Exploring reasons for non-compliance with legislation in Rand West City Local Municipality.

by

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ABSTRACT

Perpetual non-compliance to financial regulations in local government has been a worrisome trend, as evidenced in the annual financial audit reports from the Auditor General of South Africa (AGSA). Annual audit reports continue to reflect a trend of unauthorised, irregular, fruitless and wasteful expenditure in local government, despite recommendations and remedial action against this trend. The aim of the research was to explore reasons for prevalent non-compliance with financial legislation audit findings in the Rand West City Local Municipality (RWCLM) and assess whether the accountability and oversight systems are failing to ensure financial compliance in the municipality. The study sought to further propose recommendations that might assist in improving compliance with financial legislation. The research applied various qualitative methods such as in-depth interviews, questionnaires, and focus group discussions to answer the research questions.

Findings from the study revealed that factors such as ineffective internal controls, inadequate and under-qualified staff in key senior positions, budget constraints, a negative organizational culture, and political interference in the affairs of the municipality were some of the major reasons RWCLM continued to report poor audit outcomes annually from the Auditor General's office. The study concludes with plausible recommendations and measures that could be useful to ensure future compliance with financial legislation.

Key words: **Audit findings, accountability and good governance, financial compliance, oversight structures.**

DECLARATION

I, Pheladi Maria Ramakgahlela Mhlomi, declare that this report is my own, unaided work. It is submitted in partial fulfilment of the requirements of the degree for Master of Management in the field of Public and Development Management to the Faculty of Commence, Law and Management in University of the Witwatersrand, Johannesburg.

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Pheladi Maria Ramakgahlela Mhlomi

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DEDICATION

This study is dedicated to my late mother, Onica Nthopeng Boshoga, my late brother, Bartholomew Follow Boshoga, and my late uncle, who became my father at the later stage of my life, Levy Makgarimane Makgatho, who all inspired and motivated me to never give up on my goals and dreams. The love you had for education and hard work will forever live on. May your souls continue to rest in eternal peace.

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We are who we are because of God the Almighty. He is worthy to be praised and all the glory be given to Him. God said we can have plans and goals for our lives, but He is the one who determines our steps to reach those goals. He promised to guide us along the best pathways, advise and watch over us. He indeed made it possible and kept His promises (Proverbs 16:9, Psalms 32:8 and Matthew 19:26). I do thank Him wholeheartedly.

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LIST OF ACRONYMS

AFS	Annual Financial Statement
AG	Auditor General
AGSA	Auditor-General South Africa
CFO	Chief Financial Officer
COGTA	Department of Cooperative Governance and Traditional Affairs
DM	District Municipality
DORA	Division of Revenue Act
GPT	Gauteng Provincial Treasury
IGR	Intergovernmental Relations
LGES	Local Government Equitable Share
LM	Local Municipality
MDB	Municipal Demarcation Board
MEC	Member of Executive Council
MFMA	Municipal Finance Management Act
MM	Municipal Manager
MPAC	Municipal Public Accounts Committee
MSA	Municipal Systems Act
MTSF	Medium Term Strategic Framework
PWC	Price Waterhouse Coopers
RSA	Republic of South Africa
RWCLM	Rand West City Local Municipality
StatsSA	Statistics South Africa
SALGA	South African Local Government Association

SALRC	South African Law Reform Commission.
SCM	Supply Chain Management
SDBIP	Service Delivery and Budget Implementation Plan
UIFW	Unauthorised, Irregular, Fruitless and Wasteful
WHO	World Health Organisation

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CHAPTER ONE

1. INTRODUCTION

1.1 Introduction

Local government across the globe plays a pivotal role in making sure that state's national developmental agenda is achieved. In particular, local government occupies a critical space in the socio-economic development of the different societies it serves (Constitution of South Africa, 1996). Elected officials and government servants in municipalities should work with their communities to develop plans, goals and visions for the future of their cities, towns, and villages (De Visser, 2009 & Onichakwe, 2016). This, therefore, encourages the expansion and application of different progressive policies and measures that bring this vision of socio-economic development to fruition.

Without proper structures, policies and institutions to ensure accountability, service delivery, and socio-economic development of communities, funds are hampered as they are either misdirected, wasted or irregularly spent. In South African situation, poor management of finances and irregular spending in local municipalities has been a cause for concern over the years as this has significantly impacted service delivery in the country (Africa Check, 2016; Koenane, 2017; AGSA, 2019; AGSA, 2020). Many municipalities have, over the years, recorded poor financial management and operational outcomes (AGSA, 2020). Many studies have sought explanations on why such poor audit outcomes in local government across South Africa have been a recurrent phenomenon over the years (Madue, Tsolo & Ramoabi, 2014). It is, therefore, crucial for contextual purposes to provide a synopsis and summary of the South African apartheid history, before and after in terms of local government functions. This is to understand how and why this trend of non-compliance has necessitated this study.

1.2 Background and Overview

The end of apartheid in South Africa in 1994, there was a new transition of government, a new democratic state, witnessed a significant change in terms of structure and operational matters of the republic. The majority of these transformative changes were implemented in local government/municipalities to adjust to the new inclusive dispensation (Ghobadian, Viney & Redwood, 2009). Prior to 1994, local government in each province was not uniform as each province had its own unique characteristics peculiar to the racial interests of the geographical setting. Local government was governed by provincial laws, and as such, their purpose and existence was largely reliant on and influenced by those laws.

In apartheid South Africa, Municipalities were governing small portions of land in specified areas of the country. Local municipalities were mainly found in the areas of white people dominancy where services were provided to the few in those urban areas (Klug, 2016). Their major function was to ensure reliable and constant electricity and water supply, refuse collection, and urban planning of mainly privileged white communities (Klug, 2016).

Under the theme of ‘own management for own areas’ as mentioned by De Visser (2009), these separate local authorities were able to maintain and sustain their different racial and segregationist policies of local government. A look at the above responsibilities of local municipalities shows that, in general, their mandate was confined to smaller and fewer responsibilities, and as such, they worked on small budgets which resulted in them being compliant with the expectation at the provincial level and eventually at national level (Klug, 2016) even though was different expectation from each province. This structure was crucial for the continued existence of the apartheid government as it ensured that its strategies and processes were followed consistently countrywide where non-compliance will not have tolerated (Klug, 2016).

A reading of the Constitution of the Republic of South Africa (1996), on subsection 152 and 153, contains vital progressive tenets on socio-economic development, democracy, inclusivity of marginalized groups, service delivery, and a focus on poverty alleviation in local governance. Furthermore, the new Constitution of 1996 sought to redress the socio-economic injustices of the apartheid government with putting more attention on the new South Africa becoming a progressive state (De Vries, 2011). To see this project to fruition, South Africa had to establish new municipalities that covered the majority of the country, a far cry from the apartheid system that focused on designated urban and peri-urban settlements for whites only.

South African Constitution specifically in Chapter 7 mandates the local government to be accountable, promote the socio-economic progressive of the community, and ensuring delivering of services in a sustainable manner (Constitution of South Africa, 1996). The Municipal Structures Act, 117 of 1998, was subsequently created to address this issue. This, therefore, implied that service will be delivered in a new dimensional, spatial Authority, where local municipal council are formed.

It was envisaged that this spatial propinquity would benefit the state in responding to local needs (Constitution of South Africa, 1996; Klug, 2016). Furthermore, local government would be autonomous , managing their own affairs such a budgets and financial management, recruitment of officials and focus on improvement of spatial and local economic development Therefore, this required provincial and national governments to have less authority over local municipalities to independently manage local matters and assign their resources in terms of the main concerns and priorities of the communities with the intention to improve service delivery (Constitution of South Africa, 1996; Ledger, 2020). Given such progressive initiatives and legislation towards this end, the following section briefly discusses how municipalities have fared over the years.

1.3 Local Municipalities Post-Apartheid South Africa

The year 1994 marked an end to an oppressive racial system that led to the marginalization of millions of indigenous South Africans. This was celebrated the world over due to the establishment of a new constitution that was regarded as progressive compared to other states (Tshishonga, 2021). The newly 1996 elected government had developed a developmental state model with the aim to redress inequalities of the previous regime with a significant focus on inclusivity and non-segregation. This entailed improving service delivery in formerly marginalized communities aimed to improve the livelihoods of the citizens through municipalities (Tshishonga, 2021).

In as much as this initiative was noble, people-centred and innovative, citizens have discouragingly felt let down by these local authorities for a long time. Statistics South Africa (2017), in a study, found that 75% of households generally felt dissatisfied as many local authorities consistently fail to meet budgeted service-delivery targets exacerbated by poor financial management. This has continued to occur despite strict local government laws that further encourages oversight and governance role (AGSA, 2019). However, it begs the question whether poor governance in local municipalities could signify disregard or simply poor legislative compliance. This could also suggest that governance failures, as shown by continuous poor audit outcomes, could be an indication that government officials disregard the laws and regulations. Hopefully, some of these questions shall be answered during this study.

1.4 Convergence of Auditing in Local Governance

Having given a brief background on the transition of local municipalities over the past few decades, it is now important to put this into context to carefully understand the topic under study. In 2019, Auditor General had shared his dissatisfaction with the audit outcome of the municipalities where 60% of the local authorities had negative audit results. Furthermore, these results also provided an indication that poor accountability has a way to also affect service delivery provision in the communities. Several municipalities are wasting massive amounts of money and fewer are instituting proper investigations into irregular spending (Wasserman, 2019).

Some of the root causes that resulted to poor performance of municipalities are due to the fact that unavailability of necessary skills to manage the finances of the municipalities, non-adherence to Auditor General recommendations, lack of knowledge on the oversight responsibilities by Municipal Public accounts committees (AGSA, 2019). Although thirty-three (33) municipalities out of two hundred and fifty-seven (257) audited, they received reports of annual financial statement free from material misstatement without matters of emphasis (clean audit outcome) in the 2018/19 year end, a year later, 2019/20 financial year, eighteen (18) municipalities had regressed from clean audit outcome to unqualified audit opinion with matters of emphasis (AGSA, 2019). The AG's report also noted that three (3) municipalities spent more than what they budgeted for resulting to unauthorised expenditures (AGSA, 2019) in addition 34% of municipalities recorded expenditure that exceeded their income. This resulted in a combined deficit of R5.8 billion (AGSA, 2019). These figures show wasteful expenditure that could have been better used for service delivery provision in the respective precincts.

Provision of basic services to communities in a sustainable manner and being accountable to the state and its communities is the intention of local government White

Paper and the Constitution of South Africa. Ensuring that municipalities strive to be capacitated financially and administrative in order to deliver the said objectives (Constitution of South Africa, 1996). However, poor management of finances and irregular spending in local municipalities has been a cause of concern over the years as this has significantly impacted service delivery in the country (Africa Check, 2016). The country experiences numerous community protests against municipalities every year, reflecting lack of service provision by local government. The year 2018 reflected the highest number of protests ever recorded since 2005. An organisation that deals with local government data, Municipal IQ, taken note that 2014 had the highest number of protests against the municipalities with 191 protests however four years later, 2018, hit the highest number of protests with 237 protests against municipalities in the country (Savides, 2019). Gauteng province has logged the highest number of services delivery protests, with KwaZulu Natal being second and followed by Western Cape province during 2019, but there has not been a considerable spike relative to 2018.

In Gauteng province, AGSA (2020) noted that municipalities still struggle to monitor financial checks and balances that will necessitate financial compliance and accountability in line with the AG's expectations. As of 2020, municipal financial compliance outcomes remained stagnant in the Province, particularly on the Municipal Finance Management Act (MFMA) 56 of 2003, Section 32, which is evident in annual audit outcomes that continuously reflect irregular, fruitless and wasteful expenditure (AGSA, 2019). Although the municipalities have oversight structures and Provincial departments for support and advice on financial compliance, annual audit outcomes by the AG's office reflect otherwise.

It might be perceived that municipal officials are taking advantages of the processes and procedures when there is constant disregard to improve controls within municipalities. Municipalities are encouraged by AGSA to have processes available to detect non-compliance with regards to MFMA and circulars communicated by the National Treasury. It is expected that municipal councils and their administrations strictly adhere to the prescribed legislation highlighted above. However, to date, despite these requirements, no significant remedial action to address the external auditors recommendations has been taken seriously by the majority of municipalities, and there is still a continuation of non-compliance with this piece of legislation, as highlighted earlier.

Studies conducted have highlighted that lack of competent skills, poor financial management and internal controls, weak leadership, and ineffective governance are key elements of continuous non-compliance to legislation and repetitive poor audit findings by AGSA in local municipalities (Ojo, 2009; Madue, Tsolo & Ramoabi, 2014). Therefore, this study seeks to follow Nzewi (2017), who suggests that further study is needed in order to explore the relationship between compliance, internal controls, accountability systems and factors highlighted above. This could further be useful in understanding and uncovering other factors that hinder municipalities in addressing issues of non-compliance.

In addition, the increase in financial irregularities in municipalities persists despite the availability of Chapter 9 institutions, such as AGSA and Public Prosecutor of South Africa (PPSA), to monitor accountability. In particular, AGSA's office is expected and mandated to report on all spheres of government with the intention to encourage transparency, a culture of being accountable and good governance in the government sector and its public entities. (Constitution of South Africa, 1996).

The Constitution of South Africa, section 188 (1), outlines that the AG must audit and provide reports and opinion on the fair presentation of the annual financial statements, the quality of the performance information report and weather the information submitted is compliant with legislation. Once the audit report has been issued to the municipality, it is expected that the municipalities put remedial actions in place in order to address matters highlighted by the AG in the report as required and guided by Municipal Finance Management Act (MFMA, Section 131 (1). The mayor of a municipality must ensure compliance with this subsection (Nzewi, Ijeom, Sibanda & Sambumbu (2016). Each municipality must put corrective mechanisms in place and take remedial action to address the AG's findings and ensure compliance with respective legislation promoting clean and transparent audits. Issuance of corrective and remedial audit measures are thus an indication of a functional democracy that should hold public entities accountable and thus improve service delivery as envisaged by the constitution of the land. Having provided a broader context, the following section provides background information on the focus of study, i.e., Rand West Local City Municipality [herein referred to as RWCLM].

As highlighted above with evidence from municipalities across the country, the preceding sections will narrow down to the focus of the study – RWCLM. The history leading to the establishment of RWCLM and its financial performance shall be discussed to provide a contextual framework that necessitated this study.

1.5 Amalgamation of Randfontein local and Westonaria local municipalities to one local municipality, Rand West City Local Municipality

After consultations and extensive deliberations between various stakeholders, the Municipal Demarcation Board (MDB), an organisation that is mandated to determination and re-determination of municipal borders and precincts in South Africa, published its decision to re-determine the Randfontein and Westonaria local municipalities into one local municipality. This decision was published by the National Department of Cooperative Governance and Traditional Affairs in 2015, under Section 14(5), Notice of the Municipal Structures Act, 1998 (Act 117 of 1998). The Act outlines the processes of change in terms of dissolution of current two municipalities to one municipality. On the 3rd of August, 2016, both local Municipalities were officially disestablished and amalgamated into one municipality known as the Rand West City Local Municipality.

In the 2016 local government elections, two local municipalities in the West Rand District Municipality, Randfontein LM and Westonaria LM, were merged into Rand West City LM. Although before the merger, West Rand District Municipality (WRDM) had motivated for the West Rand Metropolitan due to serval reasons, amongst others, the integration of systems for the good services of the communities. However, the Municipal Demarcation Board (MDB) rejected the proposal influenced by opinions from various political parties that hinted towards the unviability of a metropolitan municipality. Therefore, MDB opted for the merger of Randfontein LM and Westonaria LM (Municipal Demarcation Board 2013).

Some myriad of factors influenced this decision which shall be outlined further in the preceding sections of this study. However, to provide context, some of the other factors included governance and legal issues, finance; integrated planning; and infrastructure and service delivery. However, the focus of this study dwells primarily on financial matters. The Member of the Executive Council (MEC) for Local Government and Traditional Affairs in Gauteng at the time, Jacob Mamabolo, argued that the merger would ensure an improvement in service delivery aided by the fact that sharing resources would ensure a more effective municipality (Mathebula, 2014).

Figure 1.1. Gauteng Municipalities, after the 2016 local Government election

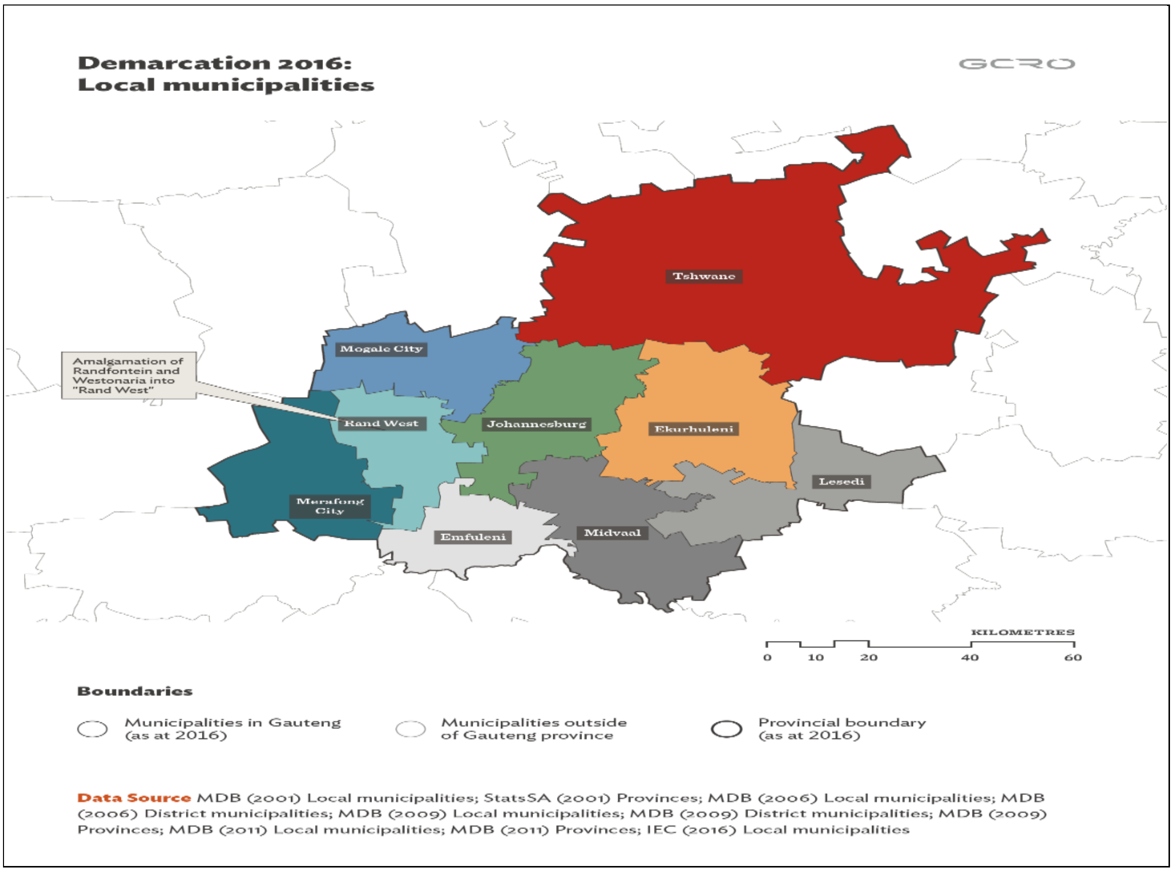

Figure 1:1. Gauteng Municipalities after the 2016 Local Government Elections. Post the 2016 local government election Randfontein LM and Westonaria LM were merged municipality of Rand West City LM which resulted to 11 Gauteng municipalities instead of 12 municipalities.

Source: GCRO Demarcation Map (post 2016 election*)*

Figure 1.2. Rand West City Local Municipality after the 2016 merger

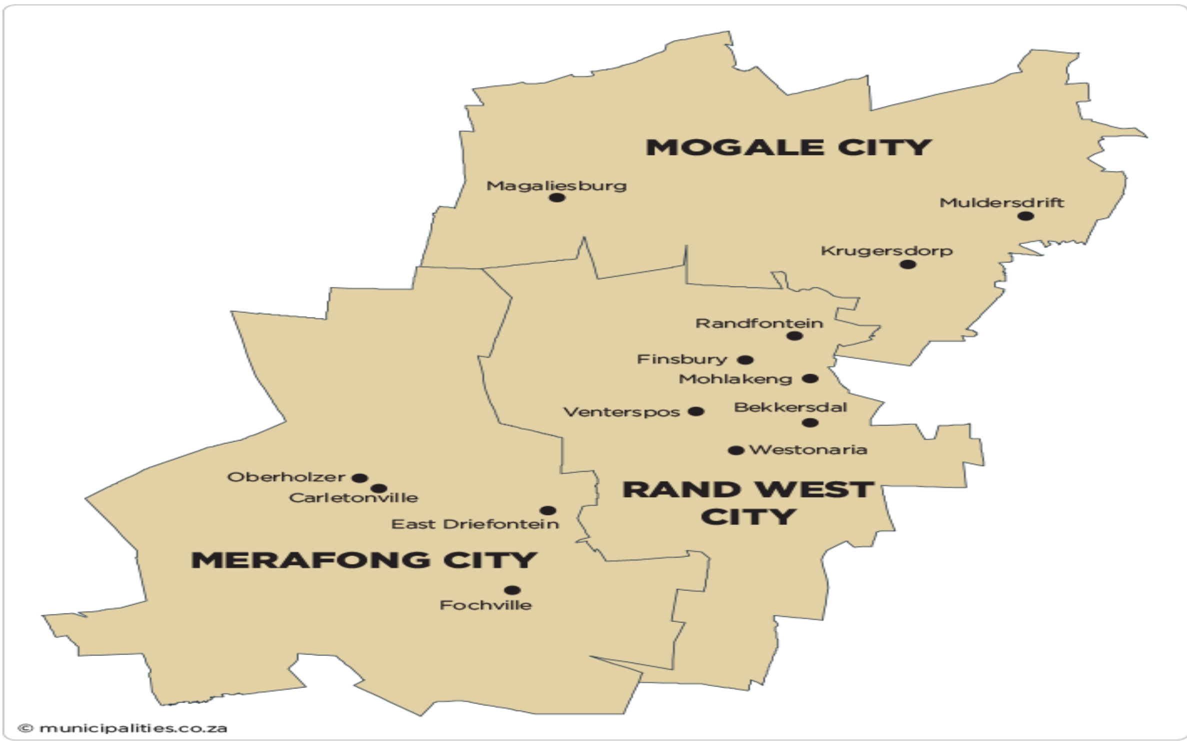

Figure 1.2. The Municipality has been amalgamated after the Local government elections in 2016 from Randfontein local and Westonaria local municipalities to Rand West City Local Municipality. Rand West City Local Municipality, a category B municipality within the West rand District municipality in Gauteng Province.

Source https://municipalities.co.za/demographic/1236/rand-west-city-local-municipality

1.6 Problem Statement

The intention of a merger is to ensure the municipality becomes viable and improve its economies of scale including the improvement of financial and administrative capabilities to provide service delivery to communities (Ncube & Monnakgotla, 2016; Kanyane & Koma, 2006). However, the previous analysis of findings from the Auditor General from 2015/16, 2016/17 and 2017/18 financial years revealed that municipalities are facing similar challenges irrespective of the results and classification of their audit outcome and the merger that took place. Material misstatements, performance and financial management are some of the instances that reflect lack of compliance with the Municipal Finance Management Act (AGSA, 2019).

The purpose of auditing financial statements is to validate if financial statements of the municipalities are fairly represented. Table no.1.1 below shows that RWCLM has regressed with regard to audit outcomes from 2016/17 to 2018/19 financial years and recent qualified material statements in the 2019/20 financial year.

Table no. 1.1 Trends of audit outcomes for RWCLM from 2016/17 financial year to 2019/20 financial year

Audit Outcomes for the 2016/17, 2017/18, 2018/19 and 2019/20 financial years for the Rand West City Local Municipality			
2016/17	2017/18	2018/19	2019/20
Unqualified	Unqualified	Unqualified	Qualified

Source: AGSA audit reports for RWCLM from 2016/17 to 2019/20 financial year

Significant issues raised by the Auditor-General under the financial period under discussion speak on factors such as Procurement and Contract Management, Financial Sustainability, Restatement of Corresponding Figures, Material Losses, Audit of Performance Information, Annual Financial Statements, Expenditure Management, Revenue Management, and Asset Management and ICT Issues (AGSA, 2020).

The municipality under study reflected poor and inconsistent findings on the quality of financial statements/non-compliance under section 122 of the MFMA. Furthermore, the basis for the qualified audit opinion was property, receivables from exchange transactions, employee benefit obligation, finance lease obligation, commitments, payables from exchange transactions, cash flow statements, financial instruments, plant and equipment and revenue management (AGSA, 2020). These above signals issues of non-compliance and poor financial audit outcomes are the ones which this study seeks to investigate.

RWCLM has, over the years, had its fair share of media criticism as a result of poor financial management and wasteful irregular expenditure. To mention a few, RWLCM in 2018 was reported to be allegedly failing to pay debtors and third parties millions in that financial year, including Eskom, for the supply of bulk electricity under the pretext of a failure to collect revenue. This resulted in recommendation made to municipal council by municipal public accounts committee to write off amounts more than R200 millions of irregular and wasteful expenditure incurred in the 2016/17 financial expenditure (Fengu, 2018).

The same committee further recommended that RWLCM should investigate and recover more than R427 thousand from government officials fingered in the scandal (Fengu, 2018). Another R12.5 million wasteful expenditure was recommended by the same committee to be investigated. The examples highlighted above are just a tip of the iceberg showing how such vast amounts of money can go to waste.

Interestingly enough, years after these recommendations to investigate, prosecute and recover these funds, no official has to date been investigated with some exceptions of the three officials that were found guilty by the Palm Ridge Magistrate Court for stealing R3.5 million from the workers' savings scheme (Makhafola, 2021). However, some officials that the municipality had recommended to be investigated include opening a criminal case against the previous Westonaria, head of administration, Thabo Ndhlovu, for scoring a contract worth R500 000 in the Sakhingomso Transaction. A criminal case was also supposed to be opened for the previous head of finance, Vincent Khefa, for deliberately not stating that he holds a directorship position in the company of Sakhingomso. Former Randfontein supply chain manager, Geoffrey Matiju, was also fingered for misrepresenting information after he lied to the municipal council committee that all the audit trail information were resolved and decided on prior to the merger of the two municipalities (Fengu, 2018). A year later, RWLCM in the AGSA 2019 report had an increase of R325 million in unauthorised expenditure.

Irregular, fruitless and unauthorised expenditure across municipalities continues to affect service delivery. This study seeks to understand why RWCLM perform poorly with regard to compliance despite recommendations and remedial action from the AG.

This municipality is best suited to gain different perspective on the issues of compliance from RWCLM officials as a representative of local government officials explaining their experiences in the municipality and insights on the daily operations. It is foreseen that results from this research will not only contribute to the knowledge gap but might also assist the national government and relevant stakeholders with information that might help in curbing and possibly proffering plausible recommendations to the problem that has necessitated this research.

1.7 Purpose Statement

The aim of this qualitative research is to explore reasons that explain failure to comply with legislation governing Rand West City Local Municipality despite the transparency generated by the AG's reports. The study also evaluates the relationship between compliance with legislation and the municipal accountability systems.

1.8 Research Objective

To provide the contributing factors to the non -compliance to the financial legislation by the Rand West City Local Municipality.

1.9 Research Questions

1.9.1 Main Question

1. Why does RWCLM continue to reflect non-compliance with legislation in the annual audit reports from AGSA?

1.9.2 Sub Questions

1. How does non-compliance with financial legislation indicate failure of accountability systems in local government?
2. In what way do national and provincial departments influence municipal financial compliance?
3. How does compliance or a lack thereof relate to municipal accountability systems and practices in Rand West City Local Municipality?

1.10 Research Methodology

This section emphasises the processes and tactics used in the study and the various mechanisms used in gathering data for analysis. The research used a qualitative study merely because it is exploratory in nature and seeks to answer an occurring phenomenon. This approach considered the complexity and the dynamics of local government sphere and other related contextual factors. The research utilised key informant of the municipality with a semi-structured interviews tool to collect data. This allowed the researcher to gain information directly from municipal officials and councillors in Rand West City Local Municipality. As shall be shown in the data analysis chapter, the key informants chosen for the interviews provided sufficient information on why there is a consistent increase in the number of compliance issues raised by AGSA.

1.11 Overview of the Chapters

Chapter 1: Introduction and Background. Provides a brief introduction and overview of the research, the research problem, reasons and context of the research undertaken.

Chapter 2: Theories of Compliance and Governance. Forms the literature review that touches on theories and a comprehensive, relevant review of literature pertaining to governance and financial mismanagement in local municipalities in South Africa.

Chapter 3: Methodology and Design. Forms the research methodology, which outlines how data for the study was collected, a justification of the research methods chosen, and how the data was eventually analysed to answer the research questions.

Chapter 4: Results and Findings. The discussion of this chapter the data analysis and outcomes of the study process. This section outlines a detailed analysis of the data collected from the participants and how the information collected was suitable for the study.

Chapter 5: Discussion of finding. This chapter provides demonstration and analysis of the outcomes. The results are represented in accordance with themes as formed. Furthermore, the results are linked with the literature review as outlined in the previous chapter.

Chapter 6: Conclusion and Recommendation. The chapter concludes with an overall summary of the report and provides suggested recommendations and areas of possible future research on issues to do with compliance in local government.

CHAPTER TWO

THEORIES OF COMPLIANCE AND GOVERNANCE

2. LITERATURE REVIEW

2.1 Introduction

This chapter outlines a synopsis of key challenges facing most local government institutions in present-day that have resulted in poor audit outcomes from the AGSA's office. Numerous narratives and studies have attempted to explain why this is a recurrent annual phenomenon concerning reports from the AG's office. In reiteration, the role of municipalities is mainly to push forward the socio-economic development of the various communities they serve guided by the national development priorities of every nation.

Therefore, this chapter provides a discussion against a backdrop of an array of theoretical structures that pursue to investigate the connection between poor audit outcomes and local government performance. Rand West Local City Municipality was assessed in this context based on overarching themes identified in the study such as accountability and good governance; regulatory compliance; non-compliance; organizational culture; and ethical behaviour of public servants in local government.

2.2 Accountability and Good Governance

The role of the Auditor General (AG), amongst many other duties on accountability, is to validate whether the pubic funds were utilised effectively, efficiency and for its initially intended through an audit (AGSA, 2019). Governance is most legitimate when democratic principles such as transparency, accountability to the electorate, and public participation are incorporated effectively (Adagbabiri, 2015). Principles of accountability and transparency dictate that public officials and their entities must account and provide feedback to the communities they serve about how the funds were utilised. (Koenane, 2017).

Measuring performance of municipalities, some governance values and standards such as rule of law and accountability are being considered since it is the ideas of democracy. These principles are a foundation in measuring municipal performance (Adagbabiri, 2015). The office of the AGSA was established as a Chapter 9 institution to promote public accountability by conducting annual financial audits in state institutions to determine the level of regulatory compliance, overall accountability through auditing and to build public confidence (AGSA, 2020). Accountability and transparency are essential elements of encouraging democracy and good governance. It, therefore, follows that effective monitoring and oversight of fiscal functions of municipalities should be under the eye of the office of the AGSA to pursue the critical value of public accountability and good governance.

2.3 Regulatory Compliance

To reiterate, compliance seeks to account for how an organisation ensures that its employees adhere to legal and regulatory requirements (Root, 2017). Requirements for compliance can be in the form of legislations and policy frameworks as well as business processes or institutional policies, procedures, and guidelines (Benedek, 2012; Nzewi, 2017; Notshulwana Matebese, 2021). However, it has been shown that a disregard for conforming to compliance can result in the imposition of sanctions or punitive measures and restrictions to ensure compliance (Root, 2017; Langevoort, 2017). These compliance failures are complex, but there is a need to narrow the components as they have considerable implications in the general corporate governance structure (Root, 2017; Notshulwana Matebese, 2021).

In a related study in Greece, Etienne (2011) noted that part of the reasons for the collapse of Greece's governance structures involved multiple instances in which non-compliance with legislation at the macro-level was observed. In the same light, it is therefore essential to maintain a multiple cause approach when assessing failures linked to non-compliance and be cognisant of issues such as psychological and social aspects that might influence the above (Langevoort, 2017). The same goes for Kuperan & Sutinen (1999), who have also emphasised the need to view compliance not only from an economic theory perspective but also from a socio-psychological perspective as these factors are arguably intertwined. For this reason, the preceding sections are worthy of discussion in a bid to understand and unpack compliance and non-compliance by individuals in an organisation.

2.4 Organisational Culture

Organisational culture is considered as a collective way of thinking and acting by employees within an organisation where there are reciprocal expectations (Serpa, 2016). Organisational culture can be negative or positive, which amongst others, includes participatory involvement of employees in decision making, communications to employees on internal controls related policies and procedures, punitive measures and consequence management and motivational/encouraging efforts to ensure performance and compliance to legislation. Previous studies conducted by Ahiauzu (2013) and O'Donoghue, Stanton & Bartram (2011) have indicated that the type of culture the organisation encourages or instils influences compliance legislation and adherence to introduced internal controls. Chidiac (2013) further adds that to promote behavioural change, including compliance to legislation in the organisation, a new culture of working together with employees needs to be introduced to improve performance.

2.5 Internal controls

Internal controls in a municipality are crucial as they govern and guide officials on how funds should be used and outline how to effectively comply with legislation on public entities (Ngcobo & Malefane, 2017). Similarly, internal controls also assist in ensuring that governance requirements are adhered to by officials (Mladin, 2014). Effective management of internal controls inhibits wasteful expenditure by ensuring that budgets are spent in areas that have a massive influence and contribution on service delivery. This, in turn, improves accountability due to compliance with internal controls that ensure that quality of annual financial reports are prepared and presented in a timely and accurate manner (International Federation of Accountants, 2013).

Morehead (2007) and Khumalo & Edoun (2021), on the other hand, argues that the absence of effective internal controls and accountability systems has negative implications to compliance with legislation, and this fosters opportunities for the abuse of public assets, funds and, in turn, leads to corruption which is detrimental to the tenets of accountability and good governance. Such evidence has consistently been reported annually in the AGSA's audit reports that reflect this worrying trend.

2.6 Ethical Behaviour and Non-Compliance

Every organisation subscribes to a particular code of ethics that all employees are expected to adhere to. As such, it would be futile to negate the topical issue of the ethical behaviour of public officials in municipalities if one is to understand non-compliance. A common narrative that comes to light when citizens speak of service delivery and how they perceive the performance of their local municipalities is corruption. As was discussed earlier in Chapter One, a survey by Statistics South Africa (2017) noted that significant sample of households amounting to 75%, generally felt dissatisfied as many local authorities consistently fail to meet budgeted service delivery targets exacerbated by poor financial management and corruption.

The general assumption was that citizens felt that public servants prioritised their selfish interests and self-aggrandisement to increase their wealth at the expense of service delivery. Hence unethical conduct was thus fingered as a major cause of lack of compliance in municipal councils. The narrative also maintains that given an opportunity, municipal officials also assess the pros, cons, course of action and its benefit to determine to either act in an ethical or unethical conduct (Lachman, 2007) Examples of such include awarding of contracts in supply chain management, failure to disconnect outstanding utility accounts, and diversion of funds to other areas that benefit public officials.

A local municipality is specifically designed to address and achieve specific socio-economic goals. One of the primary functions is basic service delivery provision to people as outlined in the Municipal System Act No. 32 of 2000 (Sikhakane & Reddy, 2011). Therefore, to ensure the goals are achieved, public officials must strictly adhere to a prescribed set of regulations that guarantee its success. To comprehensively analyse why the municipality under study continues to record poor audit outcomes, it is critical to assess whether public officials are adhering to legislation on accountability and good governance. This leads to the next section, which seeks to link the concepts discussed above to a theoretical framework used to answer the research questions.

2.7 Theoretical Framework

2.7.1 Compliance Theory

Compliance theories seek to explain why individuals, institutions, states and firms either comply or do not comply with laws and regulations governing their various operations (Etienne, 2011). There are different approaches to compliance (Étienne, 2011). A socio-economic approach to compliance aims to account for both tangible and non-tangible motivation(s) that enable one to either comply or not to comply (Sutinen & Kuprean, 1999). The goal-framing approach focuses on social approvals, perceptions, preferences and environmental influences affecting compliance (Étienne, 2011).

However, for the study, compliance theory developed by Etzioni in 1968 that focuses on the performance of organisations was used as a lens for analysis. This is because its approach articulately integrates ideas of management models and addresses various power structures and systems within an organisation that affect the performance of employees (Lunenburg, 2012).

This theory of compliance remains pertinent today despite its formulation over half a century ago. The global world we live in today is complex, vibrant and ever-changing. Scholars over the years such as Magat & Viscusi (1990) and Mitchell (2008) have noted that in addition to internal dynamics in an organisation Etzioni (1968) spoke to, consideration should also be placed on how other external factors also affect compliance. Root (2017) alludes to the same sentiment by showing how external issues such as the political climate in a country coupled with how the rule of law is respected affect compliance. It, therefore, provides a nuanced and contextual understanding peculiar to each focus of study.

To recap, Etzioni's (1968) theory comprises three levels/types of power and involvement in responses to compliance with legislation in organisational structures. The below table indicates the linkages between the type of involvement versa via the type of power in organisation that influences compliance.

Table No 2.1: Etzioni's different categories of compliance

Type of involvement	Type of Power			
		Coercive	Utilitarian	Normative
	Allentive	X		
	Calculative		X	
	Moral			X

Table 2.1: indicates the type of involvement and type of power in the organisation that has influences on compliance

Source: Adapted from Lunenburg (2012).

The first, coercive power, is when there is a use of force, infliction of pain and fear to achieve compliance. In such an organisation, compliance with legislation is guaranteed though detrimental to some extent.This is so mainly because officials' involvement in tasks and organisation results in alienation, mistrust and anger (Lunenburg & Ornstein, 2012).

The second is utilitarian/remuneration power which is used when there is an encouragement of remuneration or additional benefits to employees in exchange to comply with legislation. This type of power is used to incentivise or promise rewards to employees to adhere to legislation. Ultimately, it is beneficial to both the organisation and the employee (Lunenburg & Ornstein, 2012).

The third is normative power, which depends on the officials and the organisation's shared values and beliefs. In this setup, public officials are driven by a moral obligation to comply as they share common and mutual beliefs with the rest of the organisation. Their compliance in this regard is based on a moral "right" to follow suit and comply (Etzioni, 1968).

The sections above attempted to discuss the various concepts in academic literature that speak to lack of compliance in municipalities. The theory of compliance by Etzioni (1968) is still applicable in contemporary studies as it shows how the behaviour of employees in an organisation is influenced by an array of factors discussed above. Having provided the concepts and theoretical framework, the preceding sections link the two and provide evidence of how these ties to non-compliance in local government.

Audit outcomes of RWCLM also provide a reflection and trends of the performance amongst others compliance performance municipality.

2.8 Reasons for non-Compliance in Local Government

A body of work on governance and accountability in South African local government institutions and municipalities, emphasises the need to practice compliance with key legislation and promote capacity development (De Visser, 2009a; Erasmus & Visser, 2011; Klug, 2016; AGSA, 2019; AGSA, 2020). Non-compliance with legislation governing accountability has arguably resulted in an increasing trend of unauthorised, irregular, fruitless and wasteful expenditure in most Gauteng municipalities (Savides, 2019). Non-compliance, unauthorised, irregular, fruitless and wasteful expenditure, as highlighted previously, serve as evidence that municipalities in Gauteng still have fundamental issues to resolve in order to attain clean audits. While the theory of compliance attempts to explain the behaviour of employees in a broader sense, it falls short in accommodating external factors that may not have been anticipated at the time it was postulated.

The world today is dynamic, and it follows that contextual factors differ on how plausible explanations to a problematic situation +can be justified. Very little academic literature has attempted to assess the role of personal moral beliefs and other external influences and lived experiences of public officials' influence compliance. Arguably, this can therefore be an area for future studies. At the time of this study, such factors were considered, and those peculiar to the South African context will be discussed below.

2.8.1 Appointment of Staff in Key Positions

The appointment of staff in key senior positions within local government has also been identified as another area for non-compliance (Ledger, 2020). The importance of having qualified personnel in these critical positions cannot be overemphasised. This explains why the National Treasury and the National Department of Cooperative Governance and Traditional Affairs (NDCOG) have guidelines in this regard, i.e. the Municipal Regulations on Minimum Competency Levels updated in 2018, Regulations on Appointment and Conditions of Employment for Senior Managers and the annually published Notice on Upper Limits of Total Remuneration Packages Payable to Municipal Managers and Managers Directly Accountable to Municipal Managers.

These guidelines are clear and specific on required qualifications, experience for job titles such as senior management like municipal managers, chief financial officers, etc. However, a 2018 report on local municipalities noted that less than 50% of key staff outlined above met the bare minimum vital qualifications for the posts despite the availability of clear and mandatory regulations from the National Treasury and National DCOG that speak to this subject (AGSA, 2019). Such an example, amongst many others, shows how non-compliance is prevalent despite the availability of laws and regulations specifying conduct. One, therefore, question is posed that why local municipalities continue to fail with regard to compliance?

2.8.2 Capacity Development

According to Draai & Oshoniyi (2013), non-compliance can also be attributed to a lack of capacity or skillset to interpret and correctly apply the required knowledge applicable to a specific set of legislation. Similarly, Khambule (2020) argues that the complexity and clarity of words in a certain piece of regulation significantly or indirectly affects how correctly that regulation would be applied into practice. Put into context, it would not be far off to assume that most government officials in local municipalities are not well-versed in what is expected of them most of the time. This could explain why they fail to adhere mainly because of the complexity of the pieces of legislation (Blaser Mapitsa & Landau 2019).

2.8.3 Budget Constraints

Another school of thought stated that lack of compliance in local authorities countrywide speaks to the issue of the availability of limited resources and tight budgets. Draai & Oshoniyi (2013), in a study, noted that at times local municipalities fail to fill critical posts for senior management positions because they are financially unable to pay them their salaries since they have budget constraints. For example, 23% of all municipalities in 2018 across the country could not afford to hire a permanent municipal managers, while 14% could also not afford a permanent chief financial officers.

However, on a contrary, Basdeo (2012) identified functions that are performed by local government whereas constitutionally they are functions to be performed by another sphere of government, referred to as “unfunded mandated”, are issues that add to non-compliance with legislation. Furthermore, the functions that does not come with financial backing, it defeats the purpose of service delivery and as a result compliance will be compromised due to insufficient funds in the municipality's bank account (Khumalo & Mokate, 2007).

MEC Maile during media briefing in April 2022, indicated that RWCLM is amongst municipalities with unfunded budgets as it did not meet the funding of expenditure criteria stipulated in terms of Section 18 of the MFMA. Furthermore, it is one of the municipalities that was unable to meet its financial commitments including paying ESKOM and Rand Water. With than said, delivering on its primary mandate has been a challenge for this municipality.

For instance, in some areas in Bekkersdal at Westonaria, community members were left without water for days or they had to walk for more than 20 minutes to collect water (Liefferink, van Eeden, Wepener, 2017). This resulted in the municipality being party to non-compliance the legislation, National Water Act, no.36 of 1998 and the Constitution of South Africa.

However, decline in economy, closing down of mines, high unemployment rate of 39% and performing unfunded mandate are some of the contributing factors that are causing deterioration in revenue collection for the municipality (RWCLM IDP, 2020).

Municipalities are perpetually non-compliant with legislation where fruitless and wasteful expenditures emanate from interest incurred to major creditors such as ESKOM and Rand Water as they are not paid within 30 days due to cash flow constraints. Although with payment arrangements were made with the said creditors, the municipality is on the interest free provided that they honour the payment terms and conditions.

The fruitless and wasteful expenditure incurred due to interest and penalties contributed to R20 million in municipalities across the country (AGSA, 2017). These non-compliance issues pose risks to the municipalities as a going concern, liquidity issues and their ability to meet their immediate needs to service communities. The credit-control policies of municipalities are underestimated as there has been constant debtors that are not paying their debts on time which strains the municipality in terms of cash inflow which has implication in creditors payment period that exceeds the 30 days' payment period.

2.9 Chapter summary

The chapter offered a plausible explanations and reasons why in a broader scope, local municipalities in present-day South Africa continue to report poor audit outcomes from the AG's office. A discussion of the numerous narratives backed by analysis through a theoretical framework was provided. The discussions in the chapter have largely pointed out that non-compliance with financial regulations and a failure to implement recommendations from the AG's office suggests that this is the main reason for such outcomes. As such, various compliance theories have been highlighted, including Etzioni's (1968) theory on compliance that centres on how an organisation operates. This theory is particularly pertinent because it examines the various management models within an organization and internal power dynamics and their influence on compliance.

A literature review on reasons for non-compliance pointed out many other factors that may also affect compliance with legislation in an organisation. Such factors that came to the fore include political influence in internal affairs; appointment of unqualified staff in senior key positions; lack of capacity development; budget constraints and limited resources; organisational culture and finally, ethical behaviour of public officials in municipalities. In conclusion, it is envisaged that information gathered from the research will be scrutinised against these factors to explain why RWCLM, as the focus of the study, continues to report poor audit outcomes. Therefore, the following chapter will give a comprehensive discussion of the various research study techniques and the data analysis process and how this best suited the nature of the study.

CHAPTER THREE

METHODOLOGY AND DESIGN

3. RESEARCH METHODOLOGY AND DATA COLLECTION

3.1 Introduction

This chapter outlines how data for the study was collected and a justification of the research methods chosen, and finally, how the data was analysed to respond the research questions. Since the nature of the study was qualitative, it was necessary to use of semi-structured interviews to elicit as much in-depth and informative knowledge from key participants working in the municipality under study. The data collected from the interviews was transcribed verbatim and coded for themes. Several recurrent themes emerged, and these were used to answer the research questions (backed by academic literature) that necessitated the purpose of the study. However, results of such shall be outlined in the preceding chapter. The following sections will provide a detailed description of the data collection process, inferences to scholarly guidelines on the research process and limitations encountered during the research process.

3.2 Research Methodology

3.2.1 Key informant interviews

The research followed the approach adopted by Babbie & Mouton (2001) that provides insider's viewpoint and understanding of the key informant views through question that were posed during the in-depth interviews, which attempted to understand the world through the lens of the participants (Greef, 2011). The interviews allowed the researcher to obtain information directly from the key informants in RWCLM who know what is going on in the municipality. It was expected that the key informants' chosen for the interviews would provide sufficient and in-depth information and first-hand knowledge, understanding and motivation on why there was a consistent increase in the number of compliance issues raised by AGSA in the previous financial audits. To provide a more comprehensive and balanced understanding, staff from the AG's office were also interviewed in a bid to shed more light or provide context on the reports emanating from their office that reflected municipal legislative compliance in the RWCLM.

The study adopted a three-tier interview schedule to engage these informants. The interviews provided significant ways to explore new ideas that may not have been expected before the research. The idea was to generate questions from the key informants' responses in an interactive process. This, in turn, provided room to further probe informants for much deeper information for use in the study. In alignment with De Vos (1998), this method was crucial as it is concerned with understanding rather than explanation. He indicated that the quantitative research is about discovery of new ideas, finding new leads and not just verification and confirmation processes (De Vos, 2001: 244).

3.3 Research Tools and their Application

The qualitative study employed a semi-structured method; however, specific set of questions were constructed and sent ahead of time to allow the respondents an opportunity to express their views. The intended semi-structured interviews aimed to get information about the respondents' experiences as well as provide an opportunity to get clarity on the information provided during the interviews (Babbie & Mouton, 2001; Vandermause, 2011). Therefore, the semi structured interview guide was used to guide the interviews questions of the key informants in the Municipality. To be noted that this research commenced in March 2020 when the country moved to Lockdown Level 1 of the current COVID-19 pandemic. As such, face to face interviews were successfully conducted during November and December 2020 under strict World Health Organisation (WHO) and South African COVID-19 protocols and guidelines.

3.3.1 Sampling and Sample Size

This study employed purposive sampling, which according to Patton (2002), is a non-probability sample which involves the identification and selection individuals best suited in the study and topic taking into consideration their knowledge, expertise and experiences on the subject matter. (Cresswell, 2011). As such, this one case study was used, and purposive sampling was considered because the researcher expected that studying it would reveal similar patterns that could be applied to other cases (Patton, 2002). To recap, AGSA's findings, as outlined in the introduction, focus on all the municipalities in the country, with evidence stating that the majority had poor audit outcomes.

3.3.2 Sampling Frame

A sampling frame is defined as a list of sampling units from which a sample is drawn (Cresswell, 2011)). The list consists of geographical areas, institutions, individuals or other units. The sampling frame for this study was drawn from six Gauteng local municipalities (Category B) in terms of section 155(1) (b) that provide basic services to communities. AGSA, in the financial years under study, consistently raised issues of non-compliance to financial legislation

The sample consisted of 10 key informants, i.e. six municipal officials directly involved in the internal controls processes of RWCLM that daily engage with compliance with legislation in their line of work. Two councillors who are Section 79 committee members were also selected particularly for the oversight functions they provide as prescribed by law. The remaining participants who had vast experience in auditing Gauteng Category B local municipalities came from the AG's office.

In line with research ethics, it is noteworthy that all informants were older than 18, mixed-gender, and all had more than five years' experience in local government, and thus well acquainted with compliance with financial legislation. This was important to obtain different views and perspectives of officials, councillors and AG's staff over the specified period under study.

3.4 Process of Analysis

Audio from in-depth interviews was transcribed verbatim. Following the works of Attride-Stirling (2001), the second approach took a more exploratory perspective, where the researcher considered and coded all the data allowing for new impressions to shape the researcher's interpretation in different and unexpected directions - thematic network analysis. This enabled the researcher to familiarize themselves with the data. The process entailed reading and re-reading the data in its entirety, in the process making notes and writing summaries of each transcript or piece of data that was analysed. The aim was to condense all this information to key themes and topics that could shed light on the research question. The data was then coded for common, salient and significant themes used to answer the research questions.

3.5 Positionality, Limitations, Feasibility

3.5.1 Positionality

At the time of the study, the researcher was employed as a Director in the Department of Cooperative Governance and Traditional Affairs (COGTA). Therefore, there was a risk that could incline towards bias and dishonesty on the part of the respondents. This would be explained by the fact that local municipalities expect financial support as outlined in the constitution of South Africa specifically Section 154. National and Provincial Government support municipalities in order to reinforce municipal ability to provide services to communities and ability to manage its own affairs within its legislative powers.

To mitigate the risk of bias, a disclaimer was communicated upfront that there is no connection between the study and the support being provided to the municipalities by COGTA. In addition, the researcher used an outside-inside perspective to manage positionality within the research study. This was done to ensure that the chosen sample would not include participants that provided reports directly to the researcher, but rather participants that provided reports to another different unit within the Department. On the contrary, being employed in COGTA was a strength as it enabled the researcher to obtain first-hand information and placed in a better position to question and assess the responses and reasons provided in the scope of the research.

3.5.2 Limitations

The researcher had an established working relationship with RWCLM and the office of the AG. As such, participants were likely to provide reservations in providing accurate information that could later contradict the formal data submitted to the Department (COGTA). To mitigate this, it was emphasized that what has been formally reported to the Department will not be used as secondary data to the interview nor be part of the confirmation process. It was also made clear that the study was independent from what the Department (COGTA) used as their source of information.

The study intended to include municipal council committee members; however, due to their non-availability, the officials working with the council committee were also interviewed to get the view of council committee officials. Furthermore, the study did not include the views of the communities in the financial non-compliance but only municipal officials and the office of the Auditor-General.

Lastly, the research findings identified from RWCLM are unique to their circumstances and thus cannot be generalized to mean that all municipalities across the country perform the same.

3.5.3 Feasibility

The scheduling of interviews was prearranged to take place during working hours at the participants' offices. Although the identified municipality and AGSA offices were at different locations within Gauteng, they were within reach to conduct the interviews and successfully complete the study.

3.6 Ethics, Confidentiality, Anonymity

3.6.1 Ethical clearance

Ethical clearance and approval were attained from the WSG Human Research Ethics Committee before the study took place. Prior approval was also obtained from RWCLM before the study commenced. All data collected is stored in an electronic filing system with a password and will be destroyed after five years.

3.6.2 Confidentiality and Anonymity

Confidentiality and anonymity are central to ethical research practice, particularly where human participants are involved. The study made every effort to ensure that data cannot be traced back to the participants by ensuring that the researcher complies with the principles which protect the dignity and privacy of every individual throughout the study.

3.7 Reliability, Dependability

3.7.1 Reliability

The study's chosen approach was vital in ensuring that results are reliable, in a sense that, should the research be repeated under the same conditions, the results can be reproduced. However, there is no certainty of the same results as compliance with financial legislation changes over time, as reflected in AGSA's previous reports depending on the remedial measures municipalities have put in place.

3.7.2 Dependability

The dependability of the procedures are difficult to validate however, the produced document would allow an outsider to audit and perhaps critique the research process (Polit, Beck & Hungler, 2001).

3.7 Chapter summary

This chapter outlined in detail how data for the study was collected, and a reasonable justification of the research methods and data analysis was provided, backed by academic literature to sufficiently answer the research questions. In recap, semi-structured interview guide was employed as a tool to elicit as much in-depth and informative knowledge from key informants in RWCLM. The interviews were transcribed verbatim and coded for recurrent themes. These were therefore used to answer the research questions (backed by academic literature) that necessitated the purpose of the research. The following section will provide a synopsis of the study results and subsequent findings.

CHAPTER FOUR

RESULTS AND FINDINGS

4. RESEARCH RESULTS AND FINDINGS

4.1 Introduction

This chapter outline themes and results from the study obtained through the research techniques discussed in the previous chapter. The chapter gives a point of discussion that links the findings to the research questions and its aim as outlined in the introduction chapter. Information was gathered from the various research techniques was coded into major recurrent themes (thematic analysis). In summary, major theories and plausible explanations that came to the fore when investigating poor audit outcomes in local government touched on good governance and accountability, regulatory compliance, non-compliance to financial legislation and ethical behaviour of public servants and its effect on non-compliance. These shall be discussed in greater detail in the preceding sections.

4.2 Historical Performance of Rand West Local City Municipality and Compliance to Financial Legislation

First and foremost, municipal performance, in most instances, is determined by the National Key Performance Indicators (NKPI) set out in terms of the Local Government Municipal Planning and the Performance Management Regulations of 2001 and Section 43 of the MSA. The NKPIs are linked to the National Outcomes and Integrated Development Planning Strategic Document. It should be emphasised from the onset that this research's focus is not on performance management, but the sole focus is to investigate reasons for poor audit outcomes with regard to financial compliance.

RWCLM has, in the past years, been performing well with regard to financial compliance compared to other municipalities across the country. However, there are repetitive findings that the AG has always raised in the municipality under study, which point to repetitive non-compliance over the years, necessitating the need to conduct this study (AGSA, 2019; AGSA, 2020). This study used financial data from the 2016-2020 financial years as the scope of the investigation. The table below provides data that shows a brief and precise depiction of the major factors that pointed to non-compliance in the municipality.

4.3 Key Areas Reflecting Non-Compliance

The table above it is areas of non-compliance issues for four consecutive years in the RWCLM

Table No 4.1: AGSA 2016 -2020 Audit Report on non-compliance issues for RWCLM

Non- compliance issue	2016/17	2017/18	2018/19	2019/20
Expenditure management	√	√	√	√
Consequence Management Section 32(2) of the MFMA	√	√	√	√
Procurement and contract management related SCM Regulations	√	√	√	√
Human resource management and Compensation	√	√	√	√
Performance information	√	√	√	√

Source: adapted from 2016-2020 AGSA audit reports

To get a nuanced understanding and an analysis of the findings outlined in the table above, the researcher deliberately selected participants that could speak more from an informed position as insiders in the municipality, as shown below.

4.4 Profile of the Respondents

The data collected through interviews was obtained from the officials listed in the table below. The total number of employees and councillors interviewed were seven out of the 10 sampled. Therefore, the response rate was 70% which doesn't pose a challenge (in terms of reliability) because additional literature was used to complement non-responsive participants from the sample.

4.4.1 Profile of Key Participants for the Study

The table no. 4.2 below indicates the key participants used this research. These partakers included are in different administrative levels within the municipality, some are in senior and middle management positions, administration positions, council committee members, external stakeholders and AGSA

Table no 4.2: Categories of key informants interviewed

Respondents	Years of experience in RWCLM	Working in the compliance environment	Unit Represented
Official A.	5 years	Yes	Auditor General of South Africa
Official A	3 years	Yes	Municipal Council Committee
Official A	8 years	Yes	Internal Audit
Official A	15 years	Yes	Performance Management
Official B	8 years	Yes	Performance Management
Official A	4 years	Yes	Property Management
Official B	8 years	Yes	Property Management

4.5 Presentation of Findings

The data collected will be presented in different categories, i.e. recurring themes that are complex from the interviews. The list below was used to direct the study on areas in non-compliance specifically.

4.5.1 Specific Areas and Issues under Focus

- Importance of compliance in the Rand West City Local Municipality
- Reasons for non-compliance to financial legislation by officials
    - Lack of competent skills and qualified officials in leadership positions
    - Political meddling in administrative compliance roles,
    - Non-availability of budget and human resource capacity and;
    - Negative organisational culture
        - Non-participation and involvement of officials
        - Absence of policies to encourage financial compliance
        - Disregard for AGs findings, recommendations and remedial action
- Role Players to financial compliance
    - Role of national and provincial government on financial compliance

    - Role of oversight structures
    - Role of executive management in the municipality
- Improvement to the compliance systems and value chain
    - Improvements for role players to enable financial compliance
    - Improvement for the challenges faced by the municipalities.

4.5.2 Importance of Compliance in the Rand West City Local Municipality

Literature has indicated that compliance to legislation is perceived differently in different contexts, and this has inadvertently affected service delivery in local government (South African law Reform commission, 2014). As has been highlighted in previous chapters, it has been a challenge in municipalities to ensure compliance. Through this study, there was a need to assess how the RWCLM has institutionalised compliance to ensure that officials understand its importance.

Many countries on the continent have similarly invested funds in local government in a bid to improve financial governance, performance compliance and service delivery, but just like South Africa, these initiatives have failed to achieve the expected results (Ghobadian, Viney & Redwood, 2009; Lufunyo, 2013). Compliance with legislation improves internal processes and systems that ensure service delivery. This has, however, not been the case in RWCLM due to absences of human resource capacity, knowledge of compliance and good financial management (Van Rensburg, 2014). Furthermore, the officials within the Municipality have conceded that sometimes officials comply after numerous follow ups, explanations or because of the relationship the colleagues have built amongst themselves.

Official B: Performance Management

"Sometimes it depends on how the Head of Department communicates his/her departmental compliance dates and areas of compliance, then officials respond according to their understanding. For others you have to go office to office to ensure that people comply and the problem is when they start personalising the compliance issues as your compliance dates and areas whereas it is the municipality's compliance areas and dates, not mine."

Official B: property Management

"People know when they need to submit their reports to Council, National and Provincial COGTA for instances, monthly reports and quarterly reports and annual reports which that is compliance. So, people know, especially when you are the custodian and knowledgeable, it will be easily picked up."

4.5.3 Compliance and Service Delivery

The first question posed was in relation to finding out whether financial compliance influences provision of basic service in the municipality. This was to assess assertions in literature that argue that financial compliance improves accountability, service delivery, and consumer satisfaction (Nzewi, 2017; PWC, 2007; Root, 2017). However, in RWCLM, some officials interviewed seemed to have a different perspective on compliance and its correlation to improved service delivery, as seen in the excerpt below.

Official A: Property Management

> *"it improves in a way that on financial aspect it is accounted for, but at times compliance can delay service delivery. In such a way that somebody's house might burn today, and you will only repair it after eight months."*

Official A: Performance Management

> *"Provincial and National Treasury force down compliance and lay down rules that we need to comply with. So from their side they want us to improve our systems and controls, but on the ground at the time, it may become a hinder on where, especially when you get institutions that are in the financial distress."*

It can be noted from the excerpts above that both respondents agree to the notion that, to a greater extent, service delivery improves when there are proper processes, systems and procedures in place. They concede that this improves accountability as funds are channelled in the right direction. However, following bureaucratic procedures, on the other hand, delays effective service delivery as unforeseen events (houses burnt) are not budgeted for in time. While it is the responsibility of Management to provide shelter and decent accommodation to the community, its hands are often tied due to budget constraints and the need to follow procedures by the book. Therefore, this could explain why most communities feel dissatisfied with the services they receive, as highlighted in the survey discussed in chapter two on consumer satisfaction (StatsSA, 2017).

However, common responses indicated that indeed compliance could lead to improved service delivery, as shown below:

Official B: Performance Management

> *"No, because sometimes we do things for compliance, especially on finance, for instance, on the financial statements."*
>
> *Although some officials, especially those working in a governance and audit-related environment, seem to see compliance as a tool to improve service delivery."*

Official: Auditor General

> *"Yes, the culture of compliance with any applicable legislation improves governance within the public sector."*

Official: Internal Audit Unit

> *"Yes, it does assist the municipality with regard to budget and the needs of the community in terms of IDP and other related."*

4.6 Reasons for Non-compliance to Financial Legislation by officials

4.6.1 Lack of Capacity, Competent Skills and Qualified Officials in Positions

The importance of having qualified personnel in key positions cannot be overemphasised. The appointment of critical senior management positions within local government has also been identified as another area for non-compliance (Ledger, 2020). National Treasury and National Department of Cooperative Governance and Traditional Affairs (NDCOG) have guidelines in this regard, i.e. the Municipal Regulations on Minimum Competency Levels (Gazette 29967) and updated in 2018 (Gazette 41996), Regulations on Appointment and Conditions of Employment for Senior Managers (Government Gazette No. 37245 of 17 January 2014); and the annually published notice on upper limits of total remuneration packages payable to municipal managers. These guidelines are clear and specific on required qualifications, experience for job titles such as senior management like municipal managers, chief financial officers, etc.

However, results from the study indicated that RWCLM continues to face numerous challenges with regards to implementation and compliance with financial legislation. Participants from the study revealed that this was one of the main reasons RWCLM continued to receive poor audit outcomes.

Official A: Property Management

> *"We need to have enough capacity to do our work on a daily basis; we don't have enough staff members, we don't have enough offices and equipment to do our work effectively."*

Official B: Performance Management

> *"…. at times where officials do not have tools of trade can lead of non-compliance in the stressed municipalities lack of financial resources also may cause non-compliance."*

This finding alludes to a 2018 report on local municipalities that found that less than 50% of key staff in senior and strategic positions met the bare minimum key qualifications for the posts (AGSA, 2019).

Although there are clear and mandatory regulations from National Treasury and National DCOG that speak to this subject, a lack of financial resources was another finding from the interviews.

Official A: Property Management

> *"The reason that we do not comply is because we are on a shoestring budget, our finances are short and in terms of capacity, human capacity."*

Official B: Property Management

> *"…It takes money to make money, let's run this business as if it is a private business and let's invest where there are skills, let them allocate budget."*

Draai & Oshoniyi (2013) have pointed out that non-compliance can also be attributed to a lack of capacity or skillset to interpret and correctly apply the required knowledge applicable to a specific set of legislation. In addition, Howlett & Leong (2022), indicated that barriers of policies and legislation implementation which slows down the organisational compliance amongst others are lack of financial resources, lack of human resources, some troublesome historic practices.

Therefore, this could explain why RWCLM finds it difficult to comply and implement recommendations from the AG's office. However, it has been noted on the RWCLM website the critical position of the Municipal Manager filled but other Executive Management positions has been advertised but yet to be filled.

4.6.2 Good Governance and Accountability

There are basic principles under pinning good governance, to name the few, it is accountability and performance. It is therefore important that the institution be driven by principles of good governance (Graham, Amos, & Plumptre, 2003). The assessment during the interview was to measure if the values of good governance of management have the ability to account their performance either good or bad.

The responses from the officials indicated that accountability for actions and performance in relation to legislation is limited either by management or politicians

Official from AGSA

> *"Management lack of appetite to respond adequately to auditors audit findings and lack of implementation of auditors recommendation due to lack of consequence management."*

Official A: Property Management

> *"Political opinions that come with a particular mindset, historic and unresolved politics and community issues that require immediate attention. But because of finances in practice, you will either react on the request of the municipality or you won't react to these things completely."*

4.6.3 Political Meddling in Administrative Compliance Roles

De Visser (2009a) indicates that it is important for political structures to have the ability to draw the line between administrative roles and their political functions in the running of a municipality. As in many local authorities, there is a challenge with separation of powers between the two which has implication in compliance and performance of the municipality. The RWCLM officials also shares the same sentiments with De Visser (2009a)

Official A: Property Management

> *"Political opinions that come with a particular mindset, historic and unresolved politics and community issues that require immediate attention. But because of finances in practice you will either react on the request of the municipality or you won't react to these things completely."*

Official B: Property Management

> *"Mostly, I can say it is political; they must try to ensure that municipalities comply, they must deal with their politicians. They must show politicians the seriousness of compliance because as much as we are assisting the municipality, we are still under politicians/officials who contribute to non-compliance."*

Official A: Performance Management

> *" …if there is no harmony between the two, administrations and politicians, then there is laxity in compliance.."*

> *"…the problem is that from the political level to the lower levels, all levels, are involved in the running of the business, in other words, the guys that need to be responsible for oversight they are also involved."*

4.6.4 Negative Organisational Culture

Fourie & Poggenpoel (2017) indicate that continuous poor audit outcomes and a failure to improve and implement recommendations might point to a negative organisational culture in RWCLM. Financial compliance is significantly influenced by organisational culture. Participants particularly noted that a positive culture in the organisation would, in turn, foster compliance and a positive working environment. Participants were asked to shed light on what effect the following factors had in relation to compliance: involvement of officials in the decision-making process, consultation with officials on the policies development and implementation processes, engagement with officials on compliance with legislation and rewarding officials on good performance. Response on rewarding of good performance

Official B: Property Management

> *"There is no such a thing of rewarding good performance, the problem in our institution now, the performance is no longer assessed at individual levels, really, it is a boring system, you do your work 110% but no rewards. They are looking at the department as a whole"*

Similarly, findings have shown that the employees conduct in RWCLM departs from what is obligated in prescribed regulations. Unethical behaviour and political influence were cited as some of the primary reasons for non-compliance. On political influence:

Official A: Property Management

> *"They have an influence in directing us to a particular political decision, but the ultimate decision lies with council, in council is where everybody will be party to non-compliance."*

Official B: Performance Management

> *"Look, remember we are employed by politicians, even if I know the right processes and I know I am right, and I want to do the right thing I won't tell them; otherwise, I will be out."*

Another respondent confidently highlighted why unethical behaviour by public officials continued to exist:

Official B: Performance Management

> *"Not following the supply chain processes, I think that is our biggest problem; we do as we please."*

4.6.5 No Clear Standard Operating Procedures for corrective measures and promotion of ethical conduct including compliance

Under this theme, participants were asked if there were policies and processes in place to mitigate or discourage unethical conduct and non-compliance but encourages knowledge sharing and ethical culture. The responses received were in line with

Rohim & Budhiasa (2019) who argues that good work performance should duly be rewarded (also serves as an incentive to others) and, in turn, should be punished accordingly to deter future offenders.

The following are the responses of officials on the above point:

Official A: Property Management

> *"Nope, there is no gratitude of some sorts; there is no recognition of efforts that people are making except to say, there is a phrase that I always like to use, 'you cannot praise a fish for swimming' if you are doing your job."*

Official A: Performance Management

> *"Uhm, the policies are there, the frameworks are in place, but the problem is how we manage them, how we implement them when we do our work, and this is an area where an organisation like us should concentrate a hell lot on."*

4.6.6 Non-participation and Involvement of Officials

Participants were asked whether the involvement of senior officials in the decision-making process had an effect on compliance.

Official A: Performance Management

> *"My view is that the type of position you hold, they determine the type of responsibility and control, so in other words, the more strategic, the senior official becomes, the more emphasis should be placed on financial compliance."*

Official A: Property Management

> *"Historically, people want to be led, especially those that have decision-making powers, they want to be involved or informed, informed about things or want to participate fully in the process before they can decide."*

Official B: Property Management

“Obviously, yes, they are the ones who approve our reports, they need to be involved, and if not, it will impact negatively.”

Official: Internal Audit Unit

“Not everyone can be involved, but there can be a consultative process through departmental engagements, and the decider should decide to take the views of others.”

4.6.7 Disregard for AG’s Findings, Recommendations and Remedial Action

On numerous occasions, AG expressed concern over the continuous failure by local municipalities to take heed of his office’s recommendations. Furthermore, he mentions that the performance of municipalities have dropped which has implication in the fiscal resources (AGSA, 2019). This could draw one to the conclusion that local municipalities deliberately choose to turn a blind eye when it comes to compliance with financial legislation because they are aware that no tangible action will be taken against them.

This point was also raised in Chapter One, where examples of officials found guilty continued to serve in RWCLM for years after recommendations to prosecute and take remedial action were deliberately ignored. In light of this, participants were then asked whether they were aware of any instances of prosecution for non-compliance or other associated misdemeanours in RWCLM at the time of this study.

Their responses were as follows:

Official A: Internal Audit

“No one I know of that has been taken to task on non-compliance.”

Official A: Municipal Council Committee

“No consequence management in municipalities, this is a real let down. Until such time that officials who are party to non-compliance are charged and made an example of, the battle will still continue.”

Official: Auditor General

“No, year in and year out, similar issues affecting Section 32 of the MFMA are reported and nothing tangible has been done.”

Official A: Property Management

“I have never seen anyone being fired or somebody paying back the money or somebody losing position or maybe demotion, there is nothing like that, there is no one I know.”

Official B: Property Management

“There is barely no consequences because we have so much rights, human rights, labour law and so forth and people who are not complying it is difficult to ensure they are dealt with.”

Official A: Performance Management

“In this institution, we have been handling these issues with gloves, except those straightforward ones like stealing money.”

Official B: Performance Management

“Nothing”

“…If the municipality can be open about it, then it means officials can do something about it and improve compliance, so for now, we don’t know.”

4.7 Key Role Players in terms of Financial Compliance

4.7.1 The Role of National and Provincial Government on Financial Compliance

Section 154 of the South African constitution gives directives to the national and provincial department to provide backing and reinforce the capacity of municipalities to enable for provision of services to communities Although local municipalities are an extension of government and are autonomous, Provincial and National government maintains the mandate to continuously provide support, oversight and issue legislation that assists municipalities in improving service delivery.

Therefore, it was important to find out from the partakers whether they were aware of these structures and what role they play with regard to ensuring compliance. Their views on the topic shed light on whether Provincial and National government is essential in enforcing compliance and understanding the power and influence, if any, the provincial and national departments have on municipalities.

Responses were as follows:

Official A: Performance Management

> *"Yes, I mean legislatively, they are different legislation that government can use to make us or force us to comply through Acts and Regulations; likewise there are provisions section that they can use to assist you to comply like section 154 where they can come and assist you in order to comply, yes they are very well positioned to assist municipalities to comply."*

Official A: Property Management

> *"Yes, they have because they are governed by certain regulations and that how they do it, they do it through circulars sometimes, they give us circulars to comply with so, is the power that they have ……..And also, sometimes they will even withdraw their support, that financial support… in terms of section 139, they can dissolve municipalities. They can render them ineffective or put them under administration."*

Official B: Property Management

> *"Absolutely, especially on our side the property side, we are monitored by the national and provincial COGTA, now COGTA, are responsible for to ensure that we comply through submission of quarterly reports to National COGTA and Provincial COGTA. They are the custodian of the act, they always monitor us on the compliance aspects and non-compliance, they know how to action it."*

Official: AGSA

> *"Provincial Department, through COGTA, has the power to compel municipalities to comply. National Department, through National Treasury, has the power to influence compliance. Although there is different*

perspective from other officials where they state that compliance to financial legislation is dependent on the municipality, and the oversight departments are failing in their roles to oversee municipalities.

Official B: Performance Management

"Everything depends on the municipality, if the municipality doesn't want to do whatever as expected then it won't happen until they get a mandate then it can push them to comply."

Official: Municipal Council Committee

"National and Provincial departments fail in their oversight of municipalities and their consequences management …….as there are no efforts from administration to rectify the recurring findings."

4.7.2 Role of Oversight Structures and Political Structures in Compliance

Oversight structures are used to control and keep government in check as this promotes transparency while at the same time improving accountability and strengthening democracy (Pillazzon & Stapenhurst, 2006). Although oversight is viewed as *ex-post* and *ex-ante*, there is an agreement that effective oversight can improve the functioning of government activities. The efficiency and effectiveness of oversight depends on tools provided to the oversight committees, the oversight power given, performance of task adequately and how aggressive the opposition performs its role in terms of questioning the governing of the municipality and holding the ruling party accountable for their actions (Stapenhurst, 2006)

The officials within the RWCLM were asked to give their understanding on the role of

of the municipal council, municipal public accounts and audit committees and whether they have power or influence on non-compliance of financial legislation instigated by municipal officials. There are different views on the oversight structures and ordinary officials within the municipality. They are torn between the two standing positions as others think they have the power and can influence, and they are responsible, but other officials gave opposite responses:

Official A: Auditor General

> *"Municipal Council are responsible for providing oversight and not responsible for non-compliance."*

Official A: Internal Audit Unit

> *"Yes, councillors are getting pressures from the communities, therefore, they end up being responsible and having power of influencing deviating from normal procurement processes."*

Official A: Property Management

> *"Yes to some extent they are our section 79 committees. The committee has those powers as legislated, but they only interrogate what interests them. They don't look at the municipality as a whole, unlike when you have your auditors,they become fair to everyone but MPAC they look at a project, and they want to target a particular person and their duties and unfortunately sometimes the issues becomes miscalculated ."*

Official: Municipal Council Committee

> *"Not at all; MPAC is an oversight committee, it isn't a proactive committee but rather a reactive committee. MPAC recommendations that are taken to Council are not final until the council adopts them. The council has the privilege of not adopting them if they are not happy."*

Official A: Performance Management

> *"…Yes, they are partly, they are responsible for compliance but where controls lack, non-compliance slips in and even where the municipal councils is not firm and guarding the institution then there is a need to do oversight, otherwise then non-compliance slips."*

Official B: Property Management

> *"both administration and council obviously they have power and influence over our daily activities, and the reporting so whatever we do they are involved in the reporting, weekly reports, quarterly reports, annual reports, SDBIPs."*

4.7.3 Role of Executive Management Team of RWCLM

The municipal manager, as the leader of the administrative team, he ensures that the administration of municipal council is efficiently and effectively managed through implementation of different local government legislation such as Municipal System Act, Municipal Structures Act and Municipal Finance Management Act furthermore, financial compliance with legislation is part of the implementation of effective administration by leaders either administration or of municipal council . For this reason, questions were posed to the officials on the role of executive management in financial compliance. The study also sought to find out if the executive team has an influence on non-compliance to its officials.

The officials interviewed responded that executive management is responsible and has influence on public servants and non-compliance for instance:

Official: Municipal Council Committee

> *"Municipal managers and officials are responsible for non-compliance. Things are done to either favour a certain service provider, in turn, there is non-compliance."*

Official: Auditor General

> *"Yes, the Municipal Manager is responsible for ensuring financial compliance."*

Official B: Property Management

> *"Absolutely, if municipal managers are, for instance, not informed about what they should do to support or comply, the departments like ours, then would really have an impact on service delivery."*

Official A: Performance Management

"The more strategic, a senior official becomes, the more emphasis should be placed on financial compliance."

4.8 Improvements in Financial Compliance

With challenges faced by Rand West City Local Municipality on compliance, there is a need for tighter monitoring and oversight from the national and provincial governments since they are the custodians of some of the legislation.

As previously mentioned by one official:

Official A: Performance Management:

"The intent of the legislation was to improve controls and systems within the municipality."

In addition, the different views were shared from IGR, quarterly oversight engagements, Accountability and Consequent as shown below:

Official A: Property Management

"I think that the integrated governmental relations must be strengthened, and also taking into cognisance that each sphere of government is autonomous. So, this thing that the father is looking upon the children and children needs to listen to the father, which is what is happening currently it is not working for the municipality."

Official B: Property Management

"They must try to ensure that municipalities comply, they must deal with the politicians. They must show politicians the seriousness of compliance because as much as we are assisting the municipality, we are still under politicians."

Official A: Performance Management

"There should be special provisions for municipalities who are in financial distress. For instance, instead the National and Provincial departments sent through the section 154 support intervention team to assist the municipality with only human capacity, municipality will still choke because of financial

distress situation. So most municipalities should be assistance through some type of equitable shares that can be targeted for them to be out of financial distress. Obviously, I am not saying they should do like national treasury to Eskom, SAA every year they bail them out, but I am not saying they should bail them out, but they should get some special provisions to give municipalities for two or three years or so."

"…they need to professionalize local government seriously; they need to create structure where we will have credibility."

Official: Municipal Council Committee

"Should do quarterly oversight and implement consequence management on municipalities with the same recurring findings."

Official: Auditor General

"Accountability by two oversight bodies who force the municipality to comply with financial legislation."

Official B: Performance Management

"We have so many issues of compliance areas and some they clash. For instance, I will give an example with Annual Performance Report and the annual financial statement, compliance is expected and non-compliance it has ripple effect on."

4.8.1 Improvement for the Challenges faced by RWCLM

With the continuation of financial non-compliance, there was a need to ask officials what improvements could be made by the municipality in order to ensure financial compliance with legislation?

They shared the following responses:

Official A: Municipal Council Committee

"There is a need for constant monitoring, especially on AG findings."

Official: Auditor General

> *"Independent committees have been established to advise the accounting officer and SCM unit, however, the benefit of this proposed controls are yet to materialise."*

Official A: Property Management

> *"Finances...our finances are short and in terms of capacity, human capacity we are short, and you end up doing so many by yourselves and you end up making mistakes."*

Official B: Property Management

> *"It takes money to make money, let's run this business as if it is a private business and let's invest where there are skills, let them allocate budget…. They say you pay peanuts; you get monkeys. So, the municipality must be willing to pay for the technical skills."*

Official: Performance Management

> *"To improve, we need to put in some money there, we have reviewed our structure, we know exactly what's in supply chain, our internal audit, risk and all those areas, but we haven't gotten the financial muscle to do all those things so not for now. There is a need to professionalize local government seriously, they need to create structure where we will have credibility."*

4.9 Chapter Summary

This chapter aimed to stipulate a presentation of the results from the interviews conducted with key informants chosen from the sample of the study. As highlighted in Chapter Three, a presentation of the recurring themes has been the crux of this chapter. The recurring themes were, namely, the importance of financial compliance in service delivery, the role-players involved in the financial compliance environment, the reasons for municipal non-financial compliance and consequence management and accountability. Lastly, the chapter provided perceptions from officials on what could be done in the municipality to improve financial compliance.

The following chapter is outlining and interpreting and analysing the findings of the study. The results are presented taking into consideration the analysis processes of themes and providing connections of the focus areas and the literature review that has been established in its chapter.

CHAPTER FIVE
DISCUSSION OF FINDINGS

5. DISCUSSION OF FINDINGS

5.1 Introduction

This chapter outlines the linkage of chapter 2, literature review and analysis of the research findings. The analysis arises from the responses received from interviews and some official documents sourced from Rand West City Local Municipality. This chapter further echoes the research problem that the study aimed to address, and it will be through the identified themes that the findings will be interpreted to identify reasons for non-compliance with legislation in the RWCLM. The chapter begins by giving a broad overview of the different actors involved in the governance process and how these influence how a municipality operates concerning compliance. Moreover, it gives length to the findings to the study conducted as per the identified themes.

5.2 Role Players in Financial Compliance

Compliance is a multidisciplinary process involving many role players, including external and internal. National and Provincial departments, Municipal council and oversight commitees, Executive management are the critical role payers in the compliance environment. The diagram below illustrates the different actors in the matrix of financial compliance in local government.

Figure 5.1: Role players in the legislative compliance environment

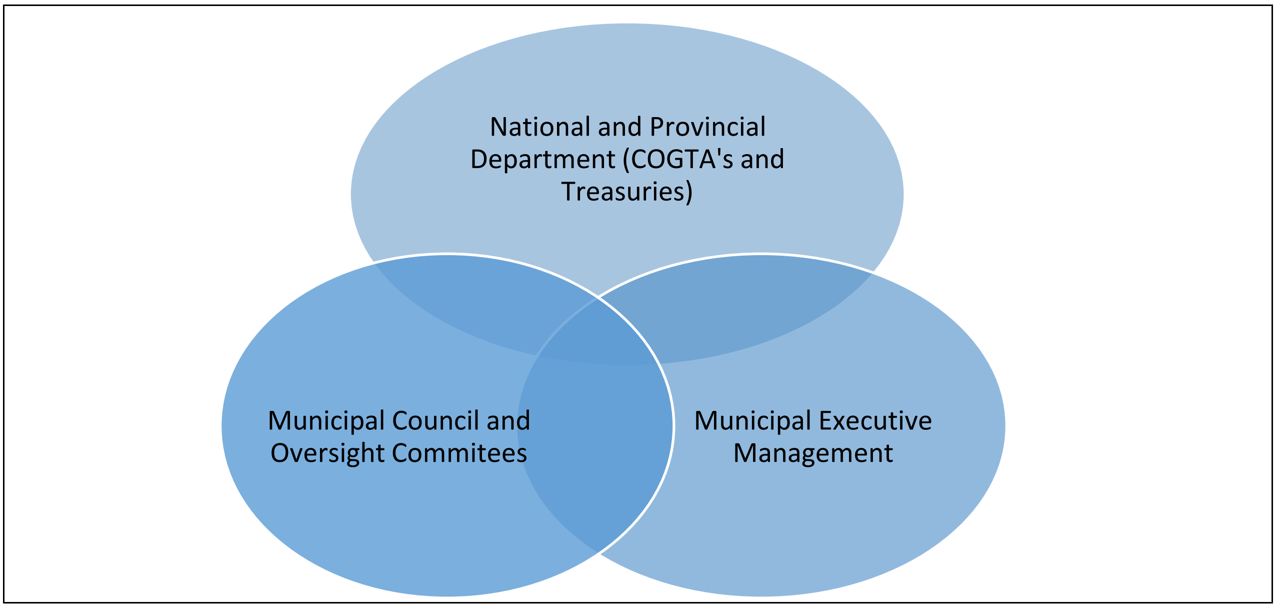

Figure 5.1: Represents the role players that are involved in the legislative compliance related issues of municipalities

Source: adapted from AGSA(2013)

5.3 Role of National and Provincial Government on Compliance

The study revealed that officials understand that the National and Provincial government have the power and influence to enforce compliance in municipalities. They indicated that the National and Provincial government has power by law to run municipalities effectively through different legislation, for instance, Section 139 of the Constitution. This can arguably be explained by a recap of significant issues and theories previously discussed in the Literature Review section.

Chapter two highlighted the presence of various theories that attempt to explain the concept of non-compliance in an organisation. Findings from this study were best interpreted through Etzioni's (1968) compliance theory in organisational setups. Etzioni's approach articulately integrates and intertwines various ideas of management models, existing and inevitable power dynamics within an organisation and how these factors influence officials' behaviour in relation to compliance.

The theory of governance as espoused by Devas & Grant (2003) on the role of institutions [National and Provincial government in this case] was also pertinent in providing a contextual analysis of the findings from the study. Therefore, it was envisaged that a combination of the theories highlighted above would provide a more holistic analysis that could explain reasons for non-compliance in the RWCLM. As such, the preceding sections will begin with a brief recap of RWCLM performance over the years leading to the current state of affairs when the study was conducted.

5.4 Financial Non-Compliance in RWCLM (2016 – 2020)

In this period, annual financial reports from the AG continued to reflect a consistent pattern of non-compliance (AGSA, 2019b to financial legislation in RWLCM). This was despite annual recommendations and remedial action from the AG's office over the years under scrutiny. To put it into context, the table below highlights, in different categories, how RWCLM performed in this financial period.

Table no 5.1: Unauthorised, Irregular and fruitless and wasteful expenditure incurred from 2015-2020 financial year for RWCLM

RWCLM - Unauthorised, Irregular, Fruitless and Wasteful Expenditure					
Expenditure	**2015/16**	**2016/17**	**2017/18**	**2018/19**	**2019/20**
Unauthorised	370,054,261	554,912,697	879,843,466	981,805,417	1,091,070,871
Irregular	392,524,112	576,643,965	726,369,738	389,380,490	467,688,019
Fruitless and Wasteful	61,452,267	116,031,873	127,517,347	143,034,362	180,657,603
Total	824,030,640	1,247,588,535	1,733,730,551	1,514,220,269	1,739,416,493
% of total in increment		34%	28%	-14%	13%

Source: AGSA Audit reports of 2015/16 to 2019/20 financial year

A closer look at the above figures highlights how unauthorised, irregular, fruitless and wasteful expenditure has consistently increased year after year. Even though 2018/19 finanical year has decreased in value but the expenditures were identified year after year which it does not give a good indicator for compliance. In the period under discussion, nowhere is it evident that there was an improvement regarding financial compliance. This justifies AGSA's assertion that RWCLM, amongst many other municipalities, has continued on this trend of non-compliance despite annual audit outcomes and recommendations that aim to redress and improve compliance which ultimately improves service delivery.

5.5 Importance of Financial Compliance in RWCLM

Data from interviews revealed a common sentiment amongst officials in the municipality that acknowledged the importance of financial compliance and its contribution to service delivery. This was in line with Devas & Grant (2003) theory of good governance and accountability and how this positively affects socio-economic growth in communities.

However, two dominant perspectives highlighted that one of the major reasons for compliance with financial legislation was merely to secure continuous funding from the National Treasury. A closer look at the table above seems to suggest otherwise and therefore supports the AG's findings of disregarding its recommendations. It is important to remain cognisant that it is the prerogative of the National Treasury to provide continuous funding to local government in its annual budgets. How these funds are (mis)used, as in the case of RWCLM, therefore, necessitated the purpose of this study. This led to the second reason that emerged, which pointed out that compliance was merely to meet deadlines as they are a prerequisite for the AG's office.

However, findings show that financial compliance over the period discussed has not been done diligently without carefully considering its implication to the entire value chain of compliance. An analysis of the table no. 5.2 below on allocation of equitable share shows that there has been a steady increase in allocations from National Treasury. Equitable share is based on a formula that includes the population index, cost of living, and the number of indigents requiring financial support. Year to year increments have been found to be constantly ± nine percent but not more than 13%. Furthermore, the table below gives some level of indication that there might be a correlation between the municpal officials being complaint financial regulations to funding increment by National Treasury to municipalities.

The MTSF Equitable share and grants allocation to RWCLM

Table no 5.2: RWCLM approved equitable share and grants allocation for 2018/19 to 2020/21

2017/18	2018/19	2019/20	2020/21
239,112,000.00	275,335,000.00	303,723,000.00	331,754,000.00

Source: RWCLM 2017/18 to 2020/19 approved budget

5.6 Financial Compliance and Service Delivery

Commitment to the ideals of democracy, the rule of law, and a culture of accountability, rooted in constitutionalism, and defined in terms of good and responsible governance, has become a core value in measuring the performance of government and its municipalities (Adagbabiri, 2015). Public officials interviewed demonstrated a clear understanding of the importance of compliance to financial legislation and its impact on improved service delivery in the municipality. However, other factors such as constrained budgets also have an impact on compliance with regulations. As a matter of fact, Rand West City has reported financial distress as guided by Section 38 of the MFMA.

Other participants, however, argued that while financial compliance is essential although it has become a red tape that hinders speedy and improved service delivery as the bureaucratic process takes time. An example given by one of the participants argued that there are instances in which utilities such as water or sewer may burst (posing health risks), budget constraints in the municipality force public officials to divert funds that were meant for other purposes to address immediate and pressing issues. Unseen circumstances coupled with limited budgets indicate irregular expenditure when annual audits are eventually done.

Section 135 (3) of the MFMA Act, No 56 of 2003 states that should the municipalities identifies that they are unable to meet its financial obligation and facing financial constrains, MEC for Local Government, MEC for Finance, orgnaised local government should be informed immediately as required in terms of the Act that they are unable to pay their creditors and third parties within the stipulated period as indicated and required in the MFMA. Despite the need to fully adhere to financial regulations, such statutes override instances where money shouldn't be diverted. Therefore, it becomes justifiable to forego set procedures as the law covers this.

While Devas & Grant (2003) note that good governance, like compliance to legislation, leads to effective service delivery, instances where a municipality fails to meet its financial obligations as a result of financial distress have a negative bearing on compliance and service delivery. As such, a declaration of financial distress guided by law could therefore justify or answer why Rand West City audit outcomes continuously reflect non-compliance to financial legislation.

5.7 Reasons for Non-Compliance to Financial Legislation in Rand West City

The following section discusses factors identified as the main reasons for non-compliance: lack of competent skills and qualified officials in positions, political meddling in administrative compliance roles, budget constraints, lack of technical capacity, and organisational culture.

5.7.1 Lack of Competent and Qualified Officials in Senior Positions

The Municipal Regulations on Minimum Competency Levels (Gazette 29967) last updated in 2018, have clear and specific regulations on issues such as the appointment of staff, required qualifications, previous experience for job titles such as executive managers, municipal and city managers, chief financial officers, etc. The importance of having qualified personnel in these critical positions cannot be overemphasised, as they have the required skills to steer the organisation in the right direction. Officials within RWCLM confirmed that it has senior officials in positions for which they are not qualified.

Some of the officials in senior and key management positions do not have prerequisite skills and the necessary work experience for the positions they occupy. Participants highlighted that the majority of these appointments resulted from political influence. This may justify why officials have performed poorly in executing their duties regarding compliance. These findings also support Managa (2012), Draai and Oshoniyi (2013), Nzewi (2017) that have indicated that lack of competent staff is one of the major reasons municipalities continue to report annual financial statements that are not fairly presented and poor delivery of services in the communities. Similarly, the officials' lack of technical expertise and inability to interpret and correctly apply legislation may lead to non-compliance. Financial legislation by nature can be vexing and complex, and chances of misinterpretation are high when one doesn't have the capacity to comprehend the terms. Therefore, indirectly leading to non-compliance in RWCLM.

5.7.2 Political Influence in Administrative Processes in RWCLM

Political influence by the powerful elite in administrative processes has been cited as another reason for non-compliance. Notably, the political elite has been accused of arm twisting and exerting undue influence on public servants to sway decisions in their favour. Supply chain, procurement and awarding of contracts are areas of major concern highlighted by participants in the study. To recap, one participant gave an example of a transaction worth half-a-million rand where the contract was awarded to an employee within the ranks due to political influence.

To date, no prosecution has been made. Another participant also noted that the politically connected people make promises to the community during election time, and once in office, they fail to deliver. When protests against poor service delivery eventually occur, these politicians then force or direct public servants to use funds reserved for other purposes to quell these protests and dissatisfaction in the community. This, therefore, results in irregular expenditure, thus justifying why non-compliance in RWCLM continues to exist.

5.7.3 Negative Organisational Culture

Organisational culture is a critical element in influencing the behaviour of officials in an organisation. Culture underpins how employees, and the entire organisation performs and ultimately attitudes towards compliance. Good governance, including compliance with regulations, can be undermined by organisational culture, and this is what the study revealed. Participants highlighted that there is a culture in the municipality that negates junior employees in the decision-making process.

As such, this demoralises employees and thus leads to poor work ethics which may indirectly contribute to non-compliance. Other participants reiterated AGSA's (2019) findings on the consistent pattern of disregarding regulations and recommendations that improve compliance. Participants gave examples of senior management that has been implicated in misconduct, corruption and wasteful expenditure but continue to serve in their different positions. Participants felt that anyone accused of wrongdoing could get away with anything. This negative organisational culture encourages staff not to adhere to regulations simply because they know nothing will happen to them.

5.7.4. No Clear Standard Operating Procedures for corrective measures and promotion of ethical conduct including compliance

The study found that there are no visible punitive measures taken by the municipality to discourage non-compliance with legislation. Although the overarching legislations are available to guide municipal officials on how to deal with non compliance of financial legislation, the policies and procedures within the municipality are not as explicit in encouraging officials to comply with the said legislations. Furthermore, the officials indicated that it was challenging to implement punitive measures to officials merely because investigations on officials implicated in misconduct often took way too long to conclude as there are no set timeframe to conclude the investigations. Political influence was again fingered as another reason that hampered process from taking place in such instances.

The study further revealed that there are no performance rewards of any sort in the municipality, and as such, participants felt that it discouraged and demotivated them to do good. Non-recognition of good performance and non punitive measures of bad performance might increase municipal fraud, corruption and non-compliance cases as other studies like Managa (2012) indicate a correlation between municipal officials sustaining their worth through unethical conduct and perpetual non-compliance that worsens the municipality's financial situation.

5.8 Chapter Summary

This chapter provided a clarification of the results from the research against a backdrop of academic literature and empirical evidence collected from the data collection process. The aim was to assess and provide possible explanations as to why non-compliance within RWCLM continued to exist over the financial period (2016 – 2020) under study. Significant highlights from the findings pointed to a poor organisational culture in RWCLM that failed to reprimand employees implicated in misconduct.

Unqualified staff occupying senior and strategic positions was also cited as a reason for non-compliance in the municipality. In conclusion, findings from the study revealed that employees understand and appreciate the importance of compliance, good governance and accountability and how this is crucial for effective service delivery.

CHAPTER SIX

CONCLUSION AND RECOMMENDATIONS

6. CONCLUSION AND RECOMMENDATION

6.1 Introduction

As the study reaches its conclusion, the aim was to explore reasons that explain failure to comply with legislation governing RWCLM despite the transparency generated by the AG's reports. The audit outcomes suggested a pattern of disregard to audit recommendations observed by AGSA due to failure to be accountable. In that case, **Chapter one** outlined the contextual history and background to the research area, which included the local government audit outcomes issued by AGSA as a representation of poor financial, compliance and performance management. In that same light, it sought to understand further the influence of external structures such as the National and Provincial government on financial compliance within the municipality. The motivation of the study was detailed in this chapter, including the purpose and problem statement and knowledge gap of the study.

Chapter two comprised a literature review and theoretical foundation that underpinned the study. The literature review provided a discussion on the theory of compliance in the functioning of an organisation. The chapter then gave a historical background of how RWCLM came to existence through a merger of Randfontein Local Municipality and Westornaria Local Municipality in the West Rand District after the August 2016 local government elections. Financial years 2016-2020 constituted the period under study where reports from the AG's office consistently reflected irregular, fruitless and wasteful expenditure, which necessitated the essence of the study.

A discussion of the literature revealed that lack of competent and skilled staff, lack of accountability and oversight, the appointment of staff in key positions, budget constraints, unfunded mandates, political interference, and unethical conduct of employees were the major reasons that contributed to non-compliance in RWCLM.

Chapter three provided a research design to the study. The research was purposeful and qualitative. It was an appropriate research methodology as interviews were conducted in order to gain an in-depth insight into the issues raised in the study. Seventy percent (70%) of the sample size responded, which by qualitative research standards was adequate to provide sustainable data to answer the research questions.

Chapter four was a presentation of the findings from the study. These were presented in recurrent themes from interviews with participants in the study.

Chapter five analysed the themes and responses identified in the previous chapter against a backdrop of the literature identified in chapter two.

In this last Chapter**, Chapter six** provides an indication that amid the municipality's challenges, there is hope in the possibility of behavioural change in compliance. Moreover, this could to some extent, be realised by adopting the suggested recommendations of the study which are shared below: -

6.2 Recommendations to Improve Compliance in RWCLM.

6.2.1 National and Provincial government should, as mandated through legislation, exercise and enforce its power over local municipalities to ensure a culture of financial compliance. This can be achieved by enforcing punitive measures covered by legislation, such as prosecuting employees implicated in non-compliance.

6.2.2 There is a need to strengthen support to municipalities as guided by the constitution, section 154. RWCLM should ensure timely and consistent submission of progress reports on financial matters, service delivery initiatives, and future projects aimed at improving development in the community.

6.2.3 For municipalities that declare financial distress, according to the requirement of Section 138 of the MFMA, the National and Provincial Treasuries ought to consider special grants that can only be allocated once the municipality in question agrees to comply with a paradigm shift in improving its financial affairs. It was also suggested that this grant should cater for capacity development in the municipality and at the same time make provision to employ qualified and experienced staff to carry the municipality through its challenges.

6.2.4 There is a need to strengthen oversight structures and empower them accordingly with the necessary expertise essential for this function. Participants of the study highlighted a great need to make municipal councillors aware of their oversight functions through training workshops and seminars to ensure that they know their roles. In the same light, politicians and public officials alike should constantly be trained and reminded about the importance of good ethical conduct in discharging their duties. This, in essence, can lead to improved compliance with financial regulations. A clear articulation of roles and responsibilities may prevent politicians from interfering in the dalily running operations of the municipality.

6.2.5 There is a need for a consequence management framework within the municipalities to be developed and implemented to assist the municipality in internal systems and processes to manage non-compliance. Disciplinary Boards should be established in the event of non-compliance as covered by the MFMA Municipal Financial Misconduct Regulations issued by the National Treasury.

6.2.6 There is a further need to develop standard operating procedures for encouragement of good performance, reward ethical conduct, penalise and discipline bad performance through officials found guilty of misconduct.

6.2.7 The leadership (administratively and political) should encourage and implement participatory leadership, which leads to the officials and communities feel and be involved in making decisions on behalf of the municipality. This gives employees and communities a sense of confidence and belonging, a sense of accountability in decisions taken. Moveover this motivates and encourages parties that are involved in compliance processes to comply with any introduced regulations and policies.

6.3 Conclusion

The objective of the study was to explore reasons for non-compliance with financial legislation in the RWCLM, and findings and recommendations were made. It is evident that to address the challenges the municipality is facing, there is a need for change management within the municipality in respect of organisation culture, a culture of consequence management through participatory leadership. Amongst other things, capable human resources and financial muscle to enforce compliance. In addition, rigour is required from national and provincial departments to strengthen and formalise the support within the municipality.

Furthermore, there is a need for more research on areas of compliance as the study indicated a correlation between compliance and peoples' behaviour and how that affects the level of compliance in the institutions. Further study is required on peoples' behaviour and perceptions towards compliance.

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Appendix A: Data Gathering Instrument: Interview Questionnaire

1. How long have you been employed in your current position in the municipality?

2. Are you working in a compliance related environment? If yes, please elaborate

3. Do you think compliance with financial legislation improves effectiveness of service delivery? Please substantiate your answer?

4. In your opinion, do you think that municipal managers and municipal councils are responsible for non-compliance with financial legislation? If Yes/No, please elaborate?

5. In your view, what has been the main challenge/ root cause that hinders compliance with financial legislation in the Municipality?

5.1 In your opinion, do you think National and Provincial department has power in the municipality to comply or not to comply with financial legislations? Please elaborate

5.2 In your view what could improve in National and Provincial departments to enable compliance with financial legislation in the Municipality?

6. In your view, do you think for officials to comply with financial legislation has do with how they are involved in the running of the municipality e.g decision making process? Please elaborate

6.1 In your opinion do you think the type of power and influence the Rand West City LM has on its officials , will influence compliance with financial legislation ? Please elaborate

6.2 And do you think the oversight structures has the ability to influence officials and councillors to comply or not to comply with financial legislation? If yes/no, please substantiate your answer.

7. Does the organisational culture and policies recognize and reward officials for compliance with section 32 of MFMA? If yes, please substantiate your answer

7.1 What has been the consequences for those officials who have not been able to comply with any financial legislation the past three years?

8. In cases where you become aware of or suspect non-compliance with legislation by municipal officials, are you aware of any processes to follow to remedy the cases identified? If yes, please elaborate

8.1 What controls measures have been put in place by the municipality to improve financial compliance in terms Section 32 of Municipal Finance Management Act?

9. In your own view, what can be done in the Municipality, Provincial and National departments to improve municipal compliance with legislation?

10. Any other comments?

Appendix B: Participant information sheet

Dear Sir/Madam

My name is Pheladi Maria Ramakgahlela Mhlomi I am a Masters student in Management in the field of Public and Development Sector Monitoring and Evaluation at the University of Witwatersrand, Johannesburg. As part of my studies, I have to undertake a research project. I am exploring reasons for non-compliance with legislation in Rand West City Local Municipality under the supervision of Dr Poltera. The aim of this research project is to explore reasons that explain failure to comply with legislation governing Rand West City Local Municipality despite the transparency generated by the AGs reports. The study also seeks to evaluate the relationship between compliance with legislation and the municipal accountability systems.

As part of the project I would like to invite you to participate in an interview. This activity will involve answering questions and will take approximately 45 minutes of your time. With your permission, I would also like to record the interview using a digital device. The recorded information will be transcribed and stored in a secured password protected device.

There will be no personal costs to you if you participate in this project. You will not receive any direct benefits from participating in this study, and there are no disadvantages or penalties if you do not choose to participate. You may withdraw at any time or not answer any question if you do not want to. The interview will be completely confidential and anonymous as the information you give to me will be held securely and not disclosed to anyone else. Further, all responses will be deidentified in the report. I will be using a pseudonym (false name) to represent your participation in my final research report. If you experience any distress or discomfort at any time in this process, we will stop the interview.

If you have any questions during or afterwards about this research, feel free to contact me on the details listed below. This study will be written up as a research report which will be available online through the university library website. The data collected from this research project will be stored in a password protected electronic device, known only by the researcher

Thank you for taking part in this interview, please feel free to ask me any questions if you need further clarity. If you have any concerns or complains regarding the ethical procedures of this study, you are welcome to contact the Wits School of Governance (WSG) Human Research Ethics Committee (Non-Medical), telephone (011) 717 1408, email hrec-medical.researchoffice@wits.ac.za or my supervisor, Dr Jacqui Poltera, email jacqui.poltera@wits.ac.za, telephone (011) 717 3520

Yours sincerely

Pheladi Mhlomi

Researcher name: Pheladi Mhlomi

Email: 1421521@students.wits.ac.za

Supervisor name: Dr Jacqui Poltera

Email: Jacqui.poltera@wits.ac.za

Appendix C: Consent form

Title of project: Exploring reasons for non-compliance with legislation in Rand West City Local Municipality

Name of researcher: Pheladi Mhlomi

I, ……………………………………….. agree to participate in this research project. The research has been explained to me and I understand what my participation will involve. I agree to the following:

	(Please circle).	
I agree that my participation will remain anonymous	YES	NO
I agree that the researcher may use anonymous quotes in his / her research report	YES	NO
I agree that the interview may be audio recorded	YES	NO
I agree that the information I provide may be used anonymously after this project has ended, for academic purposes by other researchers, subject to their own ethics clearance being obtained.	YES	NO

……………………………………. (signature of participant)

……………………………………. (name of participant)

……………………………………. (date)

Appendix D: Ethics Application (Wits)

UNIVERSITY OF THE WITWATERSRAND, JOHANNESBURG

WITS SCHOOL OF GOVERNANCE
UNIVERSITY OF THE WITWATERSRAND, JOHANNESBURG

Research Office:
Sithembile Xaba
Tel: 011 717 3133
Email: Sithembile.Xaba@wits.ac.za

Research Director:
Prof Pundy Pillay
Tel: 011 717 3501
Email: pundy.pillay@wits.ac.za

21 October 2020

Dear Ms Pheladi Maria Mhlomi

Title: Exploring reasons for continuous non-compliance with legislation in Rand West City Local Municipality
Student Number: 1421521
Degree: Masters of Management in the field of Governance specialising in Public and Development Sector Monitoring and Evaluation
Ethics Clearance Number: *WSG-2020-17*

All candidates must satisfy the University's ethical standards for research. Your ethics application has been received and reviewed by the Wits School of Governance Human Research Ethics Committee.

Your ethical clearance has been approved subject to you getting permission to conduct research from all sites where research is conducted. The letter(s) of permission to undertake research must be submitted to the WSG Research Office and kept on file with your final proposal and other ethics documents.

You may commence your data collection under the guidance of your supervisor. In the event that the scope, methodology or nature of the research changes, you are required to submit another ethics application reflecting the changes.

The onus is on you as the candidate, with support from your supervisor, to ensure your research complies with university human research ethics policies and protocols at all stages of the research process.

It is recommended that you keep this letter in a safe place as you are responsible for ensuring you have proof of ethics clearance and have lodged the ethics clearance / protocol number with Faculty before final submission of your research report. If you do not have an ethics clearance number, you are not permitted to graduate.

Please do not hesitate to contact me if you have any queries.

Yours sincerely

Professor Pundy Pillay
Research Director

www.wits.ac.za/wsg

2 St David's Place, Johannesburg, 2050, Parktown, South Africa
E: admissions.wsg@wits.ac.za or shortcourses.wsg@wits.ac.za | T: +27 717 3520

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Appendix E : Approval to undertake the research (RWCLM)

RAND WEST CITY
LOCAL MUNICIPALITY

OFFICE OF THE MUNICIPAL MANAGER

Our Ref./Ons Verw./Inamba Yethu: 4/7/4/6/2
Your Ref./U Verw./Inamba Yakho: 4/7/4/6/2
Enquiries/Navrae/Imibuzo: Hlengiwe Sithole 0114110263

Ms. Pheladi Mhlomi

APPLICATION TO CONDUCT RESEARCH IN RWCLM

Your application to conduct research within the workplace of the Rand West City Local Municipality has been considered and approved and you are herewith granted permission subject to the following terms and conditions:

(1) The research to be undertaken must be solely for academic purposes and must not discredit or expose the municipality in any form or nature.
(2) Sharing of information about a respondent for the purposes other than research is unethical and you must therefore maintain confidentiality about your research results of the Rand West City Local Municipality, at all times
(3) The participants (employees of the Rand West City Local Municipality) that would form part of your research population are not allowed to receive any payments or incentives
(4) The Rand West City Local Municipality is entirely indemnified by you for any losses or damages incurred on your person or claims by any third party during your research period

Yours faithfully

THEMBA GOBA

MUNICIPAL MANAGER

DATE: 03/11/2020

I .... Identity number ....

hereby acknowledge receipt of this letter and hereby confirm that I will adhere to the conditions as set out above.

Rand West City Local Municipality
Cnr Pollock & Sutherland Streets, Randfontein 1759 / P O Box 218, Randfontein 1760
Tel: 011 411 0000, Fax 011 693 1736 **Website**: www.randwest.gov.za