



## A Reflection on Municipal Managers' Non-Compliance with The Municipal Finance Management Act (MFMA) in South Africa

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**ABSTRACT** According to the Auditor-General of South Africa (AGSA), from the financial year 2012-2013 to the 2019-2020, more than 75 percent of the municipalities in the country were non-compliant with crucial legislation. This was the case despite the country having internationally acclaimed legislation with exceptional measures and practices promulgating sound management of municipal financial affairs. Also, this was happening despite the AGSA's continuous recommendation since the financial year 2011-2012 that municipalities must improve their compliance with the MFMA and other applicable legislation. The study aims to identify and examine the factors influencing municipal managers' lack of compliance with the MFMA within South African municipalities. The findings in this paper show that non-compliance is common in South Africa's municipalities and that the MFMA itself creates opportunities for municipal managers to circumvent the prescripts of the legislation.

### INTRODUCTION

This study examines the factors influencing municipal managers' compliance with the Local Government's Municipal Financial Management Act (56 of 2003) (MFMA) within South African municipalities. The adoption and introduction of the Act aimed to "secure sound and sustainable management of the fiscal and financial affairs of municipalities and other institutions in the local sphere of government; to establish treasury norms and standards for the local sphere of government; and to provide for matters connected in addition to that" (Shuping 2021: iv).

Officials at the local government sphere, as in other spheres in the South African government, are mandated through the Constitution of the Republic of South Africa 1996 (the Constitution) to comply and to implement the norms and standards promoting, amongst other provisions, sound and sustainable management of municipalities' financial affairs (Hanabe et al. 2018: 168). In term section 60 of the Municipal Financial Management Act 56 of 2003 (MFMA), the municipal manager as the administrative head of the municipality is constitutionally mandated to assure that the established treasury norms and standards for the management of a municipalities' financial affairs are complied with by "the political structures, political office-bearers and officials of the municipality" (MFMA

2003: 38). Furthermore, section two of the Act outlines that the municipal manager must ensure compliance with transparency and accountability requirements, reporting requirements, the management of revenues, expenditures, assets and liabilities, budgetary, financial planning and coordination processes, borrowing requirements, supply chain management processes, ethical financial management practices, and other financial matters (MFMA 2003: 12). Thus, in 1999 during the "*Executive Council of the Western Cape v Minister for Provincial Affairs and Constitutional Development of the Republic of South Africa; Executive Council of KwaZulu-Natal v President of the Republic of South Africa*" cases (BCLR 1360 (CC)) on whether the appointment of a municipal manager by a municipality was constitutional, the Constitutional Court of South Africa dismissed the notion that the matter was unconstitutional and stated that the "the municipal manager is a key structure of a municipality and not merely a personnel appointment as contemplated in section 160(1)(d) of the Constitution" (Visser 2001: 1; Surty 2010: 21).

According to Surty (2010: 28), in terms of the MFMA, role-players such as the Mayor and the Chief Financial Officer (CFO) are delegated financial responsibilities. However, the Act significantly imposes the responsibility of the overall management of a municipalities' financial affairs on the municipal manager. The latter is evidenced in sec-

tion 118 of the MFMA, which prohibits the Mayor and CFO of a municipality from partaking in supply chain management processes. Also, section 52 (b) of the Act stipulates that the Mayor is responsible for overseeing the municipality's financial affairs, but they do not have administrative functions. Moreover, section 81 of the Act vividly outlines that the municipal manager delegates the responsibilities and duties of a CFO in a municipality. The legislative provision indicates that in terms of the MFMA, both role-players (that is, the Mayor and the CFO) are subservient to the municipal manager in ensuring compliance with the prescripts of the Act and managing the municipality's financial affairs. Thus, the municipal manager inherits the ultimate responsibility to ensure compliance with the Act within a municipality.

However, the AGSA's 2017-2018 audit report on municipalities' performances highlighted that non-compliance with local government financial regulations is all too often in areas in which the municipal manager is responsible (AGSA 2019: 23). Likewise, in 2020 the late Auditor-General of South Africa (AGSA) (Mr Makwetu) lamented that "South Africans have been numbed by the staggering numbers of wasteful, fruitless, unauthorised and irregular expenditure". Moreover, the "Expenditure suggests that those who persistently incur it, are not bothered for as long as there is no accountability or consequences" (Ndaba 2020: 1). Similarly, Mr V. Smith (the then Chairperson of the Parliamentary Standing Committee on the Auditor-General (SCAG)) highlighted in the 2013-2014 local government report that the AG has since the 2011-2012 audit report on municipalities' performances made recommendations on issues such as non-compliance with legislation. However, the recommendations were neither heeded nor implemented by municipal managers and thus specific findings continue to reoccur during the AG's audits (Matlala 2018: 9; Standing Committee on Public Accounts (SCOPA) (SCOPA 2018).

Thus, the AGSA in 2018 recommended that the leadership at the local government level be committed to their roles and duties, monitor compliance, and implement consequences for non-compliance with legislation (AGSA 2018: 19). Additionally, the AGSA averred during the 2018-2019 AGSA report on municipalities' performances that the local government has financial frameworks and guidelines in place however, the leadership has

consistently failed to apply them to enforce compliance, good administration, and consequences against errant officials who contravene legislation (AGSA 2020a: 71). Thus, Ledger (2020: 1) argues that the failure to comply with regulations or legislation represents poor governance and not necessarily gaps in the regulations or legislation itself. Ledger based his argument on the 2017-2018 AGSA's findings on municipalities' performances, revealing that only 8 percent of the 257 municipalities audited during the reviewed financial year (FY) fully complied with all applicable legislation. The argument implies that non-compliance with legislation results from officials' failure to implement or follow legislated provisions, amongst other factors. Thus, compliance with and implementing legislation likely depends on management's commitment to follow legislative prescripts (Donnelly 2018: 1).

The persistence of the above problems is concerning, given that the AGSA has repeatedly raised the same issues in the last 27-odd years. Despite the AGSA's effort to enforce compliance and provide remedial actions and recommendations, action still needs to be taken to solve these problems. If any action was taken, such measures have yet to yield the desired results. As the AGSA (2022: 5) puts it, "We have...seen little improvement in the area of financial management, despite consistently reporting the same deficiencies" for the past two decades. Despite the AGSA's efforts and recommendations for remedial actions, the problem of "non-compliance with legislation remains high, resulting in unfair and uncompetitive procurement processes, fraud, and payments for goods and services not received" (AGSA 2022: 5). Notwithstanding the above argument, it suffices to note that the AGSA accentuates the cause of non-compliance with legislation to various factors, including the lack of competencies, political interferences, lack of oversight, and municipal managers' failure to implement the AG's recommendations (AGSA 2018: 22). Conversely, Ledger (2020: 1) postulates that non-compliance with legislation results from two dominant factors, that is, officials' lack of financial management skills and the culture of normalising unethical behaviour in South Africa. Meanwhile, Bothoko (2017: 47) posits that non-compliance with legislation is amongst other factors because of the decentralisation of internal controls at the local government level, which often leads to poor internal control designs or non-existent inter-

nal controls. Different from the factors mentioned above, Makgotho (2020: 1) blames section 36(1)(a) of the MFMA for creating an opportunity for looting government resources. This section allows municipal managers to deviate from normal supply chain management processes and create opportunities for corruption, maladministration and embezzlement of municipal finances. Makgotho (2020: 1) argues that allowing deviation from normal supply chain management processes is a self-inflicted criminal offence many municipal officials take advantage of to break the country's laws. Nevertheless, the AGSA notes that although his office has previously reported on the root causes of non-compliance, most municipalities' senior managers did not sufficiently apply consequences for non-compliance, and in certain instances, did not investigate non-compliance, fraudulent activities and irregularities, and hence the level of non-compliance with legislation remains high at the local government level (AGSA 2018: 19). It is because of the above reasons that the objective of this study is to determine whether the MFMA itself has gaps that municipal managers can exploit or whether the problem lies with the role-player's failure to implement the Act. The following sections discuss the problems of non-compliance with the MFMA in South African municipalities.

### **Compliance Audits in the Public Sector**

In the South African public sector, Supreme Audit Institutions such as the AGSA have the Constitutional responsibility to conduct independent audit functions at all institutions or entities funded by the government (Van Niekerk and Dalton-Brits 2016: 121). In 1910, the colonial government, through the South African Act of 1909, promulgated the necessity to appoint an AG in the country's public sector (Wood 2014: 13). Section 132 of the South African Act of 1909 stated, "The Governor General in Council shall appoint a Controller and Auditor-General who shall hold office during good behaviour". However, it was only in 1911, through the promulgation of the Exchequer and Audit Act 21 of 1911, that the government explicitly outlined the roles of an AG and the regulations and processes that governed the auditing of public accounts (Matlala and Uwizeyimana 2020). The Act also established the principles the public sector had to abide by when administering

expenditures, debits and revenues and ensuring accountability over public accounts (Matlala 2018: 5). Given that conflict-of-interest situations could occur when different parties are dealing with money, the then AG (Dr De Loor 1985) and deputy AG (Loots 1985) insisted that the AG of the country should perform their functions independently. Thus, in 1993 after the Amendment of the Exchequer and Audit Act, the office of the then AG (Mr. Kluerver) was recognised as an independent body that performed its duties and executed its authority without fear or prejudice.

According to Mentz et al. (2018: 3), the Constitution of the Republic of South Africa 1996 recognises the AGSA as an external auditor mandated to audit all government institutions and entities financed through the national budget. Similarly, the AGSA is also referred to as "a Chapter 9 institution established by the 1996 Constitution as an oversight body responsible for overseeing the management of public finances on behalf of the parliament" (Munzhedzi 2016: 3). Likewise, the AGSA is an independent institution that "facilitates and navigates the path of efficient public financial management and accountability" within all public institutions and entities (Mathiba and Lefenya 2019: 532). Regarding section 188 of the Constitution, the AGSA is critical in facilitating audits and assessing reports on all government institutions and entities' accounts, financial statements, and financial management (The Constitution of the Republic of South Africa 1996: 59; Mentz et al. 2018: 3). Additionally, the AGSA strengthens democracy by annually tabling in parliament audit opinions, which feature an ascertainment on whether or not a public institution's or entities' financial statements are credible and reliable, accounts were recorded correctly and accounted for, funds were directed to planned activities, and lastly, whether due processes and procedures were followed when administering funds (Public Audit Act 25 2004: 6; Ogochukwu and Prosper 2014: 41; Dhansay 2019: 20).

Concernedly, even though the AGSA's audit functions are delineated in legislation such as the MFMA, which is internationally acclaimed to be exceptional in promulgating and enforcing good financial management, accountability, transparency, and compliance with generally recognised accounting standards, norms, and practices, recent local government audit outcomes reflect high levels of non-compliance with legislation (Mle and

Maclean 2011: 1372; Mathiba and Lefenya 2019: 532). According to the AGSA (2020: 1), for the past 15 years, municipalities in South Africa have been characterised by a culture of non-compliance with legislation. Khaile (2020: 114) concurs that “the problem of non-compliance with municipal finance legislation has been unrelenting and pervasive for many years in South Africa”. Khaile (2020: 114) further noted that numerous audit reports by the AGSA have consecutively highlighted that non-compliance with legislation is a recurring problem within municipalities. Similarly, a cursory review by Nzewi (2017: 2) of the AGSA’s audit outcomes on the municipality’s performances from 2011 to 2015 highlighted an ongoing culture of disregarding municipal financial legislation at the local government level. The reports revealed that more than 78percent of the municipalities were non-compliant with the legislation. Similarly, the AGSA’s 2018-2019 report on municipalities’ performances revealed that 91percent of the municipalities were non-compliant with legislation and that the non-compliance significantly contributed to irregular expenditure of R32.06 billion (AGSA 2020a: 17). Even though the AGSA has previously reported on the issue of non-compliance, the 2019-2020 audit report on municipalities’ performances revealed no significant improvements on the matter as during the reviewed FY, 86percent of the municipalities were reported to be non-compliant with legislation (AGSA 2021: 9).

Mahlangu (2020: 1) maintains that the culture of non-compliance is reported to be one of the contributing factors towards an “undesirable picture of billions of rands in funds allocated to municipalities being managed in ways that are contrary to the prescripts and recognised accounting disciplines.” This is evidenced in that only 7 percent of the 257 municipalities achieved a clean audit during the 2017-2018 FY and that irregular expenditure remained high at R25.2 billion from R29.7 billion in the 2016-2017 FY (AGSA 2019: 20). Notwithstanding the findings mentioned above, the problem of non-compliance was also noted by the AG who during the release of the 2018-2019 audit outcomes on municipalities’ performances, mentioned that “we remain concerned that only 2 percent of the municipalities are fully complying. This is despite the reporting we have done in this area, the red flags we have raised, and the many recommendations we have made” (Ndaba 2020: 1). Thus,

as early as 2012, the AG argued that the mere fact that year after year the same “accountability and governance challenges we had flagged throughout these years” continue to be reported indicates that the local government leadership is not committed to addressing nor remedying through provided recommendations the root-causes of audit findings (Deliwe 2019: 55).

Despite the legislation enacted to “secure sound and sustainable management of the fiscal and financial affairs of municipalities and municipal entities”, a legal framework such as the MFMA has not succeeded in curbing non-compliance with legislation at the local government level (Mle and Maclean 2011: 1372). Khaile (2020: 120) concurs that “evidently, the legal framework has not succeeded in creating an environment, culture and utilising of the MFMA processes and mechanisms to deter, detect and punish non-compliance effectively.” In support of the above statements, the AGSA (2021: 12) argued during the 2019-2020 report that “we have seen many initiatives, plans and strategies – even direct interventions by the national and provincial government – but these have had little effect. Short-term solutions such as consultants, administration, additional monitoring, rules and capacitation are not working”. This argument is based on the fact that initiatives such as the Local Turnaround Strategy (2009), the Operation Clean Audit 2014, and the enactment of the MFMA have not had significant success in curbing or addressing the pervasive issue of non-compliance with legislation at the local government level. In addition, this notion is supported by the AGSA’s 2019-2020 findings, which revealed that municipalities had incurred an accumulated irregular expenditure of R79.22 billion, which had not been dealt with over the years (AGSA 2014: 16; AGSA 2021: 9). Thus, it can be argued that non-compliance can amongst other factors be attributed to policymakers’ inadequate regard for aspects that can negatively influence the effective implementation of provisions (Madue 2007: 310). Contrary to the above argument, Mathiba and Lefenya (2019: 541) “have profusely argued that even the envisioned outcomes of well-thought-out, best planned, overwhelmingly supported and most promising policy initiatives eventually depend on what happens at the receiving end and how the target individuals interpret and act on them”. Similarly, Ledger (2020: 1) argues “that generally poor

governance in local government represents a failure of compliance, rather than any significant gaps in the regulation itself. This is, governance failures result from officials failing to follow legislated rules, rather than an absence of regulation". This argument is based on the observation that if municipalities such as the Midvaal Metropolitan Municipality in Gauteng' which was part of the 8 percent of the municipalities that obtained clean audits during the FY 2017-2018 can for four consecutive years achieve a clean audit, other municipalities should be following in the same footsteps. The finding suggests a lack of commitment from the leadership (including municipal managers) to ensure compliance with the prescripts of the MFMA.

In support of the argument above, the National Treasury argues that the issue of non-compliance is not that the MFMA is not working or sound. However, the issue and challenge are "in implementation and buy-in by councillors and municipal managers" (Standing Committee on Public Accounts (SCOPA) 2008: 1). The argument mentioned above is evidenced in that after all the years of reporting on non-compliance, 92 percent in the 2017-2018 FY- and 91 percent in the 2018-2019 FY, of the municipalities were reported to be non-compliant with the MFMA's prescripts. The contravening of financial legislation, amongst other factors, occurs because "municipal officials are fully aware that it is difficult to hold them accountable, and they continue to steal with impunity" (Neves 2021: 1). Thus, the AGSA is convinced that improvements are bound to follow if leadership can set the tone of zero tolerance for contravening legislation. By doing so, the government will create a perception that such behaviour as non-compliance with legislation will not be tolerated (AGSA 2014: 80; AGSA 2021: 12).

### **Municipal Managers and Non-compliance with the MFMA**

The MFMA contains explicit provisions for the management of finances. However, the AGSA's reports highlight that most municipalities in South Africa need to be more compliant with the prescriptions thereof. According to Ncgobo and Malefane (2017: 77), compliance refers to the adherence to set processes and procedures that govern an institution. Similarly, for Foorhuis and Bos (2011: 3), compliance is the Act of adherence to predefined

and explicit norms, standards, rules, procedures, legislation, or principles. In other words, compliance involves an individual's conformity to and behaviour following applicable regulations, rules, or set requirements. According to the AGSA, "compliance refers to adherence by auditees to the regulations to which they are subject. Conversely, non-compliance refers to acts of omission or commission by auditees, either intentional or unintentional" (Ogochukwu and Prosper 2014: 48). Khaile (2020: 16) further describes non-compliance as an act or behaviour contravening an organisation's rules, procedures, or regulations. According to section 55 (1) (b) of the Municipal Systems Act (MSA) 32 of 2000, the municipal manager as the head of a municipality is responsible and accountable for ensuring that the affairs of the municipality are administered in accordance with the Act and other applicable municipal legislation (Municipal Systems Act 32 2000: 58). Furthermore, section 55 (2) stipulates that the municipal manager as the accounting officer is also responsible and accountable for (a) "all income and expenditure of the municipality" (b) all assets and the discharge of all liabilities of the municipality' and (c) proper and diligent compliance with applicable municipal finance management legislation." (MSA 2000: 58). Read in conjunction with the MSA, section 60 of the MFMA stipulates that the municipal manager as the accounting officer is assigned the powers to "provide guidance and advice on compliance with this Act to the political structures, political office-bearers and officials of the municipality" (MFMA 2003: 38).

Fundamentally, the MFMA requires the municipal manager to ensure compliance with the Act and, in doing so, to act with honesty, rectitude, and in the municipality's best interests when administering its financial affairs (section 61) (MFMA 2003: 38). To ensure compliance with the prescripts of the Act, the latter requires that the municipal manager take all reasonable steps to ensure that resources are utilised prudently, effectively, and for their intended purpose (section 62) (MFMA 2003: 38). The latter further requires municipal managers to ensure that financial activities are recorded and reported (section 62). Furthermore, the latter requires municipal managers to prevent unauthorised, irregular, fruitless and wasteful expenditure and institute disciplinary measures for acts contrary to the prescripts of the Act (section 62). Additionally, the latter obli-

gates the municipal manager to ensure that the municipality has and maintains financial systems that effectively recognise and control financial activities (section 65). According to the latter, should the municipal manager not be able to execute their responsibilities in terms of the Act, “they must promptly report the inability, together with reasons, to the Mayor and the provincial treasury” (section 74) (MFMA 2003: 44). As is the case, reasons for non-compliance are not given by municipal officials. Thus, it is argued that those trusted to ensure compliance with legislation or address corruption are often also the culprits of contravening legislation (Mphendu and Holtzhausen 2016: 243).

Although the MFMA explicitly stipulates the responsibilities of municipal managers as far as compliance with the Act is concerned, the AGSA and other investigative bodies have on numerous occasions reported that non-compliance at the local government level is most prevalent in the office of the municipal manager (Makwakwa 2021: 1). The following are some of the cases of non-compliance reported at the local government level.

The municipal council suspended the former Municipal Manager (Jerry Mononela) of Dr Ruth SegomotsiMompoti District municipality in the northwest for making an unauthorised advance payment of “R161,06,472.20” during a municipal holiday to a service provider. This was in contravention of section 116 (2) (d) of the MFMA, which requires officials to report regularly to the council of the municipality on the “management of the contract or agreement and the performance of the contractor”. Moreover, the municipal manager should table in the council of the municipality the reasons for the payment amendment to the contract as required by section 116 (3)(a) of the MFMA (North-West News Online 2021).

Different from the previous case, the Northern Cape Hawks Serious Corruption Investigation team, on 2 June 2021, summoned to court the former municipal manager (Aubrey Baartman) of Nama-Khoi municipality in Springbok. The Hawks alleged that the municipal manager flouted the procurement process of an R79.9 million construction tender in 2013 and that he was involved in selecting the successful bidder, which allegedly “did not meet the requirements”. In this regard, it is alleged that the municipal manager contravened section 112 (1) of the MFMA, which requires a municipality’s supply chain management process to be “fair,

equitable, transparent, competitive and cost-effective...” (Hoo 2021: 1).

Different from the cases mentioned above, in 2018, the then municipal manager of Tshwane was suspended after a controversial irregular tender with GladAfrica valued at R12 billion. In this regard, the AGSA found that there was no separation of duties during the appointment of the service provider. The findings further revealed that the municipal manager determined the contract terms and the procurement processes to be followed. This was in contravention of section 115 (1)(b) of the MFMA, which requires the accounting officer to “take all reasonable steps to ensure that proper mechanisms and separation of duties in the supply chain management system are in place to minimise the likelihood of fraud, corruption, favouritism and unfair and irregular practices” (Evans 2019: 1).

Additionally, the AGSA’s reports from 2017-2021 revealed that less than 16 percent of the municipal managers in South Africa provided the required level of assurance that practical oversight functions over financial activities were performed, internal controls were adequately adhered to, and on whether the widespread non-compliance with legislation constituted any consequences against transgressors (AGSA 2017: 112; AGSA 2018: 18; AGSA 2019: 78; AGSA 2020a: 187; and AGSA 2021: 56). Based on the above discussions, it can be deduced that municipal managers’ non-compliance with legislation is also a result of intentional behaviour aimed at blatantly disregarding or circumventing legislative prescripts. Thus, it is paramount that the local government establish strategic measures to address the factors influencing municipal managers’ compliance with the MFMA and close the legislative gaps that municipal managers often exploit.

## RESEARCH METHODOLOGY

The nature of the research methodology utilised in this study was qualitative. Its literature review relied heavily on secondary data to provide pertinent answers for the study’s research objective. The reviewed literature was analysed to establish a theoretical framework that can be utilised to explore and explain the root cause of municipal managers’ non-compliance with the MFMA’s prescripts within the local government. Additionally,

the reviewed literature revealed linking patterns predominantly drawn from the AGSA's annual audit reports, which on numerous occasions noted the recurring disregard for legislative prescripts by municipal officials.

The population studied by the researchers included all the municipalities audited by the AGSA. The population consisted of 257 municipalities. Furthermore, this research studied audit outcomes and official reports covering the FY from 2010 to 2021. The reports released during these periods offer current information on the issue studied.

### **Ethical Consideration**

This paper observed all the ethical requirements for a study that requires no direct contact with research participants and did not gather information from the mentally disabled person or minor.

## **RESULTS**

Table 1 demonstrates the low levels of compliance with legislation at the local government level over the past eight years (2014-2021). A close analysis of the findings in Table 1 shows that more than 75 percent of the municipalities in South Africa do not comply with legislation, suggesting a blatant disregard for legislation (the disregard is typical in areas the municipal manager is accountable for). The findings further show that consecutive audit outcomes on municipal performances found that most of the municipal managers often failed to ensure compliance with regulations concerning the prevention of irregular, unauthorised, and fruitless and wasteful expenditure, consequence management, the management of procurements and contracts, the preparation of financial statements, and the provision of effective control over financial affairs. Indeed, the consistent pervasive reporting of the high levels of non-compliance with legislation implies that factors influence municipal managers' successful implementation and adherence to the MFMA within the South African local government.

### **The Root Causes of Municipal Managers' Failure to Ensure Compliance with Legislation**

Through various literature analyses, it suffices to note that the failure by municipal managers to effectively ensure compliance with and the implementation of the MFMA can be because of fac-

tors such as lack of capacity, decentralised controls, lack of punitive measures, and slow responses to audit findings.

### **Lack of Capacity**

It is noted that "those that are required to supervise and monitor adherence to fiscal management laws are not doing so or are not effective in the steps they have taken so far" (AGSA 2020a: 8). Ngobese (2017, in Shuping 2021) cites that in 2014 the Public Service Trainer's Conference mentioned that there is a shortage of financial skills at the local government level and that to close this gap, employees who did not meet the minimum requirements nor have the requisite qualifications were deployed into positions by political parties. In highlighting the lack of skills to manage municipal finances, the office of the presidency in 2020 reported that nearly half (53.7%) of the senior municipal officials in South Africa did not meet the minimum competency level prescribed (for senior positions, the requirements are that a candidate must have a degree and a minimum of 5 years in a senior position) (BusinessTech 2021). Likewise, in 2021 the AGSA reported in the year reviewed that 117 municipalities utilised consultants to report their annual financial performance because of a shortage of financial skills (AGSA 2021: 32). This suggests that critical officials need more skills and proper understanding to manage municipal finances. Thus, Uwizeyimana (2022) maintains that the cost of placing unskilled or incompetent personnel into positions can significantly affect the delivery of services. According to the AGSA (2021: 10), many municipalities' performance reports reveal that municipal officials lack the basic knowledge and discipline to, for instance, apply the correct procurement processes and procure at the best price, to establish effective asset protection measures and safeguard assets, to bill accurately and collect revenues, to manage payments, and to establish preventive control measures, and moreover allow for early detection of non-compliance. This is evidenced in that unwanted expenditures continue to grow. For instance, the year-end balance of irregular expenditures accumulated over the years amounted to R108.24 billion during the 2019-2020 FY. This figure represents billions that were not put to good use nor utilised following the prescripts of the MFMA. Thus, it can be argued that

**Table 1: Sample of municipalities' non-compliance with legislation over an 8-year period**

<i>Period</i>	<i>Movement from the previous year</i>	<i>Number of municipalities with findings on non-compliance with crucial legislation</i>	<i>Common areas of non-compliance</i>
2012-13 (report released in 2014)	Regressed	254 out of 278 (91%)	The prevention of irregular, unauthorised, fruitless and wasteful expenditure; the management of contracts and procurements; the quality of financial statements.
2013-14 (report released in 2015)	Improved	237 out of 278 (85%)	Consequence management; the management of procurements and contracts; the prevention of irregular, unauthorised, fruitless and wasteful expenditure; quality of financial statements.
2014-15 (report released in 2016)	Improved	222 out of 278 (80%)	The quality of financial statements; preventing irregular, unauthorised, fruitless and wasteful expenditure; managing procurements and contracts.
2015-16 (report released in 2017)	Improved	213 out of 278 (77%)	The prevention of irregular, unauthorised, fruitless and wasteful expenditure; the quality of financial statements; the management of procurements and contracts; consequence management; expenditure management.
2016-17 (report released in 2018)	Regressed	221 out of 257 (86%)	Preparing financial statements; preventing irregular, unauthorised, fruitless and wasteful expenditure; expenditure management.
2017-18 (report released in 2019)	Regressed	236 out of 257 (92%)	The management of procurements and contracts; preparing quality financial statements; preventing irregular, unauthorised, fruitless and wasteful expenditure; consequence management; creditors not paid.
2018-19 (report released in 2020)	Slightly regressed	233 out of 257 (91%)	Preparing financial statements, managing procurements and contracts; preventing irregular, unauthorised, fruitless and wasteful expenditure; managing consequences; expenditure management.
2019-20 (report released in 2021)	Regressed	221 out of 257 (86%)	Oversight and lack of controls (in areas such as procurement and contract management; and the prevention of unauthorised, irregular, fruitless and wasteful expenditure.

the paucity of financial management skills is apparent in municipalities' financial material errors, costing the government billions of rands each FY (Ensor 2018: 1).

Different from the argument made above, Kirsten and Fourie (2021) argue that "political influence and interference in the appointment of managers and other municipal executives contrib-

ute" to some of the common root causes of municipalities' poor audit outcomes (including non-compliance with legislation). This argument can be supported by a 2020 public report from the Nelson Mandela Bay Hawks, which reported that two senior municipal officials and five businesspeople were charged with fraud and corruption amounting to R56.4 million. It was alleged that the senior



municipal officials operated a syndicate to circumvent procurement processes to benefit specific suppliers. Furthermore, it was alleged that the senior officials-controlled appointments of persons in critical posts within the municipality. This was purportedly done to ensure a steady flow of unlawful payments and later distribute funds to other syndicate members (Mthethwa 2020). Such occurrences are some of the reasons why the seating president of South Africa ought to “speedily conclude a local government skills audit and change how municipal managers, chief financial officers and other senior officials are appointed” (refers to the deployment of cadres without following the merit-based approach) (The South African 2021).

On the other hand, it has been noted that cadres deployed without the necessary qualifications answer only to the political deployment committee that placed them into office (Hoffman 2018: 1). In such instances, the political party would require the cadre to prioritise the leader’s decisions over the municipality’s mandate. Such vulnerability can also pressure the cadre to condone unlawful acts deemed political mandates that must be executed. Thus, it can be argued that in a political space, “...those who put you in office have a total disregard for your professional reputation and risk. Their interest is simply to use you as a pawn in their game of self-interest” (Mohale 2018: 13). Based on the above findings, the study believes that deploying unqualified cadres into critical positions contributes to non-compliance with legislation, as is often the case within municipalities. The cadres must gain the skills and experience to implement the recognised accounting standards in the MFMA. Moreover, it can also be assumed that unqualified cadres are often prone to succumb to political pressure, which can lead to condoning non-compliance so that political heads can be satisfied.

### **Decentralised Controls**

According to the AGSA (2021: 18), “the state of internal control is still not improving”. The state is, despite numerous recommendations by the office of the AG requesting that municipalities strengthen their internal controls to improve the management of their financial affairs. The envisaged outcome of investing in a culture of control was that municipalities would mitigate the blatant disregard of processes, human errors, and unlaw-

ful decisions, ensure preventative measures, and significantly improve financial and performance management. However, the control status at the local government level shows that the recommendation still needs to be heeded. For instance, the AGSA’s audit reports reveal that for the past four years, from 2017 to 2021, less than 10 percent of the municipalities in South Africa fully complied with supply chain management regulations. The finding suggests that it is common for municipal managers not to have controls that ensure a fair, competitive, cost-efficient, and transparent supply chain process as required by section 112(2) of the MFMA.

According to Ncgobo and Malefane (2017: 75), if internal controls are effectively implemented and designed to mitigate on-the-ground factors, there is the likelihood of sound financial and performance management, improved accountability, prevention of financial losses, transparent reporting, and the enforcement of adherence to legislation. While it can be beneficial to have controls in place, the absence of a suitable control design, non-maintenance, and disregard for controls can create an environment conducive to contravening legislation without detection and consequences. The AGSA (2021: 56) argues that the widespread non-compliance with legislation and irregular expenditure at the local government level illustrates that inadequate and poor controls and non-existent control measures currently characterise the environment. This argument is supported by the AGSA’s 2019-2020 report on municipalities’ performances, which revealed that over the past four years (2017-2021), 34 municipalities improved their internal controls and that in the reviewed FY, the status of control for 37 municipalities deteriorated. These findings indicate that there has yet to be any significant improvement in municipalities’ controls. The AGSA attributes the poor state of controls within municipalities to management’s struggle to implement primary and routine transaction controls and their lack of commitment and inability to design sound control systems (AGSA 2021: 52).

On the other hand, Botlhoko (2017: 139) postulates that the poor status of controls at the local government is due to management’s reluctance or inability to design effective preventative measures and non-existent internal controls. The effect of poorly designed or non-existent control systems can be witnessed in reports continuously high-

lighting corrupt and fraudulent activities within municipalities. A forensic report by the KwaZulu-Natal CoGTA in 2016 noted weak controls in the municipality after the then-mayor and municipal manager allegedly defrauded the municipality in an R290 million tender, and both received a cash kickback of more than R1.5 million from the service provider. Another instance highlighting weak controls at the local government level was noted during the AGSA's 2019-20 report on municipalities' performances, which revealed that the Nelson Mandela Bay Metro incurred an irregular expenditure of R17.7 billion (AGSA 2021: 116). Additionally, in 2019, numerous analysts at the Financial Times Africa Summit in London claimed that, to date, over R1-trillion has been lost due to corruption (SABC News 2019). Thus, BusinessTech (2021) argues that the high non-compliance at the local government is "due to a complete collapse in controls" (BusinessTech 2020).

Despite the empowerment by section 62 (1) (c) (i) of the MFMA, which obligates the municipal manager to design, maintain, and implement an effective and sound control system within a municipality, the section, however, does not outline the criteria on how a sound control system should be designed. The above findings revealed that this has resulted in weak and, worse, the collapse of controls at the local government level. Furthermore, based on the above findings, weak controls were due to the lack of appropriate skills to design adequate controls, the lack of commitment to ensure proper controls, and the disregard for controls by municipal managers and other municipal officials. Therefore, it can be assumed that decentralising the development of internal controls at the local government level creates an opportunity for poorly designed preventative measures and controls that can be manipulated to condone corrupt or fraudulent activities.

### **Lack of Consequence Management Systems**

According to the AGSA (2020b: 21), "Consequences should be instituted against officials who fail to comply with applicable legislation, continuously underperform or are negligent, as well as against those whose actions and decisions cause financial losses". Sibanda (2017: 324) maintains that managers must implement consequence management to ensure accountability. This is because the

absence of consequences creates the perception that non-compliance or contravening regulations are acceptable. This is often the case at the local government level, as investigations on transgressions are seldom conducted to determine the culprit(s) liable for the wrongdoing. Enwereji and Uwizeyimana (2019: 149) concur that South African "municipal management cannot facilitate consequence management where persons and entities would be held accountable for deviations or financial misappropriation". Likewise, the AGSA's 2019-2020 audit report notes that the local government continues to see a lack of consequences for transgressions (AGSA 2021: 8). This is evident as, for instance, the report outlined that more than 60 percent of the municipalities failed to implement consequences for non-compliance with legislation during the reviewed FY. The report also revealed that no consequences were implemented for municipalities' irregular expenditure of R4.86 billion because of non-compliance with supply chain management prescripts. The report also revealed no consequences for the irregular expenditure of R3.58 billion incurred by the City of Tshwane and the City of Johannesburg during the reviewed FY. Thus, it can be argued that "the MFMA merely sets the basis for any action to be taken against municipal officials for acts of financial misconduct" (National Treasury 2017: 2). Contrary to the argument mentioned above, the AGSA maintains that the MFMA clearly outlines the steps and processes municipal managers should follow when the prescripts of the Act have been contravened (AGSA 2019: 37; AGSA 2020a: 194). In terms of sections 32, 95, 102, 173, and 175 of the MFMA, the accounting officer is responsible for ensuring that the person liable for the financial loss pays back the money and for instituting a criminal proceeding against the official who has allegedly contravened the prescripts of the Act. However, a report in 2020 by the Minister of Justice and Correctional Services mentioned that, since 2006 of the 67 officials in municipalities that have been prosecuted for contravening the prescripts of the MFMA, "only nine have been convicted" (Felix 2020: 1). Thus, the National Treasury argues that the lack of decisiveness and implementation of consequence management for non-compliance creates a perception and narrative in the public sector that contravening legislation is tolerated (Sidimba 2021). Therefore, the absence of consequences can contribute to circumventing or contravening legislative prescripts.

### Lack of Slow Responses by Management

For many years, the office of the AG has noted slow responses by management as one of the root causes of poor audit outcomes. For example, the AG's audit reports on municipalities' performances for the past three years (2011-2013) revealed that clean audits had remained the same by 5 percent. Hlongwane (2012: 1) concurs that "the slow progress towards clean audits is because municipalities are slow to respond to the Auditor-General's messages". On the other hand, the AGSA's 2017-2018 municipal audit report notes that the "undesirable state of deteriorating audit outcomes shows that various local government role players have been slow in implementing, and in many instances even disregarded, the audit office recommendations" (Mthethwa 2019: 1). This statement by the AGSA comes after regression in clean audits from 33 to 18 municipalities in the reviewed FY. Meanwhile, the 2019-2020 municipal audit report confirmed that the year-end accumulated irregular expenditure of R79.22 billion incurred by municipalities was, amongst other factors, due to municipalities' slow response and in-action to the AG's audit findings on corrupt and fraudulent activities, moreover, the abuse of the supply chain management system (AGSA 2021: 9). Additionally, the increase in material irregularities illustrates that municipal managers and other municipal officials still need to act towards responding decisively to findings. This was evidenced in that 91 percent of the municipalities responded slowly to the AGSA's recommendations. Furthermore, the slow response was evident in the continued increase in fruitless and wasteful expenditure from R2.07 billion to R3.47 billion (2018-2019 to 2019-2020) (AGSA 2021: 8). Thus, the AGSA argues, that if leaders are slow to or do not respond to findings, officials will be accustomed to non-compliance without consequences or remedial actions (Matlala 2018: 94).

### CONCLUSION

This study was undertaken to identify the factors influencing compliance with the MFMA, specifically regarding South African municipal managers. Based on the data reviewed in this study, non-compliance with the MFMA by municipal managers is three-fold. Firstly, it results from the blatant disregard of legislative prescripts. Second-

ly, it is due to the leadership's failure to implement fiscal legislation, and lastly, it is caused by the legislative gaps that create opportunities for non-compliance. Nevertheless, the findings of this research show that most municipal managers in South Africa need to gain the appropriate skills, knowledge and experience needed to administer the MFMA effectively. These problems could be attributed to the skills shortages within the local government due to rampant nepotism or non-merit-based cadre deployment in South Africa. The study also noted the decentralisation of controls as another factor influencing municipal managers' need for compliance with the MFMA due to officials' need for the necessary skills to design and implement control systems. The problem is worsened by a lack of consequences management, which created a culture of impunity and a perception that non-compliance is tolerated at the local government level.

### RECOMMENDATIONS

Considering the above findings and conclusion, the following strategies are recommended to improve compliance with the MFMA in South African municipalities:

- ♦ Leaders and oversight structures should, amongst their functions, focus on compliance matters and ensure officials perform their duties within the required legislative prescripts.
- ♦ The local government should establish a culture that enforces severe consequences against officials who deliberately or blatantly disregard or fail to comply with legislation. It is also essential that the action taken against transgressors be timeous to set a less tolerant approach towards non-compliance with legislation.
- ♦ CoGTA and provincial treasuries should develop a monitoring system to detect deviations timeously.

Finally, the AG should enforce the newly enacted powers of the Public Audit Amendment Act No. 5 of 2018, which emphasises that the recommendations of the AG are binding and that failure to implement them effectively and efficiently would result in punitive actions against the transgressor(s). Applying these acts effectively, efficiently and timeously without fear or favour would assist in send-

ing a strong and clear message that non-compliance will not be tolerated. Therefore, in the same way, the failure to implement the MFMA should not be tolerated, and the AG's failure to implement and enforce the newly enacted powers of the Public Audit Amendment Act No. 5 of 2018 should not be tolerated. Action should be equally taken against anyone who transgresses the law and anyone who fails to implement the law to curb the rampant impunity culture at all spheres of government in South Africa.

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