

The background features abstract, overlapping green geometric shapes in various shades, creating a modern and dynamic feel. The shapes are primarily triangles and polygons, some semi-transparent, layered against a white background.

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Efforts to professionalise the  
local sphere of government

Hybrid 2022 Local government week

13 - 15 September 2022

# Presentation Outline

- ▶ Legal framework for professionalising senior management in local government
  - ▶ Are we following the right legal/institutional approach?
  - ▶ Is the current system working?

# Legislative framework

1988	Profession of Town Clerks Act and Municipal Accountants Act	
1995	South African Qualifications Authority Act	
2003	Municipal Finance Management Act	
2006	DPLG/Cogta issues first regs on competency requirements	
2007	NT issues its own regs on competency requirements	
2011	Municipal Systems Amendment Act adopted	
	2017	Declared unconstitutional
	2019	Lapsed, replaced in 2022
2011	Cogta issues regs on disciplining senior managers	
2014	Cogta issues new regs on competency requirements	
2014	NT issues regs on disciplining senior managers (for financial misconduct)	

## Are we following the right legal/institutional approach?

- ▶ **Non statutory Association model**
- ▶ Statutory Association model
- ▶ Generic Qualification model
- ▶ Short term delegation model
- ▶ Performance Management model
- ▶ Standard setting model

# Non-statutory association

- ▶ Professional associations that exist as private associations
  - ▶ E.g enjoy no statutory public recognition
- ▶ However, frequently determine standards for quality of their members
  - ▶ Curriculum, capacity and knowledge development
- ▶ Also control the ethical behaviour of its members
  - ▶ Codes of conduct & sanctions

## Example

- ▶ Institute of Town Clerks of Southern Africa & Institute of Municipal Treasurers and Accountants
  - ▶ Operated as voluntary association
  - ▶ Membership not a formal requirement
    - ▶ In fact membership followed appointment
  - ▶ As a result, some officials were not members

## Statutory association model

- ▶ Considerable power & autonomy to professional bodies to ensure that a particular sector is professionalised
- ▶ Nat. gov. may set standards for quality & ethics in a statute +
  - ▶ **Mandate an existing or new body (established for that purpose) to enforce compliance with those standards**

## Cont....

- ▶ Alternatively, nat. gov. may
  - ▶ establish a new or mandate an existing public body with both determination and enforcement of standards
- ▶ Exercise of powers & functions illegal unless performed by members of such an association
  - ▶ Functions ring-fenced for members only



# Examples

- ▶ Legal Practice Council
- ▶ Health Professions' Council of South Africa
- ▶ Engineering Council of South Africa
- ▶ Independent Regulatory Board for Auditors
- ▶ The South African Council for Professional and Technical Surveyors
- ▶ The South African Council of Planners
- ▶ **After 1988, Town Clerks Council & Board for Municipal Accountants**

# Generic qualification model

- ▶ Gov introduces generic qualifications + set standards not specific to local government
  - ▶ **Applicable to both private & public sector + all relevant occupations**
- ▶ Nat. Gov. (department of education)
  - ▶ **Responsible for registration of these national standards & qualification +**
  - ▶ **ensuring compliance with provisions for accreditation**

## Short-term deployment

- ▶ Relates to deployment of experts, on short term basis, to fix a capacity problem in selected municipalities
  - ▶ A response to the deficiencies of the Generic Qualifications Model
  - ▶ However, it did not replace it
- ▶ NDP calls this model
  - ▶ A quick fix model

# Examples

- ▶ Include:
  - ▶ Project Consolidate (2004)
  - ▶ Siyenza Manje (2005)
  - ▶ Secondment system - Systems Act 2011
- ▶ Gap filling, rather than capacity building

# Performance management

- ▶ Performance of officials is planned, reviewed, improved and rewarded
- ▶ Without emphasis on entry requirements (input)
- ▶ Role of government, if at all, limited to making
- ▶ legislation
  - ▶ **Prescribing a framework for performance management**
- ▶ However, each organ must establish the necessary structures to manage and operate the system

# Standard setting model

- ▶ Nat. gov. sets standards for quality & ethics of local government officials &
- ▶ Ensures compliance by those officials with such standards
- ▶ Nat.gov. regulates professional requirements for holding office & prescribe sanctions for non compliance

# Who enforces

- ▶ Municipal Council (when it appoints)
- ▶ MEC for Local Government (report, oversight, and if need be legal action)
- ▶ Enforced in haphazard fashion
- ▶ Result:
  - ▶ 15 years after first regs: only 50%
  - ▶ Courts flooded with litigation
    - ▶ (30 High Court cases in 1 year) - Prof De Visser

# Is it working?

## Almost half of South Africa's senior municipal officials don't meet minimum competency levels

Staff Writer · 19 April 2021



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Minister in the Presidency Khumbudzo Ntshavheni says that nearly half of South Africa's senior municipal officials do not meet the government's prescribed minimum competency levels.

Answering in a written recent parliamentary Q&A, Ntshavheni said that prescribed minimum competency levels were first introduced 13 years for municipal managers, chief executive officers and other officials dealing with financial management.



# Is the current system working?

- ▶ National Government is letting municipalities down
  - ▶ **Overlapping laws, overregulation - ultimately: impunity.**
- ▶ Enforcement is driven by politicians, not the profession itself
  - ▶ **Abolition of 1988 statutes = throwing the baby with the bath water**

# The baby and the bathwater

Profession of Town Clerks Act, 1988  
Municipal Accountants Act, 1988  
Professional Associations enforced  
quality and ethics of their members,  
backed by statutory recognition

Replaced by:

Politicians enforce quality and  
ethics of senior managers in local  
government.



# The right approach

- ▶ Statutory Association Model
  - ▶ Standards have been set
  - ▶ Simply need to mandate existing professional associations (through legislation) or create new associations to enforce standards +
  - ▶ Ring fence functions relating to senior managers
- ▶ Law Reform, aimed at bringing professional associations to the forefront of enforcing quality and ethics of senior managers in local government
  - ▶ CIGFARO & ILGM - aligned their entry requirements with the legal framework

The end

ENKOSI