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TITLE OF ARTICLE: Mechanisms to strengthen accountability and oversight within municipalities, with specific reference to the Municipal Public Accounts Committee and the Audit Committee of Mangaung Metropolitan Municipality

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MECHANISMS TO STRENGTHEN ACCOUNTABILITY AND OVERSIGHT WITHIN MUNICIPALITIES, WITH SPECIFIC REFERENCE TO THE MUNICIPAL PUBLIC ACCOUNTS COMMITTEE (MPAC) AND THE AUDIT COMMITTEE OF MANGAUNG METROPOLITAN MUNICIPALITY

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Abstract

Public accountability is, to an increasing extent, becoming one of the main requirements of good governance in all spheres of government. Ijeoma and Sambumbu (2013:282) maintain that effective accountability and oversight result in improved good corporate governance, effective management of public finances and effective service delivery. Thornhill (2015:79) states that accountability refers to “a statutory obligation to provide for independent and impartial observers holding the right of reporting their findings at the highest levels of state, any available information about financial administration which they may request”. On the other hand, oversight entails the proactive control mechanisms initiated by the legislature for the executive and administrative organs of state to encourage compliance with the statutory and legislative frameworks, in order to ensure effective delivery on agreed objectives for the achievement of government priorities (South African Legislative Sector, 2008:4).

This article seeks to determine what oversight and accountability mechanisms are currently applied within municipalities. For the purpose of this article the mechanisms to promote accountability and oversight within municipalities, with specific reference to the Municipal Public Accounts Committee (MPAC) and Audit Committee of Mangaung Metropolitan Municipality, will be discussed, followed by a discussion of the current challenges of accountability and oversight within municipalities. The article further aims to make specific recommendations to strengthen accountability and oversight within municipalities in the Free State Province.

INTRODUCTION

Accountability can be regarded as the bedrock of any modern government, as public functionaries are accountable to the public for their actions. Effective accountability and oversight result in improved good governance, effective management of public finances and the promotion of effective service delivery. The South African government has a constitutional democracy which entails that the administration and executive branches of the three spheres of government have to be monitored and held accountable for their actions by a distinct organ of government. Accountability is an obligation to expose, explain and justify actions of public functionaries in the three spheres of government (Van der Waldt, 2015:51).

The *Twenty Year Review Report of Local Government 2004-2014* (2014:34) points out that accountability challenges persist in local government. The Auditor-General of South Africa (AGSA)'s *Consolidated Report on the Audit Outcomes 2013 of Local Government* (2013:28-29) states that the main root causes of poor audit outcomes in local government can be contributed to a slow response of political leadership to embracing their responsibility to guide and direct development performance; to promote accountability and oversight, demonstrating effective leadership; and to capacitate the municipal public accounts committee and other oversight and reporting mechanisms. Other concerns as stated in the AGSA's *Report on the Audit Outcomes of 2011/2012 of the Free State Local Government* (2012:29) are that key role players in municipalities in the province have failed to provide the necessary assurance, and they do not show any substantial improvements from the previous year. Municipal councils lacked in providing the necessary oversight and monitoring, as they did not act on poor performance and transgressions such as financial misconduct and unauthorised, irregular as well as fruitless and wasteful expenditure. The above report further emphasises that municipal accounts committees are not functioning effectively to promote transparency, good governance and public accountability. A concern is that, if public officials and political leaders are not held accountable for their actions, the perception will be formed that these types of behaviour, actions and a lack of accountability are acceptable.

This article provides a theoretical review of the mechanisms of accountability and oversight within municipalities, with specific reference to the Municipal Public Accounts Committee and the Audit

Committee of the Mangaung Metropolitan Municipality. An analysis of selected literature, articles, research reports, legislation, regulations and government reports is provided. Opinions and perceptions of members of the Municipal Public Accounts Committee (MPAC) and Audit Committee of the Mangaung Metropolitan Municipality, as well as of members of two municipalities in the Western Cape (Cape Town Metropolitan Municipality and Oudtshoorn Local Municipality) were obtained by means of unstructured interviews. The article argues that the oversight functions of these committees are curtailed due to a lack of information given to these committees in exercising their duties. Information in all aspects of governance is not fully divulged to the relevant committee. Arguably, this leads to a construed vision of the administration of the relevant municipality.

STATUTORY AND LEGISLATIVE FRAMEWORK FOR ACCOUNTABILITY AND OVERSIGHT

The statutory and regulatory framework establishes a basis for accountability and oversight in the three spheres of government. For the purpose of this article, specific reference is made to the obligations of promoting accountability and oversight within municipalities.

Section 139(2) of the *Constitution of the Republic of South Africa, 1996* mandates a provincial executive body to intervene in a municipality that is unable to, or fails to, fulfil an executive obligation by assuming responsibility for the relevant obligation in that municipality. Furthermore, the relevant provincial executive body must submit a written notice of the intervention to the Cabinet member responsible for local government affairs, the relevant provincial legislature and the National Council of Provinces within 14 days after the commencement of the intervention. Section 151(2) of the *Constitution of the Republic of South Africa, 1996* emphasises that a municipal council (legislative and executive authority) is required to provide reasons for its actions. In terms of Section 155(7) the national government, subject to Section 44 and the provincial governments, has the legislative and executive authority to see to the effective performance by municipalities of their functions in respect of matters listed in Schedule 4 and 5, by regulating municipalities' exercising of their executive authority.

Section 36 of the *Public Financial Management Act (PFMA)*, 1999 (Act 1 of 1999) requires that every department and every constitutional institution should have an accounting officer. Section 38 of the PFMA, 1999, on the other hand, makes provision for the responsibilities of the accounting officer, including the obligation to ensure that an effective internal control system of financial and risk management is established and maintained. Section 38(1)(g) of the PFMA, 1999 requires that a system of internal audit must be established, whilst Section 40 requires the accounting officer to report any unauthorised, irregular or fruitless and wasteful expenditure to the Auditor-General.

Section 54(a) of the *Local Government Municipal Systems Act (MSA)*, 2000 (Act 32 of 2000) (as amended by Act 7 of 2011) and Section 55(3) of the *Local Government Municipal Finance Management Act (MFMA)*, 2003 (Act 56 of 2003) make provision for the accountability functions of the municipal manager. In terms of Section 65, each municipality must establish an internal audit unit to assist the municipal council in improving oversight within a municipality. While section 165(2)(b) of the MFMA, 2003 provides for the establishment of an independent audit committee consisting of at least three persons with appropriate experience, the majority of committee members should not be employed by the municipality. In terms of Section 66(1) of the MFMA, 2003 each municipality must have an audit committee that does not form part of the administration. The purpose of the audit committee is to identify risks to which a municipality could be exposed, and to advise the Municipal Council. The *Municipal Finance Management Act*, Circular 32 of 2006 provides the guidelines for the establishment of the Municipal Public Accounts Committee (MPAC), while sections 79 and 80 of the *Local Government Structures Act* (Act 117 of 1998) make provision for the establishment of portfolio committees to exercise oversight of service delivery projects.

In addition to the above-mentioned legislative frameworks, The King 111 Report is cited by the Public Sector Audit Committee Forum (Institute of Directors in South Africa (2013:2) as a non-legislative authoritative document that states the code of best practice applicable to directors in a company and management in the public sector. The King 111 Report is thus also utilised by municipal audit committees in the execution of their functions. In Chapter 3 of the King 111 Report, the role of audit committees is explained as follows: “An independent audit committee fulfills a vital role in corporate governance. The audit committee is vital to, among other things,

ensure the integrity of integrated reporting and internal financial controls and identify and manage financial risks”. An overview of accountability and oversight functions is provided in the next section.

OVERVIEW OF ACCOUNTABILITY AND OVERSIGHT

A good starting point for the purpose of this article is to clarify the concepts of ‘accountability’ and ‘oversight’. Oversight can be seen as the proactive control mechanisms initiated by the legislature with the executive and administrative organs of state to promote compliance with the statutory and legislative frameworks (South African Legislative Sector, 2008:4). Van der Waldt (2015:51) states that accountability can be seen as the obligation to expose, explain and justify the behaviours and actions of public functionaries in the three spheres of government.

In terms of Section 151(2) of the *Constitution of the Republic of South Africa, 1996* the executive and legislative authority of a municipality is vested in the municipal council. Section 152 of the *Constitution of the Republic of South Africa, 1996* further emphasises that local government is established to provide democratic and accountable municipalities for local communities with the specific aim to ensure provision of services to communities in an effective manner; to promote sustainable (social and economic) development; to promote a safe and healthy environment; and to promote public participation in the affairs of a municipality. It implies that a municipal council may legislate by means of by-laws and resolutions and has to exercise the executive authority within its area of jurisdiction. The challenge is that there are not separate executive and legislative branches within a municipality as found in national and provincial government. Van der Waldt (2015:51) maintains that it is difficult to implement the constitutional provision of the boundary between the municipal council and the administration of a municipality, as it often leads to unjustified political interferences into the administration of a specific municipality.

In terms of Section 7 of the *Constitution of the Republic of South Africa, 1996* a municipal council must conduct its business in an open manner and may close its sittings, or those of its committees, only when it is reasonable to do so, depending on the nature of the business being transacted. In terms of Section 51 of the MSA, 2000 the municipal manager of a municipality is accountable for

the overall performance of the administration of a specific municipality. Apart from the oversight and accountable functions of a municipal council and the municipal manager, there are also committees and personnel who must fulfil the functions of accountability and oversight over municipal officials to ensure that municipalities are able to meet their constitutional obligations such as the executive committees, mayoral committees, council portfolio committees, municipal public accounts committees and audit committees.

Apart from the above legislative arrangements, Section 47 of the MSA, 2000 provides for the Member of Executive Council (MEC) for Local Government to annually compile and submit to the provincial legislature and the Minister of Cooperative Governance and Traditional Affairs (COGTA), and to the National Council of Provinces (NCOP), a consolidated report on the performance of all municipalities in a particular province. The Member of Executive Council (MEC) for Local Government must assess all the annual financial statements of municipalities within a particular province, the audit reports on such statements, and any responses by municipalities to such audit reports (Fourie and Opperman, 2011:503). The mechanism to promote accountability and oversight in local government will subsequently be emphasised below.

MECHANISMS OF ACCOUNTABILITY AND OVERSIGHT OF MUNICIPALITIES

In terms of statutory and legislative frameworks, the mechanisms and personnel pointed out in the section below must exercise accountability and oversight over municipal officials for municipalities to be able to meet their constitutional obligation to provide democratic and accountable government to local communities within their jurisdiction.

The Auditor-General of South Africa

The Auditor-General of South Africa (AGSA) is a constitutional body and an important mechanism to promote accountability in all spheres of government. Section 4(3) of the *Auditor-General Act of South Africa, 1995* (Act 12 of 1995) determines that its office shall convey a report of the accounts of a municipality to the chairperson of a municipality (Municipal Council) and to the accounting officer of the municipality. Sections 4(c) and (d) of the *Auditor-General Act, 1995* determines that a meeting to discuss the AGSA report may not take place behind closed doors.

National and Provincial Treasuries

According to Fourie and Opperman (2011:501) the MFMA, 2003, in Chapter 2, indicates that the National and Provincial Treasury must fulfil their oversight responsibilities over local government's financial management. The National Treasury may monitor and assess compliance by municipalities with the provincial treasuries to fulfil their oversight responsibilities, monitor compliance with the MFMA, 2003 by municipalities, and to monitor the preparation of the municipal budgets and submissions of reports. The National Treasury may take any appropriate steps if a municipality commits a breach of the MFMA, 2003.

Municipal Councils

According to Fourie and Opperman (2011:68) a Municipal Council of a municipality is responsible for exercising the municipality's executive and legislative authority, and to use resources of the municipality in the best interest of the community. The *Municipal Structures Act*, 1998, in Section 18, states that all municipalities should have a municipal council. Section 61(1) of the *Municipal Structures Act*, 1998 further emphasises that a metropolitan municipality may establish metropolitan sub-councils who have certain decentralised decision-making powers - except for the powers as denied by Section 160(2) of the *Constitution of the Republic of South Africa*, 1996 including passing by-laws; approving budgets; raising of loans; and imposition of rates taxes, duties and levies. Sub-councils and any other committees of a municipal council provide avenues to promote representation and to promote accountability through their reports (Hussein, 1999:32-33).

A municipal council may establish one or more portfolio committees necessary for the effective and efficient performance of its functions, or to exercise any of its powers. Portfolio committees are established in terms of sections 79 and 80 of the *Municipal Structures Act* of 1998. Section 79 portfolio committees can be established by the municipal council from among its members. The functions of a portfolio committee are determined by the municipal council, and the municipal council may delegate powers and duties to the committee. Section 79 portfolio committees have to report to the municipal council. In terms of Section 80 of the *Municipal Structures Act*, 1998 the municipal council may establish a portfolio committee from its members to assist the executive

mayor. The executive committee appoints a person from the executive committee or mayor committee to chair each committee, and may also delegate powers and duties. The portfolio committee reports to the executive committee or executive mayor in the manner prescribed by the executive committee or the executive mayor.

Mayor or Executive Mayor

According to Khalo (2013:584-585) the mayor - or in the case of a municipality, the executive mayor - must, in accordance with Section 52(a) of the MFMA, 2003 provide general political guidance over the fiscal and financial affairs of the municipality, and must establish a linkage between the processes required to review the Integrated Development Plan (IDP) and the municipal budget. Thornhill and Cloete (2014:77) state that only certain types of metropolitan, local and district councils may have an executive mayor, who is elected by the municipal council. Khalo (2013:585) further states that the mayor must ensure that, within seven months of the end of the financial year, an annual audit report is produced and tabled before the municipal council for consideration. The accounting officer, who is the municipal manager of the municipality, has to make public the report as well as request members of the local community to make presentations regarding the specific municipality's annual financial report. In terms of Section 56(2) of the *Municipal Structures Act*, 1998 the executive mayor must receive reports from the committees of the council. He has to forward such reports, with the necessary recommendations, to the municipal council, except if the executive mayor can dispose of a matter in terms of his or her delegated powers.

Municipal Manager

Section 62 of the MFMA, 2003 further provides that the accounting officer, who is the municipal manager, is responsible for managing the financial administration of the municipality. According to Craythorne (2006:193-194) one of the core functions of the municipal manager is the development of an economically effective, efficient and accountable administration, which administration operates in accordance with the relevant municipality's performance management system. In terms of Section 21(a) of the MSA, 2000 the municipal manager is responsible for

making public the oversight report adopted by a municipal council in accordance with the annual report.

Municipal Audit Committee

In terms of Section 166 of the MFMA, 2003 each municipality must have an audit committee that acts as an independent advisory body. Section 166 of the MFMA, 2003 states that the municipal audit committee must advise the municipal council, the political office bearers and the accounting officer on matters relating to internal financial control and internal audits; risk management; accounting policies; financial reporting; performance management; effective governance to ensure compliance with the MFMA, 2003; the *Annual Division of Revenue Act (DoRA)*, 2012; and other applicable legislation. The Mangaung Metropolitan Municipality's Audit Committee Charter of 2013 determines that its Audit Committee has specific duties and responsibilities towards the Internal Audit Unit, the Auditor-General, the Council and the Municipal Manager. These responsibilities can be summarised as follows:

- evaluate the financial statements of the municipality for reasonability, completeness and accuracy;
- in consultation with the Auditor-General and the Internal Audit Unit, review the integrity of the municipality's financial report processes, both internal and external;
- consider the Auditor-General's opinion on the quality and appropriateness of the municipality's accounting policies and that of its entities, as applied in the financial reporting;
- review the functionality of the municipality's Performance Management System and make recommendations, if any, to the Council;
- engage with the Performance Panel with regard to performance information for additional recommendations to Council;
- review the integrated risk management system of the Council;
- review the compliance to legislation by the municipality and make recommendations, if any, to the Council; and

- issue a report to be included in the annual report for any recommendation made to the municipality.

In light of the above, the audit committee should also report to the municipal council of a municipality on any issues raised by the Auditor-General of South Africa (AGSA), and should carry out any investigation into the financial affairs of the municipality or a municipal entity (Fourie and Opperman, 2011:99).

Municipal Public Accounts Committee (MPAC)

The Municipal Public Accounts Committee was established in terms of the *Municipal Finance Management Act, Circular 32, 2006* to assist the municipal council in holding executive and municipal administrations to account, and to ensure the effective and efficient utilisation of municipal resources. The Auditor-General of South Africa's 2012/2013 *Consolidated Report on Local Government* (2013:95) states that the primary functions of the municipal public accounts, amongst others, include the following: to promote transparency and accountability, and to ensure that financial resources are used in an effective and economic manner; to assess the contents of the municipalities' annual report, and to make recommendations to the municipal council when adopting the oversight report and annual report; to examine municipalities' financial statements and audit reports; to consider improvements; and to ensure that the recommendations of the Auditor-General of South Africa (AGSA) and audit committees have been implemented. The current challenges of functionality of accountability and oversight mechanisms within municipalities in the Free State province - with specific reference to the Municipal Public Accounts Committee and the Municipal Audit Committee of the Mangaung Metropolitan Municipality - will be discussed below.

CURRENT CHALLENGES RELATED TO ACCOUNTABILITY AND OVERSIGHT MECHANISMS WITHIN MUNICIPALITIES IN THE FREE STATE

The Auditor General (AGSA)'s 2012/2013 *Consolidated Report on the Audit Outcomes of Local Government* (2013:37) states that no municipality in the province received a clean audit report during the 2012/2013 financial year. The report further indicates that only four municipalities in the Free State province showed improvements, in that one municipality moved to an unqualified opinion with findings, while three municipalities moved from a disclaimer of opinion to a qualified opinion. The Auditor-General's 2012/2013 *Consolidated Report on the Audit Outcomes of Local Government* (2013:28-29) further reports that the main causes of poor audit outcomes in local government include the following:

- a general lack of political leadership to embrace their responsibility to guide and direct development performance, improving oversight and accountability, and to capacitate the Municipal Public Accounts Committee and other oversight and reporting mechanisms to fulfil their functions effectively;
- a lack of consequences for poor performance and transgression of local government due to inadequate responses to unauthorised irregular, fruitless and wasteful expenditure; and
- key officials lacking appropriate skills and competencies.

The lack of consequences for poor performance due to inadequate responses to high levels of unauthorised irregular, fruitless and wasteful expenditure within municipalities' in the Free State Province is a serious concern. According to Gericke (2016:4) unauthorised irregular, fruitless and wasteful expenditure for the Mangaung Metropolitan Municipality for the 2014/2015 financial year was R996 million, in comparison with R67 million in the 2010/2011 financial year. From the above one could argue that municipal councils and the accounting officer have not fulfilled their oversight function effectively, as they have not acted on poor performance and transgression such as financial misconduct and unauthorised irregular, fruitless and wasteful expenditure.

Another concern is that the Auditor General of South Africa's 2012/2013 *Consolidated Report on the Audit Outcomes of the Local Government* (2013:37) states that the impact of municipal public accounts committees throughout the country has been minimal in promoting transparency, good

governance, public accountability and oversight. Findings from the opinions and perceptions of members of the Municipal Public Accounts Committee showed that the challenges experienced include a lack of skills required to perform the oversight function, and limited budget allocations to effectively fulfil their duties. One could argue that, without proper budget allocations, the MPACs' efforts to promote transparency, good governance and accountability will remain minimal.

Findings from the opinions and perceptions of members of the Audit Committee of the Mangaung Metropolitan Municipality showed that no sanctions are taken against management for non-compliance with the MFMA, 2003. Another concern is that no attention is paid to keep to deadlines provided for supplying feedback to the Audit Committee. The information that is provided to Audit Committee members also lack substance. Furthermore, it is difficult for members of the Audit Committee to function without accurate, reliable information from management and internal audit units. Findings from the opinions and perceptions of members of the Audit Committee show that elements of corruption and mismanagement were concealed from the Audit Committee members. It also became evident that, in certain instances, the Internal Audit Unit and the Chief Financial Officer (CFO) were conspiring together to keep certain aspects secured. Audit Committee members also confirmed that they would read about mismanagement and corruption at municipal level in the local newspapers, but that such facts never transpired in formal Audit Committee meetings. On more than one occasion the internal audit units were asked to provide information with regard to the allegations of mismanagement and corruption, but to no avail (Anon, 2016:1-4). The above findings are supported by the findings of the Auditor-General of South Africa's *Consolidated General Report on the Audit Outcomes of Local Government 2012-2013* (2013:87), which states that not all audit committees of the metropolitan, district and local municipalities in the Free State province function effectively in terms of the required responsibilities. The above report further states that, in general, accountability is lacking. This is the result of the Audit Committee only being able to comment on information that is supplied to it by senior management and the municipal council. Furthermore, management often puts the blame on aspects such as a lack of human resources, lack of capacity and financial constraints as a result of having to pay the Audit Committee members. The review of financial reports and information to ensure compliance with legal and regulatory provisions is thus insufficient.

RECOMMENDATIONS AND CONCLUDING REMARKS

The above discussion emphasises the fact that accountability and oversight entails the proactive control mechanisms initiated by the legislature with the executive and administrative organs of state to encourage compliance with the statutory and legislative frameworks, and to ensure effective delivery on agreed objectives for the achievement of government priorities. It also emphasises the need to improve the administrative and financial performance of all municipalities. South Africa has an impressive legislative framework by which compliance at all three levels of government is guaranteed, but according to the *Twenty Year Review Report of Local Government 2004-2014* (2014:34), numerous challenges still persist in local government, such as the inability to improve in development performances, oversights, accountability and reporting mechanisms. Another concern is that public officials and political leaders are not being held accountable for their behaviour. The article emphasises that the impact of municipal public accounts committees (MPACs) throughout the country has been minimal in promoting transparency, good governance, public accountability and oversight. It is argued that, without proper budget allocations the MPACs, efforts to promote transparency, good governance and accountability will remain minimal.

In terms of Section 66(1) of the MFMA, 2003 each municipality must have an audit committee who does not form part of the administration. The purpose of the audit committee is to identify risks to which a municipality could be exposed, and to advise the municipal council. Dejectedly the committees created for this accountability mechanism have proved to be mostly ineffective. These committees are prevented from fulfilling their appointed tasks due to a lack of support by the key role players. Oversight and accountability are crucial in the maintenance of a stable and reliable public sector. In terms of Section 7 of the *Constitution of the Republic of South Africa, 1996* a municipal council must conduct its business in an open manner. It is thus argued that the audit committees are unable to perform their functions in full, as certain facts relevant to their reporting are concealed, resulting in the report function being inadequate and unreliable. Section 166 of the MFMA, 2003 determines that the municipal audit committee must advise the municipal council, political office bearers, the accounting officer and the management of the municipality on matters relating to internal financial control and internal audits; risk management; accounting policies; financial reporting; performance management; and effective governance, to ensure

compliance with the MFMA, 2003; the Annual Division of Revenue Act (DoRA); and other applicable legislation. Audit committees are unable to fulfil their mandated functions due to a lack of support from the management of municipalities, as these structures do not adhere to timelines, and they fail to provide adequate feedback to audit committees. Municipal institutions should support the audit committees that they have appointed. Transparency and good governance can only result from exposure to criticism, and from holding those in management positions accountable for non-adherence to the legislative framework. It is thus recommended that the audit committees' powers, as envisioned in Section 166 of the MFMA, 2003 be restored, and that they are given the necessary support to fulfil their mandated functions.

Specific weaknesses pertaining to the functioning of the committees have become evident. To this effect, it is recommended that the terms of reference of audit committees, as contained in the audit committee charters, should be reviewed on a regular basis. These terms of reference must include the deadlines for submission to auditors, treasury and executive authorities. These deadlines must be incorporated into the year planner of the municipality, and must be communicated to all relevant stakeholders. Furthermore, it is recommended that a role clarification be done. The audit committees do not report to management, but management must report to the audit committees. This is in line with their independent oversight function. This will also enhance the audit committees' ability to report back to the relevant governing bodies.

A hierarchy of reporting should be made clear in the audit committee charters. Measures are to be taken to assess and ensure the independence of audit committee members on an ongoing basis. The declaration of interests must be made and explained at each meeting. Political affiliation and public influence must not play a role in an audit member's appointment. The recommendations of the audit reports and evaluations must be taken seriously by the Department of Cooperative Governance and by the applicable legislatures. Audit committees must be made aware of the requirement that they should report on the quality of management and the adequacy of reports submitted in terms of the PFMA, 1999 and MFMA, 2003 and the *Division of Revenue Act (DoRA)*, 2012. It is also recommended that the significant role of the audit committees should be emphasised at all levels of government, as these entities play a crucial role in promoting transparency and accountability. Lastly, proper budget allocations to MPACs and municipal audit

committees must be made to enhance transparency, good governance, accountability and oversight.

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