



THE STATE OF OUR LOCAL DEMOCRACIES

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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.

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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.

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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.

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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.

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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.

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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 indispensable 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'.