ENHANCING ACCOUNTABILITY IN LOCAL GOVERNMENT:
An assessment of the enforcing mechanisms.

by

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Declaration

'I hereby declare that the mini-dissertation submitted for the Master of Arts in Public Administration degree to the Rand Afrikaans University, apart from the help recognised, is my own work and has not been formerly submitted to another University for a degree.'

M.K.H.

01 November 1999
SUMMARY

The interest in this mini-dissertation is on enhancing accountability in the local government system of the Republic of South Africa. Specifically, the focus is on the assessment of the enforcing mechanisms among councillors and senior officials in municipalities. Local government refers to that sphere of government closest to its constituents and involved in the provision of a wide range of services that affect the lives of its inhabitants residing in its area of jurisdiction (Zybrands, 1998:193). Section 151 (1) of the Constitution of the Republic of South Africa Act 108 of 1996 (the Constitution) provides that the local sphere of government consists of municipalities, which must be established for the whole territory of the Republic. In section 3 of the Local Government: Municipal Systems Bill, 1999 it is stated that the municipalities constitute the local sphere of government despite their separate legal personality.

The rising public expectations and the growing demand for the provision of social services by municipalities demands acceptable working standards by councillors and municipal officials in the municipalities. The municipalities are directly in touch with the public and perform a variety of functions that affect the lives of the citizens. The councillors and municipal administrators have substantial authority and power that have to be exercised in line with democratic principles that include accountability. Section 152 (1) (a) of the Constitution states that local government should provide a democratic and accountable government for local communities. The councillors and municipal officials are subject to accountability and they are required to demonstrate a sense of responsibility when carrying out their functions and account for their decisions and activities in public (Gildenhuys, 1997:17). However, the Constitution does not specifically state the mechanisms and how councillors are accountable to their citizens and what citizens can do to exact accountability from them (Craythorne, 1997: 198). Inadequate mechanisms to ensure accountability constrain the achievement of the local government objects. The lack of accountability among councillors and officials is a major factor that contributes to the financial and administrative crisis in most municipalities. The Researcher observed growing concerns on the issues of accountability among councillors and municipal officials. Hence an exploratory study on the issue based on qualitative research methodology was undertaken. The method of work comprised a literature
review, unstructured interviews conducted with senior municipal officials and field visits to municipalities.

The accountability systems examined include the legal, political, bureaucratic and professional accountability systems. The major mechanisms designed to enhance accountability in municipalities that are analysed include bodies such as the office of the Auditor-General, the Public Protector and the courts; elections; structures such as the municipal council and its committees; the code of conduct; leadership; training and development; performance appraisals and the reward systems among others. The assessment of the mechanisms highlights the major challenges in the enforcement of accountability in municipalities, which include the lack of adjudicative powers among the bodies; financial and human resource constraints; the apathetic community; non-compliance with the code of conduct; the lack of exemplary behaviour and adequate skills among the councillors and officials and uncoordinated local government training and development programs among others.

The major conclusion drawn from the research study is that a multi-dimensional approach is required to ensure effective accountability systems in municipalities. The recommendations include the enforcement of the legal instruments, codes of conduct and regulations; the impartial prosecution of violators; implementing effective policies on training and personnel management; educating citizens and encouraging associations and all stakeholders to play a catalytic role in enforcing accountability in municipalities. It is important that municipalities apply effective mechanisms for the promotion of accountable behaviour, as the lack of it undermines the democratic principles and efficient and effective operations in municipalities.
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CHAPTER 1: INTRODUCTION

1.1 Introduction
In this chapter, the topic is introduced followed by the problem statement, the goal and objectives of the study, the justification, methodology and limitations of the study. The chapter closes with a chapter outline for the analysis and a summary of the chapter.

The interest in this mini-dissertation is on enhancing accountability among councillors and senior officials in the local sphere of government of the Republic of South Africa. Zybrands (1998:193) describes local government as that sphere of government closest to its constituents and involved in the provision of a wide range of services that affect the lives of its inhabitants residing in its area of jurisdiction. Section 151 (1) of the Constitution of the Republic of South Africa Act 108 of 1996 (the Constitution) provides that the local sphere of government consists of municipalities, which must be established for the whole territory of the Republic. In section 3 of the Local Government: Municipal Systems Bill, 1999- Government Gazette No. 20357, 6 August 1999 (Systems Bill of 1999) it is stated that the municipalities constitute the local sphere of government despite their separate legal personality.

In this connection, the focus in this analysis is on the mechanisms that enhance accountability in the municipalities. The municipality is defined as a juristic entity within the local sphere of government exercising legislative and executive authority within the area determined in terms of the Local Government: Municipal Demarcation Act No. 27 of 1998 (Section 2 of the Systems Bill of 1999). The concept of accountability is a key aspect and a central theme in the theory and practice of a democratic government and it is linked to the democratic notions of popular participation, representation and answerability (Gildenhuys, 1997:17; Schwella, 1991:59). Gildenhuys (1997:17) points out that councillors and municipal officials are subject to accountability and they should
demonstrate a sense of responsibility when carrying out their functions and account for their decisions and activities in public.

To raise a discussion on enhancing accountability in municipalities is like opening a Pandora box of troubles. The reason is that the term accountability tends to give negative signals as it is associated with illegal and corrupt activities such as bribery, graft, preferential treatment, nepotism, misuse of official information and conflict of interest on the part of councillors and municipal officials (Fourie, 1998:188). Alant et al. (1999:1) point out that South Africa is so plagued by a culture of corruption that in Camerer’s (1996:8) words, 'it is more damaging to the nation's psyche than visible violent street crimes'. In this regard, President Thabo Mbeki appealed to the academics to help combat the problem (Gildenhuys, 1999:1). Rasheed (1996:107) similarly observed that the lack of accountability and institutional norms of behaviour were so pervasive that one may conveniently speak of a crisis. In recent years, such organisations as the Transparency International (TI), the Africa Leadership Forum (ALF) and the Southern Africa Universities Social Science Conference (SAUSSC) have raised issues of accountability. The ALF organised a seminar in September 1995 in Johannesburg on Corruption, Democracy and Human Rights while SAUSSC held a conference in Lusaka in December 1997 on the theme 'Towards Democratic Governance, Ethical Behaviour, Public accountability and the Control of Corruption'. Recently, a conference on Fraud and the African Renaissance was held at Uganda Martyrs University from 8th to 10th April 1999. Such organisations have underlined the point that accountability is a serious issue that requires urgent attention of both policy makers and the public employees (Rasheed, 1996:107). The frequent press reports about the lack of accountability in the municipalities provided impetus to conduct a research on the subject.

The municipalities in South Africa are undergoing transformation as a result of the Constitutional and statutory provisions and decentralisation initiatives. There is a rising
public expectation about their role in the new democratic dispensation. The growing demand for the provision of social services in the municipalities demands acceptable working standards among councillors and municipal officials. The call is for developmental local government, which is defined as the local government committed to working with citizens and groups within the community to find sustainable ways to meet their social, economic and material needs and improve the quality of their lives (White Paper, 1998:17). Section 195 (1) of the Constitution highlights the basic ethical values and principles governing public administration. Right from the preamble of the Constitution to specific constitutional provisions such values as accountability, transparency, fairness, efficiency and public interest are clearly stated. In seeking to maintain high standards of ethical behaviour and accountability in the public sphere, institutions such as the Public Protector, the Auditor General, and the Public Service Commission are provided in the Constitution (Baloro, 1997:2). With the increased powers and authority among the councillors and officials over the delivery of services, accountability is regarded as means of guarding against the abuse of political and bureaucratic power. The major requirement is for accountable municipal system that combines effective management with democratic accountability.

1.2 Problem Statement
The effective performance and consolidation of democracy in municipalities are under threat from the extensive corruption and unaccountable behaviour among councillors and officials (Du Toit, 1998: 164). According to Mfumadi (1999:10) the lack of accountability in municipalities is one of the major disturbing trends in municipalities. Zybrands (1998:209) clearly points out that the lack of legal measures to enforce accountability is one of the reasons for financial crisis in municipalities. During the research interviews, Ramalatse (1999), pointed out that the root cause for the financial mismanagement in most municipalities is that councillors are unwilling to enforce control and audit mechanisms. On one hand, the councillors cannot be held accountable, except
for certain highly irregular matters (Zybrands, 1998:209). On the other, the Constitution does not specifically state the mechanisms and how councillors are accountable to their citizens and what citizens can do to exact accountability from them (Craythorne, 1997: 198). The incidence of maladministration has increased even where violators have been investigated or punished (Rasheed, 1996: 118). It is stated in the White Paper (1998:16) that municipal administration is characterised by authoritarian management practices among others and that it is not adequately equipped to fulfil its obligations. The question that arises is therefore, how can the councillors and municipal officials turn the constitutional and statutory provisions and other regulations into a contemporary, practical guide for accountability in their jobs and municipalities?

The comments of various scholars and analysts regarding issues of accountability have been overall pessimistic. Skidmore (1995:35-36) stated that although there has been a vigorous examination and discussion of the entire ethical spectrum that includes accountability with regards to the public service, no satisfactory solution has been accepted, still less implemented. He also observes that despite some excellent contributions from many sources, a movement towards a positive and comprehensive atmosphere, that is a prerequisite to enforcing accountability in the public service does not seem to be likely.

Huddleston et al. (1995: 140) observed that most academic work on accountability and government ethics has been rather densely scholastic, marked by sweeping philosophical speculation and reasoning. The implication is that articles that explain in clear terms on how to run an ethical and accountable organisation are scarce. According to Cohen et al. (1995:97) accountability and other ethical issues that appear in the news frequently are not very well defined. Baker (1993: xii) and Bowman (1991:105) pointed out that academic literature has little to say on practical questions such as conflict of interest and financial disclosure and that there is little ethical training for the public service.
According to Kernaghan (1993:17) the ethical dimensions of public administration and the subject of accountability in particular are not given their due attention in most public administration discourses. Clearly, the issues of accountability are so complex that they require research, thought and a practical approach for implementation in municipalities.

1.3 Objective
The focus of the study is on the mechanisms that enhance accountability in municipalities. Specifically, the objectives of the study are:

- To highlight the legal background relating to accountability in municipalities
- To identify the mechanisms that enhance accountability in municipalities
- To assess the effectiveness of the mechanisms that enhance accountability in municipalities
- To suggest strategies for the enhancement of accountability in municipalities

1.4 Justification
The municipalities have a new mandate in the Constitution that requires new capacities, attitudes and approaches (White Paper, 1998:8). It is a constitutional requirement that councillors and officials ensure accountability in their service. The study is considered as a first step of enhancing awareness and understanding among councillors and officials and consequently improving their capabilities to choose the appropriate strategies that promote accountability in the municipalities. A baseline research is significant in order to fill the gaps of knowledge and suggest the modifications that ought to be considered during implementation. The study is essential in the democratic local government because the lack of accountability undermines the democratic values (Madsen, et al. 1992:3). For instance, by engaging in self-aggrandisement, municipal administrators put themselves above the law. The rule of law is by implication contravened because self-interest is promoted. When fraud, bribery, kickbacks and other abuses in municipalities are neither detected nor punished, it practically means that local people are deprived of their power
and only a few are elevated to a position of economic control (Madsen, et al. 1992:3). As most unaccountable conduct involves money, the corrupt practices further undermine the economic rights of others. When contracts are awarded through illegal means, those who lose have their individual rights compromised (Madsen, et al. 1992:3).

The study has a special interest in the municipalities. Although many issues and problems found at national and provincial levels affect the municipalities, it is considered that a focus on accountability at the local level is very crucial. The municipalities are distinct in that they are directly in touch with the public. As Chiviya (1995:51) and Zybrands (1995:1) put it, they are 'closest to the community' and that their responsibilities are more specific than the national government's. The municipalities perform a variety of functions and play an important role in promoting the welfare of the citizens. The councillors and officials have substantial political and administrative power that has to be exercised in line with such democratic ideals as accountability, transparency and other ethical values provided by the Constitution. Therefore, the significance of a research study on enhancing accountability in municipalities cannot be over emphasised.

1.5 Methodology
This is an exploratory study based on qualitative research methodology through a literature review, unstructured interviews conducted with senior municipal officials and field visits to municipalities. The method of work comprised:

1.5.1 Literature Review
The previous studies on accountability in the public service, which includes municipalities, were reviewed. A combination of literature study, archival work and content studies was undertaken. The information from the textbooks, journals, newspapers, magazines, government gazettes, reports and the Constitution was analysed and summarised.
1.5.2 Unstructured Interviews
The interviews, discussions and meetings were conducted with officials at the Northern Metropolitan Local Council, Midrand Metropolitan Local Council; South African Local Government Association and Sanlam Centre for Metropolitan and Local Governance at Rand Afrikaans University, centred on the issues captured in the objectives and annexure A.

1.5.3 Field Visit
Field visits were undertaken to two municipalities, namely, the Northern Metropolitan Local Council, Midrand Metropolitan Local Council, and the South African Local Government Association (SALGA). The purpose was to examine the documents, make observations and hold discussions relating to issues highlighted in the objectives.

1.6 Limitation

The limitation relates to the time. The nature of the study required extensive interviews with various councillors and officials from municipalities and other public bodies such as the Auditor-General and Public Protector. The time scheduled for the studies and the length limitation of this mini-dissertation did not allow such an extensive enquiry.

1.7 Conceptual framework

The introduction of accountability techniques is part of the process of introducing an ethical approach into municipalities (Craythorne, 1997:81). Kernaghan et al. (1990:158) clearly pointed out that accountability is an ethical principle that provides guidance to the entire ethical behaviour and ensures that politicians and officials are held accountable for the exercise of their power and authority. In section 195 (1), the Constitution includes
accountability as one of the basic democratic principles in public administration.

It can be deduced from the above that accountability is a critical element of ethical behaviour and that ethical issues are broader and encompass accountability. Thus the approach and discussion in this analysis regarding accountability is in the realm of ethical behaviour. The following analysis provides definitions, meanings and scope of ethics and accountability and further illustrates the relationship between accountability and ethics.

1.7.1 Ethics defined
Various authors have defined ethics differently. The word ethics is derived from the Greek word *ethos*, which refers to character or a person's fundamental orientation towards life and in Latin, ethos is translated into *mos* or *moris* from which the word morals is derived (Costely, 1994:102; Szilagyi, 1981: 42). Grundstein-Amado (1999:248) defines ethics as a systematic thought process that leads to a desirable course of action and involves obtaining relevant information, assessing reliability, mapping out feasible alternatives for action and selecting a defensible solution. Kernaghan (1993:16) using the terms public service ethics and administrative ethics interchangeably, defines them as the principles and standards of right conduct in the administration of government and the concern for both distinguishing right from wrong and a commitment to do what is right or good. He further points out that the concept of public service ethics or administrative ethics is inextricably linked to such values as accountability, efficiency and effectiveness.

Thus, ethics refers to the right actions that can be justified with individual societal standards of right or wrong and to internal and external standards (Fourie, 1998:188; Evans, 1998:316; Hanekom, et al. 1991:37; Gortner, et al. 1990:244). Clapper (1999:13) suggests that ethical action is a purposive action according to set values or democratic principles such as accountability, responsiveness and efficiency. Thus ethical behaviour
which includes accountable behaviour refers to that behaviour which reflects societal values and democratic principles.

1.7.2 Ethical Frameworks
Woller (1998: 89) states that there are two broad ethical frameworks, namely, bureaucratic ethos and democratic ethos. The following is summary of the views of the frameworks.

1.7.2.1 Bureaucratic ethos
The bureaucratic ethos holds the view that there is a direct line of communication from the people, to their elected representatives, to the bureaucratic heads, and then down the hierarchical ladder. It also postulates that the officials who are responsible for administering and implementing public policies should be guided by the moral imperative to enforce the laws and implement the policies enacted by peoples' democratically elected representatives such as councillors who are believed to give an authoritative voice to the public will in an efficient and effective manner (Woller, 1998: 89).

According to Pugh (1991: 26), the bureaucratic framework is based on instrumental rationality, predicated on values of capitalism and market society and founded on utilitarianism and teleology. Utilitarianism holds that moral behaviour consists of doing that which will bring the greatest good for the greatest number: the decision maker has to assess which action will produce the overall state of affairs at each point of the decision and then perform that action (Pugh, 1991: 26). Hanekom et al. (1991:37) define teleology as concepts such as good, desirable or the wellbeing, which concern the ultimate good and proper goals of human endeavour.

1.7.2.2 Democratic ethos
The democratic ethos according to Woller (1998:89) emerged as a challenge to
bureaucratic ethos in the 1960's. It is regarded as an eclectic approach and a less clear concept than the former. The main argument is that the behaviour of public administrators or municipal officials should be grounded on some value set composed of certain higher-order moral principles such as accountability and transparency embedded in the notion of democratic government. The democratic ethos is founded upon deontology which holds the view that ethical behaviour is determined by a certain higher-order, or a priori moral principles (Woller, 1998:89). Hanekom et al. (1991:37) define deontology as concepts such as duty, correct conduct and moral responsibility. Woller (1998:89) suggests that deontologists simply regard the act itself as a duty regardless of the imputed consequences.

Although the two frameworks seem to differ on their base, they are similar in various points of substance. Their common prescription is the search for universal principles of moral obligation from which accountable behaviour may be deduced or judged (Fox, 1994:89). The bureaucratic ethos requires strict obedience to political authority and efficient and effective implementation while democratic ethos requires adherence to the core values of democratic government (Woller, 1998:89). The two are therefore interrelated and share common attributes although based on very different ethical foundations.

It can be deduced from the above that accountability is a basic ethical principle or concept embedded in a democratic government and society whose significance arises from the need for a responsible government by politicians and public servants or councillors and municipal officials.

1.7.3 Accountability defined
O'Loughlin (1990:278) and Romzek et al. (1987:227-237) argued that accountability could be conceptualised in two ways, namely, traditionally and broadly. Firstly, the
traditional view of accountability concerns the answerability of politicians and officials, that is, the councillors and officials are accountable to the extent that they are required to answer for their actions. Kernaghan et. al (1990:158) define accountability as the obligation to answer for the fulfilment of the assigned and accepted duties within the framework of authority and resources provided and that it relies on a system of a flow of information that is relevant and timely.

The traditional concept of accountability is interrelated with two concepts, namely, responsibility and control and that they are often used interchangeably (Mountfield, 1997:74; Kernaghan et al. 1990: 158; Stren, 1989:124). However, Mountfield (1997:74) suggests that while accountability refers to the obligation to explain what went wrong and what action is being taken to correct and prevent any mischief in the public sphere, responsibility refers to taking the blame and political consequences of action or inaction among politicians and officials. Kernaghan et al. (1990:158) define responsibility as the authority and power that officials and councillors have regarding the performance of municipalities or the clarification and understanding of who should do what. Stren (1989:124) suggests that control involves the power to enforce responsibilities. In this analysis the terms accountability and responsibility are used interchangeably.

Scholars such as Weber (1999:453), O’Loughlin (1990:278) and Romzek, et al. (1987: 228) regard the traditional view of accountability as too narrow and restrictive to be useful in a dynamic environment. Romzek et al. (1987: 228) argue that broadly, the concept of accountability in involves the means by which public agencies such as municipalities and their personnel manage the diverse expectations of all stakeholders within and outside the organisation. From the above it can be deduced that accountability in municipalities involves managing expectations of the community and other interest groups.
1.7.4 Accountability Systems

The four interrelated accountability systems according to Romzek et al. (1987:228) include the legal, political, bureaucratic and professional accountability systems. The following is a summary analysis of the accountability systems.

1.7.4.1 Legal accountability

The legal accountability system refers to the relationship between the municipality and outside bodies established by the legislature to exercise legal control or sanctions (O'Loughlin, 1990:280-281). In South Africa, such bodies include the Auditor-General and the office of Public Protector among others.

1.7.4.2 Political accountability

The political accountability is also called public accountability, democratic accountability or democratic responsibility and it emphasises the traditional understanding of accountability (Gildenhuys; 1997:18; Schwella, 1991:58; Normanton, 1972:311-312; Thompson, 1983:236). The system involves a responsive relationship between politicians such as councillors and officials or the municipality and outside actors that include the public, community interest groups and agency clientele (O'Loughlin, 1990:280-281). Craythorne (1997:14) observes that accountability in political theory means that elected representatives such as councillors and other politicians are accountable to the voters. Similarly, Stren (1989:123) defined political accountability as the right to expect disclosure and it involves an organised system of reporting on, and providing information about government action. Gildenhuys (1997:18) and Normanton (1972:311-312) use the term public accountability. Gildenhuys (1997:18) observes that public accountability goes hand in hand with representative democracy and with the rights of citizens and obligations of councillors and municipal officials. He defines public accountability as the obligations of councillors and municipal officials to expose activities and results of such activities, and to explain and justify them in public. Normanton (1972:311-312) defines
public accountability as an obligation to expose, explain and justify actions, which demands that actions of public organisations be publicised to encourage public debate and criticism. Therefore, the key demand of public accountability is the publication of facts and the submission of reports to such bodies as the public and higher levels of government.

Schwella (1991:58) using the term democratic accountability observed that democratic accountability with its basis in democratic theory emphasises the final control over the government and its administrative apparatus by the citizens of the state. Weber (1999:454) suggests that democratic accountability entails political responsiveness to the voters, efficient and effective performance and service delivery and the observation of the institutional and democratic norms or values by both politicians and officials. Thompson (1983:236) who uses the term democratic responsibility, defines it as a process of deliberation which requires that public office bearers should give reasons for and debate the merit of their decisions publicly or in front of the citizens.

Sabela et al. (1996:12) suggest that political accountability in municipalities means the giving account by the councillors and officials of their stewardship and that it includes representational accountability and financial accountability. Firstly, representational accountability. This concerns the councillors as representatives of the party and constituents to whom they are accountable. Secondly, financial accountability. This concerns both the councillors and officials and it requires that all public resources entrusted to the municipalities be judiciously used for the projects they were intended and that public funds should not be diverted for private use.

1.7.4.3 Bureaucratic accountability

The bureaucratic accountability is based on the legitimate authority that ensures a stable hierarchical relationship between managerial superiors and subordinates (O'Loughlin,
In this system subordinates follow orders from above and there is close supervision of subordinate activity.

1.7.4.4 Professional accountability

The professional accountability emphasises internal control of institutions such as municipalities and deference to the discretionary decision making power of experts such as municipal administrators, chief finance officers or accountants and engineers. Romzek et al. (1987:228) observed that professional accountability although closely related to bureaucratic accountability, differs from the latter in that while bureaucratic accountability emphasises power and control in the hands of supervisory managers, professional accountability emphasises on power, control and autonomy of the professionals or the experts to make independent decisions based on the expert knowledge.

The accountability systems are highly interrelated and therefore for purposes of analysis they are categorised into three, namely, the legal, the political and the administrative accountability. The administrative accountability encompasses the bureaucratic and professional accountability systems.

It can be deduced from the above that the process of accountability in municipalities requires that councillors and officials who are involved in making public decisions should report and explain or account for their action or inaction and that the process requires active participation of the citizens. Accountability in municipalities entails the notion that citizens should have the final control over the municipal affairs. In the democratic local government system of South Africa, the legitimacy of the municipalities is based on the consent of the constituents or voters. It is through the democratic municipal elections that the consent is given to the councillors. The call is for openly declared facts about the municipalities and open debate about those facts by the citizens. The idea of
accountability in municipalities focuses on the necessity of councillors and officials to act for the benefit of the citizens and to be accountable publicly and democratically for their actions.

1.8 Chapter Outline

The mini-dissertation is organised into five chapters. In chapter one the subject is introduced followed by the problem statement, objective, methodology, justification, limitation and conceptual framework. In chapter two, the legal basis for accountability in municipalities is outlined. In chapter three, the major mechanisms designed to enhance accountability in municipalities are analysed while chapter four focuses on the assessment of the mechanisms. The dissertation closes with chapter five in which conclusions are drawn from the discussion in the preceding chapters and recommendations for the effective enforcement of the mechanism in municipalities are presented.

1.9 Conclusion

In this chapter the introduction, problem statement, goal and objectives, justification and limitations, the conceptual framework and the chapter outline have been presented. The focus in this mini-dissertation is on the mechanisms for the enhancement of accountability in municipalities. The subject is critical because the lack of accountability in municipalities is a major factor contributing to financial and administrative crisis. The methodology includes literature review, unstructured interviews and field visits. However the major limitation is that time scheduled for the studies did not allow extensive interviews and discussions with all the key plays in the municipalities.

In the conceptual framework, the definitions and frameworks or dimensions of ethics and accountability have been highlighted. The ethical frameworks include the democratic and
bureaucratic ethos while the accountability systems include the legal, political, bureaucratic and professional accountability systems. However, in this mini-dissertation the mechanisms for enhancing accountability are examined under the legal, political and administrative systems.
CHAPTER 2: THE LEGAL BASIS FOR ACCOUNTABILITY IN LOCAL GOVERNMENT

2.1 Introduction
In this chapter, the legal basis of accountability in the local sphere of government is analysed. The focus is on the constitutional and statutory provisions that have implications for municipalities.

2.2 The Constitution
The Constitution places great emphasis on ensuring accountability in the public service, which includes the municipalities. In the preamble of the Constitution, it is declared that through the freely elected representatives, the Constitution was adopted as the supreme law of the Republic so as to lay the foundations for democratic and open society in which the government is based upon the will of the people and every citizen is equally protected. In section 1(d) it is stated that South Africa is a democratic state founded on the values of human dignity; the achievement of equality and the advancement of human rights and freedoms; universal adult suffrage; a national common voters roll and regular elections and a multiparty system of democratic government to ensure accountability, responsiveness and openness. Venter (1998:88) clearly points out that the foregoing is a reaffirmation by the Constitution of the principle of public accountability.

The Constitution has not only incorporated the core values of public governance in the Bill of Rights, but it has also established and entrenched the independence of the institutions such as the Public Protector, Auditor General, Public Service Commission and the Human Rights Commission (Baloro, 1997:4). In section 32 of the Constitution it is stated that everyone has the right to access any information which is held by the state. The provision for the access to information demonstrates the government's willingness to promote an open and accountable government. The provisions in section 33 further
reinforce accountability in the public service. Section 33(2) requires that governmental bodies and their officials should furnish written reasons to all persons whose rights have been adversely affected by any administrative decision or action. The right to a just administrative action entails an obligation on all levels of government to carry out lawful actions in the course of their administrative operations. Section 41 clearly states that all spheres of government must among other issues provide effective, transparent, accountable and coherent government. Section 152 (1) (a) specifically refers to the objects of local government. It is stated that local government is to provide a democratic and accountable government for local communities and to encourage the involvement of communities and community organisations in the matters of local government. In section 160(7) it is clearly stated that a municipal council must conduct its business in an open manner and close its sittings, or those of its committees, only when it is reasonable to do so having regard to the nature of the business being transacted.

In section 195(1) of the Constitution, the basic values and principles governing public administration, which includes accountability, are provided. It is clearly stated that public administration must be governed by the democratic values and principles enshrined in the Constitution including the following:

- Promotion and maintenance of a high standard of professional ethics and efficient, economic and effective use of resources.
- Public administration must be development oriented.
- Service must be provided impartially, fairly, equitably and without bias.
- Responding to people's needs and encouragement of public participation in policy making.
- Fostering accountability and transparency in public administration by providing the public with timely, accessible and accurate information.
- Cultivation of good human resource management and career development practices, to maximise human potential
Ensuring that public administration is broadly representative of South African people, with employment and personnel management practices based on ability, objectivity, fairness, and the need to redress imbalances of the past.

The above principles according to section 195 (2)(a) apply to all spheres of government, which includes municipalities. In terms of section 196(4)(a), the Public Service Commission is charged with the responsibility of promoting the values and principles set out above.

1.3 Statutory Provisions

The statutory provisions also emphasise the need for accountability in municipalities. Section 45(1) and (2) of the Local Government Ordinance No. 17 of 1939 (Transvaal) envisaged accountable behaviour in municipalities by prohibiting the acceptance of gifts or rewards whether pecuniary or otherwise for doing or omitting to perform the required duties. In section 10G (b) of the Local Government Transition Act 209 of 1993 (LGTA), it is stated that every municipality shall conduct its financial affairs in an accountable and transparent manner. Several provisions in the LGTA envisage accountability in municipalities and cover the obligation for efficient and effective financial management, internal financial control, the role of the chief executive officer as accounting officer, and external auditing by the Auditor-General among other issues (Gildenhuys, 1997:200). Section 10H of LGTA highlights the acts prohibited among councillors and officials that include acceptance of commission or any reward from any person and involvement in a contract with the municipality without prior consent of the council.

According to section 19 of the Local Government: Municipal Structures Act, No.117 of 1998 (Structures Act of 1998) the municipal council is required to strive within its capacity to achieve the objects set out in section 152 of the Constitution highlighted above and to review the needs of the community, its process of involving the community,
its organisational and delivery mechanisms for meeting those needs of the community and its overall performance in achieving the objects enjoined by the Constitution. It is stated in the preamble of schedule 5 of the Structures Act of 1998 that a code of conduct outlined in the fifth schedule is established for the purpose of ensuring that councillors fulfil their obligations to the communities and achieve the objectives set out in section 19 of the Structures Act of 1998 which are almost repeated verbatim as those stated in section 152 of the Constitution.

The Systems Bill of 1999 also reiterates the need for accountability in municipalities. It is stated in sections 4 (2)(b) and (c) of the Systems Bill of 1999 that the municipality and its committees and functionaries must provide, without favour or prejudice, democratic and accountable government for its residents and communities and encourage the involvement of residents, communities and other stakeholders in the affairs of the municipality. The Systems Bill of 1999 further provides in section 5(1)(a) that the residents and communities have the right to demand that the proceedings of the municipal council and its committees and functionaries should be open to the public and conducted impartially and without prejudice and untainted by personal prejudice. Section 59 (1) of the Systems Bill of 1999 provides the functions for which the municipal manager is accountable or responsible, which include:

- The formation and development of an efficient and performance driven administration.
- The administration of the municipality in terms of the legislation applicable to municipalities.
- Implementation and monitoring of the integrated development plan and other municipal decisions.
- Managing communications, labour relations, training, discipline and provision of services to communities sustainably.
- Advising the council and other political structures and functionaries of the
In terms of section 59 (2) of the Systems Bill of 1999, the municipal managers are responsible or accountable for the following financial activities:

- All income and expenditure of the municipality;
- All assets and the discharge of all liabilities of the municipality;
- Sound financial management of the municipality;
- Effective credit control mechanisms;
- Ensuring that the municipality is financially sustainable; and
- Compilation and signing of annual financial statements.

In section 60(1) of the Systems Bill of 1999 it is indicated that the managers or departmental heads are responsible and accountable to the municipal manager. To further reinforce accountable behaviour, section 70 (1) of the Systems Bill of 1999 provides that a municipal council should adopt a staff code providing for efficient, effective and transparent personnel administration. The code of conduct contained in the first schedule applies to every member staff of the municipality.

It can be deduced from the above that the constitutional and statutory provisions underline the importance of accountability in the democratic local government and administration and the need for involving citizens in municipal affairs.

2.4 Conclusion

In this chapter the constitutional and statutory basis of accountability in municipalities has been illustrated. There are numerous provisions that underscore the importance of accountable or responsible behaviour in the public service as a whole and in the municipalities specifically.
CHAPTER 3: THE MECHANISMS FOR ENHANCING ACCOUNTABILITY IN LOCAL GOVERNMENT

3.1 Introduction
The focus in this chapter is on the mechanisms that enhance accountability in municipalities. The mechanisms include the constitutional and legislative bodies, policies and rules, adoption of a code of conduct and administrative mechanisms pivotal in enhancing accountability in the organisation such as role models and supportive leadership, training and development, performance appraisals and reward system. In this analysis, the mechanisms are analysed under three sections following the three accountability systems, namely, legal, political, and administrative accountability systems. However, the accountability systems are highly interrelated as illustrated in the conceptual framework.

3.2 Legal accountability
The constitutional bodies, laws and policies are essential mechanisms that enhance legal accountability in all spheres of government including municipalities (Robson, 1999:158; Chapman, 1993:161; Kernaghan, et al. 1990:80). The legal accountability system involves the relationship between the municipalities and outside bodies established by the legislature that exercise legal control or sanctions (O'Loughlin, 1990:278; Romzek, et al. 1987: 228). Thus legal accountability involves the councillors and municipal officials to explain openly what has been done and why it is done and the responsibility is discharged by the submission of reports, preparation of financial statements, which must be audited by higher officials and by the constitutional and other investigative bodies (Stren, 1989:126). On the basis of the account rendered appropriate action is taken by the council or higher tiers of government, namely, the national and provincial government.
In South Africa, institutions such as the Auditor-General, the Public Protector, the courts of law, Commissions of Inquiry and the office for the investigation of serious economic offences (OSEO) are the major mechanisms utilised to combat serious maladministration, corruption and misappropriation or to check unaccountable and unethical behaviour (RAU, 1998a: 1). The following analysis focuses on what Mafunisa (1997:9) terms 'watchdog bodies', which are categorised into three, namely, constitutional, independent and ad hoc bodies.

3.2.1 Constitutional Bodies

The constitutional bodies are those bodies whose existence is stated in the Constitution. In order to enhance accountability in all spheres of government the Constitution provides in section 181(1) for the establishment and the independence of such bodies as the Public Protector, the Human Rights Commission, the Auditor General, and the Public Service Commission among others. The following analysis centres on the Auditor-General and the Public Protector.

3.2.1.1 The Auditor-General

An important mechanism for enhancing accountability in municipalities is through the office of the Auditor-General (Mafunisa, 1997:13). The current functioning of the office of the Auditor-General evolved from the provisions in section 191(1) of the previous Constitution of Republic of South Africa Act No.200 of 1993. However, in terms of section 188 (1) of the current Constitution, the functions of the Auditor-General are to audit and report on the accounts, financial statements and financial management of all national and provincial state departments and administrations, any institution funded by the National Revenue Fund or Provincial revenue Fund and all municipalities. In section 3(4)(d) of the Auditor-General Act, No. 12 of 1995, it is provided that the functions of the Auditor-General cover investigations on whether satisfactory management measures are taken to ensure that resources are procured and utilised economically, efficiently and
effectively. In section 3(5)(b) (iii) of the Act, the Auditor-General is given powers to investigate and enquire into any matter, including the efficiency and effectiveness of internal control and management measures, relating to expenditure and revenue of an institution. According to section 188 (4) the report of the Auditor-General must be made public. The Auditor-General enjoys independence and the office is accountable only to the National Assembly so as to ensure that the office acts without fear or favour.

Specific to the municipalities, section 10 G (2) (d)(ii) of LGTA provides that the Auditor-General shall audit the accounts of the municipalities. The chief executive is required to submit financial statements to the Auditor-General within three months after the end of the financial year in terms of section 10G (2) (e)(i). According to section 4(3) of the Auditor-General Act, a report in respect of the accounts of a municipality shall be transmitted by the Auditor-General to the chairperson of the municipality and to the accounting officer of the municipality. To reinforce accountability, it is further provided in section 4(3)(c) that the discussion of the Auditors-General’s report shall not take place behind closed doors. Section 4(d) of the Act requires that a copy of the minutes of the meeting regarding the Auditor-Generals’ report should be submitted to the Auditor-General and the provincial Director-General within 30 days after the date of the meeting.

From the above, it can be deduced that the Auditor-General is a viable mechanism for enhancement of accountability and a powerful deterrent of unaccountable behaviour. The affairs of the various spheres of government including municipalities are made known to the public through the office and therefore it acts as an insurance of public accountability. The office of the Auditor-General enhances accountability in municipalities in that the councillors and municipal officials tend to function as efficiently and effectively as possible for fear of exposure, public criticism and disciplinary action in cases of poor performance and misuse of resources.
3.2.1.2 The Public Protector

The office of the Public Protector is another essential mechanism for enhancing accountability and checking maladministration in municipalities. In terms of section 181 (1) (a) and (2) of the Constitution, the office is established to strengthen constitutional democracy and it is accorded independence subject to the Constitution and law. The office of the Public Protector was first provided for under chapter 8 of the then Constitution of the Republic of South Africa Act No. 200 of 1993 (Brynard, 1999:9; Mafunisa, 1997:7). The operational requirements of the office were outlined in the Public Protector Act No. 23 of 1994 and the first incumbent took office on 01 October 1995 (Brynard, 1999:9).

The office of the Ombudsman, which was established on 22 November 1991 and functioned in terms of Act No. 118 of 1979, was the forerunner of the office of the Public Protector (Brynard, 1999:9; Mafunisa, 1997:7). The functions performed by the office of the Ombudsman evolved from the Office of the Advocate General which was established on 18 July 1979 in terms of the Advocate General Act No. 118 of 1979 in the aftermath of the misappropriation of funds by the defunct Department of Information (Byrnard, 1999:8).

According to section 182 (1) of the Constitution, the Public Protector has the power as regulated by the national legislation to investigate any conduct in state affairs, or in the public administration in any sphere of government, which includes the local sphere, which is alleged or suspected to be improper or to result in impropriety or prejudice; to report on that conduct; and to take appropriate remedial action. Section 6(a) of the Public Protector Act No. 23 of 1994 authorises the Public Protector to investigate any alleged maladministration in connection with the affairs of any institution in which the State is the majority or controlling shareholder or of any corporation.
Section 181 (5) of the Constitution and section 11 (a) of the Public Protector Amendment Act No. 113 of 1998 provides for the office to submit a report to the National Assembly at least once a year while section 8(2)(a) of the Public Protector Act of 1994 requires the office to submit a report to Parliament on the findings of a particular investigation if necessary. Furthermore, section 8(1) authorises the Public Protector to declare to the members of the public any finding, point of view or recommendations on matters investigated. The constitutional provision in section 182 (4) states that the office must be accessible to all persons and communities and in section 182 (5) it is clearly stated that any report issued by the Public Protector should be open to the public unless exceptional circumstances determined by national legislation requires the report to be confidential.

It can be deduced from the above that the office of the Public Protector is an important mechanism designed to enhance accountability in all spheres of government including municipalities. The independence accorded to the office by section 181(2) of the Constitution and section 7 of the Public Protector Act of 1994 and the powers to investigate and publicise its findings indicate that the Public Protector has significant powers and influence on all spheres of government. The office acts as an investigator of complaints and a promoter of accountability. The office is an important mechanism for enhancing accountability in municipalities in that the councillors and municipal officials are kept on guard by the powers of the Public Protector and due to the awareness that the Public Protector may investigate any practices and make the findings known to the public (Sharma, 1997:5).

3.2.2 Independent Bodies

The independent bodies refer to the bodies, which do not depend on the external control and opinion, that is, bodies that govern themselves. The following analysis centres on the judicial authority or the courts, the Office for Serious Economic Offences (OSEO) and the media.
3.2.2.1. The Courts- Judicial Authority

Section 165 of the Constitution vests the judicial authority in the courts. The courts are independent subject only to the Constitution and the law. The courts are charged with the responsibility to apply the law impartially and without fear, favour or prejudice. The judicial institutions have the power to review the decisions of local authorities in cases where regulations are violated (Mafunisa, 1997:20). Rasheed et al. (1993:250) observe that the judiciary contributes to the checking of abuse of both the political and administrative powers through legal sanctions instituted against the erring political office bearers and employees. The legal powers are applicable to councillors and municipal officials when necessary in order to make them account for their performance particularly when there are aberrations of the laws.

The courts act as mechanisms for enhancing accountability in municipalities in that most of the court cases are publicised and as such the councillors and municipal officials tend to ensure that their practices are within the constitutional and legislative requirements for fear of bad reputation, criticisms and imprisonment. In so doing, the judicial authority encourages accountability, responsibility and ethical conduct. Mafunisa (1997:20) observes that court cases usually receive wide publicity from the press and it is the fear of being exposed that discourages political office bearers and employees. The inference from the above is that the punitive action by the court deters some councillors and municipal officials from violating the established ethical principles thereby enhancing accountability.

3.2.2.2 Office for Serious Economic Offences (OSEO): OSEO Act of 1991

The OSEO is principally involved in the investigation of criminal offences and does not form part of the prosecuting authority (RAU, 1998a: 1). The body is actively engaged in the fight against corruption both in the public and private organisations. Good (1997:107)
observes that the office possesses a team of advocates and policemen and utilise outside auditing firms during its activities. The OSEO acts as a mechanism for enhancing accountability because the investigations and the reports are made public. Therefore by deduction from the above, the councillors and municipal officials ensure accountability in their actions for fear of being investigated in case of allegations of non-accountability and corruption.

3.2.2.3 The Media
The media plays the role of enhancing all the accountability systems. However, it is discussed in this part because it is considered as independent. The newspapers, television and radio are external mechanisms that contribute to the enhancing of accountability in municipalities. According to Francke (1995:109) the mass media plays a vital role in enhancing democratic values such as accountability and influencing the ethics of public life by acting as a watchdog and a monitor of the conduct of government officials and politicians. In South Africa the media cover and publicise reports of maladministration in municipalities and other spheres of the government. For instance, the Business Day of 19 July 1999 in an article titled 'Municipalities in Crisis' highlighted the various malpractices occurring in municipalities in South Africa. Thus the media enhances accountability through the conveying of essential information about the operations of the municipalities (Schwella, 1991:65). The fear of appearing on television or the front pages of newspapers by councillors and officials due to malpractices is a deterrent to unaccountable behaviour.

3.2.3 Ad hoc Bodies
Ad hoc bodies are those that are established to serve a specific purpose and after the attainment of the objectives, the bodies are disbanded. In the following analysis, the focus is on the commissions of inquiry and the special investigation units and special tribunals.
3.2.3.1 Commission of Inquiry

The commissions of inquiry are bodies appointed to inquire into matters of national interest, such as unethical and unaccountable behaviour, allegations of abuse of power, corruption or mismanagement among politicians and public officials when the need arises (Rasheed, et al. 1993:158; Du Toit, 1991:64). Such inquiries contribute to the enhancement of accountability in municipalities through the independent investigations and the publicity of the mismanagement of public resources such as public funds. Rasheed et al. (1993:158) point out that such inquiries have a deterrent effect on others. It can be inferred from the above that councillors and municipal officials utilise resources efficiently and effectively for fear of such commissions. The councillors and officials foster accountability because of the awareness that a public inquiry can be instituted any time when the public becomes suspicious.

3.2.3.2 The Special Investigation Units and Special Tribunals

The Special Investigation Units and Special Tribunals Act, No.74 of 1996 (SIUSTA) in section 2 provides for the establishment by the President of special investigating units and special tribunals (RAU, 1998a: 1). The rationale for having the special investigation units and tribunals is to enable or capacitate the government to act decisively and with speed upon allegations of conduct posing great danger to the interests of the state and the public (RAU, 1998a: 1). The object of the special investigating units and tribunals are to provide a mechanism through which serious allegations can be comprehensively and swiftly investigated and through which remedial steps which would ordinarily be dealt with by the courts of law can be undertaken swiftly and less costly (RAU, 1998a: 1).

The units and tribunals are headed by a judge of the supreme court who may appoint other people according to section 3 of SIUSTA for the purposes of investigating serious maladministration in the state institutions that include municipalities such as improper or unlawful conduct of employees of the state institutions and unlawful appropriation of
expenditure of public money or property. The functions and powers of units and tribunals highlighted in sections 4 and 5 of SIUSTA emphasise the investigative powers and the intention to attain their goals within the framework provided by the Constitution (RAU, 1998a: 1). The councillors and municipal officials are kept on guard of their conduct and tend to ensure accountability because they are aware that any allegation of maladministration would be investigated.

It can be concluded in this part that the major constitutional and statutory mechanism for enhancing legal accountability in municipalities include the constitutional bodies such as the offices of the Auditor-General and the Public Protector; the independent bodies that include the OSEO, the courts and the media and the ad hoc bodies, which include the commissions of inquiry and the Special Investigation Units and Special Tribunals.

3.3 Political accountability

Political accountability according to Stren (1989:127) is a pervasive phenomenon that entails the commitment of the officials and councillors to pay attention to special needs of certain groups or stakeholders such as the supporters and voters in the municipality, community interest groups and professionals such accountants and administrators. In the following analysis the mechanisms for enhancing political accountability, which is also called public accountability are analysed under two categories, namely, representational accountability and financial accountability (Sabela et al. (1996:12).

3.3.1 Representational Accountability

The representational accountability concerns the councillors as representatives of the party and constituents to whom they are accountable. The mechanisms for enhancing representational accountability in the municipalities include the elections, the structures facilitating open reporting and the code of conduct (Craythorne, 1997:81; Stren 1989:127).
3.3.1.1 Elections

According to Craythorne (1997:81) the councillors are accountable through the ballot box or the municipal elections which are held every five years. Stren (1989:127) argues that open elections are a powerful tool of accountability, since councillors who perform badly can be removed. According to section 22 of the Structures Act of 1998, the composition of the municipal councils includes councillors directly elected by voters in the respective wards of the municipality to represent the wards and those elected to proportionally represent the parties that contested the election in the municipality.

3.3.1.2 Structures for open reporting

The open reporting structures analysed below include the municipal council and its committees such as the executive committee, the subcouncil and ward committees.

3.3.1.2.1 Municipal Councils

It is provided in section 18 of the Structures Act of 1998 that each municipality should have a municipal council whose objects include promotion of community involvement. To ensure accountability in the council operations, section 160(7) of the Constitution and section 31 of the Structures Act of 1998 require that the business of the council should be conducted in an open manner and that the council or its committees may close their meetings only when it is reasonable and justifiable in an open and democratic society and having regard to the nature of the business under consideration. The municipal manager is required to call the first meeting of the council within 14 days after the council has been declared elected. The municipalities are also required to establish appropriate mechanisms, processes and procedures that enable residents, communities and stakeholders in the municipalities to participate in municipal affairs [Section 8 (1) of the Systems Bill of 1999]. The mechanisms include the processing of petitions and complaints from citizens, dealing with written objections and representation, holding of
public meetings of residents on a ward or any basis, public hearings by council and its committees and conducting surveys among residents and publication of the results [Section 8(1) of the Systems Bill of 1999]. Section 9 of the Systems Bill of 1999 provides that the municipal council should disseminate information to the residents, communities and other stakeholders regarding mechanisms, processes and procedure taking into account the language and special needs of those who cannot read or write. To foster accountability in the municipalities, the municipal councils are required to give ample publicity to municipal council meetings through public notices that indicate time, date and venue of every meeting of the council and admitting the public including the media to the meetings except where it is justifiable to hold closed meetings (Section 10 and 11 of the Systems Bill of 1999).

3.3.1.2.2 Metropolitan subcouncils and Other Committees
According to Sections 61(1) of the Structures Act of 1998 the metropolitan municipalities may establish metropolitan subcouncils. The subcouncil enjoys decentralised decision making powers with the exception of powers denied by Section 160 (2) of the Constitution such as passing by-laws, approving budgets, imposition of rates and other taxes, levies and duties and the raising of loans. The membership includes all elected ward councillors representing the wards under the control of the metropolitan subcouncil and an additional number of councillors decided by the metropolitan council. These are councillors elected to the metropolitan council from the party list and appointed to the metropolitan subcouncil based on proportion of the votes casts for each party within the area of jurisdiction of the metropolitan substructure [Section 63 (1) of the Structures Act of 1998]. Section 79 (1) of the Structures Act of 1998 provides that a municipal council may establish one or more committees necessary for the effective and efficient performance of its functions and the members are to be appointed among the council members. The subcouncils and other committees established provide avenues for representation and exacting accountability from officials and councillors through their
reports and activities.

3.3.1.2. 3 Ward Committees

Section 72 (1&3) of the Structures Act of 1998 provides that metropolitan or local councils may establish ward committees for purposes of enhancing participatory democracy and accountability. According to section 73 (1&2), membership of ward committees includes the councillor representing the ward in the council and not more than 10 other members. Ward committees provide a forum through which local participation and representation, accountability and transparency are facilitated (White Paper, 1998:65).

3.3.1.3 The Code of conduct for councillors

The common mechanism for enhancing accountability in the municipalities is the provision of a code of conduct (Clapper, 1999: 146; Kernaghan, et al.1990:18). The following statutory provisions have established the code of conduct for the councillors: the LGTA schedule 7 and the Structures Act of 1998 schedule five.

In the preamble of schedule 5 of the Structures Act of 1998, it is stated that the purposes for electing councillors include to represent local communities on municipal councils, to ensure that municipalities have structured mechanisms of accountability to local communities and to meet the priority needs of the communities by providing services equitably, effectively and sustainably within the means of the municipalities. In fulfilling the above roles, the councillors are required to be accountable to their constituencies and report back at least quarterly. The code of conduct is provided to ensure that councillors fulfil their obligations to their communities and support the achievement of the objectives of the municipalities set out in section 19 of the Structures Act of 1998. The following is a summary of the legal framework of the code of conduct for councillors as outlined
in schedule 5 of the Structures Act of 1998: -

3.3.1.3.1 Conduct of councillors
The councillors are required to perform their functions in good faith, honestly and in a transparent manner and ensure credibility and integrity and act in the best interest of the municipality at all times.

3.3.1.3.2 Attendance of meetings
The councillors are required to attend each meeting of the municipal council and of a committee except if granted permission or required to withdraw from the meeting in terms of the code.

3.3.1.3.2 Sanctions for non-attendance of meetings
The municipal council may impose a fine on councillors for non-attendance of council meetings, and absence for three or more consecutive meetings would result in the councillor's removal from office as councillor.

3.3.1.3.3 Disclosure of interest
It is a requirement that councillors should disclose any direct or indirect personal or private business interest gain that the councillor, spouse, partner or business associate of the councillor may have in matters under discussion by the council or committee or withdrawal from such discussions unless the council declares the councillor's interest as trivial or when the interest or benefit is in common with other residents of the municipality.

3.3.1.3.4 Personal Gain
The position or privileges of a councillor or confidential information obtained as a councillor may not be used for private gain and a councillor may not be a party or a
beneficiary under a contract for the provision of goods and services to the municipality or obtain a financial interest in any business of a municipality except where the municipal council has given consent.

3.3.1.3.5 Declaration of interest
The councillors are required to declare in writing within 60 days after election to the municipal manager such financial interests as shares, securities, membership of any corporation, directorship, partnership and other financial interests in any business, remuneration and employment, interest in property, pension, subsidies, grants, sponsorship, gifts above prescribed amounts, rewards, gifts and favours. The council should determine which of the financial interest must be made public in view of the need for confidentiality.

3.3.1.3.6 Full-time councillors
The full-time councillors may not undertake any other paid job except with the consent of the council.

3.3.1.3.7 Unauthorized disclosure of information
The councillor may only disclose confidential information upon the council's permission. Such information includes the discussions in closed sessions, information that violates a person's privacy or that declared by the law and the council as secret and confidential.

3.2.1.3.8 Intervention in administration
The councillor may not interfere in the administration, management and obstruct implementation of decision by the council or committee or give instructions to employees of the council unless authorised or required by law.
3.3.1.3.9 Appropriation or misuse of council property.

The acquisition, use, or benefit from any property or asset of council to which the councillor has no right is prohibited.

The implications of the code of conduct are that councillors' behaviour should be accountable and operate within the prescriptions of the code. They should work for their constituencies diligently and honestly and avoid corruption and misuse of council property. The code is a mechanism for enhancing accountable behaviour because appropriate action will be taken against any councillor who breaches the code (Craythorne, 1997:78). Section 14 (1) and (2) of the Structures Act of 1998 clearly states that a municipal council may investigate and make a finding on any alleged breach of a provision of the code. Any councillor who breaches the code may be issued a formal warning, reprimanded or fined, suspended or removed from office by the Member of Executive Council (MEC) for local government in the province.

3.3.2 Financial accountability

According to Gildenhuys (1997:17) financial accountability has been a central issue in the theory and practice of municipal financial management and it involves holding councillors and municipal officials responsible for their actions and funds placed under their control. The purpose is to ensure that councillors and municipal officials are accountable to the taxpayer or voters for the way in which taxes and other revenue have been collected, kept safe and spent. The financial accountability in municipalities requires that all public resources entrusted to the municipalities should be judiciously used for the projects they were intended and that public funds should not be diverted for private use (Sabela, et al. 1996:12). Thus the councillors as elected political representatives are individually and collectively held responsible for the collection, safeguarding and the efficient and effective use of public moneys (Gildenhuys, 1997:26).

In line with sections 152 (1)(a) and 160 (7) of the Constitution and section 10G (1)(a) and
(b) of the LGTA, every municipality is required to ensure effective and economic performance and conduct its financial affairs in an accountable and transparent manner. The mechanisms exerted upon municipalities to ensure financial accountability are categorised in this analysis into external and internal mechanisms.

3.3.2.1 External mechanisms

The external mechanisms refer to the controls that the national and provincial governments exert on the municipalities through the Constitutional and statutory provisions. The following is a summary of the key provisions that cover direct intervention into the municipalities and the requirement to submit returns and reports to higher tiers of government and the constitutional and other investigative bodies.

3.3.2.1.1 Intervention

The Constitution expressly provides that when a municipality cannot or does not fulfil an executive obligation in terms of legislation, the relevant provincial executive may intervene by taking appropriate steps to ensure fulfilment of that obligation [Section 139(1) of the Constitution]. The national government subject to section 44 and the provincial governments have the legislative and executive authority to see to the effective performance by municipalities of their functions [Section 155 (7) of the Constitution]. According to section 216(1) of the Constitution, the national legislation must establish a national treasury and prescribe measures that would ensure both transparency and expenditure control in each sphere of government and that include the municipalities.

In addition, the Corruption Act No. 94 of 1992 has important implications for both councillors and municipal officials as it may be applied to them when they are found guilty of corruption (RAU, 1998:1). The Corruption Act of 1992 provides in section 1 that any person who corruptly gives or offers any benefit that is not legally due to the person with power and charged with a duty by virtue of employment or the holding of an
office, with the intention to influence such a person to do any act, to exceed his or her powers or to neglect his or her duty with the intention to reward such a person, shall be guilty of an offence. Similarly, the person who receives such a benefit that is not legally due to him for being so influenced will also be guilty of an offence. Thus the councillors and officials tend to ensure accountability for fear of charges of corruption.

3.3.2.1.2 Reports and Returns
Section 10G (3) (a) of the LGTA provides that a municipality should annually complete, and by a majority of all members of its council approve a budget for operating income and expenditure; and capital expenditure which must reflect the source of finance, future capital charges, operating and maintenance costs as well as the consequential influence on levies, rates and service charges. Section 10 G (1) of the LGTA requires every municipality to conduct its financial affairs in an accountable and transparent manner, prepare a financial plan in accordance with the integrated development plan in respect of all its powers, duties and objectives and manage its financial resources to meet and sustain its objectives.

The Systems Bill of 1999 provides in section 51(1)(b) and (c) that a municipality must prepare within 4 months of the end of each financial year an annual report consisting of audited financial statements for that year and any other reporting requirements. In addition, the municipal council is required in terms section 52 of the Systems Bill of 1999 to submit a copy of its annual report to the Minister and the member of Executive Council (MEC) of the province responsible for local government and the Auditor-General and make copies of the report accessible to the public, the media and interested persons within 14 days after its adoption.

3.3.2.2 Internal mechanisms
The internal mechanisms are those controls applied by the municipalities themselves.
Gildenhuys (1997:50) argues that whatever the nature of external mechanisms by higher authorities, the most effective mechanisms are those applied at the local level. The internal controls are exercised through the executive committee, financial regulations or standing orders, the chief executive officer, the chief finance officer or treasurer, the internal auditor and the departmental heads.

3.3.2.2.1 The Executive Committee
The municipal council has the responsibility of exercising stringent control over the financial activities of the executive committee (Gildenhuys, 1997:21). Thus it is an essential mechanism that ensures accountability regarding financial policies and budgeting. However, the executive committee, which is the most important body as far as financial accountability is concerned, exercises much of the internal controls. Its functions include to ensure that the annual budget of income and expenditure or operational and capital is drafted for council approval, control on the collection of revenue and expenditure, efficient and effective financial administration, supervision of the finance department and giving advice to the council on financial policies (Gildenhuys 1997: 36-37; Ismail et al., 1997:88).

3.3.2.2.2 Financial Regulations
The financial regulations are detailed regulations which are devised for the effective administration of the financial matters such as the preparation of budgets, control of expenditure, collection of revenue, tenders and contracts, stores and records, methods of payment, cost accounting, asset insurance, investments of surplus funds, internal auditing and custody of financial documents and records (Yorke, 1997:55; Gildenhuys, 1997:50).

3.3.2.2.3 The Chief Executive Officer/Municipal Manager
The chief executive officers or municipal managers as accounting officers have the responsibility of ensuring accountability and proper execution of the decisions and
instructions of the executive committee (Yorke, 1997:53; Gildenhuys, 1997:59). They are responsible for the financial management of the finances in all departments. Section 59(2) of Bill 1999 clearly states that the municipal manager is the accounting officer of the municipality responsible and accountable for all income and expenditure of the municipality, all assets and the discharge of all liabilities of the municipality, sound financial management of the municipality, including the establishment of effective credit control mechanisms, ensuring that the municipality is financially sustainable and compilation and signing of annual financial statements.

3.3.2.2.4 The Chief Finance Officer
The chief finance officer or the treasurer has the responsibility of ensuring that financial transactions are efficiently implemented in line with the budget (Ismail et al. 1997:86; Gildenhuys, 1997:50). The officer plays an advisory role to the council and the committees on financial matters. The functions performed by the officer include: coordinating all financial activities, loan administration and reserve management; accounting functions, financial control which involves checking corruption and theft and implementing financial regulations. The chief finance officer largely does the internal control and giving an account of the council money. Ismail et al. (1997:86) observe that the implementation of a sound budget depends on the effectiveness and efficiency of the chief finance officer.

3.3.2.2.5 Internal Auditing
The LGTA provides in section 10G(2)(c) that every municipality should establish and maintain a system of control and as far as practicable institute a system of internal audit, including audit committees as an independent appraisal function. The internal auditor also assists in tracking irregularities. Yorke (1997:57) points out that the role of the internal auditor is to assess whether the systems of internal control are adequate and whether such systems are operating effectively. The internal auditor assists in the
checking of records; procedures and systems of internal control and ensuring accountability in the financial transactions (Gildenhuys, 1997:54). According to Yorke (1997:56) the audit committees are responsible for approving the work plan of the internal auditors, receiving reports from the internal auditor and the Auditor-General, making recommendations and giving an account to council regarding issues raised in the reports and any issues relating to internal control and audit reports.

3.3.2.2.6 Departmental Heads
The departmental heads are accounting officers for their departments and they are responsible for the financial activities and giving account on the utilisation of funds allocated to the department to the chief executive officer (Gildenhuys, 1997:68).

It can be concluded in this section that the representational structures such as the council, executive committees, metropolitan sub-councils and the ward committees provide avenues for enhancing political accountability in municipalities. Regarding the enhancement of financial accountability, the external controls are provided in the Constitution and statutes while the internal mechanism are applied by the executive committee, the chief executive officers, the chief finance officers, internal auditors and auditing committees and the heads of department.

3.4 Administrative accountability
In this analysis, the bureaucratic and professional accountability systems are synthesised into administrative accountability. The bureaucratic system is based on the legitimate authority that ensures a stable hierarchical relationship between managerial superiors and subordinates (Romzek, et al. 1987:228). In this system, subordinates follow orders from above and there is close supervision of subordinate activity. It has been stated in the conceptual framework that bureaucratic accountability is related to professional accountability. Romzek, et al. (1987:228) suggested that the difference is that
professional accountability emphasises internal control of the institution and deference to the discretionary decision making power of experts such as the professional administrators, accountants and financial managers while bureaucratic accountability emphasises power and control in the hands of supervisory managers.

According to Botha (1987:174) and Khan (1983:683) administrative accountability refers to the control mechanisms devised to keep the bureaucracy or the organisational structures under surveillance and in check. The administrative accountability is influenced by among other factors the attitudes and socio-economic background, the extent of training and development and professionalism of the organisational members, the work procedures and the hierarchical relationships among the members of the institution (Botha, 1987:174; Khan, 1983:683).

The relations between structures, functionaries, councillors and officials are outlined in section 61 of the Systems Bill of 1999. It provides that the municipal council should determine the relationships among structures, appropriate line of accountability and reporting, and mechanisms, systems and processes of interaction that minimises overlapping and cross-referrals of responsibilities between structures and functionaries.

Section 59 (1) of the Systems Bill of 1999 provides that municipal managers as heads of the administration are accountable or responsible for inter-alia efficient and performance driven administration, control and maintenance of discipline of staff, managing communication with politicians and functionaries of the municipality.

The heads of department are responsible and accountable to the municipal manager and must perform the functions subject to the directions and control of the municipal manager [Section 57(l) and (n) of the Systems Bill of 1999]. To encourage accountability in the administration, section 65 provides that a person whose rights are affected by the administration’s decisions may appeal against the decision within 21 days and the municipal manager is required to immediately submit the appeal to the relevant body. The
mechanisms for enhancing administrative accountability in municipalities discussed below include the code of conduct for employees, leadership, training and development, performance appraisal and the reward system.

3.4.1 Code of conduct for municipal officials
The code of conduct, also called ethical codes for municipal officials provided by the statute and professional bodies are important mechanisms for enhancing accountability in municipalities (Clapper, 1999:146; Robson, 1999:165). Section 70(1) of the Systems Bill, 1999 requires the municipal officials to adopt a staff code which provides for efficient, effective and transparent personnel administration on matters covering recruitment, selection, appointment, service benefits, supervision, transfers, investigation of misconduct, grievance procedures, control and discipline, dismissal and retrenchment of staff. Sections 70(3) and (4) of the Systems Bill of 1999 provide that the code of conduct outlined in schedule 1 of the Bill applies to every member of staff and the municipal manager is required to issue a copy of the code of conduct to every member of staff of the municipality. The code of conduct for municipal officials cover issues similar to those outlined in the code of conduct for councillors and they include general conduct, commitment to serving the public interest, personal gain, disclosure of benefits unauthorised disclosure of information, undue influence, rewards, gifts and favours, use of council property, participation in elections and reporting for duties. In this regard, the code of conduct for the officials is an important mechanism that encourages proper conduct and accountability in municipalities as a contravention or failure to comply with any provision of the code would result in disciplinary action in terms of section 13 of schedule 1 of the Systems Bill of 1999.

3.4.2 Leadership
The leaders of the municipality contribute to the enhancement of accountability through the inspiration the employees draw from their conduct or behaviours (Kernaghan,
Guy (1991:185-204) observed that high reliability management depends on leaders who set the decisional stage by giving employees examples or role models and a common frame of reference in which to exercise individual judgement and responsibility. The lack of exemplary leadership exhibited by politicians such as councillors and senior municipal officials contributes to the lack of accountability and bureaucratic corruption (Hope, 1996:5). Thus the lack of accountable leadership results in employees disregarding accountability as a key component of the organisational culture.

Craythorne (1997:302) observes that municipalities have a number of leaders that include councillors, chief executive officers or municipal managers, the heads of departments and various subunits. The councillors give leadership in taking policy decisions. The leadership roles of councillors are reflected in the various statutory provisions. According to section 36 of the Structures Act of 1998, the municipal council must elect a speaker or chairperson among its members at the first meeting after elections. The leadership roles played by the speaker as provided in section 37 of the Act include to preside over meetings, to ensure that council meets at least quarterly, to maintain order during meetings, to ensure compliance in the council and its committees with the code of conduct set out in schedule 5 of the Structures Act of 1998 and to ensure that council meetings are conducted in accordance with the rules and orders of the council. Section 65 of the Structures Act of 1998 provides that the subcouncil must elect one of its members as a chairperson of that subcouncil. In addition, the executive mayors as provided in section 55 and other chairpersons of various committees play a leadership role. It is provided in section 73(2)(a) of the Structures Act of 1998 that a councillor representing a ward in a committee must be a chairperson of the ward committee. The implication is that councillors are first and foremost leaders of their constituents in the council.
On the part of officials, section 59 (1) of the Systems Bill of 1999 provides that municipal managers are heads of the administration. The heads of departments are accountable to the municipal manager according to section 57(1) of the Bill. In most municipalities officials who play a leadership role include heads of such departments and sub-units as the environment and recreation, city engineers, city treasurer, city secretary, town planning, protection services and community services (Burger, 1997:85).

3.4.3 Training and Development

The training and development programs through research and case studies, and the deliberate use of supervisors as mentors help to raise the moral conscience and provide guidelines for enhancing accountability (Piper, et al. 1993:148; Kernaghan, 1993:18). Truelson (1991:233) who points out that training packages stimulate the moral imagination, promote recognition of moral issues, and develop analytical skills that elicit a sense of moral responsibility and foster accountability supports the above view.

Section 79 of the Systems Bill of 1999 provides that a municipal council must develop its human resources capacity to a level that enables it to perform its functions and exercise its powers efficiently and effectively while section 81(1) requires the municipality to develop and implement programs for education, training and development of its staff.

Two separate bodies' boards, namely, the Local Government Education and Training Board and the Training Board coordinate the national local government training system for Local Government Bodies (White Paper, 1998: 103). The Local Government Education and Training Board was established in terms of the Manpower Training Act of 1989 while the enactment of the Local Government Training Act, No. 41 of 1985 (Act of 1985) resulted in the formation of the Training Board for Local Government Bodies and the Local Government Bodies Training Fund (Zybrands, 1995:2). The training and
development methods adopted by the Training Board include self study manuals; video shows, separate courses offered by sub-regional training committees covering duties of local government representatives and joint management development programs for councillors and municipal officials (Maleka, 1997: 106; Carstens, 1992:46).

However, the training of councillors is the primary responsibility of the South African Local Government Association (SALGA), a body recognised in terms of section 2(1)(a) of the Organised Local Government Act No. 52 of 1997. According to the 1999 SALGA Annual Report (1999:3), its central role is to lead in ensuring that councillors and municipal officials are adequately trained and equipped to perform their duties in an effective manner. The municipalities and other institutions such as the Institute for Local Government Management of South Africa (ILGM), universities, technikons and private consultants are involved in the training of municipal officials and councillors. During an interview, Neil (1999) indicated that the various training methods currently used include lectures or classroom training, mentorship and self-administered courses that cover issues of accountability, governance and ethics.

3.4.4 Performance Appraisal

The performance appraisal is a technique for collecting and analysing information on the performance of employees systematically (Carrell, et al. 1998:258; French, 1990: 382). It is a formal, systematic assessment of how well employees are performing their jobs in relation to the established standards and the communication of that assessment to employees (Carrell, et al. 1998:258; French, 1990: 382). The two techniques involved in performance appraisal are performance review and employee appraisal. Firstly, the performance review. This refers to a continuous process of open discussions in which a supervisor and an employee consider the duties to be performed and achievements expected, evaluation criteria and results to be achieved by the subordinates. Secondly, the employee appraisal. This involves the identification of employees' qualifications,
estimating potential and making proposals and responses to training and development.

Section 76(1) and (2) of the Systems Bill of 1999 provides that a municipality must establish and implement a system for measuring and evaluating the performance of its staff at regular intervals so as to establish appropriate performance standards, measure performance against those standards, assess and grade performance, reward consistent exceptional performance and to take corrective measures where performance is below standard. During an interview, Neil (1999) indicated that performance appraisal mechanisms are in place in most municipalities in South Africa that facilitate open evaluation of performance. Accountability is enhanced through the open discussion and reporting of the performance and through the regular assessment of the employee’s attainments.

3.4.5 Reward system
Another mechanism for enhancing accountability in municipalities prescribed by scholars is the equitable rewards for performance. Adequate rewards for both councillors and officials is an important precaution for unaccountable behaviour (Wronsley, 1994:19).

Therefore an essential mechanism for enhancing accountability in municipalities is by fostering enabling conditions of service, particularly adequate pay levels and economic incentives (Rasheed, 1996:126). The view is that councillors and officials who are grossly under-rewarded for their efforts will tend to supplement their packages by trying to pick up income on the side. Consequently, the municipalities become disorganised and corrupt. Rasheed (1996:124) observes that poor working conditions and unrealistic rewards are key problems that have undermined the professional standing of most organisations.

3.6 Conclusion
The focus in this chapter was on the mechanisms that enhance accountability in
municipalities. The legal accountability is primarily enhanced through the constitutional, independent and ad hoc bodies. The constitutional bodies include the office of the Auditor-General and the office of the Public Protector. The independent bodies include the courts, OSEO and the media while the ad hoc bodies include the commissions of inquiry and the Special Investigation Units and Special Tribunals. The political or public accountability has been classified into representational accountability and financial accountability. The representational accountability is enhanced through such mechanisms as municipal elections; structures facilitating open reporting such as the council and its committees, the metropolitan sub-councils and the ward committees; and the code of conduct. The financial accountability is enhanced through the external and internal mechanisms. The external mechanisms refer to controls exercised by the higher tiers of government through the constitutional and statutory provisions. The internal mechanisms refer to the controls exercised by the executive committee, the chief executive officer, the chief finance officer, the internal auditor and the auditing committee and the heads of departments. The administrative accountability is enhanced through the code of conduct for staff, leadership roles, training and development, performance appraisals and the reward systems.
CHAPTER 4: THE ASSESSMENT OF THE ENFORCING MECHANISMS

4.1 Introduction
The focus in this chapter is on the assessment of the mechanisms that enhance accountability in municipalities. The operations of the mechanisms are illustrated by relevant cases drawn from the local sphere and the general public.

4.2 The Auditor-General
The Auditor-General's investigations and reports highlight the strengths and weaknesses of the management and financial operations of municipalities. Such reports bring to the attention of the public and stakeholders the nature of activities, administration and management in the municipalities. The case of the Greater Johannesburg Metropolitan Council (GJMC) illustrated by the Auditor-General's report for the 1997/98 financial year, manifests the role of the office in the enhancement of accountability and its execution of the functions accorded to it in terms of section 188 of the Constitution and sections 3, 4 and 5 of the LGTA. During interviews, Tlhoaele (1999) pointed out that the report was discussed openly in the council chambers on 19 August 1999 where about eight members from the public attended. The report covered an assessment of the financial statements and human resources administration and control as well as the provision of electricity services and measures instituted by management to promote the economic, efficient, and effective planning, budgeting, authorisation and procurement and utilisation of services [Auditor-General's Report, 1997/98:8(i)]. The following summary of the key findings and follow-up activities seeks to demonstrate how accountability is enhanced in municipalities through the Auditor-General [GJMC Report 1997/98: 8(xii)-8(xv)]:

➢ The councillors had been awarded allowances which exceeded the prescribed maximums in terms of the Gauteng Department of Development, Planning and Local
Government Circulars No.5 of 1995 and No.22 of 1997 as well as the Amendment slip No.2 of 1997 and in terms of the LGTA. The overpayment was estimated at R8 million for the 1996/97 and 1997/98 financial year up to February.

- Follow-up: Investigations and discussions with the Provincial Administration were under way to clarify and conclude the payment of allowances to councillors. The councillors were required to sign an agreement that any allowances not approved by the Premier would be repaid.

- The attendance of council meetings and training sessions by councillors was low. The attendance registers for certain councils indicated an attendance as low as 21 percent. At the Eastern Metropolitan Local Council only 8 out of 27 attended a training course on the first day; and only 4 on the second day while only 3 apologies were submitted. It was indicated in the report that measures were not instituted to ensure councillors' attendance in the training sessions and meetings.

- Follow-up: Through the initiatives of the Provincial Administration, the Northern Metropolitan Local Council embarked on a capacity building program for councillors and community leaders and quarterly reports on councillors’ attendance at meetings were submitted to the Executive Committees and the council for the purpose of monitoring such attendance. The chief whip of each political party was to ensure representation in the meeting and the municipal manager had to submit reports and enforce legislation.

- The Systems Application Product system (SAP system) utilised for the personnel and salary information costing over R7 million was not implemented timeously. Only 50% of the SAP system was utilised. The Executive Officer: Information and Research of Southern Metropolitan Local Council reported on 9 January 1998 that 817 personal files were missing while 158 contract workers were identified as compared to 117 identified by the SAP system.
Follow-up: An action plan was implemented to have all information and personnel data on SAP system to be up to date by May 1998 and thereafter the data was to be checked on a monthly basis.

The disciplinary cases were not dealt with satisfactorily. By March 1998 no progress was made on five disciplinary cases dating back to 1995 and 6 cases against employees dating back to 1996 were not finalised while 28% of cases at the Public Emergency Services relating to negligence and behaviour were acquitted. It was indicated in the report that the prevalence of not guilty cases had been ascribed to poor investigation and four cases were to be withdrawn because management was unable to observe the required time frames.

Follow-up: The establishment of a special team to handle disciplinary cases was considered and approved. A process was implemented in the GJMC whereby all clusters forward the necessary statistics relating to labour relations issues to the Executive Officer- Labour Relations to ensure that all policies, procedures and time periods are followed.

Confrontation between employees and the employer. There were inadequate measures of management to address the prevalence of confrontation between employees and employers at the work place. This resulted in strikes and work stoppages. Formal grievances dating back to September 1996 and cases covering unilateral changes in conditions and terms of employment, written and telephonic death threats and abusive behaviour had not been addressed by March 1998.

Follow-up: All the clusters of the Western Metropolitan Local Council where the finding was manifested were advised on how to proceed with the disciplinary cases and training was to be undertaken with the line function managers to ensure a shared understanding and compliance.
Vacancies were not filled timeously. The critical vacancies were not timeously filled due to the moratorium on filling of vacancies. Only eight of the 52 posts in the Valuation Sub-cluster of the Northern Metropolitan Local Council were filled as at 31 January 1998. An internal audit report indicated a shortage of staff at the transport cluster of the GJMC with half the number of mechanics and a quarter of the auto-electricians required per bus. Consequently, R9 million was lost due irregularities in ticket and coupon sales. The reason was that only 3% of daily trips were subject to internal audit compared to industrial norm of checking 10% of daily trips due to shortage of route auditors.

Follow-up: The critical vacancies were filled on as-required basis by the various Strategic Executives in accordance with the approved procedure established by the committee of 15. Personnel was redeployed from other 'clusters' or sections. A provision was made in the 1998/99 budget for the Northern Metropolitan Local Council to fill 30 posts in the Revenue sub-cluster.

Excessive overtime. It was reported that overtime was not optimally managed to meet the legal requirements. The drivers at Milpark and Village main depots recorded as many as 84 and 64 hours per week on average, from December 1997 to February 1998. The hours translated to 36 and 16 hours per week. The part-time drivers at Village Main depot recorded 74 hours per week over the same period. The practice was against the Basic Conditions of Employment Act that stipulates that employees should not exceed 10 hours overtime per week or 55 total working hours per week.

Follow-up: The activities to address the situation included a rescheduling exercise in the Transport cluster and staggered-shifts were worked out to eliminate overtime. The management of overtime was clearly defined and tightened up in the Transport and Electricity Clusters. In the Southern Metropolitan Local Council, four shifts were introduced for security staff at the hostels, which resulted in the reduction of overtime.
It can be concluded from the above that the Auditor-General plays an essential role in enhancing accountability through independent investigation and reporting. However, the ineffectiveness of the Auditor-General's contribution to the enhancement of accountability in municipalities is a result of the office's inability to cover all the municipalities in time and the delays by the accounting officers in completing the financial records. Wasserfall (1999) and Ramalatse (1999) indicated during interviews that the Auditor-General requires the support of private auditors, as the office is unable to timeously cover all municipalities due to human resource constraints.

The office's lack of enforcing powers on its recommendations contributes to its ineffectiveness. During interviews with Thloaele (1999), it was indicated that the issue of councillors' allowance has been on the agenda for more than three years and no action has been effected against those councillors who received allowances exceeding the prescribed maximums. In the case of the GJMC, it seems unrealistic that councillors would repay the R8 million within the next 12 months, given the fact that next elections are projected to take place before November 2000 (SALGA Project Plan 1999:3). Yorke (1997:55) clearly points out that in many instances the report of the Auditor-General is not given sufficient attention at council meetings.

In addition, the low attendance and participation of the public during the discussions of the report, which Thloaele (1999) attributed to the lack of effective communication and publicity about council meetings, imply that the citizens do not effectively hold the councillors and municipal officials accountable for their actions.

It can be inferred from the above that the office of the Auditor-General does not adequately act as a safeguard against unaccountable behaviour.
4.3 The Public Protector

The establishment of the office of the Public Protector is regarded as one of the best things that ever happened to the Republic of South Africa and its people as the office keeps political office bearers and officials in all spheres of government, which include councillors and municipal officials, aware of their responsibilities and the need for accountability (The Sowetan, 7 June 1996). The issues brought to the attention of the office include lethargy, arrogance, tender irregularities and corruption among politicians and officials (Good, 1997:109). Annexure C is included to illustrate the cases in which the office has been involved on the public sphere. The reports produced by the office are made public unless exceptional circumstances that are determined in terms of national legislation require that the report be kept confidential.

A critical review of the performance of the office of the Public Protector reveals that the office is confined to state organs and deals primarily with individual complaints (RAU, 1998a: 1). Due to the financial and human resource constraints, the Public Protector can hardly be expected to provide the resources to deal with those matters in respect of which the commissions of inquiry are appointed from time to time. Consequently, the workload of the office is so heavy that a major backlog has built up (RAU, 1997:3). Good (1997:109) pointed out that the office had numerous cases before it and yet there was a lack of financial and human resources required to develop the office into an independent and strong defender of citizens. Brynard (1999:16) points out that the budget for 1997/98 financial year reported to be R7, 438 million was considered inadequate when compared to the required R31,0 million. As a result of the budgetary constraints and the limited human resource capacity, it took on average eight months to conclude a case (Brynard, 1999:16; Beeld, 5 August 1998). The consequences are a serious backlog of cases awaiting attention.

Another setback is that although the office of the Public Protector makes investigations
and reports the findings publicly, the office does not have adjudicative powers to enforce its findings (RAU, 1998a: 1). Brynard (1999:17) clearly points out that the Public Protector has no statutory authority to enforce its recommendations. The implication from the above is that compliance with the recommendations by institutions such as municipalities is limited.

The office of the Public Protector needs publicity of its activities and its existence so that users can utilise the office. The office to this end has used the media such as the radio, newspapers, television, reports on the Internet and a publication translated into various languages to inform the public about its operations (Brynard, 1999:9 Good, 1997:108). Despite the efforts made towards arousing awareness of the office, Brynard (1999:10) and Ayeni (1997:560) point out that the ineffectiveness of the office is a result of the high illiteracy levels, wide spread ignorance about the existence of the office and poor communication systems. The various weaknesses and strengths of the Public Protector as observed by Brynard (1999:22) are summarised and included as annexure B.

Despite the weaknesses highlighted, the Public Protector nevertheless ensures accountability in government and the municipalities by means of investigations and publicity of its reports. The office views itself as an instrument of enforcing accountability where there is maladministration or unfairness in the provision of governmental services (Brynard 1999:21). The special report of the Public Protector on the findings of the Sarafina II investigation underscored the tradition of public accountability among politicians and officials (Venter, 1999: 265). The impact of the office of the Public Protector will however be felt over time in municipalities. The consciousness of the councillors and municipal officials that maladministration, actions or inaction are subject to investigation by the office is likely to enhance their alertness and encourage accountability and responsible behaviour (Sharma, 1997:60).
4.4 The Courts- Judicial Authority

The courts of law and specifically the civil courts have to adjudicate numerous civil disputes and it takes a considerable period to have a matter placed on the court roll (RAU, 1998a: 1-3). The implication is that the judiciary is plagued with inadequate personnel to process various cases timeously. Thus its role as an effective tool to enhance accountability in municipalities is limited.

4.5 The Office for Serious Economic Offences (OSEO)

The office has undertaken various investigations both in the private and public sector such as the investigations into bank robberies; the Boesak and the Foundation for Peace and Justice following allegations of the embezzlement of about R2, 5 million from the Scandinavian donors and allegations of fraud in the Johannesburg Fresh Produce Market (De Villiers, 1998: 14; Good, 1997:107). The office probed the case of Peter Mokaba's National Tourism Forum and into the former North West government Agriculture MEC, Rocky Malebane-Metsing and examined Abe Williams, the former National Party Minister for Welfare and Population and Development over allegations of fraud, corruption and bribery (Good, 1997:107). However, the effectiveness of OSEO is negatively affected by the lack of adequate human resources due to staff resignations and financial constraints (Wood, et al. 1998: 34-35; Good, 1997:107). Good (1997:107) observed that the caseload of OSEO was so heavy that on average it took two years before it could investigate some issues.

4.6 The Media

During interviews, all respondents indicated that the media plays a significant role in enhancing accountability through the news broadcasts and newspaper articles about the activities in municipalities. Rasheed (1996:110) observes that the media has often been accused of inaccurate reporting, sensationalism and fabrications in reporting cases of ethical violations and non-accountability in public organisations. However, this view is
considered superficial in view of the timeous and tremendous impact of the press.

4.7 Commissions of Inquiry
Mafunisa (1997:5) indicates that commissions of inquiry are effective in enhancing accountability in all spheres of government. For instance, the commissions exposed the maladministration of tenders in the former Department of Development Aid. In this case, four tenders were submitted for R2, 6 million of earthworks; three of the tenders were fictitious and the fourth successful tender was signed in the maiden name of the wife of the official responsible for awarding the contract. Another case involved unused portable toilets for the rural areas costing R15 million (Mafunisa, 1997:5). The specification of the tenders for the purchase of about R2 million worth of toilets for the South African Development Trust and the former Lebowa was prepared by two officials in such a way that only a company owned by themselves could match the requirements. The tender was won and over the years sold toilets to the Department to the tune of R15 million (Report of the Commission of Enquiry into the Department of Development Aid/ Pickard Report, 1992:45-47).

The above cases illustrate that revelations by a Commission of Inquiry are influential in the enhancement of accountability and promotion of ethical conduct especially among those who fear scandals and maintain high integrity in their career. However, the Commissions do not in general terms have the power to enforce their recommendations, and irregularities exposed by them may result in litigation that is costly and can take many years to finalise by the courts (RAU, 1998a: 3). Thus their impact in enhancing accountability in municipalities is limited.

4.8 The Special Investigation Units and Special Tribunals
A few cases have been referred to the Special Investigation Units and Special Tribunals relating to municipalities. The Special Investigation Units and Special Tribunals
investigated matters relating to the serious maladministration, improper or unlawful conduct of employees, unlawful appropriation or expenditure of public money or property, irregular or unapproved acquisitive acts, transactions and practices having a bearing on council property; intentional or negligent loss of public property, and corruption and unlawful or improper conduct in the Eastern Cape (Government Gazette, Vol.389, No 18446, 19 November, 1997) and the North West Provinces (Government Gazette, Vol.R52, 1999, No.20038, 30 April, 1999).

In the Eastern Cape the matters that were investigated include misappropriation of funds by councillors and municipal officials, non-compliance with financial directives, the conclusion of contracts contrary to public interest, the failure of councillors and municipal officials to pay and collect rates and take necessary measures to ensure payment, payment of allowances to councillor contrary to applicable legislation and directives, irregular promotions and appointment of employees and participation of municipal officials in an unauthorised car scheme and failure of councillors and employees to recover the losses (Government Gazette, Vol.389, No 18446, 19 November, 1997). Similar matters relating to the municipalities in the North West Province were referred to the Special Investigating Units and Special Tribunal for investigation (Government Gazette, Vol.R52, 1999, No.20038, 30 April, 1999). However the Act is relatively new and its impact and value in municipalities will only become apparent with the passage of time (RAU, 1998a: 2).

It can be concluded in this section that the constitutional bodies are critical in enhancing accountability in the public sphere including the municipalities. However, the major challenge is the lack of legal measures in the municipalities to enforce accountability among councillors except in highly irregular matters (Zybrands, 1998:208). During interviews, Ramalatse (1999) pointed out that there was a lack of political will among councillors to enforce the audit and control measures in municipalities. According to
Huddlestone et al. (1996:145) the challenge facing the constitutional bodies is that they are little known by the public itself and those who know tend to be fearful to approach the bodies. The lack of adequate resources and qualified human resources to perform their functions efficiently and effectively is yet another obstacle to be dealt with. The tendency for the enforcers to become too bureaucratic and fail to respond to the needs of the citizens was another setback highlighted during the research interviews.

4.9 Elections

The electoral process is an essential mechanism that enhances accountability and an indicator of how well local democracy is working (Rallings, et al. 1999:59). According to section 24 (1) of the Structures Act of 1998, the municipal elections are to be held every five years. Craythorne (1997:81) is of the opinion that the periodic elections are not good enough as a mechanism to enforce accountability because the councillors can cause much damage within the five years.

In addition, the socio-economic factors tend to militate against the attainment of effective accountability through the electoral process in municipalities. The socio-cultural factors culminate at the local level into an apathetic community. Apathy is defined as a lack of interest in or lack of concern for persons, situations or phenomenon in general or in particular (Rush, et al. 1971: 90). A considerable number of people in the South African community do not participate in municipal activities (Bekker, et al. 1996: 80). For example, the municipal election voter turnout decreased from the 86% for the 1994 national and provincial elections to 51.37% in November 1995 (Die Burger, 10 November 1995).

It can be inferred from the above that the low voter turnout indicates ineffective local democracy and citizen participation. The indifference of citizens implies that accountability is not effectively exacted from councillors and municipal officials.
4.10 The Representational Structures

Representation in municipalities requires that citizens be educated towards democratic behaviour and principles such as accountability and that councillors learn to carry municipal responsibilities under the control of the citizens (Leemans, 1970:187). The general low level of education especially among the black Africans hampers representative government. The poor educational background constrains the ability of the populace to fully grasp the essence of accountability, local democracy and participating in municipal activities such as council meetings. Researchers indicate that factors such as income, education, occupational status, personal attitudes, beliefs and personality traits influence individual participation at the local level (Clapper, 1996: 62; Rush, et al. 1971: 90).

Geldenhuys (1996:22) points out that in South Africa the level of education as well as the political and economic standing of a large number of citizens in towns and cities are not conducive to democratic local government and that 'a high proportion of illiterate inhabitants are politically naive'. The literacy rate in South Africa is estimated at 62% and therefore tends to be favourable (Breytenbach, 1997:80). However, one has to be mindful of the wide gap between the education of whites and blacks in the previous regime. The National Education Policy Investigation (NEPI) estimated in 1993 that on average the school career of black adults in South Africa lasted for a period of five years and that approximately fifteen million do not have basic education (Liebenberg et al. 1997: 167). Cloete (1993:180) observes that there has been little understanding of, and education about, concepts such as democracy.

The implication from the above is that the effective attainment of accountability for councillors and officials by the community is undermined by the citizens' low education and the lack of awareness on effective strategies to hold councillors and officials accountable for their actions or inaction.
4.11 The code of conduct

The significance of the codes of conduct for councillors and employees is that they clarify the desired behaviour for councillors and municipal officials. The code of conduct is a starting point from which accountable behaviour in municipalities is followed. However, a review of the content of the code of conduct does not say much more than to obey the law. It is pointed out in the White Paper (1998:95) that the existing codes of conduct tend to emphasise the prohibition of certain actions such as corruption or financial and ethical misconduct and fail to bind councillors and officials to proactive action. The codes tend to be ineffective in view of the cases of low attendance in council meetings; the rise in incidents of unethical and unaccountable behaviour and that most violators among councillors are neither held accountable nor punished [GJMC Auditor-Generals' Report 1997/98:8(xii); Zybrands, 1998:209].

Scholars such as Kernaghan (1993:19), Denhardt (1988:1) and Wakefield (1976:63) pointed out that the codes of conduct are not enough as they provide a broad framework and fail to be specific about how to practice the values that are provided. For instance, Kernaghan et al. (1990:80) observed that there is much disagreement and confusion about the meaning of conflict interest and that there are many variations of conflict of interest that include influence peddling, improper use of government property, moonlighting, accepting gifts through bribery, acceptance of benefits or entertainment of substantial value and using confidential information for private gains. The implication is that confusion in terminology results in misunderstanding and varied interpretation of the code and consequently laxity in implementation.

4.12 Financial Accountability

The constitutional and statutory provisions adequately provide for external controls for ensuring accountability in municipalities. However, they tend to undermine the autonomy
of municipalities especially the provisions relating to intervention by MEC. In practice, the laxity in enforcing the external controls and the bureaucratic delays by municipal officials to submit reports to the higher officials tend to constrain the effectiveness of the mechanisms (GJMC, 1997/1998 Auditor-General’s Report: xviii). The internal mechanisms adequately provide for accountability. However, many councillors do not understand financial matters and the reliance on the chief finance officer’s reports, advice and technical know-how tends to undermine their roles (Ismail, et al. 1997:65; Sharma, 1997:59).

4.13 Leadership

The investigation reports on municipalities in the Eastern Cape Province (Government Gazette, 19 November 1977, No.18446) and the North West Province (Government Gazette, 30 April 1999, No. 20038) show cases of misuse of council property, misappropriation of funds, intentional or negligent loss of public money and corruption by both councillors and officials. Zybrands (1998:208) points out that in many municipalities councillors embarked on irresponsible spending and in the process stripped the assets from accumulated reserves and wiped out working capital. Raboroko (1998:1) pointed out that there are councillors and officials who do not pay for the services rendered to them. During interviews respondents indicated that most councillors and officials are often perceived as hypocritical and paying lip service to the issue of accountability. The efforts to achieve openness among the leaders are further hampered by the authoritarian tradition and secretive culture among the leaders (Alant, et al. 1999:26; Task Group on Open Democracy, 1995:1-3).

From the above, it can be concluded that the type of leadership manifested by councillors and officials in most municipalities is not conducive to enhancing accountability. Kernaghan (1993:19) and Berenbein (1990:10) observed that the conduct and the behaviours of the leaders such as senior municipal officials guide and influence the
behaviour of the employees. Thus the lack of exemplary behaviour among councillors and officials contributes to the culture of non-accountability in municipalities, as employees tend to emulate the conduct of their seniors.

4.14 Training and development

The training and development programs such as case studies on ethical issues and the deliberate use of supervisors as mentors contribute to the enhancement of accountability by stimulating the moral consciousness and imagination, promoting recognition of moral issues, developing analytical skills that elicit a sense of moral responsibility and foster ethical action (Piper, et al. 1993:148; Truelson, 1991:233).

However, in South Africa, the management and executive development programs offered to municipal officials and councillors in most municipalities are ineffective in that they do not equip managers and executives with the skills that are essential to optimise their capabilities (Pycroft, 1999:102). Van As (1999:28) observes that training conducted for municipal councillors is mostly uncoordinated. The lack of coordination within the training system among the local government training boards and the various training institutions involved in local government training has resulted into a fragmented and narrowly focused training and development system that fail to impart adequate and appropriate skills and knowledge to trainees (White Paper, 1998:103). Bernstein (1998:3) and Fast (1998:2) point out that a critical component in municipalities in South Africa is the lack of administrative, managerial and financial capacity in many local authorities. The councillors are further handicapped due to the lack of adequate formal education as many are functionally illiterate and unable to communicate effectively. According to Mokgoro (1993:3) the critical factors of local government training included absence of a comprehensive national training policy and a strategic approach in the training and development system for local government; failure to address the scope of training needs for municipalities and inability to take into account the relationships between training and
organisational structure and ethos within the context of a changing South Africa.

The major causes for deterioration in performance in most municipalities include departure of skilled personnel from municipalities, the inability of the remaining skilled staff to train junior staff members and the insufficient training programs to alleviate the skills shortage (GJMC, Auditor-General's Report, 1997/98:8). The research interviews showed that most training programs do not address actual needs of the municipalities, funds for training and development programs are often inadequate and that most councillors do not fully attend the training courses organised for them. Van As (1999:29-30) points out that in a research carried out in 50 different municipalities, less than 45% of the councillors attended training sessions.

Thus the uncoordinated, inadequate and inappropriate training and development approaches contribute to the crisis in the administration and financial management in municipalities as they are ineffective in stimulating the moral conscience and enhancing accountability (Xundu, 1999:1; White Paper, 1998:95). However, SALGA is working towards the establishment of a range of skills and competency levels for councillors and officials, identification of the critical training needs and networking with training providers to ensure effective training and development programs (SALGA Business Plan, 1999:7). During an interview with Joseph (1999), it was estimated that ten councillors will be recruited from each province to train other councillors.

The evaluation of local government training in tertiary institutions indicates that technikons and universities offer systematic courses covering issues of ethics and accountability. The research study by Taylor (1998:3) indicated that 66% of the councillors who were contacted preferred their training to be conducted by outside agencies especially the universities, technikons and private consultants to municipalities. The case of the Sanlam Centre for Metropolitan and Local Governance at Rand Afrikaans
University illustrates the important role played by universities in local government training. The Centre offers courses specialising in local government with topics on professional ethics and accountability at all levels, namely, diploma, bachelors, honours, masters and doctorate degrees. In addition, short courses, workshops and seminars are presented.

4.15 Performance Appraisal
During interviews, Neil (1999) indicated that performance appraisal systems were in place in most municipalities and that they were used as mechanisms for enhancing openness and accountability especially in the determination of training needs and identifying who to go for training. Although the appraisal system has been attacked by scholars such as Carrell et al. (1998:259) because of its subjectivity in judging the employee and the lack of information and problems in writing the performance standards as measurement indicators, it is nevertheless an essential mechanism for enhancing accountability whereby a supervisor and an employee openly discuss the duties to be performed, the evaluation criteria and the results to be achieved.

However, in view of the autocratic management styles and the lack of training and skills among municipal employees (White Paper, 1998:8) it can be inferred that the performance appraisals are not effectively executed.

4.16 The Reward System
Mafunisa (1997:2) observes that a critical barrier to the enhancement of accountability in municipalities and the public service as a whole is the low remuneration. The spate of strikes by the public servants in August 1999 clearly illustrated that they regarded their rewards as inadequate (Sunday Times, 15 August 1999). The South African public service is characterised by high-income differentials between the lowest and highest paid employees (Mafunisa, 1997:2). The income differential ratio is about 1:25 and the pay
levels for high ranking officials are relatively high while those for lower ranking ones are greatly depressed (White Paper on the Transformation of the Public Service, 1995:8). This creates the possibility for the lower level officials to be tempted to supplement their packages by indulging in corrupt activities thereby caring less about accountability.

4.17 Conclusion
The focus in this chapter was on the assessment of the enforcing mechanisms. The major challenges facing bodies that enforce legal accountability such as the office of the Auditor-General, the Public Protector and OSEO include the lack of adjudicative powers, and the financial and human resource constraints to discharge their functions effectively. The mechanisms for enforcing political accountability have been discussed under representational and financial accountability. The major challenges facing representational accountability include the low attendance of councillors in council meetings, the apathetic community especially among the blacks Africans who are characterised by low education and minimal participation in the electoral process and council meetings. The financial accountability, which is enforced by internal and external mechanisms through various constitutional and statutory provisions, is riddled by the lack of enforcing the accountability mechanisms and the code of conduct. In addition, the role of councillors in enhancing accountability is undermined by the officials due to the low levels of education among councillors who find problems in understanding financial matters.

The administrative measures for the enhancement of accountability such as leadership, training and development, performance appraisals and rewards have been analysed. The major challenges include the lack of exemplary behaviour and adequate skills among the councillors and officials, uncoordinated training programs and the low rewards especially among the lower level officials.
CHAPTER 5: CONCLUSION AND RECOMMENDATIONS

5.1 Introduction
In this chapter, conclusions are drawn from the discussion in the preceding chapters and recommendations for the effective enforcement of accountability in municipalities are presented. Clearly, the task of enhancing accountability in the municipalities is complex and challenging. The need to ensure effective accountability among councillors and municipal officials is critical in view of the prevalence of corruption and misuse of public resources. In this regard, the attainment of effective accountability systems requires a comprehensive multi-dimensional approach. The challenge is to determine the appropriate strategies and mechanisms to use in order to regulate the behaviour of councillors and officials. The following are the conclusions and suggestions to ensure accountability among the councillors and the municipal officials.

5.2 Legal Measures
It has been shown that the constitutional, independent and ad hoc bodies are essential mechanisms for enhancing accountability in municipalities. Such scholars as Hanekom et al. (1994:156-157) emphasised the importance of the office of the Auditor-General by pointing out that the state audit should not only be regarded as primarily a financial function but as a mechanism concerned with whether public institutions achieve the intended purposes for which the funds are made available and whether they comply with the provision of the laws. However the major constraints to the effective attainment of accountability among councillors is the lack of legal measures and political will to enforce the control mechanisms and accountability except in highly irregular matters (Zybrands, 1998:208). The challenges facing the constitutional and other investigative bodies include financial and human resource constraints and the lack of adjudicative
powers. To strengthen the role of the bodies in enhancing accountability in the municipalities the following strategies are suggested:

- The national government should provide adequate funds to alleviate the financial constraints and ensure that the bodies such as the Auditor-General, the Public Protector and the courts attain their objectives effectively.

- The various bodies established by the constitutional and legislative provisions such as the Public Protector and the Auditor-General should actually be on the forefront in ensuring accountability by effectively acting as enforcement agencies and reporting systems to the public. The bodies should employ and retain competent personnel to ensure efficient operations in the bodies.

- The bodies should organise training programs, workshops and seminars to ensure expertise and appropriate skills in matters relating to investigation, reporting and the enforcement of accountability in the municipalities.

- The courts should actually prosecute the offenders among the councillors and municipal officials as the mere enactment of laws, codes of conduct, rules and regulations does not guarantee the actual compliance. Therefore, hefty sentences should be pronounced on corrupt councillors and municipal officials as a foundation for a continuing campaign to scare those councillors and officials harbouring thoughts of indulging in irresponsible behaviour such as corruption.

- The state should provide legislation that formally protects whistleblowers in municipalities to encourage revelations of conspiracies and to break the secretive culture prevalent in most municipalities.

5.3 The Media

The media plays a significant role in enhancing accountability in municipalities through news broadcasts and newspaper articles. During the research, it was revealed that the reporters attending the Auditor-General's meeting were mostly inexperienced and young. This was reflected in the superficial reporting of the proceedings of the meeting. The
media should effectively play its role of exposing culprits and sensitising the public on the abuses of power and exposure of corrupt and unethical behaviour in the municipalities. In this regard, the media personnel should be adequately trained in communication skills and ensure factual reporting. The more experienced reporters who are able to produce an in-depth report should attend the municipal meetings and further probe into the municipal operations.

5.4 Political measures

5.4.1 Elections and Structures for open reporting
It has been illustrated that municipal elections are an important mechanism that enhances accountability in municipalities, though corrupt councillors may cause damage within five years. The ultimate safeguard of accountability falls on the ability of the average citizen and civil society to hold councillors and officials accountable for their actions and ensure that municipalities fulfil their functions and responsibilities (Weber, 1999:457; Rasheed (1996:132). However, apathy and low levels of education especially among the black Africans tend to affect the effectiveness of holding the councillors and municipal officials accountable for their actions. The capacity and energy of the community should therefore be geared towards ensuring accountability in the municipality. The following activities are recommended:

➢ The municipalities and community groups with an interest in municipal affairs should embark on intensive civic education of the community through public meetings and out-reach programs that focus on their roles as citizens, the importance of attending the council meetings and the identification of leadership qualities such as diligence and honesty among contestants for councillorship.

➢ The council should ensure that ward committees are operational and that quarterly meetings are held to ensure accountability.
The role of associations, professional organisations and non-governmental organisations in promoting accountability in municipalities is very critical in that they act as instruments through which morale, feelings and attitudes of the municipalities are communicated and maintained (Agere, 1992:90). Therefore, the capacity of occupational associations, trade unions, and professional bodies such as local government associations and institutes should be strengthened. The following activities are recommended:

➢ The associations dealing with local government training, administration and management such as ILGM and SALGA should form a joint task force to co-ordinate their activities and take a lead in influencing the enforcement of accountability and compliance with the code of conduct through campaigns and education programs for both councillors and officials.

➢ The various departments at universities and technikons dealing with public or municipal administration should promote student-clubs or societies that take up the challenge to disseminate information among students and the general public on issues relating to accountability and government ethics.

➢ The various institutions focusing on the promotion of democracy and the fight against corruption such as the Transparency International should also take the responsibility and provide leadership in encouraging councillors and officials to uphold accountability through various programs such as workshops and seminars.

5.4.2 Code of conduct

The code of conduct is essential as it provides a guideline of the desired behaviour among the councillors and municipal officials. However, the prevalence of cases of non-accountability, low attendance in council meetings and misuse of council property in municipalities implies that councillors and municipal officials do not comply with the code of conduct. In view of the above, the following activities are suggested:

➢ The municipal managers and the council should actually apply the legal measures
against councillors and officials who breach the code. For instance, the councillors who do not comply with the code of conduct should lose their offices or be suspended from meetings for a fixed period, after an investigation and depending on the gravity of the improper conduct as provided in section 14 of schedule 5 of the Structures Act of 1998.

➢ The municipal affairs and cases of maladministration among councillors and officials should be widely publicised through the newsletters and the media to discourage other councillors from indulging in irresponsible behaviour.

In order to ensure that public confidence and trust in the integrity, objectivity and impartiality of municipalities are conserved and enhanced, they must be premised on a philosophy of public disclosure (Aird, 1987:348). However, knowing about personal assets of councillors and officials per se neither guarantees nor assures accountability. There is a need to enforce the requirement of disclosure of all relevant assets and the potentially conflict interest of councillors and the senior municipal officials. The aim should be to restrain the councillors and officials from getting involved in decisions that result in conflict of interest through openness. The disclosures should be clearly recorded to ease the burden of proof of showing innocence or guilt when charges occur. Thus registers and databases which are open to the public should be maintained accurately in all municipalities.

In the White Paper (1998:95) it is stated that codes tend to emphasise the prohibition of certain actions such as corruption and ethical misconduct and that they do not adequately bind employees to proactive action. Therefore, the code should be revised meticulously in such a way that its weaknesses are overcome. The following activities are recommended:

➢ The council should clearly translate the codes into various languages and ensure that it forms part of the municipal culture.
The code must be written in plain language.

As the ICMA code of ethics has attempted, where possible, the code must be in two parts, namely, the rule or standard and the commentary. Firstly, the code should concisely state the individual rule or standard that is to be complied with. Secondly, commentaries that explain the rule or exemplify the behaviour being encouraged or avoided should be presented.

5.4.3 External and Internal Mechanisms - Financial Accountability

The analysis has shown that despite the constitutional and statutory provisions for external control over municipalities and the internal mechanisms for enhancing financial accountability, the incidents of corruption and maladministration are still prevalent in most municipalities. The major cause is the lack of strict enforcement of the mechanisms especially among councillors. The following activities are suggested in order to ensure effective financial accountability:

- The powers vested in the minister and the MECs responsible for local government should be effectively exercised by ensuring that internal auditing is done quarterly and that financial statements and reports are submitted in time.
- The reasons for delays in producing reports should be investigated promptly.
- Private auditing firms should be engaged in external auditing of the municipalities to ensure a thorough coverage.

The municipal officials and councillors should ensure that:

- The financial cash flow statements and debtors-age-analysis reports are issued and discussed monthly by the executive and auditing committees and prompt action is taken against any irregularity.
- The financial regulations, control measures and accounting procedures are instituted and adhered to strictly for purposes of ensuring the prudent use of resources.
- The relevant information regarding the financial position of the municipality is
disseminated to the community and all stakeholders through leaflets, notice boards, newspapers and verbal reports during council and ward meetings for the benefit of those who can not read to ensure accountability.

> Unauthorised expenditure or wasted costs incurred as a result of poor decision making or a failure to collect moneys owing and due to the municipality should in the case of the first two instances lead to a disallowance and in all the cases to a surcharge being imposed on the 'guilty' parties.

5.5 Administrative Measures

Huddlestone et al. (1996:148) argue that the most desirable method of enhancing accountability in the public service is to foster an organisational environment in which individuals choose to behave morally and become accountable as a matter of course without referring to the laws, codes and mechanisms discussed above. Kernaghan (1993:19) pointed out that the best code can have little impact on ethical tone of the public service if it is rooted in a hostile or indifferent and acquiescent organisational climate, culture or environment. The implication is that the most effective way of enhancing accountability in municipalities is by strengthening the administrative measures. The following are suggestions regarding the administrative measures to be undertaken:

5.5.1 Leadership

The councillors and municipal officials especially the municipal managers and the heads of departments should ensure consistency in their behaviour and act as role models. They should demonstrate effective and collegial leadership, maintain integrity and credibility through their interpersonal relationships or interactions.

The councillors and officials should take a leading role in enhancing accountability through their conduct and they should stimulate a sense of personal responsibility through
exemplary behaviour and encourage openness in the work environment. For instance, councillors and senior officials should promptly pay for the services rendered to them and hold monthly management and committee meetings to discuss any concerns of the employees and the public.

5.5.2 Training and Development

It has been illustrated that training and development is an important mechanism to enhance accountability in municipalities and an essential element in the process of behaviour modification and instilling values of accountability (Chapman, 1993:166; Dotse, 1991: 525-539). Therefore, the requirement for accountability, responsible behaviour and professionalism in municipalities should be based on adequate and appropriate training and development programs offered by the local government training institutions, municipalities and tertiary institutions. Rasheed (1996:127) observes that a commitment to training and development programs that are both relevant and responsive to developmental and professional needs are germane to a responsive and accountable public service that includes municipalities. Gortner et. al (1990: 250) argued that any individual who attains a position close to the top, needs to understand the issues relating to ethics and accountability. Thus it is crucial that councillors and officials should be given specialised training to reinforce accountability. The following strategies should be followed to ensure that training and development programs effectively contribute to the enhancement of responsible behaviour and accountability among officials and councillors:

➢ The training needs, focus, methods and designs of the training programs relating to ethics and accountability should be carefully worked out with sensitivity to diverse social, religious and cultural backgrounds.

➢ The various institutions should devise modules and offer intensive orientation programs relating to accountability and professional ethics and ensure that training and development activities are outcome-based.
A joint board should be formed by all bodies and institutions involved in local government training such as local government bodies, SALGA, municipalities, technikons and universities to co-ordinate the training and development programs and to ensure adequate coverage of issues relating to accountability in municipalities.

In view of the shortage of competent trainers in municipalities, the experts from the universities and technikons and other local government training institutions such as ILGM should be involved as part-time trainers in order to equip the councillors and officials with appropriate skills, capabilities and attitudes that ensure ethical conduct and accountability in municipalities.

The non-attendance of training sessions by councillors is one of the major problems in the training system. Franks (1999:77) argues that the key to building the capacity for service delivery lies in, among other things, the attitude towards learning. Thus if there is a lack of dedication and willingness among councillors, the training and development programs will not have the desired effect. The transfer of skills and knowledge cannot take place if the councillors do not pay attention or realise the relevance of the training provided. Therefore, mechanisms should be put in place to ensure compulsory attendance that include:

- Attendance of a minimum number of courses should be made compulsory as a statutory requirement in order to qualify as a councillor.
- Financial incentives in form of special allowances should be offered to those who fully attend and participate in the training programs.
- Those who deliberately neglect the courses should lose their allowances.

5.5.3 Performance Appraisal

The performance appraisal is a mechanism that ensures open evaluation and reporting of performance among municipal officials. Rasheed (1996:126) suggests that advancement based on merit contribute to the enhancement of professionalism and accountability in
the public service, which includes the municipalities.

The officials should ensure that:

➢ The performance appraisal systems are actually implemented quarterly.
➢ The managers at the supervisory level are well trained in the effective implementation of performance appraisals.
➢ The results of the performance appraisal are accompanied with appropriate acknowledgement and rewards to encourage improved performance and desired behaviour.

5.5.4 The Reward System

It has been shown in that adequate rewards are a precaution to maladministration and irresponsible behaviour. There seems to be solid truth to the local aphorism that 'it is hard for an empty sack to stand upright.' The national government should ensure that the municipal officials and councillors receive equitable and adequate rewards for their efforts to encourage commitment and discourage temptations to betray their public trust.

5.6 Conclusion

In conclusion, the focus in this mini-dissertation was on the mechanisms for the enhancement of accountability in municipalities. The mechanisms for enhancing accountability have been analysed under the legal, political and administrative accountability systems. The legal accountability is primarily enhanced through the constitutional, independent and ad hoc bodies. The constitutional bodies include the office of the Auditor-General and the office of the Public Protector. The independent bodies include the courts, OSEO and the media while the ad hoc bodies include the commissions of inquiry and the Special Investigation Units and Tribunals.

The political or public accountability has been classified into representational accountability and financial accountability. The representational accountability is
enhanced through such mechanisms as municipal elections; structures facilitating open
reporting such as the council and its committees, the metropolitan sub-councils and the
ward committees; and the code of conduct. The financial accountability is enhanced
through the external and internal mechanisms. The external mechanisms refer to controls
exercised by the higher tiers of government through the constitutional and statutory
provisions. The internal mechanisms refer to the controls exercised by the executive
committee, the chief executive officer, the chief finance officer, the internal auditor and
the auditing committee and the heads of departments. The administrative accountability
is enhanced through the code of conduct for officials, leadership roles, training and
development, performance appraisals and the reward systems.

The major challenges facing the bodies that enforce legal accountability include the lack
of adjudicative powers and the financial and human resource constraints to discharge
their functions effectively. The major challenges facing representational accountability
include the apathetic community especially among the black Africans characterised by
low education and minimal participation in the electoral process and municipal affairs.
The financial accountability is riddled by the lack of enforcing the accountability
mechanisms, non-compliance with the code of conduct and the low levels of education
among councillors who find problems in understanding financial matters. The major
challenges facing the administrative accountability include the lack of exemplary
behaviour and adequate skills among the councillors and officials, uncoordinated training
and development programs and the low rewards especially among the employees in the
lower levels of management.

In the last chapter, conclusions drawn from the discussion in the preceding chapters and
recommendations for the effective enforcement of the mechanism in municipalities were
presented. The major recommendations include strict enforcement of the legal
instruments, codes of conduct and regulations; the systematic and impartial prosecution
of violators; encouraging associations and all stakeholders to play a catalytic role in enforcing accountability in municipalities; mass education campaigns and implementing sound policies on training and development, performance appraisals and personnel management.

Finally, a multidimensional approach is required to enforce accountability in municipalities. The approach demands the political will and commitment among the councillors and municipal officials and the vigilance, support and encouragement from all bodies, politicians and the community to reinforce accountability, so as to avert the financial and administrative crisis experienced in municipalities.
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GUIDELINE FOR INTERVIEWS AND DISCUSSIONS:

MECHANISMS THAT ENHANCE AND ENFORCE ACCOUNTABILITY IN MUNICIPALITIES

The information is for academic purposes only and sources will not be directly quoted

General administration:

Describe the organizational structure and the functions of the various departments.

Briefly highlight on the operations of the council and its committees, wards committees and other structures that facilitate participation of local people?

To whom are municipal administrators accountable? (e.g. the public; councillors; Minister; Parliament; superiors; colleagues)

What are the mechanisms that ensure accountability in the above circumstances?
Briefly comment on the internal mechanisms, procedures or measures that promote accountable behaviour among employees and councillors?

Which techniques would work best to foster accountability in municipalities?

Comment on and the relationship between the municipality and the following: the office of the Public Protector and the Auditor-General.

How effective are the above institutions in discharging their functions in relation to the municipality?

Are councillors and employees familiar with the code of conduct?

Comment on the effectiveness of the code of conduct.

Are there any dilemmas or conflicts in following the code of conduct?

What are the major means of accountability in the municipality?

Comment on the role of the media and the public in ensuring accountable behaviour in the municipality?

**Human Resources**

Comment on the local government training in general?

What are the major human resources problems in the municipality? Specifically highlight on training.

What are the training needs of municipality?

Comment on the effectiveness of the previous training programs for municipal officials and councillors.
Finance:

What are the major sources of finance? What problems are experienced in revenue generation?

Are local people involved in budgeting or do they get any reports about council activities?

Comment or assess the effectiveness of the following: the financial reporting system, budgeting process and the role of the executive or financial committee.

What are your suggestions to improve the performance of municipalities and accountability in particular?

THANK YOU FOR PROVIDING THE INFORMATION
Annexure B: Criticisms against the office of the Public Protector


The features of the South African Public Protector institution most open to criticism are:

- The relatively low visibility and user awareness of the Public Protector owing to external factors such as widespread illiteracy, large geographical areas, a sparse and scattered population in some areas, and a poor communication infrastructure.
- The potential of the designation 'Public Protector' to create confusion in the minds of people as to his independence and impartiality in investigating and making a ruling on their complaints.
- The potential of the present procedures for proposing and authorising the Public Protector's budget to cast a shadow of doubt on the independence of the office from those institutions that may be a possible subject of investigation by the office.
- The limited resources and capacity of the Public Protector prevents him from doing justice to his constitutional mandate, in particular the fact that an inadequate budget is frustrating his efforts to bring his services closer to ordinary people.
- The time which the Public Protector takes to complete investigations and issue reports. The average 'throughput time' of eight months to conclude a case is, by the Public Protector's own admission, far too long.
- The absence of a special parliamentary committee, of a more permanent nature, to oversee the work of the Public Protector in order to strengthen his accountability to, and relations with, Parliament and to promote the effectiveness of the Public Protector in general.

In other respects, however, the South African institution of Public Protector is of sound construction and appears to operate effectively as can be gauged from the following:

- Its constitutional and procedural impartiality and independence of government in terms of the special constitutional provision for impartiality and independence, and the procedural safeguard of appointment to the office with the approval of Parliament and for a non-renewable term of office.
- The accessibility of the Public Protector to potential users, both in terms of constitutional provision for accessibility and in terms of the practical efforts of the institution of Public Protector in this regard.
- The almost unlimited nature of the jurisdiction of the office within the broad spectrum of public administration and state affairs and the flexibility with which the Public Protector has used his discretion to determine the bounds of the jurisdiction.
- The authority of the Public Protector to investigate a matter on his own initiative, without a formal complaint from a complainant – this is one of the strongest features of the institution.
- The virtually unrestricted powers of investigation conferred on the Public Protector implies unlimited access to all relevant information and expertise for the purpose of conducting thorough investigations and come up with authoritative findings.
- Due to his high status, his public image and the measures of persuasion at his disposal, the Public Protector has proved to be effective in securing compliance with his recommendations for redress of individual complaints and for improvements in administrative performance.
- The practice of the Public Protector to look beyond individual errors and the mere settlement of a complaint on occasion, with a view to possible systemic improvements, has already become a valuable aspect of the institution of the Public Protector.
- With realistic expectations of the substantive and psychological impact of the Public Protector on administrative performance in mind one can come to the conclusion that the contribution of the Public Protector in this regard is more qualitative and less quantitative in nature.

The various malpractices among politicians and officials are replete in the media. The following cases illustrate the role the constitutional bodies and the media play as mechanisms that enhance accountability in the public sphere.

1.0 AUDITOR-GENERAL

1.1 Independent Broadcasting Authority (IBA)

The Auditor-General launched an investigation into the activities of the IBA following press reports of financial abuse and other acts. The investigation revealed irregularities in the fraternisation and receipt of gifts by certain councillors from broadcasting organisations such as M-Net, SABC and South African Breweries; the acceptance of payment of the travel and accommodation expenses incurred by councillors' spouses in the SABC; the misuse of corporate Diner Club Cards by councillors of the IBA. After the full report was discussed in parliament many councillors resigned including the Chief Executive. However, over R100,000 have not yet been recovered from the 'guilty' former Board members (Mafunisa, 1997:20).

2.0 PUBLIC PROTECTOR

2.1 Sarafina II

The best known investigation at the national level is the Sarafina II incident. The Minister of Health and the Director of HIV/AIDS and STD's conceived the idea to develop an
AIDS awareness play, which resulted in mismanagement and a scandal. The Department of Health, which was to implement the idea prepared what it termed a limited invitation for tenders that resulted into two offers being received from Committed Artists Theatre Company and Opera Africa. The Chief Director of the Department of Health and the Director of HIV/AIDS recommended the Committed Artists Theatre Company to the Tender Committee at the payable amount of R14.27 million as opposed to the budgeted R5 million. However, the concern was on the manner in which an Aids awareness project contract was awarded to the company and the disregard of budgeted amount and also the failure to notify the European Union regarding the deviations as was required in their terms of agreement (Venter, 1999: 251-257; Mafunisa, 1997:20). The Sarafina II cast under Mr. Mbongeni Ngema was dubiously appointed to make the public aware of AIDS. In January 1996, Manase and Associates were asked to assist with financial systems and answering audit queries. They drew up a cash flow projection for the play that showed that if spending continued at the current rate, the sum needed for the project period until December 1996 would not be R14, 2 but R18, 5 (Venter, 1998: 251-257; Mail and Guardian, 13 June 1996).

The Public Protector investigated and publicly reported on the matter. The office found that the departmental Tender Committee did not adequately consider the tender award and did not recommended the award of contract to the committed Arts Company (Baloro, 1997:31). The awarding of the Sarafina II contract to the company was not in accordance with the state tender procedures and the provision of the financiers the European Union. The funding was not budgeted for and therefore constituted unauthorised expenditure (Baloro, 1997:31). The department had not gone for an open tender for the play, which would have resulted, into a high quality production at a cheaper rate (Baloro, 1997:31). The message that the play conveyed was inadequate and questionable in various instances. Thus, negligence, mismanagement or the manner in which the tendering was handled raised ethical and
accountability questions.

2.2 University of Zululand
The Public Protector conducted an investigation at the University following public allegations of corrupt practices (Baloro, 1997:31). The investigations revealed that certain highly placed officials in the University administration and academic departments conspired and fraudulently awarded marks and consequently diplomas and other certificates to students in return for monetary gains. The findings resulted in the dismissal of the officials concerned (Baloro, 1997:31).

3.0 COMMISSIONS OF INQUIRY

3.1 Mpumalanga Province: Appointments
This province was formerly known as Eastern Transvaal. There were widely published media reports concerning the appointment of a consultant Mr. Steven Nyati who was mandated to investigate the reconstruction of the Provincial Development Corporation (Baloro, 1997:35). There were allegations in the irregularity in the process of his appointment and the inflated accounts of his claims and those of members of his team. The Provincial government conducted investigations, which recommended the termination of his consultancy contract and the repayment of the moneys, which had already been repaid, to Mr. Nyati and his team (Baloro, 1997:35).

3.2 Mpumalanga Province: Award of Tenders
The media reported on the impropriety and irregularities in the award of what was referred to the Mtheo Housing Project in the Mpumalanga Province. A contract for building of low cost rural houses was alleged to have been awarded to a contract which was controlled by a woman who had been a close friend of the Minister of Housing
during their time of exile. It was also alleged that the company had no known record in the construction of houses. The issue was left in the hands of the Provincial government after the president declined to appoint a commission of inquiry (Baloro, 1997:35). The Director General lost his job as a result of the inquiry.

4.0 MEDIA

The following cases illustrate the issues exposed by the media that relate to ethical issues and accountability.

4.1 KwaZulu-Natal: Fraud
In KwaZulu-Natal syndicates of senior public officials, doctors, magistrates and criminals fleeced taxpayers of millions in massive pension and disability grants. The scheme involved manipulating the computer based biometrics identification system to pay an individual twice instead of once, impersonating dead people and fraudulently backdating payments due to newly pensioners (Monyepao, 1997:12; Sunday Times, 8 August 1995).

4.2 Gauteng Province: Corruption
The MEC Mr Steve Mabona who was a member of the ANC once instructed a driver and bodyguard to use a government vehicle to go and fetch the then Deputy Speaker of Parliament Mrs Baleka Mbete-Kgisitsile member of the ANC for Gauteng Province for a driver's licence testing in Mpumalanga Province. She was tested and given the driver's licence the same day. Mr Steve Mabona resigned after the scandal (Monyepao, 1997:13). Allegations were also investigated that people were ferried in from as far as KwaZulu-Natal to get drivers licences and that as many as 250 licences were issued per day (Monyepao, 1997:13; Rapport, 4 May 1997).