshwane, which has a loss of R1.2 billion attributed directly or indirectly to the level of compliance with SCM processes, particularly Section 32 of the MFMA and the

procurement regulations.

The disproportionate amount of irregular expenditure arising from the SCM offices of municipalities is a result of these offices not meeting minimum standards, being inadequately resourced, lacking in segregation of functions, using mainly manual processes, and employing incompetent and unknowledgeable staff especially in key functional roles. Cumulatively this could point to human error as one of the factors in non-compliance. However, more negligent or intentional motives are suspected to exist as well.

The Committee notes that for the 2017/18 financial year, the AGSA found<sup>27</sup> that material non-compliance emanating from the SCM management areas in municipalities nationally increased from 72% to 81%, the highest level reported since 2011/12.<sup>28</sup> A further finding was the inadequacy of attention to the findings on SCM and the indicators of possible fraud or improper conduct, previously reported and recommended for investigation.

The excessive use of deviations from supply chain regulations (Regulation 36) is noted with concern. While the MFMA allows for deviations under specific conditions, in many municipalities deviations are Band-Aids for poor planning, or more insidiously, could be a platform for fraud and corruption.

Regulation 36 and 32 prescripts were found not to be adhered to in Emfuleni despite deviations having been processed through the Bid Adjudicating Committee before being approved by the Accounting Officer.

Regulation 32<sup>29</sup> clearly defines the strict conditions under which a municipality can use a tender from another organ of state in order to procure the same goods or services under exactly the same terms and with the written consent of all three parties.<sup>30</sup> Oversight is needed to ensure the correct application of the regulation. For example, the Auditor-General of SA found that the tender contract entered into between Glad Africa Group, a firm of engineering project managers, and Tshwane did not comply with Regulation 32.

The GPT submitted that manipulation of SCM outcomes is suspected as often regulations are ignored despite the institution previously having been compliant in similar transactions. Documents supporting deviation applications are often received by the GPT after the transaction has been concluded.

Similarly, the comment or views of the GPT on most municipal transactions, whether required or not, seem to have little impact on their approval by municipal Councils.

27. Auditor-General's media release of 26 June 2019 on the audit results of municipalities in 2017/18.

28. For 2017/18, 74% of municipalities nationally had made inadequate follow up on allegations of financial and supply chain management misconduct and fraud. Of these, 45% did not have all the required mechanisms for reporting and investigating transgressions or possible fraud.

29. As a result of the urgency of the matter, and in the absence of a tender award, TCR was appointed by RWCLM using the deviation procedure contained in Regulation 36(1)(a) of the Municipal Supply Chain Management Regulations and the municipality's own Supply Chain Management Policy. The appropriate council resolution was passed in January 2018 and the contract commenced on 1 May 2018. The contract with the debt collector resembled that used by Emfuleni with the same collector. The municipality cited 'lessons learnt,' from that arrangement and distinguished the contract in not obliging itself to take a second tranche of money from the collector after a stipulated period, confining itself to the first tranche of R15 million at inception. Instead the parties agreed to the municipality retaining that option. The use of 'emergency procurement,' in the context of RWCLM citing the Emfuleni-MTB contract as a reference point, indicates the possibility that the municipality had Regulation 32 in mind and wished to circumvent it because of the possible implications of having to fully comply with the requirements of that Regulation which require the consent of all three parties and the same terms of contract.

30. The third party contractor, the municipality using the same contract, and the municipality that originally entered into the contract must all consent. These requirements inform the accountability of all parties.



The GPT expressed frustration at the inability to curtail SCM-originating irregular expenditure and to be influencing the consequence management process. It has the power to report on the matter and bring to the attention of the IGR forum but cannot ensure that the matter is taken further. However, the recent legislation enabling the Auditor-General of SA to make a material finding as a basis to commence action is regarded as positively empowering all actors to hold culpable parties liable.

During engagements with the Committee, all municipalities raised difficulties with the implementation of the 30% local preferential procurement.<sup>31</sup> This included varied interpretations and the perception of the community regarding the implementation of the 30% local spend on procurement.<sup>32</sup> Appropriate procurement regulations issued by the NT in 2017 are required to be applied to tenders identified to promote the policy of preferential procurement. These regulations refer to prequalification and sub-contracting.<sup>33</sup> In some instances, projects have come to a standstill with local contractors demanding a 30% share in projects, not fully understanding the process and governance regarding their participation in tenders to achieve sub-contractor status.

Contracts are extended unnecessarily, and the performance of contracts is not adequately monitored.

The GPT and COGTA had, prior to the national lockdown, discussed the development of a dashboard tool to assist both departments in overcoming the problem of the credibility of the financial information made available in-year. This is to try to close the predictability gap and have an early warning system for financial problems that emerge.

An additional support measure is the annual training conducted by the GPT MFMA team for municipal role players on financial governance key functions, with planning and budgeting being emphasised.

More widely and externally is the leading participation of the GPT in the annual Inter Governmental

Revenue forums. This is seen by GPT as the main platform to escalate and enforce accountability and consequence management of issues identified in the compliance assessments undertaken. The GPT does not have the direct ability to enforce or sanction a municipality. The GPT records that there is renewed focus on more effectively using the existing intergovernmental structures.

The observations in relation to local municipal finances apply equally to the district municipalities of Gauteng, except that districts do not have an extensive revenue base as do the local municipalities and are dependent on allocations from the NT to offset their costs. The following specific observations are made in relation to district finances:

*a) The two Gauteng DMs are not viable as the Auditor-General of SA has expressed concern over their 'going concern' and business continuity status.*

*b) Both DMs have significant outstanding creditors, with the Gauteng Department of Transport (License Fees) being a significant creditor of Sedibeng. The very high cost of employment in the budget, one of the biggest expenses for the districts, is a significant challenge. In Sedibeng, significant disparities in the salaries of staff are an added problem.*

*c) In the West Rand District (WRD) the expensive fire services function is a cash drain as the local municipalities do not contribute*

*to the full extent of the costs. Delays in the national policy on the service delivery model for fire services will affect the funding arrangements accordingly through equitable share adjustments.*

*d) In Sedibeng the high level of contracted services is a significant problem as it indicates a lack of internal capacity despite high staff numbers. There is no significant attention being paid to the economic development potential of the district based on some strategic assets that it has to advance this, such as the fruit market and local airport, and the industrial capacity of the district.*

The GPT is required to assist the NT in monitoring the implementation and compliance with measures established in terms of the MFMA by municipalities and their entities. Where gaps are detected whilst conducting its monitoring function, the GPT renders support that it regards as discharging its capacity building requirement as contained in Section 154 of the Constitution. The Annual Performance Plan of the MFMA team indicates the technical focus of the team. The outcome envisaged is improved fiscal management and compliance towards clean governance and accountability.

## The effect of Covid-19: The 2019/20 Financial Year

Only the Midvaal, Mogale City and Lesedi (regarded as being 'at risk') local municipalities produced fully funded budgets for the 2019/20 year. All three metropolitan municipalities passed funded budgets for the same year.

The Covid-19 lockdown has negatively affected the already deteriorating revenue position of municipalities. There has nevertheless been significant revenue recovery by the end of the 2019/20 financial year, despite the dramatic decrease in economic activity due to the lockdown. Revenue collected against the projections in the adjusted

budgets was 91% for the COE, 80% for the COT<sup>34</sup> and 98% for the COJ. The average collected by the local municipalities in the Sedibeng District was 96%. Both Lesedi and Emfuleni had a collection rate of 99%. Similarly the local municipalities of the West Rand achieved an average collection of 92%. The district municipalities derive over 85% of their revenue from the equitable share allocation from the NT. Their own income has a narrow base of direct service charges based on functions allocated to them, such as firefighting, property rentals and museum entry fees. Revenue is also derived from traffic licensing agency fees and investment income. Their achievement of 'collection' targets are therefore different from those of local and metropolitan municipalities and reflect revenue received. Sedibeng District Municipality (SDM) received 92% of its anticipated revenue and the West Rand District Municipality (WRD) achieved 104%.

For the 2019/20 financial year, the approach of the metropolitan municipalities in setting their projections was to revise revenue collection projections to actual collections from billing achieved in the 2018/19 financial year. Simultaneously, an adjustment in expenditure was undertaken to align to the anticipated billings for the 2019/20 year.

In the case of Ekurhuleni the revenue target was stated to have been determined with reference to actual current billings excluding net debt owing from previous years. However, a decline in revenue in the 2019/20 year had already begun prior to lockdown<sup>35</sup> against a revised revenue target of 94%. The target correlates to the actual collections achieved in the previous year (2018/19). The table below contains the unaudited financial results of the municipalities in Gauteng for the 2019/20 financial year.

31. NT Frequently Asked Questions: The Preferential Procurement Regulations, 2017 were issued by the Minister of Finance in terms of section 5(1) of the Preferential Procurement Policy Framework Act \ No. 5 of 2000. The regulations aim to use public procurement as a lever to promote socio-economic transformation, empowerment of small enterprises, rural and township enterprises, designated groups and promotion of local industrial development. This gives effect to Section 217 of the Constitution that requires organs of state to implement procurement policies that provide for categories of preference and allocation of contracts, and the 'advancement of persons, ...disadvantaged by unfair discrimination.'

32. The 30% procurement for the township enterprises and SMMEs was announced in the State of the Nation Address (SONA) in 2015.

33. Regulation 4 permits the setting of prequalification criteria and this could be applied to favour categories to be positively discriminated in favour of. Regulation 9 permits sub-contracting on tenders with a value in excess of R30 million to advance the categories of persons to be positively discriminated in favour of.

34. The presentation of these figures by the NT for COT and COE was a collection rate of 95%. The Table in text, based on the figures obtained by the GPT, are more modestly stated. Both treasuries rely on the same in year reporting system for these figures. The audit of these municipalities should determine the final revenue collection figures.

35. The revenue for Ekurhuleni in March 2020 was 7% below target for that month. The average under recovery for the last quarter was 27%.





Johannesburg has successfully diversified its revenue base, resulting in a positive revenue variance in 2019/20, for the first time in eight years.

Table 2: 2019/20 Unaudited Financial Results of Gauteng Municipalities

Revenue & Expenditure 2019/20 (Unaudited and sourced from in-year Section 71 Reports)									
Municipality R Billions	Operating Revenue				Operating Expenditure				Surplus /Deficit
	Budget	Adj Bud- get	Actual	%	Budget	Adj Budget	Actual	%	
COE	38,8	R39,15	R35,69	91	38,8	R39,28	R37,17	95	-R1,48
COJ	58,5	R65,34	R64,08	98	57,3	R64,92	R59,98	92	R4,1
COT	35,5	R41,05	R32,72	80	35,4	R35,64	R33,83	95	-R1,11
Emfuleni LM	6,2	R5,93	R5,87	99	6,2	R5,82	R4,57	79	R1,29
Lesedi LM	0,96	R0,87	R0,86	99	0,94	R0,88	R0,66	75	R0,2
Merafong City LM	1,7	R1,66	R1,54	93	1,6	R1,65	R1,26	76	R0,29
Midvaal LM	1,24	R1,19	R1,11	93	1,20	R1,26	R1,06	84	R0,
Mogale City LM	3,2	R3,13	R2,79	89	2,9	R3,11	R2,75	89	R0,05
RWC LM	2,025	R1,86	R1,77	95	2,093	R1,94	R1,96	101	-R0,04
Sedibeng DM	0,406	R0,39	R0,36	92	0,429	R0,4	R0,37	93	-R0,02
West Rand DM	0,23	R0,22	R0,23	104	0,261	R0,28	R0,26	95	-R0,03

Source: GPT Presentation to the Committee 8 September 2020 and MTREF 2019/20 Budgets of each Municipality.

Johannesburg has achieved some success in diversifying its revenue base in the face of overall declining revenue. As a result, the City had a positive revenue variance against the adjusted budget for 2019/20 against billings, for the first time in eight years. This was largely due to expenditure underperforming against the budget. However, the City also reported a collections shortfall in the year-to-date to March 2020 inclusive at 2%, that declined to 6% for the entire year. This decline in collections is ascribed significantly to the effects of the Covid-19 crisis.

The effect of Covid-19 on the ability of consumers to pay for services is reflected in a significant drop in collections levels in the last quarter of the year. In Johannesburg for example the average collection rate in the last quarter was 67% and reflects a similar trend in the other metropolitan municipalities.

The highest amount for outstanding debt is to be found in the CoJ (R31 billion) with an increase of 19% between the 2018/19 and 2019/20 year-ends. The outstanding debt for the CoE (R16.4 billion) and CoT (R16.2 billion) increased in the same period by 26% and 27% respectively.

Table 3: 2019/20 Debtors Age Analysis (Metropolitan and Local Municipalities)

	0-30 days	31-60 days	61-90 days	Over 90 days
Ekurhuleni	14%	5%	3%	78%
Johannesburg	7%	4%	4%	85%
Tshwane	20%	4%	4%	72%
Emfuleni	5%	2%	3%	90%
Mogale City	9%	2%	3%	86%

Information was available for local municipalities considered Metros and ‘Secondary Cities.’

These are unaudited figures.<sup>36</sup>

Of the total government debt owed to Gauteng municipalities at the end of the 2019/20 financial year, 79% is owed to the metropolitan municipalities. The proportion owed to Ekurhuleni was 9% and Johannesburg 54%. Of the amount outstanding to Johannesburg, 65% was from the Department of Health.<sup>37</sup> Most (60%) of the total debt owed to all municipalities in Gauteng is outstanding for more than 90 days, having a negative cash flow effect. However, about 39% of this is in respect of amounts paid but not allocated or subject to dispute. This indicates poor financial processing and dispute resolution by the municipalities.

The pressure on metropolitan municipalities in containing expenditure against realistic need, which was indicated in the 2018/19 year, had largely been met in the first three quarters of the 2019/20

year by using reserves to supplement under-budgeted revenue items such as maintenance. Johannesburg has been the only metropolitan municipality in Gauteng that added to its surplus for the year, despite the impact of the Covid-19 pandemic on revenue in the last quarter of the financial year.

The ability of the metropolitan municipalities to redeem their borrowings may be at risk should this revenue trend persist for a few years. No information is available on the exposure of the metropolitan municipalities of Gauteng for 2019/20. At the end of 2018/19, Johannesburg had long-term borrowing exposure of R21 billion of which R6 billion was in respect of listed bonds. A sinking fund of R1.4 billion is reflected as an asset against the borrowings. In Tshwane for the same year, long term borrowings stood at R11 billion. Of this R2.7 billion was in respect of municipal bonds, a further R4.5 billion was in respect of annuity loans, and R4.8 billion comprised term loans. In Ekurhuleni, the long-term liabilities related to financing stood at R8.1 billion of which R5 billion were in respect of municipal bonds. Cash equivalents stood at R3.4 billion and other long-term investments at R1.9 billion.<sup>38</sup>

The NT and GPT supported the municipalities over Covid-19 by permitting the reprioritisation of budgets and dealing with cost containment such as wage increases among other non-financial measures. These measures together with contained spending have largely mitigated the slump in revenue during the last quarter, despite relative rehabilitation of own revenue towards the end of the financial year.

36. National Treasury Local Government Revenue and Expenditure Report against Adjusted Budgets; 4th quarter 2019/20.

37. Johannesburg operates almost all of the primary health clinics within its area despite the provincial health department receiving the funding for these.

38. Annual Financial Statements of the three metropolitan municipalities 2018/19.



The table below shows the operational and revenue spending of the municipalities of Gauteng after reprioritisation of their budgets.

Table 4: Operational and Capital Allocations to Municipalities: Post Adjustment-2019/20 <sup>39</sup>

		Budget	Adjustment	Actual	Variance	%
COJ	Operational	R9bn	R14bn	R12bn	-R2bn	-14%
	Capital	R2,75bn	R2,96bn	R1,67bn	-R1,23bn	-42%
COE	Operational	R4,2bn	R5,19bn	R4,42bn	-R770m	-15%
	Capital	R2,6bn	R2bn	R1,27bn	-R788m	-38%
COT	Operational	R3,2bn	R3,58bn	R4,8bn	R1,25bn	35%
	Capital	R2,2bn	R1,67bn	R1,08bn	-R586m	-35%
Midvaal	Operational	R149m	R155m	122m	-R33m	-22%
	Capital	R87m	R101m	R49m	-R52m	-91%
Emfuleni	Operational	R847m	R849m	R819m	-R30m	-4%
	Capital	R215m	R227m	R16m	-R211m	-93%
Lesedi	Operational	R157m	R159m	R143m	-R16m	-10%
	Capital	R64m	R53m	R21m	-R32m	-60%
Mogale City	Operational	R434m	R449m	R92m	-R356m	-79%
	Capital	R179m	R211m	R106m	-R104m	-49%
Merafong City	Operational	R233m	R245m	R214m	-R31m	-13%
	Capital	R161m	R249m	R91m	-R158m	-63%
Rand West City	Operational	R345m	R343m	R316m	-R27m	-8%
	Capital	R257m	R217m	R220m	R3m	1%
SDM	Operational	R302m	R286m	R282m	-R4m	-1%
	Capital	R0	R1m	R0,039m	-R0,096	-95%
WRDM	Operational	R208m	R210m	R230m	-R20m	-10%
	Capital	R1,5m	R3m	R3m	R0	0

The expenditure in Sedibeng’s local municipalities in the 2020 financial year, that included the Covid-19 lockdown, was on average 21% shy against the adjusted budgets. Midvaal had the highest spend at 84%. The West Rand municipalities came short by 13% with RWC spending 1% over budget. SDM and WRDM had spent 93% and 95% of their budgeted expenditure.

About R1.1 billion of R5.8 billion of the Urban Settlement Development Grant (USDG) to metropolitan municipalities was diverted for Covid-19 relief. Of the reprioritised amount, 74% had been spent by the end of the 2019/20 financial year, but Johannesburg had only spent 18% of this amount. The Public Transport Network Grant (PTNG)<sup>40</sup> had only 1% of its allocation reprioritised by the metropolitan municipalities for Covid-19. The amounts spent of the reprioritised PTNG project allocation were low at 38%, with Tshwane spending only 15% of the amount.

Aside from the long-term trend for underperformance in capital expenditure, the Covid-19 pandemic has had an effect on the level of aggregated capital spending after budget adjustments to take into account reprioritisation of grants. This was at 78% for the metropolitan municipalities and 64% for all other municipalities for the 2020 financial year. Sedibeng District managed to spend 31% and West Rand District did not spend at all. The inability to spend on capital projects fully is indicative of the pre-existing capacity constraints in this area prior to the spending required by the Covid-19 crisis.

39. National Treasury Municipal Performance Report August 2020; (based on Section 71 Reports and unaudited).

40. This grant applies to the Bus Rapid Transit Systems (BRT) in Johannesburg (Rea Vaya); Tshwane (A Re Yeng) and Ekurhuleni (Harambee).



Of the MIG grants budgeted for before Covid-19 reprioritisation, only 59% of the total had been expended by the local municipalities of Gauteng despite a diversion of a portion for Covid-19 relief. The sole recipient of the Urban Infrastructure Grant, Mogale City, received permission to divert 15% of this amount. Half of the Project Infrastructure Grant was reprioritised by Mogale City and none by Emfuleni.

As metropolitan municipalities nationally had not spent about 27% of their capital budgets in 2018/19, the Covid-19 pandemic was expected to see continued underspending aside from the permitted diversion from capital grants. A significant proportion of the approved Gauteng municipal rollover application (R681 million)<sup>41</sup> are in respect of the metropolitan municipalities (R621 million). Tshwane had an application for R62 million denied.

The municipalities of Gauteng were allocated about R2 billion of the R11 billion adjustment of the equitable share earmarked for municipalities to deal with the financial shock resulting from the Covid-19 pandemic lockdown. About 74% of this allocation was received by the GPT and 89% of this was disbursed by the end of the financial year. In addition the NT required municipalities to reprioritise about R1 billion of their infrastructure and other grants to Covid-19 relief expenditure for free basic services and indigent relief.

The number of actual indigents on indigent registers is expected to increase due to the Covid-19 crisis. Ekurhuleni had budgeted a 10% increase in the number of indigents who will apply for registration as a result. Tshwane has 51 331 households on its indigent register. Johannesburg has used the indigent register in collaboration with other databases for its food distribution programme during the Covid-19 crisis. As a result 57 000 cases of vulnerable households received food aid from the City.

41. Presentation of the GPT to the Committee.



All of the metropolitan municipalities have food security initiatives within the context of the Covid-19 pandemic Emergency Regulations. Allegations of political partiality, nepotism and corruption relating to food relief distribution have surfaced in the press. Municipalities are therefore subject to greater public scrutiny as a result.

Widespread poverty that was prevalent prior to the Covid-19 crisis is expected to be exacerbated with the increased unemployment as a result of the pandemic. The economic and social delivery impact of the diversion of grants and an increase in equitable share to be directed to ameliorate municipal finances and indigent relief is likely to persist over the short term. Therefore, the implications of diverting capital expenditure to operational costs, such as support for indigents, have to be understood in more detail.

Most metros nationally underspent the operating expenditure budget and indicated that it is due, in part, to cost containment measures. The major proportion of the underspend is related to an inability to expend on capital projects interrupted by the Covid-19 lockdown. This is beyond those expenditure items that are indicated as the major drivers.

The intended modifications to enhance the impact of the City Support Programme (CSP) will involve planning reforms to achieve a long-time horizon, including aligning budgets to this perspective. As the Covid-19 lockdown was anticipated to impact the collections of metropolitan municipalities and to place additional pressure on municipal expenditure related to relief measures, the NT directed the metropolitan municipalities to divert a portion of the

funding included in their budgets under the items that comprise the CSP for this purpose. This means that the intended original application of the funds that are largely for capital expenditure purposes would have impacted the implementation of the programme.

### 2020/21 Medium Term Revenue and Expenditure Framework (MTREF)

It is required that municipalities pass their budgets before the commencement of a financial year. In all three metropolitan municipalities, passing of the 2021/21 budgets was delayed by the Covid-19 lockdown. In the local municipalities many passed roll over adjustment budgets of the MTREF for 2019/20, and in some cases such as Midvaal, they were passed in August 2020.<sup>42</sup>

The budgets of the three metropolitan municipalities of Gauteng for the 2020/21 financial year make up 54% of the total budgets of the eight metropolitan municipalities (metros) nationally. The metro budgets grew at 5.1% between 2019/20 and 2020/21. Johannesburg projected an increase of 7.4% and Tshwane, 5.6%. Ekurhuleni budgeted for a deficit. The growth in the budgets of all municipalities is driven by an increase in operating budgets of 5.5% and capital budgets of just 1.8%. Ekurhuleni had reduced its capital budget for 2019/20 by 33% and this has further decreased marginally for the 2020/21 year. All metros presented funded budgets for the MTREF period.

All local municipalities budgeted for an average increase in operating revenue of 6.5%. This is only sustainable if the revenue recovery is achievable in the period post Covid-19 lockdown that coincides with the 2020/21 financial year. The collection rate that is assumed in the operating budget is dependent on the economy recovering from the severe and sharp job losses (in excess of two million) in this year. The other unknown is whether further lockdowns will be required to contain any upsurge in the pandemic. Therefore, revenue collection rates remain unpredictable.

The reduced actual expenditure achieved in 2019/20 is indicated as the base against which the local municipalities have budgeted for an average expenditure increase of 6.4%. Lesedi and Merafong City have budgeted for an increase in expenditure beyond revenue, and Emfuleni and RWC have budgeted for a decrease. Whether the status (cash backed) of these budgets can be regarded as funded cannot be determined largely as they are based on assumptions in a potentially fast changing environment. SDM budgeted for no increase in expenditure and the WRDM projected a drop in expenditure. The average increase in revenue projected by the district municipalities is 13%.

The revenue collection targets budgeted for by metropolitan municipalities in the current MRTEF period reflect a growth in revenue, despite the effects of Covid-19, indicating an assumption of an anticipated restoration of the economy to pre-Covid-19 levels.

Table 5: Changes in the 2020/21 MTREF

Municipality	Operating Revenue (bn)			Operating Expenditure (bn)		
	Adj Budget 2020	2021	%	Adj Budget 2020	2021	%
Emfuleni LM	R5,93	R6,2	4.5%	R5,82	R6,0	3%
Lesedi LM	R0,87	R0,94	8%	R0,88	R0,97	10%
Merafong City LM	R1,66	R1,8	8%	R1,65	R1,82	10%
Midvaal LM	R1,19	R1,25	5%	R1,26	R1,32	5%
Mogale City LM	R3,13	R3,33	6%	R3,11	R3,29	6%
RWC LM	R1,86	R2,0	7.5%	R1,94	R2,03	4,6%
Sedibeng DM	R0,39	R0,42	7.7%	R0,4	R0,4	0%
West Rand DM	R0,22	R0,26	18%	R0,28	R0,26	-7%

Sources: CoGTA GP Consolidated Monthly Budget Statement 31 August 2020. GPT Presentation to the Committee 8 September 2020 (unaudited). These do not include Transfers and Subsidies recognised

The 2020/21 sources of budgeted operating revenue for Gauteng metros are expected to be derived from service charges (57% against national 69%), property rates 20% (national 27%) and the rest from the minor categories of revenue streams, including transfers from other spheres of government. Of the service charges nationally, 43% relates to electricity. Revenue from electricity is regarded as declining by the NT, due to reduced demand or consumption.



42. CoGTA GP Consolidated Monthly Budget Statement 31 August 2020 indicates all local municipalities have budgets passed, against which their year to date performance was indicated.



The following table details the expected sources of revenue funding of the operating budgets of the metropolitan municipalities of Gauteng, and their key cost drivers. In Ekurhuleni, the revenue target is at 90% for the 2020/21 financial year.

Table 6: Revenue Funding and Key Cost Drivers for 2020/21

Budgeted Funding Sources for Metropolitan Municipalities – Gauteng 2020/21					Cost <sup>43</sup> Drivers of Metropolitan Municipalities Gauteng 2020/21		
Metropolitan Municipality	Service Charges	Property Rates	Grants	Own Revenue	Employee Costs	Bulk Purchases	Contracted Services
COJ	53%	22%	16%	9%	26%	32%	7%
COE	62%	15%	12%	11%	23%	40%	11%
COT	58%	23%	13%	6%	31%	34%	11%

Table 6: Revenue Funding and Key Cost Drivers for 2020/21

The decline in the ability to generate surpluses is driven by the rapid increase in employee related costs from higher salaries and not from an increase in staffing levels. The other rapid increase arises from bulk tariffs. This has reduced or eliminated trading surpluses. A reduction in consumption has taken place due to price increases.

In addition to own revenue, the metropolitan municipalities receive funds from the NT. The breakdown of national transfers to the metropolitan municipalities of Gauteng for 2020/21 is contained in the table below.

Table 7: 2020/21 National Transfers to Gauteng Metropolitan Municipalities

	CoJ	CoE	CoT	Gauteng Metropolitan Municipalities	National Metropolitan Municipalities
Equitable Share & Related	24%	18%	14%	56%	R24,3 bn
Fuel Levy	26%	13%	11%	50%	R14 bn
Infrastructure	18%	17%	14%	50%	R14,8 bn
Capacity Building & Other	11%	7%	7%	27%	R335 m
Total Transfers	23%	16%	13%	52%	R67,4 bn

43. The costs for Gauteng compared to the national averages are: employee related 2% below (28%); 4% more on bulk purchases (31%); and 2% less on contracted services than the national average (11%).

The average transfers and subsidies projected to be received by the local municipalities, excluding Emfuleni, is R102 million for the 2020/21 year. Emfuleni expects to receive R2 billion. Almost all of the revenue of the two districts is funded by transfers.

Capital expenditure is to be funded by grants from the NT to the CoJ (35%), CoE (45%) and CoT (52%). Borrowings are at 40% for both CoJ and CoE, and 37% in the case of the CoT. Only the CoE (R9 million) and CoT (R37 million) received provincial grants which are negligible.

The support from NT when factored into the 2020/21 capital budget of Johannesburg reflect as 30% of the total capital budget and 38% of ‘equitable share (ES) and other’ transfers. For Ekurhuleni it reflects as 45% and 51% for each category respectively. For Tshwane it comprised 42% of the total capital budget and 67% of ‘ES and other.’

The historically accumulated surpluses and the relatively healthy reserves of the metropolitan municipalities indicate a greater capacity to borrow or to spend from the reserves as well as a historically conservative estimation of revenue in the budgeting process. The creditworthiness of the metropolitan municipalities, despite poor liquidity and cost to coverage ratios indicating fragile liquidity, was positively indicated by the cash available to service debt at the end of the 2018/19 financial year.

The reserves anticipated in the 2020/21 budgets of the CoJ, CoE and CoT are projected at R4.5 billion, R799 million and R860 million respectively, based on the performance of the 2020/21 financial year. With the exception of the CoJ, the remaining metropolitan municipalities have a diminishing capacity to borrow. All metros budgeted for a positive cash position for the MTREF period. The City of Ekurhuleni has budgeted for an operational deficit for the 2020/21 year.

Inadequate budget allocations, diminishing cash reserves and ability to borrow in order to fund maintenance will have a negative effect on infrastructure and other assets. Currently the maintenance budgets<sup>44</sup> of metropolitan municipalities are indicated at considerably below the National Treasury (NT) norm (8% of carrying value) required to prevent early replacement of infrastructure plant and equipment. The metropolitan municipalities of Gauteng had, prior

44. COJ 5.6%; CoE 4.5% and CoT 3.2%.



to the 2020/21 financial year, funded the shortfalls in maintenance spend by utilising cash reserves.

The metropolitan municipalities of Gauteng are budgeted to make substantial investments in trading services (CoJ – 26%, CoE – 31%, CoT – 39%), road transport (CoJ and CoT– 26%, CoE – 18%) and housing (CoJ – 19%, CoE – 15%, CoT – 13%) in the 2020/21 financial year. The trading services offered by municipalities are not regarded from a business concern perspective.

The allocations as a proportion of the total maintenance budget for the 2021 year relating to the renewal of existing assets for Johannesburg and Ekurhuleni are at 51% and 81% respectively. Tshwane allocated 34% of its total maintenance budget for this purpose.





## Committee Findings

The submission of unfunded budgets by local municipalities is symptomatic of poor planning and a lack of political will to take tough decisions on expenditure. It is proving to be a substantial challenge for many local municipalities to cut expenditure to match realistic revenue collections levels, which would eliminate many unaffordable programmes from the IDP and budget. Led by Executive Mayors, these tough choices are needed by municipal departments and ultimately by municipal councils.

The budgets of the metropolitan municipalities are assessed by NT. In this there are conservative estimates of revenue, sensitive to expenditure despite accumulated surpluses. The expenditure side of budgeting has deficiencies such as under allocations for maintenance that is supplemented by drawing on cash reserves. The availability of cash reserves is likely to decrease for maintenance during the MTREF period. It therefore becomes necessary to ensure that key expenditure items that are prioritised are reviewed regularly to ensure that expenditure is aligned to realistic revenue projections at any point in time.

The low capital budgets highlight reduced investment in infrastructure regardless of the backlogs. This is also due to the state of metropolitan finances and the ability of metropolitan municipalities to fund capital investment from own funding. This will further impact on municipalities' ability to realise their chief interests, the delivery of services and improvement of the quality of life of their residents.

The measure for the collection of revenue is based on the assumption that what is budgeted for is collected. Historic debt is therefore not factored into the methodology to determine the revenue collectable. This creates the incorrect impression of municipal revenue performance and is a key driver in the impairment of historic debt.

The level of diversity of income streams for metropolitan municipalities in comparison to other municipalities enables them to mitigate reduced revenue from the core service streams,



particularly electricity charges. However, this would appear to have been inadequate on its own even prior to the Covid-19 crisis, as cash reserves have been drawn upon by the metropolitan municipalities, for operational purposes. This is despite most reserves having been dedicated for the retirement of capital borrowing obligations.

The possibility of greater borrowings on the part of the metropolitan municipalities is anticipated. This will affect their credit rating in terms of debt serviceability being achieved by free cash flow after other expenses. The pressure on this aspect will increase particularly in light of the low liquidity and cash to cost coverage ratios of all the metropolitan municipalities. The economic impact of the Covid-19 pandemic on revenues is anticipated to lead to continued fragility of income, which will impact the level to which borrowings may be conducted and serviced from free cash flows. This will have a direct impact on the level of service delivery of which municipalities will be capable.

The billing systems of all municipalities are relatively robust and therefore the trend in revenue decline arises from poor billing practices in some instances and a decline in the capacity of consumers to pay for services. This is noted in the increase in the

contribution of non-residential consumers to the outstanding debtor's book

The uneven application of credit control (excluding indigents) in different areas in a single municipality needs to be addressed. The consistency of credit control is affected by the election cycles of both local elections and national / provincial elections. Reluctance to enforce vigorous credit control in the run up to elections creates an exceedingly small window period to sustain strong credit control.

There is an absence of intensive monitoring of the credit control and debt collections of municipalities by the GPT and NT, to attain predictability of negative outcomes for municipal collection of revenue, and to mitigate these in advance.

The significant ageing of debt and its correlation to the amounts impaired is indicative of poor credit control and debt collection capability. Metropolitan municipalities are oriented towards payment arrangements in the face of the decline in employment numbers due to the Covid-19 crisis. This is to achieve predictable cash flows, which will be the main financial factor that will determine the financial recovery of the metropolitan municipalities, and to enable consumers to meet their obligations

Of concern is the extent of impairments and write-offs of debt. The AGSA has raised this repeatedly. The debt is not actively pursued beyond a limited time. The Committee is concerned that the methodology of computing the debtor's collection rate is focused more on current billings, whilst not sufficiently focused on the cumulative impact of amounts not collected.

Government debt owing to municipalities is also of concern. As at June 2020, the total debt owed by the Gauteng Provincial Government to its municipalities is R876 million. Of this amount 21% is owed to the local municipalities, and the remainder is owed to metropolitan municipalities.

While most local municipalities would argue that their expenditure has been 'cut to the bone', it is noted that substantial expenditure is still incurred on non-service delivery related areas. The rapid growth in expenditure on security related services is a relevant illustration.



Annual salary increases for employees in the light of growing financial unviability is unaffordable by municipalities. This requires a review of central bargaining determinations, and the processes itself towards determination needs to be considered.

In order to address unaffordability,<sup>45</sup> the municipalities have the difficult task of having to apply for an exemption from annual increases agreed to by SALGA and organised labour in the bargaining councils. An instance of such an application was that of the merged RWC local municipality, which led to labour turbulence.<sup>46</sup>

Another area of concern is the cost of overtime. Though this is driven often by service delivery need, such as in technical departments (electrical for instance) with staff shortages, there is also considerable unjustified overtime. In most local municipalities overtime has been entrenched as an additional income for employees. In instances where the overtime cost could easily pay for additional staff, these are not considered as it would lower the income of employees who have come to expect this additional income as a right. Various National Treasury Circulars have been issued to curtail unnecessary expenditure at municipalities. The implementation of these circulars needs to be closely monitored and action taken timeously.

Despite the underperformance of budgeted expenditure to income in the 2019/20 financial year, this is regarded as an exception as a result of the Covid-19 pandemic. Nevertheless, the tendency to focus on income generation to match budgeted expenditure has to be balanced with due attention to the budgeting and management of expenditure as part of effective financial management. For the metropolitan municipalities, the containment of expenditure that has to date been relatively good, will be tested in the 2020/21 financial year as a result of the unpredictability of revenue recovery.

All three spheres of government are not working cooperatively to update indigent registers. It is regrettable that provincial and national departments did not place sufficient emphasis on this vital database residing at municipalities. The social services response to the Covid-19 outbreak could have been aided by the municipal indigent register. The most vulnerable households could have been easily identified (down to an erf or GIS location), had these registers been given due attention.

Addressing this challenge and the extent of relief required by those not on a register, and its cost implications, will inform the credibility of the relief and sustainable rehabilitation value chain and undercut the possibilities of corrupt practices intervening.

Budgetary provisions for the subsidisation of indigents are expected to increase in light of Covid-19. The budgets of the metropolitan municipalities do not appear to have a realistic quantification of the costs of subsidising indigents that are expected to grow rapidly.

The accountability of the Council, the leadership, senior management and officials extends to the failure to develop, implement and monitor effective systems and processes of internal control, including corrective action.<sup>47</sup>

Greater political oversight is required for the tracking of implementation of MPAC recommendations by municipal Councils. This should be tabled at Council meetings. At a provincial level, the OPCA (Operation Clean Audit) process should further strengthen the oversight of implementation as well a closer engagement with Audit Committees of Councils, with a view to strengthening service delivery.

The oversight and monitoring of compliance in the implementation of the MFMA, and support measures to address gaps in compliance, is a function of the GPT. This has not led to improved fiscal management and increased compliance that promotes clean governance and accountability. The trajectory of municipal finance decay continues despite these efforts. The state of affairs exists despite MFMA compliance assessments being conducted annually by the GPT.

45. On 24 February 2016, BusinessTech reported a study that showed that the real average monthly wage of public sector employees was 49% higher than in the private sector. This trend, that has increased since, is confirmed by a more recent analysis conducted by the Organisation against Tax Abuse (OUTA) using published data by municipalities.

46. The NT had urged municipalities to apply for bargaining council exemptions based on the financial strain of the Covid-19 lockdown and its aftermath. However, it appears that this option has not been taken up by municipalities.

47. The AG's report on the 2017/18 audits of municipalities highlights the major contributors to the accountability failures and the regression in audit outcomes.



Despite the best efforts of GPT to conduct oversight and monitoring of legal compliance by municipalities, fiscal management continues to decline.

In-year monitoring is currently reliant on the MFMA Section 71 reports from municipalities. The information is hosted and managed by the NT within the National Local Government Database. The GPT had identified the need for municipal Standard Chart of Accounts (mSCOA) reform based on the questionable credibility and quality of the information supplied by municipalities. The main reason is that most municipalities do not prepare adequate or proper management accounts, from which to draw the information for the reports. The challenge therefore is to address the accountability for the reports, despite compliance in their submission being generally good. The GPT has no control over this aspect and is therefore working with the NT on mSCOA reforms, in order to develop an early warning tool that detects financial problems, and signals this to the municipality.

Despite the credibility problems of the financial information supplied to both the GPT and NT, the MFMA team in the GPT uses the in-year reports in conjunction with the provisions of the MFMA (Sections 138 and 140) as criteria or triggers to determine cases of financial distress. This approach has been adopted by the NT. On the application of the criteria contained in Section 138 and Section 140, only the City of Ekurhuleni and Midvaal currently are not in financial distress. This approach highlights the non-predictive nature of in-year monitoring and support activity. It also highlights the deficiencies in the support rendered to Emfuleni and Merafong City that have had longstanding financial problems that flow mainly from poor governance.

The support rendered by GPT as indicated in its Annual Performance Plan and the Operational Performance Plan of the MFMA Support Team, reflects a responsive approach largely to crises such as in Merafong City and Emfuleni. Support has been of a technical and 'hands on' nature to address the challenges identified. These interventions do not form part of a continuum of ongoing support as required by Section 154 of the Constitution. As such, the support has not been informed by any strategic considerations in achieving an enhancement to the financial viability and service delivery of the municipalities.



The need for in-year reporting to arrive at a more predictive assessment of municipal financial problems has been highlighted for the non-metropolitan municipalities. As the NT is the more significant party in relation to municipal finances, the mSCOA reforms are regarded as one component of an overall reform that emphasises the business aspect of municipal revenue and expenditure and focuses less on the aspect of development. The first aspect of this is to build municipal capability to produce monthly management accounts that are able to generate cash flow statements and balance sheets. Four core tariff service<sup>48</sup> accounts are at the heart of this endeavour.

The metropolitan municipalities, in contrast to other municipalities, are capable of the production of financial statements for audit. This gap in respect of non-metropolitan municipalities is outsourced nationally at a cost of about R1.2 billion to third party service providers.

The initiation of legislation for local government is regarded by the GPT as being the responsibility of provincial CoGTA and the NT. Despite this view by the GPT, it has a responsibility to address possible defects and weaknesses in the current municipal financial system. The financial system is indicating its inadequacies in an environment of deteriorating economic conditions and rising corruption and non-adherence to good governance, made worse by the Covid-19 pandemic. It is noted that cooperation is required between the GPT, provincial CoGTA and the NT to develop appropriate legislation that will enhance sound financial governance.

The contribution of the SCM or procurement environment to UIFW expenditure in all metropolitan municipalities is significant. The capacity and adherence to legislation, regulation and best practices in SCM offices at local municipalities is of concern. It is more likely that the level of culpability, whether through lack of ability, negligence or wilfulness that is attached to the acts of omissions

that lead to UIFW arise from poor governance and management of the process and compliance required.

The trading services offered by municipalities are not viewed from a business concern perspective. There is no distinction made by municipalities between paying consumers and residents' entitlements (e.g. free basic services).<sup>49</sup> The developmental service requirements of residents, for example in informal settlements, are not adequately addressed and consequently the focus is less on the developmental side, which is itself poorly executed as a result of financial constraints and institutional dysfunctionality. There is not enough attention paid to muster the 'social capital' of residents to further developmental aims (see the Public Participation chapter).

Currently district municipalities do not adequately Perform their coordination, integrated planning, capacity building and strategic leadership role as envisaged in the legislation.<sup>50</sup> In consequence they appear to be a drain on the national fiscus instead of an enhancement to service delivery and development.

The current development of the District Development Model (DDM) by national government intends to address issues of coherence and service delivery amongst all three spheres of government. The district municipalities played a crucial role in the response to the Covid-19 pandemic, through the use of a District-Based Support Model. Further details on how the DDM will affect Gauteng's district and metropolitan municipalities are expected in the medium term.

The resolution of consumer queries is noted. Despite the improvements in Johannesburg between June 2018 and June 2020, the pace and throughput in resolving queries has a negative impact on the reputations of municipalities.<sup>51</sup> All municipalities have an interest in resolving queries expeditiously to manage reputational risk to the billing system.

48. These relate to the supply of electricity, water, sanitation and waste removal services.

49. The current approach to free basic services is to apply it near universally. However, together with a determination of indigence, it does not take into account the increasing number of persons who are asset rich but cash poor.

50. An example of the planning and co-ordination functions of a district municipality is the development and co-ordination of an integrated local economic development plan. It is also possible for a district municipality to co-ordinate the procurement of common supplies required by all the municipalities within its area to achieve better pricing and hence economies of scale. This is a key area of focus in thdraft DDM proposals.

51. At the beginning of the period, unresolved queries stood at 18 623 and had improved to 4 824 at the end of June 2020. There was no indication of the quantum involved.



The significant increase in UIFW expenditure since 2016, coinciding with the term of office of the current Councils, is attributed to the slow pace of detection, investigation, consideration by MPAC and other responsible organs of the metropolitan municipalities and their resolution. More significantly the basis and areas from where UIFW arises is indicated as being from the failure to exercise adequate financial governance and controls that comply with legislation, regulations and good practice, in order to prevent the expenditure from arising in the first instance.

The budgetary allocations to restorative maintenance of assets are noted. However, a greater investment emphasis is required in preventative maintenance to delay the need for replacement or refurbishment of infrastructure and ensure services continue to be provided and charged to those who can afford to pay in order to ensure the maintenance of the

Municipalities are often left with unfunded mandates when providing a function that should be provided by national or provincial government, without concomitant funding.

revenue base.

Of note is the concern by the NT that metropolitan municipalities are often left with unfunded mandates when a function shifts, but the cost of operations is retained by a city. In particular more attention is required to align financing and the distribution of public transport powers and functions between the three spheres of government.

The Committee did not have powers of subpoena or any other method of exceeding its probative capacity. It was therefore constrained in discharging the term of reference relating to fraud and corruption. The Committee is therefore unable to express any specific finding on corruption or maladministration but does find patterns of behaviour that enable corruption, indicating that there is perhaps a lack of political and administrative will to address and correct UIFW expeditiously both in its prevention and in its rectification.

These observations coincide with the concerns of the AGSA regarding accountability. The AGSA noted that leadership and municipal officials deliberately or negligently ignored their duties and did not comply with legislation. For example, in Emfuleni the SCM office did not function in full compliance with governance and efficient management requirements. In Merafong City, the SCM office had not been established since the start of this term of office. In RWC, the Executive and Council must have been aware of the state of the SCM office. In Midvaal, ICT department bids are evaluated and awarded within the same structure which is a poor governance process.

The AGSA noted that unprocedural extensions of contracted services should be investigated as these are often red flags for corruption, poor planning and ineffective monitoring.



# Committee Recommendations

## It is recommended that:

1.Provincial Treasury and CoGTA engage municipalities early in the budget cycle<sup>52</sup> to establish the key indicators of the next budget, so that the draft IDP and budget adopted by Council in March each year is a funded budget.

2. Municipal Councils should not approve unfunded budgets. Consideration is given to improving the powers of GPT in assisting in the prevention of unfunded budgets considering the legislative powers of municipalities.

3. The MEC should consider, within his powers, publishing that specific municipalities have passed unfunded budgets despite their assessment as being unfunded, in order to increase public transparency and the accountability of municipal councils and officials. It should be considered that the publication takes the form of advising that the Council rectify the budget.

4. The metropolitan municipalities focus on revenue from a wider perspective than that it entails collections. This is particularly relevant in an environment of deteriorating revenue bases. In addition to collections on current billing and debt, this will demonstrate that spending is appropriate and with tangible benefits to the public in order to win their inclination to make payment for services.

5. There is a severe lack of capacity within municipalities and in all spheres of government generally to set rates and tariffs. The GPT and CoGTA must find ways of involving themselves in supporting the determination of municipal tariffs for each individual municipality in Gauteng. This implicitly is a business approach to the segment of residents capable of paying and assists in differentiating from the developmental model that is funded from grants and cross subsidies for, in particular, informal settlement service provision.

6.In order to assist local municipalities that lack the capacity to determine the risks involved and to prevent onerous borrowing, close coordination is required with NT and the GPT. All intended borrowings



by municipalities should be submitted for Treasury review in advance to determine risks and to provide advice. It is noted that the GPT is undertaking measures to understand the complexities involved in municipalities raising loans from the private sector.

7. CoGTA should utilise its analysis of the full value chain of the billing process in municipalities and the problems and challenges they present, in order to assist in the development of operating systems and capability to address billing practices that lead to inconsistencies. In particular, CoGTA should monitor the issuance of consumption estimates to residents to ensure that they are transparent and resolved within three months.

8. CoGTA should facilitate an engagement across the three spheres of government including the Department of Water and Sanitation (DWS) and the Department of Mineral Resources and Energy (DME), to devise a strategy to address the loss of revenue by some municipalities as a result of mines purchasing bulk water directly from water boards.

9. CoGTA and the GPT in conjunction with the NT should assess the use of the full value chain of measures available in the credit control and

debt collection process, for capacity, capability, efficacy and adequacy of personnel in municipalities, as part of their revenue enhancement and cash flow management strategy. This exercise and the requisite capacity building that will be required is an obligation CoGTA and the GPG should support on an ongoing basis.

10. The use of the full suite of measures, including legal processes and timeframes, must inform the prevention of the premature impairment of debt out of lack of effort or capacity to recover. The risk of systems automatically generating invoices creating debt that is not accurate should be keenly monitored.

11. In the Committee’s engagements with the municipalities, the methodology of reflecting the collection rate focused on the current billings and did not appear to be aligned with the real picture of high impairments as a result of non-collection. The methodology of measuring collection rates therefore provides an incomplete picture of collections and should urgently be reviewed.

12.The basis and terms on which third party service providers performing debt collection functions are engaged should be considered for regulation. In particular, an agreement containing terms amounting to a ‘Right-To-Collect’, which are made attractive by an upfront cash injection into the municipality, should be reviewed with a view to prohibiting them.

52. The budget/IDP cycle commences at the end of March each year and the final IDP/Budget is adopted in May. This process is in respect of the following financial year commencing on 1 July.



13. The sale of a municipal debtor's book through an upfront cash injection and 'Right-To-Collect Agreement' should not be permitted given that the low value for money accruing to the municipality in such an arrangement is irregular and potentially fraudulent.<sup>53</sup>

14. In instances where current municipal debt is collected by debt collection third party service providers, and fees paid against these, CoGTA should consider the possibility of having law enforcement authorities investigate a case of fraud having being perpetrated against the municipality and examine whether there was connivance of municipal officials.

15. The management of cash flows by government departments not paying municipalities promptly requires the joint intervention of CoGTA and the GPT both at the level of facilitating the payments as well as with ongoing support in ensuring correct allocations and speedy resolution of disputes.

16. A resolution mechanism should be established in municipalities to increase the throughput of resolving matters that are in dispute.

17. The high salary and wage expenses in municipalities should be addressed in conjunction with SALGA by means of a comprehensive review of the cost drivers. It will have to consider the cost of inappropriately placed staff and the significant

vacancies that exist in most of the municipalities. The savings from systems enhancements or substitutions will be an additional factor. This should inform a whole of government approach to reducing the costs without compromising the current service delivery levels.

18. A detailed provincial and possibly national study of overtime trends and costs of all municipalities is required. Such a study could be conducted to address the balance between service delivery needs, staff complement and overtime.

19. CoGTA should consider recommending that regulation or negotiation with the bargaining council produce a two-year period to integrate and eliminate remuneration discrepancies when two municipalities merge.

20. All three spheres of government need to work collectively to ensure that each municipality has an updated and credible indigent register. The gap between registered and de facto indigents within municipalities has been sharply illuminated during the Covid-19 crisis. CoGTA should consider the work done by its counterpart in KwaZulu-Natal in establishing a dedicated unit to assist municipalities in updating their indigent register.

21. Work is required to determine changes to the way in which indigents are classified, and their identification segregated, in terms of criteria that suits both those within the formal service access universe and those outside of it. This strategic approach will simultaneously address the business basis for revenue flow and the cost impact of what is in substance a cost externality to the revenue stream.

22. The registration of all indigents on criteria that may vary for categories will better enable the municipalities to manage leakages in the system and to cost the financing of the indigent subsidy. The financial support to indigents is a

53. In form the arrangement appeared to be a legitimate debt collection agency agreement. In economic substance the upfront payment had the characteristics of a loan at best and an advance for the purchase of the debtor's book. The collection of current debt also indicates the recovery against the upfront loan/payment in advance of the rights of the municipality to receive the payments of the debtors less collections commission. In these circumstances indicating a serious malfeasance, the responsibility of the MEC to intervene needs to be determined.

national and not only a municipal function and hence is an unfunded mandate in the areas covered by municipalities.

23. It should be considered that the financial burden may be ameliorated by facilitating the impact on different functional departments of the province and at national level. Such an approach permits an assessment of the sustainability of measure. This could also assist in restoring to normal the levels of registered indigents upon the resolution of the economic effects of Covid-19. This is a cooperative governance opportunity that requires urgent attention.

24. All revenue and expenditure measures should be cash flow predictive and monitored daily to ensure that the municipalities are able to meet creditors and expenses within budget and timeously.

25. Expenditure that has maximum economic impact on returning as revenue to the municipality and that contains costs is prioritised. An example is a focus on water infrastructure maintenance to contain the financial effect of the high rate of technical water losses. This also has a local job creation impact.

26. CoGTA should facilitate a framework to guide municipalities in distinguishing the planning, costing, budgeting for and execution of developmental services from revenue paying services.

27. Greater political oversight is required for the tracking of implementation of MPAC and Auditor-General of SA recommendations by Councils. At Council level, progress against recommendations should be reported and monitored at monthly Council meetings. At a provincial level, the Operation Clean Audit process should further strengthen the oversight of implementation as well a closer engagement with Audit Committees and Speakers of Councils.

28. Where matters of possible fraud and corruption are raised in MPAC reports, as well those outside of the work of MPAC, and if these are marked by sufficient levels of suspicion of wrongdoing, CoGTA and GPT should initiate investigations to look into such matters.

29. Supply chain deviations at municipalities, which are reported to Councils, should be cross checked for legal compliance by Provincial Treasury to ensure that it was a justifiable deviation according to the MFMA. An analysis of deviations at municipalities is required.

30. In respect of the MBD/TCR contract, CoGTA and Provincial Treasury should conduct a thorough investigation with a view to holding both the administration, political heads and Council accountable for the appointment.

31. Consideration is given to improving the predictive and preventative ability of the MFMA monitoring function conducted by the GPT to change the trajectory of municipal finances in a strategic way. This entails a review of legislation, the working relationship with the NT and current prescripts. The current approach has some predictive ability. However, the MFMA unit of GPT and the CoGTA monitoring team should jointly consider the skill, personnel and systems capacity required for this function to be fulfilled.

32. GPT, CoGTA and the NT should engage the municipalities continuously regarding the implementation of their budgets. In particular, cash<sup>54</sup> and revenue<sup>55</sup> monitoring is required to inform an early adjustment budget<sup>56</sup> process if necessary, in order to influence the containment of expenditure to actual revenue achieved in-year, and to temper borrowings.

54. Section 13 of the MFMA regulates cash management and investments within a framework prescribed by the NT.

55. Revenue monitoring is conducted in terms of Section 64 of the MFMA. The Accounting Officer (Municipal Manager) has a responsibility to establish an effective collections system, collect on monthly services charges by issuing bills, deposit all monies received promptly into the bank accounts of the municipality, establish a management account and information system, ensure internal controls relating to revenue and debtor receipts, charge interest on arrear accounts, conduct weekly reconciliation of all monies received including those from agents, inform the NT of all overdue accounts by state departments and make prompt payment on amounts due to state institutions.

56. Section 71 of the MFMA requires the Accounting Officer to present a statement of revenue received per municipal service, borrowings, expenditure per budget vote and transfers and allowances received; within ten days of the close of the month, to the Mayor and the GPT.



33. For the more speedy resolution of UIFW related matters, the GPG and CoGTA should establish an inter-departmental task team to address the pace of investigations, prevention and expeditious resolution of these matters. The focus should be on the appropriate establishment, capacitation, governance, and management of the SCM offices in municipalities that are the major source of UIFW.

34. The GPG should consider the appointment of a province-wide independent panel to review and assess the use of deviations to mitigate the extent of the AGSA's findings regarding deviations and UIFW.

35. The implications of the powers of the AGSA under the Public Audit Amendment Act (2019) for provincial government accountability should be researched for forewarning Councils and officials of possible exposure, based on their professional conduct and accountabilities.

36. The indicated strategy of using an accelerated infrastructure programme under the NDP as a key lever for economic stimulation and recovery requires the utilisation of capital grants to maximum effect. This requires the addressing of planning and costing of contracts, strengthening of their financial management and governance oversight to realise maximum economic impact, and to be returned as revenue to the municipality.

37. CoGTA should provide guidance for the establishment of contract management offices in municipalities that have do not have them and review guidance for those that do have such capacity. Support to the contract management office should be ongoing and an embedded practice given the risk that the office poses. The GPG should consider establishing a central legal support hub for this purpose to assist municipalities with this function.

38. Regular inspections of the contract register at municipalities should be undertaken by MPAC to mitigate the excessive use of the below-mentioned practices, which report must be monitored by CoGTA. Where required, a Council resolution to delegate the oversight monitoring function to the MPAC should be passed. The monitoring by both CoGTA and the MPAC be focused on contracts:

- a. *Extended in time;*
- b. *Extended in scope;*
- c. *Assessing the performance of the contractor; and*
- d. *For any other procedural or other irregularity or violation of law or regulation.*

39. In the use of appropriate procurement regulations to positively discriminate in favour of specific target groups, the policy of achieving 30% procurement by these groups, especially through the use of sub-contracting, must be communicated more transparently. This would require a clear explanation at tender advertising stage, and participation of intended sub-contractors in the bid process by supplying their own credentials for assessment.

40. Where matters of possible fraud and corruption are raised in MPAC reports, as well as those outside of the work of MPAC, and if these are marked by sufficient levels of suspicion of wrongdoing, CoGTA and Provincial Treasury should take steps to initiate measures to have these be probed for rectification and accountability.

41. CoGTA should consider the development of a mechanism to monitor the pace at which consumer queries are resolved.

42. The municipalities must take active and transparent measures to ensure their credibility free of nepotism, corruption or party-political partialities and patronage in the distribution of food and the implementation of food security projects more widely.



# INSTITUTIONAL CAPABILITIES

*“If you think education is expensive, try ignorance.” - Unknown*



Central to the functioning of all municipalities is the need for adequate institutional capability for service delivery and effective infrastructure planning and project implementation.<sup>57</sup> This includes having the required operational and delivery systems in place as well as the available human resources and technical skills necessary for delivery. Of significance for delivery and implementation is compliance with relevant national legislation and specific regulatory requirements. However, it should be noted that compliance on its own does not necessarily result in effective service delivery.

### Committee Observations

The specific organisational structure of a municipality has an impact on the efficacy of the execution of its service delivery functions. In some metropolitan municipalities, this includes the use of municipal entities to perform specific services, such as waste disposal conducted by Pikitup in Johannesburg.<sup>58</sup>

Inadequate municipal systems and the inappropriate placement of human resources can negatively affect service delivery. The number of vacancies, especially in key service delivery positions, often provides a composite perspective on the capacity challenge that confronts each municipality. In this regard, the cost of unskilled or incorrectly placed personnel can significantly affect a municipality's ability to deliver services.

The use of multiple municipal entities to deliver services by Johannesburg may have mitigated the disruption of service delivery during periods of political instability. However, it could also result in a slowing down of the implementation of Council decisions as the entities have their own governance considerations in endorsing and implementing decisions made by the municipal Council.

The Committee notes with alarm the regression in the total number of senior officials in the local and district municipalities that meet the minimum competency requirements. As at March 2020, of the 110 senior managers, only 80 were compliant. This has necessitated initiatives to train these managers (Sections 56 and 57) by both CoGTA and the GPT.

There has been a significant regression in the number of senior officials in local and district municipalities that meet minimum competency requirements.



57. The expectation in Section 151(2) of the Constitution is that 'a municipality must strive within its financial and administrative capacity, to achieve the objects...' of local government as set out in Section 152(1) of the Constitution. These objects relate to both the provision of basic services in a sustainable manner, and functions related to the developmental component of the municipal mandate.

58. Pikitup is a municipal entity in the City of Johannesburg, responsible for the management of

Table 8: Minimum Competency Compliance Status (31 March 2020)

No	Municipality	Accounting Officer	Meet Minimum Competency	Chief Financial Officer	Meet Minimum Competency	Senior Managers	Meet Minimum Competency	Head/Manager of Supply Chain Management unit	Meet Minimum Competency	Middle Management	Meet Minimum Competency
1	DC42 - Sedibeng	1	1	0	0	3	1	1	1	1	1
2	DC48 – West Rand	1	1	1	1	4	4	1	1	3	1
3	GT421 - Emfuleni	1	0	1	1	5	3	1	1	4	4
4	GT422 - Midvaal	0	0	0	0	3	3	1	1	31	13
5	GT423 - Lesedi	0	0	0	0	3	3	1	1	2	2
6	GT481 – Mogale City	1	1	1	1	7	7	1	1	5	5
7	GT484 – Merafong City	1	1	1	0	5	5	1	1	1	1
8	GT485 – Rand West City	1	1	0	0	5	5	1	1	10	6
TO-TAL		6	5	4	3	35	31	8	8	57	33

Total Officials Affected	110
Total Officials Compliant	80
<b>COMPLIANT OFFICIALS (%)</b>	<b>72.73%</b>
83%	Accounting Officer
75%	Chief Financial Officer
89%	Senior Managers
100%	Head/Manager of Supply Chain Management unit
58%	Middle Management

Source: NT Progress Report shared with all municipalities on 10 March 2020 based on end of January 2020 submissions.

Metropolitan municipalities are generally able to attract the requisite professional, managerial and technical skills. However, in some instances there is misplacement of managers in positions that they are not necessarily qualified or experienced enough to hold. For example, it is reported that a metro has employed a paralegal to head the city's legal department.

Johannesburg found, in its ongoing skills audit, that managerial skills are partial to service delivery and often do not have tactical and strategic management capabilities. This observation holds for the other two metropolitan municipalities as well.



Local municipalities are unable to attract the requisite skills given the salary packages on offer at metropolitan municipalities and in the private sector. This impacts the quality of services being delivered by local municipalities. Where local municipalities have developed skills within their administration, these qualified officials are frequently enticed to move to metropolitan municipalities by better remuneration packages.

The Municipal Systems Act 32 of 2000 defines the minimum competencies required for appointments in municipalities in areas of financial management,

strategic planning, leadership and governance, but is lacking in defining the requirements for technical areas such as engineering.

A core function of municipalities is to deliver infrastructural services. However there has been a loss of primary technical skills such as suitably qualified or experienced plumbers, electricians, and artisans at smaller municipalities, to either the private sector, or to larger municipalities. This is as a result of the higher wages these skilled personnel are able to earn from new employers. The balance in the ratio of technical to non-technical staff must be kept in check.

Two vital areas of technical management that have a severe impact on the finances of municipalities are water management and electricity distribution. These skills are generally readily available to metropolitan municipalities, however this is not always the case for local municipalities.

A specific skill that is fast disappearing from municipalities is accounting. Traditional accountants are essential for, amongst others, budgeting, cash flow management and bank reconciliations. Financial planners are not accountants, as these are distinctly different skills, and should be appointed for relevant functions. The loss of skills at lower grade municipalities is concerning.

The inability to attract professionals such as Chartered Accountants and practicing engineers has impacted the strategic capacity of municipalities. The remuneration of these professionals is regarded as being beyond the rates prescribed for public service. However, the cost of using outsourced services to perform these professional functions has not been compared to their being performed internally.<sup>59</sup>

There has been a loss of primary technical skills at smaller municipalities.

Under-performing municipalities generally have a high turnover of both political and administrative leadership.

59. The office of the Auditor-General of SA (AGSA) submitted to the Committee that nationally it costs municipalities R1.2 billion for the preparation of Annual Financial Statements, by third party contractors. This is considered a duplication of costs as the expectation is that these statements are to be prepared by the municipalities themselves. The AGSA also noted the general poor quality of the Annual Financial Statements prepared, despite the costs

wThe Committee noted a correlation between periods of good governance and stability in staffing. A high turnover of both political and administrative leadership was evident in municipalities that were under-performing. Examples of this are in Emfuleni and Merafong City.

Midvaal has been consistently performing well with a low turnover in senior managers. It is therefore of concern that in the recent past a number of suspensions and resignations have occurred at the municipality (Municipal Manager, Chief Financial Officer and the Executive Director: Corporate). The municipality should be closely monitored to ensure that its governance is not impacted upon.

The coalition governments in the metropolitan municipalities have had a negative impact on the length of time and the quality of appointment of senior personnel. The appointment of senior and top management requires Council approval. Such approval was not obtained in Tshwane as Council meetings were interrupted or not quorate, thus creating delays and non-appointment of managers. In Johannesburg, a moratorium was in place because of a lack of consensus on appointments. This was lifted by the new administration that came about in December 2019.

In Johannesburg, the vacancy rate for top management is 29% and senior management, 10%. In Tshwane, the overall vacancy rate is 26%, largely the effect of political instability. In Johannesburg, the vacancy rate for the rest of the categories of employees was 6% during the 2020 year.

In respect of performance management, all of the municipalities have some system of performance management in place for organisational performance. However, in terms of individual performance management, cascading this system beyond level 5 remains a challenge. There is also often no evidence of a link between individual performance and that of the municipality.

In examining performance assessments, the Committee noted that conducting performance assessments is a specific and acquired skill that needs to be developed over a period of time. This is true too for the practice of implementing corrective measures where performance is found to be wanting.

The good practices in performance management at some municipalities such as Midvaal and City of Johannesburg are examples that could be emulated. The contingent liability of Emfuleni in relation to long outstanding labour disputes is abnormally high and requires further investigation.

## Committee Findings

The altering economic climate, deteriorating revenue base and increase in demand for services necessitates a review of organisational structures in order to adjust to the new realities.

In a province such as Gauteng, with a higher skills base than found in the rest of the country, it is expected that all senior managers should, together with their own individual qualifications, at least meet minimum competency requirements upon appointment or within 18 months.

Skills development for local municipalities is central to their fulfilling their constitutional mandate. While the current conditions are not favourable, long-term thinking should be invested in capacitating local municipalities with adequate skills.

The perception of an imbalance between technical and non-technical staff will need to be verified through a proper survey and gathering of empirical data on vacancies. The perception is perpetuated by poor service delivery. For example, the excessive unplanned power outages in Ekurhuleni are linked to the 33% vacancy rate in the electrical department, which is further exacerbated by the limitation of overtime hours permitted.

The monitoring of individual performance and organisational performance is essential for dealing with productivity in municipalities. Regular assessments of both are needed to keep a municipality responsive to under-performance.

Skills audits and appropriate job descriptions should inform the recruitment of new personnel and determine the appropriateness of current personnel.

Currently district municipalities, which are required to play a support and supervisory role

Both Midvaal and the CoJ have effective performance management systems in place, and could be used as examples of good practice to be emulated.



for local municipalities, do not necessarily have the requisite skills to carry out the functions and related mandate.

The impact of coalition governments in metropolitan municipalities has further politicised the appointment of senior civil servants.

Coalition governments in the metro municipalities have further politicised the appointment of senior personnel.

## Recommendations

It is recommended that:

1. CoGTA facilitate a review of entities as part of the institutional structure of municipalities. The objective should be a determination of the impact of entities on the efficacy with which services are delivered to residents.
2. CoGTA strengthens its oversight and analysis of skills audits at all municipalities to provide support on strategic appointments that will strengthen the capacity of municipalities to deliver services.
3. The number of senior managers that do not meet the minimum competency requirements (MCR) should be addressed by CoGTA and National Treasury.<sup>60</sup> Those managers already appointed since the detection of this irregularity should be granted a period of time within which to achieve the MCR. They must be monitored for compliance in having acquired the necessary skills and qualifications. Where subsequent appointments have been made in violation of the MCR, this should be investigated and acted upon.
4. CoGTA and the municipalities should collaborate to develop apprenticeship

60. The NT monitors this aspect in the case of the metropolitan municipalities and has imposed deadlines for the achievement of the MCR for those managers that have been placed on notice.

61. The latest review was done by CoGTA in 2016.

62. MISA itself has been unable to attract sufficient numbers of the professional skills required to fully discharge its support function to municipalities.

63. The recognition of prior learning and experience should be considered for the technical skills required. This could be patterned along the same lines as that used by the NT that sets Unit Standards relating to various aspects of the skills required of senior managers, such as Strategic Leadership and Operations Management. The accreditation of these Unit Standards in the technical skills area would have to be considered in conjunction with the regulatory bodies of the relevant professions.

programmes in order to address the shortage of artisanal skills, such as those relating to plumbing and electrical work.

5. In the determination by CoGTA of where the skills deficit exists, it should be considered that a relaxation on the limits on remuneration levels for professionals may be required, in order to attract them to municipalities. The funding of this relaxation should not impact the financial viability of the municipalities. A grant to support the employment costs of professionals by municipalities should be considered by CoGTA.
6. It is appropriate that the Scarce Skills Strategy approved by CoGTA in 2010 be reviewed<sup>61</sup> taking into account the changed requirements necessitated by the Fourth Industrial Revolution and the Covid-19 pandemic. CoGTA should engage SALGA and the Municipal Infrastructure Support Agency (MISA)<sup>62</sup> to develop a long-term strategy to attract and retain appropriate technical skills to municipalities. The review should take into account the impact of the shortage on competition between municipalities, and between the state and private sectors. The review should also consider the training of new personnel to address the shortfall.<sup>63</sup>
7. In order to mitigate the impact of the vacancy rate in critical service delivery departments such as the electricity department in Ekurhuleni, a shift system should be introduced to ensure continual service. In addition, the limitation on the number of overtime hours permitted for each employee could be increased as a temporary measure. Simultaneously an active recruitment drive should be embarked upon. CoGTA should explore establishing attractive bursary schemes to attract young people into municipal-specific competency areas with a view to internships and employment in Gauteng municipalities for a mandatory period of service. The role of the SETA should also be maximised for skills development.

8. The capacity of district municipalities to support local municipalities, and to play any future role in the implementation of the District Development Model (DDM), should be assessed. This is with a view to influencing the policy currently under consideration including the strengthening of district municipalities' capacity.

9. The ability of both national and provincial COGTA to monitor, evaluate and support municipalities must be strengthened significantly given the number of metros in Gauteng. Research capability must be significantly strengthened to determine trends and strategic foresight, which is central to changing the strategic direction of all municipalities.

10. CoGTA should compile guidance on job descriptions<sup>64</sup> and a profile of managers required. The review should address the strategic and tactical abilities needed<sup>65</sup> by metropolitan municipalities in order to better inform the agility that they will be required to demonstrate in the new normal, since the Covid-19 pandemic.

11. CoGTA should monitor the development by the executives, and their adoption by the councils of local municipalities, of an Organisational Performance Management System (OPMS).<sup>66</sup> Similarly, the implementation<sup>67</sup> of the OPMS system and its impact on the development of all municipalities and their service delivery outcomes must be monitored.

12. A comprehensive review should be initiated by CoGTA, together with all municipalities, of their business processes for service delivery in light of the altered demands brought about by the Covid-19 pandemic.



64. This function is already performed by SALGA and serves before the bargaining council that negotiates municipal salaries and wages. An independent review is required by CoGTA to better inform the discrepancies between the intended and actual state of affairs. The existing guidelines on the qualifications required that correlate with strategic ability are in reality ignored sometimes because of the appointment by councils of managers reporting to Municipal Managers (Section 56 (a) of the Municipal Systems Act 32 of 2000). The appointment is required to be made 'after consultations with the Municipal Manager.'

65. Municipal Managers are appointed by Council. They are 'subject to the policy directions of the municipal Council,' and 'responsible and accountable for (a) the formation and development of ... [an] accountable administration,' in terms of Section 55 of the Municipal Systems Act. The qualifications, experience, skills and strategic ability required of a Municipal Manager may not always be factored in appropriately by councils. CoGTA should conduct a review of the requirements for the position in light of the current circumstances and provide guidance to Councils on the recruitment of municipal managers.

66. Section 39 of the Municipal Systems Act.

67. Section 40 of the Municipal Systems Act requires that "A municipality must establish mechanisms to monitor and review its PMS." Section 42 of the same Act requires that a municipality "must involve the local community in the 'development, implementation and review of the municipalities PMS...'" This is an aspect of conception and implementation of the PMS system and should form part of CoGTA's monitoring function



## GOOD AND COOPERATIVE GOVERNANCE

*“Democracy must in essence ... mean the art and science of mobilising the entire physical, economic and spiritual resources of all the various sections of the people in the service of the common good of all.”*  
Mahatma Gandhi



Local government, as the sphere of government closest to communities, is accountable to the electorate in the performance of its service delivery functions. Councils have a mandate to govern, exercise oversight, deliver services and develop municipalities. Municipalities are distinct governmental institutions<sup>68</sup> with their own legislative and executive functions

***What is the separation of powers?***

The separation of powers is used worldwide as a mechanism to ensure oversight and transparency of government. In South Africa, the Constitution separates powers between the executive, legislature and judiciary. Similarly, in local government, a separation of powers between municipal councils and the administration ensures that there is oversight and monitoring of performance. Section 151 of the Constitution vests both legislative and executive authority of a municipality in the municipal Council. As a result, the ‘current arrangement differentiates the local sphere from the other two spheres of government, resulting in different governance systems in a unitary state.’ (SALGA, 2016)

Municipalities are guided by the broad Constitutional principle of equitable access to service delivery on the basis that ‘all spheres of government and all organs of state within each sphere must...secure the well-being of the people of the Republic.’<sup>69</sup> Municipalities perform their functions in the context of historical spatial and economic inequities. In doing so, the overall values of the Constitution are to be upheld, focused on the common good of all. The performance of a municipal function, physical, economic, social and other, cannot be at odds with these values, especially as they relate to discrimination. No consideration may be given to issues of racial, religious or other affiliation in decisions affecting service delivery and developmental issues within a municipality.

Even though municipalities are distinct governmental institutions they are interrelated and interdependent with the other spheres of government. <sup>71</sup> The scope of involvement with different governmental departments and institutions varies, as does the relationship that municipalities have with state-owned enterprises and the private sector.

This institutional independence of municipalities can sometimes conflict with the system of elections in South Africa. The party proportional and direct representation system can cause tension between the accountability to a party and the core mandate of a municipality, which should be independent of party-political considerations. The political mandate should only relate to the manner and policy emphasis of service delivery, as envisaged in Chapter 10<sup>72</sup> of the Constitution and expressed in municipal legislation and regulations.

The first principle governing public administration is the ‘high standard of professional ethics (that) must be promoted and maintained.’ <sup>73</sup> This is the minimum standard of ethical conduct expected of state officials and public representatives.

68. Chapter 3 of the Constitution of the Republic of South Africa Act, 1996 (the Constitution) enunciates the principles of cooperative governance. This asserts the cardinal principle of distinct spheres, that may not assume powers and functions not conferred to the sphere; not encroach on the geographic, functional or institutional integrity of government in another sphere; must cooperate, particularly in assisting, supporting, consulting on matters of mutual interest; coordinating including on legislation, adhering to agreed procedures and avoiding legal proceedings between one another. Section 151, Chapter 7, deals with the status of municipalities that are the ‘local sphere.’ The executive and legislative powers being vested in their Councils; a municipality has the right to ‘govern on its own initiative but subject to provincial and national legislation, with the right not to have the other two spheres compromise or impede a municipality in the discharge of its powers and functions.

69. Section 4(1)(1) of the Constitution.

70. Section 40(1) of the Constitution

71. Section 156(1) of the Constitution relates to the assignment of powers and functions to a municipality contained in Schedules to the Constitution. This is discussed together with Section 84 (2) read with Section 83(1) of the Structures Act 117 of 1998; in the text below.

72. Section 195 of the Constitution

73. Section 195(1)(a) of the Constitution

Their accountability to residents though, may be informed by views on ethical conduct that are beyond that envisaged as professional ethics.<sup>74</sup>

In order to achieve appropriate accountability<sup>75</sup> and oversight<sup>76</sup>, municipalities are required to have relevant and functioning governance structures. These include functional Council structures and related committees.

An Executive Mayor ‘exercise(s) executive authority ...in whom leadership of the municipality is vested and who is assisted by a Mayoral Committee.’<sup>77</sup> In the case of a delegation by Council to an executive committee,<sup>78</sup> it is the entire committee that has the executive responsibility. The following table indicates the municipal governance systems that are permitted to elect an Executive Mayor.<sup>79</sup>

Despite the delegations, accountability and oversight remain that of the Council, to the institution, wider government and the public. Accountability within the institution is often challenged by the simultaneous vesting of legislative and executive authority within municipal councils. <sup>80</sup> This is unlike the separation of powers applicable to central government, for instance.

74. Professional ethics would be defined as the conduct expected of a person in his or her capacity as a professional. For example, lawyers and Chartered Accountants are obliged to conduct themselves within the ethical code of their professional regulatory body. Irrespective of the professional status of municipal employees; they are bound by public service instruments, such as a code of conduct for municipal or senior managers, in the absence of a statutory definition of “professional ethics.” The latter is more substantively required within specific legislative prescripts governing particular obligations that accompany the position. Section 55 (1) (a) of the Municipal Structures Act 32 of 2000, for example, requires that the Municipal Manager is ‘responsible and accountable for the formation and development of an ...accountable administration.” Sub-section 2(b) requires that as the Accounting Officer, the Municipal Manager is responsible for “proper and diligent compliance with the MFMA.”

75.“Accountability” is the expectation of the persons or institutions affected that a municipal council explain and justify all decisions and actions taken, when required. The accountability lies with residents or the electorate, through the mandate entrusting council with the service delivery and developmental mandate. It also lies with government as a whole that this be discharged within the confines of the Constitutional and other legislative requirements generally and with local government specifically.

76 “Oversight” is the manner in which the relationship between the legislative, executive and administrative parts of a municipality is structured to monitor, detect and act upon deviations from the legal requirements governing municipalities, and how it impacts the delivery of the services and addresses the developmental mandate.

77. Section 7(b) of the Municipal Structures Act

78. Section 42 of the Municipal Structures Act

79. Section 54 of the Municipal Structures Act

80. Section 151(2) of the Constitution

81. Chapter 4, Sections 54; 8 and 9 of the Municipal Structures Act

Table 9: Categories of Municipalities and Permissibility for an Executive Mayoral System<sup>81</sup>

Category of Municipality	May have an Executive Mayor
Category A: A municipality that has exclusive municipal executive and legislative authority in its area.  (COJ, COE, COT)	1. A municipality with a mayoral executive system
	1 and 2. A Sub-Council Participatory System.
	1 and 3. A Ward Participatory System
Category B: A municipality that shares municipal executive and legislative authority in its area with a Category C municipality within whose areas it falls.	1 and 2 and 3
	1. A municipality with a mayoral executive system (Emfuleni, RWC and Merafong City).
Category C: A municipality that has a municipal executive and legisla-tive authority in an area that includes more than one municipality.	1 and 3. A Ward Participatory System (Lesedi, Mogale City)
	A municipality with a Mayoral Executive System (Sedibeng and West Rand District Municipalities).

Note: Midvaal Local Municipality has a Collective Executive System

Internal procedures of a Council are dealt with in Section 160 of the Constitution. This provision reflects the original powers of a legislative body to regulate itself. Section 160(6) (c) permits, but does not compel, a Council to make by-laws that prescribe rules and orders ‘for the establishment, composition, procedures, powers and functions of its committees.’ Oversight committees <sup>82</sup> of Council need their powers for the performance of oversight functions to be defined in by-laws.

Where the distinction between governance and operational management is not clearly demarcated, problems at the political-administrative interface may occur.

Both the governance and administrative levels of local government work together in the service of the common good. Accountability is required at both the governance (oversight) and administrative (operational) level. Where the distinction between governance and operational management is not clearly demarcated, problems at the political-administrative interface may occur. CoGTA refers to this as a systemic problem that ‘refuse(s)

to go away.’<sup>83</sup> The Committee did not always interact with the political authority in the municipalities, which may have restricted the understanding of the problems experienced in the political-administrative interface.

A key aspect of the governance process is the relationship between municipalities and other spheres of government. As discussed, a fundamental constitutional principle revolves around the distinct yet interdependent nature of each sphere of government. This interdependence requires cooperation to deliver services and resolve differences. Section 154(1) of the Constitution states that:

*‘The National government and Provincial government, by legislative and other measures, must support <sup>84</sup>and strengthen the capacity of municipalities to manage their own affairs to exercise their powers and to perform their functions.’ <sup>85</sup>*

It is the responsibility of the whole-of-government, nationally and provincially, to support municipalities in delivering their functions. This support and strengthening role is not just a CoGTA responsibility.

Cooperative government as a constitutional imperative is aimed at ensuring alignment between the spheres in order to effectively discharge their relevant mandates. Support to the municipal institution is therefore also support for the achievement of the core mandates of sustainable service delivery and the promotion of socio-economic development.<sup>86</sup> Municipalities are required to ‘strive, within its (their) financial and administrative capacity,’ <sup>87</sup> to achieve this and related objects of local government. Where that capacity is lacking, provincial and national government must provide support to strengthen municipalities.

The key function of cooperative governance is to effectively manage the many functions that are shared between spheres of government, and to encourage a whole-of-government approach to support municipalities. Additionally, cooperative governance involves resolving challenges that all spheres, including local government, face in their relationship with state owned entities (SOEs). This support relates to policymaking, legislation, implementation, and monitoring and performance assessment.

82. Committees in smaller municipalities lack sufficient council members to fulfil the span of committees required. Section 80 committees exist in local municipalities, while metros have Section 79 committees. The chairpersons of the Section 80 committees are members of a mayoral committee and not an executive committee. The financial resources and competency required for these committees is often lacking.

83. CoGTA, 2020

84. “It would not be helpful to consider dictionary definitions of the terms ‘supervision,’ ‘monitoring,’ and ‘support.’ It is more apposite to extract contextual meaning of these terms as evidenced by the New Text (of the Constitution) itself.” Certification of the Constitution of the Republic of South Africa, 1996; Constitutional Court of South Africa; 6 September 1996. Paragraph 370

85. “other measures” in Section 154 implies a wide range of options beyond legislative measures and should be both of generic application and contextually specific to the municipality being supported; and not be confined to financial and administrative support.

86. Section 152(1) of the Constitution.

87. Section 152(2) of the Constitution.



Governance obligations at all levels have vertical and horizontal dimensions. This applies to both the political and operational levels. National and provincial departments of Cooperative Governance and Traditional Affairs are required to lead and coordinate their

Where the distinction between governance and operational management is not clearly demarcated, problems at the political-administrative interface may occur.

respective spheres of government, and give effect to the constitutional and legislative imperative dealt with in this chapter.

The support obligation contained in Section 154(1) of the Constitution is addressed directly in Section 155(6)(b) as it relates to the

provincial sphere of government. The provision states: ‘...and by legislative and other measures, must promote the development of local government capacity to enable municipalities to perform their functions and manage their own affairs.’ In addition the province is obliged to ‘monitor and support’ local government. <sup>88</sup>

The specific requirement for good governance within the local government sphere is to be found in Section 152 of the Constitution and is characterised by both the Constitutional imperative of cooperative governance and autonomy, <sup>89</sup> in its execution.

The functions and the extent to which they are distributed to the municipal sphere is contained in schedules<sup>90</sup> to the Constitution that address concurrent national and provincial functions, exclusive functions and matters exclusive to municipalities. A municipality also assumes executive authority over, and administers, ‘any other matter assigned to it by national or provincial legislation.’ <sup>91</sup>

All of the metropolitan municipalities in Gauteng, as well as Mogale City, have been led by minority governments and under coalition arrangements since the last municipal elections. This has, in some cases, had an impact on the political-administrative interface and governance as a whole, affecting both the capacity and efficacy of service delivery.

During the tenure of the Committee, there were several developments seemingly due to party political stances at the CoJ and CoT that had adverse effects on the administration and service delivery of the respective metropolitan municipalities.

The capacity of the two district municipalities to provide support to their local municipalities is of concern. The execution of the role of the two district municipalities in relation to their oversight,

The three metros, and Mogale City, have been led by minority or coalition governments since the last municipal elections. This has had an impact on the political-administrative interface, and governance of municipalities.

88. Section 155(6)(a) of the Constitution

89. Section 152(1) of the Constitution defines the other objects of local government to include ‘democratic and accountable government,’ the promotion of ‘a safe and healthy environment,’ and to ‘encourage’ public participation ‘in the matters of local government. At the core of this practically is ‘sustainable service delivery’ and ‘socio-economic’ development.

90. Part B of Schedules 4 and 5.

91. Section 156(1)(a)



coordination, and support<sup>92</sup> functions rendered to their local municipalities has proven to be ineffective.

The department is not providing adequate support to districts to exercise their mandate. The mandatory obligation of the MEC to assist district municipalities to ‘provide support services’ to a local municipality is also not strongly evident.<sup>93</sup>

## Committee Observations

South Africa’s Constitutional system of interdependent and cooperative governance provides for localised powers and functions that are greater than in many other countries. In contrast, provincial government has relatively less powers than in other systems of government. This brings about an inter-spherical tension where support of local government is intended to be continuous and intervention is only allowed in defined circumstances that pose a risk to service delivery. This approach, as envisaged in the Constitution and legislation, is significantly absent in the manner in which local government is supported by all departments of the Gauteng Provincial Government (GPG) and national government.

The intended ongoing support of local government, as envisaged in the Constitution, is absent in the way in which municipalities are supported by Gauteng Provincial Government and national government.

The support provided to municipalities by the GPG is largely aimed at providing financial and administrative capacity. This does not sufficiently examine the other interdependent aspects of the specific municipal institution and the external environment within which it exists.

The Committee regards the role of both national and Gauteng Departments of CoGTA as coordinating the support capabilities of all of government to achieve the local government mandate, which is at the rock face of residents and consumers<sup>94</sup> of municipal services. This is sadly absent as can be seen in the example of Emfuleni where de-industrialisation over approximately 20 years, the negative effect of historic tariff agreements with Large Power Users (LPUs) entered into in 1987 (see Appendix for further information), and the deteriorating governance, institutional stability, financial viability and infrastructural decay has resulted in continued economic divestment since 2000. This has led to challenges for the municipality in their ability to be a going concern or functionally viable.



92. In terms of Section 83(3) of the Municipal Structures Act 117 of 1998, a District Municipality must seek to achieve the integrated, sustainable and equitable social and economic development of its area as a whole. This is done by, among other measures; at sub-section (c), “ building the capacity of local municipalities in its area to perform the functions and exercise their powers where such capacity is lacking.” Furthermore, in terms of Section 88 there is a mutual support obligation between district and local municipalities within its area. Either may request the other to provide financial, technical and administrative support and the other is obliged to respond to the extent that it has capacity to provide these support services.

93. Section 88(3) of the Structures Act states that: “The MEC for local government in a province must assist a district municipality to provide support services to a local municipality.”

94. A resident is any natural person that resides within a municipal area. Almost all residents are consumers of one or other municipal service. However, not all are paying consumers and in that sense consumers refers to those residents who pay for services. All residents are the subject of the developmental mandate of a municipality.

## The case of Emfuleni

- *Emfuleni has identified the declining local economy as a strategic risk. The development and economic dependency of the municipality had centred on the manufacture of steel and supporting tertiary industries. The parastatal, ISCOR, had been the largest employer in the area. In 1989, ISCOR was privatised and in 2004, was acquired by an International Steel Multinational Corporation (MNC), Accelor Mittal (AM). The plant’s production was integrated into the MNC’s international production value chain. Over time, changes in the international steel market made the plant uncompetitive, leading to downscaling and severe job losses. The employment figures for AM in December 2019 was 7 776 permanent employees. Between 1997 and 2010, the plant shed 79% of its workforce. The trend has deepened over the last 11 years and continues.*
- *The unemployment rate in the municipality is officially 54%, of which 28% are youth. This was significantly above the national average of about 29% unemployment, in 2019. The unemployment in Sebokeng was described by a former Municipal Manager as ‘staggering.’*
- *Tertiary industries such as engineering works, manufacturing and a more diversified industrial base have all been impacted by deteriorating international and domestic economic conditions. Increasing electricity and rail tariffs have also been cited as factors in downsizing or closing of operations.*
- *Employers are generally LPUs and have arranged to be supplied directly by Eskom as a result of the municipality attempting to revise the tariff subsidy. The consequence is a loss of revenue to the municipality (see Appendix).*
- *The municipality is engaging businesses to find ways of supporting them in order to preserve jobs and thereby mitigate a further deterioration of the municipality’s revenue base.*
- *New large manufacturing sector investors with significant direct and indirect job-creation ability are being targeted. The manufacturing sector is expected to have improved linkages to agriculture, town attraction, partnership with the private sector and SOEs. Some envisaged large investment applications being considered include:*
  - *An AB Inbev investment in a mill plant with a value of R4.5 billion to R6 billion. The project seeks to create opportunities for new black industrialists. It is intended to be 51% black-owned and produce 460 000 tons of glucose and maltose per annum. A second project is a glass manufacturing plant with a 51% black ownership, 30% of whom are envisaged to be women. The investment value of this project is R3 billion.*
  - *An investment of GDARD in four agricultural parks.*
  - *The release of land for the establishment of a locomotive industrial hub in Sebokeng.*
  - *Approvals for the construction of the Vaal River City, and a R30 million expansion project by premier foods ‘Snowflake.’*
  - *Looking into the aquatic economy and expanding agricultural development.*

The dispute between the municipality and the LPUs is the matter of an ongoing series of litigations and simultaneous negotiations. The LPUs are receiving their electricity supply directly from Eskom, depriving the municipality of revenue. Similarly, in Merafong City, mines are supplied water directly by Rand Water.

Emfuleni had very limited access to the State Legal Advisor in its approach to resolving the dispute with the LPUs. Local municipalities lack the funds to engage in protracted legal battles, as is shown in the case of Emfuleni, and in Merafong City where the disputes relate to mine property valuations. The lack of support by the Office of the State Legal Advisor is a result of their lack of focus on municipalities, instead focusing on drafting and other tasks related to the legislative process.

The support measures used by CoGTA and the GPT are informed from a perspective that their limited legislative powers do not sufficiently permit influence<sup>95</sup> over the affairs of municipalities. The exception is the intervention such as is provided for in terms of Section 139 of the Constitution. The tremendous collective power of government is necessary to ensure that ongoing support, including other instruments of intervention outside the authority of CoGTA, is marshalled to prevent the need to violate the autonomy of local government by placing them under administration.

However, the challenge is not exclusive to the way in which national and Gauteng CoGTA interpret their own roles. It is also related to the manner in which other sector departments regard their own roles relative to local government. The result is that the role of both departments of CoGTA is regarded as focusing on local government institutions rather than on the development of the municipal area.<sup>96</sup> The consequence is that the departments are regarded as an extension of local government by their peer departments. This is exacerbated by the relatively low level of responsiveness by the municipalities to departments of CoGTA, leading to little direct influence and

authority in the exercise of their oversight<sup>97</sup> function over municipalities. This is particularly the case for metropolitan municipalities that have a more substantive relationship with NT.

At the heart of the strategic approach to municipal turnaround is the use of ‘other measures’ as envisaged in Section 154 of the Constitution to garner support from all of government to assist in the ongoing capacity building of municipalities. The CoGTA mandate is to mobilise and coordinate this.

Instead the support is reactive, intended to plug gaps in capacity and is unable to be sufficiently predictive of the decay of many of the municipalities. Even if this is detected, especially in the area of the political-administrative interface and its effect on governance and the functional decline of municipalities, CoGTA has confined itself to technical and hands-on support instead of seeking the use of ‘other measures’ to address this problem from a whole-of-government perspective.

CoGTA's role in facilitating ongoing support to municipalities requires the active collaboration of other departments. It also requires a common vision that is informed both by the perspective of national government as well as the provincial economic and institutional vision, financial viability and the developmental orientation of each municipality. It appears that the work conducted jointly with the GPT is the most active and consistent with indications that both departments are considering reorganising their structures to be more aligned with the strategic vision of effectively assisting municipalities.

National and provincial departments of CoGTA are regarded as extensions of local government by peer sector departments. This leads to limited involvement in support measures by sector departments.

95. Another basis for provincial legislation is found in Section 161 of the Constitution that permits provincial government to pass legislation to provide for immunities and privileges for councils and their members. It is required that this legislation conform to the framework of national legislation.

96. The Municipal Council and its Administration comprise the municipal institution. Their core purpose is to provide services and to address the developmental needs of the community it serves. The oversight and support that is to be provided to municipalities must address both the service delivery capability and the developmental obligations; that are to be widely interpreted as stated in the principle contained in Section 41(1) (b) of the Constitution that: ‘All spheres of government and all organs of state within each sphere must ... secure the well-being of the people of the Republic...’

97. Provincial Health Services is the responsibility of the Gauteng Department of Health (GDH). However, the functions are effectively conducted by some municipalities, in particular Johannesburg. CoGTA is not involved in coordinating this situation, especially from the perspective of the financing of the function for the executing municipalities.



Simultaneously CoGTA and the GPT are addressing the issue of better delineating their responsibilities by reviewing the current Memorandum of Understanding (MOU) between the two departments. The MOU is an interim arrangement as a result of the yet-to-be-defined legislative amendments between the national Minister of Finance and Minister of CoGTA.<sup>98</sup> These amendments will serve to clarify functional responsibilities between these two departments in relation to oversight and support to be provided to municipalities. These were expected to be done through Presidential Proclamations,<sup>99</sup> and in the interim, delegations from the NT to the GPT were also delayed as a result of the legislative review process.

The GPT currently has responsibilities for oversight of municipal finance management while CoGTA is focused ‘on governance and coordination on service delivery performance.’<sup>100</sup> The possible effect of the MOU is a distribution of functions and accountabilities between departments. This may be an irregular outcome to an otherwise well-intentioned distribution based on capacity considerations.

The distribution between finance and service delivery performance ignores the underlying reasons for the decline in municipal viability; such as rapidly deteriorating local economies, or the impact of environmental and climate change or geological impediments, for example the prevalence of dolomite in a municipality.

98. The Local Government Memorandum of Understanding (MOU) CoGTA (GP) and the GPT, 18 April 2016, states that the MOU is put into place based on a decision of a series of meetings between NT, provincial treasuries, national and provincial CoGTAs, and SALGA that these be used to implement the relevant local government legislation in preparation for the delegation of powers from NT to the Provincial Treasuries.

99. Section 97 of the Constitution. The MOU between the NT and National CoGTA is cited in the MOU as well.

100. MOU.





The process of reviewing the ‘vision’ and ‘strategy’ and the related organisational structure of CoGTA (regional teams) to enhance municipal support anticipates some of the findings of this report. The structure of the department is to be aligned to the vision that in substance cannot be changed and remains developmental; with the key emphasis being economic growth within the National Development Plan (NDP) framework. The following is observed in relation to the review:

a) Aspects relating to urban planning and development, governance and institutional support are identified as requiring more consideration both for the support strategy and the structural design;

b) A greater emphasis is to be placed on the IGR structures in facilitating cooperative governance to achieve the NDP objectives and execution required by municipalities. This presupposes plans beyond the IDP timeframe and their adoption beyond the term of a municipal council. This will require a balance of approaches between the mandate within which a Council is elected, and the long-term policy objectives of the whole of government as it relates to service delivery and socio-economic development.

101. The residents of informal settlements comprise of 5% of the population although this is increasing. This remains a significant number of residents against a provincial population of 12 million.

c) This also assumes a greater degree of involvement of provincial government in general in the formulation of IDPs to address the time horizon restrictions and to formulate provincial wide development plans that inform the IDPs. Currently CoGTA is focused on the assessment of the budgets and IDP prior to adoption without any direct mechanism to address and enforce the continuity aspects above. In particular, there is little evidence of hands-on support by CoGTA in IDP formulation, its implementation, and the public participation aspect (see the chapter on this aspect below).

d) The review of the financial value chain is intended to strengthen procedural compliance. This indicates a historic problem in the execution of this function by municipalities and others and generally points to human resource capacity constraints.



The source of the distribution of functions and powers between the district municipalities and their local municipalities is governed by the Constitution<sup>102</sup> and the Municipal Structures Act 117 of 1998 (Structures Act).<sup>103</sup> The compulsory mandate (“must”) of a district municipality is to ‘seek to achieve the integrated, sustainable and equitable social and economic development of its area as a whole.’<sup>104</sup> This must be achieved by the district municipality through the functions it performs, some of which may not, in law, be assigned to a local municipality unless the MEC CoGTA determines that the district does not have the capacity to carry them out.<sup>105</sup> These allocations are done within the wider national and provincial legislative framework.<sup>106</sup>

The local municipalities are vested with service delivery functions while district municipalities should guide planning, coordination and supervisory functions. The district municipalities have a negligible revenue base derived from direct services to the community, and agency fees for performing provincial motor vehicle licensing and

limited other agency functions. District municipalities are largely dependent on allocations from the other two spheres of government. This is a systemic constraint within which the districts in Gauteng are functioning. In addition, given the intended coordination, guiding and support role of districts, it is necessary to ensure that districts have the capability to perform this function. Improving the research capacity, strategic guidance and leadership ability of district municipalities is critical. The District Development Model (DDM) currently being piloted by national CoGTA intends to address these challenges countrywide.

Where there are constraints in respect of capacity on the part of the local municipalities, the district municipality may carry out these functions directly. These functions include the provision of potable water supply systems; the transmission, and where applicable the generation, of electricity; and the provision of domestic wastewater and sewage disposal systems.<sup>107</sup> These functions<sup>108</sup> had

102. Section 83(1) of the Structures Act refers to the powers and functions as assigned in Sections 156 and 229 of the Republic of South Africa Constitution Act 108 of 1996

103. Section 83 (2) of the Structures Act.

104. Ibid, Section 83(3)

105. Section 85(2)(a) of the Structures Act

106. The framework largely is defined by the Constitution, Sections 83, 84 and 85 of the Structures Act.

107. The detail of the district functions are stated in Section 84 of the Structures Act.

108. Electricity generation is practically excluded because this is exclusively conducted by Eskom for local municipalities.



been assigned to the local municipalities in Gauteng on the basis of their pre-existing performance of these functions and capacity considerations.<sup>109</sup> This leaves district municipalities with very little obligation to provide services directly to the public and most of the district services are rendered to other local municipalities.

Sixty percent of the district councillors represent local councils, and the balance (40%) is elected by citizens in the geographical area of the districts. District municipalities do not appear to assume responsibility for the entire district. They also do not seem to be responsive to the wider developmental and service delivery functions of the local municipalities. The independent obligation of the district municipalities is to more widely perform the coordination function in order to enhance economic and related developmental enabling initiatives.

An added challenge that has systemic characteristics amongst the Gauteng district municipalities is the effect of the electoral system. The focus is on the party mandate and this is complicated by the district municipalities and local municipalities having the same party members. The matter of contradicting party accountability when the solution is at odds with party imperatives could lead to decisions that are not necessarily in the best interest of the municipality. This comes to the fore where party political, service delivery and developmental considerations are not balanced in the appointment of the Municipal Manager, for instance, based on party considerations. This leads to issues of distrust and political partiality. The only counter to this is to ensure adherence to the SALGA code of conduct for Municipal Managers. Effective and expeditious disciplinary steps against incompetent and errant Municipal Managers are



not likely to be taken or to be fair and reasonable outside of the code. A GPT official in their submission to the Committee stated that, ‘The system does not want competent people!’<sup>110</sup> This may reflect on the extent of non-suitable managers within municipalities. The active training provided by both CoGTA and the GPT to these managers indicates that many are appointed without regard of the qualifications and skills required for those posts.

The GPT advocates that in the future design of district municipalities, economies of scale in the procurement of goods and services should be modelled into a regional approach, based on an IDP. For example, the Australian concept of local government resource sharing could be a reference and be supported by an appropriate legislative framework.<sup>111</sup> The DDM process also intends to address this issue.

109. Structures Act, Section 85(1) and (2)

110. The detail of the district functions are stated in Section 84 of the Structures Act. Electricity generation is practically excluded because this is exclusively conducted by Eskom for local municipalities. Structures Act, Section 85(1) and (2)

111. The deficiencies of the district municipalities of Gauteng to discharge their planning and coordinating role relating to the service delivery mandate of the local municipalities in their areas is related to the urban character of the province. Local municipalities have pre-existing capacity to provide and derive revenue from the core transactional services. As a result consideration was given to the formation of two Uni-Cities. The one Unit-City was conceived of being established for the entire area of the West Rand District and the other for the Sedibeng District. The matter did not proceed. Nevertheless the considerations that went into the conception of Uni-Cities related to a single integrated plan for the district and to more effectively have all of cooperative governance converge in giving effect to that plan. The proposal would have challenged both existing practices and tested the bounds of the current municipal regulatory framework, particularly as it relates to cooperative governance. This would most likely have required a legislative review to determine the reform required to remove the impediments to the districts of Gauteng in discharging their intended functionality. Alternatively the purpose of their existence is called into question, as was attested to on several occasions when the Committee received submissions from various parties.

A Council may establish one or more committees necessary for the effective and efficient performance of any of its functions or the exercise of any powers (Section 79 Committees).<sup>112</sup> In the case where the Council delegates its executive powers to an Executive Mayor or executive committee, it may establish committees of Councillors (‘Section 80 Committees’)<sup>113</sup> to assist with the performance of the executive functions.

Mayoral Committees are established in all municipalities and the frequency of meetings varies between municipalities. The exception is Tshwane which is currently being run by an Administrative Council following a Section 139<sup>114</sup> intervention by the Gauteng MEC for CoGTA.

All local municipalities in Gauteng have Section 80<sup>115</sup> Committees chaired by members of the Mayoral Executive Committee. All metropolitan municipalities have Section 79 committees chaired by a member of Council. Section 79 committees include MPAC, Audit Committees, and the Rules Committee, for example.<sup>116</sup> Where these committees are directly accountable to Council, this is regarded as an aspect of the separation of accountabilities between the legislative and executive powers of the Council. Whether this is achieved as an aspect of governance oversight is reliant on how they are run, which is a matter of practice or convention.

The Committee notes the successive recurring findings of the Auditor-General of SA (AGSA) in many municipalities. The finding may, in part, be due to the Municipal Public Accounts Committees (MPACs) being influenced by party political systems.<sup>117</sup>



The governance oversight role of CoGTA does not permit it to strategically influence MPAC performance, especially as it relates to irregular expenditure. The Committee notes a lack of practical support for the performance of MPACs, aside from the jointly facilitated training by CoGTA and the GPT for MPAC members on their role and responsibilities. The training may not have had any significant effect in light of the poor performance by MPACs in reducing irregular

112. Section 79(1)(a) of the Systems Act 117 of 1998.

113. Section 80 of the Systems Act

114. Section 139 (1) of the Constitution states that: “When a municipality cannot or does not fulfil an executive obligation in terms of legislation, the relevant provincial executive may intervene by taking any appropriate steps to ensure fulfilment of that obligation....” Section 139 (1) of the MFMA states: “If a municipality, as a result of a crisis in its financial affairs, is in serious or persistent material breach of its obligations to provide basic services or to meet its financial commitments, or admits that it is unable to meet its obligations or financial commitments, the provincial executive must promptly,” take any number of steps stated in this sub-section. This includes “to determine the reasons for the crises in its financial affairs,” for instance.

116. Service Delivery Committees are Section 80 committees.

117. In the national and Western Cape legislatures, Public Accounts Committees are chaired by a member of the opposition party. This is the case in all Democratic Alliance governed municipalities across the country. This is an implicit recognition that the committee may be influenced by party political considerations in its proceedings and outcomes. The approach increases the independence of the MPAC and is an aspect of separation of powers within the context of the political independence of council and the dominance of a party within that Council.



expenditure or in initiating the process by which responsible parties are held to account.

A strong and effective Audit Committee and an effective Accounting Officer is essential to achieving a ‘clean audit,’<sup>118</sup> and for a municipality to improve its financial governance, and supplement and strengthen its service delivery and developmental outcomes. The AGSA is able to express an opinion on performance, but this cannot affect the overall audit opinion unless there is a material finding against the performance report.

Municipalities are required to provide for ‘the receipt, processing and consideration of petitions and complaints lodged by members of the local community;’<sup>119</sup> as part of their obligation to facilitate public participation. Petitions permit a Council to be

alerted to community concerns that are not otherwise detected (see Chapter on Public Participation). It is the expectation of the petitioners that Council will consider their petition, and respond, including the provision of reasons for non-implementation, as an aspect of the council’s public accountability. However, where there is difficulty in implementing the outcome required by petitioners, it is not a legal requirement that the outcome be implemented in

the form required by the petitioners

Ethics Committees are established in most municipalities and are vital in ensuring



the ethical conduct of public representatives and the deepening of democracy and good governance. Ethics Committees report to the Council. However, the level of public alienation and negative perception of municipal administrations reflects a gap in addressing public concerns. Many of these concerns flow from the ethical conduct of public officials who cannot be called before the Ethics Committee. The performance and conduct of officials can only be addressed as a human resource matter.

Across the province many ward committees are perceived as ineffective. This is despite the submission by Emfuleni, Lesedi and Mogale City that the committees are functional and meet with the communities they represent. Significantly, Mogale City cited the lack of capacity to exercise oversight functions by the ward committees, as being a strategic risk. Despite Emfuleni’s submission, the Mayor had to directly facilitate engagement with the Vaal communities that were engaged in a protracted service delivery payments boycott.

Community Development Workers (CDWs) are present in municipal communities and are expected to play a supportive and complementary role, by facilitating coordination of the services made available by all of government to residents. The CDW’s work under the aegis of CoGTA. There is therefore a challenge around their not working closely enough with municipalities given their reporting line to the province (CoGTA).

Ward-based ‘war rooms’ (otherwise referred to as ‘ward action committees’) were established to respond to the Covid-19 crisis, based on the decision of the Presidency to utilise the district municipalities as the base from which development initiatives are launched. In Gauteng, the districts are co-existent with the metropolitan municipalities and are where the ‘war rooms’ have been established. An opposition party questioned these newly

formed institutions for their legal basis and validity. However, they have been justified on the basis of the presidential decision and the responsibilities of provincial government for implementation of the Disaster Management Act.

The terms of reference of the ward-based ‘war rooms’ are in draft form. The Committee has not had sight of this to make any further observations. However, the establishment of these ‘war rooms’ chaired by ward councillors presumes that ward committees are established and functional. The findings of this report indicate to the contrary in some instances, such as in Tshwane, and in many instances state officials have been the sole participants (municipal employees, SASSA Department of Social Development (DSD)) in these structures.

In Tshwane, ward committees have not been established. Over a long period of time the lack of ward committees is likely to have compromised this form of public participation by their absence. It was stated to the Committee that this was as a result of an interpretation of the legislation that the establishment of such committees are not compulsory.<sup>120</sup> During the 2011-2016 administration, a by-law was drafted which resulted in court action initiated by the official opposition, effectively delaying the establishment of ward committees. In 2017, an amended by-law regulating the formation of ward committees was drafted and promulgated. This amended by-law was found to be deficient.<sup>121</sup> A new by-law was then drafted by a technical committee, but this had not served before Council prior to the municipality being put under administration. The other two metropolitan municipalities have established ward committees.

Disciplinary structures have been established at all municipalities. Their functioning and effectiveness should be monitored by CoGTA and Provincial Treasury (especially in relation to financial misconduct). The pace of resolution of financial misconduct as seen from the level of unauthorised, irregular, fruitless and wasteful (UIFW) expenditure, supply chain management (SCM) area-based non-compliance and the work of the risk and political

118. A ‘clean audit’ is not a technical term. However, it refers to an unqualified audit and relates to: the financial statements free from material misstatements, no material findings on the annual performance report, and that there are no material findings on non-compliance with key legislation.

119. Section 17 (2) (b) of the Municipal Systems Act 32 Of 2000.



organs in addressing consequence management is the basis for this observation.

The use of entities by Johannesburg and its integrated reporting by the risk, governance and compliance areas has assisted the relative administrative governance stability notwithstanding the change of a coalition government during the current term. So too is the advantage of including the managing directors and CEOs of the entities in the executive management team.

Tshwane has only two entities and a regional operating centre model. The executive management team is leaner and this may have created problems for the span of control and governance monitoring and implementation.

The MEC for CoGTA has an oversight role to ‘facilitate the

coordination and alignment of the IDP of a municipality within the plans, strategies and programmes of the national and provincial organs of state.’<sup>122</sup> This is aside from facilitating the coordination of alignment of the ‘IDPs of different municipalities, including those of the district municipalities and the local municipalities within its area.’<sup>123</sup> The other aspects that the MEC may involve himself in include the monitoring of the IDP process, assistance with its drafting, adoption and review, and the resolution of disputes on the IDP between municipalities and their local communities and other municipalities.

The IDPs of the metropolitan municipalities show attempts at alignment with provincial and national strategies. However clearer commitments from provincial and national departments to local strategies are needed in municipal IDPs. The NT has indicated that overall city support development plans are not aligned to metropolitan development plans.

The City Support Programme (CSP) is linked to grant reforms to provide incentives to metros to improve performance. A governance anomaly is noted that affects the alignment of city and provincial planning, certainty of funding for inclusion in budgets and therefore the ability to implement specific projects. This is based on the NT’s observation that GPG often has not gazetted allocations, for example the housing subsidy development grant.

The CSP highlights the need for greater intergovernmental integration in the execution of programmes in order to have maximum impact on the economy and so return revenue to the cities. However, the NT also recognises that initiatives and reforms at the governance level are necessary to enhance the leadership and organisational capabilities of cities to ensure the programme’s success. Nevertheless, this is confined to training including mentoring, presuming capability rather than factoring in the political dynamics that influence intergovernmental relations.

The understanding and implementation of Section 154 of the Constitution occupied a significant amount of time and attention of the Committee. The Committee is of the view that, in relation to Section 154 of the Constitution, there is an obligation that every municipality should be monitored and supported in areas where it is required by provincial and national government. Section 154 should not be seen as a

single intervention, but rather an ongoing, consistent obligation on provincial and national government to provide support to a municipality in areas where it may be unable to perform its functions. This applies especially to the metropolitan municipalities despite their superior capacities relative to district and local municipalities.

For long periods at Merafong City (May 2017 to December 2018), Section 154 was implemented as a reporting tool by the municipality to account for the implementation of its turnaround strategy. By mid-2019 a more accurate understanding emerged that under Section 154, provincial and national departments needed to, jointly with the municipality, account for their efforts to assist the municipality in addressing its challenges. Section 154 meetings therefore do not hold only the municipality accountable for task and programmes, but also provincial and national departments. It appears that at Merafong City, Section 154 support has not been adequate for the municipality, which is in currently in a dire situation.

The perspective of the Committee regarding Section 154 is that it is not a single programme but a continuous stream of support activities that are envisaged. It is the mobilisation of all resources and capacity, across the whole of government. The GPT states that these support measures are incorporated in the annual performance plan and operational plans of the MFMA Unit of GPT. Therefore, the GPT submitted that Section 154 should not be read in isolation from the Department’s strategy to address municipal financial performance failures. This indicates an approach that ‘fills the gaps,’ rather than prevents it from arising as a result of ongoing capacity building support. Nevertheless both CoGTA and the GPT recognise their limitations in providing support and have indicated that they intend to enhance their internal capacities and structures to achieve better ongoing strategically-oriented support.



Section 154 of the Constitution mandates provincial and national government to provide ongoing support to municipalities. This is not a once-off or single intervention.

The enforcement of Section 139 of the Constitution through the use of Section 139 of the MFMA, to assist municipalities in executing an ‘executive obligation,’ was not sufficiently preceded by ongoing and comprehensive support. This is replicated between the provincial and the local government spheres in that one intervenes and then regards this intervention as being a follow up on the earlier

notice of a Section 154 intervention. This is instead of both parties collaborating to ensure that the ongoing support rendered, despite its deficiencies, changes the

122. Section 31(1)(c)(ii) of the Municipal Structures Act

123. Section 31(1)(c)(i) of the Municipal Structures Act



course of the municipalities. In the case of the intervention in Tshwane, the reasons that national CoGTA cites relates to a leadership crisis (coalition), a dysfunctional municipal council and service delivery challenges. The Council has since been replaced by an administrator.

The Committee does not make a finding on the merits of the Constitutional Court case relating to the Tshwane intervention that is in process at the time of the Committee’s review. It does note the difference in the approach to Merafong City, Emfuleni and Rand West City (in 2020), using the same provision. The Committee did not have a mandate to interact with the political arms of municipalities and therefore could not establish if, and the extent of, political considerations informing the differences in approach by CoGTA.

National CoGTA testified that the interventions in the City of Tshwane and Emfuleni Local Municipality were largely influenced by politics and less by administrative challenges, albeit differently, which manifested in the collapse of governance in Tshwane, and service delivery in the case of Emfuleni.

The challenges that arise because of the unresolved distribution and location of powers and functions has created confusion, overlap and does not assist cooperative governance. A review by national CoGTA to develop an improved governance framework for powers and functions showed that cities have the capacity to deliver all municipal functions. It follows that devolution of functions must be made on the basis of actual or potential capacity to deliver those functions.

The South African Local Government Association (SALGA) provides support to its member municipalities given a general lack of cooperative governance and its objective to enhance local government. To this end it plans on using its representation in the National Council of Provinces (NCOP) to persuade



that component of Parliament to play a more active role in targeted Section 154 support and provincial intervention in municipalities.

SALGA also aims to develop better horizontal cooperation between municipalities through inter-municipal forums. It intends to identify problems through the use of a dashboard.

In respect of allegations of fraud, corruption and maladministration, the Committee was constrained as a result of the limited power afforded to it as a Committee of Inquiry as opposed to a Commission of Inquiry. The Committee found municipalities very guarded and tentative in providing information about fraud and corruption. As a result of these constraints, the best that the Committee is able to offer is to share areas of concern that should be fully investigated by relevant authorities. These areas of concern are:

*a. The GPT did not detect the investments of Merafong City Local Municipality and the West Rand District Municipality in VBS Bank that had commenced in 2015, until after it had collapsed in 2017. The failure to detect the investments exposed the weaknesses in oversight of municipal financial management by the GPT. This*

*is despite the receipt of monthly Section 71 reports by the GPT indicating the illegal investments in the mutual bank. The loss in the district as a whole was R122 million and in Merafong City, losses amounted to R62 million. The culpability of the district municipality is increased in that it invested monies due to a local municipality.*

*b. GPT has focused on understanding how investments work since the VBS saga as this is identified as an area for operational policy review relating to reporting requirements. This will not however, overcome the post facto aspect of the reporting and the continued financial difficulty facing the local municipalities in the West Rand District. Subsequent ongoing investigations by the Special Investigation Unit (SIU) have led to criminal processes, with some prosecutions having resulted in convictions.*

*c. There are tensions between political office bearers and the administration at Lesedi Local Municipality. It is unclear to what extent these are allegedly linked <sup>124</sup> to procurement irregularities.*

*d. There have been allegations of fraud and corruption at all licensing centres across the province. As motor vehicle licensing is a delegated function, the Gauteng Department of Transport is ultimately responsible for the resolution of this problem.*

*e. Implementation and the tracking of the recommendations of the forensic investigations commissioned by local municipalities do not appear to have been acted upon.*

## Committee Findings

Municipal councils do not sufficiently govern from the perspective of addressing the entire mandate of municipalities; being both service delivery and socio-economic development of the municipal area and all of its residents.

The accountabilities of Council and municipal officials are not entirely determined in practice by an adherence to those required for the discharge of the municipal mandate. There appears to be considerable confusion between the party-political mandate and the municipal mandate, often with negative consequences for the political-administrative interface.

The instability at municipalities stems from the disregard for the Local Government Municipal Systems Act, the MFMA and especially a relative lack of adherence to National Treasury’s policies and guidance.

Collectively these factors have produced fertile ground for dysfunctional behaviour and corruption as has been noted by the Auditor-General of SA.

The pattern of instability in senior management within many municipalities could be either the result of political decisions or as a result of the conduct of the Municipal Manager him or herself.

Municipal committees that are central to good governance are generally established in municipalities, but their substantive functionality could not be directly determined. Their efficacy though is inferred from the governance lapses detected in the procurement processes and outcomes of several municipalities, and the growing UIFW as pointed out by the AGSA.

Where there are best practices relating to the governance of Council committees such as MPAC, and these are adopted and implemented by successive Councils of a municipality, embedded conventions and practices for their governance role will arise to ensure greater continuity and democratic accountability.

The joint training by CoGTA and the GPT for MPAC members on their role and responsibilities will have little effect on the reduction of UIFW unless the Council-adopted recommendations of the MPACs are implemented.

<sup>124</sup> The acting Municipal Manager that made a submission to the Committee has since been replaced.

It is an area of concern that there is a fragile basis in the municipal governance design for the separation of powers as a mechanism for accountability. There is little to influence a municipality to use the separation of powers as a basis to inform the functions of committees in order to enhance accountability.

The Systems Act states that ward committees “may” be established but also obligates the facilitation of mechanisms for public participation and accountability. Tshwane has not established ward committees since the previous term of Council as there has been considerable contestation over the by-law regulating these committees

The absence of ward committees in Tshwane is a critical governance deficiency. The efficacy of ward committees in the other metropolitan municipalities could not be ascertained except to observe that during the Covid-19 lockdown, ‘ward action committees’ were established although there is a matter of controversy as to their constitutionality.

Ward committee meetings are not held with regularity in some wards. Ward councillors are required to hold community meetings throughout their wards.

The establishment of ward-based ‘war rooms’ indicates the limited capacity of existing ward committees to effectively respond to both the day-to-day governance of municipalities, and their significant lack of ability to respond to disasters.

There is a cooperative governance challenge in the manner in which the accountabilities and work of CDWs are coordinated between CoGTA and the municipalities. This cooperation is required to ensure the effectiveness of community and developmental services down to a ward level.

The use of entities by the metropolitan municipalities, and their efficacy in service delivery on a well governed basis, is contrasted to the use of regional<sup>125</sup> operational centres where a leaner executive management structure is a factor in the efficacy of administration and governance. This may relate to the span of control regarding service delivery outcomes in a coalition municipality, such as in Tshwane compared to Johannesburg. In Johannesburg, the role of the administrative structure and the integration of the CEOs of entities onto the executive management team of the metropolitan administration resulted in a higher level of maintenance of service delivery stability than in Tshwane, a coalition<sup>126</sup>notwithstanding.

CoGTA is not providing adequate support to district municipalities to exercise their mandate. The mandatory obligation of the MEC to assist district municipalities to ‘provide support services’ to a local municipality is also not strongly evident.

There is a lack of intergovernmental convergence in terms of priorities and the pursuing of a common agenda, resulting in an incoherent impact at local level. This is the direct result of weak intergovernmental and long-term planning, and buy-in from all spheres to the common objectives.

GPT is a relatively strong player in IGR forums and is highly regarded by stakeholders in the local government arena. The GPT chairs the IGR structures and tracks the implementation activities of the other departments. Strong recommendations are made by the Head of Department (GPT) and MEC in the form of letters to their counterparts. The issue of IGR participation by CoGTA, within the ambit of the delineations being addressed on responsibility for financial oversight and support activities by the GPT, will have to be addressed with due sensitivity to the established role of the GPT, should the emphasis between the departments change substantially.

It is expected that capacity building should be approached in a holistic manner by taking into account three interrelated factors: individual, institutional and environmental aspects. This will achieve better coordination of all initiatives by various stakeholders in order to optimise resources.

Whatever the capacity support provided, these will fall short of their objectives if the governance structures do not exercise their oversight roles in keeping with the common agenda.

The MEC is required to monitor<sup>127</sup> the municipalities of Gauteng and to assess the capacity of municipalities and the support required as a result.<sup>128</sup> The CSP run by the NT may amount to a usurpation of this function by making a determination of the support required in respect of Gauteng’s metropolitan municipalities.

The perception that Section 154 is an intervention that is activated when a municipality has difficulties is an incorrect interpretation of the relevant legislation for proper implementation.

The legislative means that are afforded to provinces through Section 154 are not sufficiently utilised. An example would be addressing the theft of electricity. This is a nation-wide problem and legislation should be introduced to address this matter. In addition, proper monitoring of the efficacy of the legislation is required as enacted legislation without implementation is not beneficial.

Legislative intervention for local government is regarded by the GPT as being within the ambit of Gauteng CoGTA and the NT. However, this does not consider

that intimate cooperation is required between Gauteng CoGTA and the GPT in seeking such legislative intervention, as may be appropriate in ensuring sound financial governance.

The IDPs of many municipalities do not reflect clear and realistic projects relative to their ability to fund these from all sources of revenue. This is reflected in unfunded budgets and indicates the inadequacy of oversight exercised by CoGTA and the GPT during the IDP process.<sup>129</sup>

An MOU varies the functional responsibility of the GPT and CoGTA. Its use conflates functional responsibilities and accountabilities with operational level considerations. It is not transparent to the public, as is legislation, and its approval by the Provincial Executive Council is uncertain.

The MOU under consideration between CoGTA and GPT will have to address the distribution of oversight and support measures in the municipal finance arena. An MOU is not regarded as an appropriate mechanism by the Committee for the delineation of responsibilities between the two departments. Instead, the Committee considers a resolution of the Provincial Executive Council, having the status of policy, to be the appropriate mechanism to delineate the operational responsibilities that become the obligation of the respective departments.

The lack of significant direct service delivery to the residents of a district in Gauteng has led to an internal focus on the institution itself by district municipalities; and not on the external responsibilities towards the district and the local municipalities in their areas as a whole. In Gauteng, this is evident where the very limited direct services

<sup>125</sup>. A ‘district’ within a metropolitan municipality is a sub-division for administrative and service delivery purposes. A district municipality on the other hand is an independent municipality that has within it several local municipalities.

<sup>126</sup>. The integration of the heads of entities to the senior management team of Johannesburg results in dual governance compliance being required of them. This means accountability to their boards and to the shareholder, the municipality itself, and council. The boards of the entities insulate themselves to the effect of any political instability of council. The implementation of decisions may therefore be more influenced by their accountability to the board, notwithstanding their obligation to implement council’s decisions

<sup>127</sup>. Section 31 of the Systems Act

<sup>128</sup>. Section 105 of the Systems Act states that the MEC for local government ... “must establish mechanisms, processes and procedures in terms of section 155(6) of the Constitution to monitor municipalities,” and, at sub-section (1) the MEC is required to “assess the support needed by municipalities to strengthen their capacity to manage their own affairs, exercise their powers and perform their functions.”



are not performed effectively and neither are the functions in relation to local municipalities. This poses a problem as the assignments are conducted by the MEC based on capacity considerations, and therefore the district municipalities require dedicated support to achieve the delivery function.

Weak coalition governments in municipalities impede on the ability of a municipality to exercise its powers, perform its functions and manage its affairs. This in turn has an adverse and negative effect on service delivery and stability in governance and administration. Moreover, it does not adequately express the will of the people as the party that wins the majority of the wards, in areas that require the most development, play a minority role in governing the municipality.

There is a need for the GPG to improve on compliance with both substantive and procedural requirements in regard to the invocation and application of Section 139 interventions. This is especially the case as national CoGTA indicates that it had advised the province of the correct process and procedures to follow. This demonstrates the similar challenges that arise of the distinct nature of local government relative to provincial government.

## Recommendations

It is recommended that .....

1. The Province ensures that it monitors the outcomes of the work of Section 80 committees to determine issues that emerge from this work as it addresses the developmental focus of the Council. This includes the work of these committees as they relate to their IDPs and strategic vision. This is compared to the programmes of national and provincial government that are informed by the NDP and the African Union Vision 2063.

2. CoGTA should intensify monitoring of the processes and functioning of MPACs in municipalities. In particular, reports of MPAC identifying UIFW and those of their recommendations adopted by Council for implementation, should be tracked and monitored. The MPACs should recommend appropriate measures be taken against those responsible for such expenditure which may include civil or criminal action and measures to recoup financial losses from those responsible.

3. Consideration is given for CoGTA to advocate that the chairperson of the MPAC belong to an opposing party to the governing party in a Council.

4. The Chairperson of Audit Committees and MPAC should brief Council on the monitoring and implementation of previous recommendations of the Audit Committee and the Auditor-General of SA.

5. Municipalities should be encouraged to attract skilled and experienced members to their Audit Committees and their recommendations elevated to be of more significance in a municipality. Regular feedback on these recommendations will ensure good governance outcomes.

6. The matter of the effective functionality of the ward committees should be addressed through a support programme by CoGTA.

7. The MEC should review all Section 12 establishment notices issued for municipalities, and the resolutions establishing ward committees, with a view to determine compliance with the guidelines issued by national CoGTA in 2005. The review should be communicated to national CoGTA to determine whether the guidelines previously issued need revision.

8. Closer cooperation is required between CoGTA and the municipalities to ensure the effectiveness of the work of CDWs for community and developmental services. This work should impact down to a ward level and be coordinated with ward committees.

129. Section 31(1)(c)(ii) requires that the MEC for CoGTA 'facilitate the coordination and alignment of the IDP of a municipality within the plans, strategies and programmes of the National and Provincial Organs of state.' This is aside from facilitating the coordination of alignment of the 'IDPs of different municipalities, including those of the District Municipalities and the local municipalities within its area (Section 31(1)(c)(i)).' The other aspects that the MEC may involve himself in include the monitoring of the IDP passage process, assistance with its drafting, adoption and review and resolving disputes on the IDP between municipalities and their local communities.

The educational qualifications and experience of CDWs must be reviewed in order to ensure that the standard of coordination services provided to residents is enhanced.

9. The MEC for CoGTA and GPT should table the MOU outlining the distribution of functions between their respective departments for adoption by the Provincial Executive Committee (PEC) as policy. All MOUs of the GPG relating to municipalities should be reviewed to determine whether they amount to a shifting of functions and accountabilities. In the absence of the finalisation of the requisite legislative amendments at national and provincial level, the MOU should be confined to a back office operational level and not change the current accountability requirements.

10. The Gauteng Provincial Government should gazette grants to enhance transparency and predictability and enable municipalities to table budgets that reflect all allocated revenue.

11. CoGTA should make a submission to the Law Review Commission to have the challenges presented by the weak ability to influence the separation of powers within municipalities, be investigated and recommendations made. This review should be of both the powers accorded to Committees and that of the Speaker.

12. It is further recommended that in the meantime, CoGTA facilitate an engagement with municipal Councils, Executive Mayors, Executive Committees and national CoGTA to arrive at a consensus on the best approach to achieving a separation of powers, and determine the powers accorded to Committees to give effect to their independent line of accountability to Councils.

13. CoGTA should give consideration to lending support to the Committees of municipal Councils by advocating best practices, that if adopted, could over time become embedded in the governance of the municipalities.

14. Gauteng CoGTA should establish a Section 154 dashboard of all municipalities and continuously track progress against plans, addressing areas that require support. The accountability of Section 154 support is the responsibility of the

Gauteng Provincial Government as a whole. The portfolio committee in the provincial legislature should also play an oversight role based on the municipal developmental plans of provincial government.

15. There should be a periodic correlation of the dashboard proposed for use by CoGTA with the one used by SALGA. The correlation will facilitate the elimination of bias in the monitoring systems and enhance the accuracy of the respective approaches to improving municipal performance.

16. CoGTA should establish an oversight committee to address specific areas of legislative enhancement to better enable the discharge of its obligations under Section 154. This should include all subordinate legislation and decisions of the courts as they impact on the discharge of their cooperative governance mandate.

17. The Province may consider supporting municipalities to produce credible IDP/ Budgets and summaries in an easy-to-read format, and in the four most spoken languages in Gauteng (Isizulu, Sesotho, English and Afrikaans).

18. When reviewing IDPs annually the purpose is to ensure alignment to national and provincial strategies, and to accommodate emerging issues such as the implications of the Covid-19 pandemic.

19. The GPG should assist Emfuleni in resolving the dispute with the LPUs that has the effect of further exacerbating the financial viability of the municipality and consequently its ability to provide services to its residents. This should include resolution of whether Eskom or the municipality is to be the supplier of bulk electricity services to the LPUs and which party is entitled to the revenue flowing from the supply.

20. Similarly the GPG should assist those municipalities where mines are being supplied bulk water directly by Rand Water.

21. Support is also required to resolve the ongoing dispute between the mines and Merafong City in relation to the property rates that has had a negative effect on the financial sustainability of the municipality.

22. The support that CoGTA facilitates should be an all-of-government approach to addressing the supply of bulk services to large industrial consumers such as mines and LPU's. The objective should be to address individual mines by demonstrating a pattern of industry-wide coordination.

23. The coordination of the response should involve a working forum of all government departments such as the DME, Department of Water and Sanitation (DWAS) and Environmental Affairs, together with the affected municipalities. The approach should go beyond the immediately negative financial impact of the loss of revenue for a municipality. It should be based on the impact this has on the municipal local economy, that of the province and the country. The approach should be a long term and sustainable solution addressing all these concerns simultaneously.

24. CoGTA should facilitate greater access to legal assistance, including funding litigation and soliciting assistance from the State Attorney's Office and that of the State Law Advisor in assisting municipalities involved in disputes with large bulk users.

25. CoGTA should facilitate access to technical expertise in property rates valuations for the municipalities involved in disputes with the mines. Assistance should also be made available in the provision of environmental, water and other technical management specialists to assist municipalities address the long-term impact of challenges that are described below.

26. Environmental and health and safety issues require the active support of CoGTA in coordinating a sustainable and programmatic response, and not a reactive response to a 'crisis.' These include the management of abandoned mine dumps and the dust fallout from them. The contamination of the groundwater as a result of acid mine drainage is another serious problem confronting municipalities in the West Rand and Ekurhuleni, that is beyond their capacity to manage. The management of

radioactivity and the presence of Zama Zama (illegal) miners in close proximity to urban settlements all require intergovernmental cooperation from the three spheres of government.

27. The problems related to mining rehabilitation require the active collaboration of the Department of Environmental Affairs and Tourism and the Department of Mineral and Energy Affairs (DME) to be coordinated by CoGTA. This is particularly aggravated by the sale of marginal mines to new entrant small mining companies that do not have the wherewithal to conduct the rehabilitation, having assumed the liability and taken over the rehabilitation funds that mines are obliged to have.

28. The support provided to municipalities should address their specific context. This implies a review of their executive governance structure as it relates to their Councils in order to ensure oversight and accountability; their administrative structure and accountabilities, particularly as it relates to municipal finances; the extent of involvement of residents in the affairs of the municipality; and those factors that are external to the municipality itself but impact the delivery of services and the developmental mandate.

29. Before CoGTA conducts Section 139 interventions it should ensure that the requisite support has been provided to all areas of the municipal institution by all spheres of government.

30. SALGA as the representative body of municipalities should consider assisting municipalities in obtaining legal recourse via the courts on matters of different legal interpretation, even between organs of government.<sup>130</sup>

31. The MEC of CoGTA should engage with the Mayor of Lesedi and the acting Municipal Manager who was replaced since her testimony<sup>131</sup> to the Committee, to determine the reasons and circumstances of the dismissal.

130. The Constitution discourages but does not prohibit litigation between organs of state as an aspect of Cooperative Governance. Chapter 3; Section 41(1)(h)(vii). Despite the approach in the Constitution, clarity on legal issues when intergovernmental negotiations fail could in certain circumstances be of practical benefit in advancing service delivery and socio-economic development. The form of the approach to a court could be a declaratory order that clarifies the law on a particular point and provides certainty to all parties concerned. It is therefore not necessarily an adversarial approach to the resolution of the matter by the courts.

131. The acting Municipal Manager submitted to the Committee allegations of political interference in the work of the municipal administration.

32. The National Treasury and GPT should analyse and consider Section 71 reports and ensure that where there are critical deviations and non-compliance, corrective action is taken by the municipality.

33. The GPT is required to exercise greater diligence in the monitoring of investments made by municipalities, following the VBS Bank scandal. A way should be found to have the West Rand District Municipality compensate the Merafong City Local Municipality for the monies intended to be allocated to it and instead lost through the VBS bank investment.

34. Provincial government must find mechanisms to ameliorate the potential impact on service delivery as a result of instability within coalition arrangements. This will require the stakeholders to be sensitised to the impact that has occurred, and may occur in the future.

35. When a single party does not win a majority of seats in a municipality, the MEC should consider amending the Section 12 (establishment) notice<sup>132</sup> to designate the municipality as a type 8(c) municipality (a municipality with a collective executive system combined with a ward participatory system.)<sup>133</sup> Alternatively, Section 8 of the Act must be amended to include a new type ('a municipality with a collective mayoral system combined with a ward participatory system'), with the proviso that when a single party does not win a majority of seats in a municipality, this type will automatically apply. This will not resolve party contestations entirely, but could promote political tolerance and speedier maturity of our local democracy.



132. In terms of 16(1)(a) of the Local Government: Municipal Structures Act, No. 117 of 1998, read together with Sections 8 and 11 of the same Act.

133. Ibid Structures Act.





## PUBLIC PARTICIPATION AND COMMUNITY ENGAGEMENT



*“Laws that were passed without affording the affected public the opportunity to participate meaningfully in the law-making process, were set aside. Many acts of parliament were declared constitutionally invalid by reason of their inconsistency with the Constitution. Several decisions of the president and members of cabinet suffered the same fate owing to their constitutional invalidity.”*

*Chief Justice Mogoeng Mogoeng – Constitutional Court*



The South African Constitution, and a number of additional pieces of legislation, provide for substantive participation of communities at the local level. This is central to the effective functioning of local government and the provision of services that are responsive to communities. Participation by the public also serves as the primary vehicle for exercising oversight over the use of public resources and ensuring high levels of local social capital in the maintenance of infrastructure and delivery of services.

CoGTA should provide oversight and support in ensuring meaningful public participation. This is a key aspect of a holistic support structure to ensure financial viability, institutional stability and good governance in municipalities.

## Committee Observations

South Africa places a high value on participatory democracy or community involvement in the affairs of government.<sup>134</sup> This concerted effort is as a result of the historic exclusion of the majority of South Africans from the decision-making of government. Legislation therefore now requires that all community stakeholders be involved in municipal affairs beyond local government elections.<sup>135</sup>

However, measures taken by the municipalities in facilitating public participation in the decision-making process beyond elections are generally compliance driven and do not fully achieve the intent of the procedural outcomes envisioned by legislation.<sup>136</sup> The main platform of public consultation upon which municipalities have focussed is the IDP and budget processes, as well as petitions. The local and metropolitan

municipalities have also consulted on tariff revision, property valuation<sup>137</sup> and other areas as required by legislation. The tariff consultations occur through ward consultation meetings generally held in April and May of each year. The effectiveness and impact of these consultations is questionable as there is relatively little community-influenced change between the draft IDPs adopted by the end of March and the final adoption by 1 June.

The IDP formulation and approval process is flawed both procedurally and substantively. Community participants in IDP outreach meetings address issues of immediate concern<sup>138</sup> rather than engaging on the time horizon for which the IDP is formulated. IDPs also do not generally take into account long term planning beyond the time horizon of the Council's tenure. This is also the case in the annual review process where the implementation of IDP projects is considered. The IDP consultation process is therefore not achieving the intended legislative outcomes.

Municipalities must encourage the public to participate in matters of local government and the decision-making process.

Measures taken by the municipalities in facilitating public participation in the decision-making process are generally compliance driven.

134. Section 152(1)(e) of the Constitution of the Republic of South Africa, 1996, states one of the objects of local government as being 'to encourage the involvement of communities and community organisations in the matter of local government.' Section 195 states that public administration must be governed by democratic values and principles, as contained in the Constitution including Section 195(e), the principle that 'people's needs must be responded to and the public must be encouraged to participate in policy-making.'

135. Chapter 4 of the Municipal Systems Act 32 of 2000 gives effect to the constitutional principles with regard to municipalities developing, inter alia, a culture of community participation and the mechanisms, processes and procedures for such participation. Public participation is envisaged as ongoing and not an event.

136. Section 16 (1) (a) (iii) of the Municipal Systems Act 32 of 2000 contains the substantive requirement that the community is enabled to hold the municipality accountable for its performance and its outcomes and impact. The community should be permitted to participate in the 'establishment, implementation and review' of the municipalities Performance Management System (Section 16 (1) (a) (ii). Little evidence of these substantive requirements is detected by the Committee, or any procedural mechanisms to achieve these specific requirements.

137. Tariff and Property Rates consultations invite public input, though these have little impact. Generally valuations of their property may be objected to by residents and this is reviewed. Property rates disputes are resolved by the Valuations Appeals Board. Overall, residents tend to accept tariff and property valuation adjustments.

138. At public meetings where IDPs are discussed, often the input reflects current concerns of the local community instead of addressing the content of the IDP.

The design of the consultation process is inadequate to enable municipalities to reflect community needs in their IDPs. Municipalities are not focussed during their community consultations on achieving input into the 'design and delivery of municipal programmes.'

As a result of the sequencing of the formulation of the IDP, its discussion and conclusion, adoption and passage, the involvement of communities does not meet the requirements or the intention of the law.

The IDP consultation also shows substantive omissions such as in the case of Lesedi where it is noted those stakeholders are only involved at comment stage and not from the inception of the IDP formulation. In Emfuleni, a draft IDP is presented to the community for acceptance.<sup>139</sup>

The inadequate mobilisation of the community and its resources to implement developmental programmes flowing from the IDP contributes to the sentiment of alienation, the increase in service delivery protests and other forms of negative direct community action.

Many community engagements are reactive, as a result of community protests. Proactive engagement would pre-empt issues and reduce the number of protests.

Unrealistic projects that are not supported by budget or the capacity to execute them are a significant cause of underlying service delivery protests.

Many community engagements occur as a result of community protests. These are reactive rather than proactive

community engagements. Proactive engagements should pre-empt issues and minimise the number of protests.

Ward committees are varied in their degree of establishment, functionality and effectiveness. For example, in Mogale City, councillors<sup>140</sup> hold public meetings in the wards as many ward committees were seen as ineffective, lacking capacity and 'at risk.'<sup>141</sup> As discussed in the Governance chapter, the absence of ward committees in Tshwane requires resolution. It is uncertain whether their absence has impacted on public participation in Tshwane.

Both Johannesburg and Ekurhuleni use ward committees to host public meetings and for ongoing consultation. Ekurhuleni has a structured work approach for its ward committees addressing feedback on the IDP and Budget progress, and a focus on ward priorities. This is then signed off at every meeting.

However, ward committee challenges include risks flowing from political contestation rather than a focus on development, security and poor feedback loops in the context of the IDP. With relation to IGR, information received tends to be late, disruptive and challenging for councillors. Stakeholders also do not attend meetings and comments received are insufficient.

139. Ideally an IDP should take into account the community's comments and input prior to development. To involve the community only at comment stage is to ignore the preceding requirement regarding formulation.

140. The role of councillors is central to achieving effective public participation. Councillors discharge their public participation responsibilities largely based on their capacities, including where available, the use of ward committees and interactions with community-based organisations. Ward committees are not regarded as the only vehicle for public participation. Municipalities 'may,' and are not compelled, to use ward committees. Their non-existence in Tshwane is a result of a long-standing dispute within council concerning the proposed by-law to permit their establishment and regulation (see Governance chapter).

141. In Mogale City in 2019; of the 39 ward committees 35 were considered to be ineffective as represented in the submission of the municipality to the Committee.



Despite the contestation in ward committees and other public participation mechanisms such as Community Policing Forums, School Governing Bodies, Ratepayers Associations, Civic Associations, Hawker Associations; and other similar bodies, they have positively influenced service delivery over time.

Ward-based ‘war rooms’ were established to implement local action as a response to the Covid-19 pandemic. The use of ward-based ‘war rooms’ has been questioned politically and legally as to whether it falls within the ambit of the Disaster Management Act and its regulations. These rooms are staffed by councillors and municipal officials with no indication of the extent of community participation. In Tshwane, given the absence of ward committees, the ‘war rooms’ were staffed by officials.

Wards committees should be comprised of an equal number of community and sectoral representatives.<sup>142</sup> Some ward committees may not however sufficiently involve community-based organisations to achieve effective local consultation. It should also be noted that the ‘mechanisms to interact with community groups’ are not restricted to the use of ward committees and the public meetings they host. Municipalities are permitted to develop other mechanisms for community engagement.<sup>143</sup>

The City Support Programme (CSP) coordinated by the NT emphasises the requirement that residents actively participate in the life of a city. However, the coordination function resides within the competency of national and provincial CoGTA (see chapter on Good Governance),<sup>144</sup> but is not discharged in reality.

The Gauteng City Region Observatory (managed jointly by the Universities of Witwatersrand and Johannesburg) undertakes a biennial customer satisfaction survey for the Gauteng Province and is used by metros and local municipalities to improve their services. Municipalities should ensure that they use the results of these surveys, together with input obtained from public participation processes, to inform their planning and budgeting.

Despite the interruption in the IDP, budget and tariff consultation process due to the Covid-19 lockdown, the municipalities proceeded with consultation via electronic means. Social media, print and electronic media advertising, Short Message Service (SMS) and drop boxes were used to communicate with the public in order to solicit submissions.

Johannesburg received 582 IDP, tariff and service delivery breakdown submissions in this way. Ekurhuleni received 58 submissions. These included requests to not increase tariffs given the economic fallout from Covid-19 and other issues related to service delivery challenges experienced by residents.

Despite the Covid-19 lockdown, municipalities used innovative methods such as social media, print and electronic advertising and SMS messages to engage with the public around the IDP and budget process.

There is a pattern of targeting established stakeholders for consultation and this facilitated the electronic consultation during the Covid-19 lockdown. Johannesburg consulted 332 participants ranging from political party youth structures, both formal

and informal business, women and the disabled. Tshwane appears not to have engaged in public consultation given that it was under administration. The Ekurhuleni Mayor presented the budget and IDP on radio without any evidence of public participation.

Only Johannesburg gave any indication of the nature of issues raised by the community during the public participation process. These included concerns over tariff increases, the effect of Covid-19 on livelihoods, sustainable human settlements, gender-based violence, the upgrading and maintenance of roads, and the provision of lights and electricity. The issue of integrated transport was also raised. This came from residents, for example, from the southern areas of Johannesburg in informal settlements in Devland.

Service delivery protests relating to housing occurred in almost all local municipalities. The only exception was Merafong City. Demands for access to land have led to marches and land invasions and are of concern in Midvaal, Lesedi and Emfuleni. Protests related to electricity supply occurred in all municipalities with the exception of Merafong City and Midvaal. Unemployment was the primary issue raised at protests in Midvaal and Lesedi, while in Emfuleni access to business opportunities was a major concern. The demand for access to 30% of a project’s contract value, as per procurement regulations that this be spent locally, is often accompanied by forms of protest in most local municipalities.

Specific issues that led to protests include high crime rates in Midvaal, the lack of roads in Lesedi, and a request for the reduction of domestic tariffs in Emfuleni. Measures aimed at addressing electricity losses such as the installation of smart meters have been stopped by protests in Emfuleni and credit control related electricity terminations have been protested against by

communities in Emfuleni and Lesedi. Midvaal reported some processions that pertain to matters outside of the competency of local government, such as religious processions.<sup>145</sup>

In Emfuleni, service payment boycotts are widespread in the Vaal townships. There were also protests against the length of time that it has been taking to complete the Vereeniging Taxi Rank in Emfuleni. In Rand West City (RWC), residents stopped paying for services in solidarity with striking municipal workers. Such actions, combining communities and municipal workers as they relate to the Expanded Public Works Programme (EPWP) staff for the extension of contracts or the insourcing of security personnel, have also taken place in Lesedi.

Tshwane reported that service delivery protests took place without indicating any public participation programme or approach. With an equal number of violent and non-violent protests (57 each) in 2018, this increased to 82 non-violent protests (and 14 violent) in the next year. Despite Covid-19, the 2020 year saw a spike in protests, with 174 non-violent and 60 violent. This reflects growing community dissatisfaction in the face of a politically dysfunctional Council and failing service delivery levels.

The approach taken by Ekurhuleni resulted in the identification of 560 community needs. However, human settlements and health accounted for only about 7% each of the needs identified, and therefore cannot be regarded as anything more than indicative of areas of concern rather than the extent of the shortages and challenges.

The District Development Model intends to improve coordination problems between stakeholders such as the local municipality, the district municipality, communities, and national and provincial spheres of government.

142. These committees comprise ten representatives, half of which are from the local community. The rest are sectoral representatives such as business and sports associations, and non-governmental organisations, for example. This was the original intended structure of ward committees, however there have since been considerable changes in practice.

143. An example is the engagement by the Mayor of Emfuleni with the community through the clergy, reflecting the absence of previous credible negotiating partners in the long-standing Vaal service delivery payments boycott. The effectiveness of this mechanism and an assessment of other mechanisms where there is a negotiating partner, for instance in the dynamics that inform the service delivery payment boycotts in Soweto, should be made.

144. The policy initiative by government to manage urbanisation from an economic development, job creation and improvement in the standard of living perspective, is contained in the Integrated Urban Development Framework (IUDF). There are three programmes under this framework of which the CSP is one. The other two include the Intermediate Cities Municipal Support Programme (ICM) aimed at the spatial reorganisation of secondary cities (such as Emfuleni) to address Apartheid legacy spatial planning. The Small Towns Programme is aimed at their rejuvenation. These programmes are focused on the eight metropolitan and an additional nine local municipalities that provide over 70% of all municipal revenue. The focus on revenue sustainability and enhancement may be the reason for the NT leading these programmes.

145. The following activities led by religious groups took place in Midvaal: A prayer march by Hart van God Kerk; Divine Mercy Parish Church prayer and meditation walk; and a religious procession to promote awareness of social problems.

Consultation with the community and other stakeholders, including business, is the function of a local municipality and not that of the district municipality in whose area it is located. Some confusion was expressed as to where the consultative function with business stakeholders lies, and what aspect of the function resides with local municipalities and which with district municipalities. The submission of the Sedibeng District Municipality was that it had not built the capacity to deal with this aspect. This is regarded as a local municipality function as they interact more directly with the community. Midvaal, on the other hand, stated that the function and responsibility to consult with business stakeholders is that of the district municipality.<sup>146</sup>

Consultations with business-community stakeholders is cumbersome and reflects conflicting interests. This challenged the consultation process. Municipalities have taken active steps to facilitate the consolidation and streamlining of the business stakeholder sector in order to improve consultation. In the West Rand District Municipality, the streamlining process is ongoing, with a consolidation of 12 business organisations (from 26) to date. In Mogale City, one forum has been established. The measures taken to streamline consultation with the business stakeholders is a positive development.

Further public engagement platforms include mayoral izimbizo, issues which are referred to the rapid intervention team for resolution. There are targeted roadshows to present the annual report. Print and social media is used extensively to communicate the times and dates of the roadshows to the public.

Many municipalities have a petition system to enable the Councils and Gauteng legislature to be informed of serious community concerns. The quality of decisions in certain areas of decision-making has been enhanced as a result of petitions.

The Committee notes that the implementation of the District Development Model (DDM) is being rolled out by national CoGTA on a pilot basis in OR Tambo and Waterberg municipalities as well as the eThekweni Metropolitan Municipality. This is envisaged to improve coordination problems between stakeholders such as the local municipality, the district municipality, communities,<sup>147</sup> and national and provincial spheres of government. It should be further noted that that there is limited information available on the DDM and its pilot projects. Consequently, the Committee cannot form an opinion on the ability for this model to address the deficiencies identified in Gauteng municipalities.

There is no indication that neighbouring and district municipalities, provincial and national government participate meaningfully in the public participation processes of a municipality, if at all. This includes the monitoring of the consultation process and its outcomes by CoGTA for substantive and procedural compliance and influencing.

<sup>146</sup>. Section 27 of the Systems Act requires the district municipalities to adopt an IDP framework for the district as a whole, after consulting with the local municipalities within their areas. Each local municipality is required to adopt an IDP within this framework. The responsibility to engage communities and other stakeholders is that of the local municipalities on the basis that they are the service providers. However, they are not prevented from coordinating with the district municipality where the issues to be consulted on involve more than one municipality. <sup>147</sup>. The following activities led by religious groups took place in Midvaal: A prayer march by Hart van God Kerk; Divine Mercy Parish Church prayer and meditation walk; and a religious procession to promote awareness of social problems.

<sup>147</sup>. Municipal Systems Act, Section 24

# Recommendations

It is recommended that:

1. All local municipalities facilitate ways of engaging in effective and inclusive public participation with residents and sectoral interest groups within their areas.

2. CoGTA supports municipalities in devising a strategic approach to ongoing community consultation that addresses the developmental objectives expressed by communities. These should conform to legislation giving effect to the policy intent of the White Paper on Local Government (1998), read together with Chapters 4 and 5 of the Municipal Systems Act.

3. Municipalities should, as a starting point, devise their own strategic approach and form their own focus groups with cross municipal and provincial participation to:

- Ascertain what the issues are that could potentially impact community concerns.
- Determine the various interest groups in the community, what interests they represent, and their level of representation or impact on community consultation.
- Assess the consultation measures taken to date and their efficacy.

4. The monitoring and oversight role of CoGTA should be increasingly focussed on ensuring compliance with the specific sequencing and substantive consultation process as required by legislation.

5. The district and local municipalities must actively work together in the planning and execution of the approaches to consultation that are agreed upon.

6. The IDPs should be focussed on Local Economic Development (LED) outcomes that actively involve the community in implementation through the mobilisation of community resources including human resources. This includes addressing the capacitation of ward committees in areas where they do not exist or are non-functional.

7. As part of its work, the focus group on community consultation approaches should be capacitated by CoGTA through the maintenance of a register of community protests. This should be updated regularly, with all municipalities required to report all community protests. Impending and anticipated protest action should be notified in advance of their occurrence, whether formal application has been made to protest or not. The report should provide sufficient information to allow CoGTA to assist the municipality with the resolution of the issues. It should also inform a trend analysis in order to develop strategic approaches to prevent their recurrence.

8. Similarly, a comprehensive register should be maintained and provided to CoGTA on petitions presented to municipalities. This information should be analysed to detect trends and devise measures to resolve the common issues raised by residents.

9. In addition, CoGTA should conduct a study of the manner in which petitions are processed and suggest ways to streamlining this across municipalities in order to better enable their analysis and response.

10. CoGTA, in conjunction with the municipalities, must devise methods to convey the outcome of each petition to the petitioners.



11. CoGTA should consider using Community Development Workers (CDWs) to observe meetings relating to community participation. The field reports of the CDWs should be used to inform a trend analysis of issues on an aggregated basis. An analysis of these trends may be supplemented with the development of enhanced research capability within CoGTA. This could be used as part of its monitoring and assessment role and to communicate provincial plans that impact on the community and local municipality.

12. Award-based focus should be developed for the City Support Programme (CSP). This should include the active participation of the ward community in the work of the programme as it impacts on their ward.

13. An enhancement of the data from the Gauteng City Region Observatory customer satisfaction survey should be considered, by extending the survey sample to a ward level so that it may be used by municipalities to improve service delivery at that level.

14. CoGTA should assist metropolitan municipalities to improve community access to electronic and remote access consultation, including residents of informal settlements, in order to facilitate more meaningful consultations with communities.

## EFFECTIVE SERVICE DELIVERY



*“Public service agents shall demonstrate professionalism, transparency and impartiality in the performance of their duties. (They) shall demonstrate excellence and innovation in their performance of duties. (They) shall be required to perform their professional duties and show courtesy, integrity and neutrality in dealing with users. (They) shall act responsibly and in accordance with the national laws and regulations. (They) shall demonstrate integrity and respect all rules, values and established codes of conduct in the performance of their duties.”*

*AFRICAN CHARTER WHICH CAME INTO EFFECT JULY 2016*

‘Service delivery’ is used to describe the distribution of basic resources that citizens depend on, such as water, electricity, sanitation infrastructure, land and housing. Residents, businesses, and institutions expect a municipality to deliver these in a professional, transparent, reliable, and affordable manner. Together with the developmental imperative, this is the core mandate of municipalities as contained in the Constitution. All potential consumers must be provided with access. Service delivery is the end product desired from the discourse contained in all preceding chapters. Municipalities often spend time and resources on many peripheral issues, yet the professional delivery of water, electricity, sanitation and roads are its core business. If a municipality delivers those functions well, it is well on its way to being a successful institution.

A key challenge to the maintenance of service delivery levels and their extension is adequacy of finances. These relate to the funding of maintenance of infrastructure and its extension. Revenue recovered from consumption charges against ‘transactional services’ such as electricity, water, sanitation and waste disposal is meant to fund the provision and extension of these services. The financial challenges to all services, whether transactional or otherwise, and their effect, are discussed in this chapter.

Service delivery before the Covid-19 pandemic struck was already a subject of unrest and dissatisfaction among residents. With the financial and non-financial impacts of Covid-19, municipalities are entering a period of great uncertainty. This uncertainty relates to how revenue is likely to drop given rising unemployment and the effects of having to divert funding towards personal protective equipment (PPE), cleansing of facilities and the upcoming vaccination roll-out. Overall, a whole-of-government approach is needed to help sustain service delivery levels in these challenging times.

This approach needs to be innovative, transparent and ensure the delivery of services in accordance with all relevant legislation.

## Committee Observations

Statistically the provision of basic services in Gauteng is comparatively high in relation to the rest of the country. For example, in 2016 access to piped water was at 97%,<sup>148</sup> the second highest in South Africa with the Western Cape at 99%. However, the disparities between well-established suburbs and informal settlements mask the reality faced by many Gauteng residents. Similarly, those living in semi-rural parts of the province also do not enjoy the same levels of basic services as their urban counterparts.<sup>149</sup>

Electricity supply in local municipalities in 2016 was: Mogale City (87%); Emfuleni (92%); Lesedi (90%), Merafong City (80%) and Midvaal (79%). Electricity supply in the cities of Johannesburg and Tshwane were both 93%. The sale of electricity by the cities is the biggest contributor to revenue. In Johannesburg, Tshwane and Ekurhuleni, revenue from electricity sales in 2019 was 28%, 33% and 38% respectively.<sup>150</sup> This may be more significant for the generation of cash than profitability for municipalities, despite Eskom being the direct supplier to consumers in large parts of the metros.

On average the provision of basic services in Gauteng is high compared to the rest of the country. However, there are significant disparities between well-established urban suburbs, and informal settlements, which mask the reality faced by many residents.

148. Statistics South Africa, Community Survey 2016

149. Mogale City has a wide dispersion of informal settlements in rural areas and on private agricultural property. The municipality does not provide piped water to these settlements or agricultural properties more generally. Some 14% of informal settlements did not have any sanitation services at all. The waste removal service has a 65% coverage.

150. The audited annual financial statements of

The overall impact of electricity sales on the financial sustainability of municipalities is dependent on the generation of a sufficient margin to facilitate wider municipal use. It is the National Energy Regulator of South Africa (NERSA) that authorises the ‘reasonable rate of return’ for municipalities on the sale of electricity against bulk purchase, overhead, operational and maintenance costs.<sup>151</sup> The retail price realised by municipalities is, however, impacted upon by high bulk purchase prices being driven by the financial difficulties of Eskom, distribution losses and losses through illicit usage.

The ability to pay for bulk utility purchases as they become due is reliant on adequate cash flow management within the context of fragile cash-to-cost-coverage ratios. The ratio is at risk of declining negatively in a Covid-19 impacted economy; thereby impacting the serviceability of the Eskom and Rand Water accounts. This may result in a decrease in service delivery.

The staggering debt owed to Eskom by Gauteng municipalities is symptomatic of the challenges in electricity supply and cost recovery.

To ensure security of supply in Tshwane the capital required to eliminate the infrastructure backlog is approximately R1 billion. In the case of Ekurhuleni, approximately R3 billion is required.

Technical losses due to poor maintenance of electrical substations and transmission networks are high. Illegal connections to the grid are widespread. In some cases municipalities are unable to address these losses as they are forcibly stopped from accessing the areas in which there are illegal connections. In addition, there are allegations that officials or

municipal service providers are sometimes complicit in illegal connections. In Merafong City, the number of illegal connections is in excess of 10 000 and growing daily. In Tshwane an average of 19% of electricity purchased in the three years from 2016 to 2018 was lost. In 2019, 28% of electricity purchased by Tshwane was lost. Of the losses, 40% are technical losses. The trend continued into 2020 with technical losses for the first half of the year at an average of 56m kilowatt hours per month. In Ekurhuleni, 6% of all electricity purchased is lost due to technical reasons.<sup>152</sup>

Non-technical losses are also extremely high due to unmetered supply in some areas, and billing related inefficiencies. In some new housing developments residents have taken occupation of new houses without electricity meters being installed. In Rand West City, many unmetered connections are being revealed. Whilst these losses are predominantly as a result of illegal tapping into electricity supply in informal settlements, they are also as a result of meter tampering across suburbs,<sup>153</sup> townships and informal settlements. They occur across other consumer segments including business consumers.<sup>154</sup>

In Emfuleni, some businesses have historically been paying a lower tariff for electricity based on a 1987 agreement that has since lapsed. These businesses are refusing to adjust to the regular tariff and are challenging the matter in court, whilst keeping negotiations alive with the municipality. The loss of income for Emfuleni is significant and estimated to be R580 million annually.

151. the three metropolitan municipalities for 2019, respectively. issues to be consulted on involve more than one municipality.

152. Technical and non-technical losses against purchases are both at 6%. They have been calculated from figures provided in Note 51 to the audited annual financial statements of the City of Ekurhuleni, 2019.

153. During the writing of this report, a prominent case of electricity theft in the affluent suburb of Dainfern in Johannesburg was reported by media.

154. Similar to the note above, the news documentary Carte Blanche has previously reported cases of electricity theft by businesses through by-passing of meters.



In terms of the Constitution, municipalities are responsible for the supply of electricity. Despite this, Eskom continues to supply electricity in some areas to the disadvantage of municipalities.<sup>155</sup> This includes, for example, areas such as parts of Soweto (City of Johannesburg), Duduza (City of Ekurhuleni) and Endicott (Lesedi).<sup>156</sup>

The cycle of supply termination threats followed by payment agreements between Eskom and municipalities is difficult as the financial data shows that these agreements cannot possibly be honoured. Once these agreements are breached, the cycle resumes, leading to new agreements being entered into. The situation is exacerbated where there is no payment arrangement in place.

The most acute example of the effect of these factors cumulatively on the financial viability of a municipality is to be found in Emfuleni.<sup>157</sup>

The statistics<sup>158</sup> on water supply also show a high level of access to piped water to Gauteng residents. The major growth in demand for piped water services arises from the growing number of informal settlements in the province. Piped water services provided by local municipalities to both formal and informal households in 2016 is contained in the table below:

Table 10: Access to Piped Water by Household – Gauteng Local Municipalities, 2016

Piped Water (2016)	Merafong City	RWC	Mogale City	Midvaal	Lesedi	Emfuleni
Inside Dwelling	62%	55%	52%-	62%	56%	73%
Inside Yard	26%	20%	32%	15%	34%	22%
Communal	9%	18%	10%	11%	4%	3%
Total	97%	93%	94%	88%	94%	98%
No Tap Access	3%	7%	7%	12%	7%	1%

In Johannesburg in 2016, water service provision stood at 93% for both formal and informal settlements but represents a decline from 99% for formal households. Tshwane had a 99% coverage.

It must be noted that in many instances access is not inside the dwelling. A number of residents access water outside their dwellings either in a yard, or some distance away from their dwellings. The municipalities supply informal settlements with piped water within 100m to 1km of a household. Johannesburg does not classify the supply of water through tanker delivery to informal settlements as a part of basic services.

The loss of revenue by municipalities due to technical and non-technical losses of water is high. For example, in Tshwane water losses in 2018/19 were 29% of purchases with half of this being a result of technical losses. In Johannesburg, non-revenue water amounted to 39% of purchased water.

Water borne sanitation is generally available to formal households in the municipalities. The local municipalities of Gauteng had an average provision of sanitation to 80% of all households in 2016. The West Rand District Municipality (WRDM) had an average of 2% of its households without access to any form of toilet. In the Sedibeng District Municipality (SDM) this was at 1%. About 18% of households in the area of the WRDM, and 20% in SDM, are provided alternative sewage services, mainly to informal settlements and agricultural holdings.

Johannesburg currently has 99% coverage of water borne sanitation, while Tshwane has 84%. In 2016, Ekurhuleni's coverage was 90%.<sup>159</sup> In the informal settlements of Johannesburg, only 44% have sewerage coverage, with 11 settlements receiving chemical toilets.

In many areas the water supply infrastructure has collapsed and water losses from leaks are high. In Emfuleni, over R500 million is lost annually due to water losses. The losses in Merafong City are also high. In a number of places the water supply is unmetered and no revenue is collected for consumption. Illegal water connections have also eroded the revenue base of municipalities. The revenue contribution from water was at 11% for Tshwane.

Addressing the infrastructure backlogs is a financial challenge for municipalities. Tshwane and Ekurhuleni have budgeted R568 million and R744 million respectively of their capital budgets for 2020/21 towards water and sanitation services. Johannesburg's capital budget for sanitation services is R397 million and for water, R801 million.<sup>160</sup>

Tshwane stated the cost of eradicating the lack of access to sanitation services was R68 million. In Ekurhuleni, the backlog will be eradicated with a spend of an estimated R2.4 billion. The City of Johannesburg indicated in 2017 that it needed to spend R821 million per annum to address sewer upgrading and renewal capacity.<sup>161</sup>

Water supply stability is attained through the use of water reservoirs. A backlog of reservoir construction exists in most municipalities. In some instances, reservoirs are not properly constructed or maintained leading to spillages at the water reservoirs. Response times to plug water leaks are not of an acceptable standard and many areas are marked by long delays in repairs.

Minimum night flow monitoring shows that there is a high level of water losses within water cisterns, pipes and taps in houses. It was observed that the Midvaal and Lesedi municipalities mitigate water losses by repairing leaks within indigent privately owned homes which is international best practice. Emfuleni conducts these repairs on an ad hoc basis depending on the nature of the fault. The Sharpeville Household Leaks Programme includes leak detection and repair.

In respect of sanitation, most residents in Gauteng enjoy water-borne sewer connections. The data still shows a small number of residents using the bucket-system. Rapid urbanisation in Gauteng and several new housing developments has led to a shortage in sewer capacity.



155. See Section 155, 156(1)(a) and Schedule 4b of the Constitution.

156. See Section 155, 156(1)(a) and Schedule 4b of the Constitution.

157. In Emfuleni, as in other municipalities and irrespective of the net effective margin that is achieved, the reliance on revenue from electricity for its cash flow effect is significant. The revenue effect of the dispute with Large Power Users, the ongoing Vaal township boycotts and illegal connection based losses have translated into a liquidity crises for Emfuleni affecting its financial viability.

158. Statistics South Africa, Community Survey 2016

159. Statistics South Africa, Household Survey 2016

160. The published IDP and budget documents of the three metropolitan municipalities for the 2020/21 year

161. Protect City's Sewer and Sanitation Infrastructure. Article published on the Media Statement section of the City's website date 15 November

In Emfuleni, the lack of wastewater treatment capacity has curtailed much needed development along the Vaal River. Rand Water has blocked development as the inadequate wastewater treatment capacity means further effluent will threaten the Vaal River.

Road maintenance in Emfuleni, Rand West City and Merafong City is particularly poor. Many roads that require replacement are being patched and some are beyond repair. The roads in the central business districts (CBDs) of Vereeniging, Randfontein and Carletonville are in a poor state and not conducive to attracting new businesses. Sink holes in many municipalities have also necessitated major repairs to roads.

The quality and cost of new road construction is of concern. The Committee noted with concern the high cost per kilometre (km) of new roads being constructed in Emfuleni. The failure by PRASA and the Department of Roads and Transport in Gauteng to complete the Vereeniging Taxi Rank and Station upgrade is of concern.

The backlog for roads is quantified at 22% of all infrastructure backlogs in Ekurhuleni and will cost R16.7 billion to eliminate. Tshwane has resolved 63% of all road maintenance incidents within its acceptable norms and standards <sup>162</sup> in 2019, but this dropped to 42% during the Covid-19 lockdown. A significant focus is on the blading of roads in informal settlements across the cities.

While housing delivery is ongoing in Gauteng, demand still outstrips supply.

Of great concern is that there is no associated economic development activity which renders many housing developments to be socially depressed areas. It is noted that some emerging contractors have failed to deliver on the units that that were allocated to them, as a result of poor business management. This is a historic issue that has not been resolved.

The backlog in housing in Johannesburg is 25%, represented largely by informal settlements. New housing projects are restricted by infrastructure costs, land availability, and financial challenges. In Ekurhuleni this means acquiring 6 293 hectares of land at a cost of R6 billion, to erect 288 000 houses at a cost of R71 billion.

The added responsibility of municipalities to ensure food distribution and related Covid-19 relief is likely to lead to an expectation by indigent residents that this will be ongoing. This will require greater cooperation with the Department of Social Development (DSD) to ensure the management of the expectation and to locate the responsibility and financial burden appropriately.

Metropolitan municipalities have concentrated on extending service delivery infrastructure resulting in an underspend on maintaining and refurbishing existing infrastructure to below the benchmark of 8% of the asset carrying value. In Johannesburg, deprivation zones have been identified for infrastructural extension. For example, the southern deprivation zone received an allocation of R1.3 billion in the 2020/21 financial year and this is projected to increase to R1.6 billion in 2022/23. However, this requirement

for additional spend is also related to the heavy inflow of immigrants in that part of the city. This has resulted in the need for additional electrical infrastructure due to overloading of the network. This is linked to illegal connections that resulted in overloading and damage of sub-stations and transformers, with greatly increased prevalence in the winter period.

In Ekurhuleni, assets that are in need of replacement are high risk (1%), significant risk (3%) and moderate risk (74%). With a lack of attention, this picture is likely to degenerate over time unless addressed early in a planned manner. In particular the engineering infrastructure profile is that 13% of the backlog is attributable to electricity, 43% to water, 27% to solid waste and 22% to roads. The combined cost of all assets will require capital of R36 billion, of which R9.6 billion is in respect of renewal.

Refuse removal services to formal housing and business clients is relatively effective across municipalities. The table below illustrates the methods and level of provision for all households within a municipality in 2016.

Table 11: Access to Refuse Disposal by Household – Gauteng Municipalities, 2016 <sup>163</sup>

	Merafong City	RWC	Mogale City	Midvaal	Lesedi	Emfuleni	CoJ	CoT	CoE
LM or contractor weekly	74%	74%	80%	82%	83%	90%	90%	84%	90%
Less than once a week	5%	3%	2%	1%	3%	1%	1%	1%	1%
Communal refuse dump	6%	4%	3%	2%	1%	2%	2%	5%	3%
Communal container	0.2%	2%	1%	0.1%	0%	0.4%	0%	0%	0%
Own refuse dump	10%	14%	12%	11%	10%	6%	2%	8%	2%
No rubbish disposal	5%	4%	3%	3%	2%	2%	5%	2%	3%

Weekly refuse removal is provided by municipalities themselves or, in some areas of a municipality, by third party contractors. In Johannesburg it is conducted by a municipal entity, Pikitup. The service is provided almost exclusively to formal households. In the case of the provision of a waste disposal service by municipalities, this is either conducted with its own fleet, or using a hired fleet or a combination of the two. This is a capacity issue, both in terms of the availability of the fleet and financial affordability. In Johannesburg, the weekly service coverage has increased to 93% and in Tshwane to 85% since 2016.

Communal refuse dumps including skip containers are available almost exclusively in informal settlements. These are prevalent in Lesedi and Midvaal, which have a limited number of concentrated informal settlements. Merafong City registered a significant drop in the availability of this service since 2016. The frequency at which removal is conducted at communal refuse dumps could not be established.

Innovative schemes and community initiatives have become part of the waste disposal value chain in some areas, including informal settlements. This includes ‘waste pickers’ and sorters.

A significant challenge for waste disposal services is the shortage of landfill and transit sites in Tshwane. Illegal dumping is a problem in all cities and Ekurhuleni estimates that the elimination of waste infrastructure backlogs will cost about R354 million.

<sup>162</sup>. These norms and standards relate to, among other criteria, the quality of the repairs undertaken and the time in which it is executed.

<sup>163</sup>. Ibid. Stats SA Gauteng Community Survey, p46



SALGA has pointed out the long-term planning needed to address the anticipated exhaustion of capacity of landfill sites in the province within five to ten years. SALGA has also pointed out that waste diversion to recycling is not optimal. Johannesburg has taken early steps to facilitate the participation of waste pickers into their value chain and encouraged sorting areas. National CoGTA requires that environmental aspects be specifically included in capacity building, bearing in mind that this function is the exclusive competence of provinces and municipalities.

The resolution of consumer queries, especially those in Johannesburg, has improved. However, the pace and throughput of the improvement has been slow. For example, at the end of June 2018 unresolved queries in Johannesburg stood at 18 623 and this improved to 4 824 at the end of June 2020. Unresolved queries have the effect of interrupting cash flows to the municipalities and reputational damage.

## Committee Findings

The Committee notes that the conclusion that electricity sales generate a profit is arrived at by comparing purchases and sales, rather than factoring in the costs to supply the service as well as of all the losses incurred.

The Eskom debt owed by municipalities is untenable and a viable and sustainable solution needs to be found.

The low number of personnel with ‘government certification’ to operate an electricity network is of great concern. Network efficiency is highly dependent on skilled managers and technicians. Overall, it is found that the municipalities are underspending on their capital budgets, implying that backlogs are not being adequately addressed and are likely increasing.

The ‘War on Leaks’ programme by the Department of Water Affairs needs to be accelerated.

The failure by national and provincial government to provide adequate support to implement the Sedibeng Regional Sewer Scheme by adding 250MI/day capacity that was needed (mid-1990s assessment), and replacing all connecting infrastructure, has crippled developments in Emfuleni and rendered many areas unsafe for habitation. The negative impact on the Vaal River has been catastrophic.

It is encouraging that SALGA intends to support its members with the development of their road infrastructure asset management systems.

The restraining factors mentioned above as well as creative development initiatives and inadequate spatial planning has in many cases reinforced the apartheid legacy of providing housing developments far away from facilities and employment, depriving poor people of opportunities for equitable development.

Informal settlements are less than adequately serviced and present the greatest service gap. Generally, the standard of service provided to informal settlements in all municipalities is not the same as for formal residents. In part this is due to the poor to non-existent road infrastructure in most informal settlements.

## Recommendations

### It is recommended that:

1. Where practical, disparities in the provision of services are addressed considering the recommendations.
2. Debt to Eskom should be informed by a quantification of all forms of losses incurred. CoGTA should facilitate the development of a quantification tool and subsequent strategy for each form of loss.<sup>164</sup> The same perspective is recommended for the water account of each municipality. The tariffs for

<sup>164</sup> Metropolitan municipalities are better able to manage costs and maintenance than their local municipality counterparts. This enables them to realise a relatively healthy margin.

both water and electricity must be cost driven and determined according to legislative requirements.

3. CoGTA should encourage municipalities to address the aged infrastructure and maintenance backlogs, to reduce technical losses. This is an urgent financial and economic imperative, taking into account, for instance, the high level of water losses and the downstream costs from delaying maintenance and replacement. From an economic point of view, it has a significant impact on economic development, job creation and the consequent revenue enhancement.

4. CoGTA is required to facilitate intergovernmental intervention, including the Department of Mineral and Energy Affairs, in the resolution of the dispute between Emfuleni and the Large Power Users.

5. National and provincial government must support municipalities, in particular Emfuleni, Merafong City and Rand West City, with a strategy and practical efforts to curb electricity and water losses and manage their debt to Eskom and Rand Water. For the metropolitan municipalities, these losses will, over time, have an impact on their liquidity. The efforts must include Eskom and Rand Water.

6. COGTA must facilitate support for the installation of smart metering and assist in promoting community acceptance.

7. CoGTA must take into consideration the financial impact of long-term partnerships with the private sector on the installation of meters. It must be ensured that the municipalities benefit from a measured reduction in projected losses.

8. The culture of non-payment for services is a national problem and will not be solved by individual municipalities acting on their own without provincial and national support. The support should include raising awareness of the need to pay for services, incentives to encourage payment and disincentives. The appropriate law enforcement authorities including SAPS should assist in dealing with illegal electricity and water connections. CoGTA should investigate ways in which municipalities could further be supported to deal with this matter.

9. CoGTA should work with the South African National Roads Agency and relevant stakeholders to find a model for supporting municipalities with road maintenance and construction, from an economic enablement point of view. Municipalities are responsible for the provision of roads, and basic services related to roads, within their jurisdiction.

10. Similarly, new road infrastructure and maintenance should be prioritised taking into consideration their impact on the local economy and the expansion thereof.

11. CoGTA must work with the Department of Environmental Affairs to facilitate a province-wide review of landfill sites, and other methods of waste disposal, in order to more efficiently address the environmental hazards of illegal dumping and the shortage of landfill sites.

12. CoGTA should assess the impact of placing Tshwane under Section 139 administration on service delivery, and consider this relative to the time horizon for resolution of the matter via the courts.



## CONCLUSION



*“A society based on democratic values, social justice and fundamental human rights”  
“... a democratic and open society in which government is based on the will of the people..”  
“Human dignity, the achievement of equality and the advancement of human rights and freedoms”  
South African Constitution*



This Committee of Inquiry was tasked with investigating the state of municipalities in Gauteng, specifically focusing on the performance and internal affairs of municipalities, their financial governance and viability, institutional capability, good governance, public participation, effective service delivery and whether municipalities are fulfilling their constitutional mandate. In order to do so, the Committee examined the information provided by each municipality and recorded observations, findings and recommendations. It also looked at the developmental status of individual municipalities which revealed a number of trends and challenges that were identified as requiring attention, intervention and actions into the future.

Through this investigation, the Committee confirmed that weak and inadequate individual and collective governance, accountability and leadership are at the heart of the difficulties and challenges that confront municipalities and the overall system of local governance. It is therefore imperative that the political and administrative leadership of the national and provincial Departments of CoGTA, and the municipalities in Gauteng, consider these observations, findings, and recommendations as they focus on ensuring the future sustainability and performance of local government in Gauteng. Sector departments, at both a provincial and national level, should also review these findings, in the consideration of improving their own support for local government. The difficulties experienced with the management of resources make it difficult for the public to trust government unless bold steps are taken to demonstrate public accountability, to acknowledge failures in municipal performance, to involve the public in the understanding of this report, and build support for the implementation of the recommendations of the Committee.

The Committee in its work found a delivery and performance culture that is inconsistent with Chapter 10 of the Constitution which emphasises that public service is about serving the public through Batho Pele ('People First') principles. In order that this be achieved, public servants must engage professionally and with high levels of ethical prudence. If they are managers, they must be professional in all respects. If they are engineers, they must be

part of a professional community that upholds relevant standards. CoGTA must work with all of government to facilitate the professional development of public servants so as to enable them to better serve the public. In time, a culture will evolve to recognise that joy as a public servant is about service to the people!

Section 155(6) of the Constitution obliges provinces to 'monitor and support' municipalities, while Section 139 allows provinces to intervene in municipalities under prescribed circumstances. However, the Committee is of the view that the practical application of Section 155(6) deviates from its intention as far as the eight metros and 17 'secondary cities' are concerned. The 'monitoring and support' to these municipalities is the domain of National Treasury and other national departments, particularly through the City Support Programme. The metros and 'secondary cities' account for more than 80% of municipal revenue generated as well as over 53% of the national economy. Provinces then are required to support the approximately 220 least-resourced municipalities. The Committee considers this neither Constitutional nor sustainable.

The NDP (ch.13; p.409), inter alia, covers the phenomenon of 'mission creep' when it states that 'South Africa has struggled to achieve constructive relations between the three spheres of government. A lack of clarity about the division and coordination of power and responsibilities together with the lack of coherent and predictable mechanisms for delegating or assigning functions has created tensions and instability across the three spheres. There is no consensus on how this is going to be resolved and there is a lack of leadership in finding appropriate solutions. These coordination problems are not unique to South Africa. They are made more difficult by gradual mission creep as each government agency is expected to fulfil multiple objectives. The key issue is how they are dealt with. At present, there is no clarity on who has the responsibility for mediating disputes and overcoming coordination problems.' The Committee notes that this (gradual mission creep) is most prevalent with the execution of Schedule 5B powers and functions of municipalities, where the national sphere is often perceived to

be over-reaching. A further challenge with this mission creep is that often the necessary funding and capacity support is not provided, leading to unfunded mandates and insufficient support for the provision of certain functions.

A stark observation from all of the presentations received by the Committee regarding constitutional matters was that officials often only selectively quoted from the Constitution. As South Africa's democracy matures, progress is required away from an 'according to the Constitution' approach to one of 'according to constitutional law', taking into account judgments of the Constitutional Court. For example, the Committee noted that the First Certification Judgment (FCJ) of the Constitutional Court determined that one cannot consider dictionary definitions of 'supervision, monitoring and support' when it comes to local government, but it is more apposite to 'extract contextual meaning.' At this juncture, there is no legislation defining 'supervision, monitoring and support,' to the detriment of municipalities, particularly with the implementation of Section 154 of the Constitution.

Finally, the Committee has observed that despite the support of national government to municipalities, it is often confined to financial management. In addition, insufficient support is provided to provinces to perform their constitutional obligation of supporting municipalities. A 'whole of government' integrated approach to support is critical, covering issues of capacity, funding, leadership and planning, by all relevant national and provincial sector and other departments.

The trends and issues identified by the Committee are reflected below:

Throughout the Inquiry, the financial health of municipalities was of great concern to the Committee. The Report of the Auditor-General of South Africa (2018/19) states that only one of the 11 Municipalities in Gauteng may be categorised as being in good financial health while the remaining 10 municipalities are either 'of concern' or 'requiring intervention.'

This drew the attention of the Committee to the Local Government Financial Framework within which all municipalities operate. In July 2020, the AGSA expressed the view that 'there is a financial cul-de-sac that many of the local municipalities and districts have already reached across the whole country, with a few and limited exceptions.'

In a post-1994 South Africa, local government is mandated to play a crucial role as a vital component of the developmental state. That principle was expressed in the 1998 White Paper on Local Government. Twenty-two years later there is extensive experience and data that shows that the Local Government Fiscal Framework (LGFF) may be out of sync with the economic and social conditions that prevail in South Africa today. The Committee is convinced that a significant rethink is required on how local government is funded and supported.

The overriding question that emerges about district municipalities is: 'Where to from here?' District municipalities in a relatively urban area such as Gauteng, were established to play a predominantly coordinating and leadership role for the local municipalities within their boundaries. In addition, the district municipalities are meant to provide capacity where needed, strategic direction based on research on both the local municipalities within their areas and beyond, and to drive the regional Growth and Development Strategy within its jurisdiction. In both district municipalities, these functions are either non-existent or poorly executed.

The lack of research capacity at the district municipal level, prompted the Committee to look at the provincial government generally, and at CoGTA in particular, to establish whether there is also a lack of this vital resource at provincial level. Given that the province and municipalities must strive to make evidence-based policies and decisions, the monitoring and evaluation of data, and the capacity needed for good analysis, needs to be strengthened. In short, the Provincial Government, and COGTA, in particular, needs to drastically strengthen its research capacity to enable its ability to analyse, initiate, intervene and facilitate actions required for it to lead and coordinate

activities of municipalities. These should be directed at the collective goal of government to implement the NDP, Vision 2063 and improve the lives of the people of Gauteng.

The administrative-political interface emerged regularly during the Inquiry as a sensitive area that officials were reluctant to discuss candidly. Most officials endeavoured to convince the Committee that the interface was healthy and that their political principals were upholding legislative requirements. City Managers and Municipal Managers are at the leading edge of this interface and their roles are central to determining the culture within the organisation. However, the high number of unfunded budgets indicates a deficient execution of their roles as accounting officers and possible poor coordination between Provincial Treasury, Executive Mayors and Municipal Managers.

The Committee found that the procurement process in municipalities needs improved compliance, and suitably skilled and ethical managers. Procurement should be based on the principles of value for money, transparency, competitiveness and fairness. Procurement is not simply about obeying the rules. The rules are there to ensure the principles are applied. There must be passion about the application of these principles in achieving the item(s) being procured.

The evolving political landscape and the realities of coalition government in municipalities present a myriad of new challenges. The experience at the three metropolitan municipalities indicates the effect of these challenges on the stability and ability of administrations to effectively deliver quality services. The officials in the administrations willingly provided information about the difficulties faced, although did not directly reflect on the impact of political stability on the administration.

As part of their oversight (monitoring and supervision) and support responsibilities towards municipalities, many provincial and national departments are focussed primarily on compliance. Compliance with the

legal framework is stated emphatically to be a non-negotiable minimum standard of good governance. The Committee urges that compliance and the developmental trajectory and vision of an area must be approached on an integrated and holistic basis. Compliance does not always translate into positive growth for an area unless other important factors are present. Effective strategic planning, visioning, leadership and management are all critical areas of focus to ensure the necessary growth and development of a municipality. These observations had informed the establishment of the Cities Support Programme (CSP) within National Treasury. This programme is an acknowledgment that full compliance will not necessarily alter a municipality's developmental trajectory. The CSP extends the support of National Treasury to areas of governance, human settlements, public transport, economic development and climate resilience. The NT should embrace the coordinating role of the national and provincial CoGTA as well as its leadership role in driving the identification of developmental issues that inform the CSP. This could also strengthen CoGTA Gauteng in its cooperative governance mandate across provincial departments.

A large part of the developmental trajectory mentioned above needs to be funded through what is referred to as 'trading services' in municipalities. These include the provision of electricity, water, sanitation and waste disposal services. The 'user pay' principle applies to these services. However, constitutionally, the poor need to be given access to these services through a developmental approach. This includes the provision of free basic services to meet the basic needs of each resident. The sustainability of these services and the municipal developmental role requires that business principles apply to these trading services; where productivity, value for money, rate of return, quality, consumer satisfaction and service are important considerations.

The mandatory role of national and provincial government to strengthen and support municipalities, 'through legislative and other measures,' is contained in Section 154 of the Constitution. In examining this section there is a clear presumption that municipalities have inherent weaknesses and deficient capabilities. There is also recognition of historic inequality

and spatial constraints that challenge the developmental mandate within municipalities. Despite this important mandate, strengthening and support from all national and provincial governments to municipalities is fragmented, ad hoc and at times, non-existent. Also, oft-times it is understood as being the responsibility of only one department, i.e.CoGTA.

In view of the above, serious consideration needs to be given to mainstreaming and strengthening the support to municipalities transversally throughout government. This may include legislative measures.

Despite many similarities between the 11 municipalities in Gauteng, each one had a distinct set of issues and a unique operating environment. While each municipality has to fit into the overall vision of the Gauteng Provincial Government, they also require a distinct vision based on their unique circumstances. A 'one-size-fits-all' or generic approach to each of the municipalities will not necessarily be effective. However, the distinct municipal vision cannot be crafted independently from the overall vision for Gauteng. All decision-making must be strategically informed and aligned to the integrated vision. It is also critical that both provincial and national CoGTA have a developmental vision of the local municipalities that includes their support role as contained in Section 154 of the Constitution. This must be systematically implemented through an appropriate strategic plan. National and provincial visions, together with the district vision where applicable, need to be effectively integrated with a local or metro vision in the unique circumstances that prevail in each municipality. This will ensure that planning and delivery are focused on achieving both the specific local vision, together with broader regional and national goals.

Gauteng has a societal feeling of an integrated 'city region.' The feeling that one is in the same city! The residents of Tembisa and Ivory Park are virtually across the street from one another but fall into separate metropolitan municipalities. Given this scenario, planning and coordination is required to be seamless. The same applies to infrastructure development and service delivery. The economy has no borders. People in the "city region" may live

in one metro, work in another and play sports in a third. In this it is again critical that effort is placed on ensuring that neighbouring municipalities work together in their visioning, planning and implementation. District municipalities play a leading role in ensuring this happens at a district level. However, provincial CoGTA, together with other relevant provincial departments, must also ensure that planning and visioning is seamless across the province given the relatively urban and integrated nature of the Gauteng city region. This will ensure that there is a united and effective focus on the achievement of equality and the advancement of human rights and freedoms across the province.

Inasmuch as municipalities face numerous challenges, pockets of excellence must be identified and promoted as benchmarks for best practice. No significant attempts to implement excellence or quality systems were encountered either at municipal or provincial level. Such systems must be promoted in municipalities to achieve higher levels of effectiveness, efficiency and productivity. Having concluded that a clean audit is not necessarily indicative of good service delivery, such systems will provide a layer of assurance for excellence in service delivery. Given the various levels of organisational decay and inferior service delivery, such systems may be incrementally tackled. This will only bode well for municipalities and their communities.

It was refreshing for the Committee to discover that NT utilises the Theory of Change and Programming Logic as an integral project management tool in the implementation of the CSP. Without doing any intense analysis of the tools but through finding out that they focus on outputs and outcomes, the Committee suggests that all senior managers in the province and municipalities be trained in these techniques and tools. Such tools are used by major development banks, funding and donor foundations and Fortune 500 companies with encouraging results.

Intimately bound to the above suggestion, the Committee is of the view that training all senior managers in D-Thinking (design thinking) will contribute



towards resolving challenges in the local government sphere. The spectrum of challenges prevalent in municipalities calls for innovative and re-engineered solutions, rather than technical fixes.

A decade or more ago, many large towns and cities had “Work Study Units” within their organisations. Work study techniques promote efficiency, effectiveness, productivity and, ultimately, cost savings in any organisation, public or private. Over time, such units were discontinued. These units develop efficiencies in operations by: determining optimum service delivery routes, standard times to curb overtime and better supervision, economic order quantities, most efficient methodologies, standard operating procedures, critical path plans, efficient layouts for short term and long-term operations, queue efficiencies and human resource allocations. An opportunity exists to revive such units within the design of the District Development Model (DDM).

New technologies and the fourth industrial revolution (4IR) have arrived. Many of the challenges faced by municipalities may be resolved through technological solutions. The opportunity exists, again through the DDM, to seek technological innovations, such as Artificial Intelligence, to resolve their challenges. To this end, national and provincial government must make available research and development funding in this area. This again is an area of focus for the whole of government, given the opportunities that exist in specific sectors and areas.

The concept of a Smart City embraces modernisation and 4IR. The simplest way to describe a Smart City is one that uses information and communication technologies (ICT) such as sensors, apps, artificial intelligence, gadgets, electronic methods, mobile technology, and broadband to run its business efficiently and effectively. This, in turn, allows a Smart City to communicate with its communities, and vice versa, in real time, resolve problems seamlessly, improve service delivery and enable economic activity.

Resilient cities refer to the ability of cities to mitigate disasters, and if they

do occur, their ability to restore infrastructure and basic services. As the concept evolves, it has come to include economic, environmental (climate change), social, pandemic and institutional shocks.

The Committee notes the debate within the local government sector over a considerable period of time about the professionalisation of management. The Committee is of the view that this can be another mechanism that may promote excellence and good governance in the municipal sector. Moreover, it will give effect to Section 195 of the Constitution and the capable state envisaged in the NDP. Therefore, considered attention should be given to this by national and provincial government. This professionalisation of management will ensure that there is individual and collective action to achieve the society envisioned in our Constitution and the country’s long-term National Development Plan.

Powers and functions are allocated to municipalities through Schedules 4B and 5B of the Constitution. In several cases there is mandate creep because of historical or capacity factors. Mandate creep is referred to in the NDP (p. 365) with the intention to correct this in the future. Examples of mandate creep include electricity reticulation by Eskom and road traffic management by the Road Traffic Management Corporation. Other examples are that of incidental powers executed by MISA and the CSP. In a municipality of tomorrow, there should be no encroachment by other spheres of government in the affairs of a municipality. Where municipalities are performing powers and functions not assigned to them, there needs to be urgent review of the capacity and support for such functions, together with the relevant provision of financial and other support.

Much has been said in the report about Section 139 interventions. Potentially, in a municipality of tomorrow, Section 154 must flourish and Section 139 should recede and not be used as has been the case currently and in the past.

The Committee of Inquiry is of the view that urgent steps must be taken if the

Premier of Gauteng, David Makhura’s 2020 State of the Province Address vision of ‘Inclusive Growth and Shared Prosperity’ is to be realised. The vision can be achieved if the national and provincial government provide the necessary leadership and support. There is little doubt that then the ‘the abyss of extreme poverty, unparalleled inequality and consequent social unrest’ will be avoided. As Premier David Makhura indicated: ‘The future of our country and our province is in our hands.’ This calls for individual and collective action in strengthening municipalities, improving leadership and ensuring effective implementation of programmes to deliver the society envisioned in our Constitution.

The Committee hopes that the aspects and recommendations raised in this report will be gainfully utilised by Gauteng CoGTA, provincial government and national government, to put its municipalities on a trajectory of visible improvement to the ultimate benefit of all communities in the province. This responsibility is indeed in their hands!







## APPENDIX 1: RELEVANT LEGISLATION

---



## The Constitution of the Republic of South Africa, 1996

The Constitution of South Africa is the supreme law of the land. Any law or conduct that is in conflict with the Constitution is invalid. All obligations that are imposed by the Constitution, including those on local government, must be fulfilled.

Chapter 7 of the Constitution deals with local government and sets out its overall objectives.

## Other national legislation

The Municipal Systems Act 32 of 2000<sup>165</sup>

The Municipal Systems Act is part of a legislative series that aims to empower local government to fulfil its constitutional objectives. The Act sets out the core principles, mechanisms and processes that are necessary for municipalities to function. It defines the legal nature of a municipality and the manner in which municipal powers and functions are to be exercised in terms of:

- *Community participation, by providing for methods that councils must use to engage communities;*
- *Performance management in municipalities;*
- *Municipal services;*
- *Municipal entities;*
- *Public administration and human resources in municipalities; and*
- *Credit control and debt collection in municipalities.*

The Municipal Systems Act also states that municipalities must use an integrated development plan (IDP) as their principal strategic planning instrument. An IDP is a municipality's strategic plan to promote current and future economic and social development in the community. It sets out a five-year-plan for the municipality and is reviewed each year by the municipal council. The entire

municipality and its citizens must be involved in the drawing up of an IDP.<sup>166</sup>

All municipalities are obliged to produce an IDP. A municipality's budget is based on the IDP, and other government departments that work in a municipality's area should take the IDP into account when making plans and taking decisions.

An IDP has various functions. It ensures the effective use of scarce resources in a municipality by helping it to prioritise well, it helps to speed up delivery and to attract additional funds as investors are willing to invest when a municipality has clear goals, it strengthens democracy, and it promotes co-ordination between national, provincial and local government.<sup>167</sup>

A municipal council must first adopt a document called a process plan that details the steps in planning, drafting, adopting and reviewing the IDP. This document ensures that when the planning takes place, all aspects are considered so that the process is cost-effective and benefits as many people as possible. Before a process plan is adopted, the community must be consulted and given notice of its content.

Local government legislation such as the Municipal Systems Act calls for communities to participate in the drafting of the IDP as well as its implementation and monitoring. Municipalities will have their IDPs available on their websites and will hold public meetings which give citizens the opportunity to comment and contribute.

**The Municipal Structures Act 117 of 1998<sup>168</sup>**

The Municipal Structures Act provides for:

- *Categories and the establishment of municipalities;*
- *The types of municipalities that can be established within the categories;*

165. Ibid. Stats SA Gauteng Community Survey, p46

166. <http://www.etu.org.za/toolbox/docs/localgov/webidp.html>

167. <https://www.acts.co.za/municipal-systems-act-2000/index.html>

168. <http://mfma.treasury.gov.za/Legislation/lgmsta/Pages/default.aspx>

- *The division of functions and powers between the categories of municipalities;*
- *Municipal councils and office bearers in municipalities;*
- *Internal structures; and*
- *The code of conduct.*

**The Municipal Finance Management Act 56 of 2003<sup>169</sup>**

The Municipal Finance Management Act (MFMA) applies to all municipalities and municipal entities. The MFMA provides for the management of the financial affairs within a municipality by describing the processes relating to municipal budgeting, spending and financial accountability.

The MFMA also provides for community participation in a municipality's budget and finance management.

**The Municipal Property Rates Act 27 of 2000<sup>170</sup>**

The Municipal Property Rates Act describes the processes that municipal Councils must follow when setting their property rates and taxes. The Act regulates property rates and also sets out a uniform national framework for the levying of property rates by municipalities.

**The Municipal Demarcation Act 27 of 1998<sup>171</sup>**

The Municipal Demarcation Act lays out the criteria and procedures for the determination of municipal boundaries in South Africa. The Act also creates and regulates the Municipal Demarcation Board, which determines municipal boundaries according to the Act, and renders advisory services in respect of relevant matters.

**The Local Government Municipal Electoral Act 27 of 2000<sup>172</sup>**

169. <http://mfma.treasury.gov.za/Pages/Default.aspx>

170. <https://pmg.org.za/bills/160104propertyrates.htm>

171. <http://mfma.treasury.gov.za/Legislation/lgmsta/Pages/default.aspx>

172. <https://www.acts.co.za/local-government-municipal-electoral-act-2000/index.html?ward.php>

This Act regulates municipal elections in terms of preparing for municipal elections. Duties covered include the establishment of timetables, nomination of candidates, location of voting stations, appointment of officers at voting stations, etc.

## By-laws

By-laws are laws that are made by local government. Municipal by-laws are no different to any other law in the country – they can be enforced with penalties, challenged in court and must comply with other laws such as the Constitution. People who do not comply with by-laws can be charged with a criminal offence.

A by-law is passed if it has a favourable vote from the majority of the municipal council. Before passing a by-law, a municipal council must give the community an opportunity to review and comment on the by-law.

By-laws regulate the affairs and services that a municipality provides in its area of jurisdiction. A municipality can pass a wide range of by-laws which involve:

- *Animals*
- *Cemeteries and crematoria*
- *Public parks*
- *Waste management*
- *Outdoor advertising*
- *Graffiti*
- *Informal and street trading*
- *Community fire safety*
- *Electricity supply*
- *Waste management*
- *Water supply*



**Access to information**

Section 32 of the Constitution protects the right of South African citizens

to access information. It states that everyone has the right of access to any information held by the state, or held by any other person, that is to be used for the protection or exercise of any right.

The Promotion of Access to Information Act of 2000 (PAIA) is the law that gives effect to this right. Under PAIA, anybody can request information from both natural and juristic persons. Information can be requested from public and private bodies, and at the national, provincial and municipal levels.



*APPENDIX 2: TERMS OF REFERENCE  
OF THE COMMITTEE*



## TERMS OF REFERENCE FOR GAUTENG COGTA COMMITTEE OF INQUIRY INTO THE STATE OF AFFAIRS OF MUNICIPALITIES IN THE PROVINCE OF GAUTENG

The White Paper on Local Government, 1998, provided a new vision of a developmental local government system. This vision is anchored on the working relationship of local government with local communities to find sustainable ways to meet their needs and improve the quality of lives. The White Paper was conceptualized on pillars of good governance, accountable financial management and effective and efficient service delivery.

Since the ushering of the new democratic municipal dispensation in 2000, municipalities in Gauteng over the last nineteen years have made significant strides in achieving a number of vital social and economic developmental advances.

Notwithstanding the critical role the municipalities in Gauteng have played in changing socio-economic conditions province wide, there are glaring systematic and perennial challenges in almost all the municipalities that refuse to go away. For instance:

- *Problems with the political administrative Interface*

- *Corruption and fraud*
- *Poor financial management (negative audit opinions)*
- *Violent service delivery protest*
- *Non- payment of services*
- *Insufficient institutional capacities*
- *Huge service delivery backlogs*

The recent Report on the 2017-2018 financial year on the audit results of municipalities released by the Auditor-General of South Africa patently shows that there is a serious regression of the financial state of the municipalities in the Province. This situation cannot be left unattended and a different, cost effective, comprehensive and systematic approach is now required to address the myriad challenges municipalities are confronted on a daily basis. In order to fully deal with the situation, it is imperative that a differential diagnostic approach to municipalities to generate customised solutions is adopted. To that end, it was deemed necessary to establish the Committee of Inquiry in terms of Regulation 20.1 of the PFMA as a decisive intervention mechanism by the MEC as the executive authority.

The primary focus of the Committee is to conduct an inquiry into the state of affairs in municipalities based on the following pillars:

- *Sound Financial Governance and Viability*
- *Institutional Capability*
- *Good Governance*
- *Public Participation/Community Engagement*
- *Effective Service Delivery.*

The Terms of Reference of the Committee shall be to inquire, make findings, report on and make recommendations to the MEC concerning the following, guided by the Constitution, relevant legislation, policies and guidelines:

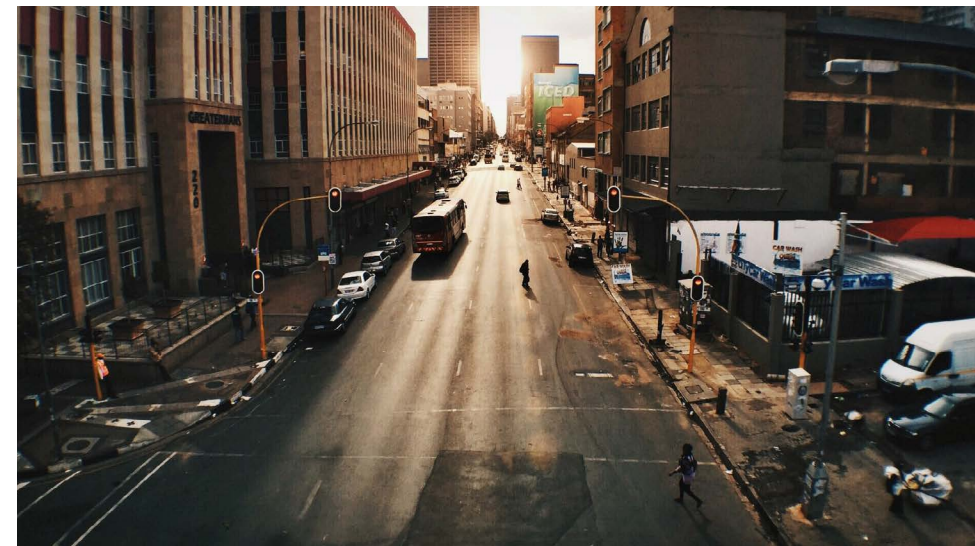
- *whether and to what extend municipalities are fulfilling their constitutional mandate as embedded in section 152 of the Constitution*

of the Republic of South Africa Act No. 108 of 1996, which is to:

- *Provide democratic and accountable government for local communities*
- *Ensure the provision of services to communities in a sustainable manner*
- *Promote social and economic development*
- *Encourage the involvement of communities and community organizations in the matters of local government*
- *Provide a safe and healthy environment*
- *whether and to what extend the Gauteng Provincial Government, within the systems of co-operative governance, is fulfilling its constitutional responsibilities in terms of section 154(1) of the Constitution which dictates amongst others, that provincial governments, by legislative and other measures, must support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their functions.*
- *to conduct an inquiry into all allegations of maladministration, fraud, corruption or any other serious malpractices that has occurred or is occurring in municipalities*
- *to inquire why there is minimal progress, in relation to the abovementioned pillars*
- *to inquire why municipalities are unable to spend the Municipal Infrastructure Grant*
- *to conduct an inquiry into the primary causes of violent service delivery protests*

The Committee will have all incidental functions and powers that are delegated to it by the MEC, in order to enable it to exercise those powers required to fulfil its mandate and exercise its functions.

The duration of the term of this Committee shall be no longer than three (3) months effective from 1 September 2019 to 30 November 2019, or such period as may be determined by the MEC.



Contact Person  
Mr Mpho Nawa: Chief Director - Back 2 Basics  
Gauteng Department of Co-operative Governance and Traditional Affairs  
Cell no: 076 198 6011  
E-mail address mpho.nawa@gauteng.gov.za



## APPENDIX 3: MEETINGS HELD

### Meetings held

Date	Activity
20-Aug-19	MEC establishes the Committee of Inquiry
23-Aug-19	Meeting of the Committee with the MEC
29-Aug-19	Meeting of the Committee
12-Sep-19	Meeting of the Committee
3-Oct-19	Meeting of the Committee
10-Oct-19	Meeting of the Committee
17-Oct-19	Sitting of the Committee: Rand West City LM
24-Oct-19	Sitting of the Committee: Merafong City LM
31-Oct-19	Meeting of the Committee
14-Nov-19	Meeting of the Committee
28-Nov-19	Sitting of the Committee: Mogale City LM
5-Dec-19	Meeting of the Committee
12-Dec-19	Sitting of the Committee: West Rand DM
19-Dec-19	Preparatory Meeting: Debrief and West Rand District Region Report
23-Jan-20	Meeting of the Committee
30-Jan-19	Sitting of the Committee: Midvaal LM and Lesedi LM
6-Feb-20	Committee Briefing on Sedibeng Region - Turffontein Race Course
13-Feb-20	Committee of Inquiry on Sedibeng DM - Housing Development Urgency
13-Feb-20	Committee Briefing by Gauteng Provincial Treasury on Emfuleni LM
20-Feb-20	Committee of Inquiry on Emfuleni LM - Sunny Side Park Hotel
25-Feb-20	Committee Briefing on municipalities by SALGA - Gauteng Partnership Fund
27-Feb-20	Committee Briefing on Metros by Gauteng CoGTA - Gauteng Partnership Fund
4-Mar-20	Meeting of the Committee
5-Mar-20	Meeting of the Committee
10-Mar-20	Meeting of the Committee
12-Mar-20	Meeting of the Committee
17-Mar-20	Meeting of the Committee
23-Mar-20	Meeting of the Committee - Zoom Virtual Meeting





Date	Activity
24-Mar-20	Meeting of the Committee - Zoom Virtual Meeting
5-May-20	Meeting of the Committee - Zoom Virtual Meeting
28-May-20	Meeting of the Committee with the HOD - Zoom Virtual Meeting
1-Jun-20	Meeting of the Committee - Zoom Virtual Meeting
2-Jun-20	Meeting of the Committee - Zoom Virtual Meeting
17-Jul-20	Meeting of the Committee - Zoom Virtual Meeting
31-Jul-20	Committee of Inquiry on City of Ekurhuleni - Zoom Virtual
6-Aug-20	Committee of Inquiry on City of Johannesburg - Zoom Virtual
17-Aug-20	Committee of Inquiry on City of Tshwane - Zoom Virtual
25-Aug-20	Meeting of the Committee - Zoom Virtual Meeting
31-Aug-20	Meeting of the Committee - Zoom Virtual Meeting
8-Sep-20	Committee of Inquiry on Gauteng Provincial Treasury - Zoom Virtual Meeting
9-Sep-20	Committee of Inquiry on Gauteng CoGTA - Zoom Virtual Meeting
11-Sep-20	Committee of Inquiry on Gauteng SALGA - Zoom Virtual Meeting
14-Sep-20	Committee of Inquiry on National Treasury - Zoom Virtual Meeting
15-Sep-20	Committee of Inquiry on National CoGTA - Zoom Virtual Meeting
30-Sep-20	Meeting of the Committee - Zoom Virtual Meeting
3-Oct-20	Meeting of the Committee - Zoom Virtual Meeting
5-Oct-20	Meeting of the Committee - Zoom Virtual Meeting
6-Oct-20	Meeting of the Committee - Zoom Virtual Meeting
8-Oct-20	Meeting of the Committee - Zoom Virtual Meeting
9-Oct-20	Meeting of the Committee - Zoom Virtual Meeting
11-Oct-20	Meeting of the Committee - Zoom Virtual Meeting
12-Oct-20	Meeting of the Committee - Zoom Virtual Meeting



# APPENDIX 4: LARGE POWER USERS

The dispute arises out of an incentive (preferential tariffs) that the municipality's predecessor had granted to Large Power Users in 1987 as part of the overall economic development and job preservation and creation efforts. In essence, the original agreement stated that the formula for the computation of the tariff was the Eskom tariff to Emfuleni Local Municipality (ELM) to which 5% was added. The relevant clause in the agreement read: 'the Council undertakes to the consumer that in accordance with the provision of the by-law, that charges payable to the consumer or all the services to be supplied from time to time in terms of this agreement will not at any time exceed or be more than the charge that the consumer will pay to Eskom.' The agreement had no end date and was ostensibly granted for ten years.

The municipality had not reviewed the arrangement, and especially the tariff, since. This type of tariff arrangement with LPUs is not unique to ELM as many other municipalities had them. These were cancelled by for instance, Tshwane, shortly after the first local government elections. Ekurhuleni similarly cancelled the agreement in the early 2000s. It was therefore of concern to the Committee that ELM had not detected the loss of revenue this meant beyond 1997. In the meantime LPUs that were not party to the original agreement were permitted the preferential tariff.

When the municipality in conjunction with NERSA approved a revised tariff in March 2019, the LPUs withheld payment on the difference thus increasing the debtor's book and negatively affecting the cash flow of the municipality. The LPUs led by Capegate, the biggest power user amongst them, maintain that the tariff is unaffordable as it is unreasonably determined. The lack of affordability by the LPUs is not verifiable as the municipality does not have access their financial records.

The municipality made about 40 proposals towards resolving the dispute, most relevantly to change the tariff block to realise the same effect for the LPUs with a savings of about R18 million per year. ELM had requested an acknowledgement of debt and the commencement of payment per an

agreed payment plan, so that it could have a positive effect on the municipal cash flow. That was not agreed to. ELM had also proposed that it would support an application by Capegate for short term incentives offered by the Department of Energy. This would have the effect of shifting the cost of the incentive to Eskom. The effect would be a shared benefit to both Capegate and the municipality. Additionally ELM proposed that it conduct online monitoring of consumption to enable a review of efficiencies. Capegate did not concede.

The LPUs seek instead a write off of the debt (R400 million in the 2019/20 financial year). This is based on the adjusted tariff levied by ELM and this is the fundamental difference where matters are deadlocked. A write off would require the revenue to be replaced from other sources, such as an increase in municipal property rates. The current cost of the incentive for a single year is computed at R500 million. The enormity of the historic costs despite the massive job losses within the municipality was brought to the attention of the Committee. The loss by February 2020, since the revision of the tariff, was estimated to be R380 million.

The matter is being litigated between Capegate, NERSA and ELM with continued attempts at a negotiated settlement. The municipality is mindful of the need for cash flow under current dire economic circumstances, in particular to the objective of the incentive which is job preservation. ELM is concerned that production may be relocated by some of these LPUs if another municipality offers them the incentives instead which could have a knock-on effect on tertiary businesses.

As the matter is complex ELM had sought the assistance of both SALGA and the Department of Energy. Both are insistent that the decisions to be made are those for ELM. ELM is further compromised as Eskom had notified them that Capegate would be supplied directly. The LPUs therefore enjoy the benefits of a guaranteed supply but not at the tariffs that is payable to the municipality. In the meantime Eskom has begun billing some of these LPUs directly.

Within the aggravating context of the Covid-19 pandemic lockdown, the financial status of the LPUs is anticipated to deteriorate. They most likely will seek funding under the lockdown financial relief arrangements made available to business by both government and the banks. Their stance prior to the lockdown is likely to be retained and if altered, will be influenced by the distress caused by lockdown. They are therefore anticipated to seek relief on their production input costs including the cost of labour and electricity charges.





Mr. Mpho Nawa,  
Chief Director: Back to Basics  
076 198 6011  
E-mail: [mpho.nawa2@gauteng.gov.za](mailto:mpho.nawa2@gauteng.gov.za)