

DEPARTMENT:

Co-operative Governance, Human Settlements and Traditional Affairs

COGHSTA



**Strengthening Oversight and Accountability in the
Local Sphere of Government: Looking at the Role of the
Executive in the Provincial Sphere of Government**

LOCAL GOVERNMENT WEEK 13 – 15 SEPTEMBER 2022

14 September 2022

HYBRID SESSION

OUTLINE



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Department:
Co-operative Governance, Human Settlements &
Traditional Affairs
Northern Cape

- × Purpose
- × Constitution
- × LG: Municipal Systems Act
- × LG: MFMA
- × Interventions
- × Challenges
- × Conclusion

PURPOSE



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- ✘ The presentation will looking at **“the Role of the Executive in the Provincial Sphere of Government”** in **“Strengthening Oversight and Accountability in the Local Sphere of Government”**.



- ✘ As part of oversight and accountability by the Provincial Executive - the Province is entrusted by various sections of the **Constitution of the Republic of South Africa, 1996** with the general monitoring and support of local government.

- ✘ The following sections of the Constitution are pertinent for support - Sections 153, 154 and 155(6), (7) and for interventions section 139.
 - + Section 153(b) provides that –
“A municipality must – participate in national and provincial developmental programmes”;



- ✘ Section 154 provides that –
“The national government and 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”.

- ✘ The oversight role played by the provincial executive over various municipalities has enabled the province to identify capacity challenges in key senior management positions and provided support -
 - + Ubuntu : Municipal manager
 - + Renosterberg : Municipal manager, CFO and Dir: Technical Services
 - + Phokwane : Municipal manager



+ Section 155(6)(a) and (b) provides that –

“Each provincial government must establish municipalities in its province in a manner consistent with the legislation enacted in terms of subsections (2) and (3) and; by legislative or other measures, must –

(a) Provide for the monitoring and support of local government in the province; and

(b) Promote the development of local government capacity to enable municipalities to perform their functions and manage their own affairs”.

+ Section 155(7) provides that –

“The . . . provincial government have the legislative and executive authority to see to the effective performance by municipalities of their functions in respect of matters listed in Schedule 4 and 5, by regulating the exercise by municipalities of their executive authority referred to in section 156(1)”.



- ✘ Whereas, in terms of sec 105(1) and (2) of the LG: Municipal Systems Act, 32 of 2000 and Regulations, the Mec for local government in a province must establish mechanisms, processes and procedures in terms of sec 155(6) of the Constitution to:
 - + **(1)(a)** monitor municipalities in the province in managing their own affairs, exercising their powers and performing their functions;
 - + (b) monitor the development of local government capacity in the province; and
 - + (c) assess the support needed by municipalities to strengthen their capacities to manage their own affairs, exercise their powers and perform their functions



- ✘ Section 105 **(2)** of the Municipal Systems Act, provides that –
 - + **“(2)**The MEC for local government in a province may by notice in the *Provincial Gazette* require municipalities of any category or type specified in the notice or of any other kind described in the notice, to submit to a specified provincial organ of state such information as may be required in the notice, either at regular intervals or within a period as may be specified”.

This provision is yet to be utilized – other measures of obtaining information.



- ✘ In terms of section 106 which deals with “Non-performance and maladministration” makes provision for -
- ✘ “(1) If an MEC has reason to believe that a municipality in the province cannot or does not fulfil a statutory obligation binding on that municipality or that maladministration, fraud, corruption or any other serious malpractice has occurred or is occurring in a municipality in the province, the MEC must -
 - + (a) by written notice-to the municipality, request the municipal council or municipal manager to provide the MEC with information required in the notice; or
 - + (b) if the MEC considers it necessary, designate a person or persons to investigate the matter”.
- ✘ **Sec 106 investigations was conducted in Phokwane and Sol Plaatje local municipalities.**



- ✘ In terms of the Regulations of appointment and conditions of employment of senior managers – MECs have the regulatory authority to receive a written report on the appointment process and outcome of the appointment of LG senior managers;
- ✘ Should the appointment not be in accordance with the regulations MEC issue a directive to enforce compliance otherwise approach the high court for a declaratory order to set the appointment aside.
- ✘ Enforcement directives / Declaratory orders to set aside unlawful appointments in the following positions:
 - + Phokwane : Municipal managers 2019 and 2021;
 - + Ubuntu : Director: Technical Services 2020-22 matter before court;
 - + Ubuntu : Municipal manager – Resigned before court hearing;
 - + Thembelihle : Director: Corporate Services 2019-2021 matter awaiting judgment;
 - + Kai !Garib : Acting Municipal manager;
 - + Kareeberg : Dir: Corporate Services and “COO”;
 - + Z. F. Mgcawu DM: Acting Municipal manager



- ✘ In terms of section 47 of the LG: Municipal Systems Act - MECs as part of oversight and accountability –
 - + annually compile and submit a consolidated report on the performance of municipalities in the province to the provincial legislature and the NCOP.
- ✘ The Municipal Support and Intervention Package (MSIP) has breached the legislative timeframe challenges to adequately resolve performance challenges observed.



- ✘ Whereas in terms section 12 of the LG: Structures Act the MECs are responsible to establish municipalities – and play an oversight role and ensure accountability in their governance.

- ✘ The Provincial Executive through MECs may –
 - + dissolve a municipal council due to governance challenges
 - + appoint administrators when there is no sufficient quorum;
 - + designate an official to preside over a council meeting where necessary;
 - + approves the appointment of some of the office bearers;
 - + Allocates powers and functions based on capacity of a municipality;
 - + Responsible for suspension or removal of a councilor from office;
 - + Conduct investigations into alleged breaches of the Code of Conduct of councilors.



- ✘ Whereas, Section 139 of the Constitution provides for 6 different modes of interventions which includes - :
 - + Issuing of a directive;
 - + Assuming responsibility for the relevant obligation [appointment of Administrator(s)];
 - + Dissolving a Municipal Council;
 - + Impose a recovery plan due to a crisis in its financial affairs;
 - + Approves a temporary budget or revenue raising measure.

- ✘ The above provisions were invoked in Phokwane and Renosterberg local municipalities due to various governance and service delivery challenges.



- ✘ In addition to the wide range of Constitutional and legislative provisions, the provincial executive plays a pivotal role in its oversight and accountability over the local government sphere through various structures –
 - + Municipal engagements: For engagement on other corrective measures of accountability and enforcement ;
 - + Operation Clean Audit Committee: For oversight, accountability and support;
 - + Provincial Intergovernmental Relations Forum: For oversight, accountability with all three spheres and other stakeholders;
 - + Governance Clusters: Oversight;
 - + Provincial Executive Council: Oversight;
 - + MuniMEC – MEC and Mayors Forum: Oversight and accountability;
 - + Executive Council Outreach: Oversight & accountability.

CHALLENGES



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- ✘ The following challenges are experienced:
 - + Affected senior managers often challenge the sec 106 investigation report;
 - + Municipal councils and/or affected officials challenge MEC decision to set their appointment aside;
 - + Municipal Councils challenge the sec 139 intervention as they perceive it to be political;
 - + Municipal Councils do not submit appointment report of senior managers.
 - +



NGIYATHOKOZA

DANKIE KE A LEBOGA

NGIYABONGA

NDIYABULELA

INKOMU NDI KHOU

LIVHUHA

Thank you