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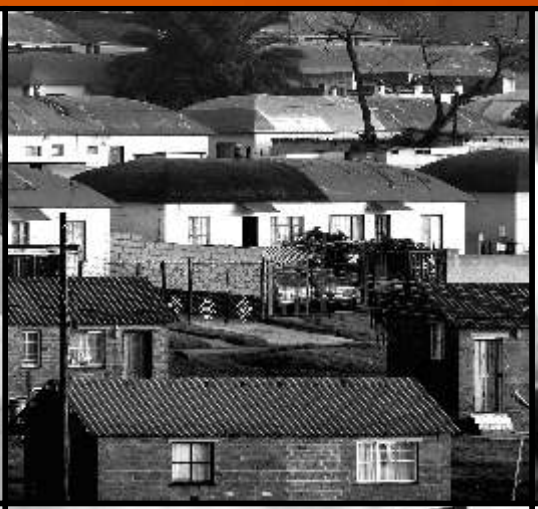
Ethical Leadership and Political Culture in Local Government



A Civil Society Perspective on Local Governance in South Africa

Ethical Leadership and Political Culture in Local Government

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About the Good Governance Learning Network

The Good Governance Learning Network (GGLN) was founded in 2003 as an initiative to bring together civil society organisations working in the field of local governance in South Africa to network and share information and lessons towards the goal of strengthening participatory democratic local governance. Over the years, the network has taken on a more active focus on positively impacting on the local governance context in South Africa through collective learning, research, information dissemination and advocacy.

Vision

The vision of the GGLN is to create a strong civil society network that harnesses and builds the collective expertise and energy of its members to contribute meaningfully to creating a system of participatory and developmental local government in South Africa.

Objectives

The objectives of the GGLN are to:

- Share information and learning about local governance by creating an interface for organisations working in this arena;
- Disseminate and profile the work of network members (e.g. useful research outputs, lessons learned, examples of good practice) through the effective use of media;
- Produce information and research outputs that are of benefit to various stakeholders involved in local governance processes, including communities and municipalities;
- Advocate for changes in policy and practice to deepen participatory local governance, based on the work and expertise of member organisations;
- Promote the development and replication of innovative models for participatory local governance and pro-poor development at the local level;
- Generate partnerships between civil society organisations, and facilitate networking between civil society and government, to strengthen local governance processes; and,
- Facilitate learning from international experience on participatory democracy to deepen local practice and responses.

Values

The GGLN is underpinned by the following values, which all members of the network commit themselves to:

- Participatory and pro-poor governance;
- Non-partisanship;
- Constructive engagement with government and other stakeholders;
- Working together in the interests of achieving the network's objectives;
- Sharing the benefits of membership amongst active members; and,
- Building the capacity of member organisations.

Membership

Full membership of the GGLN is open to all South African registered non-profit organisations that have at least one core programme that focuses specifically on issues of good governance at the local level.

The full members of the GGLN are:
Afesis-corplan
Black Sash
Built Environment Support Group (BESG)
Centre for Policy Studies (CPS)
Centre for Public Participation (CPP)
Community Connections
Community Law Centre (CLC), University of the Western Cape
Democracy Development Programme (DDP)
Electoral Institute of South Africa (EISA)
Fair Share
Foundation for Contemporary Research (FCR)
Institute for Democracy in South Africa (IDASA)
Isandla Institute
Planact
Project for Conflict Resolution and Development (PCRD)
Trust for Community Outreach and Education (TCOE)

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Foreword and Acknowledgements

This is the second GGLN report reflecting on local governance in South Africa. The first report titled 'Local Democracy in Action' was published in 2008. This second report is the culmination of a process of research and engagement within the network. In July 2009, members of the GGLN came together to share insights and perspectives on the notion of 'ethical leadership' or 'leadership with integrity', a concept that was seen to have particular significance against the backdrop of recurring (and, at the time, intensified) community-based protests and pending local government policy reform. For some of us, focusing our collective energies on leadership, and more specifically, 'public leadership', was not immediately obvious, but as the July meeting progressed there was increased appreciation for its significance in governance and service delivery.

Various members rose to the occasion to submit a contribution to this report. Our appreciation goes out to the following members in this regard: Afesis-corplan (Nontando Nglamlana, Thembi Mabhula, Gugu Mgwebi, Thabile Sokupa, Nontlantla Skenjana and Peter Kimemia), BESG (Daniel Bailey), Centre for Policy Studies (Gaynor Paradza and Lebogang Mokwena), Community Law Centre (Jaap de Visser) and Isandla Institute (Stacey-Leigh Joseph). We also acknowledge the valuable role played by David Schmidt, who guided our conversations in July with wisdom and wit, and who contributed a concept note, which is included as the introduction to this report.

Special thanks go to Glenn Hollands and Jaap de Visser for editing the contributions to this report. They did so with perception, gentle resolve and sheer dedication. Thanks also to Katharine McKenzie and Sarah Hetherington from String Communications for doing an overall text edit of the document, and making sure that the report coheres in style and language, as well as for supplying the pictures used in this document.

The GGLN Reference Group was instrumental in designing the methodology and choosing the theme for this report. My peers and partners on the Reference Group, Riedwaan Baboo, Jaap de Visser, Glenn Hollands, Peter Kimemia and Mpume Shezi, gave selflessly of their time and insights, not only to this particular project, but to all activities and processes related to the GGLN. Their individual contributions, and the willingness of their organisations (FCR, CLC, Afesis-corplan and DDP) to make them available in this regard, have not gone unnoticed. As interim GGLN Coordinator, Bonginkosi Masiwa acted as the key communicator, negotiator and connector on this project. Undoubtedly, his role has been central to the production of this report.

Last but not least, the GGLN would also like to thank the Ford Foundation and the CS Mott Foundation for their critical engagement and ongoing support for the network and its activities.

Mirjam Van Donk
Isandla Institute/Chairperson of the GGLN Reference Group
Cape Town, January 2010

Leadership and Local Governance and Development

By David Schmidt

Effective leadership is a critical ingredient in achieving organisational success. This is a common wisdom buttressed by strong research evidence.

Picture by: Brett Eloff

LEADERSHIP is also typically seen as different to management although they are related. Management relies more on planning, organisational and communication skills. Leadership relies on management skills too, but more so on qualities such as integrity, honesty, humility, courage, commitment, sincerity, passion, confidence, a positive attitude, wisdom, determination, compassion and sensitivity. Some people are born more naturally to leadership than others. But everyone can develop leadership ability. And everyone is called to take on leadership responsibilities of some sort. Leadership is about individual skills but it is also an institutional capacity that goes beyond individuals.

The search for good leaders is a contemporary holy grail and a global industry around leadership development has been in vogue for some time. The big established names of this ever-proliferating industry like Covey and Maxwell compete with this year's fads and fashions and universities and consulting companies alike seek to position themselves as leaders in a field that is seen as the precondition for success. Nor is this just a private sector phenomenon. It is a major focus within the public sector internationally. How do we build the leadership required to address the major leadership challenges of the 21st century? A simple google-

search will turn up a plethora of public leadership academies and leadership development programmes.

There is also a vibrant South African leadership industry dedicated to unpacking and repackaging the leadership lessons of our history and context. Local concepts such as ubuntu leadership and the leadership lessons of King Shaka or our Nobel Laureates jostle with other leadership manuals in the executive training and airport bookshop markets.

Within the South African municipal context, it is thus unsurprising that leadership is identified as an important area requiring attention. "Leading and learning" is identified in the 1998 White Paper on Local Government as one of the four characteristics of "developmental local government". Much of the pivotal Local Government: Municipal Structures Act focuses on clarifying and strengthening the role of political and administrative leadership. Leadership initiatives at provincial or organised local government level have been piecemeal and *ad hoc* in their focus.

At the same time, leadership or the lack thereof has not been a strong feature of the analysis of the problems of governance or service delivery for municipalities. The explanations of municipal weakness have typically tended to point to technical failings in the municipalities. This tends to lead to the predomination of technical-legal support interventions. So we have seen an emphasis since 2000 on intensive regulation of the core planning, management, budgeting and financial management processes of the municipality. We have seen a similar approach to the issues of inter-governmental relations where we have sought to resolve issues through legal means by refining roles and responsibilities (as in the various efforts to clarify the powers and functions) or through legally prescribing mechanisms for promoting inter-governmental relations rather than looking at the "softer" relationships and interface management skills. This legal-regulatory approach has been complemented by an emphasis on hands-on technical support to address perceived technical capacity deficits. Project Consolidate is a typical example of this.

> In the Centre for Policy Studies (CPS) paper on citizen's organisations that have emerged in response to service failure and poor local government, Paradza and Mokwena endorse the research findings of Idasa and Atkinson which suggest that local government's woes in fact arise from a complex array of factors that include 'weak management, hesitant or absent leadership, poor communication, political favouritism and ineptitude…' – state led analysis of the same symptoms typically focuses on only one of these factors and avoids a direct criticism of leadership.

Beyond a focus on structures and the small leadership academy programme, very little attention from a policy, support or research perspective has been done on the theme of leadership. And yet, there would be strong grounds to suggest that many of the major governance and delivery challenges stem not so much from technical deficiencies but from failures in the softer "leadership" realm - where values, vision, commitment, motivation, energy, innovation, learning, relationships and trust - come into play.

During a work-session with a team of experienced local government practitioners, the participants were asked to evaluate the local governance environment of the province where they were working in terms of four categories - Passion (which encompassed issues such as motivation, morale, vision and commitment), Trust (which

encompassed the key relationship issues internal and external to the municipality), Capacity (which related largely to the technical skills available to the municipality) and Infrastructure (which encompassed the municipal facilities, systems and resources). Passion and trust, which are associated with the quality of leadership function, were rated as very poor. Capacity and Infrastructure which are associated with the management function, scored better. Capacity was rated as poor and Infrastructure scored best and was assessed as satisfactory.

And yet, despite the growing acknowledgement that "leadership" is a very important area of attention, national and provincial support for local government is almost exclusively focused on building municipal capacity and infrastructure – the managerial-technical dimension. "Leadership" is arguably only tackled when the level of dysfunctionality of the municipality requires some kind of dramatic intervention whether in terms of section 139 of the Constitution or where a mayor, speaker or municipal manager becomes so unacceptable that they are removed by the relevant political party. Nor is this gap limited to government policy-makers. It is equally present within the academic and research arena. There are very few research papers and journal articles addressing leadership and management issues in local government in South Africa.

Why the reluctance to engage robustly on the issue of leadership? One reason may relate to its politically sensitive nature. To point to failures of leadership at municipal level is to put a spotlight on political leadership and the functioning of political parties, particularly the national ruling party.
It could be argued that the intense factionalism and partisanship within parties and between parties over the past years has resulted in a political climate that is not conducive to a frank and open discussion about the quality of municipal leadership and how this can be improved and developed.

Through its exploration of corruption in local government, the Afesis-corplan paper begins to reflect on this crisis of local governance and asks the question, is the crisis not at least partly the making of the growing gap between high order policy for clean governance and accountability and citizens daily experience of local governance which creates the impression of wide-scale malfeasance and disregard for the public interest. The problems of corruption and unethical leadership appear to be worsening at the same time as politicians and officials make escalating claims of improvement in governance systems and the integrity of the public service. When major campaigns such as the National Anti-Corruption Strategy appear to exist primarily for symbolic reasons, these misgivings are reinforced and public opinion inevitably becomes more sceptical.

Another part of the reason is that "leadership" is a slippery concept. When we say that there is a problem of leadership within the municipal realm, what exactly do we mean? Is this a problem of political leadership? Is this a problem of administrative leadership? Or is it a problem of how the political-administrative interface works? Is it a problem of the people who occupy the top positions in the municipality or organisation? Or is it a problem of the culture and competency throughout the organisation? Is it a problem of people in positions of political or administrative authority lacking the managerial skills and competence to effectively undertake their responsibilities? Or is it more a problem of ethics and values? Is it a problem of a lack of vision and commitment? Or is it a lack of knowledge about how to get things done?

Even if we have defined what we mean by particular leadership challenges, there are no simple solutions to growing better leadership. It is a softer more elusive concept that cannot be addressed through a training programme, or a new regulation or the deployment of a skilled technical expert. It requires a more holistic, longer-term process of development rooted more in culture than a skills set.

This brief conceptual note seeks to explore the different ways in which leadership is an issue in the South African municipal context from a policy and research perspective and to identify some the associated questions that would benefit from a process of deeper enquiry. Some of that enquiry and research takes place in the following papers, produced by members of the Good Governance Learning Network. However, many of them will have to be taken up subsequently by the public policy sector. The paper briefly explores leadership through six themes:

- Models and mindsets
- Roles and relationships
- Decision-making and democracy
- Affirmation, change and transformation
- Challenge and capacity
- Renewal and reform

This is not meant to be a definitive list, nor do the categories flow from any rigorous analytical scheme, but provide a framework to categorise some of issues that are relevant when considering the theme of leadership in local governance and development. Nor are these sealed, stand-alone themes, but are inter-related and interdependent. The emphasis tends to be on leadership as a function or role within the municipal context rather than a more generic focus on leadership skills and how these can be advanced at all levels within the sector.

Models and mindsets

A starting point for exploring the policy and research landscape in relation to leadership is with the underlying models or paradigms of leadership that apply in the local governance sector. For municipal practitioners different concepts of leadership compete with each other and this can require careful navigation. Are our dominant concepts of leadership about the idea of service to the people? Or is a model of leadership as status, power and patronage more prevalent? Do we put people into positions because of their capacity to innovate and to be bold or do we rather value compliance and toeing of the line in selecting leaders?

The academic literature points to three primary models of governance each with an associated leadership concept – more traditional **bureaucracy**, more market-focused **new public management** that became fashionable from the 1980s and the more recent focus on **network** governance where authority becomes less important and the ability to influence across organisational boundaries is the focus. The literature also notes that these different paradigms tend to build on each other rather than replacing each other. A good leader should be able to understand the different modes and shift mode depending on the circumstance. Thus some issues require a leader to use the bureaucratic authority that he or she has to drive change while another issue may require a more networked approach based on using his or her influence and so on.

Many people in leadership positions however are unable to access such multiple modes and are only able to respond to issues using a single mode. It could be argued that the predominant mode of leadership within the municipal sector has emphasised leadership as “authority” and is rooted in hierarchy.

Such mindsets are typically largely unconscious but inform leader's responses to a range of issues from how they view community participation to how they understand intergovernmental relationships to how they engage across the political-administrative divide. We might also expect major differences in leadership models between more rural municipalities (where understanding of the role and style of leadership might be more informed by traditional understandings rooted in chieftancy) and the larger more modern urban municipalities (where a modern democratic culture of leadership informed both by trade union traditions and urban middle class perspectives may be stronger).

There are many other areas related to the largely unconscious mindsets that inform leadership culture with municipalities that could be explored. For example, there could be important "cultural differences" between politicians and managers. John Nalbandian, who has been both politician and manager in United States city government points to four areas of cultural difference:

- **Differences of values and philosophy.** There can be considerable misjudgment of one another when political and professional values suggest different resolutions to a problem. Strongly–held views are questioned and the feeling is of frustration or being blocked. Political and administrative leadership needs to acknowledge these differences and respect them in negotiations over decisions.
- **Differences in conversation and language.** Politicians and managers can quite often describe a situation, problem or challenge in different ways. Oversimplified it may be, but politicians quite often prefer the power of the individual story drawn from real life. By contrast, managers often see the elaborateness of their data as the best way to describe the situation. Both can be partial.
- **Differences of authority and career**. Authority arises at least partially from the way in which people are selected or elected to their post and these differ between politician and manager. This has practical implications for an individual's reporting lines, what agenda they work to and how much they are prepared to negotiate.
- **Different views of performance.** The pressure for performance can differ radically between politician and manager. Delivering to local communities within shorter timescales (often heightened by electoral cycles) can be markedly different from national or professional assessments of performance over longer timescales.

  Do these factors apply in our South African context? Are there other factors in South Africa that make this relationship more difficult?

There has been very little if any research that explores these questions and which would enable a better understanding of some of the deeper less conscious mindsets that underpin many of the conflict and misunderstandings we find across some of the divides within the municipal system. Critical questions, in this regard, are:

- What is the predominant approach to leadership across the municipal sector? Are there major differences between urban and rural municipalities? Are there differences where one party is very dominant in a municipality or where political control is tightly contested? Are there different views from political and administrative leadership? Can we detect different cultures of leadership in different provinces given their different histories and context?
- Does the current regulatory regime - with its emphasis on compliance – not reinforce a culture of dependency and disempowerment at municipal level? If so, this should be addressed.

- Is government doing enough to equip municipal leadership to have a deeper grasp of the range of leadership modes and styles so that they have a wider range of responses available to the complex array of challenges that they face? What is civil society's role therein?

Roles and relationships

A key theme of policy activity since 2000 has been the roles and relationships within the municipal governance system, particularly those between politicians and administrators and between provincial and local governments. There has been a policy recognition that these are important issues although the emphasis has tended to focus on seeking to both further refine roles to reduce duplication and uncertainty and to regulate the interface rather than building the capacity to collaborate across boundaries emphasising shared responsibilities and pragmatic practical approaches to solving problems. Examples include efforts to refine the financial management responsibilities of executive mayors and municipal managers (especially through the Municipal Finance Management Act (MFMA)), to clarify the roles of executive mayors and speakers, to refine the allocation of powers and functions within local government and between provincial and local government and the establishment of inter-governmental coordination mechanisms through the intergovernmental relations framework legislation.

The contribution of the Community Law Centre (CLC), for example, argues that municipalities (and the sector that supports local government, including national and provincial governments) have done too little to make use of "softer" leadership-based initiatives to clarify roles and responsibilities. They point specifically to the lack of appreciation for the adoption of clear Terms of Reference for office-bearers, structures and the administration and over-emphasis of the "harder" institutional and legal solutions.

One major area of enquiry and research has been the relationship between politicians and officials. This is often marked by major conflict, mistrust and an inability to find an effective way of working together even where the senior management has been appointed by the politicians. There will only be effective leadership when the two groups make sense of their different views and approaches and find common ground for leading the municipality. It poses questions about who is responsible for leadership and who for management. The answer may seem straightforward - politicians lead on policy and officials implement and manage its delivery. However, experience suggests that reality is more complicated and it is this complexity that contributes to the hard work of the relationship. Politicians are necessarily involved in management and managers necessarily involved in leadership. Politicians, as well as defining policy direction, are the primary means for conveying community concerns over service delivery – they bear electoral responsibility for it – and are the deciders of resource allocations. They have values about what and how things are managed. They have ideas. For all these reasons they must be part of managing the authority without attempting to do the managers' job.

The Community Law Centre's contribution examines the political-administrative interface. It locates the discussion within the context of the conflation of legislative and executive authority in the municipal council. The contribution argues

that the problems in this relationship must be addressed through appropriate leadership and the emphasis on common values. However, it also submits that there are some legal changes that may be suggested in order to clarify the delineation between the political and the administrative.

Managers are the primary conduits for government policy and directives and for some community pressures. They also have professional and local expertise about what is possible and appropriate. They hold values about what and how things should be changed. They also have ideas. For all these reasons, they must be part of leading the authority without doing the politicians' job.

But perhaps there are instances where managers or bureaucrats *have* to do the politicians job. In the Isandla Institute paper on local government and HIV and AIDS, case study material on health professionals like Von Mollendorf suggests that in some circumstances managers are required to defy their political bosses and even official government policy in order to assert their own brand of leadership based on professional ethics. Dr Von Mollendorf sanctioned the distribution of ARVs in contravention of health policy and was dismissed for his defiance. Government has subsequently done an about turn on ARVs and today might regard Von Mollendorf as having exercised the only moral option open to a caring health professional. Isandla goes on to show that defiance of morally abhorrent public policy such as the Mbeki government's stance on ARVs was not limited to individuals. Municipalities like Msunduzi, the City of Cape Town and even the Western Cape Provincial Government have found it necessary to defy or re-interpret government policy around HIV and AIDS in order to fulfil their public duty.

Effective municipalities ensure that the key parts of the council's leadership and management are a shared responsibility between the politicians running the administration and senior managers running the organisation.

Similar levels of complexity can be observed in the challenges of clarifying local-district municipality roles and responsibilities and those of provincial government in relation to local government.

Some other questions that must still be explored include:

- What have been the benefits and costs of establishing the executive mayoral system across most of the country?
- How has the role of non-executive councillors been defined in practice and how can their oversight, representative and community leadership roles be enhanced?
- How effective are the various inter-governmental coordination mechanisms and are they helping to build shared leadership regarding key developmental challenges?
- Do we have good examples of collaborative cross-boundary working across government and between government and other stakeholders? What contributed to success and how can these lessons best be shared?

Decision-making and democracy

We elect or appoint people into positions of leadership in municipalities to represent us within the governance process and make decisions in line with our wishes that ensure better, affordable and

sustainable service delivery and development. But how much do we know about the challenges facing municipal leadership in making good democratic decisions about delivery and development?

Probably the biggest idea contained in the notion of "developmental local government" was that of public participation in the municipal decision-making process. Legislation flowing from the 1998 Local Government White Paper requires municipalities to ensure participation in a wide range of planning and decision-making processes, to publish information on their performance and financial management and created a number of participation mechanisms such as ward committees.

In the Afesis-corplan exploration of corruption in local government, it is suggested that the assessment of quality local leadership rests in part on the degree to which that leadership is prepared to submit to transparency and accountability in the course of governing. Thus not only is the quality of decision-making linked to democratic practice and the capacity of such decisions to stand up to public scrutiny, but the institutions of leadership develop a reputation or public profile that is either shaped by authoritarianism or transparency and accountability. Thus leadership behaviour shapes not just the current relations between civil society and state but how civil society perceives and is prepared to engage with the state over time.

But how well has the new system for participatory democracy performed? The focus of policy and research thus far has been on formal participation mechanisms particularly ward committees and on community-based planning and has generally suggested that our municipalities are not yet becoming the models of democratic participation that was intended. The focus on a limited range of formal mechanisms represents a narrow perspective on how the processes of participation and decision-making actually work in local government. A more nuanced picture must be developed of the informal as well as the formal processes through which stakeholders are involved in decision-making. For example, the role of party regional structures and party caucuses in participatory decision-making is often under-appreciated. At the same time, the professional opinions of officials in the decision-making process are also critical in shaping the outcome of participatory processes. More broadly, an important question is to what extent private interests involve themselves in decision-making, how does this happen and what kinds of decisions do they focus on? Do communities have real influence on resource allocation and service delivery priorities? Have the Municipal Structures Act and MFMA requirements in relation to procurement and other financial decisions had a major impact on improving the transparency and effectiveness of decision-making?

The Centre for Policy Studies case studies on organisations such as Abahlali baseMjondolo, and the Soweto Concerned Residents (SCR) suggests that these organisations are so disillusioned with the manner in which elected leadership perform their duties that they reject the integrity of local decision-making and the right of councillors and officials to determine how settlements are managed. Abahlali baseMjondolo, for example, alleges that councillors demand bribes and other payment in kind from residents in exchange for

ensuring registration on the social housing waiting list or alternative housing. Independent research, cited by CPS, suggests that the concern of these resident bodies is well founded – the veracity of local government decision-making is undermined by strong indications of nepotism, corruption, and a lack of transparency. Whether local leadership would be able to make better decisions if they were entirely honest remains a moot point – the quality of judgment exercised and the ability to assess key options often requires more than honesty.

There has also been little if any research on the inevitable trade-offs and choices integral to decision-making. Public decision-making typically involves difficult ethical dilemmas. These tend to crop up on a daily basis. It is often not clear what is right or wrong, or what one ought to do, or which perspective is right in moral terms. In this sense, an *ethical dilemma* is generally not a choice between right and wrong, but a choice between two rights. For example, stealing government property for your own personal gain would be a "moral temptation" not an ethical dilemma. Deciding whether scarce resources should go to skills training for staff or to subsidising an early childhood development scheme and how you make that decision might constitute a dilemma.

Dilemmas arise when values or priorities conflict. This kind of conflict is heightened because councillors and officials have obligations to many people who often have competing values or interests. How have municipalities and their leaders managed the trade-offs between the interests of the poor and the middle class, between economic growth and social inclusion and between environmental considerations and growth needs? Again there does not seem to be much policy or research in regard to these issues, the trade-offs and how leadership resolves them.

The contribution of BESG reflects on the difficult choices and dilemmas faced by municipalities. Public officials facing contentious decisions frequently choose the strategy that casts them as the mediators of difficult and sometimes irreconcilable interests. Many councils for example choose to attribute the decline of community services (often grass-cutting and general environmental cleansing and maintenance) in middle class areas to their decision to re-direct resources to poor communities, whereas the latter have invariably endured a similar decline in service and it is the municipal institution itself that has been the main beneficiary of shifting spending priorities.

The emergence of a range of "service delivery" protests raises many interesting questions about leadership and democracy. What new forms of community leadership do we see emerging? How do these structures relate to established government structures? Are the driving forces largely to do with poor service delivery or are they products of broader conflict and political in-fighting in a community? How have municipalities and other political structures responded to the challenges posed by protests?

In the CPS case studies of citizen's action it is suggested that protest and engagement outside of the provided spaces (ward committees, imbizos, petitions etc) becomes inevitable once citizens realise that "playing by the rules" is ineffective in shaping state responses. All of the respective movements and especially the Phumelela

stakeholders, were able to show some attempt to have their demands addressed within the official governance framework. In Phumelela this involved a series of petitions, memoranda and meetings with the municipality. The lesson for civil society in all the case studies however was the same: that only action outside of the provided spaces was effective in getting a significant state response.

A further complexity relates to the role of regional structures of political parties in municipal decision-making. There is certainly evidence to suggest that some regional structures particularly of the African National Congress (ANC), are closely involved in some of the decision-making of municipalities. How does this work? What drives it? What are the implications for good governance and the quality of decision-making?

The Community Law Centre's examination of decision-making power within political parties and the centralisation of such power is instructive. The CLC looks at instances of regional party interference in the decision-making of its representatives on the district municipality. This arose when the ANC district caucus was instructed by regional leadership to make a decision on the most senior appointment within the Amathole District Municipality. In this instance the ANC leadership on the municipality bowed to the influence of their regional executive although they knew that their decision on the candidate selection would be antithetical to the public interest. In a subsequent ruling by Justice Pickering, the Court clearly reinforced the principle that the public interest may not be conflated with or subsumed by party interests and thus underlined the importance of maintaining the separation of party from state.

A critical issue is the need to improve the accountability of political and administrative leadership to communities and individual service recipients. The development of formal and informal mechanisms to achieve better accountability is fundamental. In this regard, the role of opposition parties within the process of governance is important.

The extent and nature of patronage and corruption within the municipal system is an area of great concern and the question is whether enough is being done to address this.

One of the underlying themes in the Afesis-corplan paper concerns the signals sent out by the state, to both civil society and its own employees, through its response to irregularity and corruption. In policy terms government has accepted that it is a poor governance principle that senior officials are allowed to use their influence within government to rapidly move into related private sector work (the precedent set by certain cabinet ministers in this regard is lamentable). In the case of the contract granted to a former Department of Agriculture official by the Msunduzi Municipality, this appears to have been exacerbated by that fact that the official had not been cleared of serious allegations of financial mismanagement – under these circumstances it is not unreasonable to infer that the municipal appointment was at best "poorly advised" even though it may not have been demonstrably corrupt. But municipal leaders frequently argue that the quality of decision-making is a subjective assessment and that civil society has little legitimate input into such an assessment. According to this principle, citizen feedback has little place in local governance unless they are able to reveal blatant instances of wrongdoing.

Affirmation, change and transformation

A critical task of local leadership is to drive the transformation of our municipalities to ensure that they are representative of the population, committed to the ideals of the constitution and the vision of developmental local governance, capacitated to drive delivery and responsive to the needs of the people, particularly the poorest.

A wide range of processes to effect the implied institutional change has been undertaken since 1994 at both national and local levels. The scale of this change effort has not been matched by academic and policy research and there is no obvious long-term research programme focused on institutional transformation and capacity-building. There is consequently not a strong base of knowledge about the impact of such efforts and the role of leadership in them.

This is a theme that throws up a range of knotty leadership challenges including issues of race and gender equity, creating the required skills and talent base amongst councillors and staff, leading change management and restructuring and finding productive ways through the contested interpretations of transformation. The question is whether these profound processes of change have been led effectively by municipalities. In addition, where they indeed have been more successful, how important has municipal leadership been? The impact of municipal policies and practices on the race and gender dynamics of municipalities is underexplored. What, for example, has the impact of gender quotas on leadership representivity and accountability been?

The White Paper on Local Government makes it clear that municipal leadership has a responsibility to create a new common set of values and commitments, not only within the administration but also more broadly within the community. How well have municipalities discharged this responsibility?

Challenge and capability

A further theme has to with how we ensure that leadership has a capability that matches the nature of the challenges experienced at different levels of authority. Njabulo Ndebele suggests that part of former president Nelson Mandela's legacy is what he calls counter-intuitive leadership, and the immense possibilities it offers for re-imagining whole societies. He says that the characteristic feature of this type of leadership 'is the ability of leaders to read a situation whose most observable logic points to a most likely (and expected) outcome, but then to detect in that very likely outcome not a solution but a compounding of the problem. This assessment then calls for the prescription of an unexpected outcome, which initially may look strikingly improbable. Somehow, it is in the apparent improbability of the unlikely outcome that its power lies. The improbable scenario is soon found to evolve its own complex solutions. A leader then has to sell the unexpected outcome because he has to overcome intuitive (and understandable) doubts and suspicions that will have been expected. In this act of salesmanship truth and the absolute integrity of the leader are decisive attributes.'

In a similar vein, Ronald Heifetz distinguishes between "technical" and "adaptive" problems. Leadership for him is primarily about addressing "adaptive" problems - problems or challenges for which there is no technical remedy, a problem for which it won't help to look to an authority for answers because the answers are not there. The task of the leader in such situations is not to provide the answer but rather to create a safe social context where people have to face the tough questions,

discuss them frankly and openly and in the process adjust their views and attitudes. The South African municipal context presents challenges that are "adaptive" in character and require collective change in attitudes and practice.

For example, in its consideration of the manner in which the Equitable Share transfers have been applied towards the national objective of free basic service (FBS) provision for poor households, the BESG finds that that a policy that, despite its flaws, has much potential to transform the realisation of socio-economic rights, has created a set of complex challenges for municipal leadership. At one level the policy has removed the discretion of council to stamp its service and development outputs with a particular political direction. All municipalities are obliged to deliver FBS to the poor as best they can – the credit that accrues to local leadership therefore lies not in the adoption of the policy per se but the effectiveness in which it is implemented. The rural municipalities of KwaZulu-Natal examined by BESG leadership were failing in terms of using the FBS policy for optimum transformation. One of the most startling revelations is that municipalities are receiving equitable share earmarked for service functions that they do not undertake. The BESG found that the equitable share income had been used for means to which is it not intended.

This dilemma arose partly from the policy itself which states that the equitable share transfer is non-discretionary and is therefore subject to little transparency or accountability through reporting to the National Treasury. Salaries and operational costs of municipalities, particularly resource poor rural municipalities, have accounted for a significant part of the equitable share allocations meant for service delivery. While it is often argued that such operating costs are inevitable, and are not affordable based solely only local revenue sources and the institutional component of the transfer, what is not clearly demonstrated is that these high institutional costs are necessary for the current level of service provision or indeed even a significantly improved out put of services.

At the same time, there are there good examples of "adaptive" or counter-intuitive leadership in the South African municipal context. A lot can be learned from such examples.

For example, the contribution by Isandla Institute examines the extraordinary leadership efforts of Ben Mokoena as mayor of Middleburg in Mpumalanga in the period 1995-1999. Mokoena managed to achieve major improvements in service delivery, payment rates and widespread community support for his initiatives. This case study is now a prescribed public leadership case at some of the major international public management schools. The tragedy of Ben Mokoena is that after the elections of 2000, the provincial structures of the ANC decided that he clearly did not have the right level of deference and compliance to party structures and he was not put forward as executive mayor for the new municipality.

A particular problem is the fact that, too often, people in positions of leadership in municipalities lack the maturity and insight to function as leaders of adaptive change. This requires improvement.

An interesting but largely unexplored aspect of the above is whether the structuring and enforcement of political discipline within council presents any opportunity for creative and counter-intuitive leadership to flourish in local government. The CLC paper notes that the office of the speaker and its relationship with executive authority, as wielded by the mayor, presents complex issues in this regard. The implied checks and balances that exist between the authority of the speaker and the exercise of executive authority are rarely used to promote a more creative political discourse in council. Instead the pattern is often one of descent into inner-party conflict and factionalism or the alleged abuse of the Speaker's investigative authority for political ends. Plurality in council debate or consideration of more creative solutions to development and governance problems is frequently constrained by the imperative to consolidate coalitions across different parties or to reconcile political factions within the ruling party.

Renewal and revitalisation

The last theme has to do with how leadership can be developed within a local governance context. It is commonly recognised that leadership development is a key strategic issue for the public sector. At the same time, there are no easy solutions to either developing the leadership capacity of the existing pool of politicians and officials or to recruiting new political and administrative talent. It is increasingly acknowledged globally that the public sector experiences a challenge to attracting talent into the sector as the opportunities to make a contribution often seem more pronounced outside of government within the non-profit and private sectors. Ours is the era of the social entrepreneur where public service innovation seems to have shifted outside government.

There are currently some interesting initiatives to improve managerial and leadership capacities. National Treasury's competency regulations and associated graduate internship scheme to improve financial management is one example. The implications and nature of the still current idea of a "single public service" and the future possible role of the public service development agency (PALAMA) will be important in this.

Coupled to this must be an effort to evaluate leadership capacity in local government. Criteria must be developed to evaluate leadership capacity and the consequences (intended and unintended) of the new frameworks on leadership capacity must be evaluated. For example what has been the effect of the introduction of fixed term contracts for senior management? Some argue that fixed term contracts have unduly politicised local government administration. Others argue that fixed term contracts have resulted in impunity as the lapse of the contract becomes the focal point of accountability, rather than the performance appraisal.

The current processes and programmes for developing the capabilities of political and administrative leadership need to be rated for their effectiveness and improved where necessary. A critical question is whether enough is being done to develop the ethics and value base of political and administrative leadership. It is incumbent on political parties, professional associations in local government and educational institutions and programmes to include this in their activities.

Moving forward

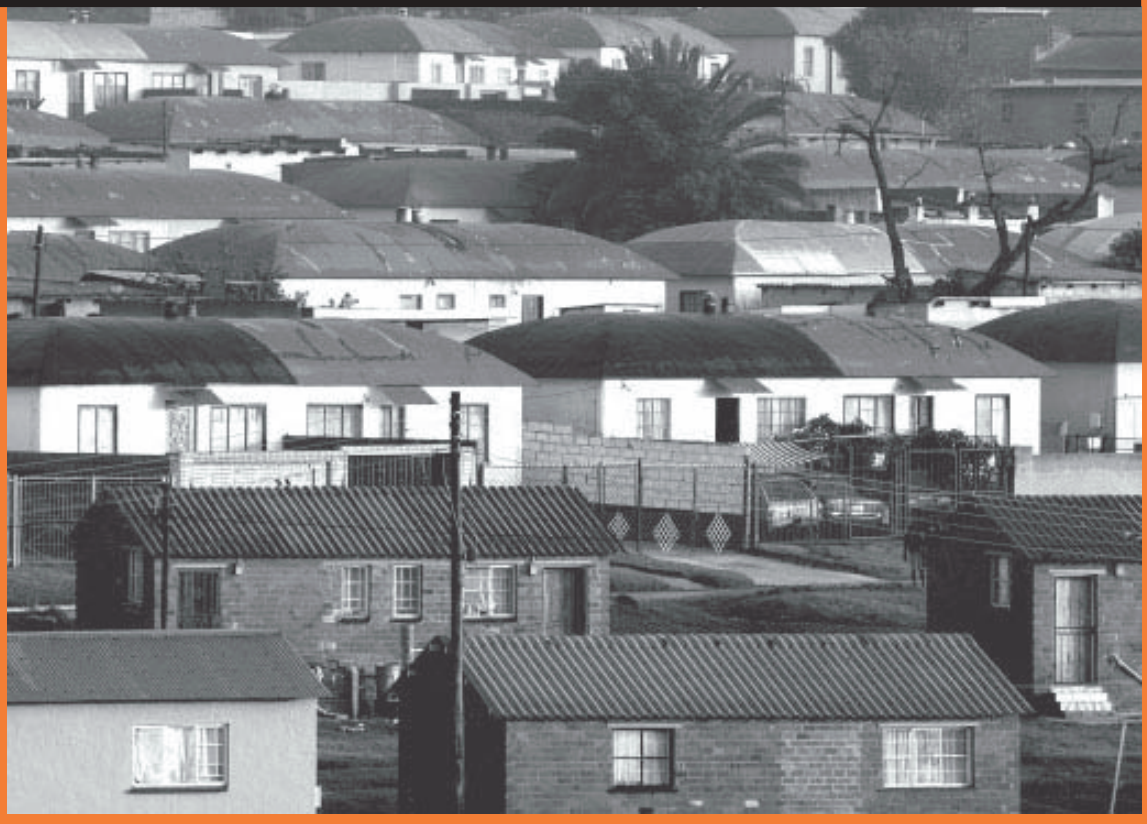
Leadership clearly is a key ingredient for effective local governance and development but has been neglected as an area for focused and systematic policy and support intervention. There are many dimensions to an exploration of leadership for local democracy and development as outlined above. It is a broad field with many and diverse areas of potential relevant enquiry. There has however been very little sustained programmatic research in South Africa over the past decade on this theme. The contributions that follow make a modest start in rectifying this knowledge gap. However, a much more sustained effort to record, examine and analyse leadership issues in local government is necessary to achieve a much needed improvement in local governance leadership and the performance of the municipal system.

The (Potential) Role of Civil Society Organisations in Enhancing Good Governance in South African Local Authorities:

A Case Study of Soweto Concerned Residents

By Gaynor Paradza & Lebogang Mokwena, Centre for Policy Studies (CPS)

This paper considers the notion of governance from the perspective of three different cases of civil society action in South Africa, namely, citizen actions in Phumelela local municipality, Abahlali baseMjondolo, and the Soweto Concerned Residents (SCR).



Picture by: Brett Eloff

THESE different actions are characteristic of contentious relations between local government structures and residents in post-apartheid South Africa on issues of service delivery and citizens' enjoyment of their socio-economic rights. Three case studies are presented to show how communities use alternative methods to engage the state when efforts to use prescribed channels have failed. This engagement has included protests, lobbying, and a legal challenge. Conceivably, this type of engagement has an impact in enforcing local government accountability and transparency. The cases provide a model of citizen-initiated engagements that can themselves be the subject of scrutiny in a context where the nature of citizens' collective action potentially undermines the rule of law. The paper concludes by reflecting on the experiences of the three organisations and highlighting lessons from the activities and impacts of the civil society organisations efforts on the municipal governance.

Evolving local state - civil society relations in South Africa

The State of Local Governance report published in 2008, asserts that despite the gains made since the establishment of a constitutional democracy, local government in South Africa still faces serious challenges in delivering services to the citizens. These challenges have largely been attributed to institutional incapacity, the lack of an effective relationship of oversight between elected and appointed local authority officials and contentious relations between municipal officials and civil society. This has resulted in poor service delivery, increased mistrust of the state and local government institutions by the public, poor management and waste and abuse of resources. The South African government has taken steps to deal with some of these challenges, and interventions include an extensive legislative framework, and policies and structures intended to improve the working relationship between municipalities and their communities. In spite of these noble initiatives, local government officials continue to deliver what residents perceive as sub-standard service.

The international best practice suggests that the limited success of state-led initiatives at improving the performance of local authority leaders can be enhanced through increased civil society involvement in local governance processes and structures. This is because civil society as the recipient of local government services is well placed to evaluate and make demands on local government officials to improve the levels and quality of services delivered by local government. In South Africa, civil society also wields power through its electoral mandate to vote for leaders and councillors in local government.

Good governance refers to a desirable relationship between the state and the other stakeholders. As distinct from government, governance describes the environment within which government functions (Atkinson 2002:2). It is the relationship between those who govern (loosely translated as the state and its representatives on the one hand) and those who are governed (including civil society). This paper focuses on the relationship between local government and civil society in the communities of South Africa. While there are a range of attributes that constitute good governance, in its broadest terms a good governance system is participatory, transparent, effective, responsive, accountable, consensus oriented, inclusive, and upholds the rule of law (GGLN 2008:11; IDASA 2008:3, Gauteng Department of Local Government 2009:16). This approach will largely be based on and incorporate elements of the Local Governance Barometer (LGB), which is an index that was developed by the Institute for Democracy in South Africa (IDASA), SNV Netherlands Development Organisation, and Pact (IDASA 2008:12) in order to establish quantitative measures of governance, to enable comparative analysis and help stakeholders to define a plan of action to address identified gaps in governance. The LGB uses effectiveness, rule of law, accountability, participation and civic engagement, and equity as the most relevant criteria for measuring good governance (IDASA 2008:3). The perceptions of citizens, government and its representatives, and the relationships between these institutions can also be used to assess existing governance regimes and their proximity to the ideal of good governance.

The South African government has since 1994 made efforts to increase good governance, specifically as measured by participatory governance systems in local government. The motivations to democratise came from international pressure to democratise (Olowu 2003:43). The South African

government has had to consolidate the democratisation process and demonstrate compliance with the principles enshrined in the Constitution. Domestically, the continued and in some cases increasing levels of political activism, coupled with ever more sophisticated forms of political engagement and claims-making through usage of the legal system and the Constitution, have also increased pressure on the government to yield ever greater space in decision-making processes (ibid). The demands for the state to be more democratic in South Africa have emerged out of an apartheid history where the state and its institutions have historically monopolised the decision–making space, leaving the vast majority of South Africans to engage the state extra-institutionally (that is, outside the limited formal institutional framework afforded by the state). Historically civil society organisations were nonetheless able to exert some influence over the state through street protests and sometimes, though rarely, through negotiations (Seekings 1997:11). Civil society also boycotted rents and user charges to resist what they considered an illegitimate state (Fjeldstad 2004:540). Although such actions did at times paralyse local government and resulted in an acrimonious relationship between the state and its citizens, these actions also resulted in concessions to citizens' demands by the apartheid state. These included charging residents a flat rate for water and electricity and non-disconnection of services for defaulting residents (McInnes 2003:10).

When South Africa became a democracy in 1994 there followed a period of institutional reorganisation of the state and its various institutions. The reforms were aimed at making the state and its institutions more responsive to the needs of all South Africans, particularly the historically disadvantaged majority. The efforts also aimed to increase the involvement of civil society in a social partnership for the direct

The reforms were aimed at making the state and its institutions more responsive to the needs of all South Africans

provision of services. It was envisioned that increasing civil society's capacity to work with the state would enable community-based organisations to act as watchdogs on the government's propensity to act unilaterally, without transparency, corruptly or inefficiently (Camay and Gordon 2004:250; Gauteng Department of Local Government 2009:120). There was also recognition that improving governance would increase the legitimacy of the democratic government (Gauteng Department of Local Government 2009:17). Thus a range of initiatives to achieve this were initiated. These included research into the incidence of corruption, the drafting of codes of ethical behaviour for officials and elected representatives, and the development of legislation that incorporated good governance principles as a guide for both state and non-state actors. Examples include: the Constitution with its Bill of Rights (Act 108 of 1996), the Non-profit Organisations Act of 1997, The Local Government: Municipal Structures Act (117 of 1998), the Promotion of Access to Information Act of 2000, the Local Government: Municipal Systems Act of 2000, the Local Government Municipal Finance Management Act (56 of 2003) and the Local Government: Municipal Property Rates Act of 2004 (Camay and Gordon 2004:48-57; GGLN 2008:22; Gauteng Department of Local Government 2009:24-26). Among the mechanisms developed to enhance good governance was the incorporation of a statutory requirement in the Municipal Systems Act of the promotion of public participation in municipal planning and implementation processes (Gauteng Department of Local Government 2009:25). It was envisaged that

this would require municipalities to build the capacity of residents, councillors and appointed municipal officials to engage in participatory processes, provide services and help facilitate local economic development.

The development of local government legislation opened up new formal spaces for citizens to participate in the governance process (GGLN 2008:16). The government also set up institutions to facilitate co-operation between local authorities and civil society together. These included ward committees, community development workers and ward-based planning. Community development workers are responsible for bringing the government closer to the people and it was envisaged that they would facilitate the representation of the community at council meetings while also transmitting important information to communities about municipal processes. With specific reference to the ward councillor, it was envisaged that this role would involve the representation of the community at council meetings and providing information to the people. As an elected member of council, the ward councillor is expected to serve the people in their constituency ward. By contrast, the proportional representation councillor does not have a ward constituency but represents the interests of those who voted for the political party they represent.
A good councillor remains in touch with the people and their issues in the ward which they represent, monitors development and understands key issues in service delivery. In council meetings, it is expected that the councillor acts as a spokesperson for the people of the ward and contributes towards making municipalities more responsive to the needs of local communities (Watson 2003; Gauteng Department of Local Government 2009:16).

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In spite of all the efforts by the government to improve governance and service delivery in South Africa, recent research shows that while there has been some improvement in civil society and community participation in decision-making processes at the local level, significant challenges in terms of municipal responsiveness still remain. Statistics compiled by the Good Governance Learning Network (GGLN) have shown that more citizens than ever before have access to basic services. The GGLN attributed this to an enabling environment for service delivery and changes in local government (GGLN 2008:8; IDASA 2008:11). In contrast a study by Heller concluded that officially endorsed forms of public participation have largely failed to enable meaningful popular participation in South Africa (Heller cited in Pithouse and Butler 2007:22). The report cites cooptation and compliance requirements as some of the impediments to fostering effective public participation. IDASA's State of Local Governance report in South Africa also noted that consultation with citizens was limited to compulsory moments defined in the legislation and not connected to decision-making (IDASA 2008:18).
A study of Merafong Local Municipality in Khutsong revealed that citizens felt that consultations with local authorities were limited to the compulsory consultation moments defined in the various pieces of legislation and was usually conducted for reasons of compliance instead of a genuine desire to consult

with and engage communities.[1] The residents also complained that decisions made in this instance with regard to municipal demarcation processes were not connected to the consultation and the participating community was not given feedback on why their plans were excluded from the final plan (Bernstein and Johnston 2007:146). A 2007/2008 survey by IDASA's Local Governance Unit concluded that South African citizens were increasingly dissatisfied with the quality and quantity of services provided by local government. The report observed that citizens in South Africa generally feel removed from local government and "development" as opposed to being an integral part thereof (IDASA 2008:11).

In addition, many municipalities face daunting problems (Bernstein and Johnston 2007:135). A 2008 survey of selected municipalities in Gauteng showed that 50% have official public participation policies and dedicated staff with the necessary resources to facilitate public participation in policy processes like the Integrated Development Plan (IDP). However, despite these key endowments, there has been limited success at incorporating residents' needs into governance and service delivery processes (Gauteng Department of Local Government 2009:4). Atkinson's research in 2002 cited the local authorities' lack of technical capacity as a limiting factor. In other local authorities challenging conditions combined with weak management, hesitant or absent leadership, poor communication, political favouritism and ineptitude compound residents' frustrations with local authorities and even councillors in addressing residents' service delivery needs (Atkinson 2002:6, Bernstein and Johnston 2007:138, Botes, Lenka, Marais, Matebesi and Sigenu undated:4-9). A 2009 report on participatory governance in Gauteng noted that the limited co-operation between the ward councillors and community development workers had a negative impact on the extent to which municipal officials received important information from and transmitted information to residents (Gauteng Department of Local Government 2009).

Furthermore, it has widely been argued that notwithstanding the existing legislative arrangements that have been promulgated in an effort to enhance public participation in local government processes, there still exist a host of municipalities that lack clear systems for engaging the public. Other institutional weaknesses that undermine the possibilities for effective public participation include poorly structured communication systems with the public and language barriers where the dominant language used is not spoken or understood by members of communities.

The perception among some communities that their councillors were rude and unresponsive does not augur well for the citizen-local municipality relationship

The perception among some communities that their councillors were rude and unresponsive does not augur well for the citizen-local municipality relationship. The inadequacies are compounded by allegations of nepotism, corruption, and a lack of transparency in the way local authorities and their officials transact their business (Olowu 2003:46; Bernstein and Johnston 2007:135; GGLN 2008:9, Botes *et al* undated:1). This has resulted in citizens' frustration and a loss of confidence in the local government system. In a governance context where there is no trust between the communities and municipal officials and elected representatives, there is likely to be no basis for co-operation among the various stakeholders. This limits opportunities for residents to hold their officials and representatives to account. This has further eroded people's belief in

the government's capacity or willingness to provide the required service (Fjeldstad 2004:547).

While the benefits of government partnerships with community groups and the private sector to foster good governance are clear, building such partnerships remains a challenge. The deteriorating relationship between the state and other social partners like the beneficiaries of government services is highlighted by the increased frequency of protests, litigation and the boycott of service charges by disaffected communities throughout the country. This widening gap between local government and civil society does not augur well for democracy and governance in South Africa. The government has, however, taken various steps to address the shortcomings of its efforts at engagement. Notwithstanding these efforts, government-led initiatives have largely failed to meet civil society's expectations of the outcomes of good governance vis-â-vis tangible improvements in the quality and levels of service delivery. Disillusioned citizens have tried to engage the government, given up or explored alternative means of engagement outside the formal governance framework, such as protest action. While not all extra institutional engagement has yielded positive outcomes for residents, some of these

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actions, which include collective protest and local authority boycotts by residents mobilised through community-based organisations (CBOs), have provided neglected and disaffected communities with opportunities to influence elements of local governance by, for example, putting pressure on local authorities to strengthen formal processes of public participation (Seekings 1997:25).

That said, however, many CBOs are not equipped to hold local government and politicians accountable (Olowu 2003:50; GGLN 2008:19). This is because for all the official mechanisms and initiatives that exist for engaging civil society, the necessary skills required for civil society to execute this function effectively has not been prioritised to the same extent as efforts at increasing and enhancing the capacity of national, provincial, and local government to execute their governance functions (Olowu 2003:50). The strategies pursued by CBOs depend on their resources and the specific issues they seek to address. The more effective CBOs have a broad membership base and technical knowledge. The broad base is buttressed by the prevalence of a critical mass of dissatisfied residents whose grievances combine with optimism and the belief that joining forces with similarly aggrieved people can remedy the situation (Kamete 2009:61). Effective CBOs also have knowledge of official policy discourses as well as the capacity to effectively use the media to further their cause (Olowu 2003:49).

The following section uses three case studies to highlight civil society organisations that have engaged the state in an effort to improve governance state responsiveness by effectively claiming their space in the governance process. The cases were selected on the basis of the diverse community interests they represent. These range from the shack dwellers in Durban to more formal residents in Phumelela. The cases were also selected on the basis of the different strategies that were employed to engage the state outside of the formal structures. While the experiences of the organisations in the cases studies cannot be generalised to the rest of the country, they do provide a useful lens within which to analyse the civil society–local government interface.

Phumelela Municipality[2]

Phumelela Municipality is located in the Free State, encompassing three towns of Vrede, Memel and Warden. The towns are characterised by rapid migration, a poor population and economic stagnation. The main complaints from poor municipal residents has been the inadequate provision of water, housing and poor sanitation as well as interrupted electricity supplies, and poor garbage collection. The council was incapacitated by internal differences between the councillors, a lack of skilled staff, a lack of financial management and corruption. All this was brought to the attention of the council by residents who had formed a ratepayers' association to protest against poor services. The ratepayers' association consisted of commercial farmers and owners of businesses in the municipality. As part of its strategy, the ratepayers' association encouraged its members to withhold payment for tariffs and rates from the municipality which reduced council revenue. The community highlighted the problems in a series of petitions and memorandums of demand made to the municipal officials. This was followed by a series of meetings spanning a period of a year between the various community groups and council representatives. Besides the council failing to rectify the problems, residents made allegations of nepotism, corruption, as well as arrogant and indifferent behaviour by council employees. Eventually the community erupted into protests that lasted for two months and resulted in extensive damage to municipal property.

In response to the unrest, the Free State Provincial Government assumed responsibility for the running of the municipality, under section 139 of the Constitution. The council and municipal authorities were relieved of their duties and an outside administrator was appointed.[3] The combination of community protest and dwindling municipal revenues (given the position of the rate payers association and a largely indigent population), required a rapid response to ensure proper governance and compliance with payment policies. The national Department of Water Affairs and Forestry responded to the protests by making R26 million available for the upgrading sanitation in the local authority. In another section of the municipality, a project to upgrade the main road was initiated. The provincial government took measures to correct the critical staff shortages, to restore financial management administration, and to ensure that local communities had access to the minimum level of basic services. Focus groups with residents reported that management of complaints and communications with residents had improved and all councillors and municipal managers seemed more accessible. While the sustainability of the intervention could not be established at the time of writing, the expectation among residents was that their situation would improve in the future (Bernstein and Johnston 2007:143).

Abahlali baseMjondolo[4]

Abahlali baseMjondolo is a militant organisation of arguably the most organised poor in post-apartheid South Africa (http://www.abahlali.org/node/16). Abahlali baseMjondolo (Shack Dwellers) is a social movement that was founded in Durban in early 2005. The movement represents tens of thousands of people from more than 30 informal settlements around the country. Abahlali baseMjondolo fights to stop forced removals and evictions, while demanding of the state the upgrade of existing informal settlements instead of evicting and forcibly removing residents from those settlements. Furthermore, Abahlali baseMjondolo have argued that local municipalities rarely talk to communities living in informal settlements. The organisation endeavours to have municipal officials talk to shack dwellers before imposing eviction orders. It has been alleged by Abahlali baseMjondolo that instead of representing the residents when there is a face-off with the municipality, ward councillors try to benefit from the sites whose residents are under threat of eviction. They have alleged that councillors demand bribes and other payment in kind from residents in exchange for facilitating the residents' registration on the social housing waiting list or accessing alternative housing.

The movement's first action involved a road blockade organised from the Kennedy Road settlement. Abahlali baseMjondolo was protesting against the sale, to a local industrialist, of a piece of land in the city. According to Abahlali baseMjondolo, the shack dwellers' committee had previously held a meeting with the chair of the housing portfolio committee of the municipality, the director of housing and the ward councillor where the three officials had promised Abahlali baseMjondolo the vacant land for housing. Ever since this initial action, Abahlali baseMjondolo has tended to be seen as an unrelenting representative of the interests of shack dwellers, having adopted a range of sophisticated, formal, and informal actions like marching to and occupying the offices of local councillors (Abahlali baseMjondolo 2006). While the movement seeks to democratise municipal processes and policy with regards to the rights of communities living in informal settlements, another primary site of contestation has been the internal organisation of settlements, where a key concern has been to try and democratise the governance systems of many settlements (Ibid).

Over and above the movement's demand for 'land and housing in the city', Abahlali baseMjondolo has also broadened the range of issues around which it organises to include access to education and the provision of water, electricity, sanitation, health care and refuse removal. Essentially, they see housing and its provision by the state as a key mechanism through which to demand broader service delivery and increased access to basic public goods and services. In some settlements, however, the movement has opted for self-provisioning or extending social services to enable citizens to improve their quality of life and livelihoods (ibid).

Initially affected municipalities and the relevant councillors reacted to Abahlali baseMjondolo in a heavy handed manner. The affected municipalities and the relevant councillors refused to speak to Abahlali baseMjondolo when invited by the movement, ignored their petitions, removed shacks without warning, withheld services and used armed police to evict shack dwellers. Reliance on the police to administer evictions made it possible to arrest protestors and to threaten the movement's leadership. The eThekwini municipality also denied Abahlali baseMjondolo access to information on the city's housing and other service delivery plans.

Abahlali baseMjondolo has continued to put pressure on local authorities by using mass mobilisations and sits-ins outside municipal offices, councillors' houses and media houses. They also approached the court in 2006 and secured an interdict against the eThekwini Municipality to prohibit further evictions. Since then, no evictions in settlements aligned to Abahlali baseMjondolo have taken place, although shack dwellers' evictions have continued in settlements where the movement does not have a strong presence. Abahlali baseMjondolo approached the court on the basis of the Promotion of Access to Information Act (2 of 2000) to force municipal officials to give shack dwellers information about matters that affect them. In 2006, Abahlali baseMjondolo used the media and the Internet to publicise violations by the police and local authorities and to demand access to officials' plans regarding shack dwellers' possible relocation or settlement upgrading. Owing to the international attention that Abahlali baseMjondolo has attracted, the municipality in one of the sites of the movement's activities agreed to hold a meeting with Abahlali baseMjondolo. Abahlali baseMjondolo's website lists amongst their victories, their success in developing a sustained voice for shack dwellers; democratisation of the governance of many settlements, stopping evictions in a number of settlements, forcing government officials, offices and projects to 'come down to the people' and increased service delivery to people in the informal settlements. Abahlali baseMjondolo and other commentators have argued that national government's commitment to an informal settlement upgrading programme in the form of a policy called "Breaking New Ground" is a response to the sustained mobilisations against relocations by the social movement (http://www.abahlali.org).

The two cases summarised above capture some of the dynamics of the deterioration in the governance relationship between local authorities and residents and the diverse consequences resulting from the various ways governing institutions chose to react. The two experiences highlight the limits of the existing local governance machinery to resolve tensions, the resulting impasses, and the subsequent actions by residents to rectify what they find to be an untenable and state of affairs. While the outcomes from the two experiences differ, they share similarities in the ways in which relationships between local government and the people on the ground is compromised when government refuses to engage citizens, with the view of facilitating civil society's capacity to partner with the state and influence policy. The cases also show the inconsistency of government's responses to protest and mass mobilisation: in Phumelela, provincial authorities assumed administrative management and control of the local authority. In the case of Abahlali, the state has largely tried to turn a blind eye to the social movement and where it has been responsive, this has been a consequence of sustained protest action and the movement's leverage through institutions like the courts. It is however clear, even in the latter case, that the state is not completely insulated from demands and policy influence – albeit indirect – of organised groups with sustained and innovative tactics. The different ways in which the state engages with protesting citizens could in these two cases be attributed to the perceived legitimacy of the respective resident groupings as typically, informal settlement dwellers are largely not considered legitimate residents in local government. It could also be that the state's reaction to the two communities was influenced by its own capacity to respond to the demands made and the perceived consequences of non-intervention by the state.

The Soweto Concerned Residents

The Soweto Concerned Residents (SCR) was formed in 2005 as a break-away group from the Soweto Electricity Crisis Committee (SECC). The SCR has extended its geographical reach and established satellite offices in Vosloorus and the Eastern Cape. While the SECC's mandate was limited to tackling pre-paid electricity meters, the SCR has engaged the government on issues such as the allocation of RDP housing, the costs of supplying basic municipal services to the user, and has contested the installation of prepaid electricity and water meters. The SCR leadership argued that while pre-paid meters are an important issue against which to mobilise communities, the problem extended beyond electricity and water meters to include what the inadequate quality and levels of service delivery to township residents in general, as well as the limited access that residents had to other social services like social grants (for pensioners, orphaned children, as well as people and children who are HIV positive). As such the SCR understands its mandate in terms of three primary issues, namely: (i) the promotion of residents' access to and enjoyment of free basic services like water, electricity, education and health services; (ii) citizen education and providing information; and (iii) consolidating the organisation's 'R5 Campaign'.

Increasing access to basic services

The SCR has adopted a literal interpretation of section 27 of the Constitution, which stipulates that everyone has the right to have access to health care services, sufficient food and water, and social security. During their weekly meetings which are held in the community hall and attended by more than 300 people, the SCR invites residents who have had their water or electricity disconnected to approach the SCR's technicians who will reconnect the services. While there is no constitutional guarantee that the state is obliged to render services without any charge to the user, the SCR's position is that since the democratic elections of 1994, the government had promised that these services would be provided free of charge and thus their campaign to take out pre-paid water and electricity meters and illegally reconnect residents to services is merely "helping the residents to enjoy" what they were promised by officials during their election campaigns.

Citizen education and the promotion of rights

According to the leadership of the SCR, while there are a range of government initiatives that have been introduced for the benefit of residents, many do not have adequate - if any - information about these. SCR argues that this limited access to information is related to a number of things. The first is the failure of government officials to disseminate information to residents (as in the case of social grants for indigent households or children under the age of 14). The second is the problem of politicised local government structures which the SCR sees as facilitating the involvement of African National Congress (ANC) aligned residents in local participatory municipal structures (like ward committees) to the exclusion of other residents. This has in turn created significant tensions between the leaders and members of the SCR, on the one hand, and ANC ward councillors and ward committee members, on the other, to the extent that the SCR actively encourages residents not to consult the ward councillor when they are experiencing problems or need information. Rather, residents are encouraged to consult with the SCR leadership about whatever problems that they might be having and where the SCR does not have the necessary information or

competence to deal with the matter, they direct it to the relevant non-governmental organisations working in that area, lawyers, or directly to the relevant government departments.

The SCR has adopted this strategy of circumventing the ward councillor in the organisation's initiatives to resist what they view as "arbitrary evictions" of residents from municipal housing in Soweto.[5] The SCR sees itself as the protector and promoter of the rights of the residents of Soweto, particularly those who are long term residents, illiterate, and poor and have limited access to information about municipal processes and their constitutional rights. The SCR believes that instead of informing residents and representing them at the municipality when decisions to evict them are made, ward councillors collude with municipal administrators and court officials to arbitrarily evict residents who are not knowledgeable about the law from the houses they occupy. According to the SCR, it is precisely these township residents who are increasingly at risk of the unscrupulous behaviour of councillors and municipal officials, who allegedly issue eviction orders so that they can attract potential buyers for the homes of those evicted. In this regard, the general perception of the SCR is that as with apartheid era evictions, post-apartheid evictions are characterised by official disregard for human rights, with local authorities who do not have the interests of poor households at heart and are thus illegitimate (to the extent that they fail to promote these in the democratic era). Between May and June 2009, for example, the leaders of the SCR asserted that they had prevented two such illegal evictions, which, they argued were a direct result of the corruption, lack of leadership, and dishonesty of councillors who do not represent the interests of communities, particularly households that are under threat of, or vulnerable to, municipal evictions. Instead, councillors take advantage of the positions of leadership that they occupy to enrich themselves, in this instance siding with the council to facilitate eviction of residents from their homes. The organisation has declared that the government's principles, which are enshrined in the *Batho Pele* (People First) slogan, have instead been subordinated to an ethic of "Profit First".

In response, the organisation has introduced a strategy called *Project Buyel' Ekhaya*, which means project 'Return Back Home' and intends to reinstate evicted household members to their homes. Once the evictee is reinstated, some of the members and leaders of the SCR remain at the home of the household members that were evicted for 48 hours, in an attempt to safeguard the evictees and deal with any confrontations with police, municipal officials, or the councillor. The SCR has also assisted affected residents to take legal action through the courts. This, they stress, is because previous attempts by the SCR to engage municipal officials on the issue have failed. When dealing with evictions, the SCR has tried to access the specific documents and files from the municipality on the disputed properties. However, such attempts have not been successful. The SCR believes that the local authority denies them access to the documents because either the municipalities' files are not up to date or the municipality has something to hide (as in the case where municipal officials cannot prove that the potential evictee was given proper notice of the eviction and or "sold" the property as they sometimes allege). Since this is supposedly public information, which the municipality refuses to disclose, the SCR seeks alternative forms of engagement. The SCR now circumvents government structures including those that have been created to foster public participation and the elected representatives and ward councillors. The SCR has lost confidence in the potential role of the councillor as a mediator because they allege that councillors routinely accompany the institutions that enforce evictions showing that councillors are incapable of representing the resident.

Through *Project Buyel' Ekhaya*, the SCR claims it has given residents important information about the correct procedure with regards to evictions, but they have also prevented the further impoverishment of poor residents who were vulnerable to being illegally evicted from their homes thereby promoting the rights of the poor in Soweto.

R5 Campaign

In some respects, the SCR's R5 Campaign, which was introduced at the start of 2009, can be seen as a slight departure from the organisation's insistence on free basic services and hence discouraging residents from paying for services. The R5 campaign, which involved disconnecting the pre-paid water and electricity meters installed by the City of Johannesburg, was the SCR's main intervention since its inception. The Supreme Court of Appeal (SCA) found the installation of the pre-paid water meters to be unconstitutional and ordered that the municipality avail 42 litres of water per day per resident for free (City of Johannesburg and Others v L. Mazibuko and Others, 2009). Presumably in the light of this judgement the SCR introduced its R5 campaign, where residents pay only R5 for municipal services as opposed to paying nothing at all or paying the amounts stipulated by the municipality.

The R5 campaign aims to achieve two outcomes: The first outcome is that the SCR hopes to achieve through this campaign greater transparency and consultation regarding the determination of service rates. The organisation argues that the rates applied by the municipality have not been determined in a manner that is transparent and cognisant of the needs of the poor, but rather, in an arbitrary manner that disadvantages the poor. While the initial approach in dealing with this lack of transparency and the cost of paying for municipal services was to refuse to pay anything pending proper negotiation and consultations between residents and government officials and councillors, the R5 campaign encourages residents to pay this minimal amount, with the hope that this would lead to a series of consultations. Through these consultations the process by which municipal rates and taxes are set would be explained to residents who would in turn be able to convey their challenges with regards to paying the amounts required. Out of this process, a more equitable arrangement between the municipality and residents could be arrived at in respect of service payments. Linked to this, the second aim of the R5 initiative is advocating a flat rate for services. Owing to the organisation's perception of the arbitrary and untransparent nature of rates determinations, the SCR's R5 initiative has been introduced to demonstrate the potential effectiveness of raising municipal revenues through a flat-rate that will be observed by all residents as opposed to differentiated rates, which, according to the SCR, pose a significant financial burden that only a few residents pay for municipal services.

The third aim of the SCR's campaign is to refute government officials' claims that township residents have adopted a general culture of non-payment — a relic of anti-apartheid struggles in the townships during the 1980s.

As with the two previous cases, the SCR argues that elected representatives and councillors do not treat them well, with councillors failing to provide important information to residents about policies and municipal decisions that affect their lives. Further, according to the members of the SCR, councillors are directly involved in the impoverishment of poor households by facilitating evictions.

Conclusion

The three cases illustrate what happens when municipal authorities and citizens fail to engage through conventional channels, as well as the limits of formally prescribed engagement. The consequences are deadlocks between the state and citizens. As a result, resolutions to the challenges of service delivery are likely to remain unresolved and communities fail to access much-needed information about service delivery and municipal progress towards provisioning. The cases show how disillusioned communities organise to confront (not always successfully) an unresponsive local government.

Though the circumstances in the three cases differ, the dissatisfied communities all initially attempted to engage the state through the established formal channels. This included attempts at non-violent engagement with the municipalities, using petitions, inviting the municipalities to meetings and organising marches. However, the case studies demonstrate that these mechanisms can only work in so far as the local municipality is responsive to residents' attempts to engage them through the formal channels. Where this does not happen, the formal mechanisms of engagement are clearly an ineffective means for ensuring good governance.

In all three cases, the civil society organisations relied on the power of collective action by dissatisfied community members to exert pressure on local government

It is only where these strategies failed to garner a response from the municipal officials that citizens have resorted to alternate forms of engagement with the state. The activities include forceful strategies like boycotting local government structures, including elections in the cases of Abahlali and SCR and in Phumelela, the organisation of mass action on such a scale as to paralyse local government. In all three cases, the civil society organisations relied on the power of collective action by dissatisfied community members to exert pressure on local government.

The literature review showed that government-led initiatives not only concentrate power in the state but do little to change the status quo. The unsuccessful attempts by the SCR and Abahlali abaseMjondolo to extract public information from their respective municipalities regarding evictions expose the state's neglect of its obligation to empower citizens through information dissemination. This renders the citizenry weak, uninformed and compromises the citizens' role as watchdogs on the activities of the state. This also undermines the citizens' capacity to participate in decisions that affect their lives.

Community-led initiatives potentially open up new avenues through which governance relationships can be progressively strengthened. The examples of Phumelela and Abahlali baseMjondolo demonstrate that citizens not only managed to communicate their demands to local government, but also obtained redress on some of their concerns. Such responses improved the governance relationship by restoring residents' confidence in the state. This was evidenced by feedback from the focus group discussions held with residents in Phumelela. The Phumelela residents felt that municipal officials and councillors were more accessible which improved communication between residents and local authority officials. The Phumelela case illustrates that lost public confidence can be restored and that the state can be responsive to citizens' demands even though the engagement takes place outside the established channels.

While it is not possible to make national

generalisations on the basis of three cases, the Phumelela case presents some important insights. It shows the importance of transparency and openness in support of good governance. While all residents' service delivery complaints were not addressed, the fact that residents incrementally gained access to officials and their leaders increased the residents' trust in the system of local government and in so doing increased resident's hope that the local municipality would eventually deliver services. The sustainability of provincial and municipal relations remains to be seen and remains a challenge in the context where significant co-operative governance between the spheres of government is not always healthy.

The sustainability of provincial and municipal relations remains a challenge in the context where significant co-operative governance between the spheres of government is not always healthy

The three cases provide some insight into the possible means through which the impasse between local government and civil society could be progressively resolved. This would improve governance, service delivery and increase citizens' confidence in their local government institutions. An improved relationship would increase the potential for stakeholders in governance to improve service delivery and communication.

The success of the SCR's R5 campaign in convincing residents to pay for services shows the potential capacity of CBOs to effect progress where the state has failed. The R5 campaign is a strategy which can be used to deal with communities who withhold payment for services where they perceive the service delivered to be inadequate or local government to be acting in bad faith. The SCR, using its mass appeal and the trust that citizens have in it as an alternative to the local authority structures, has managed to mobilise residents to make regular payment for services to the local authority. This is an important breakthrough in a society where withholding payment for services has undermined the capacity of local municipalities to enforce payment for services rendered.

The extent to which social movements succeeded in improving the relationship between communities and local authorities could only be established in the case of Phumelela and to an extent the Abahlali baseMjondolo. This was through the resolution of the dispute in Phumelela. As far as the Abahlali baseMjondolo are concerned, the organisation managed to persuade local government officials to communicate with them and include the shack dwellers' concerns in spatial development. At the time of writing, the SCR was focused on the short-term goal of consolidating its role in the community by providing an alternative means by which residents could access information and to some extent services from the local municipality. The SCR made it clear at the time of fieldwork that the organisation did not want to be co-opted into the municipal structures as this would undermine its watchdog role.[6]

The community-based organisations analysed above have played an important role in systematically organising communities, offering them a platform on which they can collectively explore alternative ways of engaging the state, voicing their concerns, and exploring new methods of engagement. This they achieve by using the resources at their disposal which include the law, their sheer numbers and (in the case of Abahlali baseMjondolo) the media, resources which would have limited impact for poorer individuals in society.

Concerns about the legitimacy of the alternative

As such, when citizens seek recourse outside the formal structures, this is in part a demonstration of their disillusionment with local authority responses to their voiced concerns

methods used by the civil society movements to engage the state have to be considered in light of the alternatives that citizens have in situations where the municipalities ignore the citizens' attempts to engage them through the legitimate channels. While the municipality can leverage its control of governance resources by disconnecting residents from services to deal with non-payment and ensure compliance of residents, petitioning and initiating meetings by the residents are not sufficient to compel the state to act. This highlights the limits of such mechanisms in trying to improve governance and leaves citizens with no option but to explore extra-institutional mechanisms to compel the state to act in a manner that is consistent with their expectations. As such, when citizens seek recourse outside the formal structures, this is in part a demonstration of their disillusionment with local authority responses (or lack thereof) to their voiced concerns.

The citizens' actions demonstrate that solutions to problems can also be found outside the formal institutions and efforts to solve governance problems could do well to embrace non-state initiatives like these (for example utilising the SCR's perceived popular legitimacy as a means through which municipal officials can engage community members outside the seemingly politicised formal structures of community engagement). Citizens' actions not only put pressure on unethical local authorities by drawing attention to the activities through the media, they also force institutions such as the courts and national government to act against errant local authorities, thus mediating contentious relationships between communities and their local municipalities.

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NOTES

[1] Though the case was about conflict over municipal boundary demarcation, the study provides useful insights into the consequences of the failure by the state to understand and respond appropriately to expressions of popular discontent or choice (Botes *et al* undated:1; Bernstein and Johnston 2007:145)

[2] (The case study was extracted from Bernstein and Johnston 2007 and Botes *et al's* undated publication)

[3] It is not clear form the literature whether the mismanagement, skills and resource shortages were of such an extent that the situation could not have been resolved without the application of section 139.

[4] Section 26 of the Constitution of the Republic of South Africa states that 'No-one may be evicted from their home, or have their home demolished without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions'. This provides legal protection against forced evictions without a legal court order. In issuing an eviction order, the court has to consider, the length of the potential evictee's occupation, the importance of the residence to the person's economic and social well-being, that there is suitable alternative accommodation, and potential evictees have to be given 14 days written notice of eviction. The notice must also be in a language that the people facing eviction understand, must be clear regarding the grounds for eviction and explain that the people facing eviction have the right to oppose the eviction in court and access to legal aid to do so (www.abahlali.org/node/984).

[5] Soweto Concerned residents launches the R5.00 Service Campaign http://apf.org.za/article.php3?id article=331 accessed on 15 May 2009.

[6] The SCR was undecided on how it would re-engage the municipality and whether it would field a candidate in the 2011 local government elections.

Understanding The Impact Of Corruption On Service Delivery In Local Government

By Nontlantla Skenjana, Nontando Ngamlana, Thembi Mabhula, Gugu Mgwebi, Thabile Sokupa, Peter Kimemia, Afesis-corplan

Corruption is a universal problem but the degrees of severity differ quite significantly from country to country. Its effects can seriously limit the development of national economies and undermine good governance. Corruption erodes stability and trust, and it damages the ethos of democratic governance.

Picture by: Rodger Bosch

THE prevalence of corruption points to a dearth of ethical leadership and a breakdown in the institutions that are supposed to enforce good governance practice and it constitutes a major threat to democracy and the rule of law.

In an effort to stamp out the vice, a number of anti-corruption initiatives are underway internationally and South Africa has participated in many of them. This has helped inform South Africa's National Anti-Corruption Strategy.

This paper discusses corruption particularly in the South African local government sphere and the responses that allegations and acts of corruption have elicited from the South African government at all levels and its anti-corruption agencies.

Definition and types of corruption

Different countries and scholars have diverse definitions and interpretations of corruption. However, the notion of 'abuse of public or private office for personal gain' is central to all of them.

Social science scholars define corruption in terms of certain basic considerations: First, corruption is related to the performance of the duties of a public office. According to Nye (1967:966) corruption is, 'behaviour which deviates from the normal duties of a public role because of private – regarding (family, close private clique), pecuniary or status gains; or violates rules against the exercise of certain types of private – regarding influence. This includes such behaviour as bribery (use of reward to pervert the judgement of a person in a position of trust); nepotism (bestowal of patronage by reason of descriptive relationship rather than merit); and misappropriation (illegal appropriation of public resource for private regarding uses)'.

Second, corruption is related to the concept of exchange derived from the theory of the market. Van Klaveren (2001:26) argues that a bureaucrat views public office as an enterprise from which to extract extra-legal income. As a consequence, the civil servant's compensation package 'does not depend on an ethical evaluation of his usefulness for the common good but precisely upon the market situation and his talents for finding the point of maximal on the public's demand curve'. In an economy pervaded by high levels of government regulations, civil servants may devote most of their time and effort to assisting entrepreneurs to evade state laws and statutes. In exchange the civil servants are paid extra-legal income (Mbaku 1992: 146).

The definition of corruption is also couched in terms of the public interest, as argued by Friedrich (1972:15). He asserts that a pattern of corruption may be said to exist whenever a power holder who is charged with doing certain things, receives monetary or other rewards which favour whoever provides the reward. In return, this damages the public image of the group or organisation to which the functionary belongs, more specifically the government.

The definition by Nye (1967) provides a point of departure. Several parts of his definition are important, particularly his emphasis on public roles. If an official fights with a partner or abuses a child, that may be assault but it is not corruption. The nature of corruption that Nye is describing is that which only involves the behaviour of an official in his or her public role. This definition, therefore, covers situations where money winds up in the pockets of the official or a relative, but it does not cover situations where the goal of the abuse is to benefit the official's political party, ethnic group, etc. Evidence indicates that corruption is sometimes perpetrated in order to benefit a third party.

The Watergate scandal in the United States of America, for example, certainly involved illegalities, but most of the illegal acts were intended to benefit the President's party, to ensure that the Republicans won in the 1972 presidential election, and later to prevent the embarrassing disclosure of the Nixon administration's role in arranging the cover-up of the original burglary. While Richard Nixon frequently did abuse his office for personal gain (for example, by remodelling his mansion at government expense, and by padding his tax returns), the basic Watergate episode itself was not intended to enrich the President or his advisors.

A similar example in South Africa is narrated by Andrew Feinstein in his book *After the Party*. Feinstein believes that Thabo Mbeki, then Deputy President of South Africa and also Deputy President of the ruling African National Congress (ANC) at the

time of the arms deal, solicited funds particularly from the British company BAE/SAAB, not for his personal gain, but to fund the ANC's election campaign (Feinstein 2007). In a dossier submitted to Parliament in 2006, Member of Parliament, Patricia de Lille alleged that she had evidence of three payments by warship supplier ThyssenKrupp on 29 January 1999 each of R500 000, to the ANC, the Nelson Mandela Children's Fund and the Community Development Foundation in Mozambique, a charity associated with Mandela's wife, Graça Machel.

In South Africa, the National Anti-Corruption Forum at its 1999 conference defined corruption as 'any conduct or behaviour in relation to persons entrusted with responsibilities in public office and which is aimed at obtaining undue gratification of any kind for themselves or for others'. This definition seems more inclusive and encompasses the various forms and intentions of corruption that Nye in his definition is silent about.

The Prevention and Combating of Corrupt Activities Act (12 of 2004) outlines a framework for the strengthening of measures to prevent and combat corruption, provides investigative measures in respect of corruption and enterprises convicted of corrupt activities relating to tenders and contracts and provides for extraterritorial jurisdiction for corruption and offences relating to corrupt activities. The Act itself does not list various categories of corruption. The OECD, UN Convention as well as the National Anti-Corruption Summit agreed on the following as various forms of corruption:[1]

a) *Bribery:* bribery involves the promise, offering or giving of a benefit that improperly affects or intends to affect the actions or decisions of a public official. This benefit may accrue to the public official, another person or entity. A variation of this manifestation occurs where a political party or government is offered, promised or given a benefit that improperly affects the actions or decisions of the political party or government.
b) *Fraud:* this involves actions or behaviour by a public official, other person or entity that fool others into providing a benefit that would not normally accrue to the public official, other persons or entity.
c) *Embezzlement:* involves theft of resources by persons entrusted with the authority and control of such resources.
d) *Extortion:* involves coercing a person or entity to provide a benefit to a public official, another person or entity in exchange for acting (or failing to act) in a particular manner.
e) *Abuse of power:* involves a public official using his/her vested authority to improperly benefit another public official, person or entity or (using the vested authority) to improperly discriminate against another person, official or entity.
f) *Conflict of interest:* involves a public official acting or failing to act on a matter where the public official has interest or another person or entity that stands in a relationship with the public official, i.e. a public official considers tenders for a contract and awards the tender to a company of which his/her partner is the director.
g) *Favouritism:* involves the provision of services or resources according to personal affiliations of a public official. An example would be a Mayor ensuring that only persons from his/her political organisation are successful in tenders or in getting employed.
h) *Nepotism:* involves a public official ensuring that family members are appointed to public service positions or that family members are awarded contracts.

Global and regional mechanisms to fight corruption

Globalisation has fuelled trans-national corruption both in the private and the public sectors. To tackle this, the United Nations adopted a Convention against corruption in 2003.

The UN Convention outlines the responsibilities of the signatory countries in the creation of legislation to combat corruption. It envisages promoting integrity, accountability and proper management of public resources and provides definitions and clear guidelines on what constitutes an act of corruption in the public and private sector and in trans-national activities. It further recommends actions that should be taken to strengthen the organisational capacity of governments to deal effectively with corruption.

The African Union Convention on Preventing and Combating Corruption was also adopted in 2003, just before the UN Convention. The former's purpose is to provide a framework for combating, preventing, detecting and eradicating corruption in member states through policy coordination and legislation. The AU Convention acknowledges the negative impact corruption has on the development agenda and the need for cooperation between states to combat it.

The SADC Protocol against Corruption came into effect in 2001 with similar aims as the AU Convention, with the hope of strengthening cooperation between states to deal with corruption and to harmonise legislation and policy.

Overall, the objectives of all three agreements are complementary. Central to the guidelines that they provide are the definitions of what constitutes a public official and the different acts of corruption. The definition of a public official is crucial in determining whether corruption has taken place. It must be noted that the three protocols do not have the same definition of a public officer with the UN providing a broader explanation while the other two are more specific.

The benchmark

According to the National Anti-Corruption forum, 'the most critical element in the fight against corruption is the culture and ethos in government and civil society that should permeate everyday activities. The ethos and culture within government and civil society can be built through communication and training, most importantly, through a process of continual dialogue on ethical issues. In the absence of a positive ethos, even the best rules, systems, procedures and institutions will not be able to curb corruption and unethical behaviour.'

The key pillar of the local state's anti-corruption strategy is the facilitation of a strong community participation element at all levels of the operation of the municipalities including exposing and reporting corruption

Of great concern is the failure of most local municipalities to establish and maintain dialogue with civil society to ensure transparency and accountability — the key performance indicators for local government as articulated in the five year Strategic Agenda of Local Government.[2] There is also a discernible disdain for public participation and municipalities appear to regard this as a source of unnecessary irritation.

The key pillar of the local state's anti-corruption strategy is the facilitation of a strong community participation element at all levels of the operation of the municipalities including exposing and reporting corruption. Community participation can entrench a culture of transparency where communities are able to demand accountability from elected representatives and appointed administrators with regard to services being rendered. With the existence

of strong community participation, elected representatives will be compelled to engage with communities regarding, among other things, anti-corruption initiatives as a concrete demonstration of their commitment to good governance and compliance with legislation.

Key elements of an effective anti-corruption strategy

A review of international guidelines on anti-corruption and anti-corruption strategies from developed countries reveals that most strategies are anchored on the following elements:

Access to information and transparency: Greater access for citizens and news media to government information including budgets, detailed information on government revenue, disclosures of top public officials and politicians of all financial interests and transparency of political party finances. Research on the cause, nature and extent of corruption and regular anti-corruption conferences that bring together all sectors and stakeholders.

Oversight and watchdogs mechanisms: A national anti-corruption hotline, the verification of qualifications of all potential incumbents in the public service, opposition parties and civil society acting as watchdogs over government activities, parliamentary oversight, the creation of a national non-statutory independent body to advise and coordinate the implementation of anti-corruption policies.

Criminal Justice Response: Legal protection for whistleblowers, tougher legislation enabling more prosecutions and harsher sentences for corruption, more resources to investigate and prosecute corruption cases, the creation of special anti-corruption courts, a single dedicated agency to fight corruption, fighting organised crime and prosecution of high-profile individuals.

Moral and ethical values: Codes of conduct to promote professional ethics in government, increased commitment by political leaders to fight corruption and fraud, more emphasis on moral values in schools and religious community, as well as a greater emphasis on promoting moral values in everyday life.

Public service reforms: The barring of corrupt officials from holding public office, increased salaries and bonuses for government employees, greater internal financial controls, internal audits on government spending as well as the blacklisting of businesses proved to be involved in corruption.

There is little to fault with the design or development of the local anti-corruption strategy itself — the key issue lies with the implementation of the strategy. To understand the shortcomings in its implementation one needs to look at the laws and policies around anti-corruption as well as the performance of enforcement agencies.

South Africa's anti-corruption strategy is informed by, and is in line with, international approaches. Yet the problems of corruption and unethical leadership appear to be worsening. There is little to fault with the design or development of the local anti-corruption strategy itself — the key issue lies with the implementation of the strategy. To understand the shortcomings in its implementation one needs to look at the laws and policies around anti-corruption as well as the performance of enforcement agencies.

Constitutional provisions

The Constitution of South Africa (108 of 1996) commits South Africa to an ethical, accountable and democratic system of governance. However, this commitment was made against the historic background of various self-governing entities which are now incorporated into one state. At least some of these previously relied on centralised political control which actively sought to quarantine government from scrutiny and oversight. Legislative and administrative measures were implemented to transform this inheritance.

There are many legislative and administrative provisions in the Constitution that contribute to good governance and anti-corruption not discussed in detail in this paper. One particularly important structure is the Public Protector. Section 18(291) of the Constitution allows the Public Protector to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or could result in any impropriety or prejudice.[3]

The legislative framework

In his first State of the Nation address in June 1999, then President, Thabo Mbeki spoke extensively about corruption and reiterated the commitment of the South African government to honesty, transparency and accountability as well as the government's determination to act against those who transgressed these norms. He highlighted the importance of enacting the Protected Disclosures Act, which protects whistle blowers and the implementation of the Public Finance Management Act to ensure proper controls pertaining to the accountability of public finances. The Local Government Anti-Corruption Strategies were launched with a commitment to prevent corruption and focus on improving municipal governance, performance and accountability as one of the three strategic priorities. To demonstrate its commitment to the fight against corruption the government subsequently passed the following legislation:

- Local Government: Municipal Finance Management Act (5 of 2003)
- Local Government: Municipal Systems Act (32 of 2000)
- Protected Disclosures Act (26 of 2000)
- Promotion of Administrative Justice Act (3 of 2000)
- Prevention and Combating of Corruption Activities Act (12 of 2004)
- Promotion of Access to information Act (2 of 2000)
- Public Finance Management Act (1 of 1999)
- Public Service Act Proclamation 103

The Prevention and Combating of Corruption Activities Act came into effect in 2004. Chapter 2 of the Act outlines offences in respect of corrupt activities. These are covered under sections 3 to 21. The Act excludes members of the legislative authorities, the judiciary and the prosecuting authority. However, sections 7, 8 and 9 deal with these respectively. It further separates the agents and foreign public officials from the public officer in sections 5 and 6. Section 10 looks at corruption relating to employment. Part 4 of the Act refers to specific acts of corruption including: contracts, procurement processes, sports events and games of chance. Part 5 addresses conflict of interest and unacceptable conduct in the acquisition of public goods and services. Part 6 provides for accessories to corrupt activities and for attempting to, inducing or conspiring to commit corruption.

The general offence of corruption identifies certain activities that could be construed as corruption under the Prevention and Combating of

Corrupt Activities Act in section 3. Such activities include:

- Misuse or selling of information or material acquired in the course of exercising, carrying out or performance of any powers, duties or function arising out of a constitutional, statutory, contractual or any other legal obligation;
- The abuse of a position of authority;
- A breach of trust;
- The violation of a legal duty or a set of rules;
- Any action designed to achieve an unjustified result; and
- Unauthorised or improper inducement to do or not to do anything about an illegality.

These are used to test whether there could be a corrupt relationship between parties. These provisions are in agreement with those contained in the international protocols and are further entrenched in various other statutes in South Africa.

In general, offences relating to corruption can vary in terms of the form they take but in most cases they have financial implications.

South Africa thus has a relatively sophisticated and comprehensive framework, which deals with transparency in procurement and financial management, empowers the general public to acquire information and to challenge administrative decisions and provides a good basis on which to combat and prevent corruption at all levels of the public sector.

Anti-corruption enforcement agencies

In this section, we briefly discuss the role of enforcement agencies in the fight against corruption in South Africa. Some of the agencies operate nationally, some provincially and some at a local government level.

Agency/Institution	Role
South African Police Services	Criminal investigation.
Directorate of Special Investigations	Criminal investigation, prosecution and recovery of monies from organised crime.
Special Investigating Unit	Investigates and takes legal action to prevent and recover state monies and assets.
Independent Complaints Directorate	Investigates allegations of misconduct or criminal offences committed by any member of the SAPS.
Auditor-General	Ascertains, investigates and audits all the accounts and financial statements of all the departments of the national, provincial and local levels of government, and any statutory body or other institution that is financed wholly by public funds.
Public Protector	Investigates misconduct and makes recommendations.
Public Service Commission	Investigates, monitors, and evaluates organisations, administration and personnel practice of public servants, and promotes constitutional values.
National Intelligence Agency	Provides intelligence support.
Department of Public Service and Administration	Determines national and public sector policy.
Special Investigative Unit	Investigates misappropriated public monies and recovers them by using civil remedies.

Civil society involvement in the fight against corruption

Clearly from the above discussion, it is not possible to infer a strong civil society involvement in the fight against corruption. While there could be numerous activities happening in little pockets around the country, these are not necessarily coherent or integrated in any way.

The Good Governance Surveys (GGS) conducted by Afesis-corplan in various district municipalities in South Africa reveal that citizens depend mainly on the local municipalities and the South African Police to act against corruption. Consequently, in instances where corrupt activities are not prosecuted, citizens generally appear to believe that the institutions charged with the role of combating corruption are ineffective and there is no political will to stamp out the vice. The downside to all this is that citizens, in utter frustration, are increasingly joining service delivery protests because they feel like their grievances are not being attended to. A frequently mentioned complaint is that municipalities are steeped in corruption.

The Good Governance Surveys (GGS) conducted by Afesis-corplan in various district municipalities in South Africa reveal that citizens depend mainly on the local municipalities and the South African Police to act against corruption

Recent incidents of corruption

What follows is a presentation of a number of incidents of corruption in local government. The context for many of these is the absence of proper financial management systems. Public institutions that lack strong financial controls provide fertile ground for corruption. Too often, municipalities ignore the reports of the Auditor-General (AG) or fail to furnish the AG with the necessary financial records on which to base meaningful audits.

According to the Auditor General's Report for 2006/2007 (published in 2007), more than 60% of municipalities could not account for the revenue they received. This implies that they were unable to show how and when financial transfers from government took place and could not provide proof of where the amounts listed in their financial statements came from. Fifty percent could not account for the bulk of their expenditure and therefore their financial statements could not be trusted (Auditor General's Report 2007:1).

The worst performing municipalities in this regard were in Limpopo, Mpumalanga, North West, the Northern Cape and the Free State where up to 80% received disclaimers. This meant that the information in their statements could not be verified while some completely failed to submit the statements (Auditor General's Report 2007:1). Out of 40 municipalities, 30 (75%) received the worst case audit opinions (adverse and disclaimer). A statement by the Eastern Cape's MEC, Sicelo Gqobana, indicated that the provincial government would invoke section 139 of the Constitution to intervene in Buffalo City, Amahlati, Mbashe, Mngquma, Alfred Nzo and Koukamma Municipalities. He had already placed the Koukamma, Alfred Nzo and Mnquma municipalities under complete administration, while Buffalo City, Amahlathi and Mbhashe were under review (Algoa FM 2009).

The Sundays River Valley (SRV) municipality in the Eastern Cape is also among municipalities that have been placed under administration in accordance with section 139 of the Constitution. This occurred after an audit was done due to the poor financial state of the municipality and irregular processes of awarding tenders and lease agreements, all of which negatively impacted on service delivery. The audit uncovered gross financial mismanagement, fraud, corruption and the shameless flouting of procurement procedures. Municipal officials were charged with financial misconduct involving more than R9 million intended for water infrastructure, used instead to cover municipal expenses such as salaries creditors and general expenses (Masondo 2009). Out of the 1140 service providers on the municipal database, 59 were found to be municipal employees while another 42 were indirectly linked to municipal employees.

Moreover, Maxhoba Trading and Vuma Co–operatives (some of the listed service providers) were awarded contracts for which they had never tendered. They were allegedly contracted to install ceilings and plaster about 1728 houses in Nomathamsanqa in Addo. Both companies do not appear on the bid evaluation committee minutes of a meeting held in December 2007 (Dimbaza 2009). In another case Mr Joseph Saki was paid R450 000, apparently for construction services rendered to the municipality, but there is no evidence of any contract between him and the municipality. In another contractual dispute the municipality paid a Mr Banzi an amount of R350 000 out of court. The payment according to the audit report was considered as fruitless expenditure (Dimbaza 2009).

The Alfred Nzo District Municipality is another municipality recently placed under provincial administration (Magenu 2009). In spite of its weak financial base and poor service delivery performance,

the municipality controversially paid performance bonuses to the executive managers. More recently, municipal officials were allegedly involved in a fraud case involving R28 million meant for rural development in Mt. Ayliff. Ten of the accused officials were arrested while attending an urgent municipal meeting. Computers, laptops and files were confiscated by the police, so that further investigations could be conducted. Investigations had been going on since 2005 when irregularities were detected in a R52m sanitation project called Siyazakha. It was discovered that ghost companies were being awarded tenders.

Before provincial government's intervention, Mpumalanga's Mbombela Municipality, was plagued by instability and poor service delivery due to administrative and governance challenges. The municipality was placed under provincial curatorship in February 2009. The municipality has been characterised by poor service delivery with allegations of mismanagement and corruption, infighting between the mayor and the speaker, and ongoing controversy around 2010-related coordination. It was reported that the ANC had called for the sacking of senior council official Jimmy Mohlahla, who blew the whistle on alleged abuse of power and corruption in the R1 billion stadium project (Rorke and CNS 2008). Mr Mohlahla was later murdered in circumstances that remain unclear.

In yet another case the municipality attempted to force out an impoverished community of farm workers from their 118 hectare land with the intention of constructing the R1 billion Mpumalanga 2010 stadium. The land was valued at R63 million and the municipality allegedly bought it from the community for R1 following a secret negotiation (Ntsaluba 2008). The chairman of the Matsefane Trust, Terry Mdluli and the then Mayor, Justice Ntsibande failed to declare that they were business partners in a tourism company, along with another municipal official. The community won the case in the Pretoria High Court where the sale and transfer of the land was declared to have been grossly illegal.

Reports also indicate that up to R1 billion has disappeared from the Ekurhuleni metropolitan municipality coffers. Predictably, when the allegations came to light, political parties, councillors and senior municipal officials engaged in a flurry of allegations and counter-allegations leaving the general public confused as to who was telling the truth (Vos 2008). An internal forensic audit into the affairs of the Ekurhuleni Metro is also said to have revealed that it was paying more than R10 million too much for an information and communication technology (ICT) tender (Institute for Security Studies 2008:6). It is alleged that the circumstances around the awarding of the tender were fraught with controversy. The municipality's former executive director of ICT and later Chief Financial Officer, Colin Pillay, is said to have been both a shareholder of the offending company and one of its directors. The municipality's executive mayor, Duma Nkosi was reported to have resigned after being implicated in acts of corruption, involving maladministration, improper dealings with public money, financial misconduct, gross negligence, dishonesty and dereliction of duty.

In Swellendam Municipality the Mayor, Jan Jansen, is alleged to have been involved in blatant acts of nepotism. His son's company was awarded several tenders by the municipality. It was reported that the Swellendam municipal manager made a confirmation that business transactions took place between the municipality and a company trading as Group 4, of which Jansen's son was a director. Irregularities were detected when a council decision was taken to investigate the awarding of small tenders to this company (Makinana 2008).

In Msunduzi Municipality in KwaZulu-Natal, a disgraced former head of the Department of Agriculture who left his job under a cloud over R125 million that he could not account for, was allegedly awarded a R12,8 million contract to dredge a canal in Pietermaritzburg, though his company lacked the required capacity. Because of his poor reputation, political opponents and community members challenged his involvement. The award of the tender to him in spite of his past was an indictment of the municipality's tendering system and the integrity of the parties involved.

In Makhado Municipality, the South African Municipal Workers Union led a protest march demanding the immediate suspension of the mayor and other high-ranking municipal officials allegedly involved in the awarding of a tender at Waterval to Renkie Building Construction. It is alleged that the owner of the company received almost R2 million more than he originally tendered for, yet he never completed the work he was contracted to do (De Swardt 2008). The municipality's technical team is allegedly composed of the mayor's relatives and people from her home area with allegations that 30 employees had been unfairly dismissed in order to create vacancies for her relatives and friends of the municipal manager.

Overall, the impact of such acts is far reaching and seriously constrains the quality delivery of services. Politically, corruption subverts normal processes of democracy and undermines good governance and economically it distorts the efficiency of both government and businesses. Corruption also lowers compliance with construction, environmental, and other regulations, reduces the quality of government services and infrastructure, and increases budgetary pressures on government. Indirectly, corruption risks people's lives especially when shoddy building plans are approved and infrastructure compromised.

Why corruption persists

A major challenge the country faces, is that it does not have a strong state champion determined to fight corruption. The anti-corruption campaign appears disjointed with members of civil society, the media and certain state institutions achieving minimal success. There remains a high number of corrupt public and private sector officials, waiting in the wings to take advantage of a transforming state. A culture of greed, fuelled by the ever-present wealth gap in South Africa, continues to destroy personal integrity at all three spheres of government. Factors contributing to worsening levels of corruption and unethical practices include:

- Lack of political will;
- Ineffective criminal justice action regarding cases of corruption;
- Lack of management expertise and skills resulting in poor management systems;
- Lack of financial resources resulting in inadequate resource allocation;
- Lack of cross-sectoral and strategic coordination; and
- Weak civil society resulting in limited institutional mechanisms to deal with corruption.

In addition, weak oversight systems with regard to local government are also a contributing factor. Relatively autonomous municipalities that control considerable budgets have been established in areas where, prior to 1994, no form of local government existed. Moreover, in many of these areas, the municipality is the main employer and source of work in the area. The lack of enforcement and oversight that could be employed by national and

provincial governments, at the instigation of a vigilant civil society, may have contributed to the proliferation of corruption in local government.

Conclusion

The architecture of anti-corruption agencies and strategies in South Africa is impressive but this has had little impact in many local authorities. Clearly, the implementation of local government anti-corruption strategies needs strengthening.

Moreover, civil society should be involved in a more positive manner in the anti-corruption drive. A more convincing political commitment is needed to expose, dismiss, prosecute and recover from perpetrators.

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Checks and controls within the public sector that work within and transcend institutional boundaries need to be strengthened. The criminal justice system and anti-corruption bodies need to provide the necessary scope and resources to conduct their work. Overall, much of the responsibility for lacklustre anti-corruption initiatives lies with individuals who have the authority to implement policy and to enforce compliance.

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NOTES

1 Adapted from Langseth (2000).

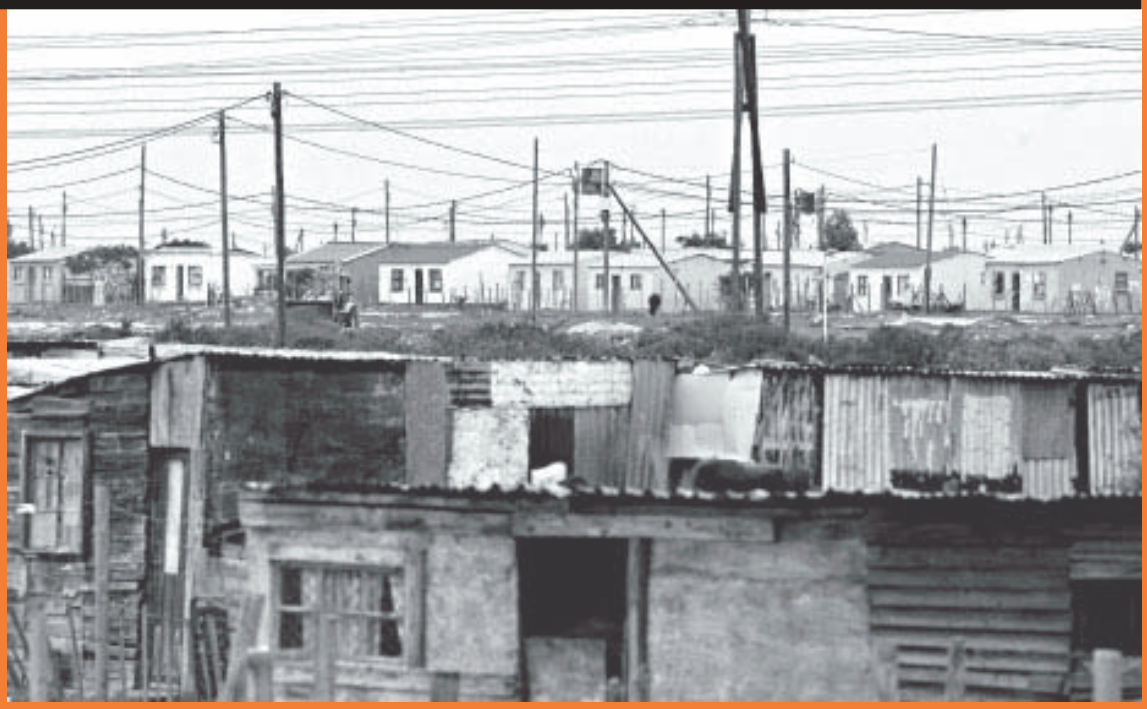
2 dplg (2007). Strategic Plan 2007 – 2012.

3 Baqwa (2001).

The State of Our Local Democracies

By Professor Jaap de Visser, Community Law Centre (CLC)

Over the last 15 years, South Africa has transformed its local government system from an illegitimate, racist institution into a democratic institution with a developmental mandate. A new generation of municipalities, lead by democratically elected municipal councils, comprise the local government system.



Picture by: Rodger Bosch

BY all accounts, local government has made a tremendous contribution to an impressive record of extending service delivery to marginalised groups in South Africa. At the same time, the challenges remain daunting. Public perceptions of local government are negative. Many communities and residents see their municipality as a locus of underperformance, corruption and inaccessibility.

The reasons behind the perceived and real performance failures are multifold and their discussion goes beyond the scope of this contribution. However, a particularly disturbing feature of the problems besetting local government is the perception that democratically elected representatives are inaccessible and unresponsive to the needs of their communities. A significant segment of our citizens do not see councillors as the champions of their wards, or the guardians of service delivery.

The allegation is that councillors are inward-focused, preoccupied with the goings-on within the political realm of the council and the technicalities of

administration. This problem provides the main backdrop to this paper. Why is it that many communities do not trust their councillors and what can be done to remedy this?

Communities, it is argued, often hold councillors accountable for aspects of service delivery over which the municipality has little or no control. For example, communities may demand answers from councillors regarding policing issues, education, housing subsidies, identity documents and pensions, while the Constitution locates competence over these issues with national and provincial governments concurrently. The South African system of intergovernmental relations offers an advanced architecture for intergovernmental service delivery that should absorb and address fragmentation, but the reality is that communities experience disjointed service delivery. However, it is too easy to dispel the levels of mistrust and misgivings of communities over service delivery as the fallout of complex intergovernmental relations. The continuing spate of community protests, directed at councillors and municipal officials is evidence of a serious breakdown of relationships between communities and councillors.

The paper examines how the functioning of institutional relationships in municipalities contributes to this breakdown. It investigates whether the structure of the municipality itself prevents councillors from becoming champions of their communities. The paper also examines the interface between politics and municipal administration. It suggests that governance in South Africa may be decentralised but politics is not. It concludes that, while the local party caucus of the ruling party in the municipality should be a platform for rigorous debate of local municipal issues, it is often a proxy for regional and sometimes even national politics. While this is inevitable and, to a degree, legitimate in any party-based system of municipal governance, the degree of undue interference and in some cases outright meddling, is threatening to drive a wedge between communities and councillors.

The overall argument in this paper is that the functioning of municipal councils is too heavily weighted towards the preparation and adoption of executive and administrative decisions and that, as a result, municipal councils do not hold the municipal executive and the administration accountable. Communities thus regard councillors as "complicit" in the municipal machinery rather than as potential allies in their quest to engage the municipality.

The conflation of legislative and executive roles in the council by the Constitution is often posited as a design flaw and is therefore a key thread throughout this discussion. The paper provides some options for institutional change. Importantly, diagnosing institutional flaws and suggesting solutions for these flaws is only part of the answer. The critical need that emerges is one of ethical leadership on the part of local government politicians and their administrators, but also on the part of the party political structures that surround the local state.

The conflation of legislative and executive role in the council by the Constitution is often posited as a design flaw

The findings of this research report are based on a series of interviews conducted in 2008 and 2009 with senior municipal officials and politicians throughout the country. Further evidence is drawn from three municipal workshops conducted in 2009.

Conflation of legislative and executive roles

A feature of local government (that is common to many nations) is the absence of a strict separation of

powers between legislative and executive branches within the local government authority.
Indeed, section 151(2) of the Constitution provides that both legislative and executive powers are vested in the Municipal Council.

Communities regard councillors as "complicit" in the municipal machinery rather than as potential allies in their quest to engage the municipality.

Statutory law provides for a degree of separation. It establishes a system of municipal executives. In the main, municipalities could be operating one of two systems. The first, and most popular, system is the executive mayoral system. The council elects an executive mayor who exercises all executive authority. The executive mayor appoints a mayoral committee to assist him or her. The second, less popular, system is the collective executive system. The council elects an executive committee that collectively exercises executive authority. Decision-making authority on the "typology" (i.e. whether the municipality has an executive committee or an executive mayor) ultimately vests in the Member of Executive Committee (MEC) for local government. There are no specific criteria in the law that guide his or her decision-making, but attributes of the municipal area, such as population size and the number of wards, should undoubtedly play a role.

Importantly, neither of the two executives – the executive mayor or the executive committee – have any original executive authority. The council delegates parts of its executive authority to its executive mayor or executive committee. As the delegating authority, the council therefore remains ultimately responsible for the exercise of executive authority and has concomitant controlling powers over the executive.

Municipalities themselves are the most critical in delineating roles and responsibilities. The legislation offers three instruments that municipalities should utilise for this purpose. The terms of reference (s 53 Municipal Systems Act) outlines roles and responsibilities of political office-bearers, political structures and the municipal manager. The municipality's delegations (s 59 Municipal Systems Act) represent the legal transfers of components of the council's executive and administrative authority to political office-bearers, political structures and the administration. Finally the council's rules and orders (s 160(6) Constitution) contain important rules surrounding the role of the speaker.

Increasingly, the conflation of legislative and executive powers is being singled out as the cause for the problems in local governance. The Department of Cooperative Governance and Traditional Affairs (CoGTA) is investigating whether the functions should be separated (Carrim 2009). In this paper, it is argued that the conflation of legislative and executive authority indeed presents a challenge to municipalities. The division of responsibility between legislatures and executive structures is relatively clear at national and provincial level, where the Constitution itself separates the two. Municipalities, however, are tasked with managing these complex relationships in an environment of limited institutional options.

The conflation of legislative and executive authority in the municipal council presents three specific challenges to municipalities. Firstly, it complicates the position of the speaker of the council. Secondly, the question as to who is in charge of the municipal administration becomes more difficult to answer. Thirdly, it encourages municipalities to adopt inappropriate committee systems. These three challenges are discussed in turn. With respect to all three challenges, it is argued

that separating the executive and legislative roles will not materially affect governance in a positive way. Rather, the solution lies in a better utilisation of the existing policy and legal frameworks and, importantly, effective political and administrative leadership.

The role of the speaker

The first challenge relates to the role of the speaker. In a context where legislative and executive roles are separated, such as the parliamentary system at national and provincial level, the role of the speaker is clear. He or she is in charge of the legislative chamber and plays little, if any, role in the executive, of which he or she is not a member. Administratively, the speaker oversees the implementation of the assembly's budget, which is separate from the executive's budget.

In the local government context, where the executive and legislative roles are merged, the situation is markedly different. Firstly, in constitutional terms, the speaker is a member of the executive because the council is designated as the executive by the Constitution. Even though the council may delegate much of the executive decision-making authority to the executive committee or executive mayor (particularly in larger municipalities), there are always executive and administrative decisions that the full council must take – under the chairpersonship of the speaker.[1] While the speaker as a political office-bearer is clearly separate from the other councillors and from the administration, the office of the speaker is not administratively separate from the municipal administration. The municipal council does not operate a separate budget from the administration's budget. The speaker is therefore dependent on the municipal executive and the municipal administration when it comes to the formulation and the implementation of his or her budget. There is thus no basis for the speaker to formulate and administer a budget that is separate from the administration's budget.

Municipal legislation defines the role of the speaker as mainly related to the traditional speaker's role of chairing council meetings and enforcing the Code of Conduct for Councillors.[2] Ordinarily, the speaker is the driver of council investigations into transgressions of the Code of Conduct. The law indicates that the speaker must conduct an investigation when he or she suspects a transgression.[3] Often, a council committee assists the speaker in this. The law leaves room for further delegation of responsibilities to the office of the speaker. In some instances, this is used to delegate responsibilities to the speaker that go outside of the classical conception of the role of a speaker.

In practice, the role definition of speaker has been fraught with difficulty. Ever since the introduction of the office of the speaker in 2000, municipalities have reported conflicts, internal tensions and political battles over the responsibilities of the speaker vis-à-vis the mayor (De Visser and Akintan 2008:15). At the very least, these conflicts often contributed to a toxic environment and an inward-focused predisposition of the council. In the worst cases, these conflicts resulted in basic governance functions grinding to a halt due to political stalemates, thus resulting in service delivery disruptions. The reality in many of these conflicts is that the role confusion between the speaker and the mayor is the platform where conflicts between and within parties are played out, at great cost to the community.

In many cases, the executive leadership of the municipality is reluctant to entrust the speaker with enforcing the Code of Conduct for Councillors and speakers complain of insistent meddling in council investigations. Conversely, there are instances where the speaker has been alleged to abuse his or her

investigative authority for political ends. This is particularly the case in those municipalities where the offices of the speaker and the mayor have been allocated to cement coalitions across different parties or to appease opposing political factions within one party.

There are institutional and legal solutions that can be considered. As the problem is rooted in the conflation of legislative and executive powers, the separation of these powers would contribute to a clearer division of roles between the speaker and the municipal executive. The most drastic solution would be to abolish the office of the speaker altogether and return to the system whereby the mayor chairs council meetings. Code of Conduct issues could be assigned to council committees (De Visser and Akintan 2008:22). However, the office of the speaker is now an entrenched institution populated by full-time office-bearers.[4] The abolition will face considerable political opposition. Furthermore, to its credit, the office of the speaker has in many municipalities contributed positively to the development of community participation strategies and practices and diluted what would otherwise have been a dangerous concentration of power in the municipal executive.

The Code of Conduct for Councillors could be revisited. Even judges have commented that the Code is not a shining example of clear legislative drafting.[5] It could be changed to ensure that the role of the speaker – and particularly the interface between the speaker and other council structures and office-bearers around Code of Conduct issues – is set out in clearer terms.

It is, however, suggested that institutional and legal solutions are not necessarily the answer. The problems can be addressed within the current legislative framework. Research suggests that many municipalities have not adequately dealt with the delineation of roles and responsibilities in the instruments offered by the legislation, such as the terms of reference, delegation and rules and orders (De Visser and Akintan 2008:20). In many municipalities, the poor quality of these instruments contributes to the creation of unnecessary grey areas and overlap in responsibilities. The terms of reference, in particular, is a mandatory instrument that is specifically designed to deal with overlapping responsibilities, grey areas and disputes. Most municipalities have not adopted this instrument.

The problems often emanate from poor political leadership and a treatment of these offices as a means of access to power and resources. The designation of the office of the speaker as a full-time position has been an important contributing factor in this regard. The adoption of the terms of reference, which is a document outlining the organisational values, dispute resolution rules and reporting rules, requires a special type of leadership from the municipality. It can be validly adopted by ordinary majority resolution. However, the reality is that every councillor should endorse it for it to be effective. There is no point in 51% of the councillors respecting the role of the speaker, as outlined in the terms of reference, and 49% of the councillors not. The adoption and implementation of the terms of reference therefore requires particularly skilful leadership that crosses political and factional divides in order to achieve better governance.

Political-administrative interface

The second challenge relates to so-called political-administrative interface – the question of who directs the municipal administration? Once again, in a context where legislative and executive powers are constitutionally separated, this question is less pertinent. For example, at a national level, the

national executive – the President with his or her cabinet – directs the executive. Parliament oversees the executive and may call in administrators to account to it, but it has no immediate authority over those administrators. A similar situation prevails at a provincial level.

Local government, again, works in a more complex manner. Since the Constitution designates the municipal council as the executive, it is essentially the employer of all municipal staff. Legislation has sought to separate the council from the administration to some extent. The Municipal Systems Act mandates the municipal council to appoint senior managers (the municipal manager and managers that report to him or her, see s 82(1)(a) Municipal Structures Act and s 56 Municipal Systems Act) and further appointments are made by the administration itself. The Code of Conduct for Councillors includes a provision that prohibits councillors from interfering in the administration (item 11 Schedule 1 Systems Act). Taking a harder line of separation, the Municipal Finance Management Act has barred councillors from taking part in tender decisions (s 117 MFMA) and includes many provisions that seek to separate the council from the administration.

In practice, however, the political-administrative interface has become the Achilles heel of many municipalities. There is no doubt that councillors, members of municipal executives and officials are struggling to define clear roles. The political administrative interface and the role confusion between speakers and mayor are the most problematic area. This is aggravated by undue political interference by political parties. There is growing concern around the inappropriate relationship between regional party structures and municipalities. There are reports of instances where regional party structures seek to operate municipalities by remote control.

Regional party structures should focus on ... providing overall strategic guidance. Instead, they often seem to focus their attention on two aspects: staff appointments and tenders.

Regional party structures should focus on recruitment and deployment of suitable candidates for political office in municipalities, ensuring and overseeing the ethics among their cadres and providing overall strategic guidance in the form of party political programmes. Instead, they often seem to focus their attention on two aspects: staff appointments and tenders. The following case illustrates a particularly clear example of party political intervention in a senior appointment:

A recent court case concerned the appointment of a municipal manager for Amathole District Municipality. There were two final contenders for the position, Dr Mlokoti and Mr Zenzile. The judgment (*Vuyo Mlokoti v Amathole District Municipality and Mlamli Zenzile*, unreported judgment, Case No: 1428/2008, 6 November 2008) records overwhelming evidence to the effect that Dr Mlokoti outperformed Mr Zenzile in the interviews and assessments. It furthermore records that two legal opinions were obtained by the municipality, advising the municipality that appointing Mr. Zenzile would be illegal in the face of the obvious differences in skills, experience and qualifications. During the meeting of the African National Congress (ANC) caucus, preceding the council meeting where the appointment decision was due to be made, the legal opinions were discussed. The caucus resolved to withhold the opinions from the council. At the meeting, Mr Zenzile was appointed as municipal manager, a decision that was taken on review by Dr Mlokoti. The judgment concludes, "that the Regional Executive Committee of the ANC instructed the caucus to appoint Mr. Zenzile and the caucus carried out this instruction". In fact, subsequent to the appointment, the Executive Mayor requested, on the official letterhead of the municipality, guidance from the ANC's Eastern Cape Chairperson. He informed the party in rather revealing language that it has 'erred by not resolving to appoint Dr Mlokoti'. In assessing this scenario, the judge in the matter, Pickering J, does not mince his words:

'In my view, the involvement of the Regional Executive Council of the ANC (...) constituted an unauthorized and unwarranted intervention in the affairs of [the municipality]. It is clear that the councillors of the ANC supinely abdicated to their political party their responsibility to fill the position of the Municipal Manager with the best qualified and best suited candidate on the basis of qualifications, suitability and with due regard to the provisions of pertinent employment legislation (...). This was a responsibility owed to the electorate as a whole and not just to the sectarian interests of their political masters. (...)

[The council] has demonstrated a lamentable abdication of its responsibilities by succumbing to a political directive from an external body, regardless of the merits of the matter. It continues, with an equally lamentable lack of insight into its conduct, to contend that it was proper for it to have done so.'

This judgment may be one of the few pieces of irrefutable evidence of improper party political interference into appointment decisions. The scenario, recorded by the Court as uncontested facts, reveals a disturbing conflation of party and state. There is a fine line between strategic political guidance on the one hand and undue interference on the other. The unconcealed interference and manipulation of processes designed to obtain quality managerial leadership and the calculated hiding of essential information shows that, in this case at least, both the council and the party crossed that line and thus engaged in cronyism.

Too many reports of fraud and corruption in municipalities, as detailed elsewhere in this *State of Local Government* report, point towards inappropriate interference exercised by political office-bearers. A particular manifestation of the conflation of party and state at local government level is the practice whereby party office-bearers populate the municipal administration. In other words, a regional secretary or branch chairperson would be appointed as an official in the municipal administration. The rationale is not difficult to grasp: as senior municipal officials are generally paid better than councillors, their posts are often more attractive than political office.

anecdotes of officials taking political precedence over their mayor and the resultant comedy of protocol have become a source of great hilarity in local government

The consequences, however, are often dire and result in a municipality being "rewired" in a very damaging way. The normal lines of political accountability do not apply and the administration takes on an inappropriately dominant role in the municipal polity. The anecdotes of municipal officials taking political precedence over their mayor and the resultant comedy of protocol as well as the so-called "untouchables" in the administration have become a source of great hilarity in local government. However, the sad reality is that the municipalities where this phenomenon manifests itself often degenerate into utter bureaucratic and political paralysis as a result of sliding staff morale and perennial power struggles. It does not take long for this bureaucratic and political fiasco to spill over into service delivery and communities ultimately bear the consequences.

The municipal governance system is shaped around political parties and depends on political parties to provide support, guidance and political accountability. The Deputy-Minister for Cooperative Governance and Traditional Affairs recently remarked: '…it's not for the party structures to micro-manage councillors, especially as this has sometimes less to do with ensuring that councillors perform effectively and more to do with influencing tenders and narrowly interfering in appointment of staff. Municipal structures should not be treated almost like sub-committees of party structures' (quoted in Local Government Research Centre 2009:16). If party structures serve narrow personal or factional interests, this is fundamentally detrimental to the developmental local government enterprise. Councillors of integrity find themselves forced to resist interference by their own party structures acting outside their legitimate ambit. Such interference drives a wedge between councillors and their communities and creates insecurity for councillors within their own political organisations.

What is the way forward with regard to the problem of undue political interference, considering that political parties are vital to the survival of the local government system? Would the separation of legislative and executive roles help? There is some argument to be made that the conflation of legislative and executive roles in local government adds fuel to the fire in respect of political interference. In its executive role, the council as an assembly is the locus of executive and administrative decision-making that deals with the hard and immediate allocation of resources, jobs and power.

In its legislative role, the council is able to step back from the above and focus on policy-making, appropriation and oversight. It is likely that the latter will prove less attractive to the proverbial political fraudster. In that line of argument, separating the legislative and executive roles may thus remove the incentive for party structures to interfere in council decision-making. However, it is suggested that trans-

forming the council into a legislative and oversight body will not do much to mitigate undue party interference. The inclination to interfere will merely shift focus from the council to the municipal executive and perhaps become even more intense.

The position of the local caucus of councillors needs to be redefined. It should be repositioned as a political structure that, while subject to reasonable strategic and ethical oversight by higher party structures, is also trusted to make decisions relating to local governance matters without the threat of being second-guessed or by-passed.

What is suggested is a combination of political and institutional solutions. Firstly, political parties need to recast their roles vis-à-vis local government, particularly at regional level. While political party structures at national level cannot be accused of endorsing the rogue practices of some regional party structures, they clearly have done too little to rein them in. The position of the local caucus of councillors needs to be redefined. It should be repositioned as a political structure that, while subject to reasonable strategic and ethical oversight by higher party structures, is also trusted to make decisions relating to local governance matters without the threat of being second-guessed or by-passed.

Secondly, it seems inconsistent that the local government system should allow an overlap between party political office and municipal officialdom while other parts of the public administration discourage senior party officials from holding office. Would it be acceptable for example, for the Secretary-General of the African National Congress to be a Director-General in a national department? Could the Chairman of the Democratic Alliance's Federal Council also be a Head of Department in the Western Cape provincial government? Such a conflation of party-political and administrative office would undoubtedly raise eyebrows yet the combination at municipal level is condoned.

Simple legal remedies appear to be at hand. For example, a specific provision should be inserted in the Municipal Systems Act, which creates an incompatibility between municipal officialdom and holding senior office in a political party. This will encourage politicians to decide between a political or an administrative career, rather than seeking to combine both to the detriment of municipal governance. In addition, political parties themselves can adopt the incompatibility in their internal rules and deploy their candidates in accordance with those rules.

Thirdly, it is suggested that the rules in the Municipal Systems Act surrounding staff appointments and staff discipline are clarified. Practice indicates a number of areas of confusion. The legislation limits the municipal council's involvement with staff appointments to three aspects. Firstly, the council adopts human resources policies, including a recruitment policy, to be implemented by the municipal manager. Secondly, as indicated earlier, the council appoints senior managers. Thirdly, the council oversees the implementation of its human resource policies.

incompatibility between municipal officialdom and senior office in a political party will encourage politicians to decide between a political or an administrative career

However, practice suggests that the council or councillors seek involvement with human resources issues on a variety of other levels. For example, the practice of councillors being part of appointment committees for staff other than senior management is not unknown, albeit clearly illegal. Also common is the practice whereby councillors sit in on staff interviews as observers.

Another major area of confusion is the position of the managers that report to the municipal manager. The council appoints them but they report to the municipal manager. The law is not clear as to where the responsibility and authority lies to discipline these officials when they violate staff codes. As these senior managers are political appointments, made by the council, this is often an arena where politics and administration cross swords. Add to this the worst-case scenario, namely where the senior manager is an office-bearer in the structures of the ruling party and there is no realistic way out of the conundrum.

It seems clear that the rules regarding staff appointments and discipline need to be clarified. The Municipal Systems Act should follow the same hard line as the Municipal Finance Management Act and limit the council's role to the abovementioned three aspects. A serious debate is also required on the need for the municipal council to appoint managers that report to the municipal manager. This configuration is not followed in the national or provincial public service, where the accounting officer of the relevant department appoints deputy director-generals.

Why are appointments of senior managers in local government explicitly labelled as political appointments in the sense that they are made the council, a political body? The rationale may have been to seek synergy between the administration and the council and it may have fitted the overall theme of a council that is both legislator and executive. However, the appointment of senior managers by the council is potentially a source of conflict and tension between the municipal manager and his or her political masters. This could be mitigated by placing the responsibility squarely on the municipal manager, perhaps in consultation with the mayor.

Committee systems

The political functioning of municipal councils is built on democratic norms like responsiveness, informed decision-making and oversight. With regard to the latter, the Auditor-General, in presenting the 2007/08 audit outcomes for local government, observed that financial management of municipalities improved significantly in areas where opposition parties pressure a ruling party (Pressly 2009). This important observation points to the value of democratic oversight exercised by the council over the functioning of the executive as an indispensible element of good governance.

The system of local government, by conflating legislative and executive roles in the council, does not in itself create ideal circumstances for political oversight by the council over the executive and the administration.

> Municipal committee systems must function not only to support the municipal executive and prepare council decisions, but also as committees that exercise oversight

However, this by no means exonerates municipalities from using the system to facilitate oversight. In fact, the research suggests that many municipalities have adopted political structures that hamper, rather than improve, oversight. This relates specifically to committee systems.

It goes without saying that portfolio committees are critical for the functioning of the council. In any functioning democratic assembly the hard work is done in the committees. That is where the impact of decisions on communities and residents are discussed in detail. The same applies to municipalities. It is only in the smallest municipalities that committee systems are superfluous. In all others, they are critical to ensure

robust engagement between councillors, municipal executives and the administration.

In terms of the law, municipalities have the freedom to fashion their own committee systems. Sections 79 and 80 of the Municipal Structures Act provide the basis for municipal committees. "Section 79 committees" comprise all, or most, parties on the council and report to the council. They are chaired by a councillor who is not a member of the municipal executive. "Section 80 committees" also comprise all, or most, parties on the council but report to the municipal executive. These committees are chaired by a member of the executive (i.e. a member of the executive committee or mayoral committee) and are designed to assist the executive. Municipalities may adopt combinations of the above two systems.

Practice, however, suggests that most municipalities opt for the adoption of section 80 committees for all portfolios. It is usually only the Code of Conduct issues that are dealt with by a section 79 committee. Municipalities in the Gauteng province are the exception; most of them have adopted section 79 committees. The result of the practice in other provinces is that municipal councils operate in terms of a committee system that exists to support the executive.

The normal course of events is that items (reports, recommendations and draft resolutions) are prepared by the administration and then discussed and refined by the section 80 committee chaired by the member of the municipal executive. The executive submits the item to the plenary council meeting. In most cases, the deliberation at the full council meeting is minimal as the preparatory work is done in the committee. This practice is not inclusive of all elected officials and does not assist in creating sound democratic practices. In fact, it directly limits oversight by the council over the executive and administration. In as much as portfolio committees function as working groups where decisions are refined and political coalitions are welded, they should also be the engines of democratic assemblies where policies and decisions are interrogated, progress is measured and the hard questions are asked in an open and vigorous debate.

The work of committees should be geared towards exercising oversight over the municipal executive and administration. Oversight and progress assessment should be the key concern of a committee meeting. These functions form the core of the committees' democratic purpose and provide councillors with the platform to raise the concerns of their constituency. When a committee's function is reduced to preparing items to be considered by the municipal executive, councillors may rightfully feel that their purpose is essentially technical or administrative.

It is therefore important for the advancement of local democracy that municipal committee systems function not only to support the municipal executive and prepare council decisions, but also as committees that exercise oversight over the municipal executive and administration. This can be achieved without separating legislative from executive roles. If municipalities argue that currently there are too few ordinary councillors capable of chairing section 79 committees, then they need to invest in and nurture such skills. If political parties and municipalities are serious about enhancing local democracy, they will not be adverse to empowering councillors to take up these roles.

Conclusion

This paper dealt with a number of critical governance challenges in municipalities. It is suggested that these challenges deserve the attention of municipalities and political parties but also of supervising provincial and national governments.

The quality of local democracy needs to be greatly improved if a more constructive relationship between communities and their municipalities is to be achieved. The conflation of legislative and executive authority in the municipal council is an important feature of local government. However, it need not dominate every municipal function, and its negative consequences may be limited without entering into a lengthy debate on the need for a separation of powers. Instead, the relevant stakeholders – national lawmakers, municipalities and supervising provinces – should consider smaller institutional changes to the governance makeup of municipalities. Even more importantly, the political and administrative leadership of municipalities and political structures that surround them should be acutely aware of the disastrous consequences that inappropriate political leadership has on the functioning of municipalities and therefore on service delivery.

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Notes

1 There are many provisions in the local government legislation that provide that certain executive or administrative decisions can be taken only by the full council. The appointment of the municipal manager (S 82(1)(a) Municipal Structures Act) is a notorious example but there are many others such as those related to the sale of immovable assets (s 14(1) MFMA), writing off irrecoverable debt from unauthorised, irregular, fruitless or wasteful expenditure (S 32(2) MFMA) etc

2 S 37 Municipal Structures Act.

3 Item 14 Schedule 1 Municipal Structures Act.

4 See Local Government: Municipal Structures Act (117/1998): Policy framework for the designation of fulltime councillors GN 2073, Government Gazette 23964, 18 October 2002.

5 In *Van Wyk v Uys* NO (2001) JOL 8976 (C), Judge Dennis Davis commented that the Code of Conduct 'does not represent a glittering example of the quality of legislative drafting to which the country is entitled'.

Leadership In a Time of HIV/AIDS

By Stacey-Leigh Joseph, Isandla Institute

Local government, widely regarded as the most direct provider of services and "closest to the people" has been identified as ideally placed to play a central role in the response to South Africa's HIV/AIDS[1] epidemic (dplg 2007).

Picture by: Katharine McKenzie

ALTHOUGH local government has equal power and authority to the other three spheres of government, it is often seen as the implementer of provincial and national policy. As a result, the absence of an appropriate national HIV/AIDS policy prior to 2007 forced local government to operate in a policy vacuum that provided little guidance on how municipalities should respond to the HIV/AIDS epidemic and its consequences. Taking a clear stance on how to respond to HIV/AIDS at local level was thus extremely difficult and challenging.

The introduction of the National Strategic Plan for HIV and AIDS and STI (2007 – 2011) heralded a significant improvement, clearly defining HIV/AIDS as a challenge that requires not just an effective bio-medical strategy but also a developmental response. The former Department of Provincial and Local Government (now the Department of Cooperative Governance and Traditional Affairs – CoGTA) introduced the framework for an Integrated Local Government Response to HIV and AIDS in 2007. These developments have highlighted the importance of local government in responding to the epidemic and opened up the space for local government to fulfil a more pro-active and much needed leadership role on HIV/AIDS.

The effect of South Africa's HIV/AIDS epidemic has been most acutely felt at the local level where communities and households have had to shoulder the burden associated with HIV/AIDS. The developmental mandate assigned to local government means that it carries a direct responsibility for the fundamental development and service concerns which increase vulnerability to HIV/AIDS. While municipalities are becoming increasingly aware of their role in response to the HIV/AIDS epidemic this has not necessarily translated into effective action.

This paper takes cognisance of the difficulties for local leaders to exercise their own discretion. However, it will also put forward an argument that in the absence of national and provincial leadership on HIV/AIDS (or perhaps better put, in the presence of negative leadership), municipalities have the scope and discretion to develop and implement an effective HIV/AIDS response. To provide a context and structure for how effective leadership can take place, the paper will draw from four leadership typologies:

- *Political leadership*: Local government leadership is often regarded as vested in politicians, councillors, executive committees and the mayor. This formal notion of elected political leadership is of course essential for a municipality in order to map and pursue a specific development path and implement the mandate granted by local citizens. In addition, buy-in from politicians and political leaders is essential for any effective HIV/AIDS response.
- *Public leadership*: The paper will borrow the notion of "public leadership" developed by Schwella (2008:27) who defines it as 'action taken through a dynamic and transparent process involving the leader with relevant others in the inclusive setting and effective realisation of legitimate, legal and useful goals and objectives… aimed at improving the quality of lives of the people and citizens'.
- *Champions:* While it may seem fairly self-evident, it is worthwhile highlighting the critical role played by champions, people who are passionate, committed and have the foresight to recognise their role and champion a relevant cause; in this instance, the importance for local government to mobilise around HIV/AIDS. Champions are generally understood to be people in authoritative positions with the power to make decisions and influence plans but they can also be ordinary municipal staff who display a commitment to HIV/AIDS, are able to influence and find appropriate avenues to encourage action and slowly bring about change in the institutional response to the epidemic.
- *Civil society leadership*: Communities and civil society, in general, have a critical leadership role to play. Communities should push from the "bottom" and hold elected leaders accountable for their actions. This engagement is essential and ensures strong and ongoing interaction between government and its constituents.

Why is HIV/AIDS an issue of leadership, more especially local government leadership?

Need for a paradigm shift

Despite the move towards seeing HIV/AIDS as a development issue, the epidemic is still largely treated as a health concern, with prevention campaigns focussing on the responsibility of individuals to remain free of infection. Much of the national and international responses to HIV/AIDS to date have focused on encouraging behaviour change through abstinence, staying faithful to one's partner and condom use (the ABC message). Both the ABC message and the provision of treatment are essential components of effective HIV/AIDS responses, but these are not the only components. The context within which people have to consider and make decisions about their sexual behaviour needs to be recognised and understood. Other factors that increase vulnerability to HIV/AIDS include overcrowding, lack of privacy to conduct private and intimate relations, violence against women and young children as well as the level of gender inequality and relative vulnerability (See Van Donk 2006, Zulu, Nii-Amoo Dodoo and Ezeh 2004, Joseph and Van Donk, 2008; Parker and Hajiyannis 2008).

It is not suggested that there is a direct correlation between HIV/AIDS and people's living conditions. Instead the argument made is that in a resource-poor context, where much of day-to-day life is about survival, there are not many options available. What might be considered irrational behaviour or decisions are based on trade-offs (see for example the research by Parker and Hijiyannis (2008) which explores the sexual choices of young people).

The burden of this epidemic has mostly fallen directly on individuals, households and communities. But as the escalating infection rates and the devastating impacts of the epidemic begin to show that HIV/AIDS affects everyone, local government has to realise that there are critical economic and institutional consequences, particularly an increase in the demand for and types of services (Van Donk 2008). Local government officials themselves are infected and affected by HIV/AIDS and this has consequences for productivity within municipalities as more people are likely be off sick, to take leave to care for ill family members and even to attend funerals of family members and colleagues. Given that there are existing capacity concerns within municipalities, this places a further burden on overstretched local authorities.

Box 1 - HIV/AIDS as a developmental issue

Estimated by the United Nations to be the country with the highest number of HIV infections, South Africa has between 5.5 and 5.7 million people between the ages of 15 and 49 who are believed to be living with HIV/AIDS. This means that approximately 18 percent of the population (between 15 and 49) is HIV positive (UNAIDS 2008). This epidemic continues to have a devastating impact on a country still struggling to overcome an apartheid legacy of inequality and underdevelopment. HIV/AIDS places a major burden on individuals, households and communities and is particularly concentrated in poor communities in both rural and informal urban areas. In short, it affects that sector of the population least likely to cope with its consequences. The epidemic reinforces vulnerability and social fault lines, leading to deepening poverty and increasing the level of inequality. These circumstances set up networks of risk related to living conditions and the power to make decisions. As a consequence those who live in unsafe, unhygienic, overcrowded settlements may find that their ability to make "rational" and safe decisions about sexual engagements , for example, is compromised (Ambert, Jassey and Thomas 2006, Isandla Institute 2007, van Donk 2006).

Furthermore, the implications for economic investment and opportunities for development are profound, as the economically active begin to succumb to the disease. For people who are unable to work due to ill health and for whom dealing with HIV/AIDS has become a priority, other expenses like the payment of municipal services, take a back seat. The collection of rates, taxes and payment for services like water and electricity is essential for municipal income and over time, HIV/AIDS will begin to erode this income base (ibid). As those who are most vulnerable to HIV/AIDS are already very poor and marginalised, this situation will lead to deepening poverty and add a further burden on the state to provide free basic services. This situation further impedes the ability of people to "lift" themselves out of poverty, entrenches dependency, homelessness and poverty and overall dependency on the state to provide (ibid).

Because an effective response to HIV/AIDS requires a cross-sectoral approach ... having effective leadership that can drive this process is absolutely essential.

Poor leadership

The cost of bad leadership around the HIV/AIDS epidemic in South Africa has been well documented (Natrass 2004; Van der Vliet 2004; Cullinan and Thom (eds.) 2009). The lack of effective leadership by national and provincial spheres led to a large amount of confusion and hampered potential interventions at local level. While debates about the cause and effects of HIV/AIDS continued to rage, it started to become even more apparent that municipalities themselves were not able to escape the direct burden of HIV/AIDS. Municipal employees are not immune to the effects of HIV/AIDS both in terms of their own vulnerability to infection and dealing with the consequences of friends, family members and colleagues becoming ill or dying (dplg 2007). Local government is notoriously under-capacitated and unless measures are put in place to protect it against the loss of institutional capacity through death or illness, the consequences will be substantial. Though these consequences are not limited to local government alone and also affect the private sector, given the role of government in general and local government in particular, this is even more devastating.

After 15 years of democracy South Africa is still coming to terms with the legacy of apartheid which has left many without access to necessary services and resources. The challenge of overcoming this legacy is given increased urgency by HIV/AIDS further complicating this situation as local government not only has to concern itself with the provision of basic services and infrastructure but has to consider how the needs of constituents are changing due to the epidemic (Van Donk 2008). For example, in areas in KwaZulu-Natal, the need for ARV treatment, increased burial space and social support is far outweighing what government is able to provide (Harber 2007). Thus HIV/AIDS is complicating the existing situation and creating a further challenge for developmental local government.

Proactive intervention

Because an effective response to HIV/AIDS requires a cross-sectoral approach and an ability to get the whole institution behind a common purpose and vision, having effective leadership that can drive this process is absolutely essential (Schmidt 2009). The case of Ben Mokoena[2] (see Box 2) illustrates this point. In 1994 Mokoena's leadership was instrumental in bringing about an integrated municipality and effectively bringing together the

Box 2 – The story of Ben Mokoena

In 1994 Ben Mokoena was inaugurated as the first black Mayor of Middelburg, Mpumalanga. This area was complex and charged with racial and political tensions. At one point the military was on constant standby to deal with protest and unrest in the area. Politically the town of Middelburg (as with its surrounding areas) was extremely polarised and like most towns under apartheid, the black and coloured areas were characterised by under-development, unemployment and poverty and had a major culture of non-payment and protest. Responding to these conditions while at the same time overcoming the political chasms in the town presented the key challenges to the new Mayor. Yet, Ben Mokoena, together with the Middelburg Forum, proved one of the critical success stories of this time due to his strong leadership, dedication, willingness to engage with people in different communities and most importantly his willingness to take unpopular and difficult decisions. This story also highlights the importance of recognising the existing context and coming up with innovative and creative ways to deal with challenges

voices and interests in Middelburg, one of the most racially and politically divided towns at the time. Mokoena understood the importance of building a common agenda and getting buy-in from all stakeholders, communities and the extremely divided transitional town council. He was forced to tackle challenges like the provision of critical services and upgrading the town's infrastructure, complicated by a complex and fragile political situation. As demonstrated by the Mokoena case study, planning in an integrated manner is no easy task. Yet it is essential in the promotion of good governance. According to Schwella (2008:34) 'good governance could … refer to the efficient and effective management of public resources and problems, and to dealing with the critical needs of society'. He further goes on to say that this is the key ingredient

Pro-active intervention can succeed in stemming the tide of this epidemic and respond to the existing HIV/AIDS challenge in South Africa

for 'social transformation and … the cornerstone of successful economies'' (Schwella 2008:35).

HIV/AIDS provides one such a complex and seemingly insurmountable challenge. Despite this, action and proactive intervention can succeed in stemming the tide of this epidemic and respond to the existing HIV/AIDS challenge in South Africa. For this to happen, having strong and strategic leadership is essential. While it is critical to have clear national and provincial leadership, the epidemic is rooted in local realities and vulnerabilities and thus the responsibilities for effective action are rooted in local leaders and institutions. Local responses require coordination of development interventions across the different spheres of government and stakeholders. It also requires the vision to think beyond the immediate and to be able to recognise and address the long term and complex consequences of HIV/AIDS, both for communities and for the institution of government and local government in particular (SALGA 2008). It requires courageous men and women to step up to the challenge of providing what will most likely be difficult and contentious but also potentially inspirational and creative leadership.

Why has there been so little evidence of the necessary local leadership?

Controversial leadership on HIV/AIDS at national level

As noted earlier, the paradigm of seeing HIV/AIDS as a health concern has been a major contributing factor towards the lack of an effective response.

Responses have also been marred and slowed down by the ongoing debates and lack of consensus around HIV/AIDS. In particular, the national leadership on HIV/AIDS, over the past ten years has been controversial, challenging and largely counterproductive. While it became increasingly clear, since the first HIV diagnosis in South Africa, that the number of infections in the country was growing sporadically, consensus around the causes and effective response to the epidemic became a political issue (Van der Vliet 2004). What was especially lacking was clear and positive leadership, and ultimately outright denialism of the epidemic and its consequences, especially from political authorities. These leadership challenges have had a major toll on the country. Many preventable deaths have occurred and the concentration of these deaths amongst young black South Africans are setting back the liberation project and increasing inequality and poverty. The ”closed” and exclusive leadership style also stifled opposing views and voices and did not allow for inclusive dialogue around this issue (Nattrass 2004).

Absence of clear policy guidelines on HIV/AIDS

The consequence of the contested and controversial leadership around HIV/AIDS was the absence of a clear national policy and strategy on how to respond to the HIV/AIDS epidemic. If such guidelines had existed it would have enabled local government leadership to develop their own approaches dependent on the local epidemic and created the space for the emergence and blossoming of a well-led local response. Prior to 2007 none of this existed and it was only recently, after the introduction of a number of noteworthy documents from the National Departments of Health and Local Government and the South African Local Government Association (SALGA), that this need is being addressed.

The National Strategic Plan for HIV and AIDS and STI (2007 – 2011), developed by the Department for Health, clearly indicates that HIV/AIDS is a multi-departmental challenge that requires a commitment from all, including those at local level. Most importantly, it recognises the critical role that should be played at the local level. In addition, moving beyond the focus on health also means that there is a move beyond seeing only national and provincial government (where the responsibility for health rests) as the relevant actors in this context. Speaking specifically to local government, CoGTA introduced the Framework for an Integrated Local Government Response to HIV and AIDS in 2007. Similarly SALGA (2008) has introduced its Country Guideline on HIV and AIDS for local government, focussing on political leadership responses to HIV/AIDS.

Thus prior to 2007, it was left up to local government leaders to interpret how they should be responding, if responding at all. Most municipalities during this time adopted a “wait and see” approach, resulting in many missed opportunities on the part of local government.

HIV/AIDS is a multi-departmental challenge that requires a commitment from all, including those at local level

Institutional and inter-governmental challenges

At the same time as this role is being contested, local government departments struggle to work in an integrated manner with effective cooperation between departments (Harrison 2008). In this context, getting departments to understand the importance of integrated planning and how challenges like HIV/AIDS not only affect the department of health but everyone, is a major struggle.

For example, this would mean that local departments of housing understand that HIV/AIDS should be taken into account when they build houses as it has consequences for the location of a house, whether residents have access to social and economic resources, whether there is sufficient ventilation, whether there is relatively easy and safe access to water and sanitation facilities and whether this will ultimately improve people's living conditions and lives and their ability to make "safe" choices (See Isandla Institute 2007; Joseph and Van Donk 2008). Instead departments are more concerned with chasing targets than with the actual quality of houses and whether these make a significant difference in people's lives.

Research (Smit 2000; Huchzermeyer 2006) suggests that the receipt of a house does not automatically translate into a difference in the lives of these recipients. Due to the higher costs associated with home ownership, the potential break up of social and other networks that may have occurred if relocation was involved and even the cost of accessing health, social and educational services place a burden on these households that is very difficult to maintain. This has resulted in some housing recipients selling their house and moving back to the informal areas that they left (ibid).
If there were a better understanding on the part of departments, resulting in improved interdepartmental cooperation, some of these consequences could be pre-empted. Without understanding the effect of HIV/AIDS on settlements and housing needs and vice versa, it is likely that people might end up in even more vulnerable positions.

Confusion and debate around roles and responsibilities of different spheres and departments further complicate matters. Ensuring a clear understanding of different roles and responsibilities is critical if these challenges are to be addressed. It also requires officials at all spheres to understand how intergovernmental relations should work and how coordination and innovative planning and implementation can work towards addressing poverty, informality and inequality. Even more pertinent for South Africa is that the HIV/AIDS epidemic should be seen within a context of informality, poverty and poor access and addressing these conditions is vital for the development of an effective national HIV/AIDS response.

If municipal officials are able to move beyond the existing practice of working in silos and start planning in an integrated manner it means that health will talk to housing, who will talk to education, who will talk to transport etc. Yet, it is often difficult to think and function on a day-to-day basis in this integrated manner. Municipalities need to work within an intergovernmental relations (IGR) framework which prescribes powers and functions.

The HIV/AIDS epidemic should be seen within a context of informality, poverty and poor access and addressing these conditions is vital for the development of an effective national HIV/AIDS response

An IGR component also allows for an enabling environment that encourages cooperation between people at an informal level. Thus far leadership that recognises the importance of this informal cooperative space, essential for dealing with the "messy" nature of decentralised service delivery, has been lacking. Schwella (2008:42) indicates that one of the key mistakes made is that 'adaptive problems,' namely those that have to do with roles, relationships and behaviour (i.e. people), are often treated as technical problems (for example, when there is no integration, this is often seen as an IGR failure). For Schwella (2008) this is where leaders play a critical role as they should steer these

challenges towards facilitating learning, developing staff competencies and knowledge and potentially use these situations to encourage new and interesting ways of carrying out daily tasks and functions. For example, effective leadership on HIV/AIDS could focus on knowledge and capacity building to highlight how integrated and concerted action on HIV/AIDS can pre-empt long-term challenges and consequences of the epidemic.

Examples of leadership not shared and disseminated

Controversy and confusion around HIV/AIDS does not necessarily mean that there have not been some innovative responses at local level. There may in fact have been examples from municipalities or local level leaders who have played critical roles in turning the tide of the epidemic in their areas. Yet, because of stigma, contestation and confusion around HIV/AIDS these may not have been profiled, shared or documented for dissemination for learning amongst others. A stark example of this is the fact that, despite the HIV/AIDS crisis in South Africa and the urgency of responding to the epidemic, awards processes like the VUNA awards, which recognise excellence in municipal practice,[3] do not make any mention of or give any recognition to innovation in terms of HIV/AIDS. If an award that highlights innovative and progressive responses to HIV/AIDS were to be established (something that is equivalent to the profile of the VUNA awards) this could signal the beginning of the epidemic being taken seriously by local level officials and provide an incentive for effective responses.

What does leadership on HIV/AIDS mean and where is it located?

So what is required to both make local government politicians and officials aware of this responsibility and to create the mind shift necessary for integrated, innovative planning that takes HIV/AIDS into account?

Speaking of leadership in South Africa brings to mind political party leadership and politicians, ward councillors and mayors. This is where political leadership of municipalities is vested (dplg 1998). Good leaders are those who are able to speak, to convince and to influence. They are not always popular and have the ability to make difficult and unpopular decisions. More importantly, they should have the ability to bring about useful and relevant changes that have positive effects (Schmidt 2009). A good leader can recognise his or her role as well as that played by others. This means understanding the context within which their leadership role is meant to be carried out so that there is a clear understanding of the competing interests that requires these difficult and often complex decisions to be made. In the South African context, a good leader would take cognisance of poverty, unemployment, inequality and the overall historical context of the country while carrying out his or her mandate. This means having the authority and foresight to make the necessary decisions within an existing and challenging context while at the same time balancing the competing and conflicting interests that arise out of this reality.

what is required ... to create the mind shift necessary for integrated, innovative planning that takes HIV/AIDS into account?

With the above in mind, an effective HIV/AIDS response by local government requires leadership at different levels.

Political leadership

Seniority in political office does not necessarily relate directly to the quality of leadership exercised.

Box 3 – The case of Dr Thys Von Mollendorf

While the debates around ARVs and treatment were raging in South Africa, it was clear that many people were dying without the life saving drugs. Recognising the severity of the epidemic, a number of medical practitioners took the unpopular decision to flout the status quo by providing antiretroviral treatment to those who needed the medication. Dr Thys Von Mollendorf, senior superintendent at a state hospital in Mpumalanga, was one of the first doctors to do so and the decision to provide ARVs (informed by his position as a medical doctor) ultimately led to his dismissal from the hospital. The sustained attempt by the Mpumalanga provincial health department to derail the hospital project, which provided ARVs to rape survivors, is a sad example of the inability to move beyond politics and to recognise the critical needs of people (Van der Vliet 2004, Von Mollendorf 2009).

Effective leadership in this instance would have meant the opening up of space to debate and engage on HIV/AIDS and especially to engage civil society, business and other relevant actors so that an inclusive and negotiated approach to the epidemic could have been developed. Politicians need to recognise that their constituents are directly affected by the HIV/AIDS epidemic and that unless a sustainable and long-term solution is found to deal with HIV/AIDS, this will have far reaching consequences for democracy. Mattes (2003:8) notes that 'the epidemic may reduce the importance which people attach to democracy because of more urgent priorities such as simple survival' and that 'mounting AIDS deaths and illness will reduce the absolute number of citizens able to vote or participate in public life'. An increasingly sick populace is likely to be more dependent on government and potentially less concerned about the quality of their leaders.

Good political leadership is critical for shaping the vision and priorities for government and as a result they play a critical role in determining where resources are allocated and which issues become priority areas.

Unless a sustainable and long-term solution is found to deal with HIV/AIDS, this will have far reaching consequences for democracy

Political leaders themselves are not immune to HIV infection and its impacts. A recent Institute for Democracy (Idasa) study indicated that almost 60 percent of the ward councillors that were interviewed indicated that they had lost a relative or friend to AIDS while at least 1 in 6 indicated that they knew of a fellow councillor that had died of AIDS. Even amongst councillors it was found that stigma was a major problem and that many feared rejection if they were ever to test HIV positive and be open about it (Chirambo and Steyn 2009). If stigma remains rife amongst political representatives how much more so amongst the general population? Political representatives should create the space for others to speak about HIV/AIDS by normalising the discourse around the epidemic. They should also speak openly about their own experiences of the epidemic. This would be a true display of leadership while at the same time go a long way towards reducing stigma and denial.

Public leadership

While there is a distinction between political and public leadership, it is inevitable that the two will overlap and inform each other and thus there has to be consensus about long-term goals and visions and how they will be realised (Schmidt 2009). In terms of HIV/AIDS this has not always been the case. This has led, in some instances, to a large amount of conflict and disagreement amongst politicians and practitioners, as illustrated by the example of Dr Von Mollendorf (See Box 3).

His example illustrates that it is sometimes necessary for those in positions of authority to take decisions that are contradictory to national stance, based on an ethical position. The decision taken by Dr Von Mollendorf and his team confirmed both their commitment to assisting people who are HIV positive and also their willingness to take tough decisions. Given the contentiousness of the situation, these actions showed remarkable leadership in a context where positive and ethical leadership in terms of HIV/AIDS was sorely needed. It is also an instance where what was required were people willing to look beyond the status quo to recognise that in some instances an "unpopular" decision is necessary. It speaks to the fact that leaders should be able to take the unpopular route that will ultimately be in the interest of those they serve and to think ahead and see the "bigger picture".

Good public leadership by senior management recognises challenges within the local context and motivates for resources and plans to address these. For example, the director for housing would be displaying forward thinking and innovative leadership if he or she recognised that housing and settlement design plays a fundamental role in decreasing vulnerability to HIV infection as good design would improve the overall quality of people's lives. He/she could then direct time and human resources to ensure that sensitivity to and understanding of HIV/AIDS is incorporated into the housing delivery plan of the municipality.

Role of 'champions'

At a local level, an effective response to HIV/AIDS requires that the municipality as an institution sets itself apart by becoming a pioneer and innovator. Yet, this is dependent on the existence of visionary leadership, both by politicians and the officials responsible for implementation of plans and policies

Box 4 – Municipal leadership on HIV/AIDS

City of Cape Town

Despite the national debates that were raging about HIV/AIDS, the Health Department of the City of Cape Town, in 1999, entered an agreement with the NGO Medicins Sans Frontieres (MSF) to provide ARVs to people living with AIDS in Khayelitsha Township. Two years later, in 2001, MSF also signed an agreement with the Provincial Government of the Western Cape to provide affordable ARVs to people with AIDS (MSF et al 2008). In addition the City launched a multi-sectoral committee, the HIV/AIDS and TB Coordinating Committee in 2001. The Committee, driven by the Department of Health and its charismatic director, recognised that HIV/AIDS was not a health concern alone and that all sector departments as well as civil society needed to be involved in the City's HIV/AIDS response.

Msunduzi local municipality

In 2001, encouraged by the high HIV/AIDS prevalence rate of 36 percent amongst women attending ante-natal clinics, the Msunduzi municipality launched its HIV/AIDS Strategy together with civil society stakeholders. This was one of the municipal strategies to engage with the epidemic in a specific area and, despite some of its later challenges, remains one of the best examples of what can be achieved through effective leadership and partnerships amongst various stakeholders. A significant reason for the success of the strategy was the fact that the municipality, despite the lack of direction from national government, recognised the need to respond to the epidemic and did so in a manner that allowed for the sharing of ideas, expertise, insights and joint planning. The leadership role played by the municipality was thus of critical importance particularly the political buy-in from the deputy mayor who was a key champion in the process. Amongst the reasons identified for the success of the strategy was the fact that the municipality played a strategic role and that it had the resources and authority to address gaps where they were identified. A key point is that the municipality was regarded as a neutral player and that it made it the ideal leader for the HIV/AIDS strategy (BESG 2003).

at local levels. The Cape Town experience (See Box 4) highlights the importance of a champion who possesses the necessary authority to ensure that the initiative is supported and prioritised (Smith 2007). The City of Cape Town response illustrates committed and courageous leadership. This requires HIV/AIDS champions. However, this should not be entirely dependent on the role of an individual and the process should in fact draw on the expertise and commitment of champions from different constituencies. In the Msunduzi local municipality (See Box 4) a factor which was an advantage early on in the strategy, proved to be part of the reason why it ultimately faltered, namely that much of the strength of the strategy depended on the role of the deputy mayor as the champion (BESG 2007). Thus while having an internal champion, especially one with authority and influence is important, the success of the entire strategy should not rest on this factor.

Leadership at community level and the role of community leaders

It is of course not only political or administrative leadership that is required for an effective response to HIV/AIDS but also community leaders and community organisations. The most obvious example is the role played by the Treatment Action Campaign (TAC) which has been the most influential HIV/AIDS movement to date. By taking government to task, particularly in getting the courts to order government to provide nevirapine to all pregnant women during childbirth, the TAC has shown the importance of recognising the opinions and experiences of ordinary citizens (Van der Vliet 2004). This has allowed the TAC to become an extremely important role player in South Africa (and globally). Cognisance should also be taken of the many smaller organisations and movements at community level (especially for their role in providing essential home-based care and responding to the needs of vulnerable children and orphans).

Yet, while a lot has been done on the part of communities, spaces should be opened by local government for effective community participation while communities should themselves be forward thinking and innovative in terms of how they engage with the local level representatives and elected councillors. While these organisations are invaluable in terms of providing support for home-based care initiatives and responding to the needs of orphans and vulnerable children, they should broaden their scope to include a focus on developmental challenges which are linked to HIV/AIDS in their communities. This could include efforts to sensitise councillors and municipal officials to the plight of vulnerable and marginalised communities and how HIV/AIDS affects the daily existence of individuals, households and communities at large. Strong and courageous community leadership is also about breaking the silence around issues like rape, the stigmatisation of people who are HIV positive, sexuality and sex and challenges associated with HIV/AIDS.

> Visionary and insightful leadership is critical for a successful, effective and sustainable HIV/AIDS response

Local government has a critical enabling and connecting role to play in this regard. For example, municipalities could enable key stakeholders (community and faith-based organisations) to participate in the development of an effective local HIV/AIDS response by providing access to information and spaces for these actors to meet and connect. Local government can also connect different stakeholders by acting as a referral point between critical services (voluntary counselling and testing, ARV treatment) and the people who need them (dplg 2007).

Conclusion

As illustrated in this paper, visionary and insightful leadership is critical for a successful, effective and sustainable HIV/AIDS response. This requires more than simply carrying out a mandate and responsibilities on a day-to-day basis. It also requires insight, innovation, a willingness to make difficult decisions and even engage in unpopular actions that might go against the status quo. The complexity of this epidemic requires those in positions of power and authority as well as ordinary officials to find ways of not just 'reproducing but transforming society' (Van Donk and Pieterse 2008: 65). HIV/AIDS has become everyone's problem and the devastating impacts of the epidemic are becoming increasingly apparent and existing methods have, on their own, proved to be insufficient. As the examples, of Dr Von Mollendorf, Mr Mokoena, the City of Cape Town and the Msunduzi Municipality show, it takes commitment, passion and foresight to show true leadership in the face of adversity if South Africa is to come to grips with its HIV/AIDS epidemic and overcome its developmental challenges. Developmental local government has a particular role to play in this regard and it is critical that it rises to the occasion and becomes an innovator and pioneer. This paper does not try to suggest that leadership is about one or the other and that strong public leadership is a response to weak political leadership (as in the case of Dr Von Mollendorf). Also, it does not suggest an oversimplifying of the constitutional context or the issue of leadership. Instead, it recognises that all the leadership styles outlined above are interconnected and are not mutually exclusive. Thus an effective leadership response to HIV/AIDS will mean that leadership exists at all four these levels, while reinforcing and inspiring one another.

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Notes

1 In many other instances and research done by others, reference has been made to HIV and AIDS as a way of recognising the different nature and impacts of infection with HIV compared to the development of AIDS, and its related illnesses. While this distinction is recognised, this paper will use the abbreviation "HIV/AIDS."

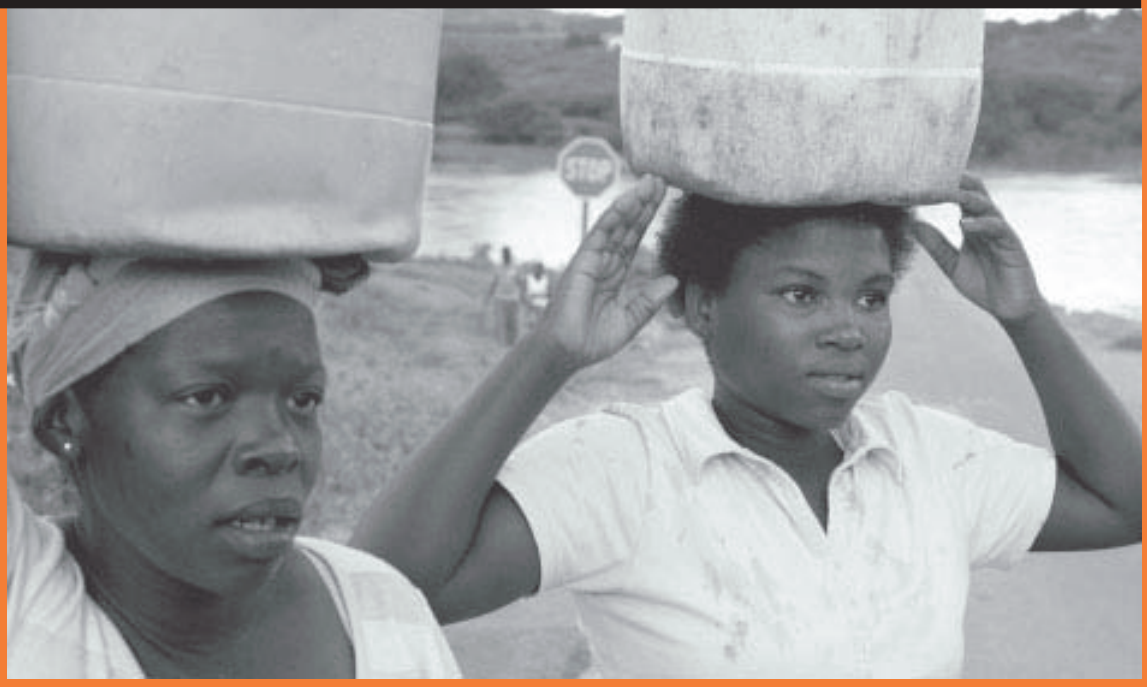
2 Personal correspondence with Professor Mark Swilling, 10 May 2009.

3 Notwithstanding recent criticisms and concerns about the Vuna awards.

Free Basic Services in Rural KwaZulu-Natal
The Built Environment Support Group

By Daniel Bailey, Built Environment Support Group (BESG)

A key task of leadership is to transform our municipalities to ensure that there is commitment to the ideals of the Constitution and a developmental state. This includes realising socio-economic rights through service delivery, ensuring that citizens are represented and that their needs are being meet on a progressive basis.



Picture by: John Robinson

THIS paper scrutinises the extent to which rural municipalities within uMgungundlovu District in KwaZulu-Natal are improving service delivery to the poor. Specifically, it examines the extent to which the municipalities provide free basic services to the indigent, and reports on public participation processes and the extent to which indigent people are included in integrated development plans (IDPs) and budgeting.

A measure to alleviate poverty

National government has strongly promoted the provision of free basic services to alleviate poverty, with the target of delivering these services to 100% of households by 2010. A study undertaken by the former Department of Provincial and Local Government (dplg) in 2005 showed that 84% of municipalities were implementing some form of free basic services. Free basic water tended to be the main free service supplied (83%) in poor communities, followed by free basic electricity (64%).

Further figures supplied to the Provincial and Local Government Portfolio Committee in 2005 suggest that 70% of the total population of 46 553 296 was being provided with free basic water, and 61% of the 29 378 792 indigent population was provided with free basic water (South Africa 2006a).

To ensure that all indigent people receive free basic services, the government committed itself to a framework for indigent support policy. In 2005, dplg published guidelines for a Framework for a Municipal Indigent Policy. This provides the basis for formulating indigent policies at the municipal level and the implementation of the constitutional responsibility to ensure people have access to free basic services (Conteh, Dettman, Dugard, Langford and Tissington 2008). Policy that supports indigent households is aimed at including those currently excluded from access to basic services, through the provision of a social safety net, and should specify criteria for eligibility, quantities of service that are free, tariff structure, registration processes and debt management (South Africa 2005).

Indigent households continue to build up 'debt' with municipalities and face restrictions or, in some cases disconnection, of services

In terms of indigent policy, indigent free basic services, provided by municipalities to poor households at no cost, include water, electricity, sanitation and waste removal. These services include a minimum amount of electricity, water and sanitation that is sufficient to cater for the basic needs of a poor household (BESG 2008).

Provisions relating to free basic service delivery

- The Constitution says:
  ...in section 152 that one of the objectives of local government is 'to ensure the provision of services in a sustainable manner'.
  …in section 27 that 'everyone has the right to have access to health care services, sufficient food and water….(2) The state must take reasonable legislative and other measures to achieve the progressive realisation of each of these rights'.
  …in section 24 that 'everyone has the right to an environment that is not harmful to their health or well being'.
- Government has committed to a Framework for a Municipal Indigent Policy (South Africa, 2005).
- The Municipal Systems Act in section 73 says that: 'A municipality must give effect to the provisions of the Constitution and ensure that all members of the local community have access to at least the minimum level of basic municipal services.' Section 74 says that a tariff policy must ensure that 'poor households have access to at least basic services through subsidisation of tariffs for poor households'.

According to the guidelines drawn up by the former dplg, local government is expected to provide at least the following essential services: water supply, sanitation, refuse removal, a supply of basic energy and assistance in the housing process. The Division of Revenue Act sees the characteristics of free basic services as distinguishing between poor households connected to services and those that are not connected to services so that alternatives can be provided, recognising water reticulation, sanitation,

refuse removal and electricity reticulation as the priority basic services, and providing municipal health services to all households (South Africa 2009a).

People are classified as indigent if they do not have access to sufficient water, basic sanitation, refuse removal, environmental health, basic energy, health care, housing, food and clothing (South Africa 2005).

The national indigent framework makes the point that 'an indigent policy will only be fully functional once subsidies are targeted in such a way that the indigent benefit and those who are not indigent pay' (Erasibo 2005:19). The legal framework for implementation of free basic services is essentially that of tariff setting, which is guided by the Constitution of the Republic of South Africa (Act No. 108 of 1996), the Local Government: Municipal Systems Act (Act No. 32 of 2000) and the Water Services Act (Act No. 108 of 1997).

Free basic water

In 2007, a nationwide community survey revealed that South Africa had made significant progress in improving access to water supply.[1] However, it should be clearly accepted that the right to water is a basic human right, and that the lack of adequate water supply and sanitation constrains opportunities and intensifies the problems of vulnerable groups particularly affected by HIV/AIDS and other diseases (Africities Summit 2006).

Legal provisions pertaining to water services

- Section 27(1b) of the Constitution provides everyone with the right of access to sufficient water and section 27(2) obliges the state to 'take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation' of this right. Schedule 4(b) of the Constitution determines that water and sanitation services are local government matters under the supervision of national and provincial government.
- The Water Services Act determines in section 10(1) that: 'The Minister may, with the concurrence of the Minister of Finance, from time to time prescribe norms and standards in respect of tariffs for water services'. Section 10(4) stipulates that 'No Water Services Institution may use a tariff which is substantially different from any prescribed norms and standards'. These norms and standards for tariffs have been promulgated by the Minister of Water Affairs. In Regulation 3(2), a water services institution must consider the right of access to basic water supply and the right of access to basic sanitation when determining which water services tariffs are to be subsidised.
- The Water Services Act Section 4(3)(c) states that procedures for limitation or discontinuation of water services must not result in a person being denied access to basic water services for non-payment, where that person proves, to the satisfaction of the relevant water services authority, that he or she is unable to pay for basic services.
- Section 5 of the Water Services Act states that if water services provided by water services institutions fail to meet the needs of all their customers, they must give preference to the provision of basic water supply and basic sanitation. In cases of emergency, basic water supply and sanitation services must be provided, even if it is at the cost of the water services authority.

- The Water Services Act states that the minimum standard for basic water supply services is –

  3 (a) the provision of appropriate education in respect of effective water use; and

  (b) a minimum quantity of potable water of 25 litres per person per day or 6kl per household per month –

  (i) at a minimum flow rate of not less than 10 litres per minute;

  (ii) within 200 metres of a household; and

  (iii) with an effectiveness such that no consumer is without a supply for more than seven full days in any year.

  (South Africa 2001a)
- Recent jurisprudence, in the Mazibuko case, reflects that the state must review its policies on providing services to indigent households in order to ensure the progressive realisation of socioeconomic rights. 'In most circumstances it will be reasonable for municipalities and provinces to strive first to achieve the prescribed (and, in the absence of a challenge, presumptively reasonable) minimum standard, before being required to go beyond that minimum standard for those to whom the minimum is already being supplied' (O'Regan 2009:37).

Free basic electricity

Local government and Eskom, the national distributor of electricity, are responsible for the delivery of free basic electricity to poor households (South Africa 2003). In general, municipalities in urban areas distribute electricity generated by Eskom, while in infrastructure-poor rural municipalities Eskom supplies people directly.

The policy on free basic electricity, approved by the national government, provides for free basic electricity of 50 kilo-Watt hours (kWh) per month to indigent households (Mabuyakhulu 2005). However, the rollout of this has been delayed in many areas, including rural parts of KwaZulu-Natal, and is not as widely implemented as free basic water (Mabuyakhulu 2005).

Municipalities are responsible for providing access to free basic electricity for indigent households, or where there is inadequate electrical infrastructure, they should provide free basic alternative energy to indigent households as determined by their indigent register or policy (South Africa undated; Africities Summit 2006).

There has been little transparency or accountability in the spending of equitable share

Stipulated quantity of free basic electricity (FBE)

- R48 per household per month for non-grid electrical systems (i.e. solar power) or 50kWh per household per month for grid electrical systems is the FBE allocation under the FBE policy.
- R55 per household per month for indigent un-electrified households under the Free Basic Alternative Energy Policy (e.g. paraffin, LPG and coal).

Free basic sanitation and refuse removal

Free basic sanitation policy has been developed, but has not yet been approved or implemented. The Department of Water Affairs is responsible for developing a strategy, together with a set of guidelines to assist Water Service Authorities to implement the free basic sanitation policy (Conteh *et al* 2008). However, the Framework for a Municipal Indigent Policy says that sanitation services should include either water-borne, VIP (ventilation improved pit) toilets or equivalent services free of charge (South Africa 2005).

A policy for free basic refuse removal has yet not been implemented. The Department of Environmental Affairs is in the process of developing a framework for the provision of this service (GCIS:2007). Refuse removal is part of the municipality's function as outlined in Schedule 4B of the Constitution.

Financing free basic services

The national indigent framework recognises that municipalities need to have the capacity and resources to roll out and maintain free basic services. Municipalities have access to the following sources to develop a subsidy framework for free basic services that will benefit the indigent:

- Cross subsidies from non-residential and high-income consumers using the particular service, whereby they are charged more than the service costs to generate a surplus to be used to cover the cost of services to the indigent.
- The own revenue of the municipality, which includes property rates and electricity surpluses.
- National Treasury, through the equitable share (Erasibo 2005:19). This is an important component as municipal funding is unable to fund free basic services (Conteh *et al* 2008).

The Division of Revenue Act (DORA) seeks to manage and promote the equitable allocation of the country's collected revenue from the national to the local level. This allocation makes possible the distribution of free basic services to households with limited capacity to pay for them. The equitable share allocation is an unconditional grant from national government to local government, meaning that municipalities are not required to report on how they allocate or spend the funds.

The Municipal Infrastructure Grant (MIG) provides funding for infrastructure programmes, in addition to the municipal budgets, to address backlogs in the infrastructure required to provide basic services (South Africa 2009a).

IDPs have tended to be formulated by consultants on behalf of the municipalities with very little meaningful community participation in the process

Responsibilities of municipalities

There are four key documents that prescribe the role of municipalities. These are the Constitution of South Africa (1996), the White Paper on Local Government (1998), The Municipal Systems Act (Act No. 32 of 2000) and the Municipal Structures Act (Act No. 117 of 1998). The White Paper indicates that the district municipality is responsible for co-ordination of local governance, bulk infrastructure development, technical support to local municipalities and a direct

service provider in rural areas where local municipalities are unviable (CLC 2007).

The Municipal Systems Act, in Section 73(1) states that 'a municipality must give priority to the basic needs of the local community' and in section 73(2a) 'that services must be equitable and accessible'. Schedules 4B and 5B of the Constitution put responsibility for water, electricity, refuse and sanitation roll out on municipalities (South Africa 1996). The Municipal Structures Act divides the roles between district and local municipalities. Generally, the district municipalities are responsible for water, sanitation and electricity and local municipalities are responsible for refuse. However, the responsibility for these functions shifts between the two levels.

Conduct of staff and councillors

It is critical to the functioning of the municipality and the delivery of free basic services that municipal staff and councillors ensure their conduct is in the public interest (South Africa 2000). Free basic service policies, no matter how well crafted and funded, have to be implemented through municipalities. Therefore, the effective implementation of free basic services policy and the prudent use of equitable share depend on ethical and committed leadership within the municipality. The Municipal Systems Act describes the conduct expected of councillors and municipal staff.

> The conduct of municipal staff and councillors continues not to be monitored effectively and disciplinary measures are not taken where justified

Code of conduct for councillors and staff

The Municipal Systems Act (Schedule 1 and 2) includes the following provisions:

- A councillor or municipal staff member must perform the functions of office in good faith, honestly, diligently and in a transparent manner.
- A councillor or municipal staff member may not use the position or privileges of a councillor for private gain or to improperly benefit another person.
- A municipal staff member must foster a culture of commitment to serving the public and a collective sense of responsibility for performance in terms of standards and targets.

In addition, municipalities must formulate and implement performance management systems. These systems should show how municipal processes of performance planning, monitoring, measurement, review, reporting and improvement are undertaken and managed (South Africa 2001b).

CASE STUDY:
FREE BASIC SERVICES (FBS) IN PRACTICE IN THE UMGUNGUNDLOVU DISTRICT

This case study of the rural district in KwaZulu-Natal, seeks to examine the following issues:

- How FBS is being implemented in practice.
- How well municipalities have performed in FBS delivery.
- The extent of service delivery backlogs.
- How indigent policy is being used in the rollout of FBS.
- What the functions of the municipalities are with regard to FBS.
- How the equitable share allocation is calculated and used.
- How the performance of the municipality has affected FBS.
- Constraints to effective FBS delivery.

The focus is the local municipalities of Mpofana, Richmond and Impendle and the district municipality of uMgungundlovu. However, data and anecdotal evidence for other municipalities within the district are referred to, where appropriate. The findings are the product of secondary research into literature, legislation, policy and other documents affecting basic services, as well as primary research through interviews, personal communication with municipal officials and experiences with local government processes.

Service delivery backlogs

Table 1: Household (h-holds) distribution for uMgungundlovu District

Municipality	No. of h-holds	h-holds as % of District	No. of Rural h-holds	Rural h-holds as % of District	No. of Urban h-holds	Urban h-holds % of District
uMshwathi	23737	10.96%	19261	21.41%	4475	3.53%
uMngeni	20487	9.46%	8470	9.42%	12016	9.48%
Mooi Mpofana	9597	4.43%	5561	6.18%	4035	3.18%
Impendle	7344	3.39%	7269	8.08%	74	0.06%
Msunduzi	130387	60.18%	27467	30.54%	102930	81.23%
Mkhambathini	12551	5.79%	12322	13.70%	230	0.18%
Richmond	12533	5.79%	9589	10.66%	2947	2.33%
uMgungundlovu	**216646**	**100%**	**89949**	**100%**	**126707**	**100%**

(Impendle Municipality 2006)

Table 1 shows that rural municipalities represent a small proportion of the total number of households in the district. The percentage of rural households in the district is 42%, compared with urban households at 58%. These figures, although based on 2001 census data, are used to determine infrastructure and service delivery funding allocations, such as the equitable share from national government (Impendle Municipality 2006). The lower population figures for rural areas have meant that rural service delivery has been neglected, as urban areas have been prioritised. As a result, there are huge basic services backlogs in rural areas.

Table 2: Basic services backlogs in uMgungundlovu District vs the Province of KwaZulu-Natal

Basic services	District backlog	Province backlog
Access to water	15.61%	6.04%
Access to sanitation	41.29%	9.72%
Access to electricity	25.64%	6.90%
Access to waste removal	53.97%	11.25%

(Impendle Municipality 2006)

Table 2 indicates that the uMgungundlovu District backlogs (lack of related infrastructure for the service specified) are higher than the average for KwaZulu-Natal provincial backlogs. These are also high compared with other urban inland districts (WFA *et al* 2006).

Table 3 shows the backlogs for the Mpofana, Richmond and Impendle municipalities. According to these statistics, the rollout of services is limited and achieving the national objective of providing basic services to all households in the district by 2010 is unlikely.

Table 3: Basic service backlogs for four municipalities in the district

	Water	Electricity	Sanitation	Waste
uMgungundlovu	16%	26%	41%	54%
Mpofana	19%	64%	82%	55%
Richmond	35%	51%	35%	95%
Impendle	81%	16%	81%	99%

(Impendle Municipality 2006)

Indigent policy

The existence and implementation of a suitable indigent policy is important for effective free basic service delivery[2] . The purpose of this policy is to identify indigent households for access to free basic services. This research shows that even where there is a municipal indigent support policy, it is often vague and not being applied. Instead of targeting indigent groups, a blanket approach to free basic service delivery is utilised.

Of the four municipalities in the study, only Impendle Municipality has an active indigent policy where indigent groups are targeted for free basic services. The other three municipalities provide free basic services to the entire population within their jurisdiction. This approach reflects poorly on leadership as commitment and accountability towards targeting poor and vulnerable households is avoided. In the case of uMgungundlovu District Municipality, a blanket approach was in use as no billing system existed, which is in contravention of the Municipal Systems Act. On the 1 July 2009 a billing system was established but the blanket approach still applies. The cost effect of blanket approaches on revenue for the respective municipalities is considerable.

Table 4: Free basic services provided

	Water	Electricity	Sanitation	Waste
uMgungundlovu Municipality	Free basic water (6 kl per month)	Function of local municipality or Eskom	Provision of VIP and water borne sanitation	No collection
Mpofana Municipality	Function of district municipality	Eskom supply, no free basic energy provided	Function of district municipality	Collection throughout
Richmond Municipality	Function of district municipality	Eskom supply, free basic energy provided to indigent	Function of district district municipality	Collection in town only
Impendle Municipality	Function of district municipality	Eskom supply, free basic energy provided to indigent	Function of district municipality	Collection in town only (62 sites)

Table 4 shows the functions of respective municipalities in respect of free basic services. It is important to point out that 6kl of water and 50kWh of electricity per month are the minimum requirements for free basic services stipulated by national policy. There is international evidence that these allocations are inadequate, especially for families dealing facing sickness. The Pacific Institute for Studies in Development, Environment and Security recommends 50l of water per person per day for drinking, cooking, bathing and sanitation (Gleick 1996). The Department of Water Affairs has acknowledged international expert advice that 6kl free basic water per

household per month is insufficient and should be increased to 12kl per household per month, which was what government's 1994 Reconstruction and Development Programme (RDP) stipulated as a medium-term goal (CALS 2008).

It also needs to be noted that the figure of 6kl per household per month was not intended to provide for toilet flushing (South Africa 2007). Thus free basic service allocations need to be reviewed as indigent households continue to fall into arrears with their basic service accounts (Conteh *et al* 2008).

Another important issue in rural municipalities is that of farm dwellers. Farm dwellers are at a distinct disadvantage when it comes to service provision and indigent policy. Farm owners do not want to encourage infrastructure development due to the perceived risk of land invasion and claims. This means that farm labourers and dwellers do not have access to free basic services. In rural municipalities focused on agricultural production, like Mpofana and Richmond, this is a large proportion of the work force.

Equitable share allocations

This study found that the biggest single factor affecting basic services is the equitable share allocation and how it is used. The equitable share is allocated to district and local municipalities by National Treasury to support service delivery. In the case of municipalities that cannot generate their own revenue, the equitable share is the lifeblood of the municipality. However, the equitable share formula is not providing rural municipalities with sufficient finance to provide basic services to citizens.

According to Mpofana Municipal Manager, Mr M. Madlala, the equitable share calculations take into account the size of the population and not service delivery backlogs in a municipality. Furthermore, the revenue-raising capacity correction factor is based on projected revenue figures and, as in the case of Mpofana, not actual revenue. The actual revenue is usually much lower due to non-payment and bad debt[3]. This results in municipalities having less funding available for service delivery[4] (See Figure 1). Therefore, it is in the interest of a municipality (at least in terms of equitable share) to project low revenues in order to boost their equitable share from National Treasury.

Figure 1: Structure of the local government equitable share formula

Grant = Adjustment factor*(BS + D + I) – R ± C

where

BS is the basic services component

D is the development component

I is the institutional support component

R is the revenue-raising capacity correction, and

C is a correction and stabilisation factor.

(South Africa 2009b)

The equitable share formula is made up of different components as shown in Figure 1. The most critical contribution to the formula is that of basic services. The basic services component makes up 92% of the equitable share and hence is the focus (South Africa 2009b). However, the institutional support component is supposed to assist with operational, administrative and governance costs. In practice, this component is inadequate for the optimal functioning of rural municipalities. Further, census data from 2001 is used for equitable share calculations, which does not provide a true statistical reflection of households in 2009 (Conteh *et al* 2008).

Figure 2 shows that the basic service component is made up of the four basic services and a yearly municipal health service levy. The breakdown of the subsidy for each basic service includes that for indigent or poor households provided with basic services and those that are unserviced.

Table 5 identifies the rand value of the basic service allocation for both serviced and unserviced households and the adjusted subsidy as recalculated by the adjustment factor. DORA is not clear about how the adjustment factor is calculated.

Figure 2: The make up of the basic services component

The basic services component

*BS=[Water Subsidy 1*Poor with Water + Water Subsidy 2*Poor without Water] +*
*[Sanitation Subsidy 1*Poor with Sanitation + Sanitation Subsidy 2*Poor without Sanitation] +*
*[Refuse Subsidy 1*Poor with Refuse + Refuse Subsidy 2*Poor without Refuse] +*
*[Electricity Subsidy 1*Poor with Electricity + Electricity Subsidy 2*Poor without Electricity] +*
*[Municipal Health Services*Total number of households]*

(South Africa 2009b)

Table 5: Basic service costs and their adjusted value

	Serviced households		Unserviced households	
	Basic service allocation	Adjusted subsidy 2009/2010	Basic service allocation	Adjusted subsidy 2009/2010
Electricity	45	136.9	16	50.6
Refuse	30	60.3	10	44.5
Water	30	97	10	28.9
Sanitation	30	64	10	42.7
Total	**135**	**358.1**	**46**	**166.7**

(South Africa 2009b)

The adjustment factor inflates the basic service component substantially, as shown in Table 5. As a result, the equitable share is much larger than it would be based purely on basic service allocations. Similarly, the actual average annual subsidy per household for the provision of municipal health services is R48 compared to the allocated cost of R18 per year.

Table 6: Equitable share allocations for uMgungundlovu District

Municipality	Equitable Share Allocations (R millions)			
	2008/2009	2009/2010	2010/2011	2011/2012
B KZN221 uMshwathi	22356	32399	40 030	43681
B KZN222 uMngeni	15879	19999	25415	27949
B KZN223 Mooi Mpofana	9113	13106	16228	17717
B KZN224 Impendle	8997	12919	15941	17392
B KZN225 Msunduzi	166588	199824	255504	284638
B KZN226 Mkhambathini	11298	16242	20028	21849
B KZN227 Richmond	11827	17073	21080	23002
C DC22 uMgungundlovu District Municipality	180165	218249	254738	264245
Total: uMgungundlovu Municipalities	**426223**	**529810**	**648965**	**700471**

(South Africa 2009a)

There are two points important to these findings.

Firstly, the equitable share formula is made up of a basic services component (as shown in Table 5), including services that municipalities currently do not provide[5]. Table 4 shows that the local municipalities do not provide water or sanitation functions. Furthermore, Mpofana and the uMgungundlovu District Municipality do not make provision for free basic services. The uMgungundlovu District Municipality also does not provide municipal health services, or refuse collection (only partial disposal)[6]. The adjustment of water and sanitation functions away from local municipalities to the district municipality should theoretically reduce the equitable share for local municipalities not operating these functions. However, this would impact negatively on these municipalities, making them even less viable. This shows that the equitable share formula has not been adjusted to channel funds to the service provider responsible for the designated basic service.

Secondly, the equitable share allocation is being used for operational costs, including staff salaries, rather than for delivery of basic services to indigent households. The unconditional nature of the equitable share grant needs to be revisited, with guidelines for expenditure and reporting of equitable share spending in order to improve service delivery to poor and vulnerable households.

Municipal performance

Levels of performance are a critical factor affecting free basic service delivery, with performance management systems not in place or not being used. 'Very few municipalities have been monitoring the implementation of their free basic services programme and even less can talk to the real impacts that the programme has had on the quality of life of beneficiaries' (Erasibo 2005:17).

Former Minister of Local Government, Housing and Traditional Affairs in KwaZulu-Natal, Mike Mabuyakhulu, in a meeting with mayors of uMgungundlovu district on 18 May 2006, highlighted the fact that the municipalities have failed to deliver basic services. He blamed this on a lack of community-centred approaches to governance, a high proportion of municipal expenditure on wages, councillors' self-enrichment and corruption[7]. Auditor General reports have also indicated incidences of procedural non-compliance related to implementation of performance management systems, the submission of financial statements, incorrect and incomplete financials, and overpayment (Mabuyakhulu 2006).

The issues Mabuyakhulu raises are indicative of the state of local government in South Africa. The Minister for Cooperative Governance and Traditional Affairs, Shicelo Shiceka, confirms that a new national priority is to reduce the instances of fraud and corruption in municipalities (Shiceka 2009).

Municipalities surveyed in this study have indicated that they struggle because of resource constraints. 'Many municipalities highlight that they do not believe they have sufficient funds for a full-scale implementation of the free basic services programme' (Erasibo 2005:17). MIG funding in particular is not sufficient to achieve the national basic service delivery targets to address the backlogs (Mabuyakhulu 2006).

But there is also evidence to the contrary, showing that municipalities are unable to spend their budget allocations (South Africa 2006b). Impendle Municipality had their funding allocation for the Management Assistance Programme[8] (MAP) withdrawn as a result of non-expenditure (Mabuyakhulu 2006). This was after the entire senior management was suspended after a forensic investigation. The MAP was part of a strategy to improve spending of conditional grants like MIG and to meet financial reporting requirements, as the Auditor General's report had found constant financial discrepancies since 2003 (PMG 2008).

A point made by the Centre for Applied Legal Studies is that municipalities have been preoccupied with cost recovery and credit control rather than prioritising the needs of the poor (CALS 2008; Conteh *et al* 2008). This preoccupation with cost recovery is an imposed requirement, as municipalities cannot budget for a deficit, unlike their provincial and national counterparts. In attempting to secure sufficient funding for projects and operations, coupled with poor and unaccountable administrative capacity, municipalities have neglected the implementation of free basic services.

That the uMgungundlovu Municipality for a number of years under-performed even with its relatively large equitable share allocation shows the negative impact of poor leadership, incompetence and corruption[9]. The leadership of the municipality was replaced, and while the new administration seems to be recovering lost ground, there are still huge institutional capacity gaps.

In Impendle, the municipal manager has changed eight times since 2001[10]. Between 2004 and 2007, the senior management was suspended (and managers were dismissed) after a forensic investigation initiated by the provincial department. Last year the mayor was found to be using a municipal vehicle for private purposes, with her daily commute from Durban to Impendle resulting in operational costs of about R8 000 per month

(Mgaga 2008). She remains in her job. It is unknown if any disciplinary action was taken against the mayors of either municipality.

The municipality of Richmond has not had a municipal manager since April 2008[11] due to internal problems and the post is currently being advertised (Richmond and District Times 2009). Vacant leadership posts have implications for service delivery and general development in the municipality.

Staff turnover is high in rural municipalities, with vacancies persisting for long periods of time. Many staff members do not live in the municipalities where they work. The Impendle Municipality has a minibus that brings staff to work from Pietermaritzburg every day, a round trip of 160 km[12]. The lack of commitment to living in the municipality, a commuter culture, the perception of inadequate salaries and poor job satisfaction contribute to high staff turnover. Of these four points raised, job satisfaction can be identified as a priority, with the other three linked to issues of urbanisation. But a major reason for job dissatisfaction is that rural municipalities lack the resources for the huge challenges they face.

Public participation

The Good Governance Learning Network (GGLN) publication 'Local Democracy in Action' (2008) documents important legislation, policy and guidelines with regard to public participation. Very few reports have been written on the izimbizos across the province[13], but some observations can be made about the IDP and budget reviews in uMgungundlovu District in 2009.

In municipalities in which BESG works, a general observation has been that IDPs have tended to be formulated by consultants on behalf of the municipalities with very little meaningful community participation in the process. This lack of consultation is continuing.

A typical constraint to community participation has been the limited provision by municipalities of channels for informing the public about opportunities to participate in IDP and budget processes. For example, the only information provided about such meetings is a notice in a local newspaper, which has limited distribution both geographically and within poor communities. Even more concerning is that meetings are often publicised at very short notice or even after the event (Brisbane 2009).

There is also inappropriate reporting around the success of izimbizo. The Umphithi News (Umphithi News 2009:4), produced by the Msunduzi Municipality, reported that 'izimbizo provide them [the community] with the single opportunity to interact with city officials as far development is concerned'. This report indicates that people want to participate in local government, but lack the opportunity to do this. Izimbizo, as the single opportunity to contribute to their IDPs, are limited to an inadequate question and answer session and therefore do not provide a forum for substantive public participation. It was reported in the same article that 'some of the councillors indicated that izimbizo were costly and they should be discontinued'. This exemplifies ignorance of public participation legislation and avoidance of meaningful public interaction by councillors and municipal leadership.

Attendance at these meetings within the uMgungundlovu District has been high. People were bussed in from communities far from the venues. However, researchers observed that although attendance was good, there were high numbers of children present. This perhaps implies that people were motivated to attend by the promise of food and T-shirts. As BESG facilitator Sanele Dlamini observed, 'You didn't see people present who are paying taxes or rates'.

At the Richmond 2007/2008 annual report back, to which the public were invited for a consultative meeting, the public was given an opportunity to voice their concerns and issues (approximately 20 minutes) and thereafter was asked to leave the meeting. In this case, the public were not present for the report back and the primary reason for public presence was overlooked.

At the uMngeni Municipality IDP/budget meeting, there was a different situation. The meeting was advertised by a mobile unit the day before and was set down for 5pm so that working people were able to attend. The meeting, conducted in isiZulu with a detailed handout in isiZulu on the budget, started with a report back on IDP achievements and was followed by a two-hour question and answer session, which was open to the entire community. It seemed most people were satisfied and further comments and complaints were welcomed at the municipal offices. The municipality also mentioned that their annual report was available at their offices. However, this municipality has been notorious for under performance and, as is often the case, even though public comment and input may be noted, it is not acted upon.

Public participation has remained theoretical and eludes ordinary citizens. Government has tended to marginalise citizens from governance and policy making and as a result there has been very little substantive and deliberative participation in governance.[14]

Conclusion

The poor state of service delivery in rural areas of uMgungundlovu District points to a lack of transformation within the municipalities. This transformation, necessary to ensure the progressive realisation of socio-economic rights and a developmental state, has been a key task for local leadership.

After 15 years of democracy, there has been a high rate of failure in achieving service delivery targets. The national target of 100% of households receiving basic services by 2010 is unachievable given the current service delivery backlogs in uMgungundlovu District. Waste and sanitation, in particular, fall far short of targets.

Legislation, policy and guidelines, where present, are not adhered to. Constitutional rights to basic services are not being realised. A policy for the delivery of these services and the provision of municipal health services to all households has not been forthcoming. The poor rollout of basic services in uMgungundlovu District has been attributed to three key areas – inadequate indigent support policy, deficient equitable share and dismal municipal performance.

Generally, there has been little attempt by municipalities to target indigent groups for free basic service delivery. The blanket approach has been deemed more suitable as it is easier to implement and there has been little commitment shown by leadership to redirect resources to obviously poor and vulnerable households.

The objective of indigent policy is to target indigent groups for free service delivery. Blanket approaches are not specific and negate the positive impacts of cross subsidisation by those who can afford services so that free basic services can be progressively increased to those in need. Further, 6kl of water per month and 50kWh of electricity per month are the minimum quantities of free basic service required by legislation, but in reality people require more support, especially where there is a high prevalence of HIV and AIDS and other diseases. Some larger municipalities in South Africa have taken the initiative to increase basic service allocations, as provided in the guidelines.

Municipalities should be realising constitutional rights, including those in relation to access to services, on a progressive basis. However, indigent households continue to build up 'debt' with municipalities and face restrictions or, in some cases disconnection, of services. This is not the intention of national policy that is supposed to support indigent households in a market-driven economy to which they have no access.

It has been shown that there are problems[15] with the formula for determining equitable share allocation, which is the main source of finance for rural municipalities. DORA is unclear how equitable share allocations are calculated, and it is questionable whether the equitable share weightings and allocations are indeed equitable. There has been little transparency or accountability in the spending of equitable share, although National Treasury is currently in the process of changing this to ensure that municipalities do report on equitable share expenditure. Salaries and operational costs of municipalities, particularly in resource-poor rural municipalities, have been met by equitable share allocations meant for service delivery. This indicates that municipal leadership does not see service delivery as a critical priority, and also that resource-poor municipalities have had no alternative but to use equitable share funds for operational requirements.

Municipal performance has been poor. Service delivery is falling behind targets and poor households continue to be marginalised as a result. Staff capacity is a limiting factor in the performance of municipalities. High staff turnover due to low salaries, poor morale, corruption and incompetence has undermined effective leadership. The conduct of municipal staff and councillors continues not to be monitored effectively and disciplinary measures are not taken where justified.

Municipalities face irregularities with regard to finances, which point to performance management systems and internal auditing processes being inadequate or complicit in unethical behaviour[16]. The trend seems to be that the bigger municipalities in the district with larger funds are the main culprits for corruption and irregularities. The Auditor-General reports are the only insight the public has into the operations of municipalities, but these reports have not led to corrective action being taken by municipal management.

Participation processes continue to be superficial and little actual engagement with communities takes place, yet municipalities claim their consultation processes are successful. Citizens have little influence over the way development occurs or how services are delivered. In some municipalities, it is apparent that municipal officials and councillors do not want to be held accountable for poor service delivery, avoiding public meetings.

Public confidence in local government is at an all-time low. The Human Sciences Research Council (HSRC) has recorded a 20% drop of public confidence in local government, from 55% in 2004 to 34% in 2007 (HSRC 2008). The poor performance of municipalities and the marginalisation of public participation processes have contributed significantly to this. Ongoing corruption without consequences and the distancing of municipalities from civil society continue to undermine good governance.

Recommendations

- Good leadership practices in municipalities need to be sought out and exemplified.
- Municipal leaders should be role models for subordinates by upholding conduct entrenched in ethical standards set in legislation. They should be held accountable for their actions and be instrumental in halting corrupt practices.
- The equitable share formula needs to be reviewed to ensure rural municipalities have operational resources, over and above their share for service delivery.
- There should be transparency and accountability to local communities on the allocation and expenditure of the equitable share by municipalities. There should be conditions associated with the expenditure of equitable share allocations.
- A targeted approach to free basic services needs to be implemented using indigent policy based primarily on household income as a qualification criterion. A comprehensive socio-economic survey should be done to determine needs of communities and income levels in order to establish informed indigent criteria. Presently, 2001 census date is being used for the calculation of equitable share and indigent income.
- National and provincial government should exercise stronger oversight on Auditor-General findings where municipalities receive qualified or disclaimer reports. Penalties for non-compliance need to be considered.
- Municipal officials and councillors need to be trained in ethical principles and a monitoring system established to improve staff performance.
- Free basic service allocations need to be reviewed, taking into account research showing that current quantities are inadequate and the impact of the economic recession on indigent households.
- Farm owners should be engaged by municipalities to ensure that farm dwellers have access to services provided by the municipality or the farmer as a service provider (and compensated as such).
- Public participation processes need to be meaningful and constructive in order to achieve their objectives. While municipalities are required to submit annual reports on public consultation processes to the Department of Cooperative Governance and Traditional Affairs, the department does not have internal capacity to monitor and evaluate the quality of those processes.

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Notes

[1] The survey findings show that 88.6% of South Africans have access to piped water (Statistics South Africa, 2007. Community Survey, http://www.statssa.gov.za/community_new/content.asp).

[2] It is important to note that the dplg definition of indigent people (p3) is not utilised by municipalities. Indigent policy drafted by municipalities has been more specific usually based on income or property value.

[3] Madlala, M. 2 June 2009. Mpofana Municipal Manager. Personal Communication.

[4] Poor debt recovery is also because indigent policy is not utilised or inadequate for indigent households needs.

[5] The basic services component weightings associated with the respective basic service functions carried out by municipalities are not reflected in DORA.

[6] Jogiat, R. 18 May 2009. uMgungundlovu Municipality. Personal Communication.

[7] uMngeni Municipality has just been exposed for irregular remuneration, corruption, procedural non-compliance and financial misrepresentations (Naidoo, 2009; Dell, 2009).

[8] This programme aims to ensure the implementation of core municipal systems which will enhance service delivery, financial management and good management practices.

[9] Khuzwayo, S. 26 May 2009. uMgungundlovu Municipal Manager. Personal Communication.

[10] Zulu, K. 28 May 2009. Impendle Municipality. Personal Communication.

[11] Donnelly, W. 5 June 2009. Richmond Municipality Personal Communication.

[12] Zulu, K. 28 May 2009. Impendle Municipality. Personal Communication.

[13] Mahlangu, B. 18 May 2009. Public Policy Unit, Office of the Premier. Personal Communication.

[14] Mahlangu, B. 18 May 2009. Public Policy Unit, Office of the Premier. Personal Communication.

[15] Including:
- The utilisation of redundant census data and
- A lack of clarity regarding basic service weightings and the adjustment factor.

[16] 2003/2004 was damning with all the municipalities within the uMgungundlovu District receiving qualified, disclaimer or adverse audit opinions. However, the audit opinion for 2007/2008 indicates all municipalities, except Impendle, were credited with unqualified audits with findings. Only 1% of South African municipalities received clean unqualified audits for 2007/2008 (AGSA, 25 June 2009, personal communication).

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