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# **A few critical observations of current oversight and accountability challenges of financial management of municipalities in the Free State province: An ethical dilemma**

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## **Abstract**

*Ethics, oversight and accountability forms part of the founding principles of public administration which needs to be espoused and practice by the leadership and officials in South African public sector of which local sphere of government cannot be excluded. The Constitution of the*

*Republic of South Africa, 1996 (hereafter refers to as the Constitution, 1996) set out the constitutional democratic values and principles that require all political and public officials (functionaries) to behave in an ethical and accountable manner. The Local Government: Municipal Financial Management Act, (Act 56 of 2003) (hereafter refers to as the MFMA, 2003) compels municipalities to establish internal Audit Units and Audit Committees to promote control, ethics and accountability in the management of municipal financial affairs. Section 79 of the Local Government: Municipal Structures Act (Act 117 of 1998) provides for the establishment of Municipal Public Accounts Committees (MPACs) responsible to exercise oversight on behalf of the municipal council. Despite of these, the recent Auditor-General General Report on local government audit outcomes of 2018-2019 confirms that there is continued breakdown in internal controls due to poor leadership responses towards improving accountability, capacity and stability in municipalities in the Free State province (AGSA 2020:10). The Auditor-General further cautioned that municipalities in the Free State province will not be able to continue on the current downward spiral of financial maladministration as their financial performance has continuously deteriorated over the last five years, as a result of this 80% of municipalities are now in a vulnerable financial position (AGSA 2020:39). The article provides a critical overview of the current oversight and accountable challenges related to financial management of municipalities in the Free State province. It is argued in the article that there is an interconnection between ethics, oversight and accountability. It is further argued that the lack of municipal financial oversight and accountability encourages, unethical behaviour of municipal functionaries (political and administrative municipal officials), that subsequently lead to a culture of limited or no consequences which in turn harms public trust in local government.*

## **Keywords:**

**Ethics, oversight, accountability, municipal financial management, unethical conduct, non-compliance.**

## 1. Introduction and background

One of the foundations of any contemporary democratic government is that functionaries are accountable to the public for their decisions, actions and usage of public funds. The supremacy of legislatures requires them to oversee and enforce accountability on the executive bodies to ensure that executives are accountable for the usage of public funds. This is done through delegated oversight structures such as councils, public accounts committees and portfolio committees by enforcing control measures such as reports submitted by executive institutions and functionaries to ensure that executives are accountable for their decisions, actions or inactions related to the usage of public funds. Functionaries must act in accordance with the values and principles provided in Section 195 of the Constitution, 1996. Section 195 of the Constitution, 1996 requires the effective, economic and effective use of resources and that all public administrations must be accountable. It can be inferred from the above that accountability is one of the pillars of ethics and that legislatures must oversee and enforce accountability to ensure that functionaries be held to account for their actions or inactions. This implies that all government activities need to be carried out in an ethical and accountable manner. Functionaries must consider these constitutional values and principles and keep in mind everything they do should be in the interest of the public.

No municipality can deliver effective services and fulfil its constitutional mandated development role without enough financial resources. If a municipality does not have a sustainable income, it cannot achieve its service delivery commitments. In practice it entails that municipalities must generate income by raising taxes, levies, rates and service charges from the communities within the municipal area. However, one in three municipalities are dysfunctional due to institutional mismanagement, maladministration and lack of accountability, causing challenges with service delivery (Van der Waldt, Van der Walt, Venter, Phutiagae, Nealer, Khalo & Vyas-Doorgapersad (2018:220)). The Auditor-General states in the Consolidated Report on local government audit outcomes of 2018-2019 (AGSA 2020:1) that the absence of oversight over public funds leads to weak accountability and consequent exposure to abuse of public funds of which financial maladministration and ethical misconduct cannot be excluded. Accountability failures result in municipalities not achieving their objectives, which in turn has negative consequences for service delivery and the lives of local communities.

Accountability entails that political and administrative municipal officials are answerable to local communities for their decisions, actions and policies (Thornhill, 2012:277).

The intent of the article is to provide a critical overview and observations of the current challenges of municipal financial oversight and accountability. The article illustrates the importance of oversight, and accountable structures and mechanisms to ensure checks and balances of municipalities' financial management. The article concludes with recommendations to strengthen ethical behaviour, oversight and accountability of municipal functionaries in dealing with municipal financial management matters.

## **2. The state of ethics in municipal financial management**

Ethics deals with the execution of constitutional and other legislative ethical principles in the performance of their responsibilities. Municipal financial management deals with the municipality's revenue, expenditure, liabilities and assets decisions. The decisions include how revenue sources such as taxes are used by municipalities to collect their revenue and decisions about ways of financing infrastructure developments and maintenance. It further refers to intergovernmental transfers received from national government such as conditional and unconditional grants (Kuye, Thornhill & Fourie, 2002:100-103). Procurement and supply chain management (SCM), asset management, reporting and oversight form part of financial management. The effective functionality of the various oversight structures and mechanisms, to hold political office-bearers and municipal administrative officials to account for the way in which the municipality managed its financial affairs, is critical to ensure sustainable service delivery.

Ethics refers to a set of moral values, principles and rules of conduct recognised in respect of a society, organisation or group (Fox, 2010:4). Edwards (2008:78) maintains that ethics refers to a system of moral values and principles that directs the behaviour of functionaries in terms of what behaviour is acceptable or unacceptable. Unethical behaviour includes misappropriation of public funds, remuneration for tasks not performed, fraud, nepotism, failure to perform one's duties and responsibilities, mismanagement and maladministration. Thus, unethical behaviour refers to any behaviour that is against legislative and statutory prescripts, rules, regulations and expected standardised norms and principles. A range of unethical behaviour such as unauthorised, irregular expenditure, inadequate

controls, bluntly disregard of legislative framework and regulations contributes to corruption (Fox, 2010:138; Mello, Phago, Makamu, Dorasamy, Holtzhausen, Mothusi, Mpabanga & Tonchi, 2020:97). In terms of section 32 of MFMA, 2003 a municipality must recover unauthorised, irregular or fruitless and wasteful expenditure from the person liable for that expenditure unless the expenditure in the case of unauthorised expenditure is authorised in an adjustment budget or certified by the municipal council, and in the case of irregular or fruitless and wasteful expenditure after an investigation by a council committee certified by the council as irrecoverable and written off by the council.

Ethics in the contexts of the South African local government involves the execution of ethical principles and standards in the performance of responsibilities. These ethical principles and standards requires that a high standard of ethical conduct must be promoted and maintained, it further requires compliance with legislative and statutory frameworks, ensuring the provision of effective service delivery and accountable local governance and for the purpose of this article municipal financial management (Mle, 2012:26; Mello *et al.*, 2020:73). It was accentuated in the introduction section that Section 195 of the Constitution, 1996 provides the basic public values and ethical principles governing public administration in all three spheres of government, organs of state and public enterprises. Schedule 1 and Schedule 2 of Local Government: Municipal System Act, (Act 32 of 2000) (hereafter refers to as MSA, 2000) provides the code of conduct for municipal councillors and municipal officials. Schedule 1 and 2 of the MSA, 2000, provides that a councillor and municipal staff member must perform the functions of office in good faith, honestly and a transparent manner and at all times act in the best interest of the municipality and in such a way that the credibility and integrity of the municipality are not compromised. Municipal councilors and staff members must promote and seek to implement the constitutional values and principles. The code of conduct sets out the values standards and norms that should guide the ethical behaviour of municipal functionaries (Ambe, 2016:22-23; Sibanda, 2017:324). These principles are *inter alia* maintaining and promoting a high standard of professional ethical conduct; promoting efficient, effective and economic use of resources; administrations being accountable and transparent, and the public must be provided with accurate, timely and accessible information. Failing to establish and to maintain professional ethics and high ethical standards in public organisation, of which municipalities cannot be excluded, may lead to unethical behaviour of political and administrative municipal officials.

According to Hanabe, Taylor and Maclean (2017:394-395), and Kanyane (2011:935), section 2 of the MFMA, 2003 establish the ethical norms and standards that municipalities and municipal entities must maintain and promote, to secure sound and effective financial management. These involves *inter alia* ensuring accountable, transparent and appropriate lines of responsibility in the financial affairs of the municipality which includes management of revenues, expenditures, liabilities and assets and the handling of financial transactions; proper financial planning and budgetary processes; the handling of financial challenges in municipalities; SCM and other financial affairs. Chapter seven and eight of the MFMA, 2003 provides the standards of behaviour expected from mayors and municipal administrative officials regarding financial management, whilst Chapter 15 of the MFMA, 2003 make provision for procedures on how to deal with municipal financial misconduct within municipalities (Mello *et al.*, 2020:4; Van der Walddt, Khalo, Nealer, Phutiagae, Van der Walt, Van Niekerk & Venter, 2014:211-212).

According to Munzhedzi (2016:2), many countries have become increasingly aware of the significance of SCM of which procurement form part as an area vulnerable to mismanagement, unethical behaviour and corruption. Currently SCM and procurement are legislated by the Public Financial Management Act (Act 1 of 1999) and the MFMA, 2003 and the Preferential Procurement Policy Framework Act, (Act 5 of 2000) while the National Treasury, SCM: A Guide for Accounting Officer of Municipalities and Municipal Entities, 2005 provides the standards of behaviour required from political and administrative officials. The Draft Public Procurement Bill, 2020 proposes a single regulatory framework for procurement applicable to all three spheres of government. The Draft Public Procurement Bill, 2020 will repeal the current procurement and SCM regulations and laws including Chapter 11 the MFMA 2003.

Despite the constitutional ethical principles, standards, various code of conduct, legislative framework and regulations, conflicting values, lack of oversight and accountability, and poor financial management give rise to unethical behaviour, fraud corruption and an increase in the misuse of municipal funds and assets (Mello *et al.*, 2020:73-74). Mello *et al.* (2020:33) further aver that the negative consequences of unethical behaviour in the South African public sector, including municipalities, are huge. In this regard the Auditor-General cautions, in the Consolidated Report on local government audit outcomes of 2018-2019, that only 2% of all municipalities are fully complying with SCM legislation due to uncompetitive and unfair

procurement processes and inadequate contract management (AGSA, 2020:17). Another concern is that municipalities do not pay enough attention to the Auditor-General findings and recommendations on SCM and the indicators of possible fraud or improper conduct (Makwetu in AGSA Media Release 26 June 2019). Except for the above, Munzhedzi (2016:2) and Mantzaris (2017:124) maintain that the continued non-compliance with key municipal legislation and tender irregularities remains a concern in all three spheres of government and local sphere of government. Thus, there must be consequences for non-compliance with local government legislation, policies and SCM regulations. Defaulters must be held accountable for their actions. The Auditor-General points out in the Consolidated General Report on local government audit outcomes of 2017-2018 and again in 2018-2019 that the financial position of 80% of municipalities in the Free State province is very vulnerable, due to total breakdown in internal control systems and an increase in irregular expenditure as a result of widespread indifference towards procuring goods and services in accordance of SCM and procurement legislation and regulations (AGSA, 2019:10; AGSA, 2020:10). It is argued that unethical behaviour often flourishes when internal control systems, accountable and oversight structures and mechanism fails to identify unethical conduct to hold functionaries to account for their actions or inactions. The key functions of oversight and accountability in municipal financial management are to safeguard against unethical behaviour, maladministration and misuse of power.

In light of the above the Public Audit Amendment Act (Act 5 of 2018) was promulgated in 2018 with the intention to empower the Auditor-General not to just recommend remedial action for public financial mismanagement and abuse but to enforce the recommendations upon the three spheres of government and public entities. In terms of section 3(1B) of the *Public Audit Amendment Act, 2018*, the Auditor-General has the power to (a) take any appropriate remedial action; and (b) issue a certificate of debt, as prescribed, where an accounting officer or accounting authority has failed to comply with remedial action. While section 3(b) provides that the Auditor-General may, as prescribed, refer any suspected material irregularity identified during an audit performed under this Act to a relevant public body for investigation, and the relevant public body must keep the Auditor-General informed of the progress and the final outcome of the investigation. The role players and internal structures and mechanisms to promote financial oversight and accountability in municipalities are discussed below.

### **3. Role players and internal structures and mechanisms to promote financial oversight and accountability within municipalities**

Gildenhuys (2018:17) avers that public accountability involves holding councillors and municipal officials responsible for their actions and funds placed under their control. On the one hand, financial accountability, refers to the municipal councillors as the political representative's and municipal administration official's responsibility to be held accountable, individually and collectively for the collection, safeguarding and the efficient and effective use of public funds (Khalo, 2013:581). On the other hand, financial accountability refers to an account about the decisions on how municipal funds were spend and used to implement municipal policies as approved by the municipal council (Van der Waldt *et al.*, 2014:581). Mazibuko and Fourie (2013:131) maintain that financial reporting can be seen as the cornerstone of financial accountability, to hold functionaries to account in the manner that the municipality utilised public funds. Financial reporting such as monthly, quarterly and annual reports must evaluate the extent to which the objectives have been met against the performance indicators that were set in the budget documents (Kuye *et al.*, 2002:120-121).

According to Van Niekerk and Dalton-Brits (2016:117-118), oversight is a constitutionally mandated function of legislative organs of state to scrutinise and oversee executive action and any organ of state. It follows that oversight entails the informal and formal, watchful, strategic and structured scrutiny exercised by legislatures in respect of the implementation of legislation, the application of the budget, and the strict observance of statutes and relevant statutory and regulatory frameworks (South African Legislative Sector, 2012:4-9). Oversight is used to define numerous activities executed by legislatures to hold administrative organs of state to account for their actions or inactions (Kraai, Holtzhausen & Malan, 2017:63).

In terms of section 55 of the Constitution, 1996 legislature must establish mechanisms to uphold oversight over the national executive (administrative) authority. While, section 114 of the Constitution, 1996 provides that a provincial legislature must provide for mechanism to maintain oversight of the exercise of provincial executive authority in the province including the implementation of legislation. This is not explicit in local government, in terms of section 151(2) the executive and legislative authority of the municipality is vested in its municipal council. Section 19 of the Municipal Structures Act, 1998 provides that municipal councils retain responsibility for approving policy and exercising oversight of its mayor, and the administration is accountable



to the council via the mayor. In terms of section 59 of the *MSA*, 2000 the municipal council must develop a system of delegation that will maximise the administrative and operational efficiency of the municipality. The system of delegation would provide for adequate checks and balances. One of the key oversight structures in a municipality is the MPAC established in terms of section 79 of the Municipal Structures Act, 1998. For the purpose of this article some of the key role players and internal structures and mechanisms, to promote financial oversight and accountability in municipalities, are outline below.

### ***3.1 The financial oversight and accountable role of the municipal council***

According to the Auditor-General, in the Consolidated Report on local government audit outcomes 2018-2019 the political leadership (mayor, executive mayor and municipal councillors) must oversee the functioning of the municipality and takes key decisions to promote accountable local government to local municipalities (AGSA, 2019:35). Section 4(2) Municipal Structures Act, 1998 provides that the municipal council, within the municipality's financial and administrative capacity has the duty to exercise the municipality's executive and legislative authority and use the resources of the municipality in the best interests of the local community. Khalo and Vyas-Doorgapersad (in Van der Waldt *et al.*, 2018:80) state that a municipal council is assigned with both the legislative and executive authority in order to prevent the monopolisation of powers. Therefore, a division of legislative and executive authority takes place between the speaker and the executive mayor in municipalities with an executive mayor system. In terms of section 37 of the Municipal Structures Act, 1998 the speaker of a municipal council performs the duties and exercises the powers delegated to the speaker in terms of Section 59 of MSA, 2000. The speaker is also the chairperson of the municipal council. In this regard Kraai *et al.* (2017:64) aver that the legislative and oversight structure refers to the speaker of the municipal council and the chairperson of the section 79 portfolio committees and the members of this portfolio committee. According to SALGA (2005:16), the speaker fulfils a key role to ensure oversight, accountability, integrity and discipline of council meetings and to hold the mayor to account for his/her actions or inactions (Siddle, 2011:139).

In terms of section 52 of the *MFMA*, 2003 the mayor must provide political guidance concerning fiscal and financial matter of the municipality. The mayor must monitor and oversees the responsibilities assigned to the municipal manager and CFO of the municipality and that the municipality performs

within the municipal budget. The mayor must submit a report to the municipal council within 30 days of each quarter regarding the implementation of the municipal budget and the financial state of the municipality. The mayor of the municipality must also report to the provincial executive if provincial interventions exist.

Mazibuko and Fourie (2013:133-134) argue that the municipal council together with the mayor and municipal manager must fulfil an important role in promoting accountable financial management of the municipality. The municipal council is responsible for enacting bylaws relating to municipal rates and taxes, collecting, safeguarding and allocating of public funds. The latter implies that the municipal council must have financial control over the executive committee of the municipality. On the other hand, individual members of the municipal council (councillors) are accountable to the taxpayers/voters. Effective oversight of municipal councils relies on the assumption that local elected representatives (proportional representative councillors) must respond to the needs and preferences of their constituencies (Yilmaz, Beris & Serrano-Berthet, 2008:13). The municipal council must give account to the local community by providing and establish suitable control and reporting systems and procedures for monitoring and evaluating. The municipal council is responsible for the financial policy in accordance with prescripts of the MFMA, 2003. The municipal council must give instructions, lay down procedures to be followed concerning all financial functions and transactions. In order to fulfil its financial responsibility concerning the manner in which the executive administrative departments collect, safeguard and spend the municipal funds entrusted to them the municipal council rely on internal control measures such as audits and the reports made by the auditors and other functionaries who are accountable only to the municipal council (Mazibuko & Fourie, 2013:133-134).

According to Ntonzima (2011:1011), financial reporting and auditing are the most important internal control mechanism to promote accountability and transparency to ensure that functionaries are held to account on how municipalities used public funds. Accountability is based on the belief that communities as taxpayers and stakeholders have a right to know and a right to receive openly declared facts about the way that public funds are being spend. Governance should be built around the responsibilities of accountability and oversight requiring a culture of transparency and regular reporting. In this regard Sirovha and Thornhill (2017:151) state that in terms of section 129(1) of the MFMA, 2003 the municipal council must consider the annual report of the municipality or that of any municipal entity under the control of the municipality. Section 130(1) of the MFMA, 2003 requires that

the municipal council meeting at which the municipal council discusses the annual report must be open to the public and any organs of state. Section 127(5) of the MFMA, 2003 requires that immediately after the annual report is tabled in the municipal council, the municipal manager as the accounting officer of the municipality must make the annual report available to every member of the community. In addition, the municipal council must provide a reasonable time to allow the community or any organ of state to submit any written submissions on the annual report. The municipal council must make provision for any community members or organs of state to address the municipal council on any matters on the annual report. The purpose of the municipality's annual report is to promote accountability to the local community for the decisions made by the municipality in any given year. Except for the above, the municipal council must consider the annual audit report and adopt an oversight report containing the municipal council's comments on the annual audit report (Gildenhuys, 2018:28-29; Khalo, 2013:585; National Treasury, 2004:6).

The code of conduct for councillors as provided in section 11 of Schedule 1, of the MSA, 2000 a councillor may not, except as provided by law, interfere in the management or administration of the municipal council unless mandated by council. It was reported by the Auditor-General that political infighting at municipal council level and the continued political interference of municipal councils and/or councillors in the administration hampers oversight and contributes to the development of a culture of no consequences (Makwetu, Media Release 26 June 2019:9). It was reported in the media that political conflict as a result of political factions in the Mangaung Metropolitan Municipality in the Free State province weakened the municipal council's oversight function (Gericke in *Die Volksblad* 10 Julie 2019:4). Except for the above, the continued breakdown in financial controls and subsequent poor response by municipal leadership (mayors and council members, municipal manager and senior managers) towards improving stability, capacity and accountability were the main reasons of further regressions in municipalities of the Free State province (AGSA, 2019:35). Therefore, the focus of political leadership of municipalities of the Free State province should be on stabilising, capacitating, supporting and overseeing municipal administrations.

### ***3.2 Financial and oversight and accountable role of mayor or executive mayor***

Section 7 of the Municipal Structures Act, 1998 makes provision for the different types of municipalities namely a collective executive system, a mayoral executive system and a plenary executive system that may be

established within each category of municipality (SALGA, 2011:7). In terms of section 56(1) of the Municipal Structures Act, 1998 municipalities who have chosen an executive mayoral system may elect an executive mayor among its council members after the council elections. SALGA (2011:7) points out that the municipal council in municipalities with a collective executive system appoints an executive committee headed by the mayor which is accountable to the municipal council. The executive mayor or executive committee headed by the mayor are expected to provide the municipality with political leadership, by proposing policies, budgets and performance targets for the municipality and its officials (Mazibuko & Fourie, 2013:133-134). Thornhill and Cloete (2014:112) state that the mayor has a primary responsibility concerning budgetary control and oversight function over the implementation of the budget. The mayor may also give instructions to the municipal manager to ensure that the budget is implemented in accordance with the service delivery and budget implementation plan (SDBIP). Therefore, the executive mayor or executive committee of the municipality fulfil a key oversight role by overseeing the performance of the municipal officials by using the SDBIP to monitor their performance through monthly progress reports and by submitting the annual report to the municipal council.

The statutory functions of the executive mayor are provided in Section 56 of the Municipal Structures Act, 1998. In terms of section 56(1) of this Act an executive mayor is entitled to receive reports from committees of the municipal council and to forward these reports together with recommendations to the municipal council when the matter cannot be disposed of by the executive mayor in terms of the executive mayor's delegated powers. While, section 44 of the Municipal Structures Act, 1998 provides that the executive committee is a committee of the municipal council which receives reports from the other committees of the council and which must forward these reports together with its recommendations to the municipal council when it cannot dispose of the matter in terms of its delegated powers. The executive committee must report to the municipal council on all decisions taken by the committee. The executive committee of the municipality is therefore subject to the municipal council to ensure public accountability.

Except for the above, Thornhill and Cloete (2014:112) aver that the mayor or executive mayor oversight role in municipal financial matters entails that they have to provide the general political guidance over financial affairs of the municipality; by taking reasonable steps such as the implementation of effective control measures to detect financial misconduct or deviations from legislation. The mayor or executive mayor must further ensure that a

municipality performs its constitutional obligations and functions within the limits of the municipality's approved budget, and reporting to the provincial executive if the budget has not been approved as required or if financial problems necessitates provincial intervention. The mayor must also perform oversight concerning municipal entities. It is evident that the mayor of a municipality fulfils a critical political oversight role in financial matters of the municipality.

### ***3.3 Accountable role of the municipal manager***

Mazibuko and Fourie (2016:134) state that in terms of section 60 of the MFMA, 2003 the municipal manager as the accounting officer of the municipality fulfils a key accountability role for the promotion of sound municipal financial management. The municipal manager is responsible and accountable for the municipality's revenue (income), expenditure, asset management, discharging of all liabilities, and to ensure compliance with MFMA, 2003. Mazibuko and Fourie (2016:134) further maintain that in terms of the MFMA, 2003 the municipal council of the municipality must oversee that the municipal finances of the municipality are managed in such a way that the constitutional objectives of local government are achieved. One of these objectives is to provide accountable local government to local communities of which accountable financial management cannot be excluded.

Gildenhuis (2018:59-61) avers that the municipal manager is in terms of section 60 of the MFMA, 2003 accountable for the effective and efficient usage of all municipal funds received and for all payments made by the municipality, the acquisition, custody and disposal of all municipal assets. The municipal manager is given some general and specific responsibilities related to developing and maintaining effective, efficient and transparent systems of financial and risk management, internal control, budget and expenditure control, control of assets and liabilities and reporting. The municipal manager delegates the financial function to the CFO. The municipal manager may not delegate any financial or other responsibilities to a political structure.

The MFMA, 2003, requires regular and accurate financial reporting to the municipal council in order to facilitate an environment in which potential or real financial challenges are reported in a timely and appropriate manner that will allow the municipal council to remedy the situation. The municipal manager must submit monthly budget progress reports to the mayor and Provincial Treasury and a mid-year budget report and performance assessment to the mayor. In addition, the municipal manager must also report to municipal council on prescribed withdrawals from bank accounts each quarter and on

unforeseen or unavoidable expenditure or expenditure that is deemed to be unauthorised or irregular or fruitless and wasteful (Fourie & Opperman, 2015:199; Gildenhuys, 2018:61).

In light of the above, Ndaba (in *The Star*, 27 June 2019:1) avers that there is a rapid deterioration of accountability as showed in the Auditor-General Consolidated Report on local government audit outcomes of 2017-2018 financial year. Ndaba further avers that municipalities placed under administration by the provincial government in the Free State province showed no improvement in the Auditor-General's local government audit outcomes of the 2017-2018 financial year. The Auditor-General also confirms that although some municipalities in the Free State province had been placed under provincial supervision, it was not effective as these municipalities' financial sustainability did not improve in the 2017-2018 and 2018-2019 financial year (Makwetu in AGSA, Media Release, 26 June 2019; AGSA, 2020:10). Sandiswe (in the *Daily Maverick*, 25 June 2020:1) agrees that poor leadership and a lack of accountability are the reason behind the poor financial outcomes in local municipalities. A concern is that municipalities of the Free State province audit outcomes continued to regress for the third consecutive year (Makwetu in AGSA, Media Release, 26 June 2019). Another concern is that Mangaung Metropolitan Municipality was the first metropolitan municipality in the country, to be placed under provincial administration, during January 2020 (Gericke, *Die Volksblad*, 30 Januarie 2020). In Mangaung Metropolitan Municipality irregular expenditure accumulated to an amount of R949,5 million, while fruitless and wasteful expenditure of R78,7 million increases, with little or no consequences (AGSA, 2020:44). The latter give rise to an increase in unethical conduct of functionaries, failure of oversight and accountable structures and mechanisms leads to a culture of limited or no consequences. Therefore, municipal managers as the accounting officers must ensure that financial resources are used in an effective and efficient and transparent manner. Municipal managers had to implement internal controls to prevent and to detect financial misconduct, irregularities and deviations from legislation and treasury regulations (Hlengwa in Parliamentary Group, 23 October 2019). Internal control measures include inter alia reports, audits, inspections, cost-accounting, statistical returns, and instructions that set out the standards and quality of work expected of employees in the provision of services to local communities (Thornhill, 2012:271).

### **3.4 *Accountable role of the chief financial officer (CFO)***

In terms of section 56 of the MSA, 2000 the CFO is appointed by the municipal council and is directly accountable to the municipal manager. Thornhill and Cloete (2014:115) state that the CFO may sub-delegate in accordance with the MFMA, 2003 any of the delegated functions to an official in the budget and treasury office, or to any other municipal official or with prescribed safeguards to any other person contracted by the municipality. In term of section 77(1) and (2) of the MFMA, 2003 the CFO must assist the municipal manager concerning the management, co-ordinating and monitoring of the financial administration of the municipality.

The CFO is accountable to the municipal manager for the delegated functions and is responsible for the financial management the budgetary process, accounting, analysis, financial reporting, cash management, debt management and other review functions. The CFO is responsible to provide advice concerning all financial matter, to co-ordinate all financial activities; responsible for the implementation of the financial system, the accounting system and the financial control function within the municipality. The CFO must perform budgeting, accounting analysis, financial reporting, cash management, debt management, review and any other delegated functions by the municipal manager (Sibanda, 2017:2017:321; Thornhill & Cloete, 2014:115; Gildenhuis, 2018:62). The CFO is directly accountable to the municipal manager concerning all financial activities including the implementation of the financial system, the accounting system and the financial control function within the municipality.

### **3.5 *Internal audit committees***

Sing (2003:92) and Van Niekerk and Dalton-Brits (2016:123) state that in terms of section 166 of the MFMA, 2003 each municipality must have an internal Audit Committee that acts as an independent advisory body. Section 166, of the MFMA, 2003 further indicates that the municipal Audit Committee must advise the municipal council; the political office-bearers and the accounting officer on matters relating to internal audits and internal financial control, accounting procedures and practices; risk and risk management; loss control and compliance with MFMA, 2003 and any applicable legislation. The internal Audit Committee must also advise municipal council on performance management, effective governance and compliance with financial regulations (Fourie & Opperman, 2015:66).

The internal Audit Committee must review the annual financial statements to provide the council with an authoritative and credible view of the financial position of the municipality, its efficiency and effectiveness. It must also respond to the council on any matters raised by the Auditor-General in the audit outcomes report (Fourie & Opperman, 2015:66). The Auditor-General reported that the Public Audit Amendment Act, (Act 5 of 2018) to recover losses and enforcing accountability against municipal officials responsible for financial losses would strengthen accountability and enforce adequate consequences where accountability failures occurred (AGSA, 2018:57).

According to Van Niekerk and Dalton-Brits (2016:125), a challenge facing the implementation of the internal Audit Committee recommendations is that there is lack of sanctions taken against management for non-compliance with the MFMA, 2003. Another challenge is that no attention is paid to keep deadlines provided for giving feedback to the internal Audit Committee. Van Niekerk and Dalton-Brits (2016:125) further mention that internal audit committee members confirmed that they would read about mismanagement and corruption in municipalities in local newspapers, but that such fact never transpired in formal Audit Committee meetings, even if internal Audit Units were asked to provide information concerning allegations of mismanagement and corruption, but to no avail. Therefore, it is difficult for internal Audit Committees to function without accurate, reliable information from management and internal Audit Units when elements of mismanagement, unethical behaviour and corruption were hidden from the internal Audit Committee which hampers its oversight role.

### **3.6 *Municipal Public Accounts Committee (MPAC)***

According to Van der Waldt (2015:60) and Sibanda (2017:313) the MPAC established in terms of section 79 of Municipal Structures Act of 1998, serves as another key political oversight structure of the municipality. The main purpose of the MPAC is to exercise oversight and to assist the municipal council in holding the executive and municipal administration to account, and to ensure the effective and efficient use of municipal resources. The functions of MPACs, include *inter alia*, to examine financial statements of all executive organs of municipal councils, to examine any audit reports issued on those statements, to examine any reports issued by the Auditor-General on the affairs of any municipal entity; to examine any other financial statements or reports referred to the committee by councils; to examine annual reports on behalf of municipal council; and to make recommendations and to monitor the extent to which its recommendations and those of the Auditor-General are carried out (Gauteng Provincial Local Government and Housing, 2012:23).



The MPACs can be seen as a key oversight committee, however, the Auditor-General warns in the audit outcomes of local government of 2017-2018 that MPACs lack the legal mandate to enforce their recommendations on municipalities. The Auditor-General further mentions that in some municipalities the municipal managers refused to attend hearings, respond to questions or supply required information to MPACs (AGSA, 2019:28). The Auditor-General confirms again in the Consolidated General Report on local government audit outcomes of 2018-2019 that the recommendations of internal Audit Units, internal Audit Committees and MPACs are not implemented, which harms the impact of these key role players to promote effective oversight and accountability in municipalities.

#### **4. Current oversight and accountability challenges of financial management of municipalities in the Free State province**

A few critical observations can be made from the above discussion and from relevant secondary sources, including Auditor-General Consolidated Reports on local government, the audit outcomes about the current oversight, and accountability challenges of financial management of municipalities in the Free State province. The first observation is that there is a nexus between ethics, oversight and accountability. It is argued that a lack of municipal financial oversight and accountability encourage unethical behaviour of municipal functionaries, that subsequently lead to a culture of limited or no consequences, which harms public trust in local government. It was mentioned that despite of the constitutional ethical principles, standards, various code of conduct, legislative framework and regulations, conflicting values, lack of oversight and accountability, and poor financial management give rise to unethical behaviour, fraud corruption and an increase in the misuse of municipal funds and assets. Therefore, one could argue that there is a nexus between ethics, oversight and accountability in that a lack of oversight and accountability could contribute to possible unethical behaviour of functionaries with little or no consequences.

The second observation is that continued disregard of constitutional values and ethical principles, code of conducts, and key legislative framework and treasury regulations results in an increase of irregular, fruitless and wasteful expenditure that could lead to unethical conduct and subsequently, corruption. The Auditor-General confirms that the lack of oversight leads to

weak accountability and the consequent exposure to abuse of public funds (AGSA, 2020:1).

The third observation is that political interference hampers effective management of municipalities' financial resources. The latter was confirmed by the Auditor-General that continued political interferences of municipal councils in the administration of municipalities harms oversight and contributes to the development of a culture of limited or no consequences (AGSA, 2019:35).

The fourth observation is that the political and administrative leadership is lacking to promote oversight and accountability in municipalities of the Free State province which lead to continued deterioration of financial performance in all municipalities of the Free State province. It was confirmed by the Auditor-General in the Consolidated General Report on local government audit outcomes of 2018-2019 that there is a lack of accountability by political and administrative leadership of municipalities of the Free State province which resulted in the continued regression and deterioration of the audit outcomes (AGSA, 2020:35).

The fifth observation is the poor implementation of the Auditor-General's recommendations made in the annual audit outcome reports and contributes to a culture of limited or no consequences. A concern was raised in the 2018-2019 audit report on local government that none of the municipalities of the Free State province, including the Mangaung Metropolitan Municipality, received clean audits (AGSA, 2020:44). One could argue that the continued inaction of municipal councils, mayors, and municipal managers to implement the recommendations of the Auditor-General weakened oversight and accountability of the financial affairs of municipalities in the Free State province. The above led to the creation of a culture of no or limited consequences that weakens effective oversight and accountability.

The sixth observation is that the relevant provincial governments fail to intervene and fail to take the required steps when municipalities do not fulfil their financial obligations. The Auditor-General cautions in that irrespective of the fact that some municipalities of the Free State province were placed under provincial supervision, yet it did not yield the required results, as these municipalities' financial sustainability did not improve (AGSA, 2020:10). Therefore, it was argued that the latter situation hampers effective oversight and accountability.

The last observation is the functionality of oversight and accountable structures such as MPAC's and Audit Committees, internal controls and

effective reporting in municipalities in the Free State province, to promote effective oversight and accountability remain a concern. The Auditor-General confirms that the lack of the impact of internal Audit units, internal Audit Committees and MPAC remains a concern in that the recommendations of these role players were not implemented (AGSA, 2020:9).

## **5. Recommendations and concluding remarks**

The article considers the significance of ethics, oversight and accountability at local sphere to ensure effective management of the municipalities' financial matters. It was accentuated in the article that the political leadership (mayor, executive mayor and municipal councillors) must oversee the functioning of the municipality and takes key decisions to promote accountable local government to local municipalities. Another key role player to promote oversight is the speaker who acts as the chairperson of the municipal council. The speaker not only fulfils a key role to ensure oversight, accountability, integrity and discipline of council meetings, he/she must hold political executives (mayor) to account for their actions or inactions. Another critical oversight structure is the MPACs. The MPACs are responsible to exercise oversight and to assist the municipal council in holding the executive and municipal administration to account, and to ensure the effective and efficient use of municipal financial resources.

A few critical observations were made about oversight and accountability challenges of municipal financial management in municipalities of the Free State province. It is argued that the lack of ethical behaviour, oversight and accountability of the municipalities' financial affairs encourage unethical behaviour of municipal functionaries, that give rise to limited or no consequences and it damage public trusts in local government. It is stressed that misappropriation of public fund, fraud, failure to execute one's duties and responsibilities, and maladministration can be seen as unethical behaviour, while a series of unethical behaviour including deliberate disregard of legislative and statutory framework and regulations, continued unauthorised, irregular expenditure, insufficient controls, contributes to corruption. It was further accentuated that the financial performance of the municipalities of the Free State province continued to regress and deteriorate for the third consecutive year. Another concern is that key oversight structures', including the MPACs and internal Audit Committees of municipalities in the Free State province, recommendations are not implemented which hampers their impact.

Considering the above, it is recommended that a culture of ethics and ethical behaviour by political and administrative leaders should be enforced to strengthen effective municipal financial systems, and processes. The code of conduct for councillors and municipal staff members provided in Schedule 1 and 2 of the *MSA, 2000*, provides that a councilor and municipal staff members must perform the functions of office in good faith, honesty and a transparent manner and that they must promote and seek to implement the constitutional ethical values and principles at all times and act in the best interest of the municipality and in such a way that the credibility and integrity of the municipality are not compromised. Preventative internal control measures must improve to hold functionaries to account for their actions or inactions. It is critical that internal controls that prevent irregularities and deviations from the *MFMA, 2003* and *SCM* regulations including the Draft Public Procurement Bill, 2020 be reinforced in all municipalities of the Free State province. Effective mechanisms must be implemented to monitor and prevent wasteful and fruitless expenditure in municipalities. There must be consequences for non-compliance with local government legislation, policies, regulations including the Draft Public Procurement Bill, 2020. Defaulters must be held accountable for their actions. Municipal councillors should give effect to section 11(a) of the Code of Conduct of Councillors, as contained in Schedule 1 of the *MSA, 2000*. It provides that a councillor may not interfere in the management or administration of any department of the municipal council, unless so mandated by council or by law.

The oversight role of the speaker, municipal council, mayor or executive mayor and the MPACs needs to be strengthened in municipalities of the Free State province so that the political and administrative executive can be held to account and to ensure the efficient and effective use of municipal resources. In this regard the Auditor-General accentuates that leaders in local government should take the responsibility for the deteriorating accountability in municipalities and should turn around the situation. Political leadership (mayor and council members) must oversee the functioning of municipalities, while the administrative leadership (municipal managers and senior managers) must be responsible and accountable for the administration and service delivery of the municipality. The provision of section 3 of the *Public Audit Amendment Act, 2018* must be implemented. Municipal managers should personally be liable for any loss of allocated funds as a result of any deficiency in the administrative or managerial arrangements of the municipality. Failure to give effect to assigned responsibilities should result in the removal of the municipal manager from office. It is thus evident

that more needs to be done to promote ethics, oversight and accountability of municipal financial management matters in all municipalities of the Free State province.

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